



# **LAWS 2017, CONSTITUTIONAL AMENDMENT 1**

## **A JOINT RESOLUTION**

PROPOSING AMENDMENTS TO ARTICLE 6 OF THE CONSTITUTION OF NEW MEXICO TO GIVE THE LEGISLATURE AUTHORITY TO PROVIDE FOR APPELLATE JURISDICTION BY STATUTE.

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

### **Constitutional Amendment 1 Section 1 Laws 2017**

SECTION 1. It is proposed to amend Article 6, Section 13 of the constitution of New Mexico to read:

"The district court shall have original jurisdiction in all matters and causes not excepted in this constitution, and such jurisdiction of special cases and proceedings as provided by law, and appellate jurisdiction of cases originating in inferior courts and tribunals in their respective districts as provided by law, and supervisory control over the same. The district courts, or any judge thereof, shall have power to issue writs of habeas corpus, mandamus, injunction, quo warranto, certiorari, prohibition and all other writs, remedial or otherwise, in the exercise of their jurisdiction; provided that no such writs shall issue directed to judges or courts of equal or superior jurisdiction. The district courts shall also have the power of naturalization in accordance with the laws of the United States. Until otherwise provided by law, at least two terms of the district court shall be held annually in each county, at the county seat."

### **Constitutional Amendment 1 Section 2 Laws 2017**

SECTION 2. It is proposed to amend Article 6, Section 27 of the constitution of New Mexico to read:

"Appeals shall be allowed in all cases from the final judgments and decisions of the probate courts and other inferior courts as provided by law."

### **Constitutional Amendment 1 Section 3 Laws 2017**

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 2017, CONSTITUTIONAL AMENDMENT 2**

## **A JOINT RESOLUTION**

PROPOSING AN AMENDMENT TO ARTICLE 5 OF THE CONSTITUTION OF NEW MEXICO TO CREATE AN INDEPENDENT STATE ETHICS COMMISSION WITH JURISDICTION TO INVESTIGATE, ADJUDICATE AND ISSUE ADVISORY OPINIONS CONCERNING CIVIL VIOLATIONS OF LAWS GOVERNING ETHICS, STANDARDS OF CONDUCT AND REPORTING REQUIREMENTS AS PROVIDED BY LAW.

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

### **Constitutional Amendment 2 Section 1 Laws 2017**

SECTION 1. It is proposed to amend Article 5 of the constitution of New Mexico by adding a new section to read:

"A. The "state ethics commission" is established as an independent state agency under the direction of seven commissioners, no more than three of whom may be members of the same political party, whose terms and qualifications shall be as provided by law. The governor shall appoint one commissioner. One commissioner each shall be appointed by the president pro tempore of the senate, the minority floor leader of the senate, the speaker of the house of representatives and the minority floor leader of the house of representatives, all as certified by the chief clerks of the respective chambers. Two commissioners, who shall not be members of the same political party, shall be appointed by the four legislatively appointed commissioners.

B. The state ethics commission may initiate, receive, investigate and adjudicate complaints alleging violations of, and issue advisory opinions concerning, standards of ethical conduct and other standards of conduct and reporting requirements, as may be provided by law, for state officers and employees of the executive and legislative branches of government, candidates or other participants in elections, lobbyists or government contractors or seekers of government contracts and have such other jurisdiction as provided by law.

C. The state ethics commission may require the attendance of witnesses or the production of records and other evidence relevant to an investigation by subpoena as provided by law and shall have such other powers and duties and administer or enforce such other acts as further provided by law."

### **Constitutional Amendment 2 Section 2 Laws 2017**

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 2017, CHAPTER 1**

## **AN ACT**

RELATING TO FISCAL SOLVENCY; REVERTING BALANCES OF THE INSURANCE OPERATIONS FUND, FIRE PROTECTION FUND, FIRE PROTECTION GRANT FUND AND LAW ENFORCEMENT PROTECTION FUND AT THE END OF EACH FISCAL YEAR; REQUIRING PERIODIC ALLOTMENTS DURING A FISCAL YEAR FROM THOSE FUNDS; MAKING NO TRANSFERS FROM THE FIRE PROTECTION FUND TO THE FIRE PROTECTION GRANT FUND FOR FISCAL YEAR 2017 OR 2018.

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

### **Chapter 1 Section 1 Laws 2017**

SECTION 1. Section 29-13-3 NMSA 1978 (being Laws 1983, Chapter 289, Section 3, as amended) is amended to read:

"29-13-3. DISTRIBUTION OF CERTAIN INSURANCE COLLECTIONS--LAW ENFORCEMENT PROTECTION FUND CREATED.--There is created in the state treasury the "law enforcement protection fund". Ten percent of all money received for fees, licenses, penalties and taxes from life, general casualty and title insurance business pursuant to the New Mexico Insurance Code, except for money received from the health insurance premium surtax imposed by Subsection C of Section 59A-6-2 NMSA 1978, shall be paid monthly to the state treasurer and credited to the fund. On or before June 30 of each year, the state treasurer shall transfer to the general fund any balance in the law enforcement protection fund in excess of one hundred thousand dollars (\$100,000) that is not obligated for expenses in that current fiscal year."

### **Chapter 1 Section 2 Laws 2017**

SECTION 2. Section 29-13-4 NMSA 1978 (being Laws 1993, Chapter 179, Section 6, as amended by Laws 2002, Chapter 78, Section 5 and by Laws 2002, Chapter 92, Section 3) is amended to read:

"29-13-4. DETERMINATION OF NEEDS AND RATE OF DISTRIBUTION.--

A. Annually on or before April 15, the division shall consider and determine the relative needs as requested by tribal, municipal and university police and county sheriff's departments for money in the fund in the succeeding fiscal year pursuant to the provisions of Subsection C of this section.

B. As necessary during the year, the division shall transfer an amount from the law enforcement protection fund to the peace officers', New Mexico mounted patrol members' and reserve police officers' survivors fund that enables the balance of the latter fund to be maintained at a minimum balance of three hundred fifty thousand dollars (\$350,000).

C. The division shall determine the rate of distribution of money in the fund to each tribal, municipal and university police and county sheriff's department as follows:

(1) all municipal police and county sheriff's departments shall be rated by class pursuant to this paragraph in accordance with populations established by the most recently completed decennial census; provided that the population of any county shall not include the population of any municipality within that county that has a municipal police department. The

rate of distribution to which a municipal police or county sheriff's department is entitled is the following:

CLASS	POPULATION	AMOUNT
1	0 to 20,000	\$20,000
2	20,001 to 160,000	30,000
3	160,001 to 1,280,000	40,000;

(2) university police departments shall be entitled to a rate of distribution of seventeen thousand dollars (\$17,000);

(3) tribal police departments shall be entitled, unless allocations are adjusted pursuant to the provisions of Subsection D of this section, to six hundred dollars (\$600) for each commissioned peace officer in the tribe. To be counted as a commissioned peace officer for the purposes of this paragraph, a commissioned peace officer shall have been assigned to duty and have worked in New Mexico for no fewer than two hundred days in the calendar year immediately prior to the date of payment. Payments shall be made for only those divisions of the tribal police departments that perform services in New Mexico. A tribal police department shall not be eligible for any disbursement under the fund if commissioned peace officers cite non-Indians into the tribal court for civil or criminal citations; and

(4) municipal and university police and county sheriff's departments shall be entitled, unless allocations are adjusted pursuant to the provisions of Subsection D of this section, to six hundred dollars (\$600) for each police officer or sheriff's deputy employed full time who has been certified by the New Mexico law enforcement academy as a police officer or has been authorized to act as a New Mexico peace officer pursuant to the provisions of Section 29-1-11 NMSA 1978.

D. After distributions are determined in accordance with Subsection A, Subsection B and Paragraphs (1) and (2) of Subsection C of this section, if the balance

in the fund is insufficient to permit the total allocations provided by Paragraphs (3) and (4) of Subsection C of this section, the division shall reduce that allocation to the maximum amount permitted by available money."

## **Chapter 1 Section 3 Laws 2017**

SECTION 3. Section 29-13-6 NMSA 1978 (being Laws 1983, Chapter 289, Section 6, as amended by Laws 2002, Chapter 78, Section 6 and by Laws 2002, Chapter 92, Section 4) is amended to read:

"29-13-6. DISTRIBUTION OF LAW ENFORCEMENT PROTECTION FUND.--

A. Based on a periodic allotment approved by the division for the current fiscal year, the state treasurer shall distribute from the fund the amounts certified by the division to be distributed to governmental entities and the peace officers', New Mexico mounted patrol members' and reserve police officers' survivors fund as required in Section 29-13-4 NMSA 1978. Payments shall be made by the treasurer to the appropriate governmental entity or fund unless otherwise specified in Subsection C of this section.

B. The state treasurer is authorized to redirect a distribution to the New Mexico finance authority in an amount certified by the division, pursuant to an ordinance or a resolution passed by the municipality or county and a written agreement of the municipality or county and the New Mexico finance authority.

C. Based on a periodic allotment approved by the division for the current fiscal year, the state treasurer shall distribute from the money in the fund money certified by the division to be distributed to tribes. Payment shall be made to the chief financial officer of the tribe. If necessary, the fund may be decreased below the level of one hundred thousand dollars (\$100,000) to enable payment to the tribes. If insufficient money remains in the fund to fully compensate the tribes, a report shall be made to the Indian affairs department and to an appropriate interim committee of the legislature that reviews issues having impact on tribes by September 1 of the year of the shortfall."

## **Chapter 1 Section 4 Laws 2017**

SECTION 4. Section 59A-6-5 NMSA 1978 (being Laws 1984, Chapter 127, Section 105, as amended) is amended to read:

"59A-6-5. DISTRIBUTION OF OFFICE COLLECTIONS.--

A. All money received by the office of superintendent of insurance for fees, licenses, penalties and taxes shall be paid daily by the superintendent to the state treasurer and credited to the "insurance department suspense fund" except as provided by the Law Enforcement Protection Fund Act.

B. The superintendent may authorize the refund of money erroneously paid as fees, licenses, penalties or taxes from the insurance department suspense fund under request for refund made within three years after the erroneous payment. In the case of premium taxes erroneously paid or overpaid in accordance with law, refund may also be requested as a credit against premium taxes due in any annual or quarterly premium tax return filed within three years of the erroneous or excess payment.

C. If required by a compact to which New Mexico has joined pursuant to law, the superintendent shall authorize the allocation of premiums collected pursuant to Section 59A-14-12 NMSA 1978 to other states that have joined the compact pursuant to an allocation formula agreed upon by the compacting states.

D. The "insurance operations fund" is created in the state treasury. The fund shall consist of the distributions made to it pursuant to Subsection E of this section. The legislature shall annually appropriate from the fund to the division those amounts necessary for the division to carry out its responsibilities pursuant to the Insurance Code and other laws. Any balance in the fund at the end of a fiscal year shall revert to the general fund.

E. At the end of every month, after applicable refunds are made pursuant to Subsection B of this section and after any allocations have been made pursuant to Subsection C of this section, the treasurer shall make the following transfers from the balance remaining in the insurance department suspense fund:

(1) to the "fire protection fund", that part of the balance derived from property and vehicle insurance business;

(2) to the insurance operations fund, that part of the balance derived from the fees imposed pursuant to Subsections A and E of Section 59A-6-1 NMSA 1978 other than fees derived from property and vehicle insurance business; and

(3) to the general fund, the balance remaining in the insurance department suspense fund derived from all other kinds of insurance business."

## **Chapter 1 Section 5 Laws 2017**

SECTION 5. Section 59A-53-5.2 NMSA 1978 (being Laws 2007, Chapter 152, Section 1, as amended) is amended to read:

"59A-53-5.2. APPROPRIATIONS AND TRANSFERS FROM THE FIRE PROTECTION FUND.--

A. For each fiscal year, the amount to be distributed by the marshal pursuant to Sections 59A-53-4, 59A-53-5 and 59A-53-5.1 NMSA 1978 is appropriated from the fire protection fund to the superintendent for the purpose of making the following distributions:

(1) the total amount to be distributed during the fiscal year pursuant to Sections 59A-53-4, 59A-53-5 and 59A-53-5.1 NMSA 1978;

(2) the total amount of other appropriations from the fire protection fund for the fiscal year;

(3) on June 30, 2017, no distribution shall be made to the fire protection grant fund; and

(4) beginning in fiscal year 2019, periodic allotments not to exceed forty and two-tenths percent of the projected remaining balance in the fire protection fund shall be distributed to the fire protection grant fund.

B. On June 30 of each year, the remaining balance in the fire protection fund shall be transferred to the general fund."

## **Chapter 1 Section 6 Laws 2017**

SECTION 6. Section 59A-53-7 NMSA 1978 (being Laws 1984, Chapter 127, Section 978, as amended) is amended to read:

"59A-53-7. DISTRIBUTION OF FIRE PROTECTION FUND.--

A. Based on periodic allotments approved by the marshal, the state treasurer shall distribute from the money in the fire protection fund, to each municipality and county fire district, the amount that the marshal or the public regulation commission, as the case may be, has certified to the state treasurer. Payment shall be made to the treasurer of any municipality and to the county treasurer of the county in which any county fire district is located for credit to the county fire district.

B. The state treasurer is authorized to redirect a distribution to the New Mexico finance authority in the amount that the marshal or the public regulation commission, as the case may be, has certified to the state treasurer pursuant to an ordinance or a resolution passed by the municipality or county and a written agreement of the municipality or county in which any county fire district is located and the New Mexico finance authority.

C. In addition to the distributions made pursuant to Subsections A and B of this section, upon certification by the marshal that the balance of the firefighters' survivors fund is less than two hundred fifty thousand dollars (\$250,000), the state treasurer shall distribute an amount from the fire protection fund to the firefighters' survivors fund so that the balance of the firefighters' survivors fund equals two hundred fifty thousand dollars (\$250,000)."

## **Chapter 1 Section 7 Laws 2017**

SECTION 7. Section 59A-53-18 NMSA 1978 (being Laws 2006, Chapter 103, Section 7, as amended) is amended to read:

"59A-53-18. FIRE PROTECTION GRANT FUND--CREATED--USES.--The "fire protection grant fund" is created in the state treasury. The fund shall consist of transfers, distributions, appropriations, gifts, grants, donations and bequests made to the fund. Money in the fund shall revert to the general fund at the end of a fiscal year. Money in the fund is appropriated to the fire protection grant council for the purposes of making distributions approved by the council for the critical needs of municipal fire departments and county fire districts. Expenditures from the fund shall be made on warrant of the secretary of finance and administration pursuant to vouchers signed by the marshal."

## **Chapter 1 Section 8 Laws 2017**

SECTION 8. TEMPORARY PROVISION--PERIODIC ADJUSTMENTS FOR FISCAL YEAR 2018.--

A. In making a determination and certification of needs pursuant to Section 59A-53-3 NMSA 1978 and distributions pursuant to Sections 59A-53-4 and 59A-53-5.1 NMSA 1978 for fiscal year 2018, the state fire marshal shall coordinate with the department of finance and administration, New Mexico finance authority, office of the state treasurer, New Mexico municipal league and New Mexico association of counties to:

(1) develop a schedule for making periodic allotments that takes into consideration documented financial hardship of county fire districts and municipalities as a result of transitioning from a one-time distribution to periodic allotments;

(2) ensure that any debt obligations of existing or previously existing fire departments or fire districts are met on a timely basis;

(3) ensure the ongoing operations of fire departments and fire districts by providing technical assistance to counties and municipalities on transitioning to an accrual accounting basis for the fire protection fund;

(4) submit the final determination and certification of needs and schedule for periodic allotments to the legislative finance committee by July 1, 2017; and

(5) by June 30, 2018, ensure that county fire districts and municipalities have fully transitioned to operating on an accrual accounting basis.

B. In making distributions pursuant to Subsection B of Section 29-13-6 and Subsection B of Section 59A-53-7 NMSA 1978, the state treasurer shall ensure that

any debt obligations to the New Mexico finance authority are met and are in accordance with Section 6-4-6 NMSA 1978.

C. Nothing in this 2017 act shall be construed to impair any debt obligation pledged for repayment from the law enforcement protection fund or the fire protection fund.”

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House Bill 4, aa

Approved January 31, 2017

## **LAWS 2017, CHAPTER 2**

### **AN ACT**

RELATING TO STATE EXPENDITURES; REDUCING APPROPRIATIONS IN THE GENERAL APPROPRIATION ACT OF 2015, IN THE GENERAL APPROPRIATION ACT OF 2016 AND IN LAWS 2016, CHAPTER 1; ALLOWING FOR FISCAL YEAR 2017 GENERAL FUND APPROPRIATION REDUCTIONS; TRANSFERRING MONEY FROM FUNDS AND ACCOUNTS TO THE FISCAL YEAR 2017 APPROPRIATION ACCOUNT AND THE OPERATING RESERVE ACCOUNT OF THE GENERAL FUND; DEDICATING LOCAL ECONOMIC DEVELOPMENT ACT FUNDING TO A ROSWELL INTERNATIONAL AIR CENTER; MAKING APPROPRIATIONS.

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

### **Chapter 2 Section 1 Laws 2017**

SECTION 1. GENERAL APPROPRIATION ACT OF 2015 APPROPRIATION REDUCTION--LOCAL ECONOMIC DEVELOPMENT ACT PROJECT FUNDING.--

~~[A. Four million dollars (\$4,000,000) of the general fund appropriation to the economic development department in Item (21) of Section 5 of the General Appropriation Act of 2015 for projects pursuant to the Local Economic Development Act shall not be expended for the original purpose but shall revert to the general fund.]~~ *LINE ITEM VETO*

B. Only if the reduction in Subsection A of this section is effected, two million dollars (\$2,000,000) of the money appropriated from the general fund to the economic development department in Item (21) of Section 5 of the General Appropriation Act of 2015 for projects pursuant to the Local Economic Development Act shall be used to improve infrastructure at the Roswell international air center in Chaves county to enhance commercial operations.

## Chapter 2 Section 2 Laws 2017

SECTION 2. A new section of the General Appropriation Act of 2016 is enacted to read:

"2016 APPROPRIATION REDUCTIONS.--The following general fund appropriations in Section 4 of the General Appropriation Act of 2016 are reduced as follows:

~~A. to the taxation and revenue department tax administration program in the personal services and employee benefits category, by two million five hundred thousand dollars (\$2,500,000);~~

~~B. to the taxation and revenue department motor vehicle program in the personal services and employee benefits category, by one million six hundred thousand dollars (\$1,600,000);~~

~~C. to the department of public safety law enforcement program in the personal services and employee benefits category, by five million dollars (\$5,000,000);]~~  
*LINE ITEM VETO*

D. to the public education department special appropriations made in Items (a) through (d), (f) through (i) and (l) through (t), by six million dollars (\$6,000,000) in the aggregate; and

E. to the public education department special appropriations made in Items (a)

through (t), by two million dollars (\$2,000,000) in the aggregate."

## Chapter 2 Section 3 Laws 2017

~~[SECTION 3. A new section of the General Appropriation Act of 2016 is enacted to read:~~

~~"FISCAL YEAR 2017 OPERATING BUDGET AND ALLOTMENT ADJUSTMENTS.--~~

~~A. For the remainder of fiscal year 2017, the department of finance and administration shall regularly consult with the legislative finance committee staff to compare revenue collections with the revenue estimate. If the general fund consensus revenue forecast projects that revenue and transfers to the general fund, including all transfers authorized by Section 13 of the General Appropriation Act of 2016, will be insufficient to meet fiscal year 2017 general fund appropriations, the governor, with the approval of the state board of finance and after review and an opportunity to comment by the legislative finance committee, shall reduce fiscal year 2017 general fund~~

~~appropriations by up to one percent of the total amount of those appropriations, in accordance with the following provisions:~~

~~(1) the reductions shall apply to all agencies, funds, programs and other recipients and to all programs and categories within agencies that receive a general fund appropriation in Section 4 of the General Appropriation Act of 2016 and in Subsection A of Section 3 and Sections 4, 5, 7 and 8 of Chapter 1 of Laws 2016, except that no reductions shall be made to the general fund operating budgets of the medical assistance program or the medicaid behavioral health program of the human services department or to the developmental disabilities support program of the department of health;~~

~~(2) except as provided in Paragraph (3) of this subsection, the reductions to appropriations in Section 4 of the General Appropriation Act of 2016 shall apply proportionately to each agency, fund, program and other recipient based on the agency's, fund's, program's and other recipient's share of the total amount of fiscal year 2017 general fund appropriations; and~~

~~(3) the reductions to legislative appropriations shall, in the aggregate, be proportionate to those appropriations' share of the total amount of fiscal year 2017 general fund appropriations, but, among individual legislative appropriations, shall be in a proportion that the New Mexico legislative council determines.~~

~~B. The department of finance and administration shall reduce and otherwise adjust the general fund allotments of all agencies, funds, programs and other recipients in accordance with the reductions applied under this section.~~

~~C. As used in this section:~~

~~(1) "fiscal year 2017 general fund appropriations" means the sum of all general fund appropriations in Section 4 of the General Appropriation Act of 2016, as reduced by Laws 2016 (2nd S.S.), Chapter 6, Section 2, and in Subsection A of Section 3 and Sections 4, 5, 7 and 8 of Chapter 1 of Laws 2016, as reduced by Section 11 of the General Appropriation Act of 2016 and by Laws 2016 (2nd S.S.), Chapter 6, Section 4; and~~

~~(2) "general fund consensus revenue forecast" means the revenue estimates prepared at the end of the 2017 legislative session by the career economists of the department of finance and administration, taxation and revenue department, department of transportation and legislative finance committee."~~

## **Chapter 2 Section 4 Laws 2017**

~~SECTION 4. FISCAL YEAR 2017--APPROPRIATIONS.--Notwithstanding any restriction on the use of money from the source, the following amounts are appropriated from the following sources for expenditure in fiscal year 2017, and any unexpended or~~

~~unencumbered balance remaining at the end of fiscal year 2017 shall revert to the source:~~

~~A. two million five hundred thousand dollars (\$2,500,000) from the state road fund to the taxation and revenue department tax administration program in the personal services and employee benefits category;~~

~~B. one million six hundred thousand dollars (\$1,600,000) from the motor vehicle suspense fund to the taxation and revenue department motor vehicle program in the personal services and employee benefits category; and~~

~~C. five million dollars (\$5,000,000) from the state road fund to the department of public safety law enforcement program in the personal services and employee benefits category.]~~ *LINE ITEM VETO*

## **Chapter 2 Section 5 Laws 2017**

SECTION 5. FUND AND OTHER ACCOUNT TRANSFERS AND REVERSIONS TO GENERAL FUND--FISCAL YEAR 2017.--Notwithstanding any restriction on the use of money in the funds or accounts, the following amounts from the following funds or accounts are transferred to the fiscal year 2017 appropriation account of the general fund:

~~[A. two million nine hundred thousand dollars (\$2,900,000) from the state infrastructure bank;]~~ *LINE ITEM VETO*

B. six million five hundred thousand dollars (\$6,500,000) from the rural infrastructure revolving loan fund;

~~[C. four million dollars (\$4,000,000) from appropriations made in Laws 2006, Chapter 111, Section 65, Laws 2007, Chapter 42, Section 86 and Laws 2008, Chapter 92, Section 72 to the wastewater facility construction loan fund;~~

~~D. four million dollars (\$4,000,000) from the enhanced 911 fund;]~~ *LINE ITEM VETO*

E. two million dollars (\$2,000,000) from the day-care fund;

F. one million six hundred forty-nine thousand four hundred fifty-eight dollars (\$1,649,458) from the balance of distributions from the cigarette tax made in accordance with Subsection F of Section 7-1-6.11 NMSA 1978;

G. two million seventy-three thousand one hundred dollars (\$2,073,100) from the oil and gas accounting suspense fund administered by the taxation and revenue department;

H. ten million dollars (\$10,000,000) from amounts reserved for risk-related coverage in the public school insurance fund;

I. ten million dollars (\$10,000,000) from the public liability fund;

J. one million five hundred thousand dollars (\$1,500,000) from the state transportation pool account of the general services department;

K. six hundred ninety-nine thousand three hundred dollars (\$699,300) from the public property reserve fund;

L. one million two hundred thirteen thousand seven hundred dollars (\$1,213,700) from the insurance licensee continuing education fund;

M. seven hundred eighty-four thousand two hundred dollars (\$784,200) from the insurance fraud fund;

N. two hundred two thousand six hundred dollars (\$202,600) from the title insurance maintenance assessment fund;

O. seven hundred three thousand seven hundred dollars (\$703,700) from the New Mexico medical board fund;

P. one million dollars (\$1,000,000) from the New Mexico livestock board general fund;

Q. one million two hundred fifty thousand dollars (\$1,250,000) from the workers' compensation administration fund;

R. three million two hundred eighty-two thousand seven hundred dollars (\$3,282,700) from the corrective action fund;

S. two million six hundred thirty-five thousand six hundred dollars (\$2,635,600) from the state air quality permit fund;

T. four hundred thousand dollars (\$400,000) from the radiation protection fund;

U. two hundred thousand dollars (\$200,000) from the tire recycling fund;

V. one hundred fifty thousand dollars (\$150,000) from the storage tank fund;

W. three hundred eighty-three thousand dollars (\$383,000) from the hazardous waste emergency fund;

X. two hundred eighty-five thousand dollars (\$285,000) from the public water supply system operator and public wastewater facility operator fund;

Y. three hundred thirteen thousand dollars (\$313,000) from the concealed handgun carry fund; and

~~Z. two million twenty-three thousand four hundred dollars (\$2,023,400) from the natural resources trustee fund.]~~ *LINE ITEM VETO*

## **Chapter 2 Section 6 Laws 2017**

SECTION 6. Section 6-4-9 NMSA 1978 (being Laws 1999, Chapter 207, Section 1, as amended) is amended to read:

"6-4-9. TOBACCO SETTLEMENT PERMANENT FUND--INVESTMENT--DISTRIBUTION.--

A. The "tobacco settlement permanent fund" is created in the state treasury. The fund shall consist of money distributed to the state pursuant to the master settlement agreement entered into between tobacco product manufacturers and various states, including New Mexico, and executed November 23, 1998 or any money released to the state from a qualified escrow fund or otherwise paid to the state as authorized by Section 6-4-13 NMSA 1978, enacted pursuant to the master settlement agreement or as otherwise authorized by law. Money in the fund shall be invested by the state investment officer in accordance with the limitations in Article 12, Section 7 of the constitution of New Mexico. Income from investment of the fund shall be credited to the fund. Money in the fund shall not be expended for any purpose, except as provided in this section.

B. In fiscal year 2007 and in each fiscal year thereafter, an annual distribution shall be made from the tobacco settlement permanent fund to the tobacco settlement program fund of an amount equal to fifty percent of the total amount of money distributed to the tobacco settlement permanent fund in that fiscal year until that amount is less than an amount equal to four and seven-tenths percent of the average of the year-end market values of the tobacco settlement permanent fund for the immediately preceding five calendar years. Thereafter, the amount of the annual distribution shall be four and seven-tenths percent of the average of the year-end market values of the tobacco settlement permanent fund for the immediately preceding five calendar years. In the event that the actual amount distributed to the tobacco settlement program fund in a fiscal year is insufficient to meet appropriations from that fund for that fiscal year, the secretary of finance and administration shall proportionately reduce each appropriation accordingly.

C. In addition to the distribution made pursuant to Subsection B of this section, in fiscal years 2009 through 2013 and 2016, the remaining fifty percent of the total amount of money distributed to the tobacco settlement permanent fund in that

fiscal year shall be distributed from the tobacco settlement permanent fund to the tobacco settlement program fund.

D. In addition to the distribution made pursuant to Subsections B and E of this section, in fiscal year 2014, twenty-five percent of the total amount of money distributed pursuant to the master settlement agreement to the tobacco settlement permanent fund in that fiscal year shall be distributed from the tobacco settlement permanent fund to the lottery tuition fund.

E. In addition to the distribution made pursuant to Subsections B and D of this section, in fiscal year 2014, twenty-five percent of the total amount of money distributed to the tobacco settlement permanent fund in that fiscal year shall be distributed from the tobacco settlement permanent fund to the tobacco settlement program fund for appropriation for direct services provided by early childhood care and education programs administered by the children, youth and families department.

F. The tobacco settlement permanent fund is a reserve fund of the state. Money in the tobacco settlement permanent fund may be expended:

(1) in the event that general fund balances, including all authorized revenues and transfers to the general fund and balances in the general fund operating reserve, the appropriation contingency fund and the tax stabilization reserve, will not meet the level of appropriations authorized from the general fund for a fiscal year. In that event, in order to avoid an unconstitutional deficit, the legislature may authorize a transfer from the tobacco settlement permanent fund to the general fund but only in an amount necessary to meet general fund appropriations; or

(2) as provided in Laws 2016 (2nd S.S.), Chapter 4, Section 2 and in Section 7 of this 2017 act."

## **Chapter 2 Section 7 Laws 2017**

SECTION 7. TOBACCO SETTLEMENT PERMANENT FUND TRANSFER TO THE GENERAL FUND--FISCAL YEAR 2017.--The governor, with state board of finance approval, may, in addition to the transfer authorized by Laws 2016 (2nd S.S.), Chapter 4, Section 2, transfer from the tobacco settlement permanent fund to the operating reserve account of the general fund an amount up to the amount remaining in the fund, less the total amount appropriated in Section 4 of the General Appropriation Act of 2016 from the tobacco settlement program fund, as necessary to meet the appropriations authorized by law from the general fund for fiscal year 2017.

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Senate Bill 113, aa, w/o ec, partial veto

Approved January 31, 2017

# **LAWS 2017, CHAPTER 3**

## **AN ACT**

RELATING TO PUBLIC SCHOOL FINANCE; LIMITING CERTAIN SCHOOL DISTRICTS' AND CHARTER SCHOOLS' FISCAL YEAR 2016 CASH BALANCES BY TAKING CREDITS AGAINST THOSE SCHOOLS' FISCAL YEAR 2017 STATE EQUALIZATION GUARANTEE DISTRIBUTIONS; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

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

### **Chapter 3 Section 1 Laws 2017**

SECTION 1. Section 22-8-41 NMSA 1978 (being Laws 1967, Chapter 16, Section 99, as amended) is amended to read:

"22-8-41. RESTRICTION ON OPERATIONAL FUNDS--EMERGENCY ACCOUNTS--CASH BALANCES.--

A. A school district shall not expend money from its operational fund for the acquisition of a building site or for the construction of a new structure, unless the school district has bonded itself to practical capacity or the secretary determines and certifies to the legislative finance committee that the expending of money from the operational fund for this purpose is necessary for an adequate public educational program and will not unduly hamper the school district's current operations.

B. A school district or charter school may budget out of cash balances carried forward from the previous fiscal year an amount not to exceed five percent of its proposed operational fund expenditures for the ensuing fiscal year as an emergency account. Money in the emergency account shall be used only for unforeseen expenditures incurred after the annual budget was approved and shall not be expended without the prior written approval of the secretary.

C. In addition to the emergency account, school districts or charter schools may also budget operational fund cash balances carried forward from the previous fiscal year for operational expenditures, exclusive of salaries and payroll, upon specific prior approval of the secretary. The secretary shall notify the legislative finance committee in writing of the secretary's approval of such proposed expenditures.

D. Notwithstanding any provision of this section to the contrary, the secretary shall reduce school districts' and charter schools' fiscal year 2017 state equalization guarantee distributions as credit for excess fiscal year 2016 operational fund cash balances in accordance with Section 2 of this 2017 act, and a school district or charter school whose distribution is accordingly reduced shall apply in the amount of

that credit its audited fiscal year 2016 operational fund cash balance toward the school district's or charter school's fiscal year 2017 operations."

### **Chapter 3 Section 2 Laws 2017**

SECTION 2. TEMPORARY PROVISION--DISTRIBUTION REDUCTIONS--FISCAL YEAR 2017.--The secretary of public education shall:

A. apply as a credit against the fiscal year 2017 state equalization guarantee

distribution of each school district and charter school that does not receive an emergency supplemental distribution in fiscal year 2017 and whose audited fiscal year 2016 operational fund cash balance is greater than three percent of its fiscal year 2016 program cost an amount equal to the result of the following calculation or, if, using that result, the applied credit would leave the school district's or charter school's audited fiscal year 2016 operational fund cash balance below three percent of its fiscal year 2016 program cost, then equal to the portion of that result that will leave the school district's or charter school's audited fiscal year 2016 operational fund cash balance at three percent of its fiscal year 2016 program cost:

(1) fifty million dollars (\$50,000,000) divided by the fiscal year 2016 program costs for all school districts and charter schools; and

(2) that quotient multiplied by the school district's or charter school's fiscal year 2016 program cost;

B. promptly after the effective date of this 2017 act, notify each school district and charter school of the amount of its credit; and

C. for each school district and charter school that does not receive an emergency supplemental distribution in fiscal year 2017 and whose audited fiscal year 2016 operational fund cash balance is greater than three percent of its fiscal year 2016 program cost, reduce by the amount of its credit the school district's or charter school's state equalization guarantee distributions evenly over the period remaining in fiscal year 2017.

### **Chapter 3 Section 3 Laws 2017**

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

Approved January 31, 2017

## **LAWS 2017, CHAPTER 4**

AN ACT

MAKING APPROPRIATIONS TO THE LEGISLATIVE AND JUDICIAL BRANCHES OF GOVERNMENT; APPROPRIATING FUNDS FOR THE EXPENSE OF THE FIFTY-THIRD LEGISLATURE, FIRST SESSION, 2017, AND FOR OTHER LEGISLATIVE EXPENSES; DECLARING AN EMERGENCY.

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

### **Chapter 4 Section 1 Laws 2017**

#### SECTION 1. SESSION EXPENSES.--

A. There is appropriated from the general fund for the expense of the legislative department of the state of New Mexico for the first session of the fifty-third legislature for per diem and mileage of its members, for salaries of employees and for other expenses of the legislature, eight million six hundred twenty-eight thousand eight hundred dollars (\$8,628,800) 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 \$413,280;
- (2) per diem for members of the house of representatives  
\$688,800;
- (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 \$6,304;
- (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 \$9,745;
- (5) salaries and employee benefits of senate employees  
\$2,699,632;
- (6) salaries and employee benefits of house of representatives employees \$2,539,253;

(7) for expense of the senate not itemized above, six hundred twenty-four thousand eighty-four dollars (\$624,084). No part of this item may be transferred to salaries or employee benefits;

(8) for expense of the house of representatives not itemized above, five hundred fifty-four thousand one hundred two dollars (\$554,102). 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 ninety-three thousand six hundred dollars (\$1,093,600) to be disbursed upon vouchers signed by the director of the legislative council service or the director's designee.

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

or the director's designee.

D. Under the printing contracts entered into for the first session of the fifty-third legislature, the chair 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 chair of the committees' committee for the senate and by the speaker for the house.

## **Chapter 4 Section 2 Laws 2017**

### **SECTION 2. BILLS AND OTHER PRINTED MATERIALS.--**

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

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

(2) upon written request, 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; and

(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.

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 seven hundred fifty dollars (\$750), 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 to each member of the respective houses, shall be supplied by the legislative council service at a charge of two hundred sixty dollars (\$260) for the entire session.

## **Chapter 4 Section 3 Laws 2017**

SECTION 3. LEGISLATIVE INFORMATION SYSTEM.--There is appropriated from the general fund to the legislative council service for expenditure in fiscal years 2017 and 2018 for the legislative information system, eight hundred fifty thousand eight hundred dollars (\$850,800).

## **Chapter 4 Section 4 Laws 2017**

### SECTION 4. EXTENSIBLE MARKUP LANGUAGE DATABASE--

SELF-PUBLICATION.--There is appropriated from the legislative cash balances to the legislative council service for the legislative share of the continued development required for the extensible markup language database, extensible markup language tagging and its use for legislative document systems and an integrated tagged database of the session laws and for the costs associated in collaborating with the New Mexico compilation commission on the ongoing development and expanding partnership role in the self-publication of the New Mexico statutes annotated, 1978, four hundred thousand dollars (\$400,000) for expenditure during fiscal years 2017 and 2018.

## **Chapter 4 Section 5 Laws 2017**

~~[SECTION 5. SUPPLEMENTAL APPROPRIATION TO THE ADMINISTRATIVE OFFICE OF THE COURTS.--Eight hundred thousand dollars (\$800,000) is appropriated from the general fund to the administrative office of the courts for expenditure in fiscal year 2017 for the jury and witness fee fund and operational needs. Any unexpended or~~

~~unencumbered balance remaining at the end of fiscal year 2017 shall revert to the general fund.] LINE ITEM VETO~~

## **Chapter 4 Section 6 Laws 2017**

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

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House Bill 1, aa, w/ec, partial veto

Approved February 2, 2017

## **LAWS 2017, CHAPTER 5**

AN ACT

MAKING SUPPLEMENTAL APPROPRIATIONS FOR THE NEW MEXICO SUPREME COURT AND THE ADMINISTRATIVE OFFICE OF THE COURTS TO PREVENT COURT CLOSINGS AND TO ADDRESS OTHER OPERATIONAL NEEDS; DECLARING AN EMERGENCY.

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

### **Chapter 5 Section 1 Laws 2017**

SECTION 1. SUPPLEMENTAL APPROPRIATION TO THE NEW MEXICO SUPREME COURT.--Eighty thousand dollars (\$80,000) is appropriated from the general fund to the New Mexico supreme court for expenditure in fiscal year 2017 for operational needs. Any unexpended or unencumbered balance remaining at the end of fiscal year 2017 shall revert to the general fund.

### **Chapter 5 Section 2 Laws 2017**

SECTION 2. SUPPLEMENTAL APPROPRIATION TO THE ADMINISTRATIVE OFFICE OF THE COURTS.--One million six hundred three thousand four hundred seven dollars (\$1,603,407) is appropriated from the general fund to the administrative office of the courts for expenditure in fiscal year 2017 for the jury and witness fee fund and operational needs. Any unexpended or unencumbered balance remaining at the end of fiscal year 2017 shall revert to the general fund.

### **Chapter 5 Section 3 Laws 2017**

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

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House Bill 261, aa, w/ec

Approved February 23, 2017

## **LAWS 2017, CHAPTER 6**

AN ACT

RELATING TO ECONOMIC DEVELOPMENT; AMENDING A SECTION OF THE LOCAL ECONOMIC DEVELOPMENT ACT TO PROVIDE FOR BROADBAND INFRASTRUCTURE DEVELOPMENT.

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

### **Chapter 6 Section 1 Laws 2017**

SECTION 1. Section 5-10-3 NMSA 1978 (being Laws 1993, Chapter 297, Section 3, as amended) is amended to read:

"5-10-3. DEFINITIONS.--As used in the Local Economic Development Act:

A. "arts and cultural district" means a developed district of public and private uses that is created pursuant to the Arts and Cultural District Act;

B. "broadband telecommunications network facilities" means the electronics, equipment, transmission facilities, fiber-optic cables and any other item directly related to a system capable of transmission of internet protocol or other formatted data at current federal communications commission minimum speed standard, all of which will be owned and used by a provider of internet access services;

C. "cultural facility" means a facility that is owned by the state, a county, a municipality or a qualifying entity that serves the public through preserving, educating and promoting the arts and culture of a particular locale, including theaters, museums, libraries, galleries, cultural compounds, educational organizations, performing arts venues and organizations, fine arts organizations, studios and media laboratories and live-work housing facilities;

D. "department" means the economic development department;

E. "economic development project" or "project" means the provision of direct or indirect assistance to a qualifying entity by a local or regional government and

includes the purchase, lease, grant, construction, reconstruction, improvement or other acquisition or conveyance of land, buildings or other infrastructure; rights-of-way infrastructure, including trenching and conduit, for the placement of new broadband telecommunications network facilities; public works improvements essential to the location or expansion of a qualifying entity; payments for professional services contracts necessary for local or regional governments to implement a plan or project; the provision of direct loans or grants for land, buildings or infrastructure; technical assistance to cultural facilities; loan guarantees securing the cost of land, buildings or infrastructure in an amount not to exceed the revenue that may be derived from the municipal infrastructure gross receipts tax or the county infrastructure gross receipts tax; grants for public works infrastructure improvements essential to the location or expansion of a qualifying entity; grants or subsidies to cultural facilities; purchase of land for a publicly held industrial park or a publicly owned cultural facility; and the construction of a building for use by a qualifying entity;

F. "governing body" means the city council, city commission or board of trustees

of a municipality or the board of county commissioners of a county;

G. "local government" means a municipality or county;

H. "municipality" means an incorporated city, town or village;

I. "person" means an individual, corporation, association, partnership or other legal entity;

J. "qualifying entity" means a corporation, limited liability company, partnership, joint venture, syndicate, association or other person that is one or a combination of two or more of the following:

(1) an industry for the manufacturing, processing or assembling of agricultural or manufactured products;

(2) a commercial enterprise for storing, warehousing, distributing or selling products of agriculture, mining or industry, but, other than as provided in Paragraph (5), (6) or (9) of this subsection, not including any enterprise for sale of goods or commodities at retail or for distribution to the public of electricity, gas, water or telephone or other services commonly classified as public utilities;

(3) a business, including a restaurant or lodging establishment, in which all or part of the activities of the business involves the supplying of services to the general public or to governmental agencies or to a specific industry or customer, but, other than as provided in Paragraph (5) or (9) of this subsection, not including businesses primarily engaged in the sale of goods or commodities at retail;

(4) an Indian nation, tribe or pueblo or a federally chartered tribal corporation;

(5) a telecommunications sales enterprise that makes the majority of its sales to persons outside New Mexico;

(6) a facility for the direct sales by growers of agricultural products, commonly known as farmers' markets;

(7) a business that is the developer of a metropolitan redevelopment project;

(8) a cultural facility; and

(9) a retail business;

K. "regional government" means any combination of municipalities and counties that enter into a joint powers agreement to provide for economic development projects pursuant to a plan adopted by all parties to the joint powers agreement; and

L. "retail business" means a business that is primarily engaged in the sale of goods or commodities at retail and that is located in a municipality with a population, according to the most recent federal decennial census, of:

(1) ten thousand or less; or

(2) more than ten thousand but less than thirty-five thousand if:

(a) the economic development project is not funded or financed with state government revenues; and

(b) the business created through the project will not directly compete with an existing business that is: 1) in the municipality; and 2) engaged in the sale of the same or similar goods or commodities at retail."

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House Bill 60, aa

Approved March 8, 2017

## **LAWS 2017, CHAPTER 7**

AN ACT

RELATING TO INFORMATION TECHNOLOGY; AMENDING SECTIONS OF THE DEPARTMENT OF INFORMATION TECHNOLOGY ACT TO PROVIDE FOR THE DEPARTMENT TO COORDINATE THE DEVELOPMENT OF A STATEWIDE BROADBAND NETWORK; PROVIDING FOR A CENTRAL TELECOMMUNICATION NETWORK; RECONCILING CONFLICTING SECTIONS OF LAW BY REPEALING LAWS 2007, CHAPTER 288, SECTION 3.

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

## **Chapter 7 Section 1 Laws 2017**

SECTION 1. Section 9-27-3 NMSA 1978 (being Laws 2007, Chapter 290, Section 3) is amended to read:

"9-27-3. DEFINITIONS.--As used in the Department of Information Technology Act:

A. "department" means the department of information technology;

B. "information technology" means computer hardware and software and ancillary products and services, including:

(1) systems design and analysis;

(2) acquisition, storage and conversion of data;

(3) computer programming;

(4) information storage and retrieval;

(5) voice, radio, video and data communications;

(6) requisite systems;

(7) simulation and testing; and

(8) related interactions between users and information systems;

C. "information technology project" means the purchase, replacement, development or modification of a hardware or software system;

D. "secretary" means the secretary of information technology;

E. "state information architecture" means a logically consistent set of principles, policies and standards that guides the engineering of state government's

information technology systems and infrastructure in a way that ensures alignment with state government's business needs;

F. "state information technology strategic plan" means the information technology planning document for the state that spans a three-year period; and

G. "telecommunication network" means the physical and logical components and all associated infrastructure used in transporting, routing, aggregating and delivering voice and data information from computer and telecommunications systems in one location to peer systems in another."

## **Chapter 7 Section 2 Laws 2017**

SECTION 2. Section 9-27-6 NMSA 1978 (being Laws 2007, Chapter 290, Section 6, as amended) is amended to read:

### **"9-27-6. SECRETARY--DUTIES AND GENERAL POWERS.--**

A. The secretary is responsible to the governor for the operation of the department. It is the secretary's duty to manage all operations of the department and to administer and enforce the laws with which the secretary or the department is charged.

B. To perform the secretary's duties, the secretary has every power expressly enumerated in the laws, whether granted to the secretary or the department or any division of the department, except where authority conferred upon any division is explicitly exempted from the secretary's authority by statute. In accordance with these provisions, the secretary shall:

(1) exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and regulations;

(2) delegate authority to subordinates as the secretary deems necessary and appropriate, clearly delineating such delegated authority and the limitations thereto;

(3) organize the department into those organizational units the secretary deems will enable it to function most efficiently, subject to provisions of law requiring or establishing specific organizational units;

(4) within the limitations of available appropriations and applicable laws, employ and fix the compensation of those persons necessary to discharge the secretary's duties;

(5) take administrative action by issuing orders and instructions, not inconsistent with the law, to ensure implementation of and compliance with the provisions of law for whose 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 operations of the department and the provision of services to state agencies and the residents of the state;

(7) provide courses of instruction and practical training for employees of the department and other persons involved in the administration of programs with the objective of improving the operations and efficiency of administration;

(8) prepare an annual budget of the department;

(9) provide cooperation, at the request of heads of administratively attached agencies, 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; and

(10) appoint for each division a "director". These appointed positions are exempt from the provisions of the Personnel Act. Persons appointed to these positions shall serve at the pleasure of the secretary.

C. As the chief information officer, the secretary shall:

(1) review executive agency plans regarding prudent allocation of information technology resources; reduction of duplicate or redundant data, hardware and software; and improvement of system interoperability and data accessibility among agencies;

(2) approve executive agency information technology requests for proposals and other executive agency requests that are subject to the Procurement Code, prior to final approval;

(3) promulgate rules for oversight of information technology procurement;

(4) approve executive agency information technology contracts and amendments to those contracts, including emergency procurements, sole source

contracts and price agreements, prior to approval by the department of finance and administration;

(5) develop and implement procedures to standardize data elements, determine data ownership and ensure data sharing among executive agencies;

(6) verify compliance with state information architecture and the state information technology strategic plan before approving documents referred to in Paragraphs (2) and (4) of this subsection;

(7) monitor executive agency compliance with its agency plan, the state information technology strategic plan and state information architecture and report to the governor, executive agency management and the legislative finance committee on noncompliance;

(8) develop information technology cost recovery mechanisms and information systems rate and fee structures of state agencies and other public or private sector providers and make recommendations to the information technology rate committee;

(9) provide technical support to executive agencies in the development of their agency plans;

(10) ensure the use of existing public or private information technology or telecommunications resources when the use is practical, efficient, effective and financially prudent and is in compliance with the Procurement Code;

(11) review appropriation requests related to executive agency information technology requests to ensure compliance with agency plans and the state information technology strategic plan and make written recommendations by November 14 of each year to the department of finance and administration and by November 21 of each year to the legislative finance committee, the appropriate interim legislative committee and the information technology commission; provided, however, that the recommendations to the legislative committees and the commission have been agreed to by the department of information technology and the department of finance and administration;

(12) promulgate rules to ensure that information technology projects satisfy criteria established by the secretary and are phased in with funding released in phases contingent upon successful completion of the prior phase;

(13) provide oversight of information technology projects, including ensuring adequate risk management, disaster recovery and business continuity practices and monitoring compliance with strategies recommended by the information technology commission for information technology projects that affect multiple agencies;

(14) conduct reviews of information technology projects and provide written reports to the information technology commission and appropriate legislative oversight bodies;

(15) conduct background checks on department employees and prospective department employees that have or will have administrative access or authority to sensitive, confidential or private information or the ability to alter systems, networks or other information technology hardware or software;

(16) report to the information technology commission projects that have been certified and are in compliance with contingencies; and

(17) perform any other information technology function assigned by the governor.

D. Each executive agency shall submit an agency information technology plan to the secretary in the form and detail required by the secretary. Each executive agency shall conduct background checks on agency or prospective agency employees that have or will have administrative access or authority to alter systems, networks or other information technology hardware or software.

E. A state agency that receives an invoice from the department for services rendered to the agency shall have thirty days from receipt of the invoice to pay the department or to notify the department if the amount of the invoice is in dispute. The agency shall have fifteen days from its notification of dispute to the department to present its reasons in writing and request an adjustment. The department shall have fifteen days from its receipt of the reasons for dispute to notify the agency of its decision. If the department and the agency do not agree on a resolution, the secretary of finance and administration shall make a determination on the amount owed by the agency to the department. If the agency has not paid the department or notified the department of a dispute within thirty days of receipt of the invoice, the department shall notify the department of finance and administration and request that the department of finance and administration transfer funds from the agency to the department of information technology to satisfy the agency's obligation.

F. The secretary, as chief information officer, shall prepare a state information technology strategic plan for the executive branch and update it at least once every three years, which plan shall be available to agencies by July 31 of each year. The plan shall comply with the provisions of the Department of Information Technology Act and provide for the:

(1) interchange of information related to information technology among executive agencies;

(2) coordination among executive agencies in the development and maintenance of information technology systems;

(3) protection of the privacy and security of individual information as well as of individuals using the state's information technology systems;

(4) development of a statewide broadband network plan in conjunction with the public education department, the higher education department, state universities, other educational institutions, the public school capital outlay council, political subdivisions of the state, Indian nations, tribes and pueblos, the public regulation commission and telecommunication network service providers; and

(5) coordination and aggregation of services where feasible for entities as provided for in Section 9-27-20 NMSA 1978 and other publicly funded entities.

G. 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.

H. Where information technology functions of executive agencies overlap or a function assigned to one agency could better be performed by another agency, the secretary may recommend appropriate legislation to the next session of the legislature for its approval.

I. The secretary may make and adopt such reasonable procedural rules as may be necessary to carry out the duties of the department and its divisions and requirements and standards for the executive branch's information technology needs, functions, systems and resources, including:

(1) information technology security;

(2) approval for procurement of information technology that exceeds an amount set by rule;

(3) detail and format for the agency information technology plan;

(4) acquisition, licensing and sale of information technology; and

(5) requirements for agency information technology projects and related plan, analysis, oversight, assessment and specifications.

J. 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. The public hearing shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the rule, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their

views and the method by which copies of the proposed rule, proposed amendment or repeal of an existing rule may be obtained shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation and mailed at least thirty days prior to the hearing date to all persons who have made a written request for an advance notice of hearing. Rules shall be filed in accordance with the State Rules Act."

## **Chapter 7 Section 3 Laws 2017**

SECTION 3. Section 9-27-20 NMSA 1978 (being Laws 1963, Chapter 181, Section 1, as amended by Laws 2007, Chapter 288, Section 3 and by Laws 2007, Chapter 290, Section 20) is amended to read:

"9-27-20. TELECOMMUNICATIONS--DUTIES.--

A. The department shall enter into necessary agreements to provide, where feasible, a telecommunication network and related facilities to all executive, legislative and judicial branches. Nothing in this section shall be construed to apply to the provision of a telecommunication network and related facilities to political subdivisions of the state.

B. Pursuant to Section 9-27-13 NMSA 1978, the department may, where feasible and economical, provide a telecommunication network and related facilities to educational institutions that request to be included in the telecommunication network and shall enter into the necessary contractual agreements with telecommunication providers to provide the telecommunication network and related facilities to educational institutions that request to be included in the telecommunication network.

C. Pursuant to Sections 9-27-6 and 9-27-13 NMSA 1978, the department and the public education department shall coordinate to apply for reimbursements from the federal universal service fund pursuant to Section 254 of the federal Telecommunications Act of 1996, 47 U.S.C. 254, as such section existed on January 1, 2006, on behalf of state agencies, political subdivisions and educational institutions as available for telecommunication network services.

D. Pursuant to Section 9-27-7 NMSA 1978, the department shall establish a rate structure based on actual costs, including necessary administrative expenses, and shall charge participants according to such rate structure."

## **Chapter 7 Section 4 Laws 2017**

SECTION 4. Section 9-27-21 NMSA 1978 (being Laws 1963, Chapter 181, Section 2, as amended) is amended to read:

"9-27-21. CENTRAL TELECOMMUNICATION NETWORK SERVICES--STAFF--BUDGET.--The telecommunications bureau of the enterprise services division of the department shall provide the staff and material necessary to properly and adequately

operate the central telecommunication network. The budget for the central telecommunication network shall be approved as part of the total operating budget of the department."

## **Chapter 7 Section 5 Laws 2017**

SECTION 5. Section 9-27-22 NMSA 1978 (being Laws 1963, Chapter 181, Section 3, as amended) is amended to read:

"9-27-22. CHARGES FOR CENTRAL TELECOMMUNICATION NETWORK SERVICES.--Departments, institutions and agencies participating in the central telecommunication network shall be charged a pro rata and equitable share of the total monthly costs of the service. This determination is to be made by the department. Toll calls not covered by the wide-area telephone service and supplemental equipment shall be segregated and paid for by agencies, institutions and departments making the calls or using the supplemental equipment."

## **Chapter 7 Section 6 Laws 2017**

SECTION 6. Section 9-27-23 NMSA 1978 (being Laws 1963, Chapter 181, Section 4, as amended) is amended to read:

"9-27-23. DEPOSIT OF MONEY.--The department shall order the deposit or transfer monthly to a fund known as the "central telecommunication network fund" the amount of money owed by each department, institution and agency utilizing the central telecommunication network. State institutions and agencies shall adopt such accounting procedures as are prescribed by the department of finance and administration for the handling of payments with reference to the central telecommunication network."

## **Chapter 7 Section 7 Laws 2017**

SECTION 7. Section 9-27-24 NMSA 1978 (being Laws 1963, Chapter 181, Section 5, as amended) is amended to read:

"9-27-24. APPROPRIATION.--All income to the central telecommunication network fund is appropriated to carry out the purposes of Sections 9-27-20 through 9-27-25 NMSA 1978 or their successor recompiled sections. Payments from the central telecommunication network fund shall be made on vouchers signed by the secretary or the secretary's designee."

## **Chapter 7 Section 8 Laws 2017**

SECTION 8. Section 9-27-25 NMSA 1978 (being Laws 1963, Chapter 181, Section 6, as amended) is amended to read:

"9-27-25. PARTICIPATION OR EXCLUSION OF AGENCY, DEPARTMENT OR INSTITUTION.--All departments, institutions and agencies of the state government to the extent that it is practical and feasible shall participate in the central telecommunication network. No agreement for any leased or purchased telephone service or for purchase of any telephone equipment shall be entered into by any department, institution or agency of the state participating in the central telecommunication network, except those institutions enumerated in Article 12, Section 11 of the constitution of New Mexico, except upon prior written approval of the secretary or the secretary's designee. If, on the basis of a technical survey, it is found to be infeasible or impractical to include particular agencies, departments or institutions in the central telecommunication network, the secretary or the secretary's designee may exclude them. In the event of exclusion of any agency, department or institution, the secretary or the secretary's designee shall file a written statement, certifying the reasons therefor, with the state records center."

## **Chapter 7 Section 9 Laws 2017**

SECTION 9. A new section of the Department of Information Technology Act is enacted to read:

"INDIAN NATIONS, TRIBES AND PUEBLOS--STATEWIDE BROADBAND--RIGHT-OF-WAY AGREEMENT.--Indian nations, tribes and pueblos may connect to the statewide broadband network in exchange for a right-of-way agreement with the chief information officer. The chief information officer shall apply for reimbursements from the federal universal service fund pursuant to Section 254 of the federal Telecommunications Act of 1996, 47 U.S.C. 254, as such section existed on January 1, 2006, on behalf of Indian nations, tribes and pueblos that execute a right-of-way agreement."

## **Chapter 7 Section 10 Laws 2017**

SECTION 10. REPEAL.--Laws 2007, Chapter 888, Section 3 is repealed.

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HSIVC/House Bill 113, aa

Approved March 8, 2017

# **LAWS 2017, CHAPTER 8**

AN ACT

RELATING TO COURTS; CLOSING MAGISTRATE CIRCUIT COURTS IN CATRON COUNTY AND TAOS COUNTY.

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

### **Chapter 8 Section 1 Laws 2017**

SECTION 1. Section 35-1-5 NMSA 1978 (being Laws 1968, Chapter 62, Section 7, as amended) is amended to read:

"35-1-5. MAGISTRATE COURT--CATRON DISTRICT.--There shall be one magistrate in Catron magistrate district whose principal court is in Reserve."

### **Chapter 8 Section 2 Laws 2017**

SECTION 2. Section 35-1-32 NMSA 1978 (being Laws 1968, Chapter 62, Section 34, as amended) is amended to read:

"35-1-32. MAGISTRATE COURT--TAOS DISTRICT.--There shall be two magistrates in Taos magistrate district, divisions 1 and 2 operating as a single court in Taos."

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House Bill 12

Approved March 11, 2017

## **LAWS 2017, CHAPTER 9**

AN ACT

RELATING TO LIQUOR CONTROL; PROVIDING FOR CERTAIN LOCAL OPTION DISTRICTS TO RESTRICT THE HOURS OF SALE OF ALCOHOLIC BEVERAGES FOR CONSUMPTION OFF A LICENSED PREMISES.

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

### **Chapter 9 Section 1 Laws 2017**

SECTION 1. Section 60-7A-1 NMSA 1978 (being Laws 1981, Chapter 39, Section 47, as amended) is amended to read:

"60-7A-1. HOURS AND DAYS OF BUSINESS--SUNDAY SALES--CHRISTMAS DAY SALES--SALES FOR CONSUMPTION OFF THE LICENSED PREMISES--ELECTIONS.--

A. Provided that nothing in this section shall prohibit the consumption at any time of alcoholic beverages in guest rooms of hotels, alcoholic beverages shall be sold, served and consumed on licensed premises only during the following hours and days:

(1) on Mondays from 7:00 a.m. until midnight;

(2) on Tuesdays through Saturdays from after midnight of the previous day until 2:00 a.m., then from 7:00 a.m. until midnight, except as provided in Subsections E and G of this section; and

(3) on Sundays only after midnight of the previous day until 2:00 a.m., except as provided in Subsections D and F of this section and Section 60-7A-2 NMSA 1978.

B. Except as provided in Subsection C of this section, alcoholic beverages may be sold by a dispenser or a retailer in unbroken packages, for consumption off the licensed premises and not for resale, only on Mondays through Saturdays from 7:00 a.m. until midnight, except as provided in Subsections E and G of this section.

C. The governing body of a local option district that is a class B county with a population greater than seventy thousand and less than seventy-six thousand according to the most recent federal decennial census or that is a municipality located within a class B county with a population greater than seventy thousand and less than seventy-six thousand according to the most recent federal decennial census may pass an ordinance to place restrictions, in addition to those provided in this section, on the hours during which a dispenser or retailer may sell alcoholic beverages in unbroken packages for consumption off the licensed premises and not for resale. The ordinance may restrict sales between 7:00 a.m. and 10:00 a.m. and shall provide the hours between 7:00 a.m. and 10:00 a.m., if any, during which a dispenser or retailer may sell alcoholic beverages in unbroken packages for consumption off the licensed premises and not for resale.

D. A dispenser, restaurant licensee or club may, upon payment of an additional fee of one hundred dollars (\$100), obtain a permit to sell, serve or permit the consumption of alcoholic beverages by the drink on the licensed premises on Sundays, subject to approval obtained pursuant to the process set forth in Subsection F of this section. Alcoholic beverages

may be sold, served and consumed from 11:00 a.m. until midnight as set forth in the licensee's Sunday sales permit, except as otherwise provided for a restaurant licensee in Section 60-6A-4 NMSA 1978. The Sunday sales permit shall expire on June 30 of each year and may be renewed from year to year upon application for renewal and payment of the required fee. The permit fee shall not be prorated. Sales made pursuant to this subsection or Subsection H of this section shall be called "Sunday sales".

E. Retailers, dispensers, canopy licensees that were replaced by dispenser's licensees pursuant to Section 60-6B-16 NMSA 1978, restaurant licensees, club licensees and governmental licensees or their lessees shall not sell, serve, deliver or allow the consumption of alcoholic beverages on the licensed premises from 2:00 a.m. on Christmas day until 7:00 a.m. on the day after Christmas, except as permitted pursuant to Subsection G of this section.

F. Sunday sales pursuant to the provisions of Subsection D of this section are permitted in a local option district that voted to permit them. If in that election a majority of the voters in a local option district voted "no" on the question "Shall Sunday sales of alcoholic beverages by the drink for consumption on the licensed premises of licensees be allowed in this local option district?", Sunday sales are unlawful in that local option district upon certification of the election returns unless the provisions of Subsection K of this section apply. The question shall not again be placed on the ballot in that local option district until:

(1) at least one year has passed; and

(2) a petition is filed with the local governing body bearing the signatures of registered qualified electors of the local option district equal in number to ten percent of the number of votes cast and counted in the local option district for governor in the last preceding general election in which a governor was elected. The signatures on the petition shall be verified by the clerk of the county in which the local option district is situated.

G. On and after July 1, 2002, dispensers, canopy licensees that were replaced by dispenser's licensees pursuant to Section 60-6B-16 NMSA 1978, restaurant licensees, club licensees and governmental licensees or lessees of these licensees, provided that the licensees have current, valid food service establishment permits, may sell, serve or allow the consumption of alcoholic beverages by the drink on licensed premises from noon until 10:00 p.m. on Christmas day, except in a local option district in which, pursuant to petition and election under this subsection, a majority of the voters voting on the question votes against continuing such sales or consumption on Christmas day. An election shall be held on the question of whether to continue to allow the sale, service or consumption of alcoholic beverages by the drink on licensed premises from noon until 10:00 p.m. on Christmas day in a local option district, if a petition requesting the governing body of that district to call the election is signed by at least ten percent of the registered voters of the district and is filed with the clerk of the governing body of the district. Upon verification by the clerk that the petition contains the required number of signatures of registered voters, the governing body shall adopt a resolution calling an election on the question of allowing the sale, service or consumption of alcoholic beverages by the drink on licensed premises from noon until 10:00 p.m. on Christmas day. The election shall be held within sixty days after the date the petition is verified, or it may be held in conjunction with a regular election of the governing body if that election occurs within sixty days of such verification. The election shall be called, conducted, counted and canvassed in substantially the same manner as

provided for general elections in the county under the Election Code or for special municipal elections in a municipality under the Municipal Election Code. If a majority of the voters voting on the question votes against continuing the sale, service or consumption of alcoholic beverages by the drink on licensed premises from noon until 10:00 p.m. on Christmas day, then such sales and consumption shall be prohibited. If a majority of the voters voting on the question votes to allow continued sale, service and consumption of alcoholic beverages by the drink on licensed premises from noon until 10:00 p.m. on Christmas day, then such sales and consumption shall be allowed to continue. The question then shall not be submitted again to the voters within two years of the date of the last election on the question.

H. Notwithstanding the provisions of Subsection F of this section, any Indian nation, tribe or pueblo whose lands are wholly situated within the state that has, by statute, ordinance or resolution, elected to permit the sale, possession or consumption of alcoholic beverages on lands within the territorial boundaries of the Indian nation, tribe or pueblo may, by statute, ordinance or resolution of the governing body of the Indian nation, tribe or pueblo, permit Sunday sales by the drink on the licensed premises of licensees on lands within the territorial boundaries of the Indian nation, tribe or pueblo; provided that a certified copy of such enactment is filed with the office of the director and with the secretary of state.

I. Subject to the provisions of Subsection J of this section, a dispenser or retailer, upon payment of an additional fee of one hundred dollars (\$100), may obtain a permit to sell alcoholic beverages in unbroken packages for consumption off the licensed premises on Sundays from noon until midnight, and in those years when December 31 falls on a Sunday, from noon on December 31 until 2:00 a.m. of the following day. The permit shall expire on June 30 of each year and may be renewed from year to year upon application for renewal and payment of the required fee. The permit fee shall not be prorated. Sales made pursuant to the provisions of this subsection shall be called "Sunday package sales".

J. If a petition requesting the governing body of a local option district to call an election on the question of continuing to allow sales of alcoholic beverages in unbroken packages for consumption off the licensed premises on Sundays is filed with the clerk of the governing body and that petition is signed by at least ten percent of the number of registered voters of the local option district and the clerk of the governing body verifies the petition signatures, the governing body shall adopt a resolution calling an election on the question. The election shall be held within sixty days of the date that the petition is verified, or it may be held in conjunction with a regular election of the governing body, if the regular election occurs within sixty days of the petition verification. The election shall be called, conducted, counted and canvassed substantially in the manner provided by law for general elections within a county or for special municipal elections within a municipality. If a majority of the voters of the local option district voting in the election votes to allow the sale of alcoholic beverages in unbroken packages for consumption off the licensed premises, then those sales shall continue to be allowed. If a majority of the voters of the local option district voting in the

election votes not to allow the Sunday package sales, then those Sunday package sales shall be prohibited commencing the first Sunday after the results of the election are certified. Following the election, the question of allowing the Sunday package sales shall not be submitted again to the voters within two years of the date of the last election on the question.

K. Sunday sales of alcoholic beverages shall be permitted at resorts and at horse racetracks statewide pursuant to the provisions of Section 60-7A-2 NMSA 1978."

## **Chapter 9 Section 2 Laws 2017**

SECTION 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2017.

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House Bill 162, aa

Approved March 14, 2017

## **LAWS 2017, CHAPTER 10**

AN ACT

RELATING TO GAMING; AMENDING A SECTION OF THE GAMING CONTROL ACT TO PROVIDE FOR ADDITIONAL CONDITIONS FOR A GAMING OPERATOR'S LICENSE TO BECOME AUTOMATICALLY VOID.

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

## **Chapter 10 Section 1 Laws 2017**

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;

(2) the racetrack paid gaming tax to the state on its net take in an amount greater than eight million dollars (\$8,000,000) in the prior fiscal year pursuant to Section 60-2E-47 NMSA 1978 and 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, except as provided in Subsection F of this section; or

(3) the racetrack paid gaming tax to the state on its net take in an amount equal to eight million dollars (\$8,000,000) or less in the prior fiscal year pursuant to Section 60-2E-47 NMSA 1978 and fails to maintain a minimum of three live race days a week with at least ten live races on each day during its licensed race meets, except as provided in Subsection F of this section.

C. Unless a larger number is allowed pursuant to Subsection D of this section, a gaming operator licensee that is a racetrack may have up to six hundred licensed gaming machines.

D. By execution of an allocation agreement, signed by both the allocating racetrack and the racetrack to which 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. Maintaining fewer live race days or fewer live races on each race day during a licensed race meet does not constitute a failure to maintain the minimum number of live race days or races as required by Paragraphs (2) and (3) of Subsection B of this section if the licensee submits to the board written approval by the state racing commission for the licensee to vary the minimum number of live race days or races, and the variance is due to:

(1) the inability of a racetrack gaming operator licensee to fill races as published in the licensee's condition book as long as the same type of canceled race is run within the following two race weeks as the race season permits;

(2) severe weather or other act, event or occurrence resulting from natural forces;

(3) a strike or work stoppage by jockeys or other persons necessary to conduct a race or meet;

(4) a power outage, electrical failure or failure or unavailability of any equipment or supplies necessary to conduct a race or meet;

(5) hazardous conditions or other threats to the public health or safety; or

(6) any other act, event or occurrence that the board finds is not within the control of the licensee even with the exercise of reasonable diligence or care.

G. 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."

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House Bill 230

Approved March 14, 2017

## **LAWS 2017, CHAPTER 11**

AN ACT

RELATING TO PUBLIC SAFETY; PROVIDING FOR REMEDIATION OF THE DANGER POSED BY THE CARLSBAD BRINE WELL; CREATING THE CARLSBAD

BRINE WELL REMEDIATION ADVISORY AUTHORITY; CREATING THE CARLSBAD BRINE WELL REMEDIATION FUND.

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

**Chapter 11 Section 1 Laws 2017**

SECTION 1. CARLSBAD BRINE WELL REMEDIATION ADVISORY AUTHORITY--CREATED--MEMBERSHIP--ADMINISTRATION OF THE CARLSBAD BRINE WELL REMEDIATION.--

A. The "Carlsbad brine well remediation advisory authority" is created. The authority shall be a governmental entity of the state. The membership of the board of directors of the authority shall consist of the following eight members:

(1) the mayor of the city of Carlsbad, who shall serve as chair of the board, or the mayor's designee;

(2) the chair of the Eddy county board of county commissioners or the chair's designee;

(3) the secretary of energy, minerals and natural resources or the secretary's designee;

(4) the secretary of environment or the secretary's designee;

(5) the secretary of transportation or the secretary's designee;

(6) the manager of the Carlsbad irrigation district or the manager's designee;

(7) the state engineer or the engineer's designee; and

(8) the attorney general or the attorney general's designee.

B. The advisory authority:

(1) shall recommend policy for and advise the oil conservation division of the energy, minerals and natural resources department on the remediation of the Carlsbad brine well located at: Unit Letter M (SW/4 of the SW/4) in Section 17, Township 22 South, Range 27 East, NMPM; Eddy County, New Mexico; and

(2) is granted all powers necessary and appropriate to provide advice to the division for a revenue source dedicated to the Carlsbad brine well remediation fund.

C. Nothing in this section shall be construed as a waiver or alteration of the immunity from liability granted pursuant to the Tort Claims Act or as a waiver of any other immunity or privilege under law.

## **Chapter 11 Section 2 Laws 2017**

### **SECTION 2. CARLSBAD BRINE WELL REMEDIATION FUND--CREATED--PURPOSE--CONDITIONS.--**

A. There is created the "Carlsbad brine well remediation fund". The energy, minerals and natural resources department shall administer the fund. The fund shall be used by

the oil conservation division of the energy, minerals and natural resources department to the extent that revenues are available to remediate the Carlsbad brine well.

B. Money in the fund may consist of federal grants, appropriations, donations, earnings from investment of the fund and other revenue that from time to time may accrue to the fund from other sources for remediation of the Carlsbad brine well.

C. Money in the fund shall be subject to appropriation by the legislature and shall not revert at the end of any fiscal year.

D. Money in the fund shall be disbursed on warrants signed by the secretary of finance and administration pursuant to vouchers signed by the secretary of energy, minerals and natural resources or the secretary's authorized representative.

## **Chapter 11 Section 3 Laws 2017**

### **SECTION 3. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.**

--The Carlsbad brine well remediation advisory authority is terminated on July 1, 2029 pursuant to the Sunset Act. The advisory authority shall continue to operate according to the provisions of this act until July 1, 2030. Effective July 1, 2030, this act is repealed.

## **Chapter 11 Section 4 Laws 2017**

SECTION 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2017.

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House Bill 29, aa

Approved March 16, 2017

# LAWS 2017, CHAPTER 12

## AN ACT

RELATING TO THE 1999 PUBLIC ACCOUNTANCY ACT; CLARIFYING THE DEFINITION OF "ATTEST"; ALLOWING A NONRESIDENT TO MEET CONTINUING EDUCATION REQUIREMENTS IN NEW MEXICO IF THE NONRESIDENT MEETS THE REQUIREMENTS IN THE STATE WHERE THE NONRESIDENT'S PRIMARY PLACE OF BUSINESS IS LOCATED; EXPANDING THE TYPE OF SERVICES A NONRESIDENT FIRM MAY OFFER TO OR RENDER FOR A CLIENT IN NEW MEXICO WITHOUT A PERMIT; REPEALING SECTION 61-28B-7 NMSA 1978 (BEING LAWS 1999, CHAPTER 179, SECTION 7, AS AMENDED).

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

### Chapter 12 Section 1 Laws 2017

SECTION 1. Section 61-28B-3 NMSA 1978 (being Laws 1999, Chapter 179, Section 3, as amended) is amended to read:

"61-28B-3. DEFINITIONS.--As used in the 1999 Public Accountancy Act:

A. "attest" means to provide the following services:

(1) an audit or other engagement performed in accordance with the statements on auditing standards;

(2) a review of a financial statement performed in accordance with the statement on standards for accounting and review services;

(3) an engagement performed in accordance with the statements on standards for attestation engagements adopted by the board; and

(4) an engagement to be performed in accordance with the auditing standards of the public company accounting oversight board;

B. "board" means the New Mexico public accountancy board;

C. "certificate" means the legal recognition issued to identify a certified public accountant or a registered public accountant pursuant to the 1999 Public Accountancy Act or prior law;

D. "certified public accountant" means a person certified by this state or by another state to practice public accountancy and use the designation;

E. "compilation" means a service provided to management, applying accounting and financial reporting expertise, in the presentation of financial statements and reports without undertaking to obtain or provide assurance that there are no material modifications that should be made to the financial statements or reports to be in accordance with the applicable financial reporting framework;

F. "contingent fee" means a fee established for the performance of a service pursuant to an arrangement in which no fee will be charged unless a specific finding or result is attained or upon which the amount of the fee is dependent upon a finding or result. "Contingent fee" does not mean a fee set by the court or a public authority on a tax matter;

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

H. "firm" means a sole proprietorship, professional corporation, partnership, limited liability company, limited liability partnership or other legal business entity that practices public accountancy;

I. "licensee" means a person, certified public accountant, certified public accountant firm, registered public accountant or registered public accountant firm authorized to do business in New Mexico pursuant to the provisions of the 1999 Public Accountancy Act or prior law;

J. "peer review" means a study, appraisal or review of one or more aspects of the professional work of a firm by a certified public accountant who is not affiliated with the firm being reviewed;

K. "permit" means the annual authority granted to practice as a certified public accountant firm or a registered public accountant firm;

L. "practice" means performing or offering to perform public accountancy for a client or potential client by a person who makes a representation to the public as being a permit holder or registered firm;

M. "public accountancy" means the performance of one or more kinds of services involving accounting or auditing skills, including the issuance of reports on financial statements, the performance of one or more kinds of management, financial advisory or consulting services, the preparation of tax returns or the furnishing of advice on tax matters;

N. "registered public accountant" means a person who is registered by the board to practice public accountancy and use the designation;

O. "report" means a written communication issued by an accountant or an accountant firm that:

(1) when used in reference to an audit, review or examination service, expresses or disclaims an opinion or a conclusion as to whether subject matter is presented in accordance with specified criteria; and

(2) when used in reference to a compilation, agreed-upon procedures service or other service that is not an audit, review or examination service, includes a statement or implication that the accountant or accountant firm that issued the report has special knowledge or competence in accounting or attest services such as by the use of names or titles indicating that the person or firm is an accountant or an accountant firm or by the contents of the report itself; and

P. "substantial equivalency" means a determination by the board that the education, examination and experience requirements for certification of another jurisdiction are comparable to or exceed the requirements of Paragraph (1) of Subsection A of Section 61-28B-26 NMSA 1978."

## **Chapter 12 Section 2 Laws 2017**

SECTION 2. Section 61-28B-9 NMSA 1978 (being Laws 1999, Chapter 179, Section 9, as amended) is amended to read:

"61-28B-9. ISSUANCE AND RENEWAL OF CERTIFICATE--MAINTENANCE OF COMPETENCY--NONRESIDENT MAINTENANCE OF COMPETENCY REQUIREMENTS.--

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 the certificate holder's 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. A nonresident certificate holder seeking to renew a certificate shall be determined to have met the continuing professional education requirement in this state if the nonresident has met the continuing professional education requirement in the state where the nonresident's principal place of business is located; provided that:

(1) the nonresident signs a statement on the renewal application that the nonresident has met the continuing professional education requirement in the state where the nonresident's principal place of business is located; and

(2) the state where the nonresident's principal place of business is located requires continuing professional education.

G. 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 12 Section 3 Laws 2017**

SECTION 3. 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 certified public accountant firm to an applicant that demonstrates its qualifications in accordance with this section.

B. A permit issued pursuant to this section shall be required for the following:

(1) a firm with an office in New Mexico performing attest services as defined by the 1999 Public Accountancy Act;

(2) a firm with an office in New Mexico that uses the title "CPA" or "CPA firm"; or

(3) a firm that does not have an office in New Mexico but offers or renders attest services for a client in New Mexico, except as provided in Subsection C of this section.

C. A firm that does not have an office in New Mexico may offer or render attest services for a client in New Mexico and may use the title "CPA" or "CPA firm" without a permit issued pursuant to this section only if:

(1) the firm offers or renders the services through a person with practice privileges under Section 61-28B-26 NMSA 1978; provided that the firm can lawfully perform the services in the state where the person's primary place of business is located;

(2) the firm meets the requirements of Paragraph (1) of Subsection H of this section; and

(3) the firm meets the requirements of Subsection L of this section.

D. A firm not subject to the requirements of Subsection B or C of this section may perform other nonattest professional services while using the title "CPA" or "CPA firm" in New Mexico without a permit issued pursuant to this section only if:

(1) the firm performs services through a person with practice privileges pursuant to Section 61-28B-26 NMSA 1978; and

(2) the firm can lawfully perform services in the state that is the firm's principal place of business.

E. Permits shall be issued and renewed for periods of 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.

F. The board shall grant or deny an application for a permit no later than ninety days after the complete application is filed.

G. 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.

H. 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. A partner, officer, shareholder, member or manager, whose principal place of business is in New Mexico, and who performs professional services in New Mexico, must hold a valid certificate. The firm and all owners must comply with the 1999 Public Accountancy Act. A person with practice privileges pursuant to Section 61-28B-26 NMSA 1978 who performs services for which a permit is required pursuant to this section shall not be required to obtain a certificate from New Mexico pursuant to Section 61-28B-9 NMSA 1978. A firm may include owners who are not certificate holders; provided that:

(a) the firm designates a New Mexico certificate holder, or in the case of a firm that must have a permit, a licensee of another state who meets the requirements of Subsection A of Section 61-28B-26 NMSA 1978, who is responsible for the proper registration of the firm and identifies that person to the board;

(b) all owners who are not certificate holders are active 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) a certificate holder, or a person qualifying for practice privileges pursuant to Section 61-28B-26 NMSA 1978, who is responsible for supervising attest services or signs or authorizes someone to sign the accountant's report on behalf of the firm meets the experience requirements set out in the professional standards for such services.

I. 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.

J. 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.

K. 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.

L. 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, or a person qualifying for practice privileges pursuant to Section 61-28B-26 NMSA 1978, who is responsible for supervising attest services and signs or authorizes someone to sign the accountant's report on behalf of the firm meets the experience requirements set out in the professional standards for the services as required by the board.

M. If a partner, shareholder or member is a legal business entity, that legal business entity must be a firm.

N. Attest services may only be provided by a certificate holder or a member of a firm that satisfies the requirements of this section and Sections 61-28B-8 and 61-28B-13 NMSA 1978. 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 12 Section 4 Laws 2017**

SECTION 4. Section 61-28B-26 NMSA 1978 (being Laws 1999, Chapter 179, Section 26, as amended) is amended to read:

"61-28B-26. PRACTICE PRIVILEGE AND DISCIPLINE FOR A CERTIFICATE HOLDER FROM A STATE WHOSE ACCOUNTANCY STATUTE IS SUBSTANTIALLY EQUIVALENT.--

A. Except as provided in Subsection D of this section, a person whose principal place of business is not in New Mexico shall be presumed to have qualifications substantially similar to New Mexico's requirements and may exercise all the practice privileges of certificate holders of New Mexico without the need to obtain a certificate pursuant to Section 61-28B-9 NMSA 1978 if the person:

(1) holds a valid license as a certified public accountant from any state that requires, as a condition of licensure, that a person:

(a) have at least one hundred fifty semester hours of college education, including a baccalaureate or higher degree conferred by a college or university acceptable to the board;

(b) achieve a passing grade on the uniform certified public accountant examination; and

(c) possess at least one year of experience, including providing any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax or consulting skills, which may be obtained through government, industry, academic or public practice, all of which can be verified by a licensee; or

(2) holds a valid license as a certified public accountant from any state that does not meet the requirements of Paragraph (1) of Subsection A of this section, but the person's certified public accountant qualifications are substantially equivalent to those requirements. A person who passed the uniform certified public accountant examination and holds a valid license issued by any other state prior to January 1, 2012 may be exempt from the education requirement in Subparagraph (a) of Paragraph (1) of this subsection.

B. Notwithstanding any other provision of law, a person who qualifies for the practice privilege pursuant to this section may offer or render professional services whether in person or by mail, telephone or electronic means, and no notice, fee or other submission shall be required of the person.

C. A person licensed in another state exercising the practice privilege afforded pursuant to this section shall consent, as a condition of exercising the practice privilege:

(1) to submit to the personal and subject-matter jurisdiction and disciplinary authority of the board;

(2) to comply with the 1999 Public Accountancy Act and the rules adopted by the board;

(3) to cease offering or rendering professional attest services in New Mexico in the event the license from the state of the person's principal place of business is no longer valid; and

(4) to the appointment of the state board that issued the license as agent upon whom process may be served in any action or proceeding by the New Mexico public accountancy board against the licensee.

D. A person who qualifies for the practice privileges pursuant to this section and who performs an attest service shall meet the requirements of Section 61-28B-11 NMSA 1978.

E. A certificate or permit holder of New Mexico that offers or renders an attest service or uses its certified public accountant title in another state shall be subject to disciplinary action in New Mexico for an act committed in another state for which it would be subject to discipline in the other state. The board shall investigate any complaint made by the board of accountancy in another state in accordance with the provisions of the 1999 Public Accountancy Act."

## **Chapter 12 Section 5 Laws 2017**

SECTION 5. REPEAL.--Section 61-28B-7 NMSA 1978 (being Laws 1999, Chapter 179, Section 7, as amended) is repealed.

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House Bill 197

Approved March 16, 2017

## **LAWS 2017, CHAPTER 13**

AN ACT

RELATING TO TRANSPORTATION; AMENDING THE TRANSPORTATION NETWORK COMPANY SERVICES ACT TO EXCLUDE ENTITIES RECEIVING FEDERAL SUBSIDIES TO PROVIDE SERVICE UNDER THE FEDERAL OLDER AMERICANS ACT OF 1965.

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

## **Chapter 13 Section 1 Laws 2017**

SECTION 1. Section 65-7-2 NMSA 1978 (being Laws 2016, Chapter 80, Section 2) is amended to read:

"65-7-2. DEFINITIONS.--As used in the Transportation Network Company Services Act:

A. "digital network" means an internet-supported application, software, program, website or system offered or utilized by a transportation network company that enables the prearrangement of transportation by passengers with transportation network company drivers;

B. "personal vehicle" means a vehicle that is used by a transportation network company driver and is:

(1) owned, leased or otherwise authorized for use by a transportation network company driver; and

(2) not a taxicab or other vehicle for hire;

C. "prearranged ride" means transportation provided by a transportation network company driver, which shall be deemed to commence when a driver accepts a transportation request through a digital network and continue until all passengers have exited from the personal vehicle at the destination requested by the rider. "Prearranged ride" does not include shared-expense vanpool or carpool arrangements or transportation provided using a taxicab, limousine or other vehicle for hire pursuant to the Motor Carrier Act;

D. "transportation network company" means a corporation, partnership, sole proprietorship or other entity that is licensed pursuant to the Transportation Network Company Services Act and lawfully operating in New Mexico that uses a digital network, but which shall not:

(1) be deemed to control, direct or manage the personal vehicles or transportation network company drivers that connect to its digital network except where agreed to by written contract; or

(2) include any entity receiving funding to supplement transportation services through Title III B of the federal Older Americans Act of 1965, including any driver for such an entity, but only when the driver is providing those services;

E. "transportation network company driver" or "driver" means an individual who:

(1) accepts a prearranged ride requested through a digital network and for a fee paid by a transportation network company rider to the transportation network company; and

(2) uses a personal vehicle to provide a prearranged ride through a digital network;

F. "transportation network company insurance" means a liability insurance policy that specifically covers a transportation network company driver's use of a transportation network company digital network; and

G. "transportation network company rider" or "rider" means a person who uses a digital network for a prearranged ride."

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House Bill 77, aa

Approved March 17, 2017

## **LAWS 2017, CHAPTER 14**

AN ACT

RELATING TO PUBLIC FINANCES; ALLOWING A MUNICIPALITY TO ESTABLISH A MUNICIPAL POST-EMPLOYMENT LIFE INSURANCE BENEFITS TRUST.

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

### **Chapter 14 Section 1 Laws 2017**

SECTION 1. MUNICIPAL POST-EMPLOYMENT LIFE INSURANCE BENEFITS TRUST.--

A. A municipal post-employment life insurance benefits trust may be established, maintained and used by a municipal treasurer with the advice and consent of the municipal board of finance.

B. The municipality's contributions to the municipal post-employment life insurance benefits trust shall be irrevocable, and the money in the trust shall be dedicated exclusively to funding post-employment life insurance benefits pursuant to the provisions of the trust established by the municipal treasurer.

C. Money in a municipal post-employment life insurance benefits trust shall be invested pursuant to the Uniform Prudent Investor Act and the provisions of this section. Earnings and income from investment of money in the trust shall be credited to the trust.

D. The municipal treasurer shall serve as the trustee and may use the services of a trust company to manage the investment of money in the municipal post-employment life insurance benefits trust.

E. As used in this section:

(1) "municipal post-employment life insurance benefits trust" means an investment fund established, maintained and used by a municipality exclusively for the purposes permitted by this act; and

(2) "trust company" means an individual or a company, corporation, firm, partnership, state-chartered bank, national bank or other legal entity that provides

investment services pursuant to the Trust Company Act and that agrees to adhere to the provisions of the Uniform Prudent Investor Act.

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House Bill 97, aa

Approved March 17, 2017

## **LAWS 2017, CHAPTER 15**

AN ACT

RELATING TO INSURANCE; AMENDING A SECTION OF THE NEW MEXICO INSURANCE CODE TO PROVIDE FOR ELECTRONIC CLAIMS PAYMENT.

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

### **Chapter 15 Section 1 Laws 2017**

SECTION 1. Section 59A-16-21 NMSA 1978 (being Laws 1984, Chapter 127, Section 287, as amended) is amended to read:

"59A-16-21. PAYMENT OF CLAIM BY CHECK, DRAFT OR ELECTRONIC TRANSFER--FAILURE TO PAY--INTEREST.--

A. An insurer shall pay promptly claims arising under its policies with checks or drafts or, if a claimant requests, may pay by electronic transfers. Without amending other statutes dealing with checks, drafts and electronic transfers of funds, a resident of New Mexico is granted a cause of action for ten percent of the amount of any check, draft or electronic transfer of funds that is not paid or lawfully rejected within ten days of forwarding by a New Mexico financial institution, but in no case to be less than five hundred dollars (\$500) plus costs of suit and attorney fees. The insurer shall not be required to pay such civil damages for delay if it proves that the delay in processing and payment was caused by a financial institution or postal or delivery service and the check, draft or electronic transfer of funds was paid or lawfully rejected within forty-eight hours of actual receipt of the draft, check or electronic transfer of funds by the person on whom drawn.

B. Notwithstanding any provision of the Insurance Code, any insurer issuing any policy, certificate or contract of insurance, surety, guaranty or indemnity of any kind or nature that fails for a period of forty-five days, after required proof of loss has been furnished, to pay to the person entitled the amount justly due shall be liable for the amount due and unpaid with interest on that amount at the rate of one and one-half times the prime lending rate, as determined by the superintendent, for New Mexico banks per year during the period the claim is unpaid.

C. Subsection B of this section shall not apply to any claims in arbitration or litigation."

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House Bill 127, aa

Approved March 17, 2017

## **LAWS 2017, CHAPTER 16**

AN ACT

RELATING TO PHARMACEUTICALS; ENACTING A SECTION OF THE PHARMACY BENEFITS MANAGER REGULATION ACT TO BAN CERTAIN FEES.

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

### **Chapter 16 Section 1 Laws 2017**

SECTION 1. Section 59A-61-1 NMSA 1978 (being Laws 2014, Chapter 14, Section 1) is amended to read:

"59A-61-1. SHORT TITLE.--Chapter 59A, Article 61 NMSA 1978 may be cited as the "Pharmacy Benefits Manager Regulation Act"."

### **Chapter 16 Section 2 Laws 2017**

SECTION 2. A new section of the Pharmacy Benefits Manager Regulation Act is enacted to read:

"PHARMACY BENEFITS MANAGERS--PROHIBITED PHARMACY FEES.--A pharmacy benefits manager shall not charge a pharmacist or pharmacy a fee related to the adjudication of a claim, including:

- A. the receipt and processing of a pharmacy claim;
- B. the development or management of a claim processing or adjudication network; or
- C. participation in a claim processing or claim adjudication network.

### **Chapter 16 Section 3 Laws 2017**

SECTION 3. APPLICABILITY.--The provisions of this act:

A. apply to any contract executed or renewed on or after June 16, 2017;  
and

B. shall not be construed to affect the terms of a contract entered into or renewed before June 16, 2017."

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HBIC/House Bill 122, aa

Approved March 17, 2017

## **LAWS 2017, CHAPTER 17**

### **AN ACT**

RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; AMENDING THE IGNITION INTERLOCK LICENSING REQUIREMENT TO PROVIDE THAT A PERSON WITH ONLY ONE PRIOR CONVICTION FOR DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS IN ANOTHER JURISDICTION MAY OBTAIN A NEW MEXICO DRIVER'S LICENSE UPON PROOF OF COMPLETION OF ALL CONDITIONS OF THE PERSON'S SENTENCE.

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

### **Chapter 17 Section 1 Laws 2017**

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 older who is enrolled in and attending or has completed a driver education course approved by the bureau that includes a DWI education and prevention component;

(2) a provisional license to a 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 as provided in Section 66-5-8 NMSA 1978; and

(b) who has successfully completed a practice driving component;

(3) a driver's license to a person sixteen years and six months of age or older:

(a) who has had a provisional license for at least a twelve-month period immediately preceding the date of the application for the driver's license as provided in Section 66-5-9 NMSA 1978;

(b) who has complied with restrictions on that license; and

(c) who has not been adjudicated for an offense involving the use of alcohol or drugs during the twelve-month period immediately preceding the application for the driver's license and who has no pending adjudications alleging an offense involving the use of alcohol or drugs at the time of application; and

(4) to a 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 that:

(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 was convicted on or after June 17, 2005 of driving a motor vehicle while under the influence of intoxicating liquor or drugs pursuant to the laws or ordinances of any other state, the District of Columbia or any governmental subdivision thereof, unless the person obtains an ignition interlock license as provided in the Ignition Interlock Licensing Act for a period of one year for a first conviction; a period of two years for a second conviction; a period of three years for a third conviction; or the remainder of the offender's life for a fourth or subsequent conviction, subject to a five-year review as provided in Subsection D of this section. Upon presentation of proof satisfactory to the division, the division may credit time spent by a person operating a motor vehicle with an ignition interlock or comparable device, as a condition of the person's sentence for a conviction in another jurisdiction, against the ignition interlock time requirements imposed by this subsection. The division shall promulgate rules necessary for granting credit to persons who participate in comparable out-of-state programs following a conviction for driving a motor vehicle while under the influence of intoxicating liquor or drugs. The requirements of this subsection shall not apply to a person who:

(1) has only one conviction for driving a motor vehicle while under the influence of intoxicating liquor or drugs and that conviction is pursuant to the laws or ordinances of any other state or any governmental subdivision thereof and who presents proof satisfactory to the division that the person completed all conditions of the person's sentence for the conviction in the other jurisdiction, whether or not installation of an ignition interlock device was a condition of the sentence; or

(2) applies for a driver's license ten years or more from the date of the person's last conviction, except for a person who is subject to lifetime driver's license revocation for a conviction in another jurisdiction pursuant to this subsection;

F. who has previously been afflicted with or who is suffering from any mental disability or disease that would render the person unable to drive a motor vehicle with safety upon the highways and who has not, at the time of application, been restored to health;

G. who is required by the Motor Vehicle Code to take an examination, unless the person has successfully passed the examination;

H. who is required under the laws of this state to deposit proof of financial responsibility and who has not deposited the proof;

I. 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

J. 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 17 Section 2 Laws 2017**

SECTION 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2017.

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House Bill 31, aa

Approved March 17, 2017

## **LAWS 2017, CHAPTER 18**

AN ACT

RELATING TO HIGHER EDUCATION; AMENDING THE POST-SECONDARY EDUCATION ARTICULATION ACT TO ESTABLISH AND CLARIFY CONDITIONS UNDER WHICH STUDENTS MAY TRANSFER EARNED CREDITS BETWEEN AND AMONG NEW MEXICO INSTITUTIONS OF HIGHER EDUCATION.

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

## **Chapter 18 Section 1 Laws 2017**

SECTION 1. Section 21-1B-2 NMSA 1978 (being Laws 1995, Chapter 224, Section 2, as amended) is amended to read:

"21-1B-2. DEFINITIONS.--As used in the Post-Secondary Education Articulation Act:

A. "articulation" means the transfer of courses that fulfill a graduation requirement for a student's chosen degree program;

B. "department" means the higher education department;

C. "general education core curriculum" means the group of lower-division courses approved by the department as fulfilling general education requirements that are accepted by all institutions for transfer purposes;

D. "institution" means an accredited, public post-secondary educational institution operating in the state;

E. "meta-major" means fifteen credits of lower-division courses that are developed in consultation with the faculty and approved by the department and that include general education courses and prerequisite courses and that can articulate to multiple degree programs and can include courses across the institution that address diversity;

F. "transfer" means the transfer of course credits from one institution to another; and

G. "transfer module" means a list of lower-division courses established by the department that fulfill graduation requirements for a specific degree program."

## **Chapter 18 Section 2 Laws 2017**

SECTION 2. Section 21-1B-3 NMSA 1978 (being Laws 1995, Chapter 224, Section 3, as amended) is amended to read:

"21-1B-3. INITIAL ARTICULATION PLANNING AND DEVELOPMENT OF META-MAJOR AND TRANSFER MODULE.--

A. The department shall establish and maintain a comprehensive statewide plan to provide for the articulation of educational programs and facilitate the transfer of course credits between institutions.

B. In establishing a statewide articulation plan, the department shall:

(1) by August 1, 2017, establish a common course naming and numbering system for courses identified as substantially equivalent lower-division courses; provided that the department 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 coursework in that field;

(3) maintain a list of lower-division courses offered at higher education institutions in New Mexico. All courses assigned the same number shall transfer between institutions as that course name and number; and

(4) develop a process for reviewing, updating and maintaining the common course numbering system.

C. The department shall, in consultation with the faculty, facilitate the development and approval of statewide meta-majors and transfer modules by August 2019.

D. The department, in consultation with faculty, shall develop a statewide general education core curriculum of not less than fifteen hours for an associate in applied science degree, thirty hours for an associate degree other than in applied science and thirty hours for a bachelor degree. The statewide general education core curriculum shall include a comprehensive array of lower-division college-level courses designed to provide a foundation for a liberal education and courses that include the interdisciplinary study of differences that recognize and respect New Mexico's diverse cultures, histories and identities. The department shall develop a process for maintaining and updating the statewide general education core curriculum. The department shall review and approve proposed statewide general education core curriculum requirements. For every institution, each approved course in the general education core curriculum shall be transferable, and its credit hours shall count toward fulfilling general education core curriculum requirements at any institution to which they are transferred."

## **Chapter 18 Section 3 Laws 2017**

SECTION 3. Section 21-1B-4 NMSA 1978 (being Laws 1995, Chapter 224, Section 4, as amended) is amended to read:

#### "21-1B-4. TRANSFER OF CREDITS.--

A. Courses that have a New Mexico common course number shall be accepted as the equivalent courses offered at the receiving institution.

B. Courses taken as part of an approved meta-major or transfer module shall be accepted to meet lower-division graduation requirements of a degree-granting program to which the meta-major or transfer module articulates.

C. An institution shall not increase requirements for degree-granting programs as a result of the use of a meta-major or transfer module or acceptance of a course that is part of a meta-major or transfer module. An institution may specify additional lower-division or upper-division requirements not included in a meta-major or transfer 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."

### **Chapter 18 Section 4 Laws 2017**

SECTION 4. Section 21-1B-5 NMSA 1978 (being Laws 1995, Chapter 224, Section 5, as amended) is amended to read:

#### "21-1B-5. OVERSIGHT OF ARTICULATION PROGRAMS--COMPLAINT PROCEDURES.--

A. The department shall establish and maintain a process to monitor and improve articulation through frequent and systematic consultation with institutions.

B. The department shall establish a complaint procedure for transfer students who fail to receive credit for courses that have a common course number or are contained in an approved meta-major or transfer module taken at another institution. The department 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 department. The department 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 department shall summarize all articulation complaints filed with the department and the decisions of the department with regard to those complaints.

D. If a student's articulation complaint regarding commonly numbered courses or courses contained in a meta-major or transfer 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 18 Section 5 Laws 2017**

SECTION 5. Section 21-1B-6 NMSA 1978 (being Laws 1995, Chapter 224, Section 6, as amended) is amended to read:

"21-1B-6. REPORTING.--

A. Prior to December 31 of each year, the department shall report to the legislative finance committee and the governor regarding the status of articulation programs and the transfer of students between institutions.

B. The report developed by the department shall include the statewide meta-major and transfer modules available, an analysis of the number of students transferring between New Mexico's higher education institutions, the graduation rates and time to earn degrees 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 department with regard to those complaints.

E. All institutions shall provide articulation information required by the department for the development of the annual report prior to September 30 of each year."

## **Chapter 18 Section 6 Laws 2017**

SECTION 6. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2017.

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Senate Bill 103, aa

Approved March 17, 2017

# **LAWS 2017, CHAPTER 19**

AN ACT

RELATING TO PUBLIC EDUCATION; AMENDING THE PUBLIC SCHOOL CODE TO CLARIFY THE ELIGIBILITY OF CERTAIN STUDENTS TO PARTICIPATE IN THE K-3 PLUS PROGRAM; REPEALING THE KINDERGARTEN PLUS PILOT PROJECT SECTION; DECLARING AN EMERGENCY.

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

## **Chapter 19 Section 1 Laws 2017**

SECTION 1. Section 22-13-28 NMSA 1978 (being Laws 2007, Chapter 12, Section 1, as amended) is amended to read:

"22-13-28. K-3 PLUS--ELIGIBILITY--APPLICATION--REPORTING AND EVALUATION.--

A. The six-year K-3 plus pilot project has demonstrated that increased time in kindergarten and the early grades narrows the achievement gap between disadvantaged students and other students and increases cognitive skills and leads to higher test scores for all participants.

B. The "K-3 plus" program is created in the department to provide funding for additional educational time for students in kindergarten through third grade. K-3 plus shall be administered by the department and shall provide the funding for approved full-day kindergarten and grades one through three to be extended by at least twenty-five instructional days, beginning up to two months earlier than the regular school years.

C. K-3 plus shall be conducted upon application in:

(1) a high-poverty elementary school in which eighty percent or more of the students are eligible for free or reduced-fee lunch at the time the school applies for the program;

(2) an elementary school with a D or F school grade at the time of application or schools that improved their school grade with K-3 plus and wish to continue the program; or

(3) an elementary school that serves students in specific grade levels between kindergarten and third grade that is not otherwise eligible that receives students from or sends students to another elementary school that is eligible and participating in the regular course of the school district attendance zoning.

D. The department shall prioritize funding to school districts and charter schools that keep students that participate in K-3 plus with the same teacher and cohort of students during the regular school year.

E. The department shall promulgate rules for application requirements and procedures and criteria for evaluating applications. In evaluating applications for K-3 plus, the department shall grant priority to those schools with research-based, scientific reading strategies and programs. An applicant shall demonstrate that its K-3 plus program will meet all department standards and employ only qualified teachers and other staff.

F. K-3 plus programs shall be funded at no less than thirty percent of the unit value per student. Up to two percent of the money received by a school district shall be used for student recruitment and to ensure regular attendance by K-3 plus students. Funding for individual school programs shall be based on enrollment on the fifteenth day of the program.

G. School districts and charter schools that meet the qualifications for K-3 plus funding may submit applications by March 15 for the succeeding fiscal year. The department shall notify all school districts and charter schools by February 1 that applications will be accepted until March 15 and that final funding is contingent on the final unit value set by the secretary. The notification shall include the application and any requirements for supplementary documentation. Applications may be submitted electronically or by mail or other delivery. Schools that are awarded funding for K-3 plus for the next school year shall be notified by April 15 of the calendar year.

H. The department shall provide additional professional development for K-3 plus teachers in how young children learn to read. Teachers and educational assistants shall be paid at the same rate and under the same terms for K-3 plus as teachers and educational assistants are paid for regular educational programs.

I. Students participating in K-3 plus shall be evaluated at the beginning of K-3 plus, and their progress shall be measured through department-approved summative and formative assessments.

J. The department shall establish reporting and evaluation requirements for participating schools, including student and program assessments. The department shall report annually to the legislature and the governor on the efficacy of K-3 plus.

K. The department may use up to four percent of any appropriation made by the legislature for K-3 plus for professional development for participating educators and department administrative costs.

L. The department shall develop and disseminate information on best practices in the areas of student recruitment, retention and academic success of early learners.

M. The secretary shall appoint a "K-3 plus advisory committee" composed of representatives of school districts that participate in K-3 plus and other stakeholders.

The advisory committee shall meet twice a year to advise the department on K-3 plus implementation."

## **Chapter 19 Section 2 Laws 2017**

SECTION 2. REPEAL.--Section 22-2-20 NMSA 1978 (being Laws 2003, Chapter 130, Section 1, as amended) is repealed.

## **Chapter 19 Section 3 Laws 2017**

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

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Senate Bill 32, w/ec

Approved March 17, 2017

# **LAWS 2017, CHAPTER 20**

AN ACT

RELATING TO DEFERRED COMPENSATION; AMENDING THE DEFERRED COMPENSATION ACT TO UPDATE DEFINITIONS, INVESTMENT OPTIONS, TRANSMISSION METHOD AND FILING AND NOTIFICATION REQUIREMENTS.

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

## **Chapter 20 Section 1 Laws 2017**

SECTION 1. Section 10-7A-2 NMSA 1978 (being Laws 1981, Chapter 155, Section 2, as amended) is amended to read:

"10-7A-2. DEFINITIONS.--As used in the Deferred Compensation Act:

- A. "board" means the public employees retirement board;
- B. "local public body" means all political subdivisions of the state, their agencies, instrumentalities and institutions;
- C. "local public employee" means any officer or employee to whom a local public body pays a salary for services rendered;

D. "deferred compensation carriers" means any corporation, partnership or persons providing administrative, recordkeeping or investment consulting services to participants in deferred compensation plans pursuant to funding agreements; and

E. "state employee" means any officer or employee to whom the state pays a salary for services rendered."

## **Chapter 20 Section 2 Laws 2017**

SECTION 2. Section 10-7A-3 NMSA 1978 (being Laws 1984, Chapter 127, Section 988.1, as amended) is amended to read:

"10-7A-3. DEFERRED COMPENSATION PLAN--STATE AND LOCAL PUBLIC EMPLOYEES.--

A. After the effective date of the Deferred Compensation Act, the board shall review and approve deferred compensation plans for participation by state and local public employees. A deferred compensation plan shall provide for the method of transfer of funds to a plan through written or electronic salary reduction agreements with state and local public employees and shall provide for deferral of only those salary amounts upon which income taxes are eligible for deferral pursuant to federal law.

B. Compensation deferred under any deferred compensation plan shall be included with current income for purposes of computing retirement contributions and benefits.

C. Amounts by which salary is reduced shall be transmitted to the approved deferred compensation carrier.

D. Local public employees may participate in a deferred compensation plan selected by their local public body employer after it takes formal action conforming to board requirements. If the plan selected is different from the plan approved by the board, the board shall have no responsibility concerning the plan. If the plan selected is that approved by the board pursuant to Section 10-7A-5 NMSA 1978, the provisions of Section 10-7A-8 NMSA 1978 shall apply."

## **Chapter 20 Section 3 Laws 2017**

SECTION 3. Section 10-7A-5 NMSA 1978 (being Laws 1984, Chapter 127, Section 988.2, as amended) is amended to read:

"10-7A-5. DEFERRED COMPENSATION PLAN--APPROVAL.--

A. The board shall review proposals providing investment options to participants of a deferred compensation plan submitted by deferred compensation carriers that have been engaged for a minimum of three years in the business of

funding public employee deferred compensation plans authorized by 26 U.S.C. Section 457 and approve proposals that are consistent with the goals of providing state or local public employees with an investment that, in the opinion of the board, is safe and will provide a reasonable return to the employees upon their reaching the appropriate age or date at which they may begin receiving funds from the deferred compensation plan.

B. The type of deferred compensation investment options that may be approved include mutual funds, including stock, bond or capital preservation funds or any other investments determined by the board to fulfill the goals of providing viable deferred compensation for state or local public employees."

## **Chapter 20 Section 4 Laws 2017**

SECTION 4. Section 10-7A-8 NMSA 1978 (being Laws 1981, Chapter 155, Section 8, as amended) is amended to read:

"10-7A-8. DEFERRED COMPENSATION PLAN--LOCAL PUBLIC EMPLOYEE PARTICIPATION.--

A. Local public employees shall be eligible to participate in a deferred compensation plan approved by the board upon the filing of a local public body's participation agreement, conforming to board requirements, applicable to its local public employees and such other participants permitted by the plan as the local public body may elect. Such filing shall be made at such dates and places and in such manner as the board requires.

B. A local public body may terminate its local public employees' and other qualified participants' future participation in a board-approved plan any time not less than two years after the date participation has become effective, upon the local public body's filing of written or electronic notice conforming to board requirements."

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Senate Bill 75

Approved March 17, 2017

## **LAWS 2017, CHAPTER 21**

AN ACT

RELATING TO EDUCATIONAL RETIREMENT; AMENDING THE EDUCATIONAL RETIREMENT ACT TO CLARIFY REQUIREMENTS FOR PROVISIONAL MEMBERSHIP, TO ESTABLISH REQUIREMENTS FOR USE OF A MEDICAL AUTHORITY TO DETERMINE DISABILITY STATUS AND TO MAKE CLARIFYING

AND TECHNICAL CHANGES; REPEALING SECTIONS OF THE EDUCATIONAL RETIREMENT ACT.

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

## **Chapter 21 Section 1 Laws 2017**

SECTION 1. Section 22-11-2 NMSA 1978 (being Laws 1967, Chapter 16, Section 126, as amended) is amended to read:

"22-11-2. DEFINITIONS.--As used in the Educational Retirement Act:

A. "member" means an employee, except for a participant or a retired member, coming within the provisions of the Educational Retirement Act;

B. "regular member" means:

(1) a person regularly employed by a state educational institution, except for:

(a) a participant; or

(b) all employees of a general hospital or outpatient clinics thereof operated by a state educational institution named in Article 12, Section 11 of the constitution of New Mexico;

(2) a person regularly employed by a junior college or community college created pursuant to Chapter 21, Article 13 NMSA 1978, except for a participant;

(3) a person regularly employed by a technical and vocational institute created pursuant to the Technical and Vocational Institute Act, except for a participant;

(4) a person regularly employed by the New Mexico boys' school, the girls' welfare home, the Los Lunas medical center or a school district or as a licensed school employee of a state institution or agency providing an educational program and holding a license issued by the department, except for a participant;

(5) a person regularly employed by the department holding a license issued by the department at the time of commencement of such employment;

(6) a member classified as a regular member in accordance with the rules of the board;

(7) a person regularly employed by the New Mexico activities association holding a license issued by the department at the time of commencement of such employment; or

(8) a person regularly employed by a regional education cooperative holding a license issued by the department at the time of commencement of such employment;

C. "provisional member" means a person described in Section 22-11-17 NMSA 1978;

D. "local administrative unit" means an employing agency however constituted

that is directly responsible for the payment of compensation for the employment of members or participants;

E. "beneficiary" means a person having an insurable interest in the life of a member or a participant designated by written instrument duly executed by the member or participant and filed with the director to receive a benefit pursuant to the Educational Retirement Act that may be received by someone other than the member or participant;

F. "employment" means employment by a local administrative unit that qualifies a person to be a member or participant;

G. "service employment" means employment that qualifies a person to be a regular member;

H. "provisional service employment" means employment that qualifies a person to be a provisional member;

I. "prior employment" means employment performed prior to the effective date of the Educational Retirement Act that would be service employment or provisional service employment if performed thereafter;

J. "service credit" means that period of time with which a member is accredited for the purpose of determining the member's eligibility for and computation of retirement or disability benefits;

K. "earned service credit" means that period of time during which a member was engaged in employment or prior employment with which the member is accredited for the purpose of determining the member's eligibility for retirement or disability benefits;

L. "allowed service credit" means that period of time during which a member has performed certain nonservice employment with which the member may be

accredited, as provided in the Educational Retirement Act, for the purpose of computing retirement or disability benefits;

M. "retirement benefit" means an annuity paid monthly to members whose employment has been terminated by reason of their age;

N. "disability benefit" means an annuity paid monthly to members whose employment has been terminated by reason of a disability;

O. "board" means the educational retirement board;

P. "fund" means the educational retirement fund;

Q. "director" means the educational retirement director;

R. "medical authority" means a medical doctor or medical review panel designated or employed by the board to examine medical records and report on the medical condition of applicants for or recipients of disability benefits;

S. "actuary" means a person trained and regularly engaged in the occupation of calculating present and projected monetary assets and liabilities under annuity or insurance programs;

T. "actuarial equivalent" means a sum paid as a current or deferred benefit that is equal in value to a regular benefit, computed upon the basis of interest rates and mortality tables;

U. "contributory employment" means employment for which contributions have been made by both a member and a local administrative unit pursuant to the Educational Retirement Act;

V. "qualifying state educational institution" means the university of New Mexico, New Mexico state university, New Mexico institute of mining and technology, New Mexico highlands university, eastern New Mexico university, western New Mexico university, central New Mexico community college, Clovis community college, Luna community college, Mesalands community college, New Mexico junior college, northern New Mexico state school, San Juan college and Santa Fe community college;

W. "participant" means:

(1) a person regularly employed as a faculty or professional employee of the university of New Mexico, New Mexico state university, New Mexico institute of mining and technology, New Mexico highlands university, eastern New Mexico university or western New Mexico university who first becomes employed with such an educational institution on or after July 1, 1991, or a person regularly employed as a faculty or professional employee of the central New Mexico community college,

Clovis community college, Luna community college, Mesalands community college, New Mexico junior college, northern New Mexico state school, San Juan college or Santa Fe community college who is first employed by the institution on or after July 1, 1999 and who elects, pursuant to Section 22-11-47 NMSA 1978, to participate in the alternative retirement plan; and

(2) a person regularly employed who performs research or other services pursuant to a contract between a qualifying state educational institution and the United States government or any of its agencies who elects, pursuant to Section 22-11-47 NMSA 1978, to participate in the alternative retirement plan; provided that the research or other services are performed outside the state;

X. "salary" means the compensation or wages paid to a member or participant by any local administrative unit for services rendered. "Salary" includes payments made for annual or sick leave and payments for additional service provided to related activities, but does not include payments for sick leave not taken unless the payment for the unused sick leave is made through continuation of the member on the regular payroll for the period represented by that payment and does not include allowances or reimbursements for travel, housing, food, equipment or similar items;

Y. "alternative retirement plan" means the retirement plan provided for in Sections 22-11-47 through 22-11-52 NMSA 1978; and

Z. "retired member" means a person whose employment has been terminated by reason of age and who is receiving or is eligible to receive retirement benefits."

## **Chapter 21 Section 2 Laws 2017**

SECTION 2. Section 22-11-4 NMSA 1978 (being Laws 1967, Chapter 16, Section 128, as amended) is amended to read:

### **"22-11-4. BOARD--REGULAR AND SPECIAL MEETINGS.--**

A. The board shall hold regular meetings four times each year and may provide for additional regular meetings. Prior to each regular meeting, written notice shall be given to each member of the board specifying the time and place of the regular meeting.

B. Special meetings of the board may be called by the chair or by any three members of the board. Written notice of the special meeting shall be sent to each member of the board at least three days in advance of the special meeting.

C. If not in violation of Subsection A or B of this section, the rules of the board or the Open Meetings Act, the chair or any of three members of the board may cancel or reschedule a meeting."

## **Chapter 21 Section 3 Laws 2017**

SECTION 3. Section 22-11-5.1 NMSA 1978 (being Laws 1999, Chapter 153, Section 2) is amended to read:

"22-11-5.1. RESTRICTIONS ON RECEIPT OF GIFTS.--Except for gifts of food or beverage given in a place of public accommodation, consumed at the time of receipt, not exceeding fifty dollars (\$50.00) for a single gift and the aggregate value of which gifts may not exceed one hundred fifty dollars (\$150) in a calendar year, neither a board member nor an employee of the board shall receive or accept anything of value directly or indirectly from a person who:

A. has a current contract with the board;

B. is a potential bidder, offeror or contractor for the provision of services or personal property to the board;

C. is authorized to invest public funds pursuant to state or federal law or is an employee or agent of such a person; or

D. is an organization, association or other entity having a membership that includes persons described in Subsections A through C of this section."

## **Chapter 21 Section 4 Laws 2017**

SECTION 4. Section 22-11-6 NMSA 1978 (being Laws 1967, Chapter 16, Section 130, as amended) is amended to read:

"22-11-6. BOARD--POWERS--DUTIES.--

A. The board shall:

(1) properly and uniformly enforce the Educational Retirement Act;

(2) hire employees and delegate administrative authority to these employees;

(3) make an actuarial report on the financial operation of the Educational Retirement Act to the legislature at each regular session every odd-numbered year;

(4) accept donations, gifts or bequests to the fund; and

(5) adopt regulations pursuant to the Educational Retirement Act.

B. The board may:

(1) select and contract for the services of one or more custodial banks. For purposes of this subsection, "custodial bank" means a financial institution with the general fiduciary duties to manage, control and collect the assets of an investment fund, including receiving all deposits and paying all disbursements as directed by staff, safekeeping of assets, coordination of asset transfers, timely settlement of securities transactions and accurate and timely reporting by individual account and in total; and

(2) contract for legal services for litigation matters on a contingent fee basis, subject to the provisions of the Procurement Code; provided that:

(a) the board shall submit each proposed contract to the attorney general for review of the contingency fee. The attorney general shall review a proposed contract within thirty days after receiving the contract. The review shall take into account the complexity of the factual and legal issues presented by the claims to be pursued under the contract. If the attorney general advises the board that the proposed contingency fee is not reasonable, the board may nevertheless approve the contract and the contingency fee if no fewer than four members vote for approval;

(b) each prospective contractor seeking to represent the board on a contingency fee basis shall file with the board the disclosure required by Section 13-1-191.1 NMSA 1978 disclosing all campaign contributions made to the governor, attorney general, state treasurer or any member of the board, or to a political committee that is intended to aid or promote the nomination or election of any candidate to a state office if the committee is: 1) established by any of the foregoing persons or their agents; 2) established in consultation with or at the request of any of the foregoing persons or their agents; or 3) controlled by one of the foregoing persons or their agents; and

(c) nothing in this paragraph shall prejudice or impair the rights of a qui tam plaintiff pursuant to the Fraud Against Taxpayers Act."

## **Chapter 21 Section 5 Laws 2017**

SECTION 5. Section 22-11-7 NMSA 1978 (being Laws 1967, Chapter 16, Section 131) is amended to read:

"22-11-7. EDUCATIONAL RETIREMENT DIRECTOR--BOND.--

A. The board shall employ an educational retirement director. The director shall be the administrative officer for the board in carrying out the provisions of the Educational Retirement Act and shall have those additional duties provided in the rules of the board.

B. Before assuming the duties of office, the director shall obtain an official bond payable to the fund and conditioned upon the faithful performance of the director's

duties during the director's term of office. The bond shall be executed by a corporate surety company authorized to do business in this state. The amount of the bond shall be not less than twenty-five thousand dollars (\$25,000). The board may elect to obtain a schedule or blanket corporate surety bond covering the director and employees of the board for any period not exceeding four years. The cost of a bond obtained pursuant to this section shall be paid from the fund. Any bond obtained shall be approved by the board and filed with the secretary of state."

## **Chapter 21 Section 6 Laws 2017**

SECTION 6. Section 22-11-8 NMSA 1978 (being Laws 1967, Chapter 16, Section 132) is amended to read:

"22-11-8. MEDICAL AUTHORITY--FEES.--

A. The board shall employ the services of a medical authority. The medical authority may examine, make reports of and certify the medical condition of applicants for and recipients of disability benefits pursuant to the Educational Retirement Act.

B. The board shall pay the medical authority a reasonable fee for professional services."

## **Chapter 21 Section 7 Laws 2017**

SECTION 7. Section 22-11-9 NMSA 1978 (being Laws 1967, Chapter 16, Section 133, as amended) is amended to read:

"22-11-9. ACTUARY--FEES.--

A. The board shall employ the services of an actuary. The actuary shall prepare a table of actuarial equivalents for use of the board and the director in computing the value of advanced, deferred or optional payment of benefits pursuant to the Educational Retirement Act. The actuary shall also study the financial operations of the Educational Retirement Act and shall make written reports thereon to the board.

B. The board shall pay the actuary a reasonable fee for professional services.

C. Unless otherwise required by the governmental accounting standards board of the American institute of certified public accountants, an actuarial report shall be conducted at least once every three years."

## **Chapter 21 Section 8 Laws 2017**

SECTION 8. Section 22-11-17 NMSA 1978 (being Laws 1967, Chapter 16, Section 141, as amended) is amended to read:

"22-11-17. PROVISIONAL MEMBERSHIP.--

A provisional member is a person who is employed by the board, the department, the New Mexico school for the deaf, the northern New Mexico state school, the New Mexico school for the blind and visually impaired, the girls' welfare home, the New Mexico boys' school or the Los Lunas medical center and who has the option of qualifying for coverage under either the Educational Retirement Act or the public employees retirement association. This option shall be exercised by filing a written election with both the director and the executive secretary of the public employees retirement association. This election shall be made within six months after employment and shall be irrevocable regardless of subsequent employment or reemployment in any administrative unit enumerated in this section. Until this election is made, the provisional member shall be covered and shall be required to make contributions under the Educational Retirement Act."

## **Chapter 21 Section 9 Laws 2017**

SECTION 9. Section 22-11-21.3 NMSA 1978 (being Laws 1998, Chapter 38, Section 1, as amended) is amended to read:

"22-11-21.3. PICK UP--ROLLOVER.--

A. Commencing on July 1, 1998, each local administrative unit may, solely for the purpose of compliance with Section 414(h) of the Internal Revenue Code of 1986, pick up, for the purposes specified in that section, member contributions permitted by Section 22-11-17 NMSA 1978; Subsection C of Section 22-11-33 NMSA 1978; or Paragraph (4) of Subsection A of Section 22-11-34 NMSA 1978. Member contributions picked up under the provisions of this subsection shall be treated as local administrative unit contributions for purposes of determining income tax obligations under the Internal Revenue Code of 1986; however, such picked-up member contributions shall be included in the determination of the member's gross annual salary for all other purposes under federal and state laws. Member contributions picked up under this section shall continue to be designated member contributions for all purposes of the Educational Retirement Act and shall be considered as part of the member's annual salary for purposes of determining the amount of the member's contribution. The provisions of this section are voluntary, and the member shall have no option concerning the pick up to receive the contributed amounts directly instead of having them paid by the local administrative unit to the fund. The contribution may be paid through the local administrative unit's payroll deduction.

B. Commencing July 1, 1998, the board may accept rollover contributions from other retirement funds solely for and subject to the restrictions set forth in Section 22-11-17 NMSA 1978 and Subsection B of Section 22-11-34 NMSA 1978 and the

applicable restrictions set forth in the Internal Revenue Code of 1986 for pension plan qualification."

## **Chapter 21 Section 10 Laws 2017**

SECTION 10. Section 22-11-25 NMSA 1978 (being Laws 1967, Chapter 16, Section 148) is amended to read:

"22-11-25. RETIREMENT--REEMPLOYMENT.--

A. A member retired pursuant to the provisions of the Educational Retirement Act may be removed from retirement status by returning to employment. A reemployed member shall make regular contributions pursuant to the Educational Retirement Act. Upon termination of reemployment, the member shall be eligible for retirement benefits again based upon all service credit acquired. In no case shall the retirement benefits be less than the member was receiving prior to the member's reemployment.

B. At the time of retirement following a period of reemployment, the member's retirement benefits shall be paid in accordance with the terms of the option selected at the time of the first retirement."

## **Chapter 21 Section 11 Laws 2017**

SECTION 11. Section 22-11-29 NMSA 1978 (being Laws 1967, Chapter 16, Section 152, as amended) is amended to read:

"22-11-29. RETIREMENT BENEFIT OPTIONS.--

A. Upon retirement pursuant to the Educational Retirement Act, a member may elect, and, except as provided in Subsection D or E of this section, such election shall be irrevocable, to receive the actuarial equivalent of the member's retirement benefit, as provided in Section 22-11-30 NMSA 1978, to be effective on the member's retirement in any one of the following optional forms:

(1) OPTION A. An unreduced retirement benefit pursuant to Section 22-11-30 NMSA 1978;

(2) OPTION B. A reduced annuity payable during the member's life with provision that upon the member's death the same annuity shall be continued during the life of and paid to the beneficiary designated by the member in writing at the time of electing this option; or

(3) OPTION C. A reduced annuity payable during the member's life with provision that upon the member's death one-half of this same annuity shall be

continued during the life of and paid to the beneficiary designated by the member in writing at the time of electing this option.

B. In the case of Options B and C of Subsection A of this section, the actuarial equivalent of the member's retirement benefit shall be computed on the basis of the lives of both the member and the beneficiary.

C. In the event that the named beneficiary of a retired member who elected Option B or C of Subsection A of this section at the time of retirement predeceases the retired member, the annuity of the retired member shall be adjusted by adding an amount equal to the amount by which the annuity of the retired member was reduced at retirement as a result of the election of Option B or C. The adjustment authorized in this subsection shall be made as follows:

(1) beginning on the first month following the month in which the named beneficiary of a retiree dies applicable to an annuity received by a retiree who retires after June 30, 1987; or

(2) beginning on July 1, 1987 applicable to an annuity received by a retiree who retired prior to July 1, 1987 and otherwise qualifies for the adjustment; provided, however, no adjustment shall be made retroactively.

D. A retired member who is being paid an adjusted annuity pursuant to Subsection C of this section because of the death of the named beneficiary may exercise a one-time irrevocable option to designate another individual as the beneficiary and may select either Option B or Option C of Subsection A of this section; provided that:

(1) the amount of the annuity under the option selected shall be recalculated and have the same actuarial present value, computed on the effective date of the designation, as the annuity being paid to the retired member prior to the designation;

(2) the designation and the amount of the annuity shall be subject to a court order as provided for in Subsection B of Section 22-11-42 NMSA 1978; and

(3) the retired member shall pay one hundred dollars (\$100) to the board to defray the cost of determining the new annuity amount.

E. A retired member who is being paid an annuity under Option B or C of Subsection A of this section with a living designated beneficiary other than the retired member's spouse or former spouse may exercise a one-time irrevocable option to deselect the designated beneficiary and elect to:

(1) designate another beneficiary; provided that:

(a) the retired member shall not have an option to change from the current form of payment;

(b) the amount of the annuity under the form of payment shall be recalculated and shall have the same actuarial present value, computed as of the effective date of the designation, as the amount of annuity paid prior to the designation; and

(c) the retired member shall pay one hundred dollars (\$100) to the board to defray the cost of determining the new annuity amount; or

(2) have future annuity payments made without a reduction as a result of Option B or C.

F. In the event of the death of the member who has not retired and who has completed at least five years' earned service credit, the member shall be considered as retiring on the first day of the month following the date of death, and the benefits due the surviving beneficiary, computed as of that date, shall, except as provided in Subsection I of this section, be commenced effective on the first day of such month in accordance with the terms of Option B of Subsection A of this section. In lieu of the provisions of Option B, the surviving beneficiary may elect to receive payment of all the contributions made by the member, plus interest at the rate set by the board reduced by the sum of any disability benefits previously received by the member, or the surviving beneficiary may choose to defer receipt of the survivor's benefit to whatever age the beneficiary chooses up to the time the member would have attained age sixty. If the benefit is thus deferred, it shall be calculated as though the member had retired on the first day of the month in which the beneficiary elects to receive the benefit. In the event of the death of the beneficiary after the death of the member and prior to the date on which the beneficiary has elected to receive the beneficiary's benefit, the estate of the beneficiary shall be entitled to a refund of the member's contributions plus interest at the rate earned by the fund during the preceding fiscal year, reduced by the sum of any disability benefits previously received by the member.

G. In the case of death of a retired member who did not elect either Option B or C of Subsection A of this section and before the benefits paid to the member have equaled the sum of the member's accumulated contributions to the fund plus accumulated interest at the rate set by the board, the balance shall be paid to the beneficiary designated in writing to the director by the member or, if no beneficiary was designated, to the estate of the member.

H. No benefit shall be paid pursuant to this section if the member's contributions have been refunded pursuant to Section 22-11-15 NMSA 1978.

I. In the case of death of a member with less than five years' earned service credit or death of a member who has filed with the director a notice rejecting the provisions of Subsection F of this section, which notice shall be revocable by the

member at any time prior to retirement, the member's contributions to the fund plus interest at the rate set by the board shall be paid to the beneficiary designated in writing to the director by the member or, if no beneficiary was designated, to the estate of the member."

## **Chapter 21 Section 12 Laws 2017**

SECTION 12. Section 22-11-31 NMSA 1978 (being Laws 1979, Chapter 333, Section 2, as amended) is amended to read:

"22-11-31. COST-OF-LIVING ADJUSTMENT--ELIGIBILITY--BASED ON FUNDED RATIO--ADDITIONAL CONTRIBUTIONS.--

A. For the purposes of this section:

(1) "adjustment factor" means a multiplicative factor computed to provide an annuity adjustment pursuant to the provisions of Subsection B of this section;

(2) "annuity" means any benefit payable under the Educational Retirement Act or the Public Employees Retirement Reciprocity Act as a retirement benefit, disability benefit or survivor benefit;

(3) "calendar year" means the full twelve months beginning January 1 and ending December 31;

(4) "consumer price index" means the average of the monthly consumer price indexes for a calendar year for the entire United States for all items as published by the United States department of labor;

(5) "funded ratio" means the ratio of the actuarial value of the assets of the fund to the actuarial accrued liability of the educational retirement system;

(6) "median adjusted annuity" means the median value of all annuities and retirement benefits paid pursuant to Section 22-11-29 or 22-11-30 NMSA 1978, as calculated each fiscal year; provided, however, that the benefits paid to a member pursuant to Section 22-11-38 NMSA 1978 shall not be included in the median adjusted annuity calculation;

(7) "next preceding calendar year" means the full calendar year immediately prior to the preceding calendar year; and

(8) "preceding calendar year" means the full calendar year preceding the July 1 on which a benefit is to be adjusted.

B. On or after July 1, 1984:

(1) the annuity of a member who retires pursuant to Subsection A of Section 22-11-23 NMSA 1978 or Subsection A of Section 22-11-23.1 NMSA 1978 shall be adjusted annually and cumulatively commencing on July 1 of the year in which a member attains the age of sixty-five years or on July 1 following the year a member retires, whichever is later; and

(2) the annuity of a member who retires pursuant to Subsection A of Section 22-11-23.2 NMSA 1978 shall be adjusted annually and cumulatively commencing on July 1 of the year in which the member attains the age of sixty-seven years or on July 1 following the year the member retires, whichever is later.

C. Beginning on July 1, 2013 and on each July 1 thereafter:

(1) if the funded ratio of the fund as reported by the board's actuary in the actuarial valuation report for the next preceding fiscal year is one hundred percent or greater, the annuity adjustments provided for under Subsection B of this section shall be adjusted by applying an adjustment factor based on the percentage increase of the consumer price index between the next preceding calendar year and the preceding calendar year. The adjustment factor shall be applied as follows:

(a) if the percentage increase of the consumer price index is less than two percent in absolute value, the adjustment factor shall be the same amount as the percentage increase of the consumer price index; and

(b) if the percentage increase of the consumer price index is two percent or greater in absolute value, the adjustment factor shall be one-half of the percentage increase; except that the adjustment shall not exceed four percent in absolute value nor be less than two percent in absolute value;

(2) if the funded ratio of the fund as reported by the board's actuary in the actuarial report for the next preceding fiscal year is greater than ninety percent but less than one hundred percent, except for a member who is on disability status in accordance with Section 22-11-35 NMSA 1978 and whose benefit is adjusted as provided in Subsection G of this section or a member who is retired pursuant to Section 22-11-38 NMSA 1978, the adjustment factor provided for in Subsection B of this section shall be applied as follows:

(a) if the percentage increase in the consumer price index is less than two percent in absolute value, for a member who has twenty-five or more years of service credit at retirement and whose annuity is less than or equal to the median adjusted annuity for the fiscal year next preceding the adjustment date, the adjustment factor shall be ninety-five percent of the adjustment factor determined pursuant to Subparagraph (a) of Paragraph (1) of this subsection;

(b) if the percentage increase in the consumer price index is less than two percent in absolute value, for a member who has less than twenty-five

years of service credit at retirement and whose annuity is less than or equal to the median adjusted annuity for the fiscal year next preceding the adjustment date, and for a member whose annuity is greater than the median adjusted annuity for the fiscal year next preceding the adjustment date, the adjustment factor shall be ninety percent of the adjustment factor determined pursuant to Subparagraph (a) of Paragraph (1) of this subsection;

(c) if the percentage increase in the consumer price index is greater than or equal to two percent in absolute value for a member who has twenty-five or more years of service credit at retirement and whose annuity is less than or equal to the median adjusted annuity for the fiscal year next preceding the adjustment date, the adjustment factor shall be ninety-five percent of the adjustment factor determined under Subparagraph (b) of Paragraph (1) of this subsection; and

(d) if the percentage increase in the consumer price index is greater than or equal to two percent in absolute value, for a member who has less than twenty-five years of service credit at retirement and whose annuity is less than or equal to the median adjusted annuity for the fiscal year next preceding the adjustment date, and for a member whose annuity is greater than the median adjusted annuity for the fiscal year next preceding the adjustment date, the adjustment factor shall be ninety percent of the adjustment factor determined under Subparagraph (b) of Paragraph (1) of this subsection;

(3) if the funded ratio of the fund as reported by the board's actuary in the actuarial valuation report for the next preceding fiscal year is ninety percent or less, except for a member who is on disability status in accordance with Section 22-11-35 NMSA 1978 and whose benefit is adjusted as provided in Subsection G of this section or a member who is retired pursuant to Section 22-11-38 NMSA 1978, the adjustment factor provided for in Subsection B of this section shall be applied as follows:

(a) if the percentage increase in the consumer price index is less than two percent in absolute value, for a member who has twenty-five or more years of service credit at retirement and whose annuity is less than or equal to the median adjusted annuity for the fiscal year next preceding the adjustment date, the adjustment factor shall be ninety percent of the adjustment factor determined pursuant to Subparagraph (a) of Paragraph (1) of this subsection;

(b) if the percentage increase in the consumer price index is less than two percent in absolute value, for a member who has less than twenty-five years of service credit at retirement and whose annuity is less than or equal to the median adjusted annuity for the fiscal year next preceding the adjustment date, and for a member whose annuity is greater than the median adjusted annuity for the fiscal year next preceding the adjustment date, the adjustment factor shall be eighty percent of the adjustment factor determined pursuant to Subparagraph (a) of Paragraph (1) of this subsection;

(c) if the percentage increase in the consumer price index is greater than or equal to two percent in absolute value for a member who has twenty-five or more years of service credit at retirement and whose annuity is less than or equal to the median adjusted annuity for the fiscal year next preceding the adjustment date, the adjustment factor shall be ninety percent of the adjustment factor determined under Subparagraph (b) of Paragraph (1) of this subsection; and

(d) if the percentage increase in the consumer price index is greater than or equal to two percent in absolute value, for a member who has less than twenty-five years of service credit at retirement and whose annuity is less than or equal to the median adjusted annuity for the fiscal year next preceding the adjustment date, and for a member whose annuity is greater than the median adjusted annuity for the fiscal year next preceding the adjustment date, the adjustment factor shall be eighty percent of the adjustment factor determined under Subparagraph (b) of Paragraph (1) of this subsection; and

(4) an annuity shall not be decreased if there is a decrease in the consumer price index between the next preceding calendar year and the preceding calendar year.

D. A retired member whose benefit is subject to adjustment under the provisions of the Educational Retirement Act in effect prior to July 1, 1984 shall have the member's annuity readjusted annually and cumulatively under the provisions of that act in effect prior to July 1, 1984 until July 1 of the year in which the member attains the age of sixty-five years, when the member shall have the annuity readjusted annually and cumulatively under the provisions of this section.

E. A member who:

(1) retires pursuant to Subsection A of Section 22-11-23 NMSA 1978 or Subsection A of Section 22-11-23.1 NMSA 1978 after attaining the age of sixty-five years shall have the member's annuity adjusted as provided in Subsections B and C of this section commencing on July 1 of the year following the member's retirement; or

(2) retires pursuant to Subsection A of Section 22-11-23.2 NMSA 1978 after attaining the age of sixty-seven years shall have the member's annuity adjusted as provided in Subsections B and C of this section commencing on July 1 of the year following the member's retirement.

F. A retired member who returns to work and suspends retirement shall be subject to the provisions of this section as they exist at the time of the member's latest retirement.

G. Benefits of a member who is on a disability status in accordance with Section 22-11-35 NMSA 1978 or a member who is certified by the board as disabled at

regular retirement shall be adjusted in accordance with Subsections B and C of this section, except that the benefits shall be adjusted annually and cumulatively commencing on July 1 of the third full year following the year in which the member was approved by the board for disability or retirement."

## **Chapter 21 Section 13 Laws 2017**

SECTION 13. Section 22-11-33 NMSA 1978 (being Laws 1967, Chapter 16, Section 156, as amended) is amended to read:

"22-11-33. EARNED SERVICE CREDIT.--

A. Upon a member filing an application for retirement or disability benefits, earned service credit for the time of contributory employment shall be certified by the director and subject to the review of the board.

B. A member shall be certified to have earned service credit for that period of time when the member was engaged in prior employment. Earned service credit shall not be certified for that period of employment for which the contributions have been withdrawn from the fund by the member.

C. Earned service credit shall be certified for periods of employment interrupted for some cause other than retirement or disability. This shall be done if a member withdrawing contributions from the fund for this period returns to the fund, for each year of earned service credit desired, a sum equal to the member's contribution to the fund during this period and an additional sum as interest compounded annually from the date the contributions were withdrawn to the date of payment of the amount of returned contributions at the rate of interest set by the board."

## **Chapter 21 Section 14 Laws 2017**

SECTION 14. Section 22-11-34 NMSA 1978 (being Laws 1967, Chapter 16, Section 157, as amended) is amended to read:

"22-11-34. ALLOWED SERVICE CREDIT.--

A. A member shall be certified to have acquired allowed service credit pursuant to the Internal Revenue Code of 1986 for those periods of time when the member was:

(1) employed prior to July 1, 1967 in a federal educational program within New Mexico, including United States Indian schools and civilian conservation corps camps. This service credit shall be allowed without contribution;

(2) engaged in military service that interrupted the member's employment in New Mexico if the member returned to employment within eighteen

months following honorable discharge. This service credit shall be allowed without contribution;

(3) engaged in United States military service or the commissioned corps of the public health service from which the member was honorably discharged; provided that:

(a) the member shall have five years or more of contributory employment to be eligible to purchase allowed service credit pursuant to this paragraph;

(b) the member shall contribute to the fund, for each year of service credit the member elects to purchase, a sum equal to the member's average annual actual salary for the five years preceding the date of the contribution multiplied by the sum of the member contribution rate and the employer contribution rate in effect at the time of the member's written election to purchase, subject to the federal Uniformed Services Employment and Reemployment Rights Act of 1994;

(c) full payment shall be made in a single lump sum within sixty days of the date that the member is informed of the amount of the payment; and

(d) the portion of the purchase cost derived from the employer's contribution rate shall be credited to the fund and, in the event that a member requests a refund of contributions pursuant to Section 22-11-15 NMSA 1978, the member shall not be entitled to a refund of that portion of the purchase cost derived from the employer contribution rate; or

(4) employed:

(a) in a public school or public institution of higher learning in another state, territory or possession of the United States;

(b) in a United States military dependents' school operated by a branch of the armed forces of the United States;

(c) as provided in Paragraph (1) of this subsection after July 1, 1967; or

(d) in a private school or institution of higher learning in New Mexico whose education program is accredited or approved by the department at the time of employment.

B. Effective July 1, 2001, the member or employer under Paragraph (4) of Subsection A of this section shall contribute to the fund for each year of allowed service credit desired an amount equal to the actuarial value of the service purchased as defined by the board. No allowed service credit shall be purchased pursuant to

Paragraph (4) of Subsection A of this section unless the member is currently employed by a local administrative unit.

C. No member shall be certified to have acquired allowed service credit:

(1) under any single paragraph or the combination of only Paragraphs (1) and (4) or only Paragraphs (2) and (3) of Subsection A of this section in excess of five years; or

(2) in excess of ten years for any other combination of Paragraphs (1) through (4) of Subsection A of this section.

D. A member receiving service credit under Paragraph (3) or (4) of Subsection A of this section who enrolls in the retiree health care authority shall make contributions pursuant to Subsection C of Section 10-7C-15 NMSA 1978."

## **Chapter 21 Section 15 Laws 2017**

SECTION 15. Section 22-11-35 NMSA 1978 (being Laws 1967, Chapter 16, Section 158) is amended to read:

"22-11-35. DISABILITY BENEFIT--ELIGIBILITY--MEDICAL EXAMINATION.--

A. A member shall be eligible for disability benefits if the member has acquired ten years or more of earned service credit and if the board certifies the member to be totally disabled to continue the member's employment and unable to obtain and retain other gainful employment commensurate with the member's background, education and experience.

B. Prior to any certification of disability by the board, the board shall require each applicant for disability benefits to submit medical records as required by the board in support of the applicant's disability claim."

## **Chapter 21 Section 16 Laws 2017**

SECTION 16. Section 22-11-36 NMSA 1978 (being Laws 1967, Chapter 16, Section 159, as amended) is amended to read:

"22-11-36. DISABILITY BENEFIT--CONTINUED ELIGIBILITY--RE-EXAMINATIONS.--

A. Unless designated by the board as being permanently disabled, to continue to receive disability benefits, a member shall, on the anniversary date in each year of the member's being placed on a disability status, present current medical records to the medical authority in support of the applicant's continuing disability claim. The medical authority shall recommend to the board that the member either be placed

on continuing annual disability or permanent disability or removed from disability status due to a substantial betterment of the member's condition. In the event a substantial betterment of the disability is reported, the board shall determine whether the member is totally disabled for employment and unable to obtain and retain other gainful employment commensurate with the member's background, education and experience. If the board determines that the member is no longer disabled, the payment of the disability benefits shall cease.

B. Payment of disability benefits to a member shall be suspended if the member fails to submit medical records to the medical authority within thirty days after the date upon which the member should have submitted the medical records and where the failure to submit the medical records was due to the unexcused failure or the refusal of the member to do so. Payment of disability benefits shall be resumed only after the member has submitted current medical records to the board and the board has determined that the member is totally disabled. A member shall have no right or claim for benefits withheld during a period of suspension.

C. The board may, in its discretion, require that the member obtain an independent medical examination; provided that the examination is performed at the board's expense.

D. Upon a determination by the board, a member's status may be changed from permanently disabled to temporarily disabled or no longer disabled."

## **Chapter 21 Section 17 Laws 2017**

SECTION 17. Section 22-11-39 NMSA 1978 (being Laws 1967, Chapter 16, Section 162) is amended to read:

"22-11-39. REPORT OF IMPROVED HEALTH--PENALTY.--

A. A member receiving disability benefits shall report to the director in writing any substantial improvement in the member's disability within thirty days after the member has or reasonably should have knowledge of the improvement.

B. A member failing to report to the director as required by this section is guilty of a petty misdemeanor."

## **Chapter 21 Section 18 Laws 2017**

SECTION 18. Section 22-11-40 NMSA 1978 (being Laws 1967, Chapter 16, Section 163) is amended to read:

"22-11-40. RESTORATION TO FUND.--

If a member is obligated to restore any sum of money to the fund and fails or refuses to do so for a period of three months after written demand is made by the director, the member shall forfeit membership and receive no further benefits pursuant to the Educational Retirement Act. The director shall determine whether the former member's contributions to the fund exceed the total amount of disability or retirement benefits the member has received and shall withdraw from any such balance of contributions the amount of money the member is obligated to restore to the fund. Any balance of the contribution remaining in the fund shall be paid to the former member or the former member's beneficiary. In the event the money the former member is obligated to restore to the fund is not restored to the fund, the former member shall be subject to civil action by the board for its recovery."

## **Chapter 21 Section 19 Laws 2017**

SECTION 19. Section 22-11-44 NMSA 1978 (being Laws 1967, Chapter 16, Section 167) is amended to read:

"22-11-44. SAVING CLAUSE--RETIREMENT BENEFITS--DISABILITY BENEFITS.--

A. Any person retired pursuant to the provisions of any laws repealed by the Educational Retirement Act shall be considered to have retired pursuant to the Educational Retirement Act and shall continue to receive retirement benefits in the same amount as received prior to the enactment of the Educational Retirement Act.

B. Any person receiving disability benefits pursuant to any laws repealed by the Educational Retirement Act shall continue to receive disability benefits in the same amount as received prior to the enactment of the Educational Retirement Act and shall be considered to have been granted disability benefits pursuant to and be subject to the provisions of the Educational Retirement Act.

C. Nothing in the Educational Retirement Act shall be construed to adversely affect any benefits being paid pursuant to any laws repealed by the Educational Retirement Act or any laws establishing the public employees retirement association.

D. No person who was covered under the provisions of any statute repealed by the Educational Retirement Act shall be retired at a monthly benefit that is less than the person would have received had the person's employment continued to be performed under such repealed provisions."

## **Chapter 21 Section 20 Laws 2017**

SECTION 20. REPEAL.--Sections 22-11-18 and 22-11-45 NMSA 1978 (being Laws 1971, Chapter 73, Section 1 and Laws 1967, Chapter 16, Section 168) are repealed.

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Senate Bill 28

Approved March 17, 2017

## **LAWS 2017, CHAPTER 22**

AN ACT

RELATING TO FINANCE; AUTHORIZING THE NEW MEXICO FINANCE AUTHORITY TO MAKE LOANS OR GRANTS FROM THE WATER PROJECT FUND FOR CERTAIN WATER PROJECTS; DECLARING AN EMERGENCY.

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

### **Chapter 22 Section 1 Laws 2017**

#### SECTION 1. AUTHORIZATION OF QUALIFYING WATER 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 qualifying entities for the following qualifying water projects on terms and conditions established by the water trust board and the New Mexico finance authority:

1. to the Alcalde mutual domestic water consumers' and mutual sewage works association in Rio Arriba county for a water storage, conveyance and delivery project;
2. to the Ancones mutual domestic water and wastewater consumers association in Rio Arriba county for a water storage, conveyance and delivery project;
3. to the city of Anthony in Dona Ana county for a flood prevention project;
4. to the Canadian River soil and water conservation district in Quay county for a watershed restoration and management project;
5. to the Canoncito at Apache Canyon mutual domestic water consumers' and mutual sewage works association in Santa Fe county for a water storage, conveyance and delivery project;
6. to the city of Carlsbad in Eddy county for a water conservation or treatment, recycling or reuse project;
7. to the village of Cimarron in Colfax county for a water storage, conveyance and delivery project;

8. to the Claunch-Pinto soil and water conservation district in Torrance county for a watershed restoration and management project;

9. to the Claunch-Pinto soil and water conservation district in Torrance county for an additional watershed restoration and management project;

10. to the city of Clovis in Curry county for a water conservation or treatment, recycling or reuse project;

11. to the village of Columbus in Luna county for a water storage, conveyance and delivery project;

12. to the village of Eagle Nest in Colfax county for a water storage, conveyance and delivery project;

13. to the East Rio Arriba soil and water conservation district in Rio Arriba county for a watershed restoration and management project;

14. to El Creston mutual domestic water consumers association in San Miguel county for a water storage, conveyance and delivery project;

15. to the town of Elida in Roosevelt county for a water storage, conveyance and delivery project;

16. to the eastern New Mexico water utility authority in Curry county for a water storage, conveyance and delivery project;

17. to the city of Jal in Lea county for a water conservation or treatment, recycling or reuse project;

18. to the lower Arroyo Hondo mutual domestic water consumers association in Taos county for a water storage, conveyance and delivery project;

19. to the lower Rio Grande public water works authority in Dona Ana county for a water conservation or treatment, recycling or reuse project;

20. to the lower Rio Grande public water works authority in Dona Ana county for a water storage, conveyance and delivery project;

21. to the North Star domestic water consumers and mutual sewage works cooperative, incorporated, in San Juan county for a water storage, conveyance and delivery project;

22. to the city of Portales in Roosevelt county for a water storage, conveyance and delivery project;

23. to the town of Red River in Taos county for a water storage, conveyance and delivery project;

24. to the Santa Cruz water association in Santa Fe county for a water storage, conveyance and delivery project;

25. to the city of Santa Fe in Santa Fe county for a water storage, conveyance and delivery project;

26. to the city of Santa Rosa in Guadalupe county for a water conservation or treatment, recycling or reuse project;

27. to the city of Santa Rosa in Guadalupe county for a water storage, conveyance and delivery project;

28. to the city of Truth or Consequences in Sierra county for a water storage, conveyance and delivery project;

29. to the Trampas mutual domestic water consumers' and mutual sewage works association in Taos county for a water conservation or treatment, recycling or reuse project;

30. to the upper Rio Grande watershed district in Rio Arriba county for a flood prevention project;

31. to the Ute Creek soil and water conservation district in Harding county for a watershed restoration and management project; and

32. to the Valley Estates mutual water and sewer association in Rio Arriba county for a water storage, conveyance and delivery project.

## **Chapter 22 Section 2 Laws 2017**

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

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Senate Bill 44, w/ec

Approved without signature

March 18, 2017. See Art. 4,

Section 22, N.M. Const.

# **LAWS 2017, CHAPTER 23**

AN ACT

RELATING TO MOTOR VEHICLES; PROVIDING FOR A SPECIAL REGISTRATION PLATE TO HONOR POLICE OFFICERS WHO HAVE DIED IN THE LINE OF DUTY; MAKING AN APPROPRIATION.

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

## **Chapter 23 Section 1 Laws 2017**

SECTION 1. A new section of the Motor Vehicle Code is enacted to read:

"HONORING FALLEN OFFICERS SPECIAL REGISTRATION PLATE.--

A. The division shall issue a standardized special registration plate with a logo designed in accordance with Subsection C of Section 66-3-424 NMSA 1978 to commemorate police officers who have died in the line of duty. The plate shall include the words "Honoring Fallen Officers".

B. A fee of ten dollars (\$10.00), which is in addition to the regular motor vehicle registration fee, shall be collected by the division for the original issuance of the "Honoring Fallen Officers" special registration plate. The fee shall be retained by the division and is appropriated to the division to defray the cost of making and issuing special registration plates pursuant to this section."

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Senate Bill 357

Approved without signature

March 18, 2017. See Art. 4,

Section 22, N.M. Const.

# **LAWS 2017, CHAPTER 24**

AN ACT

RELATING TO PUBLIC LANDS; CREATING THE STATE TRUST LANDS RESTORATION AND REMEDIATION FUND; MAKING AN APPROPRIATION.

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

## Chapter 24 Section 1 Laws 2017

SECTION 1. Section 19-1-11 NMSA 1978 (being Laws 1912, Chapter 82, Section 6, as amended) is amended to read:

"19-1-11. STATE LANDS MAINTENANCE FUND--CREATED--STATE LANDS INCOME--DISPOSITION--STATE TRUST LANDS RESTORATION AND REMEDIATION FUND CREATED.--

A. Ninety-nine percent of the income derived from any state lands granted or confirmed by the Enabling Act or otherwise under the management, care, custody and control of the commissioner of public lands shall constitute a fund to be known as the "state lands maintenance fund"; provided that the state lands maintenance fund shall not include any money required to be transferred to any permanent fund created in Chapter 19 NMSA 1978.

B. The "state trust lands restoration and remediation fund" is created in the state treasury. One percent of the income derived from any state trust lands granted or confirmed by the Enabling Act or otherwise under the management, care, custody and control of the commissioner of public lands shall be deposited in the state trust lands restoration and remediation fund; provided that the state trust lands restoration and remediation fund shall not include any money required to be transferred to any permanent fund created in Chapter 19 NMSA 1978. The state trust lands restoration and remediation fund also consists of income from investment of the fund and money otherwise accruing to the fund. Money in the state trust lands restoration and remediation fund that exceeds five million dollars (\$5,000,000) shall be distributed to the trust beneficiaries in the same manner that surpluses in the state lands maintenance fund are distributed. Money in the fund shall not revert to any other fund at the end of a fiscal year. The state land office shall administer the fund. Subject to legislative appropriation, expenditures may be made from the state trust lands restoration and remediation fund upon vouchers signed by the commissioner or the commissioner's authorized representative and issued by the secretary of finance and administration to administer contractual surface damage and watershed restoration and remediation projects on state trust lands.

C. For any expenditure made from the state trust lands restoration and remediation fund, the commissioner shall attempt to recover the costs of remediation projects from any person who may otherwise bear liability for that remediation project under the Voluntary Remediation Act, the New Mexico Mining Act, the Surface Mining Act, the Oil and Gas Act, the Water Quality Act, the Solid Waste Act or the Hazardous Waste Act."

# **LAWS 2017, CHAPTER 25**

## **AN ACT**

RELATING TO PUBLIC EMPLOYEES; PROVIDING FOR SEPARATE PAYMENT BY THE PUBLIC EMPLOYEES RETIREMENT ASSOCIATION AND THE EDUCATIONAL RETIREMENT BOARD OF RETIREMENT BENEFITS ACCUMULATED UNDER MULTIPLE STATE SYSTEMS.

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

### **Chapter 25 Section 1 Laws 2017**

SECTION 1. Section 10-13A-4 NMSA 1978 (being Laws 1992, Chapter 116, Section 16, as amended) is amended to read:

"10-13A-4. NORMAL RETIREMENT--PENSION BENEFIT.--If a member has one month or more of eligible reciprocal service credit under each of two or more state systems, the following provisions shall apply, together with the applicable provisions of the Public Employees Retirement Reciprocity Act, the Educational Retirement Act, the Public Employees Retirement Act, the Judicial Retirement Act, the Magistrate Retirement Act and the rules and regulations for those acts promulgated by the board:

A. a member's total eligible reciprocal service credit under all state systems shall be used in satisfying the service credit requirements for normal retirement under the state system from which the member retires;

B. when a member with eligible reciprocal service credit retires, the member shall receive a pension that is equal to the sum of the pensions attributable to the service credit the member has accrued under each state system, subject to the following restrictions:

(1) the salary used in calculating each component of the pension shall be the salary, average annual salary or final average salary, as those terms are defined under the applicable act, earned while the member was covered under the state system calculating that component as follows:

(a) the member's entire salary history under the public employees retirement system and the educational retirement system shall be used to determine the final average salary and annual average salary under each state system if the member has eligible reciprocal service credit under both state systems;

(b) the member's entire salary history under the educational retirement system and the judicial retirement system or the magistrate retirement system, or both, shall be used to determine the average annual salary under the Educational Retirement Act if the member has eligible reciprocal service credit under

those state systems but has less than five years of service credit under the educational retirement system;

(c) the member's salary history under the educational retirement system shall be used to determine the average annual salary under that system if the member has eligible reciprocal service credit under the Educational Retirement Act and the Judicial Retirement Act or the Magistrate Retirement Act, or both, and has five or more years of service credit under the educational retirement system; or

(d) if a member has less than twelve months of credited service under the judicial retirement system or the magistrate retirement system, the final year's salary shall be the aggregate amount of salary paid to the member for the period of credited service divided by the member's credited service times twelve;

(2) the member shall meet the age and service credit requirements for retirement under each applicable state system before the component of the pension attributable to service credit accrued under that state system may be paid; provided that the member's total eligible reciprocal service credit under all state systems shall be used in satisfying the service credit requirement for normal retirement under each state system;

(3) the member shall terminate employment under all state systems before the member may receive a pension from any state system; and

(4) the member shall file an application for retirement under the state system under which the member was last employed, in accordance with the requirements of that state system;

C. subject to the restrictions contained in this section, the component of the pension attributable to each state system shall be calculated based upon:

(1) the member's eligible reciprocal service credit acquired as a member of that state system; and

(2) the pension calculation formula applicable to the member under that state system;

D. the following limitations shall apply to pensions calculated under the Public Employees Retirement Reciprocity Act:

(1) in no case shall the total amount of the pension, calculated under the Public Employees Retirement Reciprocity Act and received by a member attributable to all state systems, exceed the amount allowable under Section 415 of the Internal Revenue Code; and

(2) where the member has less than five years of service credit in one state system, the pension from that state system shall not exceed six hundred twenty-five thousandths percent per month of service under that state system multiplied by the following amount applicable under that state system:

(a) one-twelfth of the member's magistrate salary received during the last year in office;

(b) one-twelfth of the member's judicial salary received during the last year in office; or

(c) the member's final average salary as defined pursuant to the Public Employees Retirement Act;

E. for members who retire prior to July 1, 2017, the state system from which a member with earned eligible reciprocal service credit retires shall be the payor fund for the pension; provided that:

(1) each state system shall reimburse the payor fund the amount of the component of the pension attributable to service credit accrued under that state system; and

(2) reimbursements shall be made in the manner and frequency determined by the boards;

F. for members who retire on or after July 1, 2017, each state system from which a member earned eligible reciprocal service credit shall pay the amount of the component of the pension attributable to service credit accrued under that state system;

G. in no case shall any member retire from more than one state system; and

H. if a member retires from any state system with eligible reciprocal service credit and is subsequently employed by any employer covered by a state system, the retired member's eligibility to continue to receive pension payments shall be governed by the retirement act governing the state system from which the member retired. Subsequent membership in the retirement program under which the subsequent employee is covered shall be governed by that retirement act."

## **Chapter 25 Section 2 Laws 2017**

SECTION 2. A new section of the Public Employees Retirement Reciprocity Act is enacted to read:

"CONDITION FOR SEPARATE PAYMENT OF PENSION COMPONENT.-- Notwithstanding the provisions of Subsection E of Section 10-13A-4 NMSA 1978 to the

contrary, a member who retires prior to July 1, 2017 shall be paid pursuant to Subsection E of Section 10-13A-4 NMSA 1978 until the executive director of the public employees retirement association and the executive director of the educational retirement board have certified to each other that the association or the board, respectively, has in place the appropriate accounting and financial structures and information technology for each state retirement system from which a member earned eligible reciprocal service credit to separately pay the amount of the component of the pension attributable to service credit accrued under that state system, at which time each state retirement system shall separately pay a member who retires prior to July 1, 2017 pursuant to Subsection F of Section 10-13A-4 NMSA 1978."

## **Chapter 25 Section 3 Laws 2017**

SECTION 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2017.

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House Bill 34, aa  
Approved March 29, 2017

## **LAWS 2017, CHAPTER 26**

AN ACT

RELATING TO THE NATIONAL GUARD; PROVIDING EMPLOYMENT PROTECTION FOR NATIONAL GUARD MEMBERS.

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

## **Chapter 26 Section 1 Laws 2017**

SECTION 1. Section 20-4-7.1 NMSA 1978 (being Laws 2004, Chapter 37, Section 1) is amended to read:

"20-4-7.1. SERVICEMEMBERS CIVIL RELIEF ACT BENEFITS--UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT--FEDERAL OR STATE ACTIVE DUTY.--

A. The rights, benefits and protections of the federal Servicemembers Civil Relief Act shall apply to a member of the national guard of this state or any other state or territory of the United States ordered to state active duty for a period of thirty or more consecutive state duty days or to any federally funded duty performed in an operational role for homeland security in accordance with 32 U.S.C. 502. The federally funded duty

is in addition to and different from any federally funded unit training, assembly or drill pursuant to Section 20-4-7 NMSA 1978.

B. The rights, benefits and protections of the federal Uniformed Services Employment and Reemployment Rights Act of 1994 shall apply to a member of the national guard of this state or any other state or territory of the United States ordered to federal or state active duty."

## **Chapter 26 Section 2 Laws 2017**

SECTION 2. Section 28-15-1 NMSA 1978 (being Laws 1941, Chapter 10, Section 1, as amended) is amended to read:

"28-15-1. REEMPLOYMENT OF PERSONS IN ARMED FORCES.--Any person who, after having given advance written or verbal notice of an obligation or intention to perform service in the uniformed services to the person's employer, unless notice is precluded by military necessity or is otherwise impossible or unreasonable, since July 1, 1940, has left or leaves a position the person has held, other than a temporary position, in the employ of any employer to enter the armed forces of the United States, an organized reserve or the national guard of this state or any other state or territory of the United States and who serves on active duty and is honorably discharged or released from active duty to complete the person's remaining service in a reserve component or is entitled to a certificate of service, or who terminates service without dishonor, has not had a cumulative period of absence in excess of five years by reason of service in the uniformed services and is still qualified to perform the duties of that position and makes application for reemployment within ninety days after the person is relieved from training and service, or from hospitalization and convalescence continuing after discharge for a period of not more than two years, shall be reemployed as follows:

A. if the person's position was in the employ of a private employer, the employer shall restore the person to that position or to a position of like seniority, status and pay unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so; or

B. if the person's position was in the employ of the state or any political subdivision thereof, the person shall be deemed to meet all the requirements of the Personnel Act as well as all residency requirements or other provisions of law and shall be restored to that position or to a position of like seniority, status and pay."

## **Chapter 26 Section 3 Laws 2017**

SECTION 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2017.

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House Bill 83, aa  
Approved March 29, 2017

## **LAWS 2017, CHAPTER 27**

AN ACT

RELATING TO COURTS; EXPANDING THE JURISDICTION FOR MUNICIPAL COURTS FOR ISSUING BENCH WARRANTS; AMENDING A SECTION OF THE NMSA 1978.

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

### **Chapter 27 Section 1 Laws 2017**

SECTION 1. Section 35-15-4 NMSA 1978 (being Laws 1884, Chapter 39, Section 21, as amended) is amended to read:

"35-15-4. SERVICE OF PROCESS.--

A. In the county in which the municipality whose ordinances are alleged to have been violated is located, a law enforcement officer with jurisdiction in that county may serve any municipal court process or make any arrests authorized by law to be made.

B. In counties adjacent to the county in which the municipality whose ordinances are alleged to have been violated is located, a law enforcement officer with jurisdiction in that county may serve any municipal court process or make any arrests authorized by law to be made, except for any service or arrest emanating from parking violations alleged to have occurred in a municipality located in another county."

### **Chapter 27 Section 2 Laws 2017**

SECTION 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2017.

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House Bill 110, aa  
Approved March 30, 2017

## **LAWS 2017, CHAPTER 28**

AN ACT

RELATING TO HORSE RACING; REMOVING CERTAIN EXCEPTIONS TO CONDUCT THAT REQUIRES DENIAL OR REVOCATION OF AN OCCUPATIONAL LICENSE; PROVIDING FOR AN EQUINE HEALTH AND TESTING ADVISOR TO REPLACE THE OFFICIAL CHEMIST; CLARIFYING THE DESIGNATION AND HANDLING OF TESTING SAMPLES; PROVIDING FOR COMPENSATION OF THE EQUINE HEALTH AND TESTING ADVISOR FROM THE RACEHORSE TESTING FUND.

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

## **Chapter 28 Section 1 Laws 2017**

SECTION 1. Section 60-1A-11 NMSA 1978 (being Laws 2007, Chapter 39, Section 11, as amended) is amended to read:

"60-1A-11. GRANTING A LICENSE--STANDARDS--DENIAL AND REVOCATION--SUSPENSION AND PENALTIES.--

A. A license shall not be issued or renewed unless the applicant has satisfied the commission that the applicant:

(1) is of good moral character, is honest and has integrity;

(2) does not currently have a license suspended by a horse racing licensing authority in another jurisdiction;

(3) does not have any prior activities, criminal record, reputation, habits or associations that:

(a) pose a threat to the public interest;

(b) pose a threat to the effective regulation and control of horse racing; or

(c) create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of horse racing, the business of operating a horse racetrack licensed pursuant to the Horse Racing Act or the financial activities incidental to operating a horse racetrack;

(4) is qualified to be licensed consistent with the Horse Racing Act;

(5) has sufficient business probity, competence and experience in horse racing as determined by the commission;

(6) has proposed financing that is sufficient for the nature of the license and from a suitable source that meets the criteria set forth in this subsection; and

(7) is sufficiently capitalized pursuant to standards set by the commission to conduct the business covered by the license.

B. The commission shall establish by rule additional qualifications for a licensee as it deems in the public interest.

C. A person issued or applying for an occupational license who has positive test results for a controlled substance or who has been convicted of a violation of a federal or state controlled substance law shall be denied a license or shall be subject to revocation of an existing

license unless sufficient evidence of rehabilitation is presented to the commission.

D. The commission may deny or revoke an occupational license if the applicant or occupational licensee, for the purpose of stimulating or depressing a racehorse or affecting its speed or stamina during a race or workout, is found to have administered, attempted to administer or conspired to administer to a racehorse, internally, externally or by injection, a drug, chemical, stimulant or depressant, or other prohibited substance as defined by the association of racing commissioners international, incorporated, or a successor organization or, if none, by another nationally recognized organization that has published substantially similar guidelines that are generally accepted in the horse racing industry as determined by the commission.

E. In addition to its authority to deny or revoke an occupational license for the conduct described in Subsection D of this section, the commission may suspend a license and impose fines on a licensee. For suspensions and fines, the commission shall adopt as its own rules the model rules for the imposition of penalties for the use of prohibited substances published by the association of racing commissioners international, incorporated, or a successor organization or, if none, by another nationally recognized organization that has published substantially similar rules that are generally accepted in the horse racing industry as determined by the commission.

F. The commission shall revoke for a period not to exceed five years an occupational license if the occupational licensee used, attempted to use or conspired with others to use an electrical or mechanical device, implement or instrument for the purpose of affecting the speed or stamina of a racehorse.

G. The burden of proving the qualifications of an applicant or licensee to be issued a license or have a license renewed shall be on the applicant or licensee."

## **Chapter 28 Section 2 Laws 2017**

SECTION 2. Section 60-1A-13 NMSA 1978 (being Laws 2007, Chapter 39, Section 13) is amended to read:

"60-1A-13. EQUINE HEALTH AND TESTING ADVISOR--QUALIFICATIONS--DUTIES.--The commission shall hire or contract with an equine health and testing advisor. An equine health and testing advisor shall be a doctor of veterinary medicine or shall hold a doctorate degree in chemistry or a related field and shall be knowledgeable and experienced in the techniques used for testing the specimens collected pursuant to Section 60-1A-14 NMSA 1978. The equine health and testing advisor shall exercise the duties prescribed by rules of the commission."

### **Chapter 28 Section 3 Laws 2017**

SECTION 3. Section 60-1A-14 NMSA 1978 (being Laws 2007, Chapter 39, Section 14, as amended) is amended to read:

"60-1A-14. TESTING SPECIMENS.--

A. The commission shall adopt rules applying to the handling of pre- and post-race, out-of-competition and necropsy testing of blood serum plasma, urine or other appropriate test samples identified by the commission to be taken from racehorses, following guidelines that meet or exceed the standards established in model rules published by the association of racing commissioners international, incorporated, or a successor organization or, if none, by another nationally recognized organization that has published substantially similar guidelines that are generally accepted in the horse racing industry as determined by the commission.

B. Each specimen taken from a racehorse shall be divided into two or more samples, and:

(1) one sample, designated as the "official sample", shall be tested by the commission or its designated laboratory in order to detect the presence of unauthorized drugs, chemicals, stimulants, depressants or other prohibited substances as defined in guidelines published by the association of racing commissioners international, incorporated, or a successor organization or, if none, by another nationally recognized organization that has published substantially similar guidelines that are generally accepted in the horse racing industry as determined by the commission; and

(2) the remaining samples, each designated as a "split sample", may be forwarded by the commission to the scientific laboratory division of the department of health or maintained by the commission in a manner that meets or exceeds the guidelines identified in Paragraph (1) of this subsection.

C. After a positive test result on the official sample tested by the commission or its designated laboratory and upon a written request from the president, executive director or manager of the New Mexico horsemen's association on forms

designated by the commission, a corresponding split sample shall be transferred to an independent laboratory in a manner prescribed by commission rule.

D. All samples shall be kept in a controlled environment for a period of time specified by the commission in each case.

E. The commission shall contract with an independent laboratory to maintain a quality assurance program. The laboratory shall meet or exceed the current national laboratory standards for the testing of drugs or other foreign substances in a horse, as established by the association of racing commissioners international, incorporated, or of a successor organization or, if none, of another nationally recognized organization that has published substantially similar guidelines that are generally accepted in the horse racing industry."

## **Chapter 28 Section 4 Laws 2017**

SECTION 4. Section 60-1A-14.1 NMSA 1978 (being Laws 2013, Chapter 102, Section 1, as amended) is amended to read:

"60-1A-14.1. RACEHORSE TESTING FUND--CREATED--PURPOSE.--The "racehorse testing fund" is created in the state treasury. The purpose of the fund is to ensure the testing of racehorses at a laboratory that meets or exceeds the current national laboratory standards for the testing of drugs or other foreign substances not naturally occurring in a horse, as established by the association of racing commissioners international, incorporated, or of a successor organization or, if none, of another nationally recognized organization that has published substantially similar guidelines that are generally accepted in the horse racing industry. The fund consists of one-half of the daily capital outlay tax appropriated and transferred pursuant to Paragraph (4) of Subsection A of Section 60-1A-20 NMSA 1978 and appropriations, gifts, grants and donations made to the fund. Income from investment of the fund shall be credited to the fund. The commission shall administer the racehorse testing fund, and money in the fund is appropriated to the commission for the handling of pre- and post-race, out-of-competition and necropsy testing of blood serum plasma, urine or other appropriate test samples taken from racehorses pursuant to Section 60-1A-14 NMSA 1978 and to compensate the equine health and testing advisor employed or selected pursuant to Section 60-1A-13 NMSA 1978. Any unexpended or unencumbered balance remaining in the racehorse testing fund at the end of a fiscal year in excess of six hundred thousand dollars (\$600,000) shall revert to the general fund. Expenditures from the fund shall be made on warrant of the secretary of finance and administration pursuant to vouchers signed by the executive director of the commission."

## **Chapter 28 Section 5 Laws 2017**

SECTION 5. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2017.

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HBIC/House Bill 229, aa  
Approved March 30, 2017

## **LAWS 2017, CHAPTER 29**

AN ACT

MAKING AN APPROPRIATION FOR DRINKING WATER SYSTEM FINANCING.

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

### **Chapter 29 Section 1 Laws 2017**

SECTION 1. APPROPRIATION.--One million eight hundred thousand dollars (\$1,800,000) is appropriated from the public project revolving fund to the drinking water state revolving loan fund for expenditure in fiscal year 2018 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. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the public project revolving fund.

### **Chapter 29 Section 2 Laws 2017**

SECTION 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2017.

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House Bill 256  
Approved March 30, 2017

## **LAWS 2017, CHAPTER 30**

AN ACT

RELATING TO LANDSCAPE BEAUTIFICATION; AMENDING, REPEALING AND ENACTING SECTIONS OF THE LITTER CONTROL AND BEAUTIFICATION ACT; ABOLISHING THE DUSTY ROADRUNNER LITTER BAG; ABOLISHING THE LITTER CONTROL COUNCIL AND CREATING THE NEW MEXICO CLEAN AND BEAUTIFUL ADVISORY COMMITTEE.

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

## Chapter 30 Section 1 Laws 2017

SECTION 1. Section 67-16-3 NMSA 1978 (being Laws 1985, Chapter 23, Section 3, as amended) is amended to read:

"67-16-3. DEFINITIONS.--As used in the Litter Control and Beautification Act:

A. "keep America beautiful system" means a comprehensive program to improve waste handling practices and the control of litter;

B. "keep New Mexico beautiful, incorporated" is the statewide organization that is the official clearinghouse for beautification projects in the state;

C. "committee" means the New Mexico clean and beautiful advisory committee;

D. "department" means the tourism department;

E. "litter" means weeds, graffiti and all waste material, including disposable packages or containers, but not including the waste of the primary processes of mining, logging, sawmilling or farming;

F. "person" means an individual, corporation, partnership, association, firm, receiver, guardian, trustee, executor, administrator, fiduciary or representative or group of individuals or entities of any kind;

G. "public place" means an area that is used or held out for use by the public, whether owned or operated by public or private interests;

H. "recycling" means the collection, separation or processing and return to the economic mainstream of raw materials or products that would otherwise become solid waste; and

I. "regional tourism district" means one of the following:

(a) the central region consisting of Bernalillo, Sandoval, Tarrant and Valencia counties;

(b) the north-central region consisting of Los Alamos, Rio Arriba, Santa Fe and Taos counties;

(c) the northeast region consisting of Colfax, Guadalupe, Harding, Mora, Quay, San Miguel and Union counties;

(d) the northwest region consisting of Cibola, McKinley and San Juan counties;

(e) the southeast region consisting of Chaves, Curry, De Baca, Eddy, Lea, Lincoln, Otero and Roosevelt counties; and

(f) the southwest region consisting of Catron, Dona Ana, Grant, Hidalgo, Luna, Sierra and Socorro counties."

## **Chapter 30 Section 2 Laws 2017**

SECTION 2. Section 67-16-4 NMSA 1978 (being Laws 1985, Chapter 23, Section 4, as amended) is repealed and a new Section 67-16-4 NMSA 1978 is enacted to read:

"67-16-4. NEW MEXICO CLEAN AND BEAUTIFUL ADVISORY COMMITTEE.--

A. The "New Mexico clean and beautiful advisory committee" is created, consisting of eleven members appointed by the tourism commission. No two members shall be residents of the same county. The tourism commission shall appoint members to the committee who are knowledgeable in the areas of beautification, blight reduction, litter eradication, waste diversion and modification of human behavior patterns; provided that no member shall be an employee of the state. One member of the committee shall be appointed from each of the six regional tourism districts, and five members shall be appointed from the state at large; provided that at least two of the members shall have experience in tourism, economic development, community beautification or recycling initiatives; provided further that at least two members shall be affiliates in good standing of keep America beautiful.

B. The committee shall select a person from its membership to serve as chair, and the committee shall meet at least quarterly to conduct its business.

C. Notwithstanding the provisions of the Per Diem and Mileage Act, the members of the committee shall not receive any compensation, perquisite or allowance in connection with their duties."

## **Chapter 30 Section 3 Laws 2017**

SECTION 3. Section 67-16-5 NMSA 1978 (being Laws 1985, Chapter 23, Section 5) is amended to read:

"67-16-5. LITTER CONTROL COORDINATOR.--The department shall appoint a litter control coordinator to coordinate the activities of the committee."

## **Chapter 30 Section 4 Laws 2017**

SECTION 4. Section 67-16-7 NMSA 1978 (being Laws 1989, Chapter 10, Section 4) is amended to read:

"67-16-7. MEASUREMENT AND EVALUATION.--The committee shall document and report on an annual basis the effectiveness and impact of department-sponsored litter control and beautification programs through the following:

A. evaluate and report on all governmental entities and keep New Mexico beautiful, incorporated projects and activities funded by the department. The community appearance index technique shall be a part of this report in communities where appropriate and available; and

B. investigate and report on the feasibility, appropriateness and cost of a statewide community appearance index or other technique for the evaluation of highway litter."

## **Chapter 30 Section 5 Laws 2017**

SECTION 5. Section 67-16-12 NMSA 1978 (being Laws 1985, Chapter 23, Section 12, as amended) is amended to read:

"67-16-12. FURTHER DUTIES OF DEPARTMENT.--

A. The department shall:

(1) serve as the coordinating agency between various industry and business organizations seeking to aid in the anti-litter effort;

(2) cooperate with all local governments to accomplish coordination of local anti-litter efforts;

(3) encourage voluntary local anti-litter campaigns seeking to focus the attention of the public on programs to control and remove litter;

(4) encourage voluntary recycling programs and aid in identifying programs and available markets for recycled materials;

(5) apply for funds available from any other source for use in the administration of the Litter Control and Beautification Act;

(6) adopt rules to enter into contracts for making either direct or matching grants with other state agencies, cities or counties or with an Indian nation, tribe or pueblo government for the purpose of promoting local keep America beautiful system programs; and

(7) aid in the adoption and enforcement of model anti-litter statutes and ordinances and improve state and local litter control programs.

B. The department shall also allocate funds appropriated to it from the litter control and beautification fund according to the following formula:

(1) no more than fifteen percent of the fees received in a year for operating expenses directly related to the administration of the committee, including:

(a) research, development and implementation of a statewide evaluation system;

(b) professional services provided to the state by representatives of keep America beautiful, incorporated; and

(c) the promotion of and encouragement of private recycling efforts for all recyclable items;

(2) no more than twenty percent of the fees received in a year to purchase litter bags and receptacles and to conduct a public awareness and media campaign to include brochures, literature and educational materials, production of public service announcements and other expenses relating to public relations;

(3) no more than fifty percent of the fees received in a year to local governments to establish and help continue local keep America beautiful system programs;

(4) no more than sixty percent of the fees received in a year to local governments to establish a summer youth employment program to aid in litter control and beautification projects; and

(5) no more than ten percent of fees received in a year to keep New Mexico beautiful, incorporated to further beautification and educational programs."

## **Chapter 30 Section 6 Laws 2017**

SECTION 6. REPEAL.--Section 67-16-10 NMSA 1978 (being Laws 1985, Chapter 23, Section 10, as amended) is repealed.

## **Chapter 30 Section 7 Laws 2017**

SECTION 7. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2017.

# **LAWS 2017, CHAPTER 31**

## **AN ACT**

RELATING TO CRANE OPERATORS; AMENDING THE HOISTING OPERATORS SAFETY ACT TO BE NAMED THE CRANE OPERATORS SAFETY ACT AND TO REFLECT UPDATED DEFINITIONS AND PRACTICES; PROVIDING AN EXEMPTION FOR PROPANE TANK INSTALLATION AND MAINTENANCE; MAKING CONFORMING AND TECHNICAL CHANGES.

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

### **Chapter 31 Section 1 Laws 2017**

SECTION 1. Section 60-15-1 NMSA 1978 (being Laws 1993, Chapter 183, Section 1, as amended) is amended to read:

"60-15-1. SHORT TITLE.--Chapter 60, Article 15 NMSA 1978 may be cited as the "Crane Operators Safety Act"."

### **Chapter 31 Section 2 Laws 2017**

SECTION 2. Section 60-15-2 NMSA 1978 (being Laws 1993, Chapter 183, Section 2) is amended to read:

"60-15-2. PURPOSE.--The purpose of the Crane Operators Safety Act is to promote the general welfare and protect the lives and property of the people of New Mexico by requiring persons operating cranes to be trained and licensed when employed in construction, demolition or excavation work."

### **Chapter 31 Section 3 Laws 2017**

SECTION 3. Section 60-15-3 NMSA 1978 (being Laws 1993, Chapter 183, Section 3, as amended) is amended to read:

"60-15-3. DEFINITIONS.--As used in the Crane Operators Safety Act:

A. "class I crane operator" means a person who is authorized to operate a crane of any size or weight;

B. "class II crane operator" means a person who is authorized to operate:

(1) a hydraulic crane of up to one hundred tons lifting capacity with a maximum boom length of one hundred fifty feet, regardless of mounting or means of mobility; and

(2) any other type or size of crane under the direct supervision of a class I crane operator;

C. "class III crane operator" means a person who is authorized to work as an apprentice, trainee or crane oiler or driver under the direct supervision of a class I or class II crane operator;

D. "council" means the crane operators licensure examining council;

E. "crane" means:

(1) a conventional crane;

(2) a tower crane;

(3) a hydraulic crane equipped with a winch, cable and hook with over one ton lifting capacity;

(4) a power-operated derrick; or

(5) a mobile, carrier-mounted, track or crawler type power-operated hoisting machine that is used to hoist, lower or horizontally and laterally move a suspended load by means of a winch, cable and hook but does not mean an excavator or forklift;

F. "department" means the regulation and licensing department;

G. "endorsement" means an authorization stamped on a class I crane operator's license indicating authorization to operate a conventional crane, a tower crane or a hydraulic crane of any size or weight;

H. "licensee" means a person licensed under the Crane Operators Safety Act;

I. "person" means an individual, firm, partnership, corporation, association or other organization or any combination thereof;

J. "seat time" means the actual hands-on operation of a crane by a class II crane operator while under the direct supervision of a licensed class I crane operator or the actual hands-on operation of a crane by a class III crane operator while under the direct supervision of a licensed class I or II crane operator; and

K. "superintendent" means the superintendent of regulation and licensing."

## **Chapter 31 Section 4 Laws 2017**

SECTION 4. Section 60-15-4 NMSA 1978 (being Laws 1993, Chapter 183, Section 4, as amended) is amended to read:

"60-15-4. LICENSE REQUIRED--EXEMPTIONS.--

A. No person shall operate a crane in construction, demolition or excavation work unless the person is licensed under the Crane Operators Safety Act or exempt pursuant to Subsection D of this section.

B. Operating a crane without a license shall be considered unlicensed operation and shall subject the person who is operating the crane and the person's employer, or the employer's representative, to penalties as provided in the Crane Operators Safety Act.

C. The licensee and the licensee's employer shall be 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.

D. The Crane Operators Safety Act shall not apply to the operation of a crane used in construction, demolition or excavation associated with:

- (1) natural gas gather lines;
- (2) interstate transmission facilities and interstate natural gas facilities subject to the federal Natural Gas Pipeline Safety Act of 1968 and its amendments;
- (3) interstate pipeline facilities and carbon dioxide pipeline facilities subject to the federal Hazardous Liquid Pipeline Safety Act of 1979;
- (4) gas and oil pipeline facilities subject to the Pipeline Safety Act;
- (5) mining, milling or smelting operations subject to mine safety and health administration regulations or occupational safety and health administration regulations;
- (6) prefabricated control rooms of natural gas, oil or carbon dioxide pipeline transmission facilities;
- (7) oil and gas exploration, production or drilling;
- (8) rural electric cooperative and electric, gas and water utility operations;
- (9) commercial sign operations;

(10) the construction or operation of railroads;

(11) the installation and maintenance of telephone or television cable; or

(12) the installation and maintenance of propane tanks."

## **Chapter 31 Section 5 Laws 2017**

SECTION 5. Section 60-15-6 NMSA 1978 (being Laws 1993, Chapter 183, Section 6) is amended to read:

"60-15-6. ADMINISTRATION OF ACT.--

A. The department shall enforce and administer the provisions of the Crane Operators Safety Act.

B. The department shall adopt rules to carry out the provisions of the Crane Operators Safety Act and to meet the occupational safety and health administration crane certification requirements."

## **Chapter 31 Section 6 Laws 2017**

SECTION 6. Section 60-15-7 NMSA 1978 (being Laws 1993, Chapter 183, Section 7, as amended) is amended to read:

"60-15-7. REQUIREMENTS FOR LICENSURE.--

A. The department shall issue a license for a class I crane operator with an endorsement to an applicant who files a completed application, accompanied by the required fees, and who submits satisfactory evidence that the applicant:

(1) is at least twenty-one years of age;

(2) has passed a written examination as prescribed by the department or has successfully completed an employer's in-house training program approved by the council;

(3) has had a physical examination, including substance abuse testing, within the twelve-month period preceding the date of application, showing that the applicant is in satisfactory physical condition for performing the functions of a class I crane operator; and

(4) within the past three years, has completed at least five hundred hours of seat time in the type of crane for which the applicant seeks a license and an endorsement and has successfully passed a practical examination administered by a

council-approved examining vendor or completed an employer's in-house training course approved by the council in the type of crane for which the applicant seeks a license and an endorsement.

B. The department shall issue a license for a class II crane operator to an applicant who files a completed application, accompanied by the required fees, and who submits satisfactory evidence that the applicant:

(1) is at least eighteen years of age;

(2) has passed a written examination prescribed by the department or has successfully completed an employer's in-house training course approved by the council;

(3) has had a physical examination, including substance abuse testing, within the twelve-month period preceding the date of application, showing that the applicant is in satisfactory physical condition for performing the functions of a class II crane operator; and

(4) within the past three years, has completed at least five hundred hours of seat time in the actual operation of hydraulic cranes with over ten tons and up to one hundred tons lifting capacity with a maximum boom length of one hundred fifty feet, regardless of mounting or means of mobility, and has successfully passed a practical examination administered by a council-approved examining vendor or has completed an employer's in-house training course approved by the council in the type of crane for which the applicant seeks a license.

C. A class II crane operator who seeks to become licensed as a class I crane operator shall keep a log book of the class II crane operator's seat time and must accumulate fifty hours of seat time under the direct supervision of a class I crane operator.

D. The department shall issue a license for a class III crane operator to an applicant who files a completed application, accompanied by the required fees, and who submits satisfactory evidence that the applicant:

(1) is at least eighteen years of age;

(2) has passed an examination prescribed by the department; and

(3) has had a physical examination, including substance abuse testing, within the twelve-month period preceding the date of application, showing that the applicant is in satisfactory physical condition for performing the functions of a class III crane operator.

E. A class III crane operator who seeks to become licensed as a class I or class II crane operator shall keep a log book of the class III crane operator's seat time within the past three years and must accumulate five hundred hours of seat time under the direct supervision of a class I or class II crane operator who is properly licensed in the kind of crane being operated.

F. A class III crane operator shall not operate a crane unless under the direct supervision of a class I or class II crane operator who is properly licensed in the type of crane being operated.

G. The department shall recognize an in-house crane operator card issued to an applicant who:

(1) is at least eighteen years of age;

(2) is participating in an in-house training course approved by the council; and

(3) has had a physical examination, including substance abuse testing, within the twelve-month period preceding the date of application, showing that the applicant is in satisfactory physical condition for performing the functions of a crane operator.

H. A person with an in-house crane operator card shall only operate a crane for the employer who provided the approved in-house training course. The employer of a person with an in-house crane operator card shall provide that operator with supervision and additional training by a class I or class II crane operator who is properly licensed in the type of crane being operated to ensure compliance and safe operation of the crane pursuant to the Crane Operators Safety Act.

I. An in-house crane operator card shall be valid for two years and is not subject to extension or renewal."

## **Chapter 31 Section 7 Laws 2017**

SECTION 7. Section 60-15-8 NMSA 1978 (being Laws 1993, Chapter 183, Section 8, as amended) is amended to read:

"60-15-8. LICENSE RENEWAL.--

A. A license issued pursuant to Section 60-15-7 NMSA 1978 shall be valid for two years from the date of issuance.

B. License renewal procedures shall be prescribed by the department by rule.

C. Any license not renewed by the expiration date shall be considered expired, and the licensee shall not operate a crane within the state until the license is renewed. Operating a crane with an expired license shall be considered unlicensed operation and shall subject the person who is operating the crane to the penalties as provided in the Crane Operators Safety Act.

D. The department shall adopt and promulgate rules for renewal of an expired license and may require the licensee to reapply as a new applicant."

## **Chapter 31 Section 8 Laws 2017**

SECTION 8. Section 60-15-11 NMSA 1978 (being Laws 1993, Chapter 183, Section 11, as amended) is amended to read:

"60-15-11. FINES--DENIAL, SUSPENSION OR REVOCATION OF LICENSE--STOP WORK ORDERS--INJUNCTIVE PROCEEDINGS--VIOLATIONS.--

A. Notwithstanding any other provision of the Crane Operators Safety Act, the department upon reasonable cause that a violation of the provisions of the Crane Operators Safety Act or a rule adopted pursuant to that act has occurred that creates a health or safety risk for the community, which requires immediate action, may issue a stop work order. At any time after service of the order to stop work, the person may request a prompt hearing to determine whether a violation occurred. If a person fails to comply with a stop work order within twenty-four hours, the department may bring a suit for a temporary restraining order and for injunctive relief to prevent further violations.

B. Whenever the department possesses evidence that indicates a person has engaged in or intends to engage in an act or practice constituting a violation of the Crane Operators Safety Act or a rule adopted pursuant to that act, the department may seek temporarily or permanently to restrain or to enjoin the act or practice. The department shall not be required to post a bond when seeking a temporary or permanent injunction.

C. Unless otherwise provided in the Crane Operators Safety Act, it is a violation of that act for a person to:

(1) operate, or employ a person to operate, a crane in construction, demolition or excavation work without a valid license issued pursuant to the Crane Operators Safety Act;

(2) refuse to comply with a stop work order issued by the department;

(3) refuse or fail to comply with the provisions of the Crane Operators Safety Act or a rule adopted pursuant to that act;

(4) make a material misstatement in an application for licensure;

(5) intentionally make a material misstatement to the department during an official investigation;

(6) aid or abet another in violating provisions of the Crane Operators Safety Act or a rule adopted pursuant to that act;

(7) alter or falsify a license issued by the department; or

(8) fail to furnish to the department, its investigators or its representatives information requested by the department in the course of an official investigation.

D. The department may deny, suspend or revoke a license for a violation of the rules adopted by the department pursuant to the Crane Operators Safety Act or for a violation of the provisions of that act.

E. Disciplinary proceedings may be instituted by sworn complaint by any person, including department staff or a member of the council, and shall conform with the provisions of the Uniform Licensing Act.

F. The department may issue a citation and fine to an individual or business for violation of the provisions of the Crane Operators Safety Act. The amount of such fines and terms of such orders shall be established by the department by rule subject to the limitations of Section 60-15-13 NMSA 1978."

## **Chapter 31 Section 9 Laws 2017**

SECTION 9. 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 Crane Operators Safety Act, provide for a hearing pursuant to the provisions of the Uniform Licensing Act."

## **Chapter 31 Section 10 Laws 2017**

SECTION 10. Section 60-15-13 NMSA 1978 (being Laws 1993, Chapter 183, Section 13, as amended) is amended to read:

"60-15-13. CIVIL AND ADMINISTRATIVE PENALTIES.--

A. A person who engages in unlicensed operation may be assessed an administrative penalty not to exceed one thousand dollars (\$1,000).

B. An employer, firm, partnership, corporation, association or other organization that knowingly violates the provisions of the Crane Operators Safety Act may be assessed an administrative penalty not to exceed five thousand dollars (\$5,000).

C. Any licensed crane operator who violates a provision of the Crane Operators Safety Act may be assessed an administrative penalty not to exceed five thousand dollars (\$5,000).

D. The department may bring an action in a court of competent jurisdiction to enforce the provisions of or to enjoin a person from violating the provisions of the Crane Operators Safety Act. If the court finds that a violation has occurred, the person who committed the violation shall be liable for the expenses incurred by the department in investigating and enforcing the provisions of that act plus reasonable attorney fees and costs associated with court action."

## **Chapter 31 Section 11 Laws 2017**

SECTION 11. Section 60-15-14 NMSA 1978 (being Laws 1993, Chapter 183, Section 14, as amended) is amended to read:

"60-15-14. CRANE OPERATORS LICENSURE EXAMINING COUNCIL--  
APPOINTED.--

A. The "crane operators licensure examining council" is created. The members of the council shall serve at the pleasure of the superintendent. The superintendent shall appoint at least five members to the council with consideration given to geographical representation and proportional representation of operator, contractor, labor and public members. The members of the council shall include at least:

(1) one class I crane operator;

(2) one contractor, as defined by Section 60-13-3 NMSA 1978, who employs at least one crane operator;

(3) one representative of organized labor; and

(4) two members from the public at large who are not licensed crane operators.

B. The duties of the council include:

(1) reviewing and approving the applications, qualifications and examinations of applicants for licensure as crane operators and recommending to the superintendent whether licensure should be granted based on their evaluation of the operating experience and competence of the applicants;

(2) reporting findings and recommendations from the hearings to the superintendent;

(3) proceeding according to regulations adopted by the department;  
and

(4) approving examinations and training programs that meet the requirements of the federal occupational safety and health administration, United States department of labor or occupational health and safety bureau of the department of environment."

## **Chapter 31 Section 12 Laws 2017**

SECTION 12. Section 60-15-15 NMSA 1978 (being Laws 2005, Chapter 52, Section 4) is amended to read:

"60-15-15. CRANE OPERATORS SAFETY ACT FUND CREATED--PURPOSE--  
APPROPRIATION.--

A. The "Crane 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 Crane 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 Crane 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."

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House Bill 257, aa  
Approved March 31, 2017

## **LAWS 2017, CHAPTER 32**

AN ACT

RELATING TO INSURANCE; AMENDING SECTIONS OF THE WORKERS' COMPENSATION ACT TO REESTABLISH RETURN TO WORK AND CLARIFY BENEFIT ENTITLEMENT.

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

## **Chapter 32 Section 1 Laws 2017**

SECTION 1. Section 52-1-25.1 NMSA 1978 (being Laws 1990 (2nd S.S.), Chapter 2, Section 10, as amended) 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 and the employer does not make a reasonable work offer at the worker's pre-injury wage, the worker shall receive temporary total disability compensation benefits equal to two-thirds of the worker's pre-injury 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 worker returns to work at less than the worker's pre-injury wage, the worker 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. A worker is not entitled to temporary total disability benefits as set forth in Subsection B or C of this section if:

(1) the employer makes a reasonable work offer at or above the worker's pre-injury wage, within medical restrictions, if any, as stated by the health care provider pursuant to Section 52-1-49 NMSA 1978, and the worker rejects the offered employment;

(2) the worker accepts employment with another employer at or above the worker's pre-injury wage; or

(3) the worker is terminated for misconduct connected with the employment that is unrelated to the workplace injury; if the workers' compensation judge finds that an employer terminated the worker for pretextual reasons as a way of attempting to avoid payment of benefits to the worker or as retaliation against the worker for seeking benefits, the worker shall be entitled to temporary total disability

benefits and the employer shall be subject to penalties as set forth in Sections 52-1-28.1 and 52-1-28.2 NMSA 1978.

E. Upon a finding that an employer has terminated a worker for pretextual reasons, the workers' compensation judge at the judge's discretion may also impose an additional fine, not to exceed ten thousand dollars (\$10,000), on the employer, to be paid to the worker.

F. Notwithstanding the provisions of this section, the employer shall continue to

provide reasonable and necessary medical care pursuant to Section 52-1-49 NMSA 1978.

G. If there is a dispute between the parties regarding the reasonableness of the employer's work offer or the worker's refusal to return to work, the workers' compensation judge shall decide if the work offer or the worker's refusal to return to work is reasonable based on all of the circumstances."

## **Chapter 32 Section 2 Laws 2017**

SECTION 2. Section 52-1-26 NMSA 1978 (being Laws 1987, Chapter 235, Section 12, as amended) is amended to read:

"52-1-26. PERMANENT PARTIAL DISABILITY.--

A. As a guide to the interpretation and application of this section, the policy and intent of this legislature is declared to be that every person who suffers a compensable injury with resulting permanent partial disability should be provided with the opportunity to return to gainful employment as soon as possible with minimal dependence on compensation awards.

B. As used in the Workers' Compensation Act, "partial disability" means a condition whereby a worker, by reason of injury arising out of and in the course of employment, suffers a permanent impairment.

C. Permanent partial disability shall be determined by calculating the worker's impairment as modified by the worker's age, education and physical capacity, pursuant to Sections 52-1-26.1 through 52-1-26.4 NMSA 1978; provided that, regardless of the actual calculation of impairment as modified by the worker's age, education and physical capacity, the percentage of disability awarded shall not exceed ninety-nine percent.

D. On or after the date of maximum medical improvement, the worker's permanent partial disability rating shall be equal to the worker's impairment and shall

not be subject to the modifications calculated pursuant to Sections 52-1-26.1 through 52-1-26.4 NMSA 1978 if:

(1) the worker returns to work at a wage at or above the worker's pre-injury wage;

(2) the worker accepts employment with another employer at or above the worker's pre-injury wage;

(3) the employer makes a reasonable work offer, at or above the worker's pre-injury wage, within medical restrictions, if any, as stated by the health care provider pursuant to Section 52-1-49 NMSA 1978, and the worker rejects the offered employment; or

(4) the worker is terminated for misconduct connected with the employment that is unrelated to the workplace accident; if the workers' compensation judge finds that an employer terminates the worker for pretextual reasons to avoid payment of benefits to the worker or as retaliation against the worker for seeking benefits, the worker shall be entitled to modifier benefits and the employer shall be subject to penalties as set forth in Sections 52-1-28.1 and 52-1-28.2 NMSA 1978.

E. Upon a finding that an employer has terminated a worker for pretextual reasons, the workers' compensation judge at the judge's discretion may also impose an additional fine, not to exceed ten thousand dollars (\$10,000), on the employer, to be paid to the worker.

F. In considering a claim for permanent partial disability, a workers' compensation judge shall not receive or consider the testimony of a vocational rehabilitation provider offered for the purpose of determining the existence or extent of disability.

G. If there is a dispute between the parties regarding the reasonableness of the employer's work offer or the worker's refusal to return to work, the workers' compensation judge shall decide if the work offer or the worker's refusal to return to work is reasonable based on all of the circumstances."

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SCORC/Senate Bill 155, aa  
Approved April 3, 2017

## **LAWS 2017, CHAPTER 33**

AN ACT

RELATING TO EDUCATION; ENACTING A NEW SECTION OF THE PUBLIC SCHOOL CODE TO LIMIT THE USE OF RESTRAINT AND SECLUSION IN SCHOOLS; PROVIDING FOR NOTICE TO PARENTS.

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

### **Chapter 33 Section 1 Laws 2017**

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

"USE OF RESTRAINT AND SECLUSION–TECHNIQUES--REQUIREMENTS.--

A. A school may permit the use of restraint or seclusion techniques on any student only if both of the following apply:

(1) the student's behavior presents an imminent danger of serious physical harm to the student or others; and

(2) less restrictive interventions appear insufficient to mitigate the imminent danger of serious physical harm.

B. If a restraint or seclusion technique is used on a student:

(1) school employees shall maintain continuous visual observation and monitoring of the student while the restraint or seclusion technique is in use;

(2) the restraint or seclusion technique shall end when the student's behavior no longer presents an imminent danger of serious physical harm to the student or others;

(3) the restraint or seclusion technique shall be used only by school employees who are trained in the safe and effective use of restraint and seclusion techniques unless an emergency situation does not allow sufficient time to summon those trained school employees;

(4) the restraint technique employed shall not impede the student's ability to breathe or speak; and

(5) the restraint technique shall not be out of proportion to the student's age or physical condition.

C. Schools shall establish policies and procedures for the use of restraint or seclusion techniques in a school safety plan; provided that:

(1) the school safety plan shall not be specific to any individual student; and

(2) any school safety plan shall be drafted by a planning team that includes at least one special education expert.

D. Schools shall establish reporting and documentation procedures to be followed when a restraint or seclusion technique has been used on a student. The procedures shall include the following provisions:

(1) a school employee shall provide the student's parent or guardian with written or oral notice on the same day that the incident occurred, unless circumstances prevent same-day notification. If the notice is not provided on the same day of the incident, notice shall

be given within twenty-four hours after the incident;

(2) within a reasonable time following the incident, a school employee shall provide the student's parent or guardian with written documentation that includes information about any persons, locations or activities that may have triggered the behavior, if known, and specific information about the behavior and its precursors, the type of restraint or seclusion technique used and the duration of its use; and

(3) schools shall review strategies used to address a student's dangerous behavior if use of restraint or seclusion techniques for an individual student has occurred two or more times during any thirty-calendar-day period. The review shall include:

(a) a review of the incidents in which restraint or seclusion techniques were used and an analysis of how future incidents may be avoided, including whether the student requires a functional behavioral assessment; and

(b) a meeting of the student's individualized education program team, behavioral intervention plan team or student assistance team within two weeks of each use of restraint or seclusion after the second use within a thirty-calendar-day period to provide recommendations for avoiding future incidents requiring the use of restraint or seclusion.

E. If a school summons law enforcement instead of using a restraint or seclusion technique on a student, the school shall comply with the reporting, documentation and review procedures established pursuant to Subsection D of this section.

F. Policies regarding restraint and seclusion shall consider school district support and strategies for school employees to successfully reintegrate a student who has been restrained or secluded back into the school or classroom environment.

G. The provisions of this section shall not be interpreted as addressing the conduct of law enforcement or first responders.

H. The provisions of this section do not apply to any school located within a county juvenile detention center or a state-operated juvenile facility.

I. For the purposes of this section:

(1) "first responder" means a person based outside of a school who functions within the emergency medical services system and who is dispatched to a school to provide initial emergency aid;

(2) "mechanical restraint" means the use of any device or material attached or adjacent to the student's body that restricts freedom of movement or normal access to any portion of the student's body and that the student cannot easily remove, but "mechanical restraint" does not include mechanical supports or protective devices;

(3) "physical restraint" means the use of physical force without the use of any device or material that restricts the free movement of all or a portion of a student's body, but "physical restraint" does not include physical escort;

(4) "restraint" when not otherwise modified means mechanical or physical restraint; and

(5) "seclusion" means the involuntary confinement of a student alone in a room from which egress is prevented. "Seclusion" does not mean the use of a voluntary behavior management technique, including a timeout location, as part of a student's education plan, individual safety plan, behavioral plan or individualized education program that involves the student's separation from a larger group for purposes of calming."

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HJC/HEC/House Bill 75, aa  
Approved April 3, 2017

## **LAWS 2017, CHAPTER 34**

AN ACT

RELATING TO TAXATION; ELIMINATING A DISTRIBUTION OF THE CIGARETTE TAX.

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

### **Chapter 34 Section 1 Laws 2017**

SECTION 1. Section 6-21-6.10 NMSA 1978 (being Laws 2005, Chapter 58, Section 1, as amended) is amended to read:

"6-21-6.10. NEW MEXICO FINANCE AUTHORITY REVENUE BONDS --  
PURPOSE--APPROPRIATION.--

A. The 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 authority may issue and sell revenue bonds in compliance with the New Mexico Finance Authority Act in an amount not to exceed five million dollars (\$5,000,000) for acquiring land for and planning, designing, constructing and equipping department of health facilities or improvements to those facilities, upon certification from the secretary of health that such projects are needed. The costs associated with issuing the bonds shall be paid from the net proceeds from the sale of the bonds, and the remainder is appropriated to the facilities management division of the general services department for the projects certified pursuant to this subsection.

D. The cigarette tax proceeds distributed to the authority pursuant to Subsection C of Section 7-1-6.11 NMSA 1978:

(1) are appropriated to the authority to be pledged irrevocably for the payment of the principal, interest, premiums and related expenses of the bonds and for payment of the expenses incurred by the authority related to the issuance, sale and administration of the bonds; and

(2) shall be deposited in a separate fund or account of the authority.

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.

F. The authority may 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."

**Chapter 34 Section 2 Laws 2017**

SECTION 2. 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 cancer research and treatment center at the university of New Mexico health sciences center in an amount equal to eighty-three 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 in an amount equal to eight and eighty-nine 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.

C. A distribution pursuant to Section 7-1-6.1 NMSA 1978 in an amount equal to three and seventy-four 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.

D. A distribution pursuant to Section 7-1-6.1 NMSA 1978 in an amount equal to nine and seventy-seven 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.

E. A distribution pursuant to Section 7-1-6.1 NMSA 1978 in an amount equal to sixty-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 rural county cancer treatment fund, to the New Mexico finance authority."

### **Chapter 34 Section 3 Laws 2017**

SECTION 3. EFFECTIVE DATE.--The effective date of the provisions of this act is the later of:

A. November 1, 2017; or

B. the first day of the month following the day the chief executive officer of the New Mexico finance authority certifies to the secretary of taxation and revenue, the secretary of finance and administration, the legislative council service and the New Mexico compilation commission that the bonds issued pursuant to Section 6-21-6.10 NMSA 1978 have been discharged in full and the distribution pursuant to Subsection D

of Section 7-1-6.11 NMSA 1978 is no longer needed to pay debt service, as that subsection was in effect prior to the effective date of this act.

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House Bill 8  
Approved April 6, 2017

## **LAWS 2017, CHAPTER 35**

### **AN ACT**

RELATING TO LAW ENFORCEMENT; PROVIDING THAT TOURNIQUETS AND TRAUMA KITS AND TRAINING ON THE USE OF THOSE ITEMS BE GIVEN TO NEW MEXICO LAW ENFORCEMENT ACADEMY AND TRAINING FACILITY CADETS AND TO CERTIFIED LAW ENFORCEMENT OFFICERS; MAKING AN APPROPRIATION.

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

### **Chapter 35 Section 1 Laws 2017**

SECTION 1. A new section of the Law Enforcement Training Act is enacted to read:

#### **"TOURNIQUET AND TRAUMA KIT TRAINING AND DISTRIBUTION.--**

A. Tourniquet and trauma kit training shall be included in the curriculum of each basic law enforcement training class and as a component of in-service law enforcement training each year for certified police officers. The academy, in coordination with certified regional law enforcement training facilities, shall provide a tourniquet and trauma kit to each cadet who graduates from the academy or from a certified regional law enforcement training facility and to each previously certified police officer who attends a certification-by-waiver course.

B. The academy shall provide hands-on tourniquet and trauma kit training to all officers using tourniquet and trauma kit equipment designed for training purposes. The training shall be designed in a manner that will safely replicate field conditions without the risk of injury in order for officers to develop the necessary skills to use tourniquets and trauma kits. In order to supplement the hands-on training, the academy may produce a training video on the proper use of tourniquets and trauma kits for use in the academy and certified regional law enforcement training facilities.

C. The academy, in coordination with certified regional law enforcement training facilities, shall distribute a tourniquet and trauma kit to each police officer who has been certified pursuant to the Law Enforcement Training Act."

## **Chapter 35 Section 2 Laws 2017**

SECTION 2. Section 29-13-2.1 NMSA 1978 (being Laws 1993, Chapter 179, Section 4, as amended) is amended to read:

"29-13-2.1. DEFINITIONS.--As used in the Law Enforcement Protection Fund Act:

- A. "academy" means the New Mexico law enforcement academy;
- B. "division" means the local government division of the department of finance and administration;
- C. "fund" means the law enforcement protection fund;
- D. "governmental entity" means the academy, a municipality, university, tribe or a county;
- E. "tribal police department" means the police department of a tribe that has entered into an agreement with the department of public safety pursuant to Section 29-1-11 NMSA 1978;
- F. "tribe" means an Indian nation, tribe or pueblo located wholly or partly in New Mexico; and
- G. "university" means a four-year post-secondary educational institution listed in Article 12, Section 11 of the constitution of New Mexico."

## **Chapter 35 Section 3 Laws 2017**

SECTION 3. Section 29-13-4 NMSA 1978 (being Laws 1993, Chapter 179, Section 6, as amended by Laws 2002, Chapter 78, Section 5 and by Laws 2002, Chapter 92, Section 3) is amended to read:

"29-13-4. DETERMINATION OF NEEDS AND RATE OF DISTRIBUTION.--

- A. Annually on or before April 15, the division shall consider and determine the relative needs as requested by tribal, municipal and university police, county sheriff's departments and the academy for money in the fund pursuant to the provisions of Subsection C of this section.
- B. As necessary during the year, the division shall transfer an amount from the fund to the peace officers', New Mexico mounted patrol members' and reserve police officers' survivors fund that enables the balance of the peace officers', New Mexico mounted patrol members' and reserve police officers' survivors fund to be maintained at a minimum balance of three hundred fifty thousand dollars (\$350,000).

C. The division shall determine the rate of distribution of money remaining in the fund as follows:

(1) all municipal police and county sheriff's departments shall be rated by class pursuant to this paragraph in accordance with populations established by the most recently completed decennial census; provided that the population of any county shall not include the population of any municipality within that county that has a municipal police department. The rate of distribution to which a municipal police or county sheriff's department is entitled is the following:

CLASS	POPULATION	AMOUNT
1	0 to 20,000	\$20,000
2	20,001 to 160,000	30,000
3	160,001 to 1,280,000	40,000;

(2) university police departments shall be entitled to a rate of distribution of seventeen thousand dollars (\$17,000);

(3) the academy shall be entitled to a rate of distribution of twenty-four thousand five hundred dollars (\$24,500) to carry out the purposes of Section 1 of this 2017 act;

(4) tribal police departments shall be entitled, unless allocations are adjusted pursuant to the provisions of Subsection D of this section, to six hundred dollars (\$600) for each commissioned peace officer in the tribe. To be counted as a commissioned peace officer for the purposes of this paragraph, a commissioned peace officer shall have been assigned to duty and have worked in New Mexico for no fewer than two hundred days in the calendar year immediately prior to the date of payment. Payments shall be made for only those divisions of the tribal police departments that perform services in New Mexico. A tribal police department shall not be eligible for any disbursement under the fund if commissioned peace officers cite non-Indians into the tribal court for civil or criminal citations; and

(5) municipal and university police and county sheriff's departments shall be entitled, unless allocations are adjusted pursuant to the provisions of Subsection D of this section, to six hundred dollars (\$600) for each police officer or sheriff's deputy employed full time by that department who has been certified by the academy, or by a regional law enforcement training facility in the state certified by the director of the academy, as a police officer or has been authorized to act as a New Mexico peace officer pursuant to the provisions of Section 29-1-11 NMSA 1978.

D. After distributions are determined in accordance with Subsection A, Subsection B and Paragraphs (1), (2) and (3) of Subsection C of this section, if the

balance in the fund is insufficient to permit the total allocations provided by Paragraphs (4) and (5) of Subsection C of this section, the division shall reduce that allocation to the maximum amount permitted by available money."

## **Chapter 35 Section 4 Laws 2017**

SECTION 4. Section 29-13-5 NMSA 1978 (being Laws 1983, Chapter 289, Section 5, as amended) is amended to read:

"29-13-5. DETERMINATION OF NEEDS--REVIEW.--No later than May 1 of each year, the division shall notify in writing each affected municipal police, university police, tribal police and county sheriff's department and the academy of its determination of money to be distributed pursuant to the provisions of Section 29-13-4 NMSA 1978. Any affected governmental entity may appeal that determination by filing a notice of appeal with the secretary of finance and administration no later than May 15. If an appeal is filed, the secretary of finance and administration shall review the determination of the division in an informal and summary proceeding and shall certify the result of the appeal to the division no later than June 30, and the division shall adjust its determination accordingly. If no appeal is filed, the original determination of the division shall be final and binding and not subject to further review."

## **Chapter 35 Section 5 Laws 2017**

SECTION 5. Section 29-13-7 NMSA 1978 (being Laws 1983, Chapter 289, Section 7, as amended) is amended to read:

"29-13-7. EXPENDITURE LIMITATION--CONTROL.--

A. Except as provided for the academy in Subsection B of this section, amounts distributed from the fund shall be expended only for the following:

(1) the repair and purchase of law enforcement apparatus and equipment, including the financing and refinancing thereof, that meet minimum nationally recognized standards;

(2) the purchase of law enforcement equipment, including protective vests, for police dogs;

(3) expenses associated with advanced law enforcement planning and training;

(4) maintaining the balance of the peace officers', New Mexico mounted patrol members' and reserve police officers' survivors fund at a minimum amount of three hundred fifty thousand dollars (\$350,000);

(5) complying with match or contribution requirements for the receipt of federal funds relating to criminal justice programs; and

(6) no more than fifty percent of the replacement salaries of municipal and county law enforcement personnel of municipalities or counties rated as Class 1 in Paragraph (1) of Subsection C of Section 29-13-4 NMSA 1978 participating in basic law enforcement training.

B. For the academy, amounts distributed from the fund shall be expended only for providing tourniquet and trauma kits and training on the use of tourniquet and trauma kits pursuant to Section 1 of this 2017 act.

C. Amounts distributed from the fund shall be expended only pursuant to approved budgets and upon duly executed vouchers approved as required by law."

## **Chapter 35 Section 6 Laws 2017**

SECTION 6. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2017.

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House Bill 9, aa  
Approved April 6, 2017

## **LAWS 2017, CHAPTER 36**

AN ACT

RELATING TO CONSUMER PROTECTION; CREATING THE DATA BREACH NOTIFICATION ACT; REQUIRING NOTIFICATION TO PERSONS AFFECTED BY A SECURITY BREACH INVOLVING PERSONAL IDENTIFYING INFORMATION; REQUIRING SECURE STORAGE AND DISPOSAL OF DATA CONTAINING PERSONAL IDENTIFYING INFORMATION; REQUIRING NOTIFICATION TO CONSUMER REPORTING AGENCIES AND THE OFFICE OF THE ATTORNEY GENERAL; PROVIDING CIVIL PENALTIES; EXEMPTING NEW MEXICO AND ITS POLITICAL SUBDIVISIONS FROM COMPLIANCE WITH THE DATA BREACH NOTIFICATION ACT.

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

## **Chapter 36 Section 1 Laws 2017**

SECTION 1. SHORT TITLE.--This act may be cited as the "Data Breach Notification Act".

## Chapter 36 Section 2 Laws 2017

### SECTION 2. DEFINITIONS.--As used in the Data Breach Notification Act:

A. "biometric data" means a record generated by automatic measurements of an identified individual's fingerprints, voice print, iris or retina patterns, facial characteristics or hand geometry that is used to uniquely and durably authenticate an individual's identity when the individual accesses a physical location, device, system or account;

B. "encrypted" means rendered unusable, unreadable or indecipherable to an unauthorized person through a security technology or methodology generally accepted in the field of information security;

C. "personal identifying information":

(1) means an individual's first name or first initial and last name in combination with one or more of the following data elements that relate to the individual, when the data elements are not protected through encryption or redaction or otherwise rendered unreadable or unusable:

(a) social security number;

(b) driver's license number;

(c) government-issued identification number;

(d) account number, credit card number or debit card number in combination with any required security code, access code or password that would permit access to a person's financial account; or

(e) biometric data; and

(2) does not mean information that is lawfully obtained from publicly available sources or from federal, state or local government records lawfully made available to the general public;

D. "security breach" means the unauthorized acquisition of unencrypted computerized data, or of encrypted computerized data and the confidential process or key used to decrypt the encrypted computerized data, that compromises the security, confidentiality or

integrity of personal identifying information maintained by a person. "Security breach" does not include the good-faith acquisition of personal identifying information by an employee or agent of a person for a legitimate business purpose of the person;

provided that the personal identifying information is not subject to further unauthorized disclosure; and

E. "service provider" means any person that receives, stores, maintains, licenses, processes or otherwise is permitted access to personal identifying information through its provision of services directly to a person that is subject to regulation.

### **Chapter 36 Section 3 Laws 2017**

SECTION 3. DISPOSAL OF PERSONAL IDENTIFYING INFORMATION.--A person that owns or licenses records containing personal identifying information of a New Mexico resident shall arrange for proper disposal of the records when they are no longer reasonably needed for business purposes. As used in this section, "proper disposal" means shredding, erasing or otherwise modifying the personal identifying information contained in the records to make the personal identifying information unreadable or undecipherable.

### **Chapter 36 Section 4 Laws 2017**

SECTION 4. SECURITY MEASURES FOR STORAGE OF PERSONAL IDENTIFYING INFORMATION.--A person that owns or licenses personal identifying information of a New Mexico resident shall implement and maintain reasonable security procedures and practices appropriate to the nature of the information to protect the personal identifying information from unauthorized access, destruction, use, modification or disclosure.

### **Chapter 36 Section 5 Laws 2017**

SECTION 5. SERVICE PROVIDER USE OF PERSONAL IDENTIFYING INFORMATION--IMPLEMENTATION OF SECURITY MEASURES.--A person that discloses personal identifying information of a New Mexico resident pursuant to a contract with a service provider shall require by contract that the service provider implement and maintain reasonable security procedures and practices appropriate to the nature of the personal identifying information and to protect it from unauthorized access, destruction, use, modification or disclosure.

### **Chapter 36 Section 6 Laws 2017**

SECTION 6. NOTIFICATION OF SECURITY BREACH.--

A. Except as provided in Subsection C of this section, a person that owns or licenses elements that include personal identifying information of a New Mexico resident shall provide notification to each New Mexico resident whose personal identifying information is reasonably believed to have been subject to a security breach. Notification shall be made in the most expedient time possible, but not later than forty-

five calendar days following discovery of the security breach, except as provided in Section 9 of the Data Breach Notification Act.

B. Notwithstanding Subsection A of this section, notification to affected New Mexico residents is not required if, after an appropriate investigation, the person determines that the security breach does not give rise to a significant risk of identity theft or fraud.

C. Any person that is licensed to maintain or possess computerized data containing personal identifying information of a New Mexico resident that the person does not own or license shall notify the owner or licensee of the information of any security breach in the most expedient time possible, but not later than forty-five calendar days following discovery of the breach, except as provided in Section 9 of the Data Breach Notification Act; provided that notification to the owner or licensee of the information is not required if, after an appropriate investigation, the person determines that the security breach does not give rise to a significant risk of identity theft or fraud.

D. A person required to provide notification of a security breach pursuant to Subsection A of this section shall provide that notification by:

(1) United States mail;

(2) electronic notification, if the person required to make the notification primarily communicates with the New Mexico resident by electronic means or if the notice provided is consistent with the requirements of 15 U.S.C. Section 7001; or

(3) a substitute notification, if the person demonstrates that:

(a) the cost of providing notification would exceed one hundred thousand dollars (\$100,000);

(b) the number of residents to be notified exceeds fifty thousand; or

(c) the person does not have on record a physical address or sufficient contact information for the residents that the person or business is required to notify.

E. Substitute notification pursuant to Paragraph (3) of Subsection D of this section shall consist of:

(1) sending electronic notification to the email address of those residents for whom the person has a valid email address;

(2) posting notification of the security breach in a conspicuous location on the website of the person required to provide notification if the person maintains a website; and

(3) sending written notification to the office of the attorney general and major media outlets in New Mexico.

F. A person that maintains its own notice procedures as part of an information security policy for the treatment of personal identifying information, and whose procedures are otherwise consistent with the timing requirements of this section, is deemed to be in compliance with the notice requirements of this section if the person notifies affected consumers in accordance with its policies in the event of a security breach.

## **Chapter 36 Section 7 Laws 2017**

SECTION 7. NOTIFICATION--REQUIRED CONTENT.--Notification required pursuant to Subsection A of Section 6 of the Data Breach Notification Act shall contain:

A. the name and contact information of the notifying person;

B. a list of the types of personal identifying information that are reasonably believed to have been the subject of a security breach, if known;

C. the date of the security breach, the estimated date of the breach or the range of dates within which the security breach occurred, if known;

D. a general description of the security breach incident;

E. the toll-free telephone numbers and addresses of the major consumer reporting agencies;

F. advice that directs the recipient to review personal account statements and credit reports, as applicable, to detect errors resulting from the security breach; and

G. advice that informs the recipient of the notification of the recipient's rights pursuant to the federal Fair Credit Reporting.

## **Chapter 36 Section 8 Laws 2017**

SECTION 8. EXEMPTIONS.--The provisions of the Data Breach Notification Act shall not apply to a person subject to the federal Gramm-Leach-Bliley Act or the federal Health Insurance Portability and Accountability Act of 1996.

## **Chapter 36 Section 9 Laws 2017**

SECTION 9. DELAYED NOTIFICATION.--The notification required by the Data Breach Notification Act may be delayed:

A. if a law enforcement agency determines that the notification will impede a criminal investigation; or

B. as necessary to determine the scope of the security breach and restore the integrity, security and confidentiality of the data system.

## **Chapter 36 Section 10 Laws 2017**

SECTION 10. NOTIFICATION TO ATTORNEY GENERAL AND CREDIT REPORTING AGENCIES.--A person that is required to issue notification of a security breach pursuant to the Data Breach Notification Act to more than one thousand New Mexico residents as a result of a single security breach shall notify the office of the attorney general and major consumer reporting agencies that compile and maintain files on consumers on a nationwide basis, as defined in 15 U.S.C. Section 1681a(p), of the security breach in the most expedient time possible, and no later than forty-five calendar days, except as provided in Section 9 of the Data Breach Notification Act. A person required to notify the attorney general and consumer reporting agencies pursuant to this section shall notify the attorney general of the number of New Mexico residents that received notification pursuant to Section 6 of that act and shall provide a copy of the notification that was sent to affected residents within forty-five calendar days following discovery of the security breach, except as provided in Section 9 of the Data Breach Notification Act.

## **Chapter 36 Section 11 Laws 2017**

SECTION 11. ATTORNEY GENERAL ENFORCEMENT--CIVIL PENALTY.--

A. When the attorney general has a reasonable belief that a violation of the Data Breach Notification Act has occurred, the attorney general may bring an action on the behalf of individuals and in the name of the state alleging a violation of that act.

B. In any action filed by the attorney general pursuant to the Data Breach Notification Act, the court may:

(1) issue an injunction; and

(2) award damages for actual costs or losses, including consequential financial losses.

C. If the court determines that a person violated the Data Breach Notification Act knowingly or recklessly, the court may impose a civil penalty of the greater of twenty-five thousand dollars (\$25,000) or, in the case of failed notification, ten

dollars (\$10.00) per instance of failed notification up to a maximum of one hundred fifty thousand dollars (\$150,000).

## **Chapter 36 Section 12 Laws 2017**

SECTION 12. STATE OF NEW MEXICO AND POLITICAL SUBDIVISIONS EXEMPTED.--Nothing in the Data Breach Notification Act shall be interpreted to apply to the state of New Mexico or any of its political subdivisions.

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HJC/House Bill 15, aa  
Approved April 6, 2017

## **LAWS 2017, CHAPTER 37**

AN ACT

RELATING TO INSURANCE; ALLOWING FOR PAYMENT OF INSURANCE AGENT AND BROKER COMMISSIONS AND OTHER COMPENSATION TO DECEASED AGENTS' AND BROKERS' ESTATES.

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

## **Chapter 37 Section 1 Laws 2017**

SECTION 1. Section 59A-12-24 NMSA 1978 (being Laws 1984, Chapter 127, Section 225, as amended by Laws 1999, Chapter 272, Section 14 and also by Laws 1999, Chapter 289, Section 15) is amended to read:

"59A-12-24. SHARING OF COMMISSIONS.--

A. An agent or broker shall share a commission or compensation for or on account of the solicitation or negotiation in this state of insurance on individuals or property or risks in this state only with the agent's duly licensed solicitor, or duly licensed agent of the insurer with which the insurance was placed, or duly licensed broker.

B. No such licensee shall share in commission or compensation as to a kind of insurance for which not licensed.

C. Such sharing in commissions and compensation between the same such licensees shall be infrequently only, and shall not unduly obviate the general necessity of appointment of the agent by the insurer with which the insurance is placed.

D. Nothing in the Insurance Code shall be deemed to prohibit payment, to or for the account of a former owner of an insurance agency or brokerage, of commissions or part thereof currently accruing on business of the agency or brokerage, as part of the purchase price of the agency or brokerage, whether or not such former owner is currently licensed as agent, solicitor or broker.

E. Nothing in the Insurance Code shall be deemed to prohibit the payment of a commission, compensation or other valuable consideration to the personal representative of the estate, their trust or beneficiary, of a deceased agent or broker or the heirs or devisees if the estate has been distributed, if that agent or broker would otherwise be entitled to that payment."

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House Bill 80, aa  
Approved April 6, 2017

## **LAWS 2017, CHAPTER 38**

AN ACT

RELATING TO GAME AND FISH; AMENDING SECTIONS OF CHAPTER 17 NMSA 1978 TO PROVIDE STRICTER PENALTIES FOR MAJOR VIOLATIONS.

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

### **Chapter 38 Section 1 Laws 2017**

SECTION 1. Section 17-2-8 NMSA 1978 (being Laws 1977, Chapter 70, Section 1) is amended to read:

"17-2-8. UNLAWFUL TAKING OF BIG GAME AND WASTE OF GAME.--

A. It is unlawful for any person:

(1) who hunts or fishes and takes any game mammal designated in Paragraphs (2), (3) or (4) of Subsection A of Section 17-2-3 NMSA 1978, any game bird or any game fish to fail to transport the edible portions of the meat obtained to the person's home for human consumption or to provide for the human consumption thereof under any commission regulations pertaining to exportation, transportation and donation of game;

(2) who wounds or may have wounded any game mammal designated in Paragraphs (2), (3) or (4) of Subsection A of Section 17-2-3 NMSA 1978 to fail to go to the place where the mammal sustained or may have sustained the wound and make a reasonable attempt to track the mammal and reduce it to possession; or

(3) to take or kill a bighorn sheep, ibex, oryx, Barbary sheep, elk, deer or pronghorn antelope outside of the legal season or without a valid license, which taking or killing results in waste of the animal. Waste of the animal consists of removing from the animal only the head, antlers or horns or abandoning any of the four quarters, backstraps or tenderloins of the carcass. A violation of the provisions of this paragraph is intended to be separate from and cumulative to any other violation of Chapter 17 NMSA 1978.

B. Violation of Paragraph (3) of Subsection A of this section is a fourth degree felony pursuant to Section 31-18-15 NMSA 1978, and violation of Paragraph (1) or (2) of Subsection A of this section is a misdemeanor pursuant to Section 17-2-10 NMSA 1978."

## **Chapter 38 Section 2 Laws 2017**

SECTION 2. Section 17-2-10 NMSA 1978 (being Laws 1931, Chapter 117, Section 7, as amended) is amended to read:

"17-2-10. VIOLATION OF GAME AND FISH LAWS OR RULES--PENALTIES.--

A. A person violating any of the provisions of Chapter 17 NMSA 1978, except for the felony provision of Section 17-2-8 NMSA 1978, or any rules adopted by the state game commission that relate to the time, extent, means or manner that game animals, birds or fish may be hunted, taken, captured, killed, possessed, sold, purchased or shipped is guilty of a misdemeanor and upon conviction shall be sentenced pursuant to Section 31-19-1 NMSA 1978. In addition, the person shall be sentenced to the payment of a fine in accordance with the following schedule:

(1) for illegally taking, attempting to take, killing, capturing or possessing of each deer, antelope, javelina, bear or cougar during a closed season, a fine of four hundred

dollars (\$400);

(2) for illegally taking, attempting to take, killing, capturing or possessing of each elk, bighorn sheep, oryx, ibex or Barbary sheep, a fine of one thousand dollars (\$1,000);

(3) for hunting big game without a proper and valid license, lawfully procured, a fine of one hundred dollars (\$100);

(4) for exceeding the bag limit of any big game species, a fine of four hundred dollars (\$400);

(5) for attempting to exceed the bag limit of any big game species by the hunting of any big game animal after having tagged a similar big game species, a fine of two hundred dollars (\$200);

(6) for signing a false statement to procure a resident hunting or fishing license when the applicant is residing in another state at the time of application for a license, a fine of four hundred dollars (\$400);

(7) for using a hunting or fishing license issued to another person, a fine of one hundred dollars (\$100);

(8) for a violation of Section 17-2-31 NMSA 1978, a fine of three hundred dollars (\$300);

(9) for selling, offering for sale, offering to purchase or purchasing any big game animal, unless otherwise provided by Chapter 17 NMSA 1978, a fine of one thousand dollars (\$1,000);

(10) for illegally taking, attempting to take, killing, capturing or possessing of each jaguar, a fine of two thousand dollars (\$2,000); and

(11) for a violation of the provisions of Subsection A of Section 17-2A-3 NMSA 1978, a fine of five hundred dollars (\$500).

B. A person convicted a second time for violating any of the provisions of Chapter 17 NMSA 1978, except for the felony provision of Section 17-2-8 NMSA 1978, or any rules adopted by the state game commission that relate to the time, extent, means or manner that game animals, birds or fish may be hunted, taken, captured, killed, possessed, sold, purchased or shipped is guilty of a misdemeanor and upon conviction shall be sentenced pursuant to Section 31-19-1 NMSA 1978. In addition, the person shall be sentenced to the payment of a fine in accordance with the following schedule:

(1) for illegally taking, attempting to take, killing, capturing or possessing of each deer, antelope, javelina, bear or cougar during a closed season, a fine of six hundred dollars (\$600);

(2) for illegally taking, attempting to take, killing, capturing or possessing of each elk, bighorn sheep, oryx, ibex or Barbary sheep, a fine of one thousand five hundred dollars (\$1,500);

(3) for hunting big game without a proper and valid license, lawfully procured, a fine of four hundred dollars (\$400);

(4) for exceeding the bag limit of any big game species, a fine of six hundred dollars (\$600);

(5) for attempting to exceed the bag limit of any big game species by the hunting of any big game animal after having tagged a similar big game species, a fine of six hundred dollars (\$600);

(6) for signing a false statement to procure a resident hunting or fishing license when the applicant is residing in another state at the time of application for a license, a fine of six hundred dollars (\$600);

(7) for using a hunting or fishing license issued to another person, a fine of two hundred fifty dollars (\$250);

(8) for a violation of Section 17-2-31 NMSA 1978, a fine of five hundred dollars (\$500);

(9) for selling, offering for sale, offering to purchase or purchasing any big game animal, unless otherwise provided by Chapter 17 NMSA 1978, a fine of one thousand five hundred dollars (\$1,500);

(10) for illegally taking, attempting to take, killing, capturing or possessing of each jaguar, a fine of four thousand dollars (\$4,000); and

(11) for a violation of the provisions of Subsection A of Section 17-2A-3 NMSA 1978, a fine of one thousand dollars (\$1,000).

C. Notwithstanding the provisions of Section 31-18-13 NMSA 1978, a person convicted a third or subsequent time for violating any of the provisions of Chapter 17 NMSA 1978, except for the felony provision of Section 17-2-8 NMSA 1978, or any rules adopted by the state game commission that relate to the time, extent, means or manner that game animals, birds or fish may be hunted, taken, captured, killed, possessed, sold, purchased or shipped is guilty of a misdemeanor and upon conviction shall be sentenced to imprisonment in the county jail for a term of not less than ninety days, which shall not be suspended or deferred. In addition, the person shall be sentenced to the payment of a fine in accordance with the following schedule:

(1) for illegally taking, attempting to take, killing, capturing or possessing of each deer, antelope, javelina, bear or cougar during a closed season, a fine of one thousand two hundred dollars (\$1,200);

(2) for illegally taking, attempting to take, killing, capturing or possessing of each elk, bighorn sheep, oryx, ibex or Barbary sheep, a fine of three thousand dollars (\$3,000);

(3) for hunting big game without a proper and valid license, lawfully procured, a fine of one thousand dollars (\$1,000);

(4) for exceeding the bag limit of any big game species, a fine of one thousand two hundred dollars (\$1,200);

(5) for attempting to exceed the bag limit of any big game species by the hunting of any big game animal after having tagged a similar big game species, a fine of one thousand dollars (\$1,000);

(6) for signing a false statement to procure a resident hunting or fishing license when the applicant is residing in another state at the time of application for a license, a fine of one thousand two hundred dollars (\$1,200);

(7) for using a hunting or fishing license issued to another person, a fine of one thousand dollars (\$1,000);

(8) for a violation of Section 17-2-31 NMSA 1978, a fine of one thousand dollars (\$1,000);

(9) for selling, offering for sale, offering to purchase or purchasing any big game animal, unless otherwise provided by Chapter 17 NMSA 1978, a fine of three thousand dollars (\$3,000);

(10) for illegally taking, attempting to take, killing, capturing or possessing of each jaguar, a fine of six thousand dollars (\$6,000); and

(11) for a violation of the provisions of Subsection A of Section 17-2A-3 NMSA 1978, a fine of two thousand dollars (\$2,000).

D. A person who is convicted of a violation of any rules adopted by the state game commission or of a violation of any of the provisions of Chapter 17 NMSA 1978, except for the felony provision of Section 17-2-8 NMSA 1978, for which a punishment is not set forth under this section, is a misdemeanor and shall be fined or imprisoned pursuant to Section 31-19-1 NMSA 1978.

E. The provisions of this section shall not be interpreted to prevent, constrain or penalize a Native American for engaging in activities for religious purposes, as provided in Section 17-2-14 or 17-2-41 NMSA 1978.

F. The provisions of this section shall not apply to a landowner or lessee, or employee of either of them, who kills an animal on private land, in which they have an ownership or leasehold interest, that is threatening human life or damaging or destroying property, including crops; provided, however, that the killing is reported to the department of game and fish within twenty-four hours and before the removal of the carcass of the animal killed; and provided further that all actions authorized in this subsection are carried out according to rules of the department."

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HJC/House Bill 92  
Approved April 6, 2017

## **LAWS 2017, CHAPTER 39**

AN ACT

RELATING TO THE DISTRICT COURTS; ALLOWING DISTRICT COURTS TO RECOVER COSTS FOR ALTERNATIVE DISPUTE RESOLUTION ON A SLIDING FEE SCALE.

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

### **Chapter 39 Section 1 Laws 2017**

SECTION 1. Section 34-6-45 NMSA 1978 (being Laws 1986, Chapter 26, Section 2, as amended) is amended to read:

"34-6-45. DISTRICT COURTS--ALTERNATIVE DISPUTE RESOLUTION--FEE.--

A. In addition to fees collected pursuant to, and subject to exceptions set forth in, Section 34-6-40 NMSA 1978 for docketing of civil cases in any judicial district that has established an alternative dispute resolution program, the district court clerk shall collect a fee of fifteen dollars (\$15.00) on all new and reopened civil cases except domestic relations cases. The fee shall be deposited for credit to the district court alternative dispute resolution fund pursuant to the provisions of Section 34-6-44 NMSA 1978.

B. A judicial district may establish an alternative dispute resolution program by court rule approved by the supreme court. Parties shall pay the cost of the alternative dispute resolution program pursuant to a sliding fee scale approved by the supreme court. The sliding fee scale shall be based on ability to pay. The fee shall be paid to the district court to be credited to the fund."

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House Bill 131, aa  
Approved April 6, 2017

## **LAWS 2017, CHAPTER 40**

AN ACT

RELATING TO WORKFORCE TRAINING; TEMPORARILY ALLOWING FOR THE REDUCTION OF THE RESIDENCY REQUIREMENT FOR THE WORKFORCE

DEVELOPMENT TRAINING PROGRAM OF THE ECONOMIC DEVELOPMENT DEPARTMENT WHEN THE TRAINING PROVIDED IS FOR HIGH WAGE-JOBS IN CERTAIN LOCATIONS OF THE STATE.

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

## **Chapter 40 Section 1 Laws 2017**

SECTION 1. Section 21-19-7 NMSA 1978 (being Laws 1983, Chapter 299, Section 1, as amended) is amended to read:

"21-19-7. DEVELOPMENT TRAINING.--

A. The economic development department shall establish a development training program that provides quick-response classroom training, in-plant training and skill-enhancement training to furnish qualified workforce 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 instructional support and 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 workforce solutions department;

(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 ensure that funds expended from the development training fund will generate business activity and give measurable growth to the economic base of New Mexico within the legal limits while preserving the ecological state of New Mexico and its people. For fiscal years 2018 through 2022, in expending money from the fund, except that for film and multimedia production companies and preemployment training programs for that industry, the board shall employ a preference for

training or instructional services for trainees who meet the criterion in Subparagraph (a) of Paragraph (3) of Subsection F of this section over training or instructional services for trainees who meet the criterion in Subparagraph (b) of that paragraph.

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' workforce 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 instructional support and 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) trainees shall be guaranteed full-time employment with the contracted company upon successful completion of the training;

(3) trainees shall be of legal status for employment and:

(a) have resided within the state for at least one year at any time before the start of the training program; or

(b) for fiscal years 2018 through 2022, have resided within the state for at least one day at any time before the start of the training program if the salary of the job guaranteed to the trainee upon successful completion of the training is at least: 1) sixty thousand dollars (\$60,000) for a job performed in, based in or within ten miles of the external boundaries of a municipality with a population, according to the most recent federal decennial census, of sixty thousand or more or a job performed in or based in an H class county; or 2) forty thousand dollars (\$40,000) for a job performed in or based in a municipality with a population, according to the most recent federal decennial census, of less than sixty thousand or for a job performed in or based in the unincorporated area, not within ten miles of the external boundaries of a municipality with a population of sixty thousand or more, of a county other than an H class county;

(4) payment for institutional classroom training shall be made pursuant to any accepted training contract for a qualified training program;

(5) 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;

(6) trainees 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;

(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 with a population, according to the most recent decennial census, of more than forty thousand or in 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 at least fifty percent of the premium for the health insurance plan for those employees who choose to enroll in it; provided that the fifty percent employer contribution shall not be a requirement for the dependent coverage that is offered."

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House Bill 147, aa  
Approved April 6, 2017

## **LAWS 2017, CHAPTER 41**

### **AN ACT**

RELATING TO PROPERTY; ENACTING THE UNIFORM PARTITION OF HEIRS PROPERTY ACT AND MAKING CONFORMING AMENDMENTS TO THE UNIFORM PROBATE CODE; AMENDING PROCEDURES FOR SELF-PROVING WILLS IN THE UNIFORM PROBATE CODE; MAKING A TECHNICAL AMENDMENT TO THE UNIFORM TRUST DECANTING ACT.

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

### **Chapter 41 Section 1 Laws 2017**

SECTION 1. SHORT TITLE.--Sections 1 through 13 of this act may be cited as the "Uniform Partition of Heirs Property Act".

### **Chapter 41 Section 2 Laws 2017**

SECTION 2. DEFINITIONS.--As used in the Uniform Partition of Heirs Property Act:

A. "ascendant" means an individual who precedes another individual in lineage, in the direct line of ascent from the other individual;

B. "collateral" means an individual who is related to another individual under the law of intestate succession of this state but who is not the other individual's ascendant or descendant;

C. "descendant" means an individual who follows another individual in lineage, in the direct line of descent from the other individual;

D. "determination of value" means a court order determining the fair market value of heirs property under Section 6 or 10 of the Uniform Partition of Heirs Property Act or adopting the valuation of the property agreed to by all cotenants;

E. "heirs property" means real property held in tenancy in common, but does not include undivided mineral interests, and that satisfies all of the following requirements as of the filing of a partition action:

(1) there is no agreement in a record binding all the cotenants that governs the partition of the property;

(2) one or more of the cotenants acquired title from a relative, whether living or deceased; and

(3) any of the following applies:

(a) twenty percent or more of the interests are held by cotenants who are relatives;

(b) twenty percent or more of the interests are held by an individual who acquired title from a relative, whether living or deceased; or

(c) twenty percent or more of the cotenants are relatives;

F. "partition by sale" means a court-ordered sale of the entire heirs property, whether by auction, sealed bids or open-market sale, conducted under Section 10 of the Uniform Partition of Heirs Property Act;

G. "partition in kind" means the division of heirs property into physically distinct and separately titled parcels;

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

I. "relative" means an ascendant, descendant or collateral or an individual otherwise related to another individual by blood, marriage, adoption or law of this state other than the Uniform Partition of Heirs Property Act.

## **Chapter 41 Section 3 Laws 2017**

### **SECTION 3. APPLICABILITY--RELATION TO OTHER LAW.--**

A. The Uniform Partition of Heirs Property Act applies to partition actions filed on or after July 1, 2017.

B. In an action to partition real property under Chapter 42, Article 5 NMSA 1978, the court shall determine whether the property is heirs property. If the court determines that the property is heirs property, the property shall be partitioned under the Uniform Partition of Heirs Property Act unless all of the cotenants otherwise agree in a record.

C. The Uniform Partition of Heirs Property Act supplements Chapter 42, Article 5 NMSA 1978 and, if an action is governed by the Uniform Partition of Heirs Property Act, replaces provisions of Chapter 42, Article 5 NMSA 1978 that are inconsistent with the Uniform Partition of Heirs Property Act.

## **Chapter 41 Section 4 Laws 2017**

### **SECTION 4. SERVICE--NOTICE BY POSTING.--**

A. The Uniform Partition of Heirs Property Act does not limit or affect the method by which service of a complaint in a partition action may be made.

B. If the plaintiff in a partition action seeks an order of notice by publication and the court determines that the property may be heirs property, the plaintiff, not later than ten days after the court's determination, shall post and maintain while the action is pending a conspicuous sign on the property that is the subject of the action. The sign must state that the action has commenced and identify the name and address of the court and the common designation by which the property is known. The court may require the plaintiff to publish on the sign the name of the plaintiff and the known defendants.

## **Chapter 41 Section 5 Laws 2017**

SECTION 5. COMMISSIONERS.--If the court appoints commissioners pursuant to Section 42-5-6 NMSA 1978, each commissioner, in addition to the requirements and disqualifications applicable to commissioners in Section 42-5-6 NMSA 1978, shall be disinterested and impartial and not a party to or a participant in the action.

## **Chapter 41 Section 6 Laws 2017**

### **SECTION 6. DETERMINATION OF VALUE.--**

A. Except as otherwise provided in Subsections B and C of this section, if the court determines that the property that is the subject of a partition action is heirs property, the court shall determine the fair market value of the property by ordering an appraisal pursuant to Subsection D of this section.

B. If all cotenants have agreed to the value of the property or to another method of valuation, the court shall adopt that value or the value produced by the agreed method of valuation.

C. If the court determines that the evidentiary value of an appraisal is outweighed by the cost of the appraisal, the court, after an evidentiary hearing, shall determine the fair market value of the property and send notice to the parties of the value.

D. If the court orders an appraisal, the court shall appoint a disinterested real estate appraiser licensed in this state to determine the fair market value of the property assuming sole ownership of the fee simple estate. On completion of the appraisal, the appraiser shall file a sworn or verified appraisal with the court.

E. If an appraisal is conducted pursuant to Subsection D of this section, not later than ten days after the appraisal is filed, the court shall send notice to each party with a known address stating:

(1) the appraised fair market value of the property;

(2) that the appraisal is available at the clerk's office; and

(3) that a party may file with the court an objection to the appraisal not later than thirty days after the notice is sent, stating the grounds for the objection.

F. If an appraisal is filed with the court pursuant to Subsection D of this section, the court shall conduct a hearing to determine the fair market value of the property not sooner than thirty days after a copy of the notice of the appraisal is sent to each party under Subsection E of this section, whether or not an objection to the appraisal is filed under Paragraph (3) of Subsection E of this section. In addition to the court-ordered appraisal, the court may consider any other evidence of value offered by a party.

G. After a hearing under Subsection F of this section, but before considering the merits of the partition action, the court shall determine the fair market value of the property and send notice to the parties of the value.

## **Chapter 41 Section 7 Laws 2017**

### **SECTION 7. COTENANT BUYOUT.--**

A. If any cotenant requests partition by sale, after the determination of value under Section 6 of the Uniform Partition of Heirs Property Act, the court shall send notice to the parties that any cotenant except a cotenant that requests partition by sale may buy all the interests of the cotenants that request partition by sale.

B. Not later than forty-five days after the notice is sent under Subsection A of this section, any cotenant except a cotenant that requests partition by sale may give notice to the court that it elects to buy all the interests of the cotenants that request partition by sale.

C. The purchase price for each of the interests of a cotenant that requests partition by sale is the value of the entire parcel determined under Section 6 of the Uniform Partition of Heirs Property Act multiplied by the cotenant's fractional ownership of the entire parcel.

D. After expiration of the period in Subsection B of this section, the following rules apply:

(1) if only one cotenant elects to buy all the interests of the cotenants that request partition by sale, the court shall notify all the parties of that fact;

(2) if more than one cotenant elects to buy all the interests of the cotenants that request partition by sale, the court shall allocate the right to buy those interests among the electing cotenants based on each electing cotenant's existing fractional ownership of the entire parcel divided by the total existing fractional ownership of all cotenants electing to buy and send notice to all the parties of that fact and of the price to be paid by each electing cotenant; and

(3) if no cotenant elects to buy all the interests of the cotenants that request partition by sale, the court shall send notice to all the parties of that fact and resolve the partition action under Subsections A and B of Section 8 of the Uniform Partition of Heirs Property Act.

E. If the court sends notice to the parties under Paragraph (1) or (2) of Subsection D of this section, the court shall set a date, not sooner than sixty days after the date the notice was sent, by which electing cotenants shall pay their apportioned price into the court. After this date, the following rules apply:

(1) if all electing cotenants timely pay their apportioned price into court, the court shall issue an order reallocating all the interests of the cotenants and disburse the amounts held by the court to the persons entitled to them;

(2) if no electing cotenant timely pays its apportioned price, the court shall resolve the partition action under Subsections A and B of Section 8 of the Uniform Partition of Heirs Property Act as if the interests of the cotenants that requested partition by sale were not purchased; and

(3) if one or more but not all of the electing cotenants fail to pay their apportioned price on time, the court, on motion, shall give notice to the electing cotenants that paid their apportioned price of the interest remaining and the price for all that interest.

F. Not later than twenty days after the court gives notice pursuant to Paragraph (3) of Subsection E of this section, any cotenant that paid may elect to purchase all of the remaining interest by paying the entire price into the court. After the twenty-day period, the following rules apply:

(1) if only one cotenant pays the entire price for the remaining interest, the court shall issue an order reallocating the remaining interest to that cotenant. The court shall issue promptly an order reallocating the interests of all of the cotenants and disburse the amounts held by it to the persons entitled to them;

(2) if no cotenant pays the entire price for the remaining interest, the court shall resolve the partition action under Subsections A and B of Section 8 of the Uniform Partition of Heirs Property Act as if the interests of the cotenants that requested partition by sale were not purchased; and

(3) if more than one cotenant pays the entire price for the remaining interest, the court shall reapportion the remaining interest among those paying cotenants, based on each paying cotenant's original fractional ownership of the entire parcel divided by the total original fractional ownership of all cotenants that paid the entire price for the remaining interest. The court shall issue promptly an order reallocating all of the cotenants' interests, disburse the amounts held by it to the persons entitled to them and promptly refund any excess payment held by the court.

G. Not later than forty-five days after the court sends notice to the parties pursuant to Subsection A of this section, any cotenant entitled to buy an interest under this section may request the court to authorize the sale as part of the pending action of the interests of cotenants named as defendants and served with the complaint but that did not appear in the action.

H. If the court receives a timely request under Subsection G of this section, the court, after hearing, may deny the request or authorize the requested additional sale on such terms as the court determines are fair and reasonable, subject to the following limitations:

(1) a sale authorized under this subsection may occur only after the purchase prices for all interests subject to sale under Subsections A through F of this section have been paid into court and those interests have been reallocated among the cotenants as provided in those subsections; and

(2) the purchase price for the interest of a nonappearing cotenant is based on the court's determination of value under Section 6 of the Uniform Partition of Heirs Property Act.

## **Chapter 41 Section 8 Laws 2017**

### **SECTION 8. PARTITION ALTERNATIVES.--**

A. If all the interests of all cotenants that requested partition by sale are not purchased by other cotenants pursuant to Section 7 of the Uniform Partition of Heirs Property Act or if, after conclusion of the buyout under that section, a cotenant remains that has requested partition in kind, the court shall order partition in kind unless the

court, after consideration of the factors listed in Section 9 of the Uniform Partition of Heirs Property Act, finds that partition in kind will result in manifest prejudice to the cotenants as a group. In considering whether to order partition in kind, the court shall approve a request by two or more parties to have their individual interests aggregated.

B. If the court does not order partition in kind under Subsection A of this section, the court shall order partition by sale pursuant to Section 10 of the Uniform Partition of Heirs Property Act, or if no cotenant requested partition by sale, the court shall dismiss the action.

C. If the court orders partition in kind pursuant to Subsection A of this section, the court may require that one or more cotenants pay one or more other cotenants' amounts so that the payments, taken together with the value of the in-kind distributions to the cotenants, will make the partition in kind just and proportionate in value to the fractional interests held.

D. If the court orders partition in kind, the court shall allocate to the cotenants that are unknown, unlocatable or the subject of a default judgment, if their interests were not bought out pursuant to Section 7 of the Uniform Partition of Heirs Property Act, a part of the property representing the combined interests of these cotenants as determined by the court.

## **Chapter 41 Section 9 Laws 2017**

### **SECTION 9. CONSIDERATIONS FOR PARTITION IN KIND.--**

A. In determining under Subsection A of Section 8 of the Uniform Partition of Heirs Property Act whether partition in kind would result in manifest prejudice to the cotenants as a group, the court shall consider the following:

(1) whether the heirs property practicably can be divided among the cotenants, including whether portions of the property once divided would be of sufficient size, and have adequate access and legal rights, to serve intended uses;

(2) whether partition in kind would apportion the property in such a way that the aggregate fair market value of the parcels resulting from the division would be materially less than the value of the property if it were sold as a whole, taking into account the condition under which a court-ordered sale likely would occur;

(3) evidence of the collective duration of ownership or possession of the property by a cotenant and one or more predecessors in title or predecessors in possession to the cotenant who are or were relatives of the cotenant or each other;

(4) a cotenant's sentimental attachment to the property, including any attachment arising because the property has ancestral or other unique or special value to the cotenant;

(5) the lawful use being made of the property by a cotenant and the degree to which the cotenant would be harmed if the cotenant could not continue the same use of the property;

(6) the degree to which the cotenants have contributed their pro rata share of the property taxes, insurance and other expenses associated with maintaining ownership of the property or have contributed to the physical improvement, maintenance or upkeep of the property; and

(7) any other relevant factor.

B. The court shall not consider any one factor in Subsection A of this section to be dispositive without weighing the totality of all relevant factors and circumstances.

C. The court shall not partition property in a manner that would result in subdivision of the property that would not otherwise be allowable under valid covenants and restrictions or applicable law."

## **Chapter 41 Section 10 Laws 2017**

### **SECTION 10. OPEN-MARKET SALE, SEALED BIDS OR AUCTION.--**

A. If the court orders a sale of heirs property, the sale must be an open-market sale unless the court finds that a sale by sealed bids or an auction would be more economically advantageous and in the best interest of the cotenants as a group.

B. If the court orders an open-market sale and the parties, not later than ten days after the entry of the order, agree on a real estate broker licensed in this state to offer the property for sale, the court shall appoint the broker and establish a reasonable commission. If the parties do not agree on a broker, the court shall appoint a disinterested real estate broker licensed in this state to offer the property for sale and shall establish a reasonable commission. The broker shall offer the property for sale in a commercially reasonable manner at a price no lower than the determination of value and on the terms and conditions established by the court.

C. If the broker appointed under Subsection B of this section obtains within a reasonable time an offer to purchase the property for at least the determination of value:

(1) the broker shall comply with the reporting requirements in Section 11 of the Uniform Partition of Heirs Property Act; and

(2) the sale may be completed in accordance with state law other than the Uniform Partition of Heirs Property Act.

D. If the broker appointed under Subsection B of this section does not obtain within a reasonable time an offer to purchase the property for at least the determination of value, the court, after hearing, may:

- (1) approve the highest outstanding offer, if any;
- (2) redetermine the value of the property and order that the property continue to be offered for an additional time; or
- (3) order that the property be sold by sealed bids or at an auction.

E. If the court orders a sale by sealed bids or an auction, the court shall set terms and conditions of the sale. If the court orders an auction, the auction must be conducted under Chapter 42, Article 5 NMSA 1978.

F. If a purchaser is entitled to a share of the proceeds of the sale, the purchaser is entitled to a credit against the price in an amount equal to the purchaser's share of the proceeds.

## **Chapter 41 Section 11 Laws 2017**

### **SECTION 11. REPORT OF OPEN-MARKET SALE.--**

A. Unless required to do so within a shorter time by Chapter 42, Article 5 NMSA 1978, a broker appointed under Subsection B of Section 10 of the Uniform Partition of Heirs Property Act to offer heirs property for open-market sale shall file a report with the court not later than seven days after receiving an offer to purchase the property for at least the value determined under Section 6 or 10 of the Uniform Partition of Heirs Property Act.

B. The report required by Subsection A of this section shall contain the following information:

- (1) a description of the property to be sold to each buyer;
- (2) the name of each buyer;
- (3) the proposed purchase price;
- (4) the terms and conditions of the proposed sale, including the terms of any owner financing;
- (5) the amounts to be paid to lienholders;
- (6) a statement of contractual or other arrangements or conditions of the broker's commission; and

(7) other material facts relevant to the sale.

## **Chapter 41 Section 12 Laws 2017**

SECTION 12. UNIFORMITY OF APPLICATION AND CONSTRUCTION.--In applying and construing the Uniform Partition of Heirs Property Act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

## **Chapter 41 Section 13 Laws 2017**

SECTION 13. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.--The Uniform Partition of Heirs Property Act 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).

## **Chapter 41 Section 14 Laws 2017**

SECTION 14. Section 45-2-103 NMSA 1978 (being Laws 1993, Chapter 174, Section 6, as amended) is amended to read:

"45-2-103. SHARE OF HEIRS OTHER THAN SURVIVING SPOUSE.--

A. Any part of the intestate estate not passing to a decedent's surviving spouse pursuant to Section 45-2-102 NMSA 1978, or the entire intestate estate if there is no surviving spouse, passes in the following order to the individuals who survive the decedent:

(1) to the decedent's descendants by representation;

(2) if there is no surviving descendant, to the decedent's parents equally if both survive, or to the surviving parent if only one survives;

(3) if there is no surviving descendant or parent, to the descendants of the decedent's parents or either of them by representation;

(4) if there is no surviving descendant, parent or descendant of a parent, but the decedent is survived by one or more grandparents or descendants of grandparents, on both grandparents' sides:

(a) half to the decedent's grandparents on one side equally if both survive, or to the survivor of them if only one survives, or to the descendants of the decedent's grandparents on this side or either of them if both are deceased, the descendants taking by representation; and

(b) half to the decedent's grandparents on the other side equally if both survive, or to the survivor of them if only one survives, or to the descendants of the decedent's grandparents or either of them if both are deceased, the descendants taking by representation; and

(5) if there is no surviving descendant parent, or descendant of a parent, but the decedent is survived by one or more grandparents or descendants of grandparents on one side but not the other side, to the decedent's relatives on the side with one or more surviving members in the manner described in Paragraph (4) of this subsection.

B. If there is no taker under Subsection A of this section, but the decedent has:

(1) one deceased spouse who has one or more descendants who survive the decedent, the estate or part thereof passes to that spouse's descendants by representation; or

(2) more than one deceased spouse who has one or more descendants who survive the decedent, an equal share of the estate or part thereof passes to each set of descendants by representation.

C. For purposes of Subsection B of this section, the term "deceased spouse" means an individual to whom the decedent was married at the individual's death, and does not include a spouse who was divorced from, or treated pursuant to Section 45-2-802 or Section 45-2-804 NMSA 1978 as divorced from, the decedent at the time of the decedent's death."

## **Chapter 41 Section 15 Laws 2017**

SECTION 15. Section 45-2-504 NMSA 1978 (being Laws 1993, Chapter 174, Section 27, as amended) is amended to read:

"45-2-504. SELF-PROVED WILL.--

A. A will may be simultaneously executed, attested and made self-proved by acknowledgment thereof by the testator and affidavits or affirmations under penalty of perjury of the witnesses, each made before an officer authorized to administer oaths under the laws of the state in which execution occurs and evidenced by the officer's certificate, under official seal, in substantially the following form:

"I, \_\_\_\_\_, the testator, swear or affirm under penalty of perjury on this \_\_\_\_\_ day of \_\_\_\_\_, that I request \_\_\_\_\_ and \_\_\_\_\_ to act as witnesses to my will; that I declare to them and the undersigned authority that this document is my will; that I sign this will in the presence of both witnesses; that they sign the will as witnesses in my presence and in the presence of each other; that the will was read by

me (or read and explained to me) after being prepared and before I sign it; that it clearly and accurately expresses my wishes; that I sign it willingly (or willingly directed another to sign for me); that I make and sign the will as my free and voluntary act for the purposes expressed in the will; that I am eighteen years of age or older; that I am mentally capable of disposing of my estate by will; and that I am not acting under duress, menace, fraud or undue influence of any person.

\_\_\_\_\_

Testator

We, \_\_\_\_\_ and \_\_\_\_\_, the witnesses, do hereby swear or affirm under penalty of perjury on this \_\_\_\_\_ day of \_\_\_\_\_ to the undersigned authority that the testator, \_\_\_\_\_, declares that the attached document is his or her will; that the testator signs it willingly (or willingly directs another to sign for him or her); that the testator signs it in the presence of both of us and requests both of us to sign as witnesses; that each of us, in the presence of the testator and in the presence of each other, signs this will as witness to the testator's signing; that so far as we can determine, the testator is eighteen years of age or older; that the testator is not acting under duress, menace, fraud or undue influence of any person; and that the testator, in our opinion, is mentally capable of disposing of his or her estate by will.

\_\_\_\_\_

Witness

\_\_\_\_\_

Witness

State of \_\_\_\_\_

County of \_\_\_\_\_

Subscribed and sworn to, or affirmed under penalty of perjury, and acknowledged before me by \_\_\_\_\_, the testator, and subscribed and sworn to, or affirmed under penalty of perjury, before me by \_\_\_\_\_ and \_\_\_\_\_, witnesses, this \_\_\_\_\_ day of \_\_\_\_\_.

(Seal)

(Signed)

\_\_\_\_\_

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(Official capacity of officer)".

B. An attested will may be made self-proved at any time after its execution by the acknowledgment thereof by the testator and the affidavits or affirmation under penalty of perjury of the witnesses, each made before an officer authorized to administer oaths under the laws of the state in which the acknowledgment occurs and evidenced by the officer's certificate, under official seal, attached or annexed to the will in substantially the following form:

I, \_\_\_\_\_, the testator, swear or affirm under penalty of perjury on this \_\_\_\_\_ day of

\_\_\_\_\_ that I requested \_\_\_\_\_ and \_\_\_\_\_ to act as witnesses to my will; that I declared to them and the undersigned authority that this document is my will; that I signed this will in the presence of both witnesses; that they signed the will as witnesses in my presence and in the presence of each other; that the will was read by me (or read and explained to me) after being prepared and before I signed it; that it clearly and accurately expresses my wishes; that I signed it willingly (or willingly directed another to sign for me); that I made and signed the will as my free and voluntary act for the purposes expressed in the will; that I am eighteen years of age or older; that I am mentally capable of disposing of my estate by will; and that I am not acting under duress, menace, fraud or undue influence of any person.

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Testator

We, \_\_\_\_\_ and \_\_\_\_\_, witnesses, do hereby swear or affirm under penalty of perjury on this \_\_\_\_\_ day of \_\_\_\_\_ that the testator, \_\_\_\_\_, declared the attached document to be his or her will; that the testator signed it willingly (or willingly directed another to sign for the testator); that the testator signed it in the presence of both of us and requested both of us to sign as witnesses; that each of us, in the presence of the testator and in the presence of each other, signed this will as witness to the testator's signing; that so far as we could determine, the testator is eighteen years of age or older; that the testator was not acting under duress, menace, fraud or undue influence of any person; and that the testator, in our opinion, was mentally capable of disposing of the testator's estate by will.

---

Witness

\_\_\_\_\_

Witness

State of \_\_\_\_\_

County of \_\_\_\_\_

Subscribed and sworn to, or affirmed under penalty of perjury, and acknowledged before me by \_\_\_\_\_, the testator, and subscribed and sworn to, or affirmed under penalty of perjury, before me by \_\_\_\_\_ and \_\_\_\_\_, witnesses, this \_\_\_\_\_ of \_\_\_\_\_.

(Seal)

(Signed)

\_\_\_\_\_

\_\_\_\_\_

(Official capacity of officer)".

C. A signature affixed to a self-proving affidavit attached to a will is considered a signature affixed to the will if necessary to prove the will's due execution."

### **Chapter 41 Section 16 Laws 2017**

SECTION 16. Section 45-3-203 NMSA 1978 (being Laws 1975, Chapter 257, Section 3-203, as amended) is amended to read:

"45-3-203. PRIORITY AMONG PERSONS SEEKING APPOINTMENT AS PERSONAL REPRESENTATIVE.--

A. Whether the proceedings are formal or informal, persons who are not disqualified have priority for appointment in the following order:

(1) the person with priority as determined by a probated will, including a person nominated by a power conferred in a will;

(2) the surviving spouse of the decedent who is a devisee of the decedent;

(3) other devisees of the decedent;

(4) the surviving spouse of the decedent;

(5) other heirs of the decedent; and

(6) forty-five days after the death of the decedent, any creditor.

B. An objection to an appointment may be made only in formal proceedings. In case of objection, the priorities stated in Subsection A of this section apply except that:

(1) if the estate appears to be more than adequate to meet allowances and costs of administration but inadequate to discharge anticipated unsecured claims, the court, on petition of creditors, may appoint any qualified person; and

(2) in case of objection to appointment of a person other than one whose priority is determined by will by an heir or devisee appearing to have a substantial interest in the estate, the court may appoint a person who is acceptable to heirs and devisees whose interests in the estate appear to be worth in total more than half of the probable distributable value of the estate or, in default of this accord, any suitable person.

C. A person entitled to letters under Paragraphs (2) through (5) of Subsection A of this section or a person who has not reached the age of majority and who would be entitled to letters but for the person's age may nominate a qualified person to act as personal representative by an appropriate writing filed with the court and thereby confer the person's relative priority for appointment on the person's nominee. Any person who has reached the age of majority may renounce the right to nominate or to an appointment by an appropriate writing filed with the court. When two or more persons entitled to letters under Paragraphs (2) through (5) of Subsection A of this section share a priority, all those who do not renounce must concur in nominating another to act for them or in applying for appointment by an appropriate writing filed with the court. The person so nominated shall have the same priority as those who nominated the person. A nomination or renunciation shall be signed by each person making it, the person's attorney or the person's representative authorized by Subsection D of this section.

D. Conservators of the estates of protected persons or, if there is no conservator, any guardian except a guardian ad litem of a minor or incapacitated person may exercise the same right to nominate, to object to another's appointment or to participate in determining the preference of a majority in interest of the heirs and devisees that the protected person would have if qualified for appointment.

E. Appointment of one who does not have priority, including priority resulting from renunciation or nomination determined pursuant to this section, may be made only in formal proceedings. Before appointing one without priority, the court shall

determine that those having priority, although given notice of the proceedings, have failed to request appointment or to nominate another for appointment and that administration is necessary.

F. No person is qualified to serve as a personal representative who is:

(1) under the age of majority; or

(2) a person whom the court finds unsuitable in formal proceedings.

G. A personal representative appointed by a court of the decedent's domicile has priority over all other persons except where the decedent's will nominates different persons to be personal representatives in New Mexico and in the state of domicile. The domiciliary personal representative may nominate another, who shall have the same priority as the domiciliary personal representative.

H. This section governs priority for appointment of a successor personal representative but does not apply to the selection of a special administrator."

## **Chapter 41 Section 17 Laws 2017**

SECTION 17. Section 45-3-703 NMSA 1978 (being Laws 1975, Chapter 257, Section 3-703, as amended) is amended to read:

"45-3-703. GENERAL DUTIES--RELATION AND LIABILITY TO PERSONS INTERESTED IN ESTATE--STANDING TO SUE.--

A. A personal representative is a fiduciary who shall observe the same standards of care applicable to trustees. A personal representative is under a duty to settle and distribute the estate of a decedent in accordance with the terms of any probated and effective will and the Uniform Probate Code and as expeditiously and efficiently as is consistent with the best interests of the estate. The personal representative shall use the authority conferred upon the personal representative by the Uniform Probate Code, the terms of the will, if any, and any order in proceedings to which the personal representative is party for the best interests of successors to the estate.

B. A personal representative may not be surcharged for acts of administration or distribution if the conduct in question was authorized at the time. Subject to other obligations of administration, an informally probated will authorizes a personal representative to administer and distribute the estate according to its terms.

C. An order of appointment of a personal representative, whether issued in informal or formal proceedings, authorizes a personal representative to distribute apparently intestate assets to the heirs of the decedent if, at the time of distribution, the personal representative is not aware of:

- (1) a pending testacy proceeding;
- (2) a proceeding to vacate an order entered in an earlier testacy proceeding;
- (3) a formal proceeding questioning the personal representative's appointment or fitness to continue; or
- (4) a supervised administration proceeding.

D. This section does not affect the duty of the personal representative to administer and distribute the estate in accordance with the rights of claimants whose claims have been allowed, the surviving spouse, any minor and dependent children and any pretermitted child of the decedent.

E. Except as to proceedings that do not survive the death of the decedent, a personal representative of a decedent domiciled in New Mexico at the decedent's death has the same standing to sue and be sued in the courts of New Mexico and the courts of any other jurisdiction as the decedent had immediately prior to death.

F. The personal representative must not delay distribution of an estate pending the possible birth of a posthumously conceived child unless the personal representative:

- (1) has received written notice or has actual knowledge that there is an intention to use a decedent's genetic material to create a child; and

- (2) the birth of the child pursuant to the provisions of Section 45-2-120 NMSA 1978 or other law could have an effect on the personal representative's distribution of the estate. As used in this subsection, "genetic material" means eggs, sperm or embryos."

## **Chapter 41 Section 18 Laws 2017**

SECTION 18. Section 45-3-705 NMSA 1978 (being Laws 1975, Chapter 257, Section 3-705, as amended) is amended to read:

"45-3-705. DUTY OF PERSONAL REPRESENTATIVE--NOTICE TO HEIRS AND DEVISEES.--

A. Not later than thirty days after appointment, every personal representative, except a special administrator, shall give notice of the appointment to the heirs and devisees, including, if there has been no formal testacy proceeding and if the personal representative was appointed on the assumption that the decedent died intestate, the devisees in any will mentioned in the application or petition for appointment of a personal representative.

B. The notice shall be delivered or sent by ordinary mail to each of the heirs and devisees whose address is reasonably available to the personal representative. The duty does not extend to require notice to persons:

(1) who have been adjudicated in a prior formal testacy proceeding to have no interest in the estate; or

(2) who are born more than thirty days after the personal representative's appointment, including children born by posthumous conception.

C. The notice shall:

(1) include the name and address of the personal representative;

(2) indicate that it is being sent to persons who have or may have some interest in the estate being administered;

(3) indicate whether bond has been filed; and

(4) describe the court where papers relating to the estate are on file.

D. The notice shall state that the estate is being administered by the personal representative pursuant to the provisions of the Uniform Probate Code without supervision by the court but that recipients are entitled to information regarding the administration from the personal representative and can petition the court in any matter relating to the estate, including distribution of assets and expenses of administration.

E. The personal representative shall file a statement with the appointing court giving the names and addresses of those persons notified pursuant to Subsection A of this section.

F. The personal representative's failure to give notice pursuant to this section is a breach of duty to the persons concerned but does not affect the validity of the appointment, the personal representative's powers or other duties. A personal representative may inform other persons of the appointment by delivery or ordinary mail."

## **Chapter 41 Section 19 Laws 2017**

SECTION 19. Section 45-3-911 NMSA 1978 (being Laws 1975, Chapter 257, Section 3-911) is amended to read:

"45-3-911. PARTITION FOR PURPOSE OF DISTRIBUTION.--

A. When two or more heirs or devisees are entitled to distribution of undivided interests in any real or personal property of the estate, the personal representative or one or more of the heirs or devisees may petition the district court prior to the formal or informal closing of the estate to make partition.

B. After notice to the interested heirs or devisees, the district court shall partition the property pursuant to the provisions of the Uniform Partition of Heirs Property Act.

C. The district court may direct the personal representative to sell any property pursuant to the provisions of the Uniform Partition of Heirs Property Act."

## **Chapter 41 Section 20 Laws 2017**

SECTION 20. Section 46-12-119 NMSA 1978 (being Laws 2016, Chapter 72, Section 1-119) is amended to read:

"46-12-119. TAX-RELATED LIMITATIONS.--

A. As used in this section:

(1) "grantor trust" means a trust as to which a settlor of a first trust is considered the owner under 26 U.S.C. Sections 671 through 677, as amended, or 26 U.S.C. Section 679, as amended;

(2) "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended;

(3) "nongrantor trust" means a trust that is not a grantor trust; and

(4) "qualified benefits property" means property subject to the minimum distribution requirements of 26 U.S.C. Section 401(a)(9), as amended, and any applicable regulations or subject to any similar requirements that refer to 26 U.S.C. Section 401(a)(9), as amended or the regulations.

B. An exercise of the decanting power is subject to the following limitations:

(1) if a first trust contains property that qualified, or would have qualified but for provisions of the Uniform Trust Decanting Act other than those in this section, for a marital deduction for purposes of the gift or estate tax under the Internal Revenue Code or a state gift, estate or inheritance tax, the second-trust instrument shall not include or omit any term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying for the deduction, or would have reduced the amount of the deduction, under

the same provisions of the Internal Revenue Code or state law under which the transfer qualified;

(2) if the first trust contains property that qualified, or would have qualified but for provisions of the Uniform Trust Decanting Act other than those in this section, for a charitable deduction for purposes of the income, gift or estate tax under the Internal Revenue Code or a state income, gift, estate or inheritance tax, the second-trust instrument shall not include or omit any term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying for the deduction, or would have reduced the amount of the deduction, under the same provisions of the Internal Revenue Code or state law under which the transfer qualified;

(3) if the first trust contains property that qualified, or would have qualified but for provisions of the Uniform Trust Decanting Act other than those in this section, for the exclusion from the gift tax described in 26 U.S.C. Section 2503(b), as amended, the second-trust instrument shall not include or omit a term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying under 26 U.S.C. Section 2503(b), as amended. If the first trust contains property that qualified, or would have qualified but for provisions of the Uniform Trust Decanting Act other than those in this section, for the exclusion from the gift tax described in 26 U.S.C. Section 2503(b), as amended, by application of 26 U.S.C. Section 2503(c), as amended, the second-trust instrument shall not include or omit a term that, if included or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying under 26 U.S.C. Section 2503(c), as amended;

(4) if the property of the first trust includes shares of stock in an S corporation, as defined in 26 U.S.C. Section 1361, as amended, and the first trust is, or, but for provisions of the Uniform Trust Decanting Act other than those in this section, would be, a permitted shareholder under any provision of 26 U.S.C. Section 1361, as amended, an authorized fiduciary may exercise the power with respect to part or all of the S-corporation stock only if any second trust receiving the stock is a permitted shareholder under 26 U.S.C. Section 1361(c)(2), as amended. If the property of the first trust includes shares of stock in an S corporation and the first trust is, or, but for provisions of the Uniform Trust Decanting Act other than those in this section, would be, a qualified subchapter-S trust within the meaning of 26 U.S.C. Section 1361(d), as amended, the second-trust instrument shall not include or omit a term that prevents the second trust from qualifying as a qualified subchapter-S trust;

(5) if the first trust contains property that qualified, or, but for provisions of the Uniform Trust Decanting Act other than those in this section, would have qualified, for a zero inclusion ratio for purposes of the generation-skipping transfer tax under 26 U.S.C. Section 2642(c), as amended, the second-trust instrument shall not include or omit a term that, if included in or omitted from the first-trust instrument, would

have prevented the transfer to the first trust from qualifying for a zero inclusion ratio under 26 U.S.C. Section 2642(c), as amended;

(6) if the first trust is directly or indirectly the beneficiary of qualified benefits property, the second-trust instrument shall not include or omit any term that, if included in or omitted from the first-trust instrument, would have increased the minimum distributions required with respect to the qualified benefits property under 26 U.S.C. Section 401(a)(9), as amended, and any applicable regulations or any similar requirements that refer to 26 U.S.C. Section 401(a)(9), as amended, or the regulations. If an attempted exercise of the decanting power violates this paragraph, the trustee is deemed to have held the qualified benefits property and any reinvested distributions of the property as a separate share from the date of the exercise of the power, and Section 46-12-122 NMSA 1978 applies to the separate share;

(7) if the first trust qualifies as a grantor trust because of the application of 26 U.S.C. Section 672(f)(2)(A), as amended, the second trust shall not include or omit a term that, if included in or omitted from the first-trust instrument, would have prevented the first trust from qualifying under 26 U.S.C. Section 672(f)(2)(A), as amended;

(8) as used in this paragraph, "tax benefit" means a federal or state tax deduction, exemption, exclusion or other benefit not otherwise listed in this section, except for a benefit arising from being a grantor trust. Subject to Paragraph (9) of this subsection, a second-trust instrument shall not include or omit a term that, if included in or omitted from the first-trust instrument, would have prevented qualification for a tax benefit if:

(a) the first-trust instrument expressly indicates an intent to qualify for the benefit or the first-trust instrument clearly is designed to enable the first trust to qualify for the benefit; and

(b) the transfer of property held by the first trust or the first trust qualified, or, but for provisions of the Uniform Trust Decanting Act other than those in this section, would have qualified, for the tax benefit;

(9) subject to Paragraph (4) of this subsection:

(a) except as otherwise provided in Paragraph (7) of this subsection, the second trust may be a nongrantor trust, even if the first trust is a grantor trust; and

(b) except as otherwise provided in Paragraph (10) of this subsection, the second trust may be a grantor trust, even if the first trust is a nongrantor trust; and

(10) an authorized fiduciary shall not exercise the decanting power if a settlor objects in a signed record delivered to the fiduciary within the notice period and:

(a) the first trust and a second trust are both grantor trusts, in whole or in part, the first trust grants the settlor or another person the power to cause the first trust to cease to be a grantor trust and the second trust does not grant an equivalent power to the settlor or other person; or

(b) the first trust is a nongrantor trust and a second trust is a grantor trust, in whole or in part, with respect to the settlor, unless: 1) the settlor has the power at all times to cause the second trust to cease to be a grantor trust; or 2) the first-trust instrument contains a provision granting the settlor or another person a power that would cause the first trust to cease to be a grantor trust and the second-trust instrument contains the same provision."

## **Chapter 41 Section 21 Laws 2017**

### SECTION 21. EFFECTIVE DATE.--

A. The effective date of the provisions of Sections 14 and 20 of this act is July 1, 2017.

B. The effective date of the provisions of Sections 1 through 13 and 15 through 19 of this act is January 1, 2018.

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House Bill 181, aa  
Approved April 6, 2017

## **LAWS 2017, CHAPTER 42**

### AN ACT

RELATING TO LICENSURE; AMENDING PROVISIONS OF THE ENGINEERING AND SURVEYING PRACTICE ACT PERTAINING TO DEFINITIONS, ROSTER OF LICENSED PROFESSIONAL ENGINEERS AND PROFESSIONAL SURVEYORS, EDUCATIONAL REQUIREMENTS FOR PROFESSIONAL ENGINEERS, ENGINEERING PUBLIC WORKS AND SURVEYING PUBLIC WORKS; EXTENDING THE SUNSET DATE FOR THE STATE BOARD OF LICENSURE FOR PROFESSIONAL ENGINEERS AND PROFESSIONAL SURVEYORS; MAKING TECHNICAL AND CONFORMING CHANGES.

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

## **Chapter 42 Section 1 Laws 2017**

SECTION 1. Section 61-23-2 NMSA 1978 (being Laws 1987, Chapter 336, Section 2, as amended) is amended to read:

"61-23-2. DECLARATION OF POLICY.--The legislature declares that it is a matter of public safety, interest and concern that the practices of engineering and surveying merit and receive the confidence of the public and that only qualified persons be permitted to engage in the practices of engineering and surveying. In order to safeguard life, health and property and to promote the public welfare, any person in either public or private capacity practicing or offering to practice engineering or surveying shall be required to submit evidence that the person is qualified to so practice and shall be licensed as provided in the Engineering and Surveying Practice Act. It is unlawful for any person to practice, offer to practice, engage in the business, act in the capacity of, advertise or use in connection with the person's name or otherwise assume, use or advertise any title or description tending to convey the impression that the person is a professional, licensed engineer or surveyor unless that person is licensed or exempt under the provisions of the Engineering and Surveying Practice Act. A person who engages in the business or acts in the capacity of an engineer or surveyor in New Mexico, except as otherwise provided in Sections 61-23-22 and 61-23-27.10 NMSA 1978, with or without a New Mexico license, has thereby submitted to the jurisdiction of the state and to the administrative jurisdiction of the board and is subject to all penalties and remedies available for a violation of any provision of Chapter 61, Article 23 NMSA 1978. The practice of engineering or surveying shall be deemed a privilege granted by the board based on the qualifications of the individual as evidenced by the licensee's certificate, which shall not be transferable."

## **Chapter 42 Section 2 Laws 2017**

SECTION 2. Section 61-23-3 NMSA 1978 (being Laws 1987, Chapter 336, Section 3, as amended) is amended to read:

"61-23-3. DEFINITIONS.--As used in the Engineering and Surveying Practice Act:

- A. "approved" or "approval" means acceptable to the board;
- B. "authorized company officer" means an employee of a business entity duly authorized by the business entity to contractually obligate the business entity;
- C. "board" means the state board of licensure for professional engineers and professional surveyors;
- D. "business entity" means a corporation, professional corporation, limited liability corporation, professional limited liability corporation, general partnership, limited

partnership, limited liability partnership, professional limited liability partnership, a joint stock association or any other form of business, whether or not for profit;

E. "conviction" or "convicted" means a final adjudication of guilt, whether pursuant to a plea of nolo contendere or otherwise and whether or not the sentence is deferred or suspended;

F. "engineer", "professional engineer", "consulting engineer", "licensed engineer" or "registered engineer" means a person who is qualified to practice engineering by reason of the person's 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 and who is licensed by the board to practice engineering;

G. "engineering accreditation commission" means the engineering accreditation commission of the accreditation board for engineering and technology, incorporated, or any successor commission or organization;

H. "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;

I. "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;

J. "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;

K. "fund" means the professional engineers' and surveyors' fund;

L. "incidental practice" means the performance of other professional services that are related to a licensee's work as an engineer;

M. "person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture or a legal or commercial entity;

N. "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 to maintain licensure;

O. "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;

P. "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 and construction surveys of engineering and architectural public works projects;

(5) the preparation and perpetuation of maps, records, plats, field notes, easements and property descriptions; and

(6) the depiction and transmittal by paper or digital means of any digital geospatial data for use in geographic information systems or land information systems that purports to be the authoritative location of points or features of a survey regulated by the Engineering and Surveying Practice Act, but excludes data used solely for a cadastre, such as assessment and tax mapping purposes, or general representations of surveyed or historic data used for mapping purposes, such as land parcels and built infrastructure;

Q. "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;

R. "surveyor", "professional surveyor", "licensed surveyor" or "registered surveyor" means a person who is qualified to practice surveying by reason of the person's 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;

S. "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;

T. "surveying work" means the work performed in the practice of surveying; and

U. "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 and easements and the dependent or independent surveys or resurveys of the public land system."

## **Chapter 42 Section 3 Laws 2017**

SECTION 3. Section 61-23-11 NMSA 1978 (being Laws 1987, Chapter 336, Section 11, as amended) is amended to read:

"61-23-11. RECEIPTS AND DISBURSEMENT--FUND CREATED.--

A. The "professional engineers' and surveyors' fund" is created in the state treasury. The executive director of the board shall receive and account for all money received under the provisions of the Engineering and Surveying Practice Act and shall pay that money to the state treasurer for deposit in the fund. Money in this fund shall be paid out only by warrant of the secretary of finance and administration upon the state

treasurer, upon itemized vouchers approved by the chair and attested by the executive director of the board. All money in the fund is appropriated for the use of the board. Earnings from investment of the fund shall accrue to the credit of the fund.

B. The executive director of the board shall give a surety bond to the state in such sum as the board may determine. The premium on the bond shall be regarded as a proper and necessary expense of the board and shall be paid out of the fund.

C. The board may make expenditures of the fund for any purpose that in the opinion of the board is reasonably necessary for the proper performance of its duties pursuant to the Engineering and Surveying Practice Act, including the expenses of the board's delegates to the conventions of, and for membership dues to, the national council of examiners for engineering and surveying and any of its subdivisions or any other body of similar purpose."

## **Chapter 42 Section 4 Laws 2017**

SECTION 4. Section 61-23-12 NMSA 1978 (being Laws 1987, Chapter 336, Section 12, as amended) is amended to read:

"61-23-12. RECORDS AND REPORTS.--

A. The board shall keep a record of its proceedings and a register of all applications for licensure, indicating the name, age and residence of each applicant, the applicant's educational and other qualifications, whether an examination was required, whether the applicant was rejected, whether a certificate of licensure was granted, the date of the action of the board and such other information as may be deemed necessary by the board. The record and register shall be open to public inspection.

B. The following board records and papers are of a confidential nature and are not public records:

- (1) examination material for examinations not yet given;
- (2) file records of examination problem solutions;
- (3) letters of inquiry and reference concerning applicants;
- (4) board inquiry forms concerning applicants;
- (5) investigation files where any investigation is ongoing or is still pending; and
- (6) all other materials of like confidential nature.

C. The records of the board shall be prima facie evidence of the proceedings of the board set forth in those records, and a transcript thereof, duly certified by the secretary of the board under seal, shall be admissible in evidence with the same effect as if the original were produced.

D. Annually, on or before August 30, the board shall submit to the governor a report of its transactions of the preceding year, accompanied by a complete statement of the receipts and expenditures of the board attested by affidavits of the board's chair, secretary and executive director."

## **Chapter 42 Section 5 Laws 2017**

SECTION 5. Section 61-23-13 NMSA 1978 (being Laws 1987, Chapter 336, Section 13, as amended) is amended to read:

"61-23-13. ROSTER OF LICENSED PROFESSIONAL ENGINEERS AND PROFESSIONAL SURVEYORS.--A roster showing the names and addresses of all licensed professional engineers and licensed professional surveyors shall be maintained by the board and shall be placed on file with the state commission of public records and made available to the public."

## **Chapter 42 Section 6 Laws 2017**

SECTION 6. 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; and

(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 may be accepted by the board; provided that a satisfactory written explanation is given.

B. An applicant may be licensed through examination if the applicant can demonstrate the following:

(1) the applicant is certified as an engineer intern and has at least one of the following:

(a) received a bachelor's degree in an engineering discipline recognized by the board from a program accredited by the engineering accreditation commission or a program that fulfills the required content of the engineering education standard as defined by the national council of examiners for engineering and surveying and has at least four years of engineering experience subsequent to receiving the degree;

(b) received a bachelor's degree in an engineering discipline recognized by the board from a foreign educational institution where the program that was completed fulfills the required content of the engineering education standard as defined by the national council of examiners for engineering and surveying and has at least four years of engineering experience in the United States subsequent to receiving the degree;

(c) received a master's degree in an engineering discipline recognized by the board from a program accredited by the engineering accreditation commission or an institution that offers programs accredited by the engineering accreditation commission or that fulfills the required content of the engineering education standard as defined by the national council of examiners for engineering and surveying and has at least three years of engineering experience subsequent to receiving the degree;

(d) received a master's degree in an engineering discipline recognized by the board from a foreign educational institution where the program that was completed fulfills through evaluation the required curricular content and educational standards as defined by the national council of examiners for engineering and surveying and has at least three years of engineering experience in the United States subsequent to receiving the degree;

(e) received a doctorate degree in an engineering discipline recognized by the board from a board-approved engineering curriculum and has at least two years of engineering experience subsequent to receiving the degree; or

(f) at least six years of board-approved engineering experience after graduation from a school offering a board-approved, four-year engineering technology curriculum accredited by the technology accreditation commission of the accreditation board for engineering and technology, including the two years for engineer intern certification; or

(2) the applicant is not certified as an engineer intern and has at least one of the following:

(a) received a bachelor's degree in an engineering discipline recognized by the board from a program accredited by the engineering accreditation commission or a program that fulfills the required content of the engineering education standard as defined by the national council of examiners for engineering and surveying and has twelve years of engineering experience subsequent to receiving the degree;

(b) received a master's degree in an engineering discipline recognized by the board from a program accredited by the engineering accreditation commission or an institution that offers programs accredited by the engineering accreditation commission or that fulfills the required content of the engineering education standard as defined by the national council of examiners for engineering and surveying and has at least six years of engineering experience subsequent to receiving the degree; or

(c) received a doctorate degree in an engineering discipline recognized by the board from a board-approved engineering curriculum and has at least four years of engineering experience subsequent to receiving the degree.

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 that 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 42 Section 7 Laws 2017**

SECTION 7. Section 61-23-19 NMSA 1978 (being Laws 1987, Chapter 336, Section 19, as amended) is amended to read:

"61-23-19. ENGINEERING--LICENSES--SEALS--INCIDENTAL ARCHITECTURAL WORK--SUPPLEMENTAL SURVEYING WORK.--

A. The board shall issue licenses pursuant to the provisions of the Engineering and Surveying Practice Act. The board shall provide for the proper authentication of all documents.

B. The board shall regulate the use of seals.

C. An engineer shall have the right to engage in activities properly classified as architecture insofar as it is incidental to the engineer's work as an engineer; provided that the engineer shall not make any representation as being an architect or as performing architectural services unless duly registered as such.

D. 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 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 professional engineer only on a project for which the engineer is providing engineering design services."

## **Chapter 42 Section 8 Laws 2017**

SECTION 8. 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 licenses 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 within thirty days of the change.

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 December 31 of the applicable biennial period. A delinquent licensee may renew a license by the payment of twice the biennial renewal fee at any time before March 1, but the delinquent licensee shall not practice during this period. Should the licensee apply to renew an expired license after the March 1 deadline 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, may consider the applicant's qualifications for licensure if the requirements for licensure have changed since the applicant was first licensed. The board may adopt rules for inactive and retired status."

## **Chapter 42 Section 9 Laws 2017**

SECTION 9. Section 61-23-21 NMSA 1978 (being Laws 1987, Chapter 336, Section 21, as amended) is amended to read:

"61-23-21. PRACTICE OF ENGINEERING.--

A. No business entity shall be licensed pursuant to the Engineering and Surveying Practice Act. No business entity shall practice or offer to practice engineering in the state except as provided in the Engineering and Surveying Practice Act.

B. Professional engineers may engage in the practice of engineering and perform engineering work pursuant to the Engineering and Surveying Practice Act as individuals or through a business entity. In the case of an individual, the individual shall be a professional engineer pursuant to the Engineering and Surveying Practice Act. All plans, designs, drawings, specifications or reports that are involved in such practice, or that are issued by or for the practice, shall bear the seal and signature of the professional engineer in responsible charge of and directly responsible for the work issued. In the case of practice through a business entity that is a partnership, at least one of the partners shall be a professional engineer pursuant to the Engineering and Surveying Practice Act, and all plans, designs, drawings, specifications or reports that are involved in such practice, or that are issued by or for the partnership, shall bear the seal and signature of the professional engineer in responsible charge of and directly responsible for such work when issued. In the case of practice through a business entity other than a partnership, services or work involving the practice of engineering may be offered through that business entity; provided that the person in responsible charge of the activities of the business entity that constitute engineering practice is a professional engineer who has authority to bind such business entity by contract; and further provided that all plans, designs, drawings, specifications or reports that are involved in engineering practice, or that are issued by or for such business entity, bear the seal and signature of a professional engineer in responsible charge of and directly responsible for the work when issued.

C. An individual or business entity may not use or assume a name involving the terms "engineer", "professional engineer", "engineering", "registered" or "licensed" engineer or any modification or derivative of such terms unless that individual

or business entity is qualified to practice engineering in accordance with the requirements of the Engineering and Surveying Practice Act.

D. In the case of practice through a business entity offering or providing services or work involving the practice of engineering, an authorized company officer and the professional engineer who is employed by the business entity and in responsible charge shall place on file with the board a signed affidavit, as prescribed by board rule. The affidavit shall be kept current, and, if there is any change in the professional engineer or authorized company officer, the affidavit shall be promptly revised and resubmitted to the board."

## **Chapter 42 Section 10 Laws 2017**

SECTION 10. Section 61-23-22 NMSA 1978 (being Laws 1993, Chapter 218, Section 17, as amended) is amended to read:

"61-23-22. ENGINEERING--EXEMPTIONS.--

A. A New Mexico licensed architect who has complied with all of the laws of New Mexico relating to the practice of architecture has the right to engage in the incidental practice, as defined by regulation, of activities properly classified as engineering; provided that the architect shall not make any representation as being an engineer or as performing engineering services; and further provided that the architect shall perform only that part of the work for which the architect is professionally qualified and shall use qualified professional engineers or others for those portions of the work in which the contracting architect is not qualified. Furthermore, the architect shall assume all responsibility for compliance with all laws, codes, regulations and ordinances of the state or its political subdivisions pertaining to all documents bearing the architect's professional seal.

B. An engineer employed by a business entity who performs only the engineering services involved in the operation of the business entity's business shall be exempt from the provisions of the Engineering and Surveying Practice Act; provided that neither the employee nor the business entity offers engineering services to the public. Performance of engineering on public works projects pursuant to Section 61-23-26 NMSA 1978 constitutes engineering services to the public and is not exempt."

## **Chapter 42 Section 11 Laws 2017**

SECTION 11. 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 LICENSES.--

A. The board may suspend, refuse to renew or revoke a license, impose a fine not to exceed seven thousand five hundred dollars (\$7,500), 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 license of another;

(3) given false or forged evidence to the board or to a board member for obtaining a license;

(4) falsely impersonated any other licensee of like or different name;

(5) attempted to use an expired, suspended or revoked license;

(6) falsely purported 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 F and H 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 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.

E. A person may prefer charges of fraud, deceit, gross negligence, incompetence or misconduct against a 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 a 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 license to a person whose license has been revoked or suspended; provided that a majority of the members of the engineering committee, acting for the board, or of the board votes in favor of the reissuance. A new license bearing the original license number to replace a revoked, lost, destroyed or mutilated license may be issued subject to the rules of the board with payment of a fee.

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 seven thousand five hundred dollars (\$7,500) 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 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 42 Section 12 Laws 2017**

SECTION 12. Section 61-23-26 NMSA 1978 (being Laws 1987, Chapter 336, Section 26, as amended) is amended to read:

"61-23-26. ENGINEERING--PUBLIC WORK.--It is unlawful for the state or any of its political subdivisions or any person to engage in the construction of any public work involving engineering unless the engineering is under the responsible charge of a licensed professional engineer."

## **Chapter 42 Section 13 Laws 2017**

SECTION 13. Section 61-23-27.5 NMSA 1978 (being Laws 1993, Chapter 218, Section 26, as amended) is amended to read:

"61-23-27.5. SURVEYING--APPLICATION AND EXAMINATION FEES.--

A. All applicants for licensure pursuant to the Engineering and Surveying Practice Act shall apply for examination, licensure 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. Fees shall not be refundable.

C. Any application may be denied for fraud, deceit, conviction of a felony or for any crime involving moral turpitude."

## **Chapter 42 Section 14 Laws 2017**

SECTION 14. 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 business entity shall be licensed pursuant to the Engineering and Surveying Practice Act. No business entity shall practice or offer to practice surveying in the state except as provided in the Engineering and Surveying Practice 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 or through a business entity. 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, or that are 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 business entity that is a partnership, at least one of the partners shall be a professional surveyor pursuant to the Engineering and Surveying Practice 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 business entity other than a partnership, services or work involving the practice of surveying may be offered through the business entity; provided the person in responsible charge of the activities of the business entity that constitute the practice of surveying is a professional surveyor who has authority to bind the business entity by contract; and further provided that all drawings or reports that are involved in such practice, or that are issued by or for the business entity, bear the seal and signature of a professional surveyor in responsible charge of and directly responsible for the work when issued.

C. In the case of practice through a business entity offering or providing services or work involving the practice of surveying, an authorized company officer and the professional surveyor who is employed by the business entity and in responsible charge shall place on file with the board a signed affidavit, as prescribed by board rule. The affidavit shall be kept current, and, if there is any change in the professional surveyor or authorized company officer, the affidavit shall be promptly revised and resubmitted to the board.

D. An individual or business entity 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 or business entity is qualified to practice surveying in accordance with the requirements of the Engineering and Surveying Practice Act.

E. 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 42 Section 15 Laws 2017**

SECTION 15. Section 61-23-27.10 NMSA 1978 (being Laws 1993, Chapter 218, Section 31, as amended) is amended to read:

"61-23-27.10. SURVEYING EXEMPTIONS.--An employee of a business entity who performs only the surveying services involved in the operation of the business

entity's business shall be exempt from the provisions of the Engineering and Surveying Practice Act; provided that neither the employee nor the business entity offers surveying services to the public; and provided further that the surveying services performed do not include any determination, description, portraying, measuring or monumentation of the boundaries of a tract of land. Performance of surveying on public works projects pursuant to Section 61-23-27.13 NMSA 1978 constitutes surveying services to the public and is not exempt."

## **Chapter 42 Section 16 Laws 2017**

SECTION 16. 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 LICENSES.--

A. The board may suspend, refuse to renew or revoke the license, impose a fine not to exceed seven thousand five hundred dollars (\$7,500), place on probation for a specific period of time with specific conditions or reprimand a 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 license of another;

(3) given false or forged evidence to the board or to any board member for obtaining a license;

(4) falsely impersonated any other licensee of like or different name;

(5) attempted to use an expired, suspended or revoked license;

(6) falsely purported 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. A person may prefer charges of fraud, deceit, gross negligence, incompetency or misconduct against a professional surveyor. 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 surveying committee, acting for the board, or by the board.

E. 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.

F. The board or a 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 license to a person whose license has been revoked or suspended; provided that a majority of the members of the surveying committee, acting for the board, or of the board votes in favor of reissuance. A new license bearing the original license number to replace a revoked, lost, destroyed or mutilated license may be issued subject to the rules of the board with payment of a fee determined by the board.

H. 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 seven thousand five hundred dollars (\$7,500) or by imprisonment of no more than one year, or both.

I. 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.

J. 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 42 Section 17 Laws 2017**

SECTION 17. Section 61-23-27.13 NMSA 1978 (being Laws 1993, Chapter 218, Section 34, as amended) is amended to read:

"61-23-27.13. SURVEYING--PUBLIC WORK.--It is unlawful for the state or any of its political subdivisions or any person to engage in the construction of any public work involving surveying unless the surveying is under the responsible charge of a licensed professional surveyor."

## **Chapter 42 Section 18 Laws 2017**

SECTION 18. Section 61-23-28.2 NMSA 1978 (being Laws 1999, Chapter 259, Section 34, as amended) is amended to read:

"61-23-28.2. SURVEYING--RECORD OF SURVEY.--

A. For those surveys that do not create a division of land but only show existing tracts of record, except in the instance of remonumentation as specified in the board's minimum standards for boundary surveys, within sixty calendar days of the completion of the survey, a professional surveyor shall cause to be recorded at the office of the county clerk a survey entitled "boundary survey" that shall:

(1) contain a printed certification of the professional surveyor stating that "this is a boundary survey of an existing tract", or existing tracts, if appropriate, and that "it is not a land division or subdivision as defined in the New Mexico Subdivision Act";

(2) identify all tracts by the uniform parcel code designation or other designation established by the county assessor, if applicable;

(3) meet the minimum standards for surveying in New Mexico as established by the board; and

(4) not exceed a size of eighteen inches by twenty-four inches and be at least eight and one-half inches by eleven inches or as required by the local governing authority.

B. Fees for recording a boundary survey shall be in conformance with Section 14-8-15 NMSA 1978.

C. For those surveys that create a division of land, the survey shall be completed in conformity with the board's minimum standards and in conformity with the New Mexico Subdivision Act and any applicable local subdivision ordinances. Filing procedures shall be prescribed in the board's minimum standards. The record of survey required to be filed and recorded pursuant to this subsection shall be recorded at the office of the county clerk within sixty calendar days after completion of the survey or approval by the governing authority."

## **Chapter 42 Section 19 Laws 2017**

SECTION 19. 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 professional surveyors is terminated on July 1, 2023 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, 2024. Effective July 1, 2024, the Engineering and Surveying Practice Act is repealed."

## **Chapter 42 Section 20 Laws 2017**

SECTION 20. APPLICABILITY.--The provisions of Section 61-23-14.1 NMSA 1978 apply to persons initially applying for licensure as a professional engineer on or after July 1, 2017.

## **Chapter 42 Section 21 Laws 2017**

SECTION 21. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2017.

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House Bill 188, aa  
Approved April 6, 2017

# **LAWS 2017, CHAPTER 43**

AN ACT

RELATING TO MILITARY AFFAIRS; ALLOWING FOR THE AUTHORIZATION OF WOMEN TO SERVE IN ANY POSITION OF THE ORGANIZED MILITIA.

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

### **Chapter 43 Section 1 Laws 2017**

SECTION 1. Section 20-2-2 NMSA 1978 (being Laws 1987, Chapter 318, Section 9) is amended to read:

"20-2-2. MILITIA COMPOSITION.--The militia is composed of the organized and the unorganized militia.

A. The organized militia is the national guard and the standing cadre of the state defense force and such parts of the unorganized militia when and as may be activated, enrolled or enlisted into the national guard or into the state defense force.

B. The unorganized militia is comprised of all able-bodied male citizens of the state and all other able-bodied males who have or shall have declared their intentions to become citizens of the United States and are residents of the state who are not less than eighteen or more than forty-five years of age, but who shall not be more than sixty-four years of age if they shall have earlier served in or retired from the national guard; subject to the following exceptions:

(1) persons exempted by the laws of the United States from federal military service;

(2) persons who are engaged in civilian occupations which are deemed by the governor to be of greater public service or necessity than would be their service in the militia if called into active service of the state;

(3) persons who have received dismissal, a dishonorable discharge, a bad conduct discharge, an undesirable discharge or a discharge under other than honorable conditions from any military component; and

(4) persons in active federal military service or retired military members subject to federal recall to active military service.

C. The adjutant general may prescribe plans by regulation for the orderly activating and detailing of the unorganized militia and its members, to include mission analysis and personnel classification. Enrollment or enlistment of members of the unorganized militia may be into the national guard, subject to federal criteria, or into the state defense force, as determined by the governor.

D. The governor may authorize the voluntary appointment or voluntary enlistment of female citizens of the state into any military occupational specialty or

career field of the branches and services of the organized militia that is consistent with current federal department of defense policy and while so serving they shall have the same status as male members."

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House Bill 209  
Approved April 6, 2017

## **LAWS 2017, CHAPTER 44**

AN ACT

RELATING TO STATE BOARDS; TRANSFERRING POWERS AND DUTIES, PERSONNEL, PROPERTY, CONTRACTS AND REFERENCES FROM THE ANIMAL SHELTERING BOARD TO THE BOARD OF VETERINARY MEDICINE; CREATING THE ANIMAL SHELTERING COMMITTEE; PROVIDING PENALTIES.

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

### **Chapter 44 Section 1 Laws 2017**

SECTION 1. Section 61-14-2 NMSA 1978 (being Laws 1967, Chapter 62, Section 2, as amended) is amended to read:

"61-14-2. DEFINITIONS.--As used in the Veterinary Practice Act:

A. "animal" means any animal other than man;

B. "animal shelter":

(1) means:

(a) a county or municipal facility that provides shelter to animals on a regular basis, including a small animal impound facility; and

(b) a private humane society or a private animal shelter that temporarily houses stray, unwanted or injured animals through administrative or contractual arrangements with a local government agency; and

(2) does not include a municipal zoological park;

C. "euthanasia" means to produce a humane death of an animal by standards deemed acceptable by the board as set forth in its rules;

D. "euthanasia agency" means a facility that provides shelter to animals on a regular basis, including a small animal impound facility, a humane society or a public or private shelter facility that temporarily houses stray, unwanted or injured animals, and that performs euthanasia;

E. "practice of veterinary medicine" means:

(1) the diagnosis, treatment, correction, change, relief or prevention of animal disease, deformity, defect, injury or other physical or mental condition, including the prescription or administration of any drug, medicine, biologic, apparatus, application, anesthetic or other therapeutic or diagnostic substance or technique and the use of any procedure for artificial insemination, testing for pregnancy, diagnosing and treating sterility or infertility or rendering advice with regard to any of these;

(2) the representation, directly or indirectly, publicly or privately, of an ability and willingness to do any act mentioned in Paragraph (1) of this subsection; or

(3) the use of any title, words, abbreviation or letters in a manner or under circumstances that induce the belief that the person using them is qualified to do any act mentioned in Paragraph (1) of this subsection;

F. "veterinarian" means a person having the degree of doctor of veterinary medicine or its equivalent from a veterinary school or a person who has received a medical

education in veterinary medicine in a foreign country and has thereafter entered the United States and fulfilled the requirements and standards set forth by the American veterinary medical association and has passed all examinations required by the board prior to being issued any license to practice veterinary medicine in this state;

G. "licensed veterinarian" means a person licensed to practice veterinary medicine in this state;

H. "veterinary school" means any veterinary college or any division of a university or college that is approved for accreditation by the American veterinary medical association;

I. "board" means the board of veterinary medicine;

J. "veterinary technician" means a skilled person certified by the board as being qualified by academic and practical training to provide veterinary services under the supervision and direction of the licensed veterinarian who is responsible for the performance of that technician;

K. "committee" means the veterinary technician examining committee;

L. "direct supervision" means the treatment of animals on the direction, order or prescription of a licensed veterinarian who is available on the premises and who has established a valid veterinarian-client-patient relationship;

M. "sheltering committee" means the animal sheltering committee;

N. "valid veterinarian-client-patient relationship" means:

(1) the veterinarian has assumed responsibility for making medical judgments regarding the health of an animal being treated and the need for and the course of the animal's medical treatment;

(2) the client has agreed to follow the instructions of the veterinarian;

(3) the veterinarian is sufficiently acquainted with an animal being treated, whether through examination of the animal or timely visits to the animal's habitat for purposes of assessing the condition in which the animal is kept, to be capable of making a preliminary or general diagnosis of the medical condition of the animal being treated; and

(4) the veterinarian is reasonably available for follow-up treatment; and

O. "veterinary medicine" means veterinary surgery, obstetrics, dentistry and all other branches or specialties of veterinary medicine."

## **Chapter 44 Section 2 Laws 2017**

SECTION 2. Section 61-14-5 NMSA 1978 (being Laws 1967, Chapter 62, Section 4, as amended) is amended to read:

"61-14-5. BOARD--DUTIES.--The board shall:

A. examine and determine the qualifications and fitness of applicants for a license to practice veterinary medicine in New Mexico and issue, renew, deny, suspend or revoke licenses;

B. regulate artificial insemination and pregnancy diagnosis by establishing standards of practice and issuing permits to persons found qualified;

C. establish a schedule of license and permit fees based on the board's financial requirements for the ensuing year;

D. conduct investigations necessary to determine violations of the Veterinary Practice Act and discipline persons found in violation;

E. employ personnel necessary to carry out its duties;

F. promulgate and enforce rules necessary to establish recognized standards for the practice of veterinary medicine and to carry out the provisions of the Veterinary Practice Act. The board shall make available to interested members of the public copies of the Veterinary Practice Act and all rules promulgated by the board;

G. examine applicants for veterinary technician certification purposes. Such examination shall be held at least once a year at the times and places designated by the board;

H. establish a five-member veterinary technician examining committee;

I. adopt rules establishing continuing education requirements as a condition for license renewal;

J. regulate the operation of veterinary facilities, including:

(1) establishing requirements for operation of a veterinary facility in accordance with recognized standards for the practice of veterinary medicine;

(2) issuing permits to qualified veterinary facilities; and

(3) adopting standards for inspection of veterinary facilities.

For purposes of this subsection, "veterinary facility" means a building, mobile unit, vehicle or other location where services included within the practice of veterinary medicine are provided;

K. perform the duties imposed on the board pursuant to the Animal Sheltering Act; and

L. establish a five-member sheltering committee."

## **Chapter 44 Section 3 Laws 2017**

SECTION 3. A new section of the Veterinary Practice Act is enacted to read:

"ANIMAL SHELTERING COMMITTEE--DUTIES.--The sheltering committee shall:

A. develop a voluntary statewide dog and cat spay and neuter program in conjunction with animal shelters and euthanasia agencies;

B. develop criteria for individuals, nonprofit organizations, animal shelters and euthanasia agencies to receive assistance for dog and cat sterilization from the animal care and facility fund; and

C. recommend to the board the disbursements of money from the animal care and facility fund to qualifying individuals, nonprofit organizations, animal shelters and euthanasia agencies."

## **Chapter 44 Section 4 Laws 2017**

SECTION 4. Section 61-14-12 NMSA 1978 (being Laws 1967, Chapter 62, Section 8, as amended) is amended to read:

"61-14-12. LICENSE, PERMIT AND REGISTRATION RENEWAL.--

A. All licenses, permits and registrations issued pursuant to the Veterinary Practice Act may be renewed by payment of the renewal fee and submission of proof of completion of continuing education requirements as established by regulation of the board. Not later than thirty days prior to expiration, the board shall mail a notice to each licensed veterinarian, registered veterinary technician and holder of an artificial insemination or pregnancy diagnosis permit that the license, registration or permit will expire and provide a renewal application form.

B. Except as provided in Subsections C and D of this section, a person may reinstate an expired license, registration or permit, issued pursuant to the Veterinary Practice Act, within five years of its expiration by making application to the board for renewal and paying the current renewal fee along with all delinquent renewal fees and late fees. After five years have elapsed since the date of expiration, a license, registration or permit may not be renewed and the holder shall apply for a new license, registration or permit and take the required examination.

C. A person shall not have the person's license, issued pursuant to the Veterinary Practice Act, reinstated in New Mexico if, during the time period in which the person's license lapsed, the person's license in another state or jurisdiction was suspended or revoked for reasons for which the license would have been subject to suspension or revocation in New Mexico.

D. A person who, during the time period in which the person's license, issued pursuant to the Veterinary Practice Act, lapsed, was subject to any disciplinary proceedings resulting in action less than suspension or revocation in another state or jurisdiction, may, at the discretion of the board, have the person's license to practice in New Mexico reinstated on a probationary status for up to two years. Upon request by the applicant for reinstatement, the board shall determine under what circumstances the probationary status shall be continued or removed or the application for reinstatement denied.

E. The board may provide by regulation for waiver of payment of any renewal fee of a licensed veterinarian during any period when the veterinarian is on active duty with any branch of the armed services of the United States for the duration of a national emergency."

## **Chapter 44 Section 5 Laws 2017**

SECTION 5. Section 61-14-14 NMSA 1978 (being Laws 1967, Chapter 62, Section 10, as amended) is amended to read:

"61-14-14. EXEMPTIONS.--Provisions of the Veterinary Practice Act do not apply to:

- A. employees of federal or state governments performing official duties;
- B. regular students in a veterinary school performing duties or actions assigned by an instructor or working under direct supervision of a licensed veterinarian during a school vacation period;
- C. reciprocal aid of neighbors in performing routine accepted livestock management practices;
- D. a veterinarian licensed in a foreign jurisdiction consulting with a licensed veterinarian;
- E. a merchant or manufacturer selling at the merchant's or manufacturer's regular place of business any medicine, feed, appliance or other product used in the prevention or treatment of animal disease;
- F. the owner of an animal and the owner's consignees and their employees while performing routine accepted livestock management practices in the care of animals belonging to the owner;
- G. a member of the faculty of a veterinary school performing the member's regular functions or a person lecturing or giving instruction or demonstration at a veterinary school or in connection with a continuing education course or seminar for licensed veterinarians, veterinary technicians or persons holding or training for valid permits for artificial insemination or diagnosing pregnancy;
- H. a person selling or applying any pesticide, insecticide or herbicide; or
- I. a person engaging in bona fide scientific research that reasonably requires experimentation involving animals."

## **Chapter 44 Section 6 Laws 2017**

SECTION 6. Section 61-14-18 NMSA 1978 (being Laws 1967, Chapter 62, Section 13, as amended) is amended to read:

"61-14-18. PRACTICING WITHOUT LICENSE--PENALTY.--

A. It is a misdemeanor punishable pursuant to Section 31-19-1 NMSA 1978 for a person to practice veterinary medicine without complying with the provisions of the Veterinary Practice Act and without being the holder of a license entitling the person to practice veterinary medicine in New Mexico.

B. If the board finds that a person or entity has practiced veterinary medicine without a license, the board may:

(1) impose a fine not to exceed five thousand dollars (\$5,000);

(2) assess the person or entity for administrative costs, including investigative costs and the cost of conducting a hearing; and

(3) impose any other sanction as provided pursuant to board rules."

## **Chapter 44 Section 7 Laws 2017**

SECTION 7. 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, 2023 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of Chapter 61, Article 14 and Chapter 77, Article 1B NMSA 1978 until July 1, 2024. Effective July 1, 2024, Chapter 61, Article 14 and Chapter 77, Article 1B NMSA 1978 are repealed."

## **Chapter 44 Section 8 Laws 2017**

SECTION 8. Section 77-1B-2 NMSA 1978 (being Laws 2007, Chapter 60, Section 2, as amended) is amended to read:

"77-1B-2. DEFINITIONS.--As used in the Animal Sheltering Act:

A. "animal" means any animal, except humans, not defined as "livestock" in Subsection K of this section;

B. "animal shelter":

(1) means:

(a) a county or municipal facility that provides shelter to animals on a regular basis, including a small animal impound facility; and

(b) a private humane society or a private animal shelter that temporarily houses stray, unwanted or injured animals through administrative or contractual arrangements with a local government agency; and

(2) does not include a municipal zoological park;

C. "board" means the board of veterinary medicine;

D. "disposition" means adoption of an animal; return of an animal to the owner; release of an animal to a rescue organization; release of an animal to another animal shelter or to a rehabilitator licensed by the department of game and fish or the United States fish and wildlife service; or euthanasia of an animal;

E. "emergency field euthanasia" means the process defined by rule of the board to cause the death of an animal in an emergency situation when safe and humane transport of the animal is not possible;

F. "euthanasia" means to produce a humane death of an animal by standards deemed acceptable by the board as set forth in its rules;

G. "euthanasia agency" means a facility that provides shelter to animals on a regular basis, including a small animal impound facility, a humane society or a public or private shelter facility that temporarily houses stray, unwanted or injured animals, and that performs euthanasia;

H. "euthanasia drugs" means non-narcotic Schedule II or Schedule III substances and chemicals as set forth in the Controlled Substances Act that are used for the purposes of euthanasia and pre-euthanasia of animals;

I. "euthanasia instructor" means a veterinarian or a euthanasia technician certified by the board to instruct other individuals in euthanasia techniques;

J. "euthanasia technician" means a person licensed by the board to euthanize animals for a euthanasia agency;

K. "livestock" means all domestic or domesticated animals that are used or raised on a farm or ranch and exotic animals in captivity and includes horses, asses, mules, cattle, sheep, goats, swine, bison, poultry, ostriches, emus, rheas, camelids and farmed cervidae but does not include canine or feline animals;

L. "rescue organization" means an organization that rescues animals and is not involved in the breeding of animals;

M. "supervising veterinarian" means a person who is a veterinarian, who holds both a valid New Mexico controlled substance license and a valid federal drug enforcement agency license and who approves the drug protocols and the procurement and administration of all pharmaceuticals; and

N. "veterinarian" means a person who is licensed as a doctor of veterinary medicine by the board pursuant to the Veterinary Practice Act."

## **Chapter 44 Section 9 Laws 2017**

SECTION 9. Section 77-1B-3 NMSA 1978 (being Laws 2007, Chapter 60, Section 3, as amended) is amended to read:

"77-1B-3. ANIMAL SHELTERING COMMITTEE CREATED--MEMBERS--

QUALIFICATIONS--TERMS--VACANCIES--DUTIES--REMOVAL--APPLICATION OF UNIFORM LICENSING ACT.--

A. The "animal sheltering committee" is created. The animal sheltering committee shall consist of five members as follows:

(1) one euthanasia agency employee with training and education in euthanasia;

(2) one veterinarian who has provided paid or unpaid services to an animal shelter;

(3) one representative from a nonprofit animal advocacy group;

(4) one member of the public; and

(5) a manager or director of a New Mexico facility that provides shelter to animals on a regular basis; provided that the manager or director selected is trained in animal shelter standards.

B. No more than two animal sheltering committee members shall be appointed from any one county within the state.

C. With respect to licenses issued pursuant to the Animal Sheltering Act, the board and its operations are governed by the Uniform Licensing Act. If the provisions of the Uniform Licensing Act conflict with the provisions of the Animal Sheltering Act, the provisions of the Animal Sheltering Act shall prevail.

D. The board shall appoint members to the animal sheltering committee for terms of four years, except in the first year of the animal sheltering committee, when members shall be appointed for staggered terms. Of the first appointments, two

members shall be appointed for four-year terms, one member shall be appointed for a three-year term, one member shall be appointed for a two-year term and one member shall be appointed for a one-year term. Subsequent appointments shall be made to fill vacancies created in unexpired terms, but only until the term ends or for a full four-year term when the term of an animal sheltering committee member expires. Animal sheltering committee members shall hold office until their successors are duly qualified and appointed. Vacancies shall be filled by appointment by the board for the unexpired term within sixty days of the vacancy to maintain the required composition of the animal sheltering committee.

E. Members of the animal sheltering committee 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.

F. A simple majority of the appointed board members constitutes a quorum."

## **Chapter 44 Section 10 Laws 2017**

SECTION 10. Section 77-1B-4 NMSA 1978 (being Laws 2007, Chapter 60, Section 4, as amended) is amended to read:

"77-1B-4. ANIMAL CARE AND FACILITY FUND CREATED--  
ADMINISTRATION.--

A. The "animal care and facility fund" is created in the state treasury. All fees collected pursuant to the Animal Sheltering Act shall be deposited in the fund.

B. The animal care and facility fund shall consist of money collected by the board pursuant to the Animal Sheltering Act; income from investment of the fund; and money appropriated to the fund or accruing to it through fees or administrative penalties, cooperative research agreements, income, gifts, grants, donations, bequests, sales of promotional items, handbooks or educational materials or any other source. Money in the fund shall not be transferred to another fund or encumbered or expended except for expenditures authorized pursuant to the Animal Sheltering Act.

C. Money in the fund is appropriated by the legislature to the board to be used to help animal shelters and communities defray the cost of implementing the board's initiatives conducted pursuant to the Animal Sheltering Act. The fund shall be administered by the board to carry out the purposes of the Animal Sheltering Act.

D. The "statewide spay and neuter subaccount" is established in the animal care and facility fund. Money in the subaccount shall only be used to carry out the board's dog and cat sterilization assistance program. Money collected pursuant to Section 7-2-30.9 NMSA 1978 and Section 66-3-424.3 NMSA 1978 shall be deposited in the subaccount.

E. A disbursement from the fund shall be made only upon a warrant drawn by the secretary of finance and administration pursuant to a voucher signed by the executive director of the board or the director's designee with the approval of the majority of the board with consideration of the recommendation of a majority of the animal sheltering committee.

F. Unexpended and unencumbered balances in the fund at the end of a fiscal year shall not revert to the general fund."

## **Chapter 44 Section 11 Laws 2017**

SECTION 11. Section 77-1B-5 NMSA 1978 (being Laws 2007, Chapter 60, Section 5, as amended) is amended to read:

"77-1B-5. BOARD POWERS AND DUTIES.--The board shall:

A. adopt infrastructure and operating standards and may enforce those standards with consideration of the recommendations by the animal sheltering committee;

B. provide for inspections of animal shelters and euthanasia agencies;

C. provide for oversight, including oversight of licensing requirements, regulations and discipline, of veterinarians employed by local government animal shelters;

D. adopt methods and procedures acceptable for conducting emergency field euthanasia;

E. adopt, promulgate and revise rules necessary to carry out the provisions of the Animal Sheltering Act;

F. have authority to issue licenses and certificates pursuant to the Animal Sheltering Act;

G. establish the types of licenses and certificates that may be issued pursuant to the Animal Sheltering Act and establish criteria for issuing the licenses and certificates;

H. prescribe standards and approve curricula for educational programs that will be used to train and prepare persons for licensure or certification pursuant to the Animal Sheltering Act;

I. implement continuing education requirements for licensees and certificate holders pursuant to the Animal Sheltering Act;

J. conduct administrative hearings upon charges relating to violations of provisions of the Animal Sheltering Act or rules adopted pursuant to that act in accordance with the Uniform Licensing Act;

K. provide for all examinations and for issuance and renewal of licenses and certificates;

L. establish fees not to exceed one hundred fifty dollars (\$150) for licenses and certificates pursuant to the Animal Sheltering Act;

M. establish committees as the board deems necessary to effect the provisions of the Animal Sheltering Act;

N. apply for injunctive relief to enforce the provisions of the Animal Sheltering Act;

O. conduct national criminal background checks on applicants seeking licensure or certification under the Animal Sheltering Act;

P. keep a record of all proceedings;

Q. make an annual report to the legislature;

R. provide for the inspection of animal shelters and euthanasia agencies;

S. develop mechanisms to address complaints of misconduct at animal shelters and euthanasia agencies and noncompliance with the provisions of the Animal Sheltering Act or rules adopted pursuant to that act;

T. develop mechanisms to address complaints of licensee and certificate holder misconduct and noncompliance;

U. adopt standards for maintaining records concerning health care and disposition of animals; and

V. refer to the published national association of shelter veterinarians standards in determining its regulations for animal shelters and euthanasia agencies."

## **Chapter 44 Section 12 Laws 2017**

SECTION 12. Section 77-1B-9 NMSA 1978 (being Laws 2007, Chapter 60, Section 9, as amended) is amended to read:

"77-1B-9. VIOLATIONS.--

A. Unless otherwise provided in the Animal Sheltering Act, it is a violation of that act for a person to:

(1) perform euthanasia for a euthanasia agency or an animal shelter in this state without possessing a valid license pursuant to the Animal Sheltering Act;

(2) solicit, advertise or offer to perform an act for which licensure or certification is required pursuant to the Animal Sheltering Act, unless the person holds a license or certification;

(3) refuse to comply with a cease and desist order issued by the board;

(4) refuse or fail to comply with the provisions of the Animal Sheltering Act;

(5) make a material misstatement in an application for licensure or certification;

(6) intentionally make a material misstatement to the board during an official investigation;

(7) impersonate an official or inspector;

(8) refuse or fail to comply with rules adopted by the board or with a lawful order issued by the board;

(9) aid or abet another in violating provisions of the Animal Sheltering Act, or a rule adopted by the board;

(10) alter or falsify a certificate of inspection, license or certification issued by the board;

(11) fail to carry out the duties of a euthanasia technician in a professional manner;

(12) abuse the use of a chemical substance or be guilty of habitual or excessive use of intoxicants or drugs;

(13) sell or give chemical substances used in euthanasia procedures to an unlicensed person; or

(14) assist an unlicensed or unauthorized person in euthanizing animals, except during a board-approved course in euthanasia.

B. It is a violation of the Animal Sheltering Act for a euthanasia agency or an animal shelter to:

(1) refuse to permit entry or inspection of its facilities by the board or its designees;

(2) sell, offer for sale, barter, exchange or otherwise transfer animals that are prohibited by the department of game and fish, the United States department of agriculture or any other regulatory agency to be kept unless the sale, offer for sale, bartering, exchanging or transferring of the animal is to a facility employing permitted rehabilitators or an individual that is a permitted rehabilitator pursuant to the rules adopted by the department of game and fish or another agency that has authority over people who are permitted to receive and provide care for such animals;

(3) allow a license or certificate issued pursuant to the Animal Sheltering Act to be used by an unlicensed or uncertified person; or

(4) make a misrepresentation or false promise through advertisements, employees, agents or other mechanisms in connection with the euthanasia of an animal.

C. It is a violation of the Animal Sheltering Act for an employee or official of the board or the animal sheltering committee to disclose or use for that person's own advantage information derived from reports or records submitted to the board pursuant to that act."

## **Chapter 44 Section 13 Laws 2017**

SECTION 13. Section 77-1B-11 NMSA 1978 (being Laws 2007, Chapter 60, Section 11, as amended) is amended to read:

"77-1B-11. DISCIPLINARY ACTIONS--EUTHANASIA TECHNICIANS, EUTHANASIA AGENCIES AND EUTHANASIA INSTRUCTORS--HEARINGS--PENALTIES.--

A. With the respect to licenses pursuant to the Animal Sheltering Act, the provisions of the Uniform Licensing Act apply to all disciplinary procedures and hearings of the board.

B. The board may:

(1) deny, suspend, revoke, reprimand, place on probation or take other action against a license or certificate held or applied for pursuant to the Animal Sheltering Act, including imposing an administrative penalty, upon a finding by the

board that the licensee, certificate holder or applicant has performed acts in violation of the Animal Sheltering Act or a rule adopted pursuant to that act; and

(2) impose an administrative penalty on a person who makes a false representation as being a licensed euthanasia technician, a certified euthanasia instructor or a licensed euthanasia agency.

C. The board may issue letters of admonition or deny, suspend, refuse to renew, restrict or revoke a license or certification authorized pursuant to the Animal Sheltering Act if the applicant or licensee:

(1) has refused or failed to comply with a provision of the Animal Sheltering Act, a rule adopted pursuant to that act or an order of the board;

(2) is guilty of cruelty to animals pursuant to a statute of this state or another state;

(3) has had an equivalent license or certificate denied, revoked or suspended by an authority;

(4) has refused to provide the board with reasonable, complete and accurate information regarding the care or euthanasia of animals when requested by the board; or

(5) has falsified information requested by the board or the board's designee.

D. In a proceeding held pursuant to this section, the board may accept as prima facie evidence of grounds for disciplinary action any disciplinary action taken against a licensee from another jurisdiction, if the violation that prompted the disciplinary action in that jurisdiction would be grounds for disciplinary action pursuant to this section.

E. Disciplinary proceedings may be instituted by the board or by a complaint to the board.

F. The board shall not initiate a disciplinary action more than two years after the date that it receives a complaint or that it begins an investigation without a filed complaint.

G. The board may administer oaths, take statements and compel disclosure by the witnesses of all facts known to them relative to matters under investigation.

H. The board may impose an administrative penalty in an amount not to exceed five hundred dollars (\$500) on a holder of a license or certificate for violations of the Animal Sheltering Act.

I. A person or euthanasia agency whose license or certificate is suspended or revoked by the board pursuant to the provisions of this section may, at the discretion of the board, obtain a license or certificate at any time without examination upon written application to the board showing cause to justify reinstatement or renewal of the license or certificate.

J. The board shall adopt other rules pertaining to hearings, appeals and rehearings as it deems necessary.

K. The board shall not be required to certify a record to the court of appeals of a decision of the board until the proper fee has been paid to the board for a copy and certification of the record.

L. A person engaging in acts without a license or certificate issued by the board is guilty of a misdemeanor.

M. A person who practices, offers to practice, attempts to practice as, or makes any representation as being, a euthanasia technician, a euthanasia instructor or a licensed euthanasia agency without holding a license or certificate issued by the board shall, in addition to any other penalty provided in this section or any other law, pay an administrative penalty to the board in an amount not to exceed five hundred dollars (\$500) for each offense."

## **Chapter 44 Section 14 Laws 2017**

SECTION 14. TEMPORARY PROVISION--EXISTING MEMBERS OF ANIMAL SHELTERING BOARD--SERVICE ON THE INITIAL ANIMAL SHELTERING COMMITTEE.--Animal sheltering board members serving as of the effective date of this act shall continue to serve on the animal sheltering committee for a period of at least one year.

## **Chapter 44 Section 15 Laws 2017**

SECTION 15. TEMPORARY PROVISION--TRANSFER OF PERSONNEL, PROPERTY, CONTRACTS AND REFERENCES IN LAW.--On July 1, 2018:

A. all personnel, appropriations, money, records, equipment, supplies and other property of the animal sheltering board shall be transferred to the board of veterinary medicine;

B. all contracts of the animal sheltering board shall be binding and effective on the board of veterinary medicine; and

C. all references in law to the animal sheltering board shall be deemed to be references to the board of veterinary medicine.

### **Chapter 44 Section 16 Laws 2017**

SECTION 16. REPEAL.--Section 77-1B-12 NMSA 1978 (being Laws 2007, Chapter 60, Section 12, as amended) is repealed.

### **Chapter 44 Section 17 Laws 2017**

SECTION 17. EFFECTIVE DATE.--

A. The effective date of the provisions of Sections 1 through 6 and 8 through 16 of this act is July 1, 2018.

B. The effective date of the provisions of Section 7 of this act is July 1, 2017.

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HCPAC/House Bill 219, aa  
Approved April 6, 2017

## **LAWS 2017, CHAPTER 45**

AN ACT

RELATING TO INFORMATION TECHNOLOGY; TERMINATING THE INFORMATION TECHNOLOGY COMMISSION; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

### **Chapter 45 Section 1 Laws 2017**

SECTION 1. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The information technology commission is terminated July 1, 2017 pursuant to the provisions of the Sunset Act. The commission shall continue to operate according to the provisions of the Department of Information Technology Act until July 1, 2018. Effective July 1, 2018, Section 9-27-9 NMSA 1978 (being Laws 2007, Chapter 290, Section 9, as amended) is repealed.

### **Chapter 45 Section 2 Laws 2017**

SECTION 2. Section 9-27-6 NMSA 1978 (being Laws 2007, Chapter 290, Section 6, as amended) is amended to read:

"9-27-6. SECRETARY--DUTIES AND GENERAL POWERS.--

A. The secretary is responsible to the governor for the operation of the department. It is the secretary's duty to manage all operations of the department and to administer and enforce the laws with which the secretary or the department is charged.

B. To perform the secretary's duties, the secretary has every power expressly enumerated in the laws, whether granted to the secretary or the department or any division of the department, except where authority conferred upon any division is explicitly exempted from the secretary's authority by statute. In accordance with these provisions, the secretary shall:

(1) exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and regulations;

(2) delegate authority to subordinates as the secretary deems necessary and appropriate, clearly delineating such delegated authority and the limitations thereto;

(3) organize the department into those organizational units the secretary deems will enable it to function most efficiently, subject to provisions of law requiring or establishing specific organizational units;

(4) within the limitations of available appropriations and applicable laws, employ and fix the compensation of those persons necessary to discharge the secretary's duties;

(5) take administrative action by issuing orders and instructions, not inconsistent with the law, to ensure implementation of and compliance with the provisions of law for whose 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 operations of the department and the provision of services to state agencies and the residents of the state;

(7) provide courses of instruction and practical training for employees of the department and other persons involved in the administration of programs with the objective of improving the operations and efficiency of administration;

(8) prepare an annual budget of the department;

(9) provide cooperation, at the request of heads of administratively attached agencies, in order to:

(a) minimize or eliminate duplication of services and jurisdictional conflicts;

(b) coordinate activities and resolve problems of mutual concern; and

(c) resolve by agreement the manner and extent to which the department shall provide budgeting, recordkeeping and related clerical assistance to administratively attached agencies; and

(10) appoint for each division a "director". These appointed positions are exempt from the provisions of the Personnel Act. Persons appointed to these positions shall serve at the pleasure of the secretary.

C. As the chief information officer, the secretary shall:

(1) review executive agency plans regarding prudent allocation of information technology resources; reduction of duplicate or redundant data, hardware and software; and improvement of system interoperability and data accessibility among agencies;

(2) approve executive agency information technology requests for proposals and other executive agency requests that are subject to the Procurement Code, prior to final approval;

(3) promulgate rules for oversight of information technology procurement;

(4) approve executive agency information technology contracts and amendments to those contracts, including emergency procurements, sole source contracts and price agreements, prior to approval by the department of finance and administration;

(5) develop and implement procedures to standardize data elements, determine data ownership and ensure data sharing among executive agencies;

(6) verify compliance with state information architecture and the state information technology strategic plan before approving documents referred to in Paragraphs (2) and (4) of this subsection;

(7) monitor executive agency compliance with its agency plan, the state information technology strategic plan and state information architecture and report

to the governor, executive agency management and the legislative finance committee on noncompliance;

(8) develop information technology cost recovery mechanisms and information systems rate and fee structures of state agencies and other public or private sector providers and make recommendations to the information technology rate committee;

(9) provide technical support to executive agencies in the development of their agency plans;

(10) ensure the use of existing public or private information technology or telecommunications resources when the use is practical, efficient, effective and financially prudent and is in compliance with the Procurement Code;

(11) review appropriation requests related to executive agency information technology requests to ensure compliance with agency plans and the state information technology strategic plan and make written recommendations by November 14 of each year to the department of finance and administration and by November 21 of each year to the legislative finance committee and the appropriate interim legislative committee; provided, however, that the recommendations to the legislative committees have been agreed to by the department of information technology and the department of finance and administration;

(12) promulgate rules to ensure that information technology projects satisfy criteria established by the secretary and are phased in with funding released in phases contingent upon successful completion of the prior phase;

(13) provide oversight of information technology projects, including ensuring adequate risk management, disaster recovery and business continuity practices and monitoring compliance with strategies for information technology projects that affect multiple agencies;

(14) conduct reviews of information technology projects and provide written reports to the appropriate legislative oversight bodies;

(15) conduct background checks on department employees and prospective department employees that have or will have administrative access or authority to sensitive, confidential or private information or the ability to alter systems, networks or other information technology hardware or software; and

(16) perform any other information technology function assigned by the governor.

D. Each executive agency shall submit an agency information technology plan to the secretary in the form and detail required by the secretary. Each executive

agency shall conduct background checks on agency or prospective agency employees that have or will have administrative access or authority to alter systems, networks or other information technology hardware or software.

E. A state agency that receives an invoice from the department for services rendered to the agency shall have thirty days from receipt of the invoice to pay the department or to notify the department if the amount of the invoice is in dispute. The agency shall have fifteen days from its notification of dispute to the department to present its reasons in writing and request an adjustment. The department shall have fifteen days from its receipt of the reasons for dispute to notify the agency of its decision. If the department and the agency do not agree on a resolution, the secretary of finance and administration shall make a determination on the amount owed by the agency to the department. If the agency has not paid the department or notified the department of a dispute within thirty days of receipt of the invoice, the department shall notify the department of finance and administration and request that the department of finance and administration transfer funds from the agency to the department of information technology to satisfy the agency's obligation.

F. The secretary, as chief information officer, shall prepare a state information technology strategic plan for the executive branch and update it at least once every three years, which plan shall be available to agencies by July 31 of each year. The plan shall comply with the provisions of the Department of Information Technology Act and provide for the:

(1) interchange of information related to information technology among executive agencies;

(2) coordination among executive agencies in the development and maintenance of information technology systems; and

(3) protection of the privacy and security of individual information as well as of individuals using the state's information technology systems.

G. 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.

H. Where information technology functions of executive agencies overlap or a function assigned to one agency could better be performed by another agency, the secretary may recommend appropriate legislation to the next session of the legislature for its approval.

I. The secretary may make and adopt such reasonable procedural rules as may be necessary to carry out the duties of the department and its divisions and

requirements and standards for the executive branch's information technology needs, functions, systems and resources, including:

- (1) information technology security;
- (2) approval for procurement of information technology that exceeds an amount set by rule;
- (3) detail and format for the agency information technology plan;
- (4) acquisition, licensing and sale of information technology; and
- (5) requirements for agency information technology projects and related plan, analysis, oversight, assessment and specifications.

J. 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. The public hearing shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the rule, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed rule, proposed amendment or repeal of an existing rule may be obtained shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation and mailed at least thirty days prior to the hearing date to all persons who have made a written request for an advance notice of hearing. Rules shall be filed in accordance with the State Rules Act."

## **Chapter 45 Section 3 Laws 2017**

SECTION 3. Section 9-27-11 NMSA 1978 (being Laws 2008, Chapter 84, Section 2, as amended) is amended to read:

### **"9-27-11. EQUIPMENT REPLACEMENT PLANS--EQUIPMENT REPLACEMENT REVOLVING FUNDS.--**

A. In order to plan for the expenditure of capital investments necessary to provide goods and services to the state and its agencies and to local public bodies and other enterprise customers, the department shall establish and maintain an equipment replacement plan for each of the department's enterprise functions. No later than September 1 of each year, the plans shall be submitted to the department of finance and administration and the legislature, accompanied by a reconciliation report of the preceding fiscal year reflecting financial activity in each of the equipment replacement revolving funds established pursuant to this section.

B. Upon the request of the secretary, the state treasurer shall establish in the state treasury such "equipment replacement revolving funds" as are necessary to

administer each of the department's enterprise functions. The revolving funds shall consist of legislative appropriations to the funds and transfers made to the funds pursuant to Subsections C and D of this section. Income from investment of the revolving funds shall be credited back to the funds, and money in the funds shall not revert at the end of a fiscal year. Expenditures from the funds shall only be made pursuant to an appropriation from the legislature and only for the purpose of acquiring and replacing capital equipment and associated software used to provide enterprise services pursuant to the department's equipment replacement plans.

C. The department shall record amounts due to the equipment replacement revolving funds each fiscal year, based on the calculation of amortization and depreciation applicable to each enterprise service as reflected in the department's published cost structures for calculation of rates for services. Transfers to the funds shall be made from the operating funds of each enterprise in amounts that reconcile with the recorded amounts due. The recording of amounts due to the equipment replacement revolving funds and the transfer of the funds shall be consistent with generally accepted accounting principles.

D. The department may make initial transfers from its operating funds to establish the beginning fund balances as of July 1, 2008."

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House Bill 231  
Approved April 6, 2017

## **LAWS 2017, CHAPTER 46**

### AN ACT

RELATING TO TAXATION; EXTENDING THE DEDUCTION FROM GROSS RECEIPTS AND GOVERNMENTAL GROSS RECEIPTS FOR NONATHLETIC SPECIAL EVENTS AT POST-SECONDARY EDUCATIONAL INSTITUTIONS.

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

### **Chapter 46 Section 1 Laws 2017**

SECTION 1. Section 7-9-104 NMSA 1978 (being Laws 2007, Chapter 33, Section 1, as amended) is amended to read:

"7-9-104. DEDUCTION--GROSS RECEIPTS--NONATHLETIC SPECIAL EVENT AT POST-SECONDARY EDUCATIONAL INSTITUTION.--Receipts received from July 1, 2007 through June 30, 2022 from admissions to a nonathletic special event held at a venue that is located on the campus of a post-secondary educational institution within

fifty miles of the New Mexico border and that accommodates at least ten thousand persons may be deducted from gross receipts or from governmental gross receipts."

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House Bill 249, aa  
Approved April 6, 2017

## **LAWS 2017, CHAPTER 47**

### **AN ACT**

RELATING TO PUBLIC FINANCE; AUTHORIZING THE ISSUANCE OF COUNTY AREA EMERGENCY COMMUNICATIONS AND EMERGENCY MEDICAL AND BEHAVIORAL HEALTH SERVICES TAX REVENUE BONDS AND COUNTYWIDE EMERGENCY COMMUNICATIONS AND EMERGENCY MEDICAL AND BEHAVIORAL HEALTH SERVICES TAX REVENUE BONDS; SPECIFYING THAT REVENUE FROM THOSE TAXES MAY BE USED TO PURCHASE EMERGENCY COMMUNICATIONS EQUIPMENT FOR CERTAIN EMERGENCY COMMUNICATIONS CENTERS; MAKING TECHNICAL AND CLARIFYING CHANGES TO LAW; DECLARING AN EMERGENCY.

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

### **Chapter 47 Section 1 Laws 2017**

SECTION 1. Section 4-62-1 NMSA 1978 (being Laws 1992, Chapter 95, Section 1, as amended) is amended to read:

"4-62-1. REVENUE BONDS--AUTHORITY TO ISSUE--PLEDGE OF REVENUES--LIMITATION ON TIME OF ISSUANCE.--

A. In addition to any other law authorizing a county to issue revenue bonds, a county may issue revenue bonds pursuant to Chapter 4, Article 62 NMSA 1978 for the purposes specified in this section. The term "pledged revenues", as used in Chapter 4, Article 62 NMSA 1978, means the revenues, net income or net revenues authorized to be pledged to the payment of particular revenue bonds as specifically provided in Subsections B through N of this section.

B. Gross receipts tax revenue bonds may be issued for one or more of the following purposes:

(1) constructing, purchasing, furnishing, equipping, rehabilitating, making additions to or making improvements to one or more public buildings or purchasing or improving the ground of the building or buildings;

(2) acquiring or improving county or public parking lots, structures or facilities;

(3) purchasing, acquiring or rehabilitating firefighting equipment;

(4) acquiring, extending, enlarging, bettering, repairing or otherwise improving or maintaining storm sewers and other drainage improvements, sanitary sewers, sewage treatment plants, water utilities or other water, wastewater or related facilities, which may include the acquisition of rights of way and water and water rights;

(5) reconstructing, resurfacing, maintaining, repairing or otherwise improving existing alleys, streets, roads or bridges or laying off, opening, constructing or otherwise acquiring new alleys, streets, roads or bridges, which may include the acquisition of rights of way;

(6) purchasing, acquiring, constructing, making additions to, enlarging, bettering, extending or equipping airport facilities, which may include the acquisition of land, easements or rights of way;

(7) purchasing, otherwise acquiring or clearing land or purchasing, otherwise acquiring or beautifying land for open space;

(8) acquiring, constructing, purchasing, equipping, furnishing, making additions to, renovating, rehabilitating, beautifying or otherwise improving public parks, public recreational buildings or other public recreational facilities;

(9) acquiring, constructing, extending, enlarging, bettering, repairing, otherwise improving or maintaining solid waste disposal equipment, equipment for operation and maintenance of sanitary landfills, sanitary landfills or solid waste facilities; and

(10) acquiring, constructing, extending, bettering, repairing or otherwise improving public transit systems or regional transit systems or facilities.

A county may pledge irrevocably any or all of the revenue from the first one-eighth increment, the third one-eighth increment and the one-sixteenth increment of the county gross receipts tax and any increment of the county infrastructure gross receipts tax and county capital outlay gross receipts tax for payment of principal and interest due in connection with, and other expenses related to, gross receipts tax revenue bonds for any of the purposes authorized in this section or specific purposes or for any area of county government services. If the revenue from the first one-eighth increment, the third one-eighth increment or the one-sixteenth increment of the county gross receipts tax or any increment of the county infrastructure gross receipts tax or county capital outlay gross receipts tax is pledged for payment of principal and interest as authorized by this subsection, the pledge shall require the revenues received from that increment of the county gross receipts tax or any increment of the county infrastructure gross receipts

tax or county capital outlay gross receipts tax to be deposited into a special bond fund for payment of the principal, interest and expenses. At the end of each fiscal year, money remaining in the special bond fund after the annual obligations for the bonds are fully met may be transferred to any other fund of the county.

Revenues in excess of the annual principal and interest due on gross receipts tax revenue bonds secured by a pledge of gross receipts tax revenue may be accumulated in a debt service reserve account. The governing body of the county may appoint a commercial bank trust department to act as trustee of the proceeds of the tax and to administer the payment of principal of and interest on the bonds.

C. Fire protection revenue bonds may be issued for acquiring, extending, enlarging, bettering, repairing, improving, constructing, purchasing, furnishing, equipping or rehabilitating an independent fire district project or facility, including, as applicable, purchasing, otherwise acquiring or improving the ground for the project. A county may pledge irrevocably any or all of the county fire protection excise tax revenue for payment of principal and interest due in connection with, and other expenses related to, fire protection revenue bonds. These bonds may be referred to in Chapter 4, Article 62 NMSA 1978 as "fire protection revenue bonds".

D. Environmental revenue bonds may be issued for the acquisition and construction of solid waste facilities, water facilities, wastewater facilities, sewer systems and related facilities. A county may pledge irrevocably any or all of the county environmental services gross receipts tax revenue for payment of principal and interest due in connection with, and other expenses related to, environmental revenue bonds. These bonds may be referred to in Chapter 4, Article 62 NMSA 1978 as "environmental revenue bonds".

E. Gasoline tax revenue bonds may be issued for the acquisition of rights of way for and the construction, reconstruction, resurfacing, maintenance, repair or other improvement of county roads and bridges. A county may pledge irrevocably any or all of the county gasoline tax revenue for payment of principal and interest due in connection with, and other expenses related to, county gasoline tax revenue bonds. These bonds may be referred to in Chapter 4, Article 62 NMSA 1978 as "gasoline tax revenue bonds".

F. Utility revenue bonds or joint utility revenue bonds may be issued for acquiring, extending, enlarging, bettering, repairing or otherwise improving water facilities, sewer facilities, gas facilities or electric facilities. A county may pledge irrevocably any or all of the net revenues from the operation of the utility or joint utility for which the particular utility or joint utility bonds are issued to the payment of principal and interest due in connection with, and other expenses related to, utility or joint utility revenue bonds. These bonds may be referred to in Chapter 4, Article 62 NMSA 1978 as "utility revenue bonds" or "joint utility revenue bonds".

G. Project revenue bonds may be issued for acquiring, extending, enlarging, bettering, repairing, improving, constructing, purchasing, furnishing, equipping or rehabilitating any revenue-producing project, including, as applicable, purchasing, otherwise acquiring or improving the ground for the project and acquiring and improving parking lots. The county may pledge irrevocably any or all of the net revenues from the operation of the revenue-producing project for which the particular project revenue bonds are issued to the payment of the interest on and principal of the project revenue bonds. The net revenues of any revenue-producing project shall not be pledged to the project revenue bonds issued for any other revenue-producing project that is clearly unrelated in nature; but nothing in this subsection prevents the pledge to any of the project revenue bonds of the revenues received from existing, future or disconnected facilities and equipment that are related to and that may constitute a part of the particular revenue-producing project. A general determination by the governing body that facilities or equipment is reasonably related to and constitutes a part of a specified revenue-producing project shall be conclusive if set forth in the proceedings authorizing the project revenue bonds. As used in Chapter 4, Article 62 NMSA 1978:

(1) "project revenue bonds" means the bonds authorized in this subsection; and

(2) "project revenues" means the net revenues of revenue-producing projects that may be pledged to project revenue bonds pursuant to this subsection.

H. Fire district revenue bonds may be issued for acquiring, extending, enlarging, bettering, repairing, improving, constructing, purchasing, furnishing, equipping and rehabilitating a fire district project, including, as applicable, purchasing, otherwise acquiring or improving the ground for the project. The county may pledge irrevocably any or all of the revenues received by the fire district from the fire protection fund as provided in the Fire Protection Fund Law and any or all of the revenues provided for the operation of the fire district project for which the particular bonds are issued to the payment of the interest on and principal of the bonds. The revenues of a fire district project shall not be pledged to the bonds issued for a fire district project that clearly is unrelated in its purpose; but nothing in this section prevents the pledge to such bonds of revenues received from existing, future or disconnected facilities and equipment that are related to and that may constitute a part of the particular fire district project. A general determination by the governing body of the county that facilities or equipment is reasonably related to and constitutes a part of a specified fire district project shall be conclusive if set forth in the proceedings authorizing the fire district revenue bonds.

I. Law enforcement protection revenue bonds may be issued for the repair and purchase of law enforcement apparatus and equipment that meet nationally recognized standards. The county may pledge irrevocably any or all of the revenues received by the county from the law enforcement protection fund distributions pursuant

to the Law Enforcement Protection Fund Act to the payment of the interest on and principal of the law enforcement protection revenue bonds.

J. Hospital emergency gross receipts tax revenue bonds may be issued for acquiring, equipping, remodeling or improving a county hospital or county health facility. A county may pledge irrevocably to the payment of the interest on and principal of the hospital emergency gross receipts tax revenue bonds any or all of the revenues received by the county from a county hospital emergency gross receipts tax imposed pursuant to Section 7-20E-12.1 NMSA 1978 and dedicated to payment of bonds or a loan for acquiring, equipping, remodeling or improving a county hospital or county health facility.

K. Economic development gross receipts tax revenue bonds may be issued for the purpose of furthering economic development projects as defined in the Local Economic Development Act. A county may pledge irrevocably any or all of the county infrastructure gross receipts tax to the payment of the interest on and principal of the economic development gross receipts tax revenue bonds for the purpose authorized in this subsection.

L. County education gross receipts tax revenue bonds may be issued for public school or off-campus instruction program capital projects as authorized in Section 7-20E-20 NMSA 1978. A county may pledge irrevocably any or all of the county education gross receipts tax revenue to the payment of interest on and principal of the county education gross receipts tax revenue bonds for the purpose authorized in this section.

M. County area emergency communications and emergency medical and behavioral health services tax revenue bonds and countywide emergency communications and emergency medical and behavioral health services tax revenue bonds may be issued for the purpose of purchasing emergency communications equipment for an emergency communications center that has been determined by the local government division of the department of finance and administration to be a consolidated public safety answering point if the useful life of the equipment exceeds the term in which the bonds mature. A county may pledge irrevocably any or all of the county area emergency communications and emergency medical and behavioral health services tax revenue and the countywide emergency communications and emergency medical and behavioral health services tax revenue to the payment of interest on and principal of county area emergency communications and emergency medical and behavioral health services tax revenue bonds and countywide emergency communications and emergency medical and behavioral health services tax revenue bonds for the purpose authorized in this section.

N. PILT revenue bonds may be issued by a county to repay all or part of the principal and interest of an outstanding loan owed by the county to the New Mexico finance authority. A county may pledge irrevocably all or part of PILT revenue to the payment of principal of and interest on new loans or preexisting loans provided by the

New Mexico finance authority to finance a public project as "public project" is defined in Subsection E of Section 6-21-3 NMSA 1978.

O. Except for the purpose of refunding previous revenue bond issues, no county may sell revenue bonds payable from pledged revenue after the expiration of two years from the date of the ordinance authorizing the issuance of the bonds or, for bonds to be issued and sold to the New Mexico finance authority as authorized in Subsection C of Section 4-62-4 NMSA 1978, after the expiration of two years from the date of the resolution authorizing the issuance of the bonds. However, any period of time during which a particular revenue bond issue is in litigation shall not be counted in determining the expiration date of that issue.

P. No bonds may be issued by a county, other than an H class county, a class B county as defined in Section 4-36-8 NMSA 1978 or a class A county as described in Section 4-36-10 NMSA 1978, to acquire, equip, extend, enlarge, better, repair or construct a utility unless the utility is regulated by the public regulation commission pursuant to the Public Utility Act and the issuance of the bonds is approved by the commission. For purposes of Chapter 4, Article 62 NMSA 1978, a "utility" includes a water, wastewater, sewer, gas or electric utility or joint utility serving the public. H class counties shall obtain public regulation commission approvals required by Section 3-23-3 NMSA 1978.

Q. Any law that imposes or authorizes the imposition of a county gross receipts tax, a county environmental services gross receipts tax, a county fire protection excise tax, a county infrastructure gross receipts tax, the county education gross receipts tax, a county capital outlay gross receipts tax, the gasoline tax, the county hospital emergency gross receipts tax, the countywide emergency communications and emergency medical and behavioral health services tax or the county area emergency communications and emergency medical and behavioral health services tax, or that affects any of those taxes, shall not be repealed or amended in such a manner as to impair outstanding revenue bonds that are issued pursuant to Chapter 4, Article 62 NMSA 1978 and that may be secured by a pledge of those taxes unless the outstanding revenue bonds have been discharged in full or for which provision has been fully made.

R. As used in this section:

(1) "county area emergency communications and emergency medical and behavioral health services tax revenue" means the revenue from the county area emergency communications and emergency medical and behavioral health services tax transferred pursuant to Section 7-1-6.13 NMSA 1978;

(2) "county capital outlay gross receipts tax revenue" means the revenue from the county capital outlay gross receipts tax transferred to the county pursuant to Section 7-1-6.13 NMSA 1978;

(3) "county education gross receipts tax revenue" means the revenue from the county education gross receipts tax transferred to the county pursuant to Section 7-1-6.13 NMSA 1978;

(4) "county environmental services gross receipts tax revenue" means the revenue from the county environmental services gross receipts tax transferred to the county pursuant to Section 7-1-6.13 NMSA 1978;

(5) "county fire protection excise tax revenue" means the revenue from the county fire protection excise tax transferred to the county pursuant to Section 7-1-6.13 NMSA 1978;

(6) "county gross receipts tax revenue" means the revenue attributable to the first one-eighth increment, the third one-eighth increment and the one-sixteenth increment of the county gross receipts tax transferred to the county pursuant to Section 7-1-6.13 NMSA 1978 and any distribution related to the first one-eighth increment made pursuant to Section 7-1-6.16 NMSA 1978;

(7) "county infrastructure gross receipts tax revenue" means the revenue from the county infrastructure gross receipts tax transferred to the county pursuant to Section 7-1-6.13 NMSA 1978;

(8) "countywide emergency communications and emergency medical and behavioral health services tax revenue" means the revenue from the countywide emergency communications and emergency medical and behavioral health services tax transferred to the county pursuant to Section 7-1-6.13 NMSA 1978;

(9) "gasoline tax revenue" means the revenue from that portion of the gasoline tax distributed to the county pursuant to Sections 7-1-6.9 and 7-1-6.26 NMSA 1978;

(10) "PILT revenue" means revenue received by the county from the federal government as payments in lieu of taxes; and

(11) "public building" includes fire stations, police buildings, county or regional jails, county or regional juvenile detention facilities, libraries, museums, auditoriums, convention halls, hospitals, buildings for administrative offices, courthouses and garages for housing, repairing and maintaining county vehicles and equipment.

S. As used in Chapter 4, Article 62 NMSA 1978, "bond" means any obligation of a county issued under Chapter 4, Article 62 NMSA 1978, whether designated as a bond, note, loan, warrant, debenture, lease-purchase agreement or other instrument, evidencing an obligation of a county to make payments."

## **Chapter 47 Section 2 Laws 2017**

SECTION 2. Section 7-20E-22 NMSA 1978 (being Laws 2002, Chapter 14, Section 1, as amended) is amended to read:

"7-20E-22. COUNTY EMERGENCY COMMUNICATIONS AND EMERGENCY MEDICAL AND BEHAVIORAL HEALTH SERVICES TAX--AUTHORITY TO IMPOSE COUNTYWIDE OR ONLY IN THE COUNTY AREA--ORDINANCE REQUIREMENTS--USE OF REVENUE--ELECTION.--

A. The majority of the members of the governing body of an eligible county that does not have in effect a tax imposed pursuant to Subsection B of this section may enact an ordinance imposing an excise tax at a rate not to exceed one-fourth percent of the gross receipts of a person engaging in business in the county for the privilege of engaging in business. The tax imposed by this subsection may be referred to as the "countywide emergency communications and emergency medical and behavioral health services tax".

B. The majority of the members of the governing body of an eligible county that does not have in effect a tax imposed pursuant to Subsection A of this section may enact an ordinance imposing an excise tax at a rate not to exceed one-fourth percent of the gross receipts of a person engaging in business in the county area for the privilege of engaging in business. The tax imposed by this subsection may be referred to as the "county area emergency communications and emergency medical and behavioral health services tax".

C. The taxes authorized in Subsections A and B of this section may be imposed in one or more increments of one-sixteenth percent not to exceed an aggregate rate of one-fourth percent.

D. The governing body, at the time of enacting an ordinance imposing a rate of tax authorized in Subsection A or B of this section, shall dedicate the revenue to one or more of the following purposes:

(1) operation of an emergency communications center that has been determined by the local government division of the department of finance and administration to be a consolidated public safety answering point. That operation may include the purchase of emergency communications equipment for the center;

(2) operation of emergency medical services provided by the county; or

(3) provision of behavioral health services, including alcohol abuse and substance abuse treatment.

E. An ordinance imposing any increment of the countywide emergency communications and emergency medical and behavioral health services tax or the county area emergency communications and emergency medical and behavioral health

services tax shall not go into effect until after an election is held and a majority of the voters voting in the election votes in favor of imposing the tax. In the case of an ordinance imposing an increment of the countywide emergency communications and emergency medical and behavioral health services tax, the election shall be conducted countywide. In the case of an ordinance imposing the county area emergency communications and emergency medical and behavioral health services tax, the election shall be conducted only in the county area. The governing body shall adopt a resolution calling for an election within seventy-five days of the date the ordinance is adopted on the question of imposing the tax. The question may be submitted to the voters as a separate question at a general election or at a special election called for that purpose by the governing body. A special election shall be called, conducted and canvassed in substantially the same manner as provided by law for general elections. In any election held, the ballot shall clearly state the purpose to which the revenue will be dedicated pursuant to Subsection D of this section. If a majority of the voters voting on the question approves the imposition of the countywide emergency communications and emergency medical and behavioral health services tax or the county area emergency communications and emergency medical and behavioral health services tax, the ordinance shall become effective in accordance with the provisions of the County Local Option Gross Receipts Taxes Act. If the question of imposing the tax fails, the governing body shall not again propose the imposition of any increment of either tax for a period of one year from the date of the election.

F. For the purposes of this section, "eligible county" means:

(1) a county that operates or, pursuant to a joint powers agreement, is served by an emergency communications center that has been determined by the local government division of the department of finance and administration to be a consolidated public safety answering point; or

(2) in the case of a county imposing the tax for the purposes provided in Paragraph (3) of Subsection D of this section, a county that operates or contracts for the operation of a behavioral health services facility providing alcohol abuse, substance abuse and inpatient and outpatient behavioral health treatment."

## **Chapter 47 Section 3 Laws 2017**

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

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House Bill 259, aa, w/ec  
Approved April 6, 2017

## **LAWS 2017, CHAPTER 48**

AN ACT

RELATING TO HEALTH; AMENDING THE NEW MEXICO DRUG, DEVICE AND COSMETIC ACT TO PROVIDE FOR REGULATION OF BIOSIMILAR PRODUCTS.

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

**Chapter 48 Section 1 Laws 2017**

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 any of the following that is applicable to the prevention, treatment or cure of a disease or condition of human beings:

(1) a virus;

(2) a therapeutic serum;

(3) a toxin;

(4) an antitoxin;

(5) a vaccine;

(6) blood;

(7) a blood component or derivative;

(8) an allergenic product;

(9) a protein, except any chemically synthesized polypeptide;

(10) a product that is analogous to any of the products listed in Paragraphs (1) through (9) of this subsection; or

(11) arsphenamine, a derivative of arsphenamine or any other trivalent organic arsenic compound;

D. "biosimilar" or "biosimilarity" means, in reference to a biological product that the federal food and drug administration has licensed, that:

(1) the biological product is highly similar to the reference product notwithstanding minor differences in clinically inactive components; and

(2) there are no clinically meaningful differences between the biological product and the reference product in terms of the safety, purity and potency of the product;

E. "controlled substance" means a drug, substance or immediate precursor enumerated in Schedules I through V of the Controlled Substances Act;

F. "drug" means articles:

(1) recognized in an official compendium;

(2) intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans 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 humans 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 human body or the bodies of other animals; and

(4) intended for use as a component of Paragraph (1), (2) or (3) of this subsection, but "drug" does not include devices or their component parts or accessories;

G. "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 layperson 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 or drug order 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";

H. "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 are products that 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) "relabels", which are drugs that have passed their expiration dates or have been distributed by unauthorized foreign sources and may include placebos created for late-phase clinical trials;

I. "device", except when used in Subsection R 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 humans or other animals; or

(3) intended to affect the structure or a function of the human body or the bodies of other animals and that does not achieve any of its principal intended purposes through chemical action within or on the human body or the bodies of other animals and that is not dependent on being metabolized for achievement of any of its principal intended purposes;

J. "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, the prescriber's 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;

K. "practitioner" means a certified advanced practice chiropractic physician, physician, doctor of oriental medicine, dentist, veterinarian, euthanasia technician, certified nurse practitioner, clinical nurse specialist, pharmacist, pharmacist clinician, certified nurse-midwife, physician assistant, prescribing psychologist, dental hygienist, optometrist or other person licensed or certified to prescribe and administer drugs that are subject to the New Mexico Drug, Device and Cosmetic Act;

L. "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;

M. "interchangeable biological product" means a biological product that the federal food and drug administration has licensed and:

(1) has determined that the biological product is biosimilar to the reference product and can be expected to produce the same clinical result as the reference product in any given patient;

(2) for a biological product that is administered more than once to an individual and:

(a) has determined to have been administered more than once to the individual; or

(b) for which the risk in terms of safety or diminished efficacy of alternating or switching between use of the biological product and the reference product is not greater than the risk of using the reference product without alternation or switching; or

(3) has determined to be therapeutically equivalent as set forth in the latest edition or supplement to the federal food and drug administration's approved drug products with therapeutic equivalence evaluations;

N. "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;

O. "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;

P. "immediate container" does not include package liners;

Q. "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;

R. "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;

S. "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;

T. "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;

U. "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;

V. "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;

W. "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;

X. "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;

Y. "federal act" means the Federal Food, Drug, and Cosmetic Act;

Z. "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;

AA. "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", "physician assistant", "certified advanced practice chiropractic physician", "doctor of oriental medicine", "dentist", "veterinarian", "euthanasia technician", "certified nurse practitioner", "clinical nurse specialist", "pharmacist", "pharmacist clinician", "certified nurse-midwife", "dental hygienist" or "optometrist" or with the descriptive designation of any other practitioner licensed in this state to use or order the use of the device;

BB. "valid practitioner-patient relationship" means a professional relationship, as defined by the practitioner's licensing board, between the practitioner and the patient;

CC. "pedigree" means the recorded history of a drug;

DD. "drug order" means an order 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 licensed practitioner or the practitioner's agent, and bearing the name and address of the practitioner and the practitioner's license classification and the name and quantity of the drug or device ordered for use at an inpatient or outpatient facility; and

EE. "reference product" means the single biological product against which a biosimilar was evaluated in its marketing application to the federal food and drug administration."

## **Chapter 48 Section 2 Laws 2017**

SECTION 2. Section 26-3-3 NMSA 1978 (being Laws 1976, Chapter 60, Section 4, as amended) is amended to read:

"26-3-3. DRUG AND BIOLOGICAL PRODUCT SELECTION PERMITTED--  
CONDITIONS--EXCEPTION FOR PROHIBITION--LABELING.--

A. Upon receipt of a prescription written by a licensed practitioner who may prescribe drugs or biological products for a drug or biological product for which one or more multiple-source drugs or interchangeable biological products 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 or interchangeable biological products 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 or biological product listed in the prescription.

B. Upon receipt of a prescription written by a licensed practitioner for a drug or biological product that appears on the federal food and drug administration's approved prescription drug products with therapeutic equivalence evaluation list as supplemented, or for a biological product that is listed as interchangeable on the lists of the federal food and drug administration's lists of licensed biological products with reference product exclusivity and biosimilarity or interchangeability evaluations, as supplemented, a pharmacist may dispense any of the listed therapeutically equivalent drugs or interchangeable biological products that is lower in cost than the prescribed drug or biological product.

C. Drug and biological 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 or biological product selection. A licensed practitioner shall prohibit drug or biological product selection by making an entry that is electronically accessible that includes the words "no substitution" or the diminution "no sub" on a prescription.

D. If drug or biological 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 or the specific biological product prescribed and the name of the drug or interchangeable biological product dispensed.

E. A pharmacist who selects an interchangeable biological product shall inform the patient or the patient's representative.

F. A pharmacist shall not select a therapeutically equivalent drug or interchangeable biological product unless the substitution is in accordance with the provisions of Subsection A of this section.

G. Within five business days following the dispensing of a biological product, the dispensing pharmacist or the pharmacist's designee shall make an entry of the specific product provided to the patient, including the name of the product and the manufacturer. The communication shall be conveyed by making an entry that is electronically accessible to the prescriber through:

- (1) an interoperable electronic medical records system;
- (2) an electronic prescribing technology;
- (3) a pharmacy benefit management system; or
- (4) a pharmacy record.

H. Entry into an electronic medical records system pursuant to Subsection G of this section is presumed to provide notice to the prescriber. Otherwise, the pharmacist shall communicate to the prescriber what biological product was dispensed,

using facsimile, telephone, electronic transmission or other prevailing means; provided that communication shall not be required when:

(1) there is no interchangeable biological product that has been approved by the federal food and drug administration for the product prescribed; or

(2) a refill prescription is not changed from the product dispensed on the prior filling of the prescription.

I. The board shall maintain a link on its website to the current lists of all biological products that the federal food and drug administration has determined to be interchangeable biological products.

J. For purposes of this section:

(1) "multiple-source drug" means a drug marketed or sold by two or more manufacturers, formulators or labelers; and

(2) "therapeutically equivalent" means drug products that have the same amount of the active drug in the same dosage form that when administered can be expected to provide the same therapeutic effect."

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HBIC/House Bill 260, aa  
Approved April 6, 2017

## **LAWS 2017, CHAPTER 49**

AN ACT

RELATING TO ALCOHOL SALES; AMENDING A SECTION OF THE LIQUOR CONTROL ACT TO PROVIDE FOR HOURS OF SALES WHEN DECEMBER 31 FALLS ON A SUNDAY.

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

### **Chapter 49 Section 1 Laws 2017**

SECTION 1. Section 60-7A-1 NMSA 1978 (being Laws 1981, Chapter 39, Section 47, as amended) is amended to read:

"60-7A-1. HOURS AND DAYS OF BUSINESS--SUNDAY SALES--CHRISTMAS DAY SALES--SUNDAY SALES FOR CONSUMPTION OFF THE LICENSED PREMISES--ELECTIONS.--

A. Provided that nothing in this section shall prohibit the consumption at any time of alcoholic beverages in guest rooms of hotels, alcoholic beverages shall be sold, served and consumed on licensed premises only during the following hours and days:

(1) on Mondays from 7:00 a.m. until midnight;

(2) on Tuesdays through Saturdays from after midnight of the previous day until 2:00 a.m., then from 7:00 a.m. until midnight, except as provided in Subsections D and F of this section; and

(3) on Sundays only after midnight of the previous day until 2:00 a.m., except as provided in Subsections C and E of this section and Section 60-7A-2 NMSA 1978.

B. Alcoholic beverages shall be sold by a dispenser or a retailer in unbroken packages, for consumption off the licensed premises and not for resale, on Mondays through Saturdays from 7:00 a.m. until midnight, except as provided in Subsections D and F of this section.

C. A dispenser, restaurant licensee or club may, upon payment of an additional fee of one hundred dollars (\$100), obtain a permit to sell, serve or permit the consumption of alcoholic beverages by the drink on the licensed premises on Sundays, subject to approval obtained pursuant to the process set forth in Subsection E of this section. Alcoholic beverages may be sold, served and consumed from 11:00 a.m. until midnight as set forth in the licensee's Sunday sales permit, and in those years when December 31 falls on a Sunday, from 11:00 a.m. until 2:00 a.m. of the following day, except as otherwise provided for a restaurant licensee in Section 60-6A-4 NMSA 1978. The Sunday sales permit shall expire on June 30 of each year and may be renewed from year to year upon application for renewal and payment of the required fee. The permit fee shall not be prorated. Sales made pursuant to this subsection or Subsection G of this section shall be called "Sunday sales".

D. Retailers, dispensers, canopy licensees that were replaced by dispenser's licensees pursuant to Section 60-6B-16 NMSA 1978, restaurant licensees, club licensees and governmental licensees or their lessees shall not sell, serve, deliver or allow the consumption of alcoholic beverages on the licensed premises from 2:00 a.m. on Christmas day until 7:00 a.m. on

the day after Christmas, except as permitted pursuant to Subsection F of this section.

E. Sunday sales pursuant to the provisions of Subsection C of this section are permitted in a local option district that voted to permit them. If in that election a majority of the voters in a local option district voted "no" on the question "Shall Sunday sales of alcoholic beverages by the drink for consumption on the licensed premises of licensees be allowed in this local option district?", Sunday sales are unlawful in that

local option district upon certification of the election returns unless the provisions of Subsection J of this section apply. The question shall not again be placed on the ballot in that local option district until:

(1) at least one year has passed; and

(2) a petition is filed with the local governing body bearing the signatures of registered qualified electors of the local option district equal in number to ten percent of the number of votes cast and counted in the local option district for governor in the last preceding general election in which a governor was elected. The signatures on the petition shall be verified by the clerk of the county in which the local option district is situated.

F. On and after July 1, 2002, dispensers, canopy licensees that were replaced by dispenser's licensees pursuant to Section 60-6B-16 NMSA 1978, restaurant licensees, club licensees and governmental licensees or lessees of these licensees, provided that the licensees have current, valid food service establishment permits, may sell, serve or allow the consumption of alcoholic beverages by the drink on licensed premises from noon until 10:00 p.m. on Christmas day, except in a local option district in which, pursuant to petition and election under this subsection, a majority of the voters voting on the question votes against continuing such sales or consumption on Christmas day. An election shall be held on the question of whether to continue to allow the sale, service or consumption of alcoholic beverages by the drink on licensed premises from noon until 10:00 p.m. on Christmas day in a local option district, if a petition requesting the governing body of that district to call the election is signed by at least ten percent of the registered voters of the district and is filed with the clerk of the governing body of the district. Upon verification by the clerk that the petition contains the required number of signatures of registered voters, the governing body shall adopt a resolution calling an election on the question of allowing the sale, service or consumption of alcoholic beverages by the drink on licensed premises from noon until 10:00 p.m. on Christmas day. The election shall be held within sixty days after the date the petition is verified, or it may be held in conjunction with a regular election of the governing body if that election occurs within sixty days of such verification. The election shall be called, conducted, counted and canvassed in substantially the same manner as provided for general elections in the county under the Election Code or for special municipal elections in a municipality under the Municipal Election Code. If a majority of the voters voting on the question votes against continuing the sale, service or consumption of alcoholic beverages by the drink on licensed premises from noon until 10:00 p.m. on Christmas day, then such sales and consumption shall be prohibited. If a majority of the voters voting on the question votes to allow continued sale, service and consumption of alcoholic beverages by the drink on licensed premises from noon until 10:00 p.m. on Christmas day, then such sales and consumption shall be allowed to continue. The question then shall not be submitted again to the voters within two years of the date of the last election on the question.

G. Notwithstanding the provisions of Subsection E of this section, any Indian nation, tribe or pueblo whose lands are wholly situated within the state that has, by statute, ordinance or resolution, elected to permit the sale, possession or consumption of alcoholic beverages on lands within the territorial boundaries of the Indian nation, tribe or pueblo may, by statute, ordinance or resolution of the governing body of the Indian nation, tribe or pueblo, permit Sunday sales by the drink on the licensed premises of licensees on lands within the territorial boundaries of the Indian nation, tribe or pueblo; provided that a certified copy of such enactment is filed with the office of the director and with the secretary of state.

H. Subject to the provisions of Subsection I of this section, a dispenser or retailer, upon payment of an additional fee of one hundred dollars (\$100), may obtain a permit to sell alcoholic beverages in unbroken packages for consumption off the licensed premises on Sundays from noon until midnight, and in those years when December 31 falls on a Sunday, from noon on December 31 until 2:00 a.m. of the following day. The permit shall expire on June 30 of each year and may be renewed from year to year upon application for renewal and payment of the required fee. The permit fee shall not be prorated. Sales made pursuant to the provisions of this subsection shall be called "Sunday package sales".

I. If a petition requesting the governing body of a local option district to call an election on the question of continuing to allow sales of alcoholic beverages in unbroken packages for consumption off the licensed premises on Sundays is filed with the clerk of the governing body and that petition is signed by at least ten percent of the number of registered voters of the local option district and the clerk of the governing body verifies the petition signatures, the governing body shall adopt a resolution calling an election on the question. The election shall be held within sixty days of the date that the petition is verified, or it may be held in conjunction with a regular election of the governing body, if the regular election occurs within sixty days of the petition verification. The election shall be called, conducted, counted and canvassed substantially in the manner provided by law for general elections within a county or for special municipal elections within a municipality. If a majority of the voters of the local option district voting in the election votes to allow the sale of alcoholic beverages in unbroken packages for consumption off the licensed premises, then those sales shall continue to be allowed. If a majority of the voters of the local option district voting in the election votes not to allow the Sunday package sales, then those Sunday package sales shall be prohibited commencing the first Sunday after the results of the election are certified. Following the election, the question of allowing the Sunday package sales shall not be submitted again to the voters within two years of the date of the last election on the question.

J. Sunday sales of alcoholic beverages shall be permitted at resorts and at horse racetracks statewide pursuant to the provisions of Section 60-7A-2 NMSA 1978."

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## **LAWS 2017, CHAPTER 50**

### 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 50 Section 1 Laws 2017**

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 for public projects as defined in Section 6-21-3 NMSA 1978. Pursuant to Section 6-21-6 NMSA 1978, loans of less than one million dollars (\$1,000,000) do not require specific authorization and need not be identified in this act. Authorization is given to the New Mexico finance authority to make loans to the following qualified entities on terms and conditions established by the authority:

1. the Agua Sana water users association in Rio Arriba county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

2. the Alamogordo public school district in Otero county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

3. the city of Alamogordo in Otero county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights, special assessment district and solid waste projects;

4. the Artesia public school district in Eddy and Chaves counties for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

5. the city of Bayard in Grant county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

6. the Bernalillo county metropolitan court in Bernalillo county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

7. the Bernalillo public school district in Sandoval county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

8. the Bluewater water and sanitation district in Cibola county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

9. the Bloomfield school district in San Juan county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

10. the village of Bosque Farms in Valencia county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

11. the Camino Real regional utility authority in Dona Ana county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

12. the Capitan municipal school district in Lincoln county for building, equipment, infrastructure, debt refinance, land acquisition, water, wastewater, water rights and solid waste projects;

13. the village of Capitan in Lincoln county for building, equipment, infrastructure, debt refinance, land acquisition, water, wastewater, water rights and solid waste projects;

14. the city of Carlsbad in Eddy county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

15. the Carlsbad municipal school district in Eddy county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

16. the Central consolidated school district in San Juan county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

17. the village of Chama in Rio Arriba county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

18. Chaves county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

19. the village of Cimarron in Colfax county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

20. the Clayton municipal school district in Union county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

21. the Cloudcroft municipal school district in Otero county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

22. the village of Cloudcroft in Otero county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

23. the Clovis municipal school district in Curry county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

24. the city of Clovis in Curry county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

25. the governing board of Clovis community college in Curry county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

26. the village of Columbus in Luna county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

27. the village of Corrales in Sandoval county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

28. the Cottonwood classical preparatory school in Bernalillo county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

29. the city of Deming in Luna county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

30. the town of Dexter in Chaves county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

31. the village of Eagle Nest in Colfax county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

32. the East Rio Arriba soil and water conservation district in Rio Arriba county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

33. El Rito mutual domestic water consumers association in Rio Arriba and Taos counties for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

34. El Valle de Los Ranchos water and sanitation district in Taos county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

35. the Eldorado water and sanitation district in Santa Fe county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

36. the city of Elephant Butte in Sierra county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

37. the town of Elida in Roosevelt county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

38. the Espanola public school district in Rio Arriba and Santa Fe counties for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

39. the city of Farmington in San Juan county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

40. the village of Fort Sumner in De Baca county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

41. the Gadsden independent school district in Dona Ana and Otero counties for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

42. Gila regional medical center in Grant county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

43. Grant county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights, special assessment district and solid waste projects;

44. the Gilbert L. Sena charter high school in Bernalillo county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights, special assessment district and solid waste projects;

45. the town of Hagerman in Chaves county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

46. Hidalgo county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

47. the city of Hobbs in Lea county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

48. the Hobbs municipal school district in Lea county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

49. the Hondo Valley public school district in Lincoln county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

50. the village of House in Quay county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

51. the village of Jemez Springs in Sandoval county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

52. the Jicarilla Apache Nation in Rio Arriba county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

53. the town of Lake Arthur in Chaves county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

54. Lincoln county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights, special assessment district and solid waste projects;

55. the village of Los Ranchos de Albuquerque in Bernalillo county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

56. the governing board of Luna community college in San Miguel county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

57. Luna county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights, special assessment district and solid waste projects;

58. the Magdalena municipal school district in Socorro county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

59. McKinley county for building, equipment, infrastructure, debt refinance, public improvement district, road, land acquisition, water, wastewater, water rights, special assessment district and solid waste projects;

60. the Melrose public school district in Roosevelt and Quay counties for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

61. the governing board of Mesalands community college in Quay county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

62. the town of Mountainair in Torrance county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

63. the governing board of New Mexico junior college in Lea county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

64. the board of regents of the New Mexico military institute in Chaves county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

65. the North Central solid waste authority in Rio Arriba and Santa Fe counties for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

66. the Pecos independent school district in San Miguel county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

67. the Pojoaque Valley public school district in Santa Fe county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

68. the Pueblo of Acoma in Cibola county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

69. the Pueblo of Picuris in Taos county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

70. the Pueblo of San Felipe in Sandoval county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

71. the Pueblo of Santa Clara in Rio Arriba county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

72. the Pueblo of Tesuque in Santa Fe county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

73. the village of Questa in Taos county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

74. the Raton public school district in Colfax county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

75. the town of Red River in Taos county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

76. the village of Reserve in Catron county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

77. the Rio Rancho public school district in Sandoval county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

78. the city of Rio Rancho in Bernalillo and Sandoval counties for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights, special assessment district and solid waste projects;

79. the Roosevelt county special hospital district in Roosevelt county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

80. the Roswell independent school district in Chaves county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

81. the city of Roswell in Chaves county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

82. Sandoval county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

83. the village of Santa Clara in Grant county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

84. Santa Fe county for building, equipment, infrastructure, debt refinance, public improvement district, road, land acquisition, water, wastewater, water rights, special assessment district and solid waste projects;

85. the Santa Fe public school district in Santa Fe county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

86. the Santa Fe solid waste management agency in Santa Fe county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

87. the city of Santa Fe in Santa Fe county for building, equipment, infrastructure, debt refinance, public improvement district, road, land acquisition, water, wastewater, water rights, special assessment district and solid waste projects;

88. the city of Santa Rosa in Guadalupe county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

89. the Silver consolidated school district in Grant county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

90. the town of Springer in Colfax county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

91. the Taos regional landfill in Taos county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

92. the Texico municipal school district in Curry and Roosevelt counties for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

93. the Tierra Adentro of New Mexico in Bernalillo county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

94. the Tierra y Montes soil and water conservation district in San Miguel county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

95. the Timberon water and sanitation district in Otero county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

96. the city of Truth or Consequences in Sierra county for building, equipment, infrastructure, debt refinance, land acquisition, water, wastewater, water rights and solid waste projects;

97. the village of Tularosa in Otero county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

98. the village of Virden in Hidalgo county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

99. the West Las Vegas public school district in San Miguel county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects;

100. the village of Willard in Torrance county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects; and

101. the village of Williamsburg in Sierra county for building, equipment, infrastructure, debt refinance, road, land acquisition, water, wastewater, water rights and solid waste projects.

## **Chapter 50 Section 2 Laws 2017**

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 2019 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 50 Section 3 Laws 2017**

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

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House Bill 268, aa, w/ec  
Approved April 6, 2017

# **LAWS 2017, CHAPTER 51**

AN ACT

RELATING TO HEALTH; MAKING THE OFFERING OF INFLUENZA AND PNEUMOCOCCAL IMMUNIZATIONS TO SENIOR CITIZENS MANDATORY UPON RELEASE FROM A HOSPITAL.

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

**Chapter 51 Section 1 Laws 2017**

SECTION 1. A new section of the Public Health Act is enacted to read:

"HOSPITALS--REQUIREMENT TO OFFER INFLUENZA AND PNEUMOCOCCAL IMMUNIZATIONS.--Each year between October 1 and March 1 and in accordance with the latest recommendations of the advisory committee on immunization practices of the federal centers for disease control and prevention, each hospital licensed by the department of health shall offer, prior to discharge, immunizations against the influenza virus and pneumococcal disease to all inpatients sixty-five years of age and older unless contraindicated for a patient and contingent upon the availability of the vaccine."

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House Bill 274  
Approved April 6, 2017

**LAWS 2017, CHAPTER 52**

AN ACT

RELATING TO PROFESSIONAL LICENSURE; CHANGING MEMBERSHIP OF CERTAIN LICENSING BOARDS; EXTENDING SUNSET DATES OF CERTAIN BOARDS; INCREASING PENALTIES FOR UNLICENSED ACTIVITIES OF CERTAIN PROFESSIONS.

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

**Chapter 52 Section 1 Laws 2017**

SECTION 1. A new section of the Professional Athletic Competition Act is enacted to read:

"UNLICENSED ACTIVITY--DISCIPLINARY PROCEEDINGS--CIVIL PENALTY.--A person who is not licensed to engage in a professional athletic competition activity regulated by the board is subject to disciplinary proceedings by the board as provided in

the Uniform Licensing Act. The provisions of Section 61-1-3.2 NMSA 1978 notwithstanding, the board may impose a civil penalty in an amount not to exceed two thousand dollars (\$2,000) against a person who engages in a professional athletic competition activity regulated by the board without a license. In addition, the board may assess the person for administrative costs, including investigative costs and the cost of conducting a hearing."

## **Chapter 52 Section 2 Laws 2017**

SECTION 2. 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, 2023 pursuant to the Sunset Act. The commission shall continue to operate according to the provisions of the Professional Athletic Competition Act until July 1, 2024. Effective July 1, 2024, Chapter 60, Article 2A NMSA 1978 is repealed."

## **Chapter 52 Section 3 Laws 2017**

SECTION 3. Section 61-14A-19 NMSA 1978 (being Laws 1993, Chapter 158, Section 27) is amended to read:

"61-14A-19. PENALTIES.--

A. A person who violates a provision of the Acupuncture and Oriental Medicine Practice Act is guilty of a misdemeanor and upon conviction shall be punished as provided in Section 31-19-1 NMSA 1978.

B. In addition to criminal penalties, a person who engages in acupuncture or oriental medicine without a license is subject to disciplinary proceedings by the board. The provisions of Section 61-1-3.2 NMSA 1978 notwithstanding, the board may impose a civil penalty in an amount not to exceed two thousand dollars (\$2,000) against such person and may assess the person for administrative costs, including investigative costs and the cost of conducting a hearing. The fine shall be deposited to the credit of the current school fund."

## **Chapter 52 Section 4 Laws 2017**

SECTION 4. Section 61-14A-22 NMSA 1978 (being Laws 1993, Chapter 158, Section 30, as amended) 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, 2023 pursuant to the Sunset Act. The board shall continue to operate according to the Acupuncture and Oriental Medicine Practice Act until July 1, 2024. Effective July 1, 2024, Chapter 61, Article 14A NMSA 1978 is repealed."

## **Chapter 52 Section 5 Laws 2017**

SECTION 5. Section 61-15-3 NMSA 1978 (being Laws 1979, Chapter 362, Section 3, as amended) is amended to read:

"61-15-3. BOARD OF EXAMINERS FOR ARCHITECTS CREATED--TERMS--QUALIFICATIONS.--

A. The "board of examiners for architects" is created consisting of seven members appointed by the governor for staggered terms of three years each. Six of the members shall be architects having ten years or more experience in the profession, five years of which shall have been in responsible charge of architectural projects, and shall have been registered as architects in New Mexico for at least five years. One of these six architects shall be in architectural education in an accredited college of architecture, and one of the six architects shall be from the public sector and not in private practice. The seventh member shall be a public member who is a voting member. The public member of the board shall not have been licensed as an architect, nor shall the public member have any significant financial interest, whether direct or indirect, in the occupation regulated.

B. Each member of the board shall be at least thirty years of age, a citizen of the United States and a resident of New Mexico for at least five years prior to the date of appointment.

C. Members of the board shall be appointed for staggered terms of three years each made in such a manner that the terms of not more than two members expire on June 30 of each year. Each member shall serve until a successor has been appointed and qualified. A vacancy shall be filled for the unexpired term by appointment by the governor of a person having similar qualifications as the member that the person replaces. Each member of the board whose term has not expired on the effective date of this section shall serve out the member's unexpired term.

D. Each member of the board shall receive a certificate of appointment from the governor and, before beginning the member's term of office, shall file with the secretary of state the constitutional oath of office. The governor may remove any member from the board for the neglect of any duty required by law, for incompetence or, if the member is a licensed architect, for any improper or unprofessional conduct as defined by rules of the board.

E. The board shall elect a chair, a vice chair and a secretary and any other officers it deems necessary."

## **Chapter 52 Section 6 Laws 2017**

SECTION 6. 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, 2023 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, 2024. Effective July 1, 2024, the Architectural Act is repealed."

## **Chapter 52 Section 7 Laws 2017**

SECTION 7. 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 professional surveyors is terminated on July 1, 2023 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, 2024. Effective July 1, 2024, the Engineering and Surveying Practice Act is repealed."

## **Chapter 52 Section 8 Laws 2017**

SECTION 8. Section 61-27B-6 NMSA 1978 (being Laws 2007, Chapter 115, Section 6) is amended to read:

"61-27B-6. PRIVATE INVESTIGATIONS ADVISORY BOARD--CREATED--MEMBERS.--

A. The "private investigations advisory board" is created.

B. The superintendent of regulation and licensing shall appoint members to the advisory board to assist in the conduct of the examination process for licensees and registrants and to assist the department in other manners as requested by the superintendent or provided for in rules of the department.

C. The advisory board members shall consist of at least the following:

- (1) one private investigator;
- (2) one private patrol operator;
- (3) one polygraph examiner; and
- (4) two members of the public.

D. Members of the advisory board shall be reimbursed pursuant to the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance for each day spent in the discharge of their duties.

E. The public members of the advisory board or their spouses shall not:

(1) have been licensed pursuant to the Private Investigations Act or any prior similar statutory provisions; or

(2) have a direct or indirect financial interest in a private investigation company, private patrol company, polygraph business or a related business."

## **Chapter 52 Section 9 Laws 2017**

SECTION 9. Section 61-27B-27 NMSA 1978 (being Laws 1993, Chapter 212, Section 14, as amended) is amended to read:

"61-27B-27. HEARING--PENALTIES.--

A. A person who is denied a license or registration or who has a license or registration suspended or revoked shall be entitled to a hearing before the department if within twenty days after the denial, suspension or revocation a request for a hearing is received by the department. The procedures of the Uniform Licensing Act shall be followed pertaining to the hearing to the extent that they do not conflict with the provisions of the Private Investigations Act.

B. In accordance with the provisions of the Uniform Licensing Act, and in addition to other penalties provided by law, the department may impose the following:

(1) for a violation of the Private Investigations Act, a civil penalty not to exceed one thousand dollars (\$1,000) for each violation; and

(2) against a person who is found by the department to be engaging in a practice regulated by the department without an appropriate license or registration, civil penalties not to exceed two thousand dollars (\$2,000)."

## **Chapter 52 Section 10 Laws 2017**

SECTION 10. 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, 2023 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, 2024. Effective July 1, 2024, Chapter 61, Article 24C NMSA 1978 is repealed."

## **Chapter 52 Section 11 Laws 2017**

SECTION 11. Section 61-27B-36 NMSA 1978 (being Laws 2007, Chapter 115, Section 35, as amended) is amended to read:

"61-27B-36. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The private investigations advisory board is terminated on July 1, 2023 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of the Private Investigations Act until July 1, 2024. Effective July 1, 2024, Chapter 61, Article 27B NMSA 1978 is repealed."

## **Chapter 52 Section 12 Laws 2017**

SECTION 12. Section 61-28B-20 NMSA 1978 (being Laws 1999, Chapter 179, Section 20, as amended) is amended to read:

"61-28B-20. ENFORCEMENT--ADMINISTRATIVE VIOLATIONS AND REMEDIES.--

A. The board may take, after providing a person due process pursuant to the Uniform Licensing Act, corrective action identified in Subsection B of this section following a finding that an applicant or licensee:

- (1) committed fraud or deceit in obtaining a certificate or permit;
- (2) lost a certificate or permit through cancellation, revocation, suspension or refusal of renewal in any other state for cause, as defined by board rule;
- (3) failed to maintain compliance with the

requirements of the 1999 Public Accountancy Act and board rules for issuance or renewal of a certificate or permit or failed to report material changes to the board, as required by board rule;

(4) lost the authorization to practice in any state or before any federal agency through revocation or suspension of that authorization;

(5) committed dishonest, fraudulent or grossly negligent acts in the practice of public accountancy or in the filing or failure to file the applicant's or licensee's own income or other federal, state or local tax returns;

(6) violated a provision of the 1999 Public Accountancy Act or a rule promulgated by the board pursuant to that act;

(7) violated a rule of professional conduct promulgated by the board pursuant to the 1999 Public Accountancy Act;

(8) has been convicted of a felony or of a crime an element of which is dishonesty or fraud under the laws of the United States, of New Mexico or of any other state, or of any other jurisdiction, if the acts involved would have constituted a crime under the laws of New Mexico;

(9) performed a fraudulent act while holding a certificate or permit issued pursuant to the 1999 Public Accountancy Act or prior law; or

(10) participated in any conduct reflecting adversely upon the applicant's or licensee's fitness to engage in practice.

B. After a finding by the board that an applicant or licensee has committed a violation identified in Subsection A of this section, the board may take, with or without terms, conditions and limitations, one or more of the following corrective actions:

(1) deny an application or revoke a certificate or permit issued pursuant to the 1999 Public Accountancy Act or corresponding provisions of prior law;

(2) suspend a certificate or permit for a period of not more than five years;

(3) reprimand, censure or limit the scope of practice of a licensee;

(4) impose an administrative fine not exceeding ten thousand dollars (\$10,000); or

(5) place the licensee on probation.

C. In lieu of or in addition to a remedy specifically provided in Subsection B of this section, the board may require of a licensee:

(1) a quality review conducted in such a fashion as the board may specify;

(2) satisfactory completion of such continuing professional education programs as the board may specify;

(3) correction of the violation identified; and

(4) any other suitable remedial action as determined by the board.

D. In a proceeding in which a remedy provided by Subsection B or C of this section is imposed, the board may also require the respondent to pay the costs of the proceeding.

E. The provisions of Section 61-1-3.2 NMSA 1978 notwithstanding, the board may impose a civil penalty in an amount not to exceed two thousand dollars (\$2,000) against a person who engages in public accountancy without a license. In addition, the board may assess the person for administrative costs, including investigative costs and the cost of conducting a hearing."

## **Chapter 52 Section 13 Laws 2017**

SECTION 13. Section 61-28B-29 NMSA 1978 (being Laws 1999, Chapter 179, Section 29, as amended) is amended to read:

"61-28B-29. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The New Mexico public accountancy board is terminated on July 1, 2023 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, 2024. Effective July 1, 2024, the 1999 Public Accountancy Act is repealed."

## **Chapter 52 Section 14 Laws 2017**

SECTION 14. Section 61-30-22 NMSA 1978 (being Laws 1990, Chapter 75, Section 22, as amended) is amended to read:

"61-30-22. CIVIL AND CRIMINAL PENALTIES--INJUNCTIVE RELIEF.--

A. Any person who violates any provision of the Real Estate Appraisers Act is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars (\$1,000) or by imprisonment for not more than six months or both.

B. In the event any person has engaged in or proposes to engage in any act or practice violating a provision of the Real Estate Appraisers Act, the attorney general or the district attorney of the judicial district in which the person resides or the judicial district in which the violation has occurred or will occur shall, upon application of the board, maintain an action in the name of the state to prosecute the violation or to enjoin the proposed act or practice.

C. The board may impose a civil penalty in an amount not to exceed one thousand dollars (\$1,000) for each violation of the Real Estate Appraisers Act and assess administrative costs for any investigation and administrative or other proceedings against a real estate appraiser trainee, a state licensed residential real estate appraiser or a state certified real estate appraiser. The provisions of Section 61-1-3.2 NMSA 1978 notwithstanding, the board may impose a civil penalty not to exceed two thousand dollars (\$2,000) against any person who is found, through an

administrative proceeding, to have acted without a license. Appeals from decisions of the board shall be taken as provided in Section 39-3-1.1 NMSA 1978."

## **Chapter 52 Section 15 Laws 2017**

SECTION 15. 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, 2023. The Real Estate Appraisers Act shall continue in effect until July 1, 2024. Chapter 61, Article 30 NMSA 1978 is repealed effective July 1, 2024."

## **Chapter 52 Section 16 Laws 2017**

SECTION 16. Section 61-32-6 NMSA 1978 (being Laws 1993, Chapter 204, Section 6, as amended) is amended to read:

"61-32-6. BOARD POWERS.--

A. In addition to any other authority provided by law, the board has the power to:

- (1) adopt, in accordance with the provisions of the Uniform Licensing Act, and file, in accordance with the State Rules Act, rules necessary to carry out the provisions of the Funeral Services Act;
- (2) adopt rules implementing continuing education requirements;
- (3) conduct hearings upon charges relating to the discipline of licensees and take administrative actions pursuant to Section 61-1-3 NMSA 1978;
- (4) establish reasonable fees to carry out the provisions of the Funeral Services Act;
- (5) provide for investigations necessary to determine violations of the Funeral Services Act;
- (6) establish committees as the board deems necessary for carrying out the provisions of the Funeral Services Act;
- (7) apply for injunctive relief to enforce the provisions of the Funeral Services Act or to restrain any violation of that act; and
- (8) conduct criminal background checks on applicants for licensure.

B. No action or other legal proceedings for damages shall be instituted against the board, any board member or employee of the board for any act performed in good faith and in the intended performance of any power or duty granted under the Funeral Services Act or for any neglect or default in the good faith performance or exercise of any such power or duty."

## **Chapter 52 Section 17 Laws 2017**

SECTION 17. Section 61-32-23 NMSA 1978 (being Laws 1993, Chapter 204, Section 23, as amended) is amended to read:

"61-32-23. FEES AND FINES.--The board shall establish by rule a schedule of reasonable fees and fines for applications, examinations, licenses, inspections, renewals, penalties, reinstatements and necessary administrative fees. All fees collected shall be deposited in accordance with Section 61-32-26 NMSA 1978. All fines collected shall be deposited in the current school fund."

## **Chapter 52 Section 18 Laws 2017**

SECTION 18. Section 61-32-26 NMSA 1978 (being Laws 1993, Chapter 204, Section 26, as amended) is amended to read:

"61-32-26. FUND ESTABLISHED.--

A. There is created in the state treasury the "funeral services fund".

B. All fees and costs received or collected by the board or the department pursuant to provisions of the Funeral Services Act shall be deposited with the state treasurer for credit to the funeral services fund. The state treasurer shall invest the fund as other state funds are invested. All balances in the fund at the end of any fiscal year shall remain in the fund and shall not revert to the general fund.

C. Money in the funeral services fund is appropriated to the board and shall be used only for the purpose of carrying out the provisions of the Funeral Services Act."

## **Chapter 52 Section 19 Laws 2017**

SECTION 19. Section 61-32-30.1 NMSA 1978 (being Laws 2003, Chapter 420, Section 11, as amended) is amended to read:

"61-32-30.1. UNLICENSED ACTIVITY--CIVIL PENALTY.--The provisions of Section 61-1-3.2 NMSA 1978 notwithstanding, the board may impose a fine in an amount not to exceed two thousand dollars (\$2,000) and costs on a person who is found to have acted without a license in violation of the Funeral Services Act by a court or an administrative proceeding as provided for in the Funeral Services Act."

## **Chapter 52 Section 20 Laws 2017**

SECTION 20. 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 funeral services is terminated on July 1, 2023 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, 2024. Effective July 1, 2024, the Funeral Services Act is repealed."

## **Chapter 52 Section 21 Laws 2017**

SECTION 21. TEMPORARY PROVISION--BOARD PUBLIC MEMBERS.--In carrying out the statutory requirement to replace professional members with public members on the board of examiners for architects and the private investigations advisory board, the governor shall appoint a public member to replace the applicable professional member whose term first expires after the effective date of this act. If a vacancy occurs in an applicable professional member position prior to the expiration of that term, the governor shall appoint a public member, and that position shall become a public member position.

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HBIC/House Bill 295  
Approved April 6, 2017

# **LAWS 2017, CHAPTER 53**

AN ACT

RELATING TO PUBLIC SCHOOLS; AMENDING THE PUBLIC SCHOOL CODE TO REQUIRE THE SENDING SCHOOL DISTRICT AND THE RECEIVING SCHOOL DISTRICT ENROLLING A HIGH SCHOOL STUDENT WHO HAS EXPERIENCED DISRUPTION IN THE EDUCATION PROCESS THROUGH NO FAULT OF THE STUDENT TO PROVIDE THAT STUDENT WITH OPPORTUNITIES TO PARTICIPATE IN COMPARABLE SCHOOL ACADEMIC PROGRAMS AND EXTRACURRICULAR ACTIVITIES FOR WHICH THE STUDENT IS ELIGIBLE AND TO EARN CREDITS AND GRADUATE FROM HIGH SCHOOL.

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

## **Chapter 53 Section 1 Laws 2017**

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

"TIMELY GRADUATION AND SUPPORT FOR STUDENTS WHO EXPERIENCE DISRUPTION IN THE STUDENT'S EDUCATION.--

A. For purposes of this section, "a student who has experienced disruption in the student's education" means a student who experiences one or more changes in school or school district enrollment during a single school year as the result of:

(1) homelessness as defined in the federal McKinney-Vento Homeless Assistance Act as determined by the school or school district;

(2) adjudication:

(a) as an abused or neglected child as determined by the children, youth and families department pursuant to the Abuse and Neglect Act;

(b) as part of a family in need of court-ordered services voluntary placement pursuant to the Family Services Act; or

(c) as a delinquent if the parent wishes to disclose the adjudication of delinquency; or

(3) placement in a mental health treatment facility or habilitation program for developmental disabilities pursuant to the Children's Mental Health and Developmental Disabilities Act or placement in treatment foster care.

B. When a student who has experienced a disruption in the student's education transfers to a new public school or school district, the receiving school or school district shall communicate with the sending school district within two days of the student's enrollment. The sending school or school district shall provide the receiving school or school district with any requested records within two days of having received the receiving school's or school district's communication.

C. A student who has experienced a disruption in the student's education transferring to a new school as the result of circumstances set forth in this section shall have:

(1) priority placement in classes that meet state graduation requirements; and

(2) timely placement in elective classes that are comparable to those in which the student was enrolled at the student's previous school or schools as soon as the school or school district receives verification from the student's records.

D. For a student who has experienced disruption in the student's education at any time during the student's high school enrollment, a school district and public schools shall ensure:

(1) acceptance of the student's state graduation requirements for a diploma of excellence pursuant to the Public School Code;

(2) equal access to participation in sports and other extracurricular activities, career and technical programs or other special programs for which the student qualifies;

(3) timely assistance and advice from counselors to improve the student's college or career readiness; and

(4) that the student receives all special education services to which the student is entitled."

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House Bill 301, aa  
Approved April 6, 2017

## **LAWS 2017, CHAPTER 54**

### AN ACT

RELATING TO MOTOR VEHICLES; REDEFINING "AUTOCYCLE".

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

### **Chapter 54 Section 1 Laws 2017**

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 a significant mobility limitation to safely exit and enter a motor vehicle that is immediately adjacent to a designated parking space for persons with significant mobility limitation 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 and maintained with blue striping and, after January 1, 2011, the words "NO PARKING" in capital letters, each of which shall be at least one foot high and at least two inches wide, placed at the rear of the access aisle so as to be close to where an adjacent vehicle's rear tires would be placed;

C. "actual empty weight" means the weight of a vehicle without a load;

D. "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 C 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;

E. "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;

F. "authorized emergency vehicle" means any fire department vehicle, police vehicle and 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;

G. "autocycle" means a three-wheeled motorcycle on which the driver and all

passengers ride in a completely or partially enclosed seating area and that is manufactured to comply with all applicable federal standards, regulations and laws and is equipped with:

- (1) non-straddle seating;
- (2) rollover protection;
- (3) safety belts for all occupants;
- (4) antilock brakes;

(5) a steering wheel; and

(6) pedals; and

H. "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."

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House Bill 302, aa  
Approved April 6, 2017

## **LAWS 2017, CHAPTER 55**

AN ACT

RELATING TO PROCUREMENT; ADDING EXTENSION OF FOUR-YEAR CONTRACT TIME PERIOD FOR CAPITAL IMPROVEMENT PROJECT DESIGN AND ENGINEERING SERVICES.

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

### **Chapter 55 Section 1 Laws 2017**

SECTION 1. Section 13-1-150 NMSA 1978 (being Laws 1984, Chapter 65, Section 123, as amended) is amended to read:

"13-1-150. MULTI-TERM CONTRACTS--SPECIFIED PERIOD.--

A. A multi-term contract for items of tangible personal property, construction or services except for professional services, in an amount under twenty-five thousand dollars (\$25,000), may be entered into for any period of time deemed to be in the best interests of the state agency or a local public body not to exceed four years; provided that the term of the contract and conditions of renewal or extension, if any, are included in the specifications and funds are available for the first fiscal period at the time of contracting. If the amount of the contract is twenty-five thousand dollars (\$25,000) or more, the term shall not exceed eight years, including all extensions and renewals, except that for a contract entered into pursuant to the Public Facility Energy Efficiency and Water Conservation Act, the term shall not exceed twenty-five years, including all extensions and renewals. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor.

B. A contract for professional services may not exceed four years, including all extensions and renewals, except for the following:

(1) services required to support or operate federally certified medicaid, financial assistance and child support enforcement management information or payment systems;

(2) services to design, develop or implement the taxation and revenue information management systems project authorized by Laws 1997, Chapter 125;

(3) a multi-term contract for the services of trustees, escrow agents, registrars, paying agents, letter of credit issuers and other forms of credit enhancement and other similar services, excluding bond attorneys, underwriters and financial advisors with regard to the issuance, sale and delivery of public securities, may be for the life of the securities or as long as the securities remain outstanding;

(4) services relating to the implementation, operation and administration of the Education Trust Act;

(5) services relating to measurement and verification of conservation-related cost savings and utility cost savings pursuant to the Public Facility Energy Efficiency and Water Conservation Act; and

(6) services relating to the design and engineering of a state public works project:

(a) for a period not to exceed the requisite time for project completion and a subsequent warranty period; and

(b) upon approval of the secretary of finance and administration."

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House Bill 317, aa  
Approved April 6, 2017

## **LAWS 2017, CHAPTER 56**

AN ACT

RELATING TO COUNTY SHERIFFS; ALLOWING THE HIGHEST-RANKING DEPUTY SHERIFF TO EXERCISE THE POWERS OF SHERIFF UNTIL A SHERIFF HAS BEEN APPOINTED AND QUALIFIED; DECLARING AN EMERGENCY.

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

### **Chapter 56 Section 1 Laws 2017**

SECTION 1. Section 4-41-9 NMSA 1978 (being Laws 1855-1856, Chapter 2, Section 3, as amended) is amended to read:

"4-41-9. POWERS OF DEPUTY SHERIFF.--Deputies are authorized to discharge all the duties that belong to the office of sheriff that may be placed under their charge by their principals, with the same effect as though they were executed by the respective sheriffs. If there is a vacancy in the office of sheriff, the highest-ranking deputy sheriff or under-sheriff, who is qualified to hold the office of sheriff, shall exercise the powers of sheriff until a sheriff is appointed and qualified."

### **Chapter 56 Section 2 Laws 2017**

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

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House Bill 321, aa, w/ec  
Approved April 6, 2017

## **LAWS 2017, CHAPTER 57**

AN ACT

RELATING TO OIL AND GAS; AMENDING SECTIONS OF THE LPG AND CNG ACT TO DEFINE "LIQUEFIED NATURAL GASES" AND "LNG"; PROVIDING A PENALTY.

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

### **Chapter 57 Section 1 Laws 2017**

SECTION 1. Section 70-5-1 NMSA 1978 (being Laws 1947, Chapter 214, Section 1, as amended) is amended to read:

"70-5-1. DEFINITIONS.--As used in the LPG and CNG Act:

A. "liquefied petroleum gases", "LPG" or "LP gas" means any material that is composed predominantly of any of the following hydrocarbons or mixtures of them: propane, propylene, butanes (normal butane or iso-butane) and butylenes;

B. "compressed natural gases", "CNG", "liquefied natural gases" and "LNG" means mixtures of hydrocarbon gases, vapors or liquids consisting principally of methane that has been compressed for vehicular fuel;

C. "product" or "products" of liquefied petroleum gases or compressed natural gases are considered to be liquefied petroleum gases or compressed natural gases, respectively;

D. "qualified instructor" means an employee, owner or other qualified individual who has passed the required examination and performed for at least one year the work being taught;

E. "inspector" means a person hired by the bureau to enforce under administrative direction the laws and safety rules and regulations of the bureau with respect to the LP gas industry and the use of CNG and LNG in motor vehicles;

F. "division" means the construction industries division of the regulation and licensing department;

G. "bureau" means the liquefied petroleum and compressed gas bureau of the division; and

H. "commission" means the construction industries commission."

## **Chapter 57 Section 2 Laws 2017**

SECTION 2. Section 70-5-21 NMSA 1978 (being Laws 1947, Chapter 214, Section 22, as amended) is amended to read:

"70-5-21. MISDEMEANOR.--Any person violating any provision of the LPG and CNG Act or the rules, regulations or orders of the bureau or the commission issued pursuant to that act is guilty of a misdemeanor and shall be punished pursuant to Subsection A of Section 31-19-1 NMSA 1978."

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House Bill 322, aa  
Approved April 6, 2017

## **LAWS 2017, CHAPTER 58**

AN ACT

RELATING TO HEALTH INSURANCE; AMENDING A SECTION OF THE NEW MEXICO INSURANCE CODE TO REMOVE STOP LOSS INSURANCE FROM THE

LIST OF ACCIDENT AND HEALTH INSURANCE PRODUCTS AND AUTHORIZE CERTAIN INSURERS TO WRITE STOP LOSS LIABILITY INSURANCE.

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

**Chapter 58 Section 1 Laws 2017**

SECTION 1. Section 59A-7-3 NMSA 1978 (being Laws 2016, Chapter 89, Section 6) is amended to read:

"59A-7-3. ACCIDENT AND HEALTH INSURANCE.--

A. Accident and health includes:

- (1) accident;
- (2) accidental death and dismemberment;
- (3) blanket accident and sickness;
- (4) credit disability;
- (5) critical illness;
- (6) dental;
- (7) disability income;
- (8) home health care;
- (9) hospital indemnity;
- (10) long-term care;
- (11) major medical;
- (12) medical expense;
- (13) medicare supplement;
- (14) prescription drug;
- (15) sickness;
- (16) specified disease;

(17) vision; and

(18) similar products relating to accident and health matters.

B. An insurer or a health maintenance organization authorized to transact accident and health insurance may write stop loss liability insurance as listed in Subsection YY of Section 59A-7-6 NMSA 1978."

## **Chapter 58 Section 2 Laws 2017**

SECTION 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2017."

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House Bill 336, aa  
Approved April 6, 2017

## **LAWS 2017, CHAPTER 59**

AN ACT

RELATING TO HEALTH; ENACTING NEW SECTIONS OF THE NMSA 1978 TO REQUIRE THAT CERTAIN PERSONS PROVIDE OPIOID OVERDOSE EDUCATION AND NALOXONE TO PREVENT OPIOID OVERDOSE DEATHS.

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

## **Chapter 59 Section 1 Laws 2017**

SECTION 1. OPIOID TREATMENT CENTER--OPIOID OVERDOSE EDUCATION--NALOXONE.--

A. As agency funding and agency supplies of naloxone permit, an opioid treatment center agency operating a federally certified program to dispense methadone or other narcotic replacement as part of a detoxification treatment or maintenance treatment shall provide each patient it treats with:

(1) opioid overdose education that:

(a) conforms to department of health or federal substance abuse and mental health services administration guidelines for opioid overdose education;

(b) explains the causes of an opioid overdose;

(c) instructs when and how to administer in accordance with medical best practices: 1) life-saving rescue techniques; and 2) an opioid antagonist; and

(d) explains how to contact appropriate emergency medical services;

(2) two doses of naloxone in either a generic form or in a form approved by the federal food and drug administration; and

(3) a prescription for naloxone.

B. As used in this section, "naloxone" means naloxone hydrochloride, which is an opioid antagonist for the treatment of opioid overdose.

## **Chapter 59 Section 2 Laws 2017**

SECTION 2. A new section of Chapter 29 NMSA 1978 is enacted to read:

"LAW ENFORCEMENT OFFICERS--NALOXONE RESCUE KIT.--

A. As agency funding and agency supplies of naloxone rescue kits permit, each local and state law enforcement agency shall provide naloxone rescue kits to its law enforcement officers and require that officers carry the naloxone rescue kits in accordance with agency procedures so as to optimize the officers' capacity to timely assist in the prevention of opioid overdoses.

B. Nothing in this section shall be construed to impose civil or criminal liability on a local or state law enforcement agency or law enforcement officer when ordinary care is used in the administration or provision of naloxone in cases where an individual appears to be experiencing an opioid overdose.

C. As used in this section:

(1) "naloxone" means naloxone hydrochloride, which is an opioid antagonist for the treatment of opioid overdose; and

(2) "naloxone rescue kit" means a kit containing:

(a) two doses of naloxone in either a generic form or in a form approved by the federal food and drug administration; and

(b) overdose education materials that conform to department of health or federal substance abuse and mental health services administration guidelines for opioid overdose education that explain the signs and causes of an opioid

overdose and instruct when and how to administer in accordance with medical best practices: 1) life-saving rescue techniques; and 2) an opioid antagonist."

## **Chapter 59 Section 3 Laws 2017**

SECTION 3. A new section of Chapter 33 NMSA 1978 is enacted to read:

"DISCHARGE--OPIOID USE DISORDER--OPIOID OVERDOSE EDUCATION--NALOXONE.--

A. As corrections department funding and department supplies of naloxone permit, upon discharge of an inmate who has been diagnosed with an opioid use disorder from a corrections facility, regardless of whether that inmate has received treatment for that disorder, the corrections department shall:

(1) ensure that the inmate is provided with opioid overdose education that:

(a) conforms to department of health or federal substance abuse and mental health services administration guidelines for opioid overdose education;

(b) explains the causes of an opioid overdose;

(c) instructs when and how to administer in accordance with medical best practices: 1) life-saving rescue techniques; and 2) an opioid antagonist; and

(d) explains how to contact appropriate emergency medical services; and

(2) provide the inmate, as the inmate leaves the correctional facility, with:

(a) two doses of naloxone in either a generic form or in a form approved by the federal food and drug administration; and

(b) a prescription for naloxone.

B. As used in this section:

(1) "corrections facility" means a prison or other detention facility, whether operated by a government or private contractor, that is used for confinement of adult or juvenile persons who are charged with or convicted of a violation of a law or an ordinance; and

(2) "naloxone" means naloxone hydrochloride, which is an opioid antagonist for the treatment of an opioid overdose."

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HHHC/House Bill 370  
Approved April 6, 2017

## **LAWS 2017, CHAPTER 60**

### **AN ACT**

RELATING TO TAXATION; AMENDING SECTION 7-15A-14 NMSA 1978 (BEING LAWS 2003 (1ST S.S.), CHAPTER 3, SECTION 8, AS AMENDED) TO INCLUDE THE DEPARTMENT OF PUBLIC SAFETY AND THE DEPARTMENT OF TRANSPORTATION AS ELIGIBLE RECIPIENTS OF THE WEIGHT DISTANCE TAX IDENTIFICATION PERMIT FUND TO PAY THE COSTS OF ADMINISTRATION AND COMPLIANCE ENFORCEMENT OF THE WEIGHT DISTANCE TAX ACT.

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

### **Chapter 60 Section 1 Laws 2017**

SECTION 1. Section 7-15A-14 NMSA 1978 (being Laws 2003 (1st S.S.), Chapter 3, Section 8, as amended) is amended to read:

"7-15A-14. WEIGHT DISTANCE TAX IDENTIFICATION PERMIT FUND.--The "weight distance tax identification permit fund" is created in the state treasury. The purpose of the fund is to provide an account from which the department, the department of public safety and the department of transportation may pay the costs of issuing and administering weight distance tax identification permits and of enforcing weight distance tax compliance. The fund shall consist of administrative fees collected pursuant to the Weight Distance Tax Act. Money in the fund shall be appropriated to the department, the department of public safety and the department of transportation to pay for the cost of issuance and administration of weight distance tax identification permits and of enforcement by the department, the department of public safety and the department of transportation of weight distance tax compliance for motor carriers with the provisions of the Weight Distance Tax Act. Disbursements from the fund shall be by warrant of the secretary of finance and administration upon vouchers signed by the secretary or the secretary's authorized representative. Money in the fund shall not revert to the general fund at the end of a fiscal year."

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House Bill 377, aa  
Approved April 6, 2017

# **LAWS 2017, CHAPTER 61**

AN ACT

RELATING TO COURTS; REDUCING MILEAGE REIMBURSEMENT FOR CERTAIN JURORS.

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

## **Chapter 61 Section 1 Laws 2017**

SECTION 1. Section 35-8-7 NMSA 1978 (being Laws 1991, Chapter 82, Section 13) is amended to read:

"35-8-7. MAGISTRATE CIVIL JURY FEES.--

A. In each action in the magistrate court in which a jury is summoned, persons summoned for jury service and jurors shall be compensated for their time in attendance and service at the highest prevailing minimum-wage rate.

B. Those persons shall also be reimbursed for travel in excess of forty miles round trip from their place of actual residence to the court, when their attendance is ordered, at the rate allowed public officers and employees per mile of necessary travel.

C. Those costs shall be charged against the party requesting the jury in a civil action, though no costs shall be charged against the state. All costs collected by the magistrate under this section shall be remitted to the administrative office of the courts, and all jurors shall be paid by the state treasurer in the same manner as other magistrate court expenses are paid."

## **Chapter 61 Section 2 Laws 2017**

SECTION 2. Section 38-5-15 NMSA 1978 (being Laws 1969, Chapter 222, Section 15, as amended) is amended to read:

"38-5-15. MILEAGE AND COMPENSATION FOR JURORS.--Persons summoned for jury service and jurors shall be reimbursed for travel in excess of forty miles round trip from their place of actual residence to the courthouse when their attendance is ordered at the rate allowed public officers and employees per mile of necessary travel. Persons summoned for jury service and jurors shall be compensated for their time in attendance and service at the highest prevailing state minimum wage rate."

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House Bill 385, aa, w/o ec

Approved April 6, 2017

## **LAWS 2017, CHAPTER 62**

AN ACT

RELATING TO KINSHIP GUARDIANSHIP; AMENDING THE CAREGIVER'S AUTHORIZATION AFFIDAVIT TO INCLUDE PRE-SCHOOL CARE.

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

### **Chapter 62 Section 1 Laws 2017**

SECTION 1. Section 40-10B-15 NMSA 1978 (being Laws 2001, Chapter 167, Section 15) is amended to read:

"40-10B-15. CAREGIVER'S AUTHORIZATION AFFIDAVIT.--

A. A caregiver who executes a caregiver's authorization affidavit substantially in the form contained in Subsection J of this section by completing Items 1 through 4 of the form and who subscribes and swears to it before a notary public, is authorized to:

(1) enroll the named child in early intervention services, child development programs, headstart, preschool or a kindergarten through grade twelve school;

(2) consent to medical care, including school-related medical care, immunizations, sports physical examinations, dental care and mental health care; and

(3) be the authorized contact person for school-related purposes.

B. A caregiver who is a relative of the child, who executes a caregiver's authorization affidavit substantially in the form set forth in Subsection J of this section by completing Items 1 through 7 and who subscribes and swears to the affidavit before a notary public, has the same authority to authorize medical care, dental care and mental health care for the child as a guardian appointed pursuant to the Kinship Guardianship Act.

C. A caregiver's authorization affidavit executed pursuant to this section is not valid for more than one year after the date of its execution.

D. The decision of a caregiver to consent to or refuse medical, dental or mental health care pursuant to a caregiver's authorization affidavit is superseded by a

contravening decision of a parent or other person having legal custody of the child if the contravening decision does not jeopardize the life, health or safety of the child.

E. No person who acts in good faith reliance on a caregiver's authorization affidavit to provide medical, dental or mental health care to a child without actual knowledge of facts contrary to those stated in the affidavit is subject to criminal culpability, civil liability or professional disciplinary action if the affidavit complies with the requirements of this section. The foregoing exclusions apply even though a parent having parental rights or person having legal custody of the child has contrary wishes as long as the provider of the care has no actual knowledge of the contrary wishes.

F. A person who relies upon a caregiver's authorization affidavit is under no duty to make further inquiry or investigation.

G. If a child stops living with the caregiver, the caregiver shall give notice of that fact to a school, early intervention services provider, child development program provider, headstart provider, preschool or kindergarten through grade twelve school, medical or dental

health care provider, mental health care provider, health insurer or other person who has been given a copy of the caregiver's authorization affidavit.

H. A caregiver's authorization affidavit is invalid unless it contains the warning statement set out in the form contained in Subsection J of this section in not less than ten-point boldface type, or a reasonable equivalent thereof, enclosed in a box with three-point rule lines.

I. As used in this section, "school-related medical care" means medical care that is required by the state or a local government authority as a condition for school enrollment.

J. The caregiver's authorization affidavit shall be in substantially the following form:

"Caregiver's Authorization Affidavit"

Use of this affidavit is authorized by the Kinship Guardianship Act.

Instructions:

A. Completion of Items 1-4 and the signing of the affidavit is sufficient to authorize the caregiver to:

(1) enroll a minor in early intervention services, child development programs, headstart, preschool or a kindergarten through grade twelve school ("school");

(2) consent to medical care, including school-related medical care, immunizations, sports physical examinations, dental care and mental health care; and

(3) be the authorized contact person for school-related purposes.

B. Completion of Items 5-7 is additionally required to authorize any other medical care.

Print clearly:

The minor named below lives in my home and I am 18 years of age or older.

1. Name of minor: \_\_\_\_\_.

2. Minor's birth date: \_\_\_\_\_.

3. My name (adult giving authorization): \_\_\_\_\_.

4. My home address: \_\_\_\_\_.

5. Check one or both (for example, if one parent was advised and the other cannot be located):

I have advised the parent(s) or other person(s) having legal custody of the minor of my intent to authorize medical care, and have received no objection.

I am unable to contact the parent(s) or other person(s) having legal custody of the minor at this time, to notify them of my intended authorization.

6. My date of birth: \_\_\_\_\_.

7. My NM driver's license or other identification card number:

\_\_\_\_\_.

**WARNING:** Do not sign this form if any of the statements above are incorrect, or you will be committing a crime punishable by a fine, imprisonment or both.

I declare under penalty of perjury under the laws of the state of New Mexico that the foregoing is true and correct.

Signed: \_\_\_\_\_

The foregoing affidavit was subscribed, sworn to and acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_.

My commission expires: \_\_\_\_\_

Notary Public

Notices:

1. This declaration does not affect the rights of the minor's parents or legal guardian regarding the care, custody and control of the minor and does not mean that the caregiver has legal custody of the minor.
2. A person who relies on this affidavit has no obligation to make any further inquiry or investigation.
3. This affidavit is not valid for more than one year after the date on which it is executed.

Additional Information:

TO CAREGIVERS:

1. If the minor stops living with you, you are required to notify any school, early intervention services provider, child development program provider, headstart provider, preschool or kindergarten through grade twelve school, medical or dental health care provider, mental health care provider, health insurer or other person to whom you have given this affidavit.
2. If you do not have the information requested in Item 7, provide another form of identification such as your social security number or medicaid number.

TO HEALTH CARE PROVIDERS AND HEALTH CARE SERVICE PLANS:

1. No person who acts in good faith reliance upon a caregiver's authorization affidavit to provide medical, dental or mental health care, without actual knowledge of facts contrary to those stated on the affidavit, is subject to criminal liability or to civil liability to any person, or is subject to professional disciplinary action, for such reliance if the applicable portions of the form are completed.
2. This affidavit does not confer dependency for health care coverage purposes."

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House Bill 394, aa, w/cc

Approved April 6, 2017

**LAWS 2017, CHAPTER 63**

AN ACT

RELATING TO TAX ADMINISTRATION; AMENDING DEFINITIONS IN THE TAX ADMINISTRATION ACT; MAKING CHANGES TO SECTIONS OF LAW RELATING TO DISPUTING TAX LIABILITIES; CLARIFYING THAT THE MEANING OF "TAX" MEANS AMOUNT OF TAX DUE AND PENALTIES AND INTEREST; PROVIDING THAT NO INTEREST ON A CLAIM FOR REFUND OF AN OVERPAID TAX SHALL BE PAID UNLESS A COMPLETE CLAIM IS FILED WITHIN A SPECIFIED AMOUNT OF TIME; CONFORMING SECTIONS OF LAW IN THE NMSA 1978; REPEALING LAWS 2009, CHAPTER 241, SECTION 1 AND LAWS 2009, CHAPTER 242, SECTION 2.

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

### **Chapter 63 Section 1 Laws 2017**

SECTION 1. Section 6-21-6.7 NMSA 1978 (being Laws 2003, Chapter 341, Section 5, as amended) 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 E 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 comprehensive cancer 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 C or Subsection D, 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 C or Subsection D,

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 E of Section 7-1-6.11 NMSA 1978 and to distribute those cigarette tax proceeds to the general fund.

F. Any law authorizing the imposition, collection or distribution of the cigarette tax or that affects the cigarette tax shall not be amended, repealed or otherwise directly or indirectly modified so as to impair 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 63 Section 2 Laws 2017**

SECTION 2. Section 6-21-6.10 NMSA 1978 (being Laws 2005, Chapter 58, Section 1, as amended) is amended to read:

"6-21-6.10. NEW MEXICO FINANCE AUTHORITY REVENUE BONDS--  
PURPOSE--APPROPRIATION.--

A. The 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 authority pursuant to Subsection B of Section 7-1-6.11 NMSA 1978:

(1) 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; and

(2) shall be deposited in a separate fund or account of the authority; provided that 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.

D. The authority may issue and sell revenue bonds in compliance with the New Mexico Finance Authority Act in an amount not to exceed five million dollars (\$5,000,000) for acquiring land for and planning, designing, constructing and equipping department of health facilities or improvements to those facilities, upon certification from the secretary of health that such projects are needed. The costs associated with issuing the bonds shall be paid from the net proceeds from the sale of the bonds, and the remainder is appropriated to the facilities management division of the general services department for the projects certified pursuant to this subsection.

E. The cigarette tax proceeds distributed to the authority pursuant to Subsection D of Section 7-1-6.11 NMSA 1978:

(1) are appropriated to the authority to be pledged irrevocably for the payment of the principal, interest, premiums and related expenses of the bonds and for payment of the expenses incurred by the authority related to the issuance, sale and administration of the bonds; and

(2) shall be deposited in a separate fund or account of the authority.

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 authority may 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."

## **Chapter 63 Section 3 Laws 2017**

SECTION 3. Section 6-22-2 NMSA 1978 (being Laws 1992, Chapter 105, Section 2) is amended to read:

"6-22-2. DEFINITIONS.--As used in the State Aid Intercept Act:

A. "default" means the actual nonpayment of principal or interest on a local revenue bond when payment is scheduled by the indenture relating the local revenue bond;

B. "local government" means a municipality or county;

C. "local revenue bond" means a bond issued after July 1, 1992 pursuant to Sections 3-33-1 through 3-33-43 NMSA 1978 or Chapter 4, Article 62 NMSA 1978;

D. "qualified local revenue bond" means a local revenue bond for which a state distributions intercept authorization has been granted pursuant to this section;

E. "secretary" means the secretary of finance and administration; and

F. "state distributions" means any or all of the funds distributed to local governments pursuant to Sections 7-1-6.4 and 7-1-6.9 NMSA 1978."

## **Chapter 63 Section 4 Laws 2017**

SECTION 4. Section 7-1-3 NMSA 1978 (being Laws 1965, Chapter 248, Section 3, as amended) is amended to read:

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

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

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

C. "electronic payment" means a payment made by automated clearinghouse deposit, any funds wire transfer system or a credit card, debit card or electronic cash transaction through the internet;

D. "employee of the department" means any employee of the department, including the secretary, or any person acting as agent or authorized to represent or perform services for the department in any capacity with respect to any law made subject to administration and enforcement under the provisions of the Tax Administration Act;

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

F. "hearing officer" means a person who has been designated by the chief hearing officer to serve as a hearing officer and who is:

- (1) the chief hearing officer;
- (2) an employee of the administrative hearings office; or
- (3) a contractor of the administrative hearings office;

G. "Internal Revenue Code" means the Internal Revenue Code of 1986, as that code may be amended or its sections renumbered;

H. "levy" means the lawful power, hereby invested in the secretary, to take into possession or to require the present or future surrender to the secretary or the secretary's delegate of any property or rights to property belonging to a delinquent taxpayer;

I. "local option gross receipts tax" means a tax authorized to be imposed by a county or municipality upon the taxpayer's gross receipts, as that term is defined in the Gross Receipts and Compensating Tax Act, and required to be collected by the department at the same time and in the same manner as the gross receipts tax; "local option gross receipts tax" includes the taxes imposed pursuant to the Municipal Local Option Gross Receipts Taxes Act, Supplemental Municipal Gross Receipts Tax Act, County Local Option Gross Receipts Taxes Act, Local Hospital Gross Receipts Tax Act and County Correctional Facility Gross Receipts Tax Act and such other acts as may be enacted authorizing counties or municipalities to impose taxes on gross receipts, which taxes are to be collected by the department in the same time and in the same manner as it collects the gross receipts tax;

J. "managed audit" means a review and analysis conducted by a taxpayer under an agreement with the department to determine the taxpayer's compliance with a tax administered pursuant to the Tax Administration Act and the presentation of the results to the department for assessment of tax found to be due;

K. "net receipts" means the total amount of money paid by taxpayers to the department in a month pursuant to a tax or tax act less any refunds disbursed in that month with respect to that tax or tax act;

L. "overpayment" means an amount paid, pursuant to any law subject to administration and enforcement under the provisions of the Tax Administration Act, by a person to the department or withheld from the person in excess of tax due from the person to the state at the time of the payment or at the time the amount withheld is credited against tax due;

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

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

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

P. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, limited liability company, limited liability partnership, joint venture, syndicate, other association or gas, water or electric utility owned or operated by a county or municipality; "person" also means, to the extent permitted by law, a federal, state or other governmental unit or subdivision, or an agency, department or instrumentality thereof; and "person", as used in Sections 7-1-72 through 7-1-74 NMSA 1978, also includes an officer or employee of a corporation, a member or employee of a partnership or any individual who, as such, is under a duty to perform any act in respect of which a violation occurs;

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

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

S. "return" means any tax or information return, application or form, declaration of estimated tax or claim for refund, including any amendments or supplements to the return, required or permitted pursuant to a law subject to administration and enforcement pursuant to the Tax Administration Act and filed with the secretary or the secretary's delegate by or on behalf of any person;

T. "return information" means a taxpayer's name, address, government-issued identification number and other identifying information; any information contained in or derived from a taxpayer's return; any information with respect to any actual or possible administrative or legal action by an employee of the department concerning a taxpayer's return, such as audits, managed audits, denial of credits or refunds, assessments of tax, penalty or interest, protests of assessments or denial of refunds or credits, levies or liens; or any other information with respect to a taxpayer's return or tax liability that was not obtained from public sources or that was created by an employee of the department; but "return information" does not include statistical data or other information that cannot be associated with or directly or indirectly identify a particular taxpayer;

U. "secretary" means the secretary of taxation and revenue and, except for purposes of Subsection B of Section 7-1-4 NMSA 1978, also includes the deputy secretary or a division director or deputy division director delegated by the secretary;

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

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

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

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

Z. "tax return preparer" means a person who prepares for others for compensation or who employs one or more persons to prepare for others for compensation any return of income tax, a substantial portion of any return of income tax, any claim for refund with respect to income tax or a substantial portion of any claim for refund with respect to income tax; provided that a person shall not be a "tax return preparer" merely because such person:

(1) furnishes typing, reproducing or other mechanical assistance;

(2) is an employee who prepares an income tax return or claim for refund with respect to an income tax return of the employer, or of an officer or employee of the employer, by whom the person is regularly and continuously employed; or

(3) prepares as a trustee or other fiduciary an income tax return or claim for refund with respect to income tax for any person; and

AA. "taxpayer" means a person liable for payment of any tax; a person responsible for withholding and payment or for collection and payment of any tax; a person to whom an assessment has been made, if the assessment remains unabated or the amount thereof has not been paid; or a person who entered into a special agreement pursuant to Section 7-1-21.1 NMSA 1978 to assume the liability of gross receipts tax or governmental gross receipts tax of another person and the special agreement was approved by the secretary pursuant to the Tax Administration Act."

## **Chapter 63 Section 5 Laws 2017**

SECTION 5. Section 7-1-4.1 NMSA 1978 (being Laws 2003, Chapter 398, Section 1) is amended to read:

"7-1-4.1. NEW MEXICO TAXPAYER BILL OF RIGHTS CREATED--PURPOSE.--  
The "New Mexico Taxpayer Bill of Rights" is created. It is the purpose of the New Mexico Taxpayer Bill of Rights to:

A. ensure that the rights of New Mexico taxpayers are adequately safeguarded and protected during the assessment, collection and enforcement of any tax administered by the department pursuant to the Tax Administration Act;

B. ensure that the taxpayer is treated with dignity and respect; and

C. provide brief but comprehensive statements that explain in simple, nontechnical terms the rights of taxpayers as set forth in Section 7-1-4.2 NMSA 1978."

## **Chapter 63 Section 6 Laws 2017**

SECTION 6. Section 7-1-4.2 NMSA 1978 (being Laws 2003, Chapter 398, Section 2, as amended) is amended to read:

"7-1-4.2. NEW MEXICO TAXPAYER BILL OF RIGHTS.--The rights afforded New Mexico taxpayers during the assessment, collection and enforcement of any tax administered by the department as set forth in the Tax Administration Act include:

A. the right to available public information and prompt and courteous tax assistance;

B. the right to be represented or advised by counsel or other qualified representatives at any time in administrative interactions with the department in accordance with the provisions of Section 7-1-24 NMSA 1978 or the administrative hearings office in accordance with the provisions of the Administrative Hearings Office Act;

C. the right to have audits, inspections of records and meetings conducted at a reasonable time and place in accordance with the provisions of Section 7-1-11 NMSA 1978;

D. the right to have the department conduct its audits in a timely and expeditious manner and be entitled to the tolling of interest as provided in the Tax Administration Act;

E. the right to obtain nontechnical information that explains the procedures, remedies and rights available during audit, protest, appeals and collection proceedings pursuant to the Tax Administration Act;

F. the right to be provided with an explanation of the results of and the basis for audits, assessments or denials of refunds that identify any amount of tax, interest or penalty due;

G. the right to seek review, through formal or informal proceedings, of any findings or adverse decisions relating to determinations during audit or protest procedures in accordance with the provisions of Section 7-1-24 NMSA 1978 and the Administrative Hearings Office Act;

H. the right to have the taxpayer's tax information kept confidential unless otherwise specified by law, in accordance with Sections 7-1-8 through 7-1-8.11 NMSA 1978;

I. the right to abatement of an assessment of taxes determined to have been incorrectly, erroneously or illegally made, as provided in Section 7-1-28 NMSA 1978 and the right to seek a compromise of an asserted tax liability by obtaining a written determination of liability or nonliability when the secretary in good faith is in doubt of the liability as provided in Section 7-1-20 NMSA 1978;

J. upon receipt of a tax assessment, the right to be informed clearly that if the assessment is not paid, secured, protested or otherwise provided for in accordance with the provisions of Section 7-1-16 NMSA 1978, the taxpayer will be a delinquent taxpayer and, upon notice of delinquency, the right to timely notice of any collection actions that will require sale or seizure of the taxpayer's property in accordance with the provisions of the Tax Administration Act; and

K. the right to procedures for payment of tax obligations by installment payment agreements, in accordance with Section 7-1-21 NMSA 1978."

## **Chapter 63 Section 7 Laws 2017**

SECTION 7. Section 7-1-6 NMSA 1978 (being Laws 1978, Chapter 55, Section 1, as amended) is amended to read:

### **"7-1-6. RECEIPTS--DISBURSEMENTS--FUNDS CREATED.--**

A. All money received by the department with respect to laws administered pursuant to the provisions of the Tax Administration Act shall be deposited with the state treasurer before the close of the next succeeding business day after receipt of the money, except that for 1989 and every subsequent year, money received with respect to the Income Tax Act during the period starting with the fifth day prior to the due date for payment of income tax for the year and ending on the tenth day following that due date shall be deposited before the close of the tenth business day after receipt of the money.

B. Money received or disbursed by the department shall be accounted for by the department as required by law or regulation of the secretary of finance and administration.

C. Disbursements for tax credits, tax rebates, refunds, the payment of interest, the payment of fees charged by attorneys or collection agencies for collection of accounts as agent for the department, attorney fees and costs awarded by a court or hearing officer, as the result of oil and gas litigation, the payment of credit card service charges on payments of taxes by use of credit cards, distributions and transfers shall be made by the department of finance and administration upon request and certification of their appropriateness by the secretary or the secretary's delegate.

D. There are hereby created in the state treasury the "tax administration suspense fund", the "extraction taxes suspense fund" and the "workers' compensation collections suspense fund" for the purpose of making the disbursements authorized by the Tax Administration Act.

E. All revenues collected or received by the department pursuant to the provisions of the taxes and tax acts set forth in Subsection A of Section 7-1-2 NMSA 1978 and, through June 30, 2009, federal funds from the temporary assistance for needy families program pursuant to an agreement that the department and the human services department may enter into for the payment of tax refunds, tax rebates and tax credits to low-income families with dependent children otherwise authorized by state and federal law shall be credited to the tax administration suspense fund and are appropriated for the purpose of making the disbursements authorized in this section or otherwise authorized or required by law to be made from the tax administration suspense fund.

F. All revenues collected or received by the department pursuant to the taxes or tax acts set forth in Subsection B of Section 7-1-2 NMSA 1978 shall be credited to the extraction taxes suspense fund and are appropriated for the purpose of making the disbursements authorized in this section or otherwise authorized or required by law to be made from the extraction taxes suspense fund.

G. All revenues collected or received by the department pursuant to the taxes or tax acts set forth in Subsection C of Section 7-1-2 NMSA 1978 may be credited to the tax administration suspense fund, unless otherwise directed by law to be credited to another fund or agency, and are appropriated for the purpose of making disbursements authorized in this section or otherwise authorized or required by law.

H. All revenues collected or received by the department pursuant to the provisions of Section 52-5-19 NMSA 1978 shall be credited to the workers' compensation collections suspense fund and are appropriated for the purpose of making the disbursements authorized in this section or otherwise authorized or required by law to be made from the workers' compensation collections suspense fund.

I. Disbursements to cover expenditures of the department shall be made only upon approval of the secretary or the secretary's delegate.

J. Miscellaneous receipts from charges made by the department to defray expenses pursuant to the provisions of Section 9-11-6.1 NMSA 1978 and similar charges are appropriated to the department for its use.

K. From the tax administration suspense fund, there may be disbursed each month amounts approved by the secretary or the secretary's delegate necessary to maintain a fund hereby created and to be known as the "income tax suspense fund". The income tax suspense fund shall be used for the payment of income tax refunds."

## **Chapter 63 Section 8 Laws 2017**

SECTION 8. Section 7-1-6.9 NMSA 1978 (being Laws 1991, Chapter 9, Section 11, as amended) is amended to read:

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

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

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

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

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

C. Except as provided in Subsection D of this section, this distribution shall be paid into a separate road fund in the municipal treasury or county road fund for expenditure only for construction, reconstruction, resurfacing or other improvement or maintenance of public roads, streets, alleys or bridges, including right-of-way and materials acquisition. Money distributed pursuant to this section may be used by a municipality or county to provide matching funds for projects subject to cooperative agreements entered into with the department of transportation pursuant to Section 67-3-28 NMSA 1978. Any municipality or H class county that has created or that creates a "street improvement fund" to which gasoline tax revenues or distributions are irrevocably pledged under Sections 3-34-1 through 3-34-4 NMSA 1978 or that has pledged all or a portion of gasoline tax revenues or distributions to the payment of

bonds shall receive its proportion of the distribution of revenues under this section impressed with and subject to these pledges.

D. This distribution may be paid into a separate road fund or the general fund of the municipality or county if the municipality has a population less than three thousand or the county has a population less than four thousand."

## **Chapter 63 Section 9 Laws 2017**

SECTION 9. 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 comprehensive cancer center at the university of New Mexico health sciences center in an amount equal to eighty-three 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 New Mexico finance authority in an amount equal to one and twenty-five 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 in an amount equal to eight and eighty-nine 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.

D. A distribution pursuant to Section 7-1-6.1 NMSA 1978 in an amount equal to three and seventy-four 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.

E. A distribution pursuant to Section 7-1-6.1 NMSA 1978 in an amount equal to nine and seventy-seven 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.

F. A distribution pursuant to Section 7-1-6.1 NMSA 1978 in an amount equal to sixty-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 rural county cancer treatment fund, to the New Mexico finance authority."

## **Chapter 63 Section 10 Laws 2017**

SECTION 10. Section 7-1-6.24 NMSA 1978 (being Laws 1987, Chapter 265, Section 3) is amended to read:

"7-1-6.24. DISTRIBUTION--SUBSTANCE ABUSE EDUCATION FUND.--A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the substance abuse education fund of the amounts designated pursuant to Section 7-2-30 NMSA 1978 as contributions to that fund."

## **Chapter 63 Section 11 Laws 2017**

SECTION 11. Section 7-1-6.26 NMSA 1978 (being Laws 1987, Chapter 347, Section 11, as amended) is amended to read:

"7-1-6.26. COUNTY GOVERNMENT ROAD FUND--DISTRIBUTION.--

A. For the purposes of this section, "distributable amount" means the amount in the county government road fund as of the last day of any month for which a distribution is required to be made pursuant to this section in excess of the balance in that fund as of the last day of the preceding month after reduction for any required distributions for the preceding month.

B. The secretary of transportation shall determine and certify on or before July 1 of each year the total miles of public roads maintained by each county pursuant to Section 66-6-23 NMSA 1978. For the purposes of this subsection, if the certified mileage of public roads maintained by a county is less than four hundred miles, the state treasurer shall increase the number of miles of public roads maintained by that county by fifty percent and revise the total miles of public roads maintained by all counties accordingly. Except as provided otherwise in Subsection D of this section, each county shall receive an amount equal to its proportionate share of miles of public roads maintained, as the number of miles for the county may have been revised pursuant to this subsection, to the total miles of public roads maintained by all counties, as that total may have been revised pursuant to this subsection, times fifty percent of the distributable amount in the county government road fund.

C. Except as provided otherwise in Subsection D of this section, each county shall receive a share of fifty percent of the distributable amount in the county government road fund as determined in this subsection. The amount for each county shall be the greater of:

(1) twenty-one cents (\$.21) multiplied by the county's population as shown by the most recent federal decennial census; or

(2) the proportionate share that the taxable gallons of gasoline reported for that county for the preceding fiscal year bear to the total taxable gallons of

gasoline for all counties in the preceding fiscal year, as determined by the department, multiplied by fifty percent of the distributable amount in the county government road fund.

If the sum of the amounts to be distributed pursuant to Paragraphs (1) and (2) of this subsection exceeds fifty percent of the distributable amount in the county government road fund, the excess shall be eliminated by multiplying the amount determined in Paragraphs (1) and (2) of this subsection for each county by a fraction, the numerator of which is fifty percent of the distributable amount in the county government road fund, and the denominator of which is the sum of amounts determined for all counties in Paragraphs (1) and (2) of this subsection.

D. If the distribution for a class A county or for an H class county determined pursuant to Subsections B and C of this section exceeds an amount equal to one-twelfth of the product of the total taxable gallons of gasoline reported for the county for the preceding fiscal year times one cent (\$.01), the distribution for that county shall be reduced to an amount equal to one-twelfth of the product of the total taxable gallons of gasoline reported for the county for the preceding fiscal year times one cent (\$.01). Any amount of the reduction shall be shared among the counties whose distribution has not been reduced pursuant to this subsection in the ratio of the amounts computed in Subsections B and C of this section.

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

F. Distributions made to counties pursuant to this section shall be deposited in the county road fund to be used for the construction, reconstruction, resurfacing or other improvement or maintenance of the public roads and bridges in the county, including right-of-way and materials acquisition. Money distributed pursuant to this section may be used by the county to provide matching funds for projects subject to cooperative agreements entered into with the department of transportation pursuant to Section 67-3-28 NMSA 1978."

## **Chapter 63 Section 12 Laws 2017**

SECTION 12. Section 7-1-6.32 NMSA 1978 (being Laws 1990, Chapter 99, Section 44, as amended) is amended to read:

"7-1-6.32. DISTRIBUTION--SOLID WASTE ASSESSMENT FEE.--A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the solid waste facility grant fund of the net receipts attributable to the solid waste assessment fee authorized under

the Solid Waste Act less any administrative fee withheld pursuant to Section 7-1-6.41 NMSA 1978."

### **Chapter 63 Section 13 Laws 2017**

SECTION 13. Section 7-1-6.33 NMSA 1978 (being Laws 1991, Chapter 212, Section 15) is amended to read:

"7-1-6.33. DISTRIBUTION TO COUNTY-SUPPORTED MEDICAID FUND.--A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the county-supported medicaid fund of the net receipts attributable to the taxes imposed pursuant to Section 7-20E-18 NMSA 1978."

### **Chapter 63 Section 14 Laws 2017**

SECTION 14. Section 7-1-6.48 NMSA 1978 (being Laws 2005, Chapter 56, Section 1) is amended to read:

"7-1-6.48. 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 Section 7-2-30.1 NMSA 1978 as contributions to the amyotrophic lateral sclerosis research fund."

### **Chapter 63 Section 15 Laws 2017**

SECTION 15. Section 7-1-6.49 NMSA 1978 (being Laws 2005, Chapter 87, Section 1) is amended to read:

"7-1-6.49. 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 Section 7-2-30.2 NMSA 1978 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 63 Section 16 Laws 2017**

SECTION 16. Section 7-1-6.50 NMSA 1978 (being Laws 2005, Chapter 220, Section 1, as amended) is amended to read:

"7-1-6.50. 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 department of military affairs in an amount equal to the money designated pursuant to Section 7-2-30.3 NMSA 1978 as contributions for assistance to members of the New Mexico national guard deployed overseas for a period of thirty or more consecutive days and to their families. The department of military affairs shall deposit the money in a temporary suspense account for distribution to members of the New Mexico national guard and to their families."

## **Chapter 63 Section 17 Laws 2017**

SECTION 17. Section 7-1-6.59 NMSA 1978 (being Laws 2009, Chapter 175, Section 1) is amended to read:

"7-1-6.59. DISTRIBUTION--VETERANS MEMORIAL OPERATION, MAINTENANCE AND IMPROVEMENT.--A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the state parks division of the energy, minerals and natural resources department in an amount equal to the money designated pursuant to Section 7-2-30.4 NMSA 1978 as contributions to the state parks division of the energy, minerals and natural resources department for the operation, maintenance and improvement of the Vietnam veterans memorial state park near Angel Fire, New Mexico."

## **Chapter 63 Section 18 Laws 2017**

SECTION 18. Section 7-1-8 NMSA 1978 (being Laws 1965, Chapter 248, Section 13, as amended by Laws 2009, Chapter 241, Section 1 and by Laws 2009, Chapter 242, Section 2 and also by Laws 2009, Chapter 243, Section 2) is amended to read:

"7-1-8. CONFIDENTIALITY OF RETURNS AND OTHER INFORMATION.--

A. It is unlawful for any person other than the taxpayer to reveal to any other person the taxpayer's return or return information, except as provided in Sections 7-1-8.1 through 7-1-8.11 NMSA 1978.

B. A return or return information revealed under Sections 7-1-8.1 through 7-1-8.11 NMSA 1978:

(1) may only be revealed to a person specifically authorized to receive the return or return information and the employees, directors, officers and agents of such person whose official duties or duties in the course of their employment require the return or return information and to an employee of the department;

(2) may only be revealed for the authorized purpose and only to the extent necessary to perform that authorized purpose;

(3) shall at all times be protected from being revealed to an unauthorized person by physical, electronic or any other safeguards specified by directive by the secretary; and

(4) shall be returned to the secretary or the secretary's delegate or destroyed as soon as it is no longer required for the authorized purpose.

C. If any provision of Sections 7-1-8.1 through 7-1-8.11 NMSA 1978 requires that a return or return information will only be revealed pursuant to a written agreement between a person and the department, the written agreement shall:

(1) list the name and position of any official or employee of the person to whom a return or return information is authorized to be revealed under the provision;

(2) describe the specific purpose for which the return or return information is to be used;

(3) describe the procedures and safeguards the person has in place to ensure that the requirements of Subsection B of this section are met; and

(4) provide for reimbursement to the department for all costs incurred by the department in supplying the returns or return information to, and administering the agreement with, the person.

D. A return or return information that is lawfully made public by an employee of the department or any other person, or that is made public by the taxpayer, is not subject to the provisions of this section once it is made public."

## **Chapter 63 Section 19 Laws 2017**

SECTION 19. Section 7-1-8.8 NMSA 1978 (being Laws 2009, Chapter 243, Section 10, as amended) is amended to read:

"7-1-8.8. INFORMATION THAT MAY BE REVEALED TO OTHER STATE AGENCIES.--An employee of the department may reveal to:

A. a committee of the legislature for a valid legislative purpose, return information concerning any tax or fee imposed pursuant to the Cigarette Tax Act;

B. the attorney general, return information acquired pursuant to the Cigarette Tax Act for purposes of Section 6-4-13 NMSA 1978 and the master settlement agreement defined in Section 6-4-12 NMSA 1978;

C. the commissioner of public lands, return information 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;

D. the secretary of human services or the secretary's delegate under a written agreement with the department, the last known address with date of all names certified to the department as being absent parents of children receiving public financial assistance, but only for the purpose of enforcing the support liability of the absent parents by the child support enforcement division or any successor organizational unit;

E. the department of information technology, by electronic media, a database updated quarterly that contains the names, addresses, county of address and taxpayer identification numbers of New Mexico personal income tax filers, but 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;

F. the state courts, the random jury lists produced by the department of information technology under Subsection E of this section;

G. the director of the New Mexico department of agriculture or the director's authorized representative, upon request of the director or representative, the names and addresses of all gasoline or special fuel distributors, wholesalers and retailers;

H. the public regulation commission, return information with respect to the Corporate Income and Franchise Tax Act required to enable the commission to carry out its duties;

I. the state racing commission, return information with respect to the state, municipal and county gross receipts taxes paid by racetracks;

J. the gaming control board, tax returns of license applicants and their affiliates as provided in Subsection E of Section 60-2E-14 NMSA 1978;

K. the director of the workers' compensation administration or to the director's representatives authorized for this purpose, return information 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;

L. the secretary of workforce solutions or the secretary's delegate, return information for use in enforcement of unemployment insurance collections pursuant to the terms of a written reciprocal agreement entered into by the department with the secretary of workforce solutions for exchange of information;

M. the New Mexico finance authority, information with respect to the amount of municipal and county gross receipts taxes collected by municipalities and

counties pursuant to any local option municipal or county gross receipts taxes imposed, and information with respect to the amount of governmental gross receipts taxes paid by every agency, institution, instrumentality or political subdivision of the state pursuant to Section 7-9-4.3 NMSA 1978; and

N. the secretary of human services or the secretary's delegate; provided that a person who receives the confidential return information on behalf of the human services department shall not reveal the information and shall be subject to the penalties in Section 7-1-76 NMSA 1978 if the person fails to maintain the confidentiality required:

(1) that return information needed for reports required to be made to the federal government concerning the use of federal funds for low-income working families; and

(2) the names and addresses of low-income taxpayers for the limited purpose of outreach to those taxpayers; provided that the human services department shall pay the department for expenses incurred by the department to derive the information requested by the human services department if the information requested is not readily available in reports for which the department's information systems are programmed."

## **Chapter 63 Section 20 Laws 2017**

SECTION 20. A new section of the Tax Administration Act, Section 7-1-8.11 NMSA 1978, is enacted to read:

"7-1-8.11. INFORMATION THAT MAY BE REVEALED TO A WATER AND SANITATION DISTRICT.--

A. An employee of the department may reveal to the officials and employees of a water and sanitation district of this state that has in effect a water and sanitation gross receipts tax imposed by the water and sanitation district upon its request for a period specified by that water and sanitation district within the twelve months preceding the request for the information by those officials and employees:

(1) the names, taxpayer identification numbers and addresses of registered gross receipts taxpayers reporting gross receipts for that water and sanitation district; the department may also release the information described in this paragraph quarterly or upon any other periodic basis to which the secretary and the district agree; and

(2) information indicating whether the persons shown on a list of businesses within the water and sanitation district have reported gross receipts to the department but have not reported gross receipts for that water and sanitation district.

B. The officials and employees of water and sanitation districts receiving information as provided in this section shall be subject to the confidentiality provisions of Section 7-1-8 NMSA 1978 and the penalty provisions of Section 7-1-76 NMSA 1978."

## **Chapter 63 Section 21 Laws 2017**

SECTION 21. Section 7-1-11 NMSA 1978 (being Laws 1965, Chapter 248, Section 16, as amended) is amended to read:

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

A. To determine the correct amount of tax due, the department shall cause the records and books of account of taxpayers to be inspected or audited at such times as the department deems necessary for the effective execution of the department's responsibilities.

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

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

D. If the taxpayer's records and books of account do not exist or are insufficient to determine the taxpayer's tax liability, if any, the department may use any reasonable method of estimating the tax liability, including but not limited to using information about similar persons, businesses or industries to estimate the taxpayer's liability.

E. The secretary or the secretary's delegate shall develop and maintain written audit policies and procedures for all audit programs in which the department routinely conducts field audits of taxpayers, including policies and procedures concerning audit notification, scheduling, records that may be examined, analysis that may be done, sampling procedures, gathering information or evidence from third parties, policies concerning the rights of taxpayers under audit and related matters. Department audit policies and procedures shall be made available to a person who requests them, at a reasonable charge to defray the cost of preparing and distributing those policies and procedures.

F. Nothing in this section shall be construed to require the department to provide the following:

1978; or

- (1) information that is confidential pursuant to Section 7-1-8 NMSA

- (2) methods, techniques and analysis used to select taxpayers for audit, including the use of:

- (a) data analytics;

- (b) data mining;

- (c) a scoring model;

- (d) internal controls; and

- (e) metadata used to detect fraud and noncompliance.

G. For purposes of this section:

- (1) "data analytics" means the science of examining data with the purpose of drawing conclusions about the information;

- (2) "data mining" means the process of analyzing data from different perspectives and summarizing it into useful information by collecting data into data sets for the purpose of discovering patterns;

- (3) "scoring model" means a predictive model that can predict the chance of occurring of a fact and its occurrence;

- (4) "methods, techniques and methodology" means a systematic way to accomplish a tactic, qualitative or quantitative component of research and the use of a specific method;

- (5) "internal controls" means a process of assuring achievement of an organization's objectives in operational effectiveness and efficiency, reliable financial reporting and compliance with laws, regulations and policies; and

- (6) "metadata" means data that provides information about other data."

## **Chapter 63 Section 22 Laws 2017**

SECTION 22. Section 7-1-12.2 NMSA 1978 (being Laws 1985, Chapter 65, Section 13, as amended) is amended to read:

"7-1-12.2. NOTICE OF IDENTIFICATION NUMBER ASSIGNED--OPERATOR MAY REQUEST IDENTIFICATION NUMBER.--The department shall inform each

operator of a production unit as to the identification number or symbol assigned to such production unit. Such number or symbol may be changed or revised and information regarding such change or revision shall likewise be given the operator. In the creation of a new production unit or in the event of a change of ownership or revision in a production unit, the operator may request the department to assign a new identification number or symbol, and the department shall notify the operator of the identification number or symbol to be used."

## **Chapter 63 Section 23 Laws 2017**

SECTION 23. Section 7-1-21 NMSA 1978 (being Laws 1965, Chapter 248, Section 23, as amended) is amended to read:

### **"7-1-21. INSTALLMENT PAYMENTS OF TAXES--INSTALLMENT AGREEMENTS.--**

A. Whenever justified by the circumstances, the secretary or the secretary's delegate may enter into a written agreement with a taxpayer in which the taxpayer admits conclusive liability for the entire amount of taxes due and agrees to make monthly installment payments according to the terms of the agreement, but not for a period longer than seventy-two months. No installment agreement shall prevent the accrual of interest otherwise provided by law.

B. The agreement provided for in this section is to be known as an "installment agreement". If entered into after a court acquires jurisdiction over the matter, the agreement shall be part of a stipulated order or judgment disposing of the case.

C. At the time of entering into an installment agreement, the secretary shall require the affected taxpayer or person to furnish security for payment of the taxes admitted to be due according to the terms of the agreement, but if the taxpayer does not provide security, the secretary shall cause a notice of lien to be filed in accordance with the provisions of Section 7-1-38 NMSA 1978, and when so filed it shall constitute a lien upon all the property or rights to property of the taxpayer in that county in the same manner as in the case of the lien provided for in Section 7-1-37 NMSA 1978.

D. An installment agreement is conclusive as to liability for payment of the amount of taxes specified therein but does not preclude the assessment of any additional tax.

E. After entering into the agreement, except in unusual circumstances as require the secretary in the secretary's discretion to take further action to protect the interests of the state, no further attempts to enforce payment of the tax by levy or injunction shall be made; however, if installment payments are not made on or before the times specified in the agreement, if any other condition contained in the agreement is not met or if the taxpayer does not make payment of all other taxes for which the

taxpayer becomes liable as they are due, the secretary may proceed to enforce collection of the tax as if the agreement had not been made or may proceed, as provided in Section 7-1-54 NMSA 1978, against the security furnished.

F. Records of installment agreements in excess of one thousand dollars (\$1,000) shall be available for inspection by the public. The department shall keep the records for a minimum of three years from the date of the installment agreement."

## **Chapter 63 Section 24 Laws 2017**

SECTION 24. Section 7-1-23 NMSA 1978 (being Laws 1965, Chapter 248, Section 25, as amended) is amended to read:

"7-1-23. DISPUTING LIABILITIES--ELECTION OF REMEDIES.--Any taxpayer must elect to dispute the taxpayer's liability for the payment of taxes either by protesting the assessment thereof as provided in Section 7-1-24 NMSA 1978 without making payment of the disputed tax liability or by claiming a refund thereof as provided in Section 7-1-26 NMSA 1978 after making payment of the disputed tax liability. The pursuit of one of the two remedies described herein constitutes an unconditional waiver of the right to pursue the other."

## **Chapter 63 Section 25 Laws 2017**

SECTION 25. Section 7-1-24 NMSA 1978 (being Laws 1965, Chapter 248, Section 26, as amended) is amended to read:

"7-1-24. DISPUTING LIABILITIES--ADMINISTRATIVE PROTEST.--

A. A taxpayer may dispute:

- (1) the assessment to the taxpayer of any amount of tax;
- (2) the application to the taxpayer of any provision of the Tax Administration Act except the issuance of a subpoena or summons; or
- (3) the denial of or failure either to allow or to deny a:
  - (a) credit or rebate; or
  - (b) claim for refund made in accordance with Section 7-1-26 NMSA 1978.

B. The taxpayer may dispute a matter described in Subsection A of this section by filing with the secretary a written protest. Every protest shall identify the taxpayer and the tax credit, rebate, property or provision of the Tax Administration Act involved and state the grounds for the taxpayer's protest and the affirmative relief

requested. The statement of grounds for protest shall specify individual grounds upon which the protest is based and evidence supporting each ground asserted; provided that the taxpayer may supplement the statement at any time prior to ten days before the hearing conducted on the protest pursuant to the provisions of the Administrative Hearings Office Act or, if a scheduling order has been issued, in accordance with the scheduling order. The secretary may, in appropriate cases, provide for an informal conference before a hearing of the protest is set by the administrative hearings office or before acting on a claim for refund.

C. In the case of an assessment of tax by the department, a protest may be filed without making payment of the amount assessed; provided that, if only a portion of the assessment is in dispute, any unprotested amounts of tax, interest or penalty shall be paid, or, if applicable, an installment agreement pursuant to Section 7-1-21 NMSA 1978 shall be entered into for the unprotested amounts, on or before the due date for the protest.

D. A protest by a taxpayer shall be filed within ninety days of the date of the mailing to or service upon the taxpayer by the department of the notice of assessment or other peremptory notice or demand, the date of mailing or filing a return, the date of the application to the taxpayer of the applicable provision of the Tax Administration Act, the date of denial of a claim pursuant to Section 7-1-26 NMSA 1978 or the last date upon which the department was required to take action on the claim but failed to take action.

E. If a protest to a notice of assessment is not filed within the time required:

(1) the amount of tax determined to be due becomes final;

(2) the taxpayer is deemed to have waived and abandoned the right to question the amount of tax determined to be due, unless the taxpayer pays the tax and claims a refund of the tax pursuant to Section 7-1-26 NMSA 1978; and

(3) the secretary may proceed to enforce collection of any tax if the taxpayer is delinquent within the meaning of Section 7-1-16 NMSA 1978.

F. The fact that the department did not mail the assessment or other peremptory notice or demand by certified or registered mail or otherwise demand and receive acknowledgment of receipt by the taxpayer shall not be deemed to demonstrate the taxpayer's inability to protest within the required time.

G. No proceedings other than those to enforce collection of an amount assessed as tax and to protect the interest of the state by injunction, as provided in Sections 7-1-31, 7-1-33, 7-1-34, 7-1-40, 7-1-53, 7-1-56 and 7-1-58 NMSA 1978, are stayed by timely filing of a protest pursuant to the provisions of this section.

H. Nothing in this section shall be construed to authorize a criminal proceeding or to authorize an administrative protest of the issuance of a subpoena or summons."

## **Chapter 63 Section 26 Laws 2017**

SECTION 26. Section 7-1-26 NMSA 1978 (being Laws 1965, Chapter 248, Section 28, as amended) is amended to read:

"7-1-26. DISPUTING LIABILITIES--CLAIM FOR CREDIT, REBATE OR REFUND.--

A. A person who believes that an amount of tax has been paid by or withheld from that person in excess of that for which the person was liable, who has been denied any credit or rebate claimed or who claims a prior right to property in the possession of the department pursuant to a levy made under authority of Sections 7-1-31 through 7-1-34 NMSA 1978 may claim a refund by directing to the secretary, within the time limited by the provisions of Subsections F and G of this section, a written claim for refund. At the time the written claim is submitted, except as provided in Subsection K of this section, a refund claim shall include:

- (1) the taxpayer's name, address and identification number;
- (2) the type of tax for which a refund is being claimed, the credit or rebate denied or the property levied upon;
- (3) the sum of money or other property being claimed;
- (4) with respect to refund, the period for which overpayment was made;
- (5) a brief statement of the facts and the law on which the claim is based, which may be referred to as the "basis for the refund", which shall include documentation that substantiates the written claim and supports the taxpayer's basis for the refund; and
- (6) a copy of an amended return for each tax period for which the refund is claimed.

B. A claim for refund that meets the requirements of Subsection A of this section shall be deemed to be properly before the department for consideration, regardless of whether the department requests additional documentation after receipt of the claim for refund; provided that the claim for refund is filed within the time limitations provided in Subsections F and G of this section.

C. If the department requests additional relevant documentation from a taxpayer who has submitted a claim for refund, the claim for refund will not be considered complete until the taxpayer provides the requested documentation. The provisions of Paragraph (2) of Subsection D of this section and of Section 7-1-68 NMSA 1978 do not apply until a refund claim is complete.

D. The secretary or the secretary's delegate may allow the claim in whole or in part or may deny the claim. If the:

(1) claim is denied in whole or in part in writing, no claim may be refiled with respect to that which was denied, but the person, within ninety days after either the mailing or delivery of the denial of all or any part of the claim, may elect to pursue one, but not more than one, of the remedies in Subsection E of this section; and

(2) department has neither granted nor denied any portion of a complete claim for refund within one hundred eighty days of the date the claim was mailed or otherwise delivered to the department, the person may elect to treat the claim as denied and elect to pursue one, but not more than one, of the remedies provided in Subsection D of this section.

E. A person may elect to pursue no more than one of the remedies in Paragraphs (1) and (2) of this subsection. A person who timely pursues more than one remedy shall be deemed to have elected the first remedy invoked. The person may:

(1) direct to the secretary, pursuant to the provisions of Section 7-1-24 NMSA 1978, a written protest that shall set forth:

(a) the circumstances of: 1) an alleged overpayment; 2) a denied credit; 3) a denied rebate; or 4) a denial of a prior right to property levied upon by the department;

(b) an allegation that, because of that overpayment or denial, the state is indebted to the taxpayer for a specified amount, including any allowed interest, or for the property;

(c) demanding the refund to the taxpayer of that amount or that property; and

(d) reciting the facts of the claim for refund; or

(2) commence a civil action in the district court for Santa Fe county by filing a complaint setting forth the circumstance of the claimed overpayment, denied credit or rebate or denial of a prior right to property levied upon by the department alleging that on account thereof the state is indebted to the plaintiff in the amount or property stated, together with any interest allowable, demanding the refund to the plaintiff of that amount or property and reciting the facts of the claim for refund. The

plaintiff or the secretary may appeal from any final decision or order of the district court to the court of appeals.

F. Except as otherwise provided in Subsection G of this section, no credit or refund of any amount may be allowed or made to any person unless as the result of a claim made by that person as provided in this section:

(1) within three years of the end of the calendar year in which:

(a) the payment was originally due or the overpayment resulted from an assessment by the department pursuant to Section 7-1-17 NMSA 1978, whichever is later;

(b) the final determination of value occurs with respect to any overpayment that resulted from a disapproval by any agency of the United States or the state of New Mexico or any court of increase in value of a product subject to taxation under the Oil and Gas Severance Tax Act, the Oil and Gas Conservation Tax Act, the Oil and Gas Emergency School Tax Act, the Oil and Gas Ad Valorem Production Tax Act or the Natural Gas Processors Tax Act;

(c) property was levied upon pursuant to the provisions of the Tax Administration Act; or

(d) an overpayment of New Mexico tax resulted from: 1) an internal revenue service audit adjustment or a federal refund paid due to an adjustment of an audit by the internal revenue service or an amended federal return; or 2) making a change to a federal return for which federal approval is required by the Internal Revenue Code;

(2) when an amount of a claim for credit under the provisions of the Investment Credit Act, Laboratory Partnership with Small Business Tax Credit Act or Technology Jobs and Research and Development Tax Credit Act or for the rural job tax credit pursuant to Section 7-2E-1.1 NMSA 1978 or similar credit has been denied, the taxpayer may claim a refund of the credit no later than one year after the date of the denial;

(3) when a taxpayer under audit by the department has signed a waiver of the limitation on assessments on or after July 1, 1993 pursuant to Subsection F of Section 7-1-18 NMSA 1978, the taxpayer may file a claim for refund of the same tax paid for the same period for which the waiver was given, until a date one year after the later of the date of the mailing of an assessment issued pursuant to the audit, the date of the mailing of final audit findings to the taxpayer or the date a proceeding is begun in court by the department with respect to the same tax and the same period;

(4) if the payment of an amount of tax was not made within three years of the end of the calendar year in which the original due date of the tax or date of

the assessment of the department occurred, a claim for refund of that amount of tax can be made within one year of the date on which the tax was paid; or

(5) when a taxpayer has been assessed a tax on or after July 1, 1993 under Subsection B, C or D of Section 7-1-18 NMSA 1978 and when the assessment applies to a period ending at least three years prior to the beginning of the year in which the assessment was made, the taxpayer may claim a refund for the same tax for the period of the assessment or for any period following that period within one year of the date of the assessment unless a longer period for claiming a refund is provided in this section.

G. No credit or refund shall be allowed or made to any person claiming a refund of gasoline tax under Section 7-13-11 NMSA 1978 unless notice of the destruction of the gasoline was given to the department within thirty days of the actual destruction and the claim for refund is made within six months of the date of destruction. No credit or refund shall be allowed or made to any person claiming a refund of gasoline tax under Section 7-13-17 NMSA 1978 unless the refund is claimed within six months of the date of purchase of the gasoline and the gasoline has been used at the time the claim for refund is made.

H. If as a result of an audit by the department or a managed audit covering multiple periods an overpayment of tax is found in any period under the audit, that overpayment may be credited against an underpayment of the same tax found in another period under audit pursuant to Section 7-1-29 NMSA 1978, provided that the taxpayer files a claim for refund for the overpayments identified in the audit.

I. Any refund of tax paid under any tax or tax act administered under Subsection B of Section 7-1-2 NMSA 1978 may be made, at the discretion of the department, in the form of credit against future tax payments if future tax liabilities in an amount at least equal to the credit amount reasonably may be expected to become due.

J. For the purposes of this section, "oil and gas tax return" means a return reporting tax due with respect to oil, natural gas, liquid hydrocarbons, carbon dioxide, helium or nonhydrocarbon gas pursuant to the Oil and Gas Severance Tax Act, the Oil and Gas Conservation Tax Act, the Oil and Gas Emergency School Tax Act, the Oil and Gas Ad Valorem Production Tax Act, the Natural Gas Processors Tax Act or the Oil and Gas Production Equipment Ad Valorem Tax Act.

K. The filing of a fully completed original income tax return, corporate income tax return, corporate income and franchise tax return, estate tax return or special fuel excise tax return that shows a balance due the taxpayer or a fully completed amended income tax return, an amended corporate income tax return, an amended corporate income and franchise tax return, an amended estate tax return, an amended special fuel excise tax return or an amended oil and gas tax return that shows a lesser tax liability than the original return constitutes the filing of a claim for refund for the difference in tax due shown on the original and amended returns."

## Chapter 63 Section 27 Laws 2017

SECTION 27. Section 7-1-29 NMSA 1978 (being Laws 1965, Chapter 248, Section 31, as amended) is amended to read:

### "7-1-29. AUTHORITY TO MAKE REFUNDS OR CREDITS.--

A. In response to a claim for refund, credit or rebate made as provided in Section 7-1-26 NMSA 1978, but before a court acquires jurisdiction of the matter, the secretary or the secretary's delegate may authorize payment to a person in the amount of the credit or rebate claimed or refund an overpayment of tax determined by the secretary or the secretary's delegate to have been erroneously made by the person, together with allowable interest. A payment of a credit rebate claimed or a refund of tax and interest erroneously paid amounting to twenty thousand dollars (\$20,000) or more shall be made with the prior approval of the attorney general, except that the secretary or the secretary's delegate may make refunds with respect to the Oil and Gas Severance Tax Act, the Oil and Gas Conservation Tax Act, the Oil and Gas Emergency School Tax Act, the Oil and Gas Ad Valorem Production Tax Act, the Natural Gas Processors Tax Act or the Oil and Gas Production Equipment Ad Valorem Tax Act, Section 7-13-17 NMSA 1978 and the Cigarette Tax Act without the prior approval of the attorney general regardless of the amount.

B. Pursuant to the final order of the district court, the court of appeals, the supreme court of New Mexico or a federal court, from which order, appeal or review is not successfully taken, adjudging that a person has properly claimed a credit or rebate or made an overpayment of tax, the secretary shall authorize the payment to the person of the amount thereof.

C. In the discretion of the secretary, any amount of credit or rebate to be paid or tax to be refunded may be offset against any amount of tax for which the person due to receive the credit, rebate payment or refund is liable. The secretary or the secretary's delegate shall give notice to the taxpayer that the credit, rebate payment or refund will be made in this manner, and the taxpayer shall be entitled to interest pursuant to Section 7-1-68 NMSA 1978 until the tax liability is credited with the credit, rebate or refund amount.

D. In an audit by the department or a managed audit covering multiple reporting periods in which both underpayments and overpayments of a tax have been made in different reporting periods, the department shall credit the tax overpayments against the underpayments, provided that the taxpayer files a claim for refund of the overpayments. An overpayment shall be applied as a credit first to the earliest underpayment and then to succeeding underpayments. An underpayment of tax to which an overpayment is credited pursuant to this section shall be deemed paid in the period in which the overpayment was made or the period to which the overpayment was credited against an underpayment, whichever is later. If the overpayments credited

pursuant to this section exceed the underpayments of a tax, the amount of the net overpayment for the periods covered in the audit shall be refunded to the taxpayer.

E. When a taxpayer makes a payment identified to a particular return or assessment, and the department determines that the payment exceeds the amount due pursuant to that return or assessment, the secretary may apply the excess to the taxpayer's other liabilities pursuant to the tax acts to which the return or assessment applies, without requiring the taxpayer to file a claim for a refund. The liability to which an overpayment is applied pursuant to this section shall be deemed paid in the period in which the overpayment was made or the period to which the overpayment was applied, whichever is later.

F. If the department determines, upon review of an original or amended income tax return, corporate income and franchise tax return, estate tax return, special fuels excise tax return or oil and gas tax return, that there has been an overpayment of tax for the taxable period to which the return or amended return relates in excess of the amount due to be refunded to the taxpayer pursuant to the provisions of Subsection K of Section 7-1-26 NMSA 1978, the department may refund that excess amount to the taxpayer without requiring the taxpayer to file a refund claim.

G. Records of refunds and credits made in excess of ten thousand dollars (\$10,000) shall be available for inspection by the public. The department shall keep such records for a minimum of three years from the date of the refund or credit.

H. In response to a timely refund claim pursuant to Section 7-1-26 NMSA 1978 and notwithstanding any other provision of the Tax Administration Act, the secretary or the secretary's delegate may refund or credit a portion of an assessment of tax paid, including applicable penalties and interest representing the amount of tax previously paid by another person on behalf of the taxpayer on the same transaction, provided that the requirements of equitable recoupment are met. For purposes of this subsection, the refund claim may be filed by the taxpayer to whom the assessment was issued or by another person who claims to have previously paid the tax on behalf of the taxpayer. Prior to granting the refund or credit, the secretary may require a waiver of all rights to claim a refund or credit of the tax previously paid by another person paying a tax on behalf of the taxpayer."

## **Chapter 63 Section 28 Laws 2017**

SECTION 28. Section 7-1-61 NMSA 1978 (being Laws 1965, Chapter 248, Section 62, as amended) is amended to read:

"7-1-61. DUTY OF SUCCESSOR IN BUSINESS.--

A. As used in Sections 7-1-61 through 7-1-63 NMSA 1978, "tax" means the amount of tax due, including penalties and interest, imposed by provisions of the

taxes or tax acts set forth in Subsections A and B of Section 7-1-2 NMSA 1978, except the Income Tax Act.

B. The tangible and intangible property used in any business remains subject to liability for payment of the tax due on account of that business to the extent stated herein, even though the business changes hands.

C. If any person liable for any amount of tax from operating a business transfers that business to a successor, the successor shall place in a trust account sufficient money from the purchase price or other source to cover such amount of tax until the secretary or secretary's delegate issues a certificate stating that no amount is due, or the successor shall pay over the amount due to the department upon proper demand for, or assessment of, that amount due by the secretary."

## **Chapter 63 Section 29 Laws 2017**

SECTION 29. Section 7-1-68 NMSA 1978 (being Laws 1965, Chapter 248, Section 69, as amended) is amended to read:

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

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

B. Interest on overpayments of tax shall accrue and be paid at the underpayment rate established pursuant to Section 6621 of the Internal Revenue Code, computed on a daily basis; provided that if a different rate is specified by a compact or other interstate agreement to which New Mexico is a party, that rate shall apply to amounts due under the compact or other agreement.

C. Unless otherwise provided by this section, interest on an overpayment not arising from an assessment by the department shall be paid from the date of the claim for refund until a date preceding by not more than thirty days the date of the credit or refund to any person; and interest on an overpayment arising from an assessment by the department shall be paid from the date of overpayment until a date preceding by not more than thirty days the date of the credit or refund to any person.

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

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

(2) the credit or refund is made within:

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

(b) sixty days of the date of the complete claim for refund of any tax not provided for in this paragraph;

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

(d) one hundred twenty days of the date of the complete claim for refund of tax imposed pursuant to the Resources Excise Tax Act, the Severance Tax Act, the Oil and Gas Severance Tax Act, the Oil and Gas Conservation Tax Act, the Oil and Gas Emergency School Tax Act, the Oil and Gas Ad Valorem Production Tax Act, the Natural Gas Processors Tax Act or the Oil and Gas Production Equipment Ad Valorem Tax Act; or

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

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

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

(5) the department applies the credit or refund to an intercept program, to the taxpayer's estimated payment prior to the due date for the estimated payment or to offset prior liabilities of the taxpayer pursuant to Subsection E of Section 7-1-29 NMSA 1978;

(6) the credit or refund results from overpayments the department finds pursuant to Subsection F of Section 7-1-29 NMSA 1978 that exceed the refund claimed by the taxpayer on the return; or

(7) the refund results from a tax credit pursuant to the Investment Credit Act, Laboratory Partnership with Small Business Tax Credit Act, Technology Jobs and Research and Development Tax Credit Act, Film Production Tax Credit Act, Affordable Housing Tax Credit Act or a rural job tax credit or high-wage jobs tax credit.

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

## **Chapter 63 Section 30 Laws 2017**

SECTION 30. Section 7-1-76 NMSA 1978 (being Laws 1965, Chapter 248, Section 76, as amended) is amended to read:

"7-1-76. REVEALING INFORMATION CONCERNING TAXPAYERS.--A person who reveals to another person any return or return information that is prohibited from being revealed pursuant to Section 7-1-8 NMSA 1978 or who uses a return or return information for any purpose that is not authorized by Sections 7-1-8 through 7-1-8.11 NMSA 1978 is guilty of a misdemeanor and shall, upon conviction thereof, be fined not more than one thousand dollars (\$1,000) or imprisoned up to one year, or both, together with costs of prosecution, and shall not be employed by the state for a period of five years after the date of the conviction."

## **Chapter 63 Section 31 Laws 2017**

SECTION 31. REPEAL.--Laws 2009, Chapter 241, Section 1 and Laws 2009, Chapter 242, Section 2 are repealed.

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House Bill 408, aa

Approved April 6, 2017

# **LAWS 2017, CHAPTER 64**

AN ACT

RELATING TO CHILDREN; ENACTING A NEW SECTION OF THE PUBLIC SCHOOL CODE TO REQUIRE SCHOOLS TO APPOINT A PERSON WHO IS A POINT OF CONTACT FOR STUDENTS IN FOSTER CARE AND STUDENTS INVOLVED IN THE JUVENILE JUSTICE SYSTEM; ENACTING A NEW SECTION OF THE ABUSE AND NEGLECT ACT TO REQUIRE THE CHILDREN'S COURT TO APPOINT AN EDUCATIONAL DECISION MAKER FOR STUDENTS IN FOSTER CARE.

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

## **Chapter 64 Section 1 Laws 2017**

SECTION 1. A new section of Chapter 22, Article 13 NMSA 1978 is enacted to read:

## "APPOINTING A POINT OF CONTACT PERSON FOR CERTAIN STUDENTS.--

### A. As used in this section:

(1) "foster care" means twenty-four-hour substitute care for a student placed away from the student's parents or guardians and for whom the children, youth and families department has placement and care responsibility, including placements in foster family homes, foster homes of relatives, group homes, emergency shelters, treatment foster homes, residential facilities, child care institutions and preadoptive homes. For the purposes of this section, a student is in foster care regardless of whether the foster care facility is licensed and payments are made by the state, tribal or local agency for the care of the student, whether adoption subsidy payments are being made prior to the finalization of an adoption or whether there is federal matching of any payments that are made; and

(2) "involved in the juvenile justice system" means a student who has been referred to the children, youth and families department due to allegations that the student has committed a delinquent offense and voluntary or involuntary conditions have been imposed on the student, including a student who is participating in a diversion program, is under a consent decree or time waiver, is currently supervised by the children, youth and families department, has recently entered or left a juvenile or criminal justice placement or is on supervised release or parole.

B. Each school district and charter school authorized by the department shall designate an individual to serve as a point of contact for students in foster care and students involved in the juvenile justice system. Charter schools authorized by school districts shall use the district's point of contact. Multiple school districts or charter schools authorized by the department may share a single designated point of contact with approval from the department and from the children, youth and families department.

C. For students transferring into the school district or charter school authorized by the department, the point of contact person shall be responsible for:

(1) ensuring that a student is immediately enrolled regardless of whether the records normally required for enrollment are produced by the last school the student attended or by the student;

(2) ensuring that the enrolling school communicates with the last school attended by a transferring student to obtain relevant academic and other records within two business days of the student's enrollment;

(3) ensuring that the enrolling school performs a timely transfer of credits that the student earned in the last school attended; and

(4) collaborating with the education program staff in a juvenile or criminal justice placement and the educational decision maker appointed by the children's court to create and implement a plan for assisting the transition of a student to the school district or charter school authorized by the department to minimize disruption to the student's education.

D. For students transferring out of the school district or charter school authorized by the department, the point of contact person shall be responsible for providing all records to the new school within two business days of receiving a request from the receiving school.

E. For students in foster care, the point of contact person shall be responsible for:

(1) complying with state policies and developing school district or charter school policies in collaboration with the children, youth and families department for:

(a) best interest determinations about whether the student will remain in the school of origin;

(b) transportation policies to ensure that students receive transportation to their school of origin if it is in their best interest to remain in the school of origin; and

(c) dispute resolution;

(2) convening or participating in best interest determination meetings in collaboration with the children, youth and families department pursuant to state policies and the school district's or charter school authorized by the department's policies; and

(3) ensuring that transportation occurs to the student's school of origin pursuant to the school district's or charter school authorized by the department's policies and in compliance with state policies.

F. For students in foster care and students involved in the juvenile justice system, the point of contact person shall be responsible for:

(1) ensuring that a student has equal opportunity to participate in sports and other extracurricular activities, career and technical programs or other special programs for which the student qualifies;

(2) ensuring that a student in high school receives timely and ongoing assistance and advice from counselors to improve the student's college and career readiness;

(3) ensuring that a student receives all special education services and accommodations to which the student is entitled under state and federal law;

(4) identifying school staff at each school site who can ensure that students are appropriately supported throughout their enrollment;

(5) supporting communication among the school; the children, youth and families department; the student; the student's educational decision maker appointed by the children's court; caregivers; and other supportive individuals that the student identifies to ensure that the responsibilities listed in this subsection are implemented; and

(6) ensuring that other school staff and teachers have access to training and resources about the educational challenges and needs of system-involved youth, including trauma-informed practices and the impact of trauma on learning.

G. The children, youth and families department shall notify a school when a student in the school enters foster care or a student in foster care enrolls in a school.

H. The student or the student's educational decision maker may notify a school that the student is involved in the juvenile justice system to obtain support and services from the point of contact."

## **Chapter 64 Section 2 Laws 2017**

SECTION 2. Section 32A-4-2 NMSA 1978 (being Laws 1993, Chapter 77, Section 96, as amended) is amended to read:

"32A-4-2. DEFINITIONS.--As used in the Abuse and Neglect Act:

A. "abandonment" includes instances when the parent, without justifiable cause:

(1) left the child without provision for the child's identification for a period of fourteen days; or

(2) left the child with others, including the other parent or an agency, without provision for support and without communication for a period of:

(a) three months if the child was under six years of age at the commencement of the three-month period; or

(b) six months if the child was over six years of age at the commencement of the six-month period;

B. "abused child" means a child:

(1) who has suffered or who is at risk of suffering serious harm because of the action or inaction of the child's parent, guardian or custodian;

(2) who has suffered physical abuse, emotional abuse or psychological abuse inflicted or caused by the child's parent, guardian or custodian;

(3) who has suffered sexual abuse or sexual exploitation inflicted by the child's parent, guardian or custodian;

(4) whose parent, guardian or custodian has knowingly, intentionally or negligently placed the child in a situation that may endanger the child's life or health; or

(5) whose parent, guardian or custodian has knowingly or intentionally tortured, cruelly confined or cruelly punished the child;

C. "aggravated circumstances" includes those circumstances in which the parent, guardian or custodian has:

(1) attempted, conspired to cause or caused great bodily harm to the child or great bodily harm or death to the child's sibling;

(2) attempted, conspired to cause or caused great bodily harm or death to another parent, guardian or custodian of the child;

(3) attempted, conspired to subject or has subjected the child to torture, chronic abuse or sexual abuse; or

(4) had parental rights over a sibling of the child terminated involuntarily;

D. "educational decision maker" means an individual appointed by the children's court to attend school meetings and to make decisions about the child's education that a parent could make under law, including decisions about the child's educational setting, and the development and implementation of an individual education plan for the child;

E. "fictive kin" means a person not related by birth, adoption or marriage with whom a child has an emotionally significant relationship;

F. "great bodily harm" means an injury to a person that creates a high probability of death, that causes serious disfigurement or that results in permanent or protracted loss or impairment of the function of a member or organ of the body;

G. "neglected child" means a child:

(1) who has been abandoned by the child's parent, guardian or custodian;

(2) who is without proper parental care and control or subsistence, education, medical or other care or control necessary for the child's well-being because of the faults or habits of the child's parent, guardian or custodian or the failure or refusal of the parent, guardian or custodian, when able to do so, to provide them;

(3) who has been physically or sexually abused, when the child's parent, guardian or custodian knew or should have known of the abuse and failed to take reasonable steps to protect the child from further harm;

(4) whose parent, guardian or custodian is unable to discharge that person's responsibilities to and for the child because of incarceration, hospitalization or physical or mental disorder or incapacity; or

(5) who has been placed for care or adoption in violation of the law; provided that nothing in the Children's Code shall be construed to imply that a child who is being provided with treatment by spiritual means alone through prayer, in accordance with the tenets and practices of a recognized church or religious denomination, by a duly accredited practitioner thereof is for that reason alone a neglected child within the meaning of the Children's Code; and further provided that no child shall be denied the protection afforded to all children under the Children's Code;

H. "physical abuse" includes any case in which the child exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling or death and:

(1) there is not a justifiable explanation for the condition or death;

(2) the explanation given for the condition is at variance with the degree or nature of the condition;

(3) the explanation given for the death is at variance with the nature of the death; or

(4) circumstances indicate that the condition or death may not be the product of an accidental occurrence;

I. "relative" means a person related to another person by birth, adoption or marriage within the fifth degree of consanguinity;

J. "sexual abuse" includes criminal sexual contact, incest or criminal sexual penetration, as those acts are defined by state law;

K. "sexual exploitation" includes:

(1) allowing, permitting or encouraging a child to engage in prostitution;

(2) allowing, permitting, encouraging or engaging a child in obscene or pornographic photographing; or

(3) filming or depicting a child for obscene or pornographic commercial purposes, as those acts are defined by state law;

L. "sibling" means a brother or sister having one or both parents in common by birth or adoption; and

M. "transition plan" means an individualized written plan for a child, based on the unique needs of the child, that outlines all appropriate services to be provided to the child to increase independent living skills. The plan shall also include responsibilities of the child, and any other party as appropriate, to enable the child to be self-sufficient upon emancipation."

## **Chapter 64 Section 3 Laws 2017**

SECTION 3. A new section of the Abuse and Neglect Act is enacted to read:

"APPOINTMENT OR CHANGE OF EDUCATIONAL DECISION MAKER.--

A. In all matters involving children alleged by the state to be abused or neglected, including proceedings to terminate parental rights, the children's court shall appoint an educational decision maker in every case.

B. The children's court shall appoint an educational decision maker at the custody hearing; provided that the children's court:

(1) may change the appointment of an educational decision maker upon motion of a party at any stage of the proceedings; and

(2) shall review at each subsequent stage of the proceedings whether to continue or change the appointment of an educational decision maker for the child.

C. The children's court shall appoint a respondent as the child's educational decision maker, unless the children's court determines that doing so would be contrary to the best interests of the child. If the children's court determines that no respondent should be appointed as the child's educational decision maker, the children's court shall appoint another qualified individual, taking into account the following:

(1) whether the individual knows the child and is willing to accept responsibility for making educational decisions;

(2) whether the individual has any personal or professional interests that conflict with the interests of the child; and

(3) whether the individual is permitted to make all necessary educational decisions for the child, including decisions related to whether the child is a child with a disability under the federal Individuals with Disabilities Education Act."

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House Bill 411, aa

Approved April 6, 2017

## **LAWS 2017, CHAPTER 65**

AN ACT

RELATING TO PUBLIC SCHOOLS; ELIMINATING CERTAIN REPORTING REQUIREMENTS.

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

### **Chapter 65 Section 1 Laws 2017**

SECTION 1. Section 22-2C-11 NMSA 1978 (being Laws 2003, Chapter 153, Section 20, as amended by Laws 2015, Chapter 58, Section 11 and by Laws 2015, Chapter 122, Section 10) is amended to read:

"22-2C-11. ASSESSMENT AND ACCOUNTABILITY SYSTEM REPORTING-- PARENT SURVEY--DATA SYSTEM--FISCAL INFORMATION.--

A. The department shall:

(1) issue a state identification number for each public school student for use in the accountability data system;

(2) adopt the format for reporting individual student assessments to parents. The student assessments shall report each student's progress and academic needs as measured against state standards;

(3) adopt the format for reporting annual progress of public schools, school districts, state-chartered charter schools and the department. A school district's report shall include reports of all locally chartered charter schools in the school district. If

the department has adopted a state improving schools program, the annual accountability report shall include the results of that program for each public school. The annual accountability report format shall be clear, concise and understandable to parents and the general public. All annual accountability reports shall ensure that the privacy of individual students is protected;

(4) require that when public schools, school districts, state-chartered charter schools and the state disaggregate and report school data for demographic subgroups, they include data disaggregated by ethnicity, race, limited English proficiency, students with disabilities, poverty and gender; provided that ethnicity and race shall be reported using the following categories:

- (a) Caucasian, non-Hispanic;
- (b) Hispanic;
- (c) African American;
- (d) American Indian or Alaska Native;
- (e) Native Hawaiian or other Pacific Islander;
- (f) Asian;
- (g) two or more races; and

(h) other; provided that if the sample of students in any category enumerated in Subparagraphs (a) through (g) of this paragraph is so small that a student in the sample may be personally identifiable in violation of the federal Family Educational Rights and Privacy Act of 1974, the report may combine that sample into the "other" category;

(5) report cohort graduation data annually for the state, for each school district and for each state-chartered charter school and each public high school, based on information provided by all school districts and state-chartered charter schools according to procedures established by the department; provided that the report shall include the number and percentage of students in a cohort who:

- (a) have graduated by August 1 of the fourth year after entering the ninth grade;
- (b) have graduated in more than four years, but by August 1 of the fifth year after entering ninth grade;
- (c) have received a state certificate by exiting the school system at the end of grade twelve without having satisfied the requirements for a high

school diploma as provided in Section 22-13-1.1 NMSA 1978 or completed all course requirements but have not passed the graduation assessment or portfolio of standards-based indicators pursuant to Section 22-13-1.1 NMSA 1978;

(d) have dropped out or whose status is unknown;

(e) have exited public school and indicated an intent to pursue a high school equivalency credential; or

(f) are still enrolled in public school;

(6) report annually, based on data provided by school districts and state-chartered charter schools, the number and percentage of public school students in each cohort in the state in grades nine through twelve who have advanced to the next grade or graduated on schedule, who remain enrolled but have not advanced to the next grade on schedule, who have dropped out or whose other educational outcomes are known to the department; and

(7) establish technical criteria and procedures to define which students are included or excluded from a cohort.

B. Local school boards and governing boards of charter schools may establish additional indicators through which to measure the school district's or charter school's performance.

C. The school district's or state-chartered charter school's annual accountability report shall include a report of four- and five-year graduation rates for each public high school in the school district or state-chartered charter school. All annual accountability reports shall ensure that the privacy of individual students is protected. As part of the graduation rate data, the school district or state-chartered charter school shall include data showing the number and percentage of students in the cohort:

(1) who have received a state certificate by exiting the school system at the end of grade twelve without having satisfied the requirements for a high school diploma as provided in Section 22-13-1.1 NMSA 1978 or completed all course requirements but have not passed the graduation assessment or portfolio of standards-based indicators pursuant to Section 22-13-1.1 NMSA 1978;

(2) who have dropped out or whose status is unknown;

(3) who have exited public school and indicated an intent to pursue a high school equivalency credential;

(4) who are still enrolled; and

(5) whose other educational outcomes are known to the school district.

D. The school district's or state-chartered charter school's annual accountability report shall be adopted by the local school board or governing body of the state-chartered charter school, shall be published no later than November 15 of each year and shall be published at least once each school year in a newspaper of general circulation in the county where the school district or state-chartered charter school is located as well as online on the website of the school district or state-chartered charter school. In publication, the report shall be titled "The School District Report Card" or "The Charter School Report Card" and disseminated in accordance with guidelines established by the department to ensure effective communication with parents, students, educators, local policymakers and business and community organizations.

E. The annual accountability report shall include the names of those members of the local school board or the governing body of the charter school who failed to attend annual mandatory training.

F. The annual accountability report shall include data on expenditures for central office administration and expenditures for the public schools of the school district or charter school.

G. The department shall create an accountability data system through which data from each public school and each school district or state-chartered charter school may be compiled and reviewed. The department shall provide the resources to train school district and charter school personnel in the use of the accountability data system.

H. The department shall verify data submitted by the school districts and state-chartered charter schools.

I. At the end of fiscal year 2005, after the budget approval cycle, the department shall produce a report to the legislature that shows for all school districts using performance-based program budgeting the relationship between that portion of a school district's program cost generated by each public school in the school district and the budgeted expenditures for each public school in the school district as reported in the district's performance-based program budget. At the end of fiscal year 2006 and subsequent fiscal years, after the budget approval cycle, the department shall report on this relationship in all public schools in all school districts in the state.

J. When all public schools are participating in performance-based budgeting, the department shall recommend annually to the legislature for inclusion in the general appropriation act the maximum percentage of appropriations that may be expended in each school district for central office administration.

K. The department shall disseminate its statewide accountability report to school districts and charter schools; the governor, legislators and other policymakers; and business and economic development organizations.

L. As used in this section, "cohort" means a group of students who enter grade nine for the first time at the same time, plus those students who transfer into the group in later years and minus those students who leave the cohort for documented excusable reasons."

## **Chapter 65 Section 2 Laws 2017**

SECTION 2. Section 22-13-1.7 NMSA 1978 (being Laws 2007, Chapter 348, Section 3) is amended to read:

### "22-13-1.7. ELEMENTARY PHYSICAL EDUCATION.--

A. As used in this section:

(1) "eligible students" means students in kindergarten through grade six in a public school classified by the department as an elementary school; and

(2) "physical education" includes programs of education through which students participate in activities related to fitness education and assessment; active games and sports; and development of physical capabilities such as motor skills, strength and coordination.

B. Elementary physical education programs that serve eligible students are eligible for funding if those programs meet academic content and performance standards for elementary physical education programs.

C. In granting approval for funding of elementary physical education programs, the department shall provide that programs are first implemented in public schools that have the highest proportion of students most in need based on the percentage of students eligible for free or reduced-fee lunch or grade-level schools that serve an entire school district and in public schools with available space. If the department determines that an elementary physical education program is not meeting the academic content and performance standards for elementary physical education programs, the department shall notify the school district that the public school's failure to meet the academic content and performance standards will result in the cessation of funding for the following school year. The department shall compile the program results submitted by the school districts each year and make an annual report to the legislative education study committee and the legislature.

D. An elementary physical education program that receives state financial support shall:

(1) provide for the physical education needs of students defined in this section; and

(2) use teachers with a license endorsement for physical education. The department shall annually determine the programs and the consequent number of students in elementary physical education that will receive state financial support in accordance with funding available in each school year."

## **Chapter 65 Section 3 Laws 2017**

SECTION 3. Section 22-13-3.1 NMSA 1978 (being Laws 2001, Chapter 168, Section 1) is amended to read:

"22-13-3.1. EVEN START FAMILY LITERACY PROGRAM--CREATED--GUIDELINES--BENCHMARKS, PERFORMANCE STANDARDS AND EVALUATIONS.-

A. The "even start family literacy program" is created in the department to provide funding for preschool reading readiness and parenting education. The purpose of the program is to support the educational and developmental needs of students in preschool; address cultural diversity; and provide family support that leads to improved literacy, improved ability for students to succeed in school and economic self-sufficiency. Priority for funding shall be provided to those public schools that have the highest proportion of limited English proficient students, students living in poverty and Native American students.

B. The department shall develop even start family literacy program benchmarks and performance standards, guidelines for program approval and funding approval criteria. The department shall disseminate the program information in all public schools and shall provide technical assistance to public schools in developing proposals.

C. The department shall distribute money to public schools with approved even start family literacy programs that meet the specified criteria based upon actual program costs to ensure the implementation of performance based budgeting measures."

## **Chapter 65 Section 4 Laws 2017**

SECTION 4. REPEAL.--Sections 22-10A-33 and 22-15-12 NMSA 1978 (being Laws 1989, Chapter 344, Section 2 and Laws 1967, Chapter 16, Section 216, as amended) are repealed.

Approved April 6, 2017

## **LAWS 2017, CHAPTER 66**

AN ACT

RELATING TO PUBLIC EDUCATION; REQUIRING COMMUNITY SCHOOLS INITIATIVES TO INCLUDE AN INDEPENDENTLY EVALUATED, EVIDENCE-BASED OR RESULTS-BASED COMMUNITY SCHOOLS MODEL DESIGNED TO IMPROVE ACADEMIC OUTCOMES, INCREASE ATTENDANCE AND STRENGTHEN BEHAVIOR FOR ALL STUDENTS.

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

### **Chapter 66 Section 1 Laws 2017**

SECTION 1. Section 22-32-1 NMSA 1978 (being Laws 2013, Chapter 16, Section 1) is amended to read:

"22-32-1. SHORT TITLE.--Chapter 22, Article 32 NMSA 1978 may be cited as the "Community Schools Act"."

### **Chapter 66 Section 2 Laws 2017**

SECTION 2. Section 22-32-3 NMSA 1978 (being Laws 2013, Chapter 16, Section 3) is amended to read:

"22-32-3. COMMUNITY SCHOOLS INITIATIVES--SCHOOL IMPROVEMENT FUNCTIONS--REQUIREMENTS.--

A. A community schools initiative may be created in any public school in the state.

B. A community schools initiative shall include the following core set of strategies and opportunities to strengthen behavior for all students:

(1) extended learning programs, including after-school programs and summer programs;

(2) school-based or school-linked health care;

(3) opportunities for families to acquire skills to promote early learning and childhood development;

(4) school and community-resource partnerships with an integrated focus on academics and other social, health and familial support;

(5) social, health, nutrition and mental health services and support for children, family members and community members; and

(6) case management for students in need of comprehensive support in academics, attendance and behavior.

C. A community schools initiative shall include the following:

(1) a lead partner agency, including a public or private agency or community-based organization, to help coordinate programs and services;

(2) an assessment of community resources informed by students, families and community and school leaders that relates to the effective delivery of core services on site; and

(3) the implementation of an independently evaluated, evidence-based or results-based model of integrated student services and comprehensive supports that is proven to

increase student achievement."

## **Chapter 66 Section 3 Laws 2017**

SECTION 3. Section 22-32-4 NMSA 1978 (being Laws 2013, Chapter 16, Section 4) is amended to read:

"22-32-4. COMMUNITY SCHOOLS INITIATIVES--ADMINISTRATIVE COSTS--GRANTS--SCHOOL DISTRICT, GROUP OF PUBLIC SCHOOLS OR PUBLIC SCHOOL DUTIES--REQUIREMENTS.--

A. A school district shall bear any administrative costs associated with the establishment and implementation of a community school within the school district.

B. Subject to the availability of funding, grants for community schools initiatives are available to a school district, a group of public schools or a public school that has demonstrated partnerships with any lead agency and local, private and public agencies for the purpose of establishing, operating and sustaining community schools and that meets department eligibility requirements.

C. Applications for grants for community schools initiatives shall be in the form prescribed by the department and shall include the following information:

(1) a statement of need, including demographic and socioeconomic information about the area to be served by the community schools initiative;

(2) goals and expected outcomes of the initiative;

(3) services and activities to be provided by the initiative;

(4) written agreements for the provision of services by public and private agencies, community groups and other parties;

(5) a work plan and budget for the initiative, including staffing requirements and the expected availability of staff;

(6) days and hours of operation;

(7) strategies for dissemination of information about the initiative to potential users;

(8) training and professional development plans;

(9) letters of endorsement and commitment from community agencies and organizations and local governments; and

(10) any other information the department requires.

D. A school district, a group of public schools or a public school that uses funds under this section to transform a school into a research- and evidence-based community schools initiative shall:

(1) use rigorous, transparent, equitable and evidence-based evaluation systems to assess the effectiveness of the implementation of the community schools initiative;

(2) provide ongoing, high-quality professional development to staff that:

(a) aligns with the school's instructional program;

(b) facilitates effective teaching and learning; and

(c) supports the implementation of school reform strategies; and

(3) give the school sufficient operational flexibility in programming, staffing, budgeting and scheduling so that the school can fully implement a comprehensive strategy designed to focus on improving school climate, student

achievement and growth in reading and mathematics, attendance, behavior, parental engagement and, for high schools, graduation rates and readiness for college or a career."

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House Bill 477, aa

Approved April 6, 2017

## **LAWS 2017, CHAPTER 67**

### **AN ACT**

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE; AMENDING SECTION 6-10-10 NMSA 1978 (BEING LAWS 1933, CHAPTER 175, SECTION 4, AS AMENDED) TO CLARIFY THE AUTHORIZATION FOR THE USE OF LETTERS OF CREDIT ISSUED BY A FEDERAL HOME LOAN BANK FOR SECURITIZATION OF PUBLIC FUND DEPOSITS IN NEW MEXICO.

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

### **Chapter 67 Section 1 Laws 2017**

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. 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, may 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 that 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;

(2) securities that are issued and backed by the full faith and credit of the United States government or issued by its agencies or instrumentalities, including securities issued by federal home loan banks; or

(3) federally insured obligations, including brokered certificates of deposit, certificate of deposit account registry service and federally insured cash accounts.

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, may 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 I 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, may 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, may invest money held in demand deposits and not immediately needed for the operation of state government and money held in the local government investment pool, except as provided in Section 6-10-10.1 NMSA 1978. The investments may be made in securities that are issued and backed by the full faith and credit of the United States government or issued by its agencies or instrumentalities, including securities issued by federal home loan banks.

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 its agencies or instrumentalities or by other securities backed by the United States or its agencies or instrumentalities having a market value of at least one hundred two percent of the amount of the contract. The securities required as collateral under this subsection shall be delivered to a third-party custodian bank pursuant to a contract with the state and the counterparty or to the fiscal agent of New Mexico or its designee. Delivery shall be made simultaneously with the transfer of funds or as soon as practicable, but no later than the same day that the funds are transferred.

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. The collateral required by this subsection shall be delivered to the state of New Mexico or its designee simultaneously with the transfer of funds or as soon as practicable, but no later than the same day that the state-owned securities are transferred.

L. 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).

M. The state treasurer, with the advice and consent of the state board of finance, may also invest in any of the following investments in an amount not to exceed forty percent of any fund that the state treasurer invests:

(1) commercial paper rated "prime" quality by a national rating service, issued by corporations organized and operating within the United States;

(2) medium-term notes and corporate notes with a maturity not exceeding five years that are rated A or its equivalent or better by a nationally recognized rating service and that are issued by a corporation organized and operating in the United States; or

(3) an asset-backed obligation with a maturity not exceeding five years that is rated AAA or its equivalent by a nationally recognized rating service.

N. The state treasurer, with the advice and consent of the state board of finance, may also invest in:

(1) shares of an open-ended diversified investment company that:

(a) is registered with the United States securities and exchange commission;

(b) complies with the diversification, quality and maturity requirements of Rule 2a-7, or any successor rule, of the United States securities and exchange commission applicable to money market mutual funds; and

(c) assesses no fees pursuant to Rule 12b-1, or any successor rule, of the United States securities and exchange commission, no sales load on the purchase of shares and no contingent deferred sales charge or other similar charges, however designated, provided that the state shall not, at any time, own more than five percent of a money market mutual fund's assets;

(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 M 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;

(3) the local government investment pool managed by the office of the state treasurer. Investments made pursuant to this paragraph shall, in aggregate, be no more than thirty-five percent of the total assets of the local government investment pool;

(4) securities issued by the state of New Mexico, its agencies, institutions, counties, municipalities, school districts, community college districts or other subdivisions of the state, or as otherwise provided by law; or

(5) securities issued by states other than New Mexico or governmental entities in states other than New Mexico.

O. 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."

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HBIC/House Bill 513

Approved April 6, 2017

## **LAWS 2017, CHAPTER 68**

AN ACT

RELATING TO SCHOOL PERSONNEL; PROVIDING FOR AN ALTERNATIVE LEVEL THREE-B LICENSURE TRACK FOR INSTRUCTIONAL SUPPORT PROVIDERS; PROVIDING FOR CERTAIN MINIMUM SALARIES.

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

### **Chapter 68 Section 1 Laws 2017**

SECTION 1. A new section of the School Personnel Act is enacted to read:

"ALTERNATIVE LEVEL THREE-B LICENSURE--TRACK FOR INSTRUCTIONAL SUPPORT PROVIDERS.--

A. An alternative level three-B license is a five-year license granted to a school administrator applicant who meets the qualifications for that level. Licenses may be renewed upon satisfactory annual demonstration of instructional leader and administrative competency.

B. The department shall grant an alternative level three-B license to an applicant who is licensed by the department as a school counselor, school social worker, school nurse, speech-language pathologist, psychologist, physical therapist, physical therapy assistant, occupational therapist, occupational therapy assistant, recreational therapist, marriage and family therapist, interpreter for the deaf or diagnostician and who:

(1) holds a post-baccalaureate degree;

(2) has satisfactorily completed department-approved courses in administration and a department-approved administration apprenticeship program; and

(3) demonstrates instructional leader competence required by the department and verified by the local superintendent through the highly objective uniform statewide standard of evaluation.

C. The minimum annual salary for an alternative level three-B licensed school principal or assistant school principal shall be fifty thousand dollars (\$50,000) multiplied by the applicable responsibility factor."

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House Bill 41

Approved April 6, 2017

## **LAWS 2017, CHAPTER 69**

AN ACT

RELATING TO YOUTH ATHLETICS SAFETY; REQUIRING BRAIN INJURY TRAINING FOR STUDENT AND OTHER YOUTH ATHLETES.

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

### **Chapter 69 Section 1 Laws 2017**

SECTION 1. Section 22-13-31 NMSA 1978 (being Laws 2010, Chapter 96, Section 1, as amended) is amended to read:

"22-13-31. BRAIN INJURY--PROTOCOLS TO BE USED BY COACHES FOR BRAIN INJURIES RECEIVED BY STUDENTS IN SCHOOL ATHLETIC ACTIVITIES-- TRAINING OF COACHES AND STUDENT ATHLETES--INFORMATION TO BE PROVIDED TO COACHES, STUDENT ATHLETES AND STUDENT ATHLETES' PARENTS OR GUARDIANS--REQUIRING ACKNOWLEDGMENT OF TRAINING AND INFORMATION--NONSCHOLASTIC YOUTH ATHLETIC ACTIVITY ON SCHOOL DISTRICT PROPERTY--BRAIN INJURY PROTOCOL COMPLIANCE-- CERTIFICATION.--

A. A coach shall not allow a student athlete to participate in a school athletic activity on the same day that the student athlete:

(1) exhibits signs, symptoms or behaviors consistent with a brain injury after a coach, a school official or a student athlete reports, observes or suspects that a student athlete exhibiting these signs, symptoms or behaviors has sustained a brain injury; or

(2) has been diagnosed with a brain injury.

B. A coach may allow a student athlete who has been prohibited from participating in a school athletic activity pursuant to Subsection A of this section to participate in a school athletic activity no sooner than two hundred forty hours from the hour in which the student athlete received a brain injury and only after the student athlete:

(1) no longer exhibits any sign, symptom or behavior consistent with a brain injury; and

(2) receives a written medical release from a licensed health care professional.

C. Each school district shall ensure that each coach participating in school athletic activities and each student athlete in the school district receives training provided pursuant to Paragraph (1) of Subsection D of this section.

D. The New Mexico activities association shall consult with the brain injury advisory council and school districts to promulgate rules to establish:

(1) protocols and content consistent with current medical knowledge for training each coach participating in school athletic activities and each student athlete to:

(a) understand the nature and risk of brain injury associated with athletic activity;

(b) recognize signs, symptoms or behaviors consistent with a brain injury when a coach or student athlete suspects or observes that a student athlete has received a

brain injury;

(c) understand the need to alert appropriate medical professionals for urgent diagnosis or treatment; and

(d) understand the need to follow medical direction for proper medical protocols; and

(2) the nature and content of brain injury training and information forms and educational materials for, and the means of providing these forms and materials to, coaches, student athletes and student athletes' parents or guardians regarding the nature and risk of brain injury resulting from athletic activity, including the risk of continuing or returning to athletic activity after a brain injury.

E. At the beginning of each academic year or the first participation in school athletic activities by a student athlete during an academic year, a school district shall provide a brain injury training and information form created pursuant to Subsection D of this section to a student athlete and the student athlete's parent or guardian. The school district shall receive signatures on the brain injury training and information form from the student athlete and the student athlete's parent or guardian confirming that the student athlete has received the brain injury training required by this section and that the student athlete and parent or guardian understand the brain injury information before permitting the student athlete to begin or continue participating in school athletic activities for that academic year. The form required by this subsection may be contained on the student athlete sport physical form.

F. As a condition of permitting nonscholastic youth athletic activity to take place on school district property, the superintendent of a school district shall require the person offering the nonscholastic youth athletic activity to sign a certification that the nonscholastic youth athletic activity will follow the brain injury protocols established pursuant to Section 22-13-31.1 NMSA 1978.

G. As used in this section:

(1) "academic year" means any consecutive period of two semesters, three quarters or other comparable units commencing with the fall term each year;

(2) "brain injury" means a body-altering physical trauma to the brain, skull or neck caused by, but not limited to, blunt or penetrating force, concussion, diffuse axonal injury, hypoxia-anoxia or electrical charge;

(3) "licensed health care professional" means:

(a) a practicing physician or physician assistant licensed pursuant to the Medical Practice Act;

(b) a practicing osteopathic physician licensed pursuant to the Osteopathic Medicine Act;

(c) a practicing certified nurse practitioner licensed pursuant to the Nursing Practice Act;

(d) a practicing osteopathic physician's assistant licensed pursuant to the Osteopathic Medicine Act;

(e) a practicing psychologist licensed pursuant to the provisions of the Professional Psychologist Act;

(f) a practicing athletic trainer licensed pursuant to the provisions of the Athletic Trainer Practice Act; or

(g) a practicing physical therapist licensed pursuant to the Physical Therapy Act;

(4) "nonscholastic youth athletic activity" means an organized athletic activity in which the participants, a majority of whom are under nineteen years of age, are engaged in an athletic game or competition against another team, club or entity, or in practice or preparation for an organized athletic game or competition against another team, club or entity. "Nonscholastic youth athletic activity" does not include an elementary school, middle school, high school, college or university activity or an activity that is incidental to a nonathletic program;

(5) "school athletic activity" means a sanctioned middle school, junior high school or senior high school function that the New Mexico activities association regulates; and

(6) "student athlete" means a middle school, junior high school or senior high school student who engages in, is eligible to engage in or seeks to engage in a school athletic activity."

## **Chapter 69 Section 2 Laws 2017**

SECTION 2. Section 22-13-31.1 NMSA 1978 (being Laws 2016, Chapter 53, Section 2) is amended to read:

"22-13-31.1. BRAIN INJURY--PROTOCOLS--TRAINING OF COACHES--BRAIN INJURY EDUCATION.--

A. A coach shall not allow a youth athlete to participate in a youth athletic activity on the same day that the youth athlete:

(1) exhibits signs, symptoms or behaviors consistent with a brain injury after a coach, a league official or a youth athlete reports, observes or suspects that a youth athlete exhibiting these signs, symptoms or behaviors has sustained a brain injury; or

(2) has been diagnosed with a brain injury.

B. A coach may allow a youth athlete who has been prohibited from participating in a youth athletic activity pursuant to Subsection A of this section to participate in a youth athletic activity no sooner than two hundred forty hours from the hour in which the youth athlete received a brain injury and only after the youth athlete:

(1) no longer exhibits any sign, symptom or behavior consistent with a brain injury; and

(2) receives a written medical release from a licensed health care professional.

C. Each youth athletic league shall ensure that each coach participating in youth athletic activities and each youth athlete in the league receives training provided pursuant to Paragraph (1) of Subsection D of this section.

D. The department of health shall consult with the brain injury advisory council to promulgate rules to establish:

(1) protocols and content consistent with current medical knowledge for training each coach participating in youth athletic activities and each youth athlete to:

(a) understand the nature and risk of brain injury associated with youth athletic activity;

(b) recognize signs, symptoms or behaviors consistent with a brain injury when a coach or youth athlete suspects or observes that a youth athlete has received a brain injury;

(c) understand the need to alert appropriate medical professionals for urgent diagnosis or treatment; and

(d) understand the need to follow medical direction for proper medical protocols; and

(2) the nature and content of brain injury training and information forms and educational materials for, and the means of providing these forms and materials to, coaches, youth athletes and youth athletes' parents or guardians regarding the nature and risk of brain injury resulting from youth athletic activity, including the risk of continuing or returning to youth athletic activity after a brain injury.

E. At the beginning of each youth athletic activity season or the first participation in youth athletic activities by a youth athlete during a youth athletic activity season, a youth athletic league shall provide a brain injury training and information form created pursuant to Subsection D of this section to a youth athlete and the youth athlete's parent or guardian. The youth athletic league shall receive signatures on the

brain injury training and information form from the youth athlete and the youth athlete's parent or guardian confirming that the youth athlete has received the brain injury training required by this section and that the youth athlete and parent or guardian understand the brain injury information before permitting the youth athlete to begin or continue participating in youth athletic activities for the athletic season or term of participation.

F. As used in this section:

(1) "brain injury" means a body-altering physical trauma to the brain, skull or neck caused by blunt or penetrating force, concussion, diffuse axonal injury, hypoxia-anoxia or electrical charge;

(2) "licensed health care professional" means:

(a) a practicing physician or physician assistant licensed pursuant to the Medical Practice Act;

(b) a practicing osteopathic physician licensed pursuant to the Osteopathic Medicine Act;

(c) a practicing certified nurse practitioner licensed pursuant to the Nursing Practice Act;

(d) a practicing osteopathic physician's assistant licensed pursuant to the Osteopathic Medicine Act;

(e) a practicing psychologist licensed pursuant to the provisions of the Professional Psychologist Act;

(f) a practicing athletic trainer licensed pursuant to the provisions of the Athletic Trainer Practice Act; or

(g) a practicing physical therapist licensed pursuant to the provisions of the Physical Therapy Act;

(3) "youth athlete" means an individual under nineteen years of age who engages in, is eligible to engage in or seeks to engage in a youth athletic activity; and

(4) "youth athletic activity" means an organized athletic activity in which the participants, a majority of whom are under nineteen years of age, are engaged in an athletic game or competition against another team, club or entity, or in practice or preparation for an organized athletic game or competition against another team, club or entity. "Youth athletic activity" does not include an elementary school,

middle school, high school, college or university activity or an activity that is incidental to a nonathletic program."

## **Chapter 69 Section 3 Laws 2017**

SECTION 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2017.

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Senate Bill 38

Approved April 6, 2017

## **LAWS 2017, CHAPTER 70**

AN ACT

RELATING TO OFF-HIGHWAY MOTOR VEHICLES; AMENDING SECTIONS OF THE MOTOR VEHICLE CODE AND THE OFF-HIGHWAY MOTOR VEHICLE ACT; PROVIDING FOR A SPECIAL PAVED ROAD USE VEHICLE PLATE FOR

OFF-HIGHWAY MOTOR VEHICLES; AMENDING THE OFF-HIGHWAY MOTOR VEHICLE ACT TO SPECIFY AGE-APPROPRIATE OPERATING LICENSES, PERMITS AND SAFETY GEAR FOR PAVED ROAD USE; MAKING AN APPROPRIATION.

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

## **Chapter 70 Section 1 Laws 2017**

SECTION 1. Section 66-1-4.19 NMSA 1978 (being Laws 1990, Chapter 120, Section 20, as amended) 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;

C. "vehicle-business number" means the distinctive registration number given by the division to any manufacturer, auto recycler or dealer; and

D. "vehicle plate" means a plate, marker, sticker or tag similar to a registration plate, but that is issued by the department for vehicles that are exempted from registration under the Motor Vehicle Code."

## **Chapter 70 Section 2 Laws 2017**

SECTION 2. A new section of the Motor Vehicle Code is enacted to read:

"OFF-HIGHWAY MOTOR VEHICLE PAVED ROAD USE VEHICLE PLATE.--

A. The department shall issue a standardized special off-highway motor vehicle paved road use vehicle plate with a logo specified in Section 66-3-424 NMSA 1978 indicating that the recipient intends to operate an off-highway motor vehicle on paved streets or highways in accordance with the provisions of the Off-Highway Motor Vehicle Act.

B. For a fee of seven dollars (\$7.00), an off-highway motor vehicle owner who wishes to indicate an intent to operate an off-highway motor vehicle on paved streets or highways in accordance with the provisions of the Off-Highway Motor Vehicle Act may apply for the issuance of a special vehicle plate as provided in Subsection A of this section. No two owners shall be issued identically lettered or numbered vehicle plates.

C. The revenue from the special off-highway motor vehicle paved road use vehicle plate fee imposed by Subsection B of this section shall be retained by the department and is appropriated to the department for the manufacture and issuance of the vehicle plates."

## **Chapter 70 Section 3 Laws 2017**

SECTION 3. Section 66-3-1010.3 NMSA 1978 (being Laws 2005, Chapter 325, Section 11, as amended) is amended to read:

"66-3-1010.3. 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 pursuit of or harassment of livestock in any manner that negatively affects the livestock's condition;

(5) on or within an earthen tank or other structure meant to water livestock or wildlife, unless the off-highway motor vehicle is on a route designated by the landowner or land management agency as an off-highway motor vehicle route;

(6) in a manner that has a direct negative effect on or interferes with persons engaged in agricultural practices;

(7) in excess of ten miles per hour within two hundred feet of a business, animal shelter, horseback rider, bicyclist, pedestrian, livestock or occupied dwelling, unless the person operates the vehicle on a closed course or track or a public roadway;

(8) unless in possession of the person's registration certificate or nonresident permit;

(9) 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;

(10) 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;

(11) 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; or

(12) where off-highway motor vehicle traffic is prohibited under local, state or federal rules or regulations.

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 department;

(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 or recreational off-highway vehicle is an age-appropriate size-fit vehicle established by rule of the department; 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 department.

E. An off-highway motor vehicle shall 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 70 Section 4 Laws 2017**

SECTION 4. 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) paved street or highway except as provided in Subsection B, C, D or E 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. If authorized by ordinance or resolution of a local authority or the state transportation commission, a recreational off-highway vehicle or an all-terrain vehicle may be operated on a paved street or highway owned and controlled by the authorizing entity if:

(1) the vehicle has one or more headlights and one or more taillights that comply with the Off-Highway Motor Vehicle Act;

(2) the vehicle has brakes, mirrors and mufflers;

(3) the operator has valid driver's licenses or permits as required under the Motor Vehicle Code and off-highway motor vehicle safety permits as required under the Off-Highway Motor Vehicle Act;

(4) the operator is insured in compliance with the provisions of the Mandatory Financial Responsibility Act;

(5) the operator of the vehicle is using eye protection that complies with the Off-Highway Motor Vehicle Act; and

(6) if the operator is under eighteen years of age, the operator is wearing a safety helmet that complies with the Off-Highway Motor Vehicle Act.

D. Except for sections of the Motor Vehicle Code that are in conflict with the licensing and equipment requirements of the Off-Highway Motor Vehicle Act, any operator using an off-highway motor vehicle on a paved street or highway shall be subject to the requirements and penalties for operators of moving and parked vehicles under the Motor Vehicle Code.

E. By ordinance or resolution, a local authority or state transportation commission may establish separate speed limits and operating restrictions for off-highway vehicles where they are authorized to operate on paved streets or highways pursuant to Subsection C of this section.

F. 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.

G. 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.

H. Unless authorized, a person shall not:

(1) remove, deface or destroy any official sign installed by a state, federal, local or private land management agency; or

(2) install any off-highway motor vehicle-related sign."

## **Chapter 70 Section 5 Laws 2017**

SECTION 5. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2017.

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Senate Bill 51, aa

Approved April 6, 2017

## **LAWS 2017, CHAPTER 71**

AN ACT

RELATING TO COMMUNICATIONS; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NEW MEXICO TELECOMMUNICATIONS ACT TO PROVIDE FOR PUBLIC REGULATION COMMISSION JURISDICTION OVER INCUMBENT LOCAL EXCHANGE CARRIERS AND THEIR INVESTMENT IN TELECOMMUNICATIONS AND BROADBAND INFRASTRUCTURE.

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

## **Chapter 71 Section 1 Laws 2017**

SECTION 1. Section 63-9A-3 NMSA 1978 (being Laws 1985, Chapter 242, Section 3, as amended) is amended to read:

"63-9A-3. DEFINITIONS.--As used in the New Mexico Telecommunications Act:

A. "affordable rates" means local exchange service rates that promote universal service within a local exchange area, giving consideration to the economic conditions and costs to provide service in such area;

B. "cable television service" means the one-way transmission to subscribers of video programming or other programming service and subscriber interaction, if any, that is required for the selection of such video programming or other programming service;

C. "commission" means the public regulation commission;

D. "competitive telecommunications service" means a service that has been determined to be subject to effective competition pursuant to Section 63-9A-8 NMSA 1978;

E. "competitive telecommunications service provider" includes competitive carriers holding certificates of public convenience and necessity issued by the commission pursuant to laws and regulations, including, without limitation, Section 63-9A-6 NMSA 1978;

F. "effective competition" means the competition that results from the customers of the service having reasonably available and comparable alternatives to the service, consistent with the standards set forth in Section 63-9A-8 NMSA 1978;

G. "fund" means the state rural universal service fund;

H. "incumbent local exchange carrier" means a person that:

(1) was designated as an eligible telecommunications carrier by the state corporation commission in Docket #97-93-TC by order dated

October 23, 1997 or that provided local exchange service in New Mexico on February 8, 1996; or

(2) became a successor or assignee of an incumbent local exchange carrier;

I. "incumbent rural telecommunications carrier" means an incumbent local exchange carrier that serves fewer than fifty thousand access lines within the state and has been designated as an eligible telecommunications company by the state corporation commission or the public regulation commission;

J. "local exchange area" means a geographic area encompassing one or more local communities, as described in maps, tariffs or rate schedules filed with the commission,

where local exchange rates apply;

K. "local exchange service" means the transmission of two-way interactive switched voice communications furnished by a telecommunications company within a local exchange area;

L. "message telecommunications service" means telecommunications service between local exchange areas within the state for which charges are made on a per-unit basis, not including wide-area telecommunications service, or its equivalent, or individually negotiated contracts for telecommunications services;

M. "noncompetitive telecommunications service" means a service that has not been determined to be subject to effective competition pursuant to Section 63-9A-8 NMSA 1978;

N. "private telecommunications service" means a system, including the construction, maintenance or operation thereof, for the provision of telecommunications service, or any portion of that service, by a person for the sole and exclusive use of that person and not for resale, directly or indirectly. For purposes of this definition, the person that may use such service includes any affiliates of the person if at least eighty percent of the assets or voting stock of the affiliates is owned by the person. If any other person uses the telecommunications service, whether for hire or not, the private telecommunications service is a public telecommunications service;

O. "public telecommunications service" means the transmission of signs, signals, writings, images, sounds, messages, data or other information of any nature by wire, radio, lightwaves or other electromagnetic means originating and terminating in this state regardless of actual call routing. "Public telecommunications service" does not include the provision of terminal equipment used to originate or terminate such service; private telecommunications service; broadcast transmissions by radio, television and satellite broadcast stations regulated by the federal communications commission; radio common carrier services, including mobile telephone service and radio paging; or one-way cable television service;

P. "telecommunications company" means a person that provides public telecommunications service;

Q. "wire center" means a facility where local exchange access lines converge and are connected to a switching device that provides access to the public switched network and includes remote switching units and host switching units; and

R. "wire center serving area" means the geographic area of a local exchange area served by a single wire center."

## **Chapter 71 Section 2 Laws 2017**

SECTION 2. Section 63-9A-5 NMSA 1978 (being Laws 1985, Chapter 242, Section 5) is amended to read:

"63-9A-5. REGULATION BY COMMISSION.--

A. Except as otherwise provided in the New Mexico Telecommunications Act, each public telecommunications service is declared to be affected with the public interest and, as such, subject to the provisions of that act, including the regulation thereof as provided in that act.

B. The commission has exclusive jurisdiction to regulate incumbent local exchange carriers that serve fifty thousand or more access lines within the state only in the manner and to the extent authorized by the New Mexico Telecommunications Act, and Subsection B of Section 63-7-1.1 NMSA 1978 does not apply; provided, however, that the commission's jurisdiction includes the regulation of wholesale rates, including access charges and interconnection agreements consistent with federal law and its enforcement and determinations of participation in low-income telephone service assistance programs pursuant to the Low Income Telephone Service Assistance Act. The New Mexico Telecommunications Act expressly preserves and does not diminish or expand:

(1) the rights and obligations of any entity, including the commission, established pursuant to federal law, including 47 U.S.C. Sections 251 and 252, or established pursuant to any state law, rule, procedure, regulation or order related to interconnection, intercarrier compensation, intercarrier complaints, wholesale rights and obligations or any wholesale rate or schedule that is filed with and maintained by the commission;

(2) the rights and obligations of any competitive telecommunications service provider holding a certificate of public convenience and necessity, or the rights and obligations of any competitive local exchange carrier to obtain such a certificate;

(3) the authority of the commission to resolve consumer complaints regarding basic local exchange service; provided, however, that the commission's authority to resolve such complaints shall be limited to resolving issues of consumer protection and shall not include the authority to determine or fix rates, provider of last resort obligations or service quality standards except as expressly set forth in the New Mexico Telecommunications Act;

(4) the authority of the commission to establish reasonable quality of service standards; provided, however, that the enforcement of such standards shall be limited to the commission's fining authority set forth in Section 63-7-23 NMSA 1978 and the authority to seek an injunction set forth in Section 63-9-19 NMSA 1978;

(5) the rights and obligations of any entity, including the commission, regarding the fund;

(6) the rights and obligations of any entity, including the commission, regarding access to emergency service to the extent consistent with the Enhanced 911 Act; or

(7) the rights and obligations of any entity, including the commission, regarding the administration of slamming and cramming rules, telecommunications relay service and numbering resources to the extent permitted by and consistent with federal law.

C. For incumbent local exchange carriers that serve fifty thousand or more access lines within the state, the commission shall adopt relaxed regulations that provide for:

(1) reduced filing requirements for applicants in rate increase proceedings under the New Mexico Telecommunications Act; and

(2) expedited consideration in all proceedings initiated pursuant to the New Mexico Telecommunications Act in order to reduce the cost and burden for incumbent local exchange carriers and other applicants.

D. The regulatory requirements and the commission's regulation of competitive local exchange carriers, competitive access providers and interexchange carriers shall be no greater than, and no more extensive than, that of incumbent local exchange carriers that serve fifty thousand or more access lines.

E. The provisions of the New Mexico Telecommunications Act do not apply to incumbent rural telecommunications carriers."

## **Chapter 71 Section 3 Laws 2017**

SECTION 3. Section 63-9A-8 NMSA 1978 (being Laws 1985, Chapter 242, Section 8, as amended) is amended to read:

"63-9A-8. REGULATION OF RATES AND CHARGES--EFFECTIVE COMPETITION.--

A. In accordance with the policy established in the New Mexico Telecommunications Act, the commission shall, by its own motion or upon petition by

any interested party, hold hearings to determine if any public telecommunications service is subject to effective competition in the relevant market area. When the commission has made a determination that a service or part of a service is subject to effective competition, the commission shall, consistent with the purposes of the New Mexico Telecommunications Act, modify, reduce or eliminate rules, regulations and other requirements applicable to the provision of such service, including the fixing and determining of specific rates, tariffs or fares for the service. The commission's action may include the detariffing of service or the establishment of minimum rates that will cover the costs for the service. Such modification shall be consistent with the maintenance of the availability of access to local exchange service at affordable rates and comparable message telecommunications service rates, as established by the commission, for comparable markets or market areas, except that volume discounts or other discounts based on reasonable business purposes shall be permitted. Upon petition or request of an affected telecommunications company, the commission, upon a finding that the requirements of Subsection B of this section are met, shall modify the same or similar retail regulatory requirements for those providers of comparable public telecommunications services in the same relevant markets so that there shall be parity of retail regulatory standards and requirements for all such providers; provided, however, that this subsection shall not be construed to permit the adoption of any new regulatory requirements or standards for providers of comparable telecommunications services.

B. In determining whether a service is subject to effective competition, the commission shall consider the following on a wire center serving area basis for each wire center serving area and service for which a determination of effective competition is requested, and separate determinations shall be made for residential and business services in each wire center serving area:

- (1) the extent to which services are reasonably available from alternate providers;
- (2) the ability of alternate providers to make functionally equivalent or substitute services readily available at competitive rates, terms and conditions;
- (3) existing economic, technological, regulatory or other barriers to market entry and exit;
- (4) the number of other providers offering the same or reasonably comparable services;
- (5) the presence of at least two facilities-based competitors, including without limitation facilities-based providers of wireless or voice over internet protocol services, operating in all or part of the wire center for which a determination of effective competition is requested that are unaffiliated with the petitioning carrier and provide the same or reasonably comparable service of the type for which the finding of effective competition is sought;

(6) the ability of the petitioning provider to affect prices or deter competition; and

(7) such other factors as the commission deems appropriate.

C. If, in the wire center serving area for which a determination of effective competition is requested, the incumbent local exchange carrier provides basic local exchange service either separately or bundled to less than one-half of the customer locations where such service is available at the time the petition is filed, the public interest requires that effective competition be presumed for all regulated telecommunications services provided by the incumbent provider in that wire center serving area; provided, however, that findings and presumptions applied pursuant to this section shall be made separately for residential and business services and customer locations.

D. No provider of public telecommunications service may use current revenues earned or expenses incurred in conjunction with any noncompetitive service to subsidize competitive public telecommunications services. In order to avoid cross-subsidization of competitive services by noncompetitive telecommunications services, prices or rates charged for a competitive telecommunications service shall cover the cost for the provision of the service consistent with the provisions of Subsection G of Section 63-9A-8.1 NMSA 1978. In any proceeding held pursuant to this section, the party claiming that the price for a competitive telecommunications service does not cover the cost shall bear the burden of proving that the prices charged for competitive telecommunications services do not cover cost; provided, however, that the commission may require the telecommunications company against whom the complaint is filed to submit a cost study for the service that is the subject of the complaint as part of its examination and determination of the complaint.

E. The commission may, upon its own motion or on the petition of an interested party and after notice to all interested parties and customers and a hearing, reclassify any service previously determined to be a competitive telecommunications service if after a hearing the commission finds that a service is not subject to effective competition.

F. If a wire center service area is deregulated pursuant to a determination of effective competition, for those wire center service areas where that service is deregulated, the petitioning telecommunications company shall no longer be eligible to claim an exemption from the application of the Unfair Practices Act or the Antitrust Act."

## **Chapter 71 Section 4 Laws 2017**

SECTION 4. Section 63-9A-8.1 NMSA 1978 (being Laws 1998, Chapter 108, Section 61, as amended) is amended to read:

"63-9A-8.1. CHANGE IN RATES.--

A. Rates for retail public telecommunications services provided by an incumbent local exchange carrier that serves fifty thousand or more access lines within the state shall be subject to regulation by the commission only in the manner and to the extent authorized by this section.

B. An incumbent local exchange carrier that serves fifty thousand or more access lines within the state shall file tariffs for all retail public telecommunications services that, other than residential local exchange service, shall be effective after ten days' notice to its customers and the commission. An incumbent local exchange carrier that serves fifty thousand or more access lines within the state shall remain subject to complaint by an interested party subject to Section 63-9A-11 NMSA 1978.

C. An incumbent local exchange carrier that serves fifty thousand or more access lines within the state may increase its rates for residential local exchange service in the manner provided in Subsection B of this section to comply with requirements imposed by any federal or state law or rule. The procedures of Subsections D, E and F of this section shall not apply to increases under this subsection.

D. Except as provided in Subsection C of this section, rates for residential local exchange service may be increased by an incumbent local exchange carrier that serves fifty thousand or more access lines within the state 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.

E. An incumbent local exchange carrier that serves fifty thousand or more access lines within the state that proposes to increase its rates for residential local exchange service pursuant to Subsection D of this section shall hold at least one public informational meeting in each public regulation commission district as established by the Public Regulation Commission Apportionment Act in which there is a local exchange area affected by the rate change.

F. Residential local exchange service rates increased by an incumbent local exchange carrier that serves fifty thousand or more access lines within the state

pursuant to Subsections D and E of this section shall be reviewed by the commission only upon written protest signed by at least one hundred 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 that notice of the rate change was sent to affected subscribers of an incumbent local exchange 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. 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 incumbent local exchange carrier that serves fifty thousand or more access lines within the state in its operations and may include other accounting adjustments authorized by the commission.

G. Rates for local exchange, vertical and long-distance service to retail residential and business end-user customers charged by incumbent local exchange carriers that serve fifty thousand or more access lines may be reduced to a level equal to, but not below, the intrastate cost. 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 shall also include any interexchange access rates charged to another telecommunications company for the service.

H. An incumbent local exchange carrier that serves fifty thousand or more access lines within the state may offer or discontinue offering retail special incentives, discounts, packaged offerings, temporary rate waivers or other promotions and may offer individual contracts."

## **Chapter 71 Section 5 Laws 2017**

SECTION 5. Section 63-9A-9 NMSA 1978 (being Laws 1985, Chapter 242, Section 9, as amended) is amended to read:

"63-9A-9. REGULATION OF INDIVIDUAL CONTRACTS TO FACILITATE COMPETITION.--

A. In accordance with the provisions of this section, the commission shall regulate the rates, charges and service conditions for individual contracts for public telecommunications services in a manner that facilitates effective competition and shall authorize the provision of all or any portion of a public telecommunications service under stated or negotiated terms to any person or entity that has acquired or is preparing to acquire, through construction, lease or any other form of acquisition, similar public telecommunications services from an alternate source.

B. At any time, the provider of public telecommunications services may file a verified application with the commission for authorization to provide a public telecommunications service on an individual contract basis. The application shall describe the telecommunications services to be offered, the party to be served and the parties offering the service, together with such other information and in such form as the commission may prescribe. Such additional information shall be reasonably related to the determination of the existence of a competitive offer. A determination of effective competition pursuant to Section 63-9A-8 NMSA 1978 shall not be necessary to file an application or to have an application granted by the commission pursuant to this section.

C. The commission shall approve or deny any such application within ten days or such other period as shall be established by the commission, not to exceed sixty days, giving consideration to the requirements of any contract negotiations. If the commission has not acted on any application within the time period established, the application shall be deemed granted. The commission shall deny the application only upon a finding that the application fails to set forth prescribed information or that the subject or comparable services are not being offered to the customer by parties other than the applicant or that the contract fails to cover the costs of the service, as provided in Subsection G of Section 63-9A-8.1 NMSA 1978.

D. The telecommunications company shall file with the commission the final contract or other evidence of the service to be provided, together with the charges and other conditions of service, upon request by the commission. If such contract or evidence is requested, it shall be maintained by the commission on a confidential basis subject to an appropriate protective order. Any interested party may receive copies of filings made pursuant to this section upon request to the commission and execution of an appropriate confidentiality agreement, if applicable."

## **Chapter 71 Section 6 Laws 2017**

SECTION 6. Section 63-9A-11 NMSA 1978 (being Laws 1985, Chapter 242, Section 11) is amended to read:

"63-9A-11. COMPLAINT ALLEGING VIOLATION BY PROVIDER OF TELECOMMUNICATIONS SERVICES.--

A. Complaint may be made by any interested party setting forth any act or omission by a provider of telecommunications services alleged to be in violation of any provision of the New Mexico Telecommunications Act or any

order or rule of the commission issued pursuant to that act.

B. Upon filing of the complaint, the commission shall set the time and place of hearing, if a hearing is required, and at least ten days' notice of the hearing shall be given to the party complained of. Service of notice of the hearing shall be made in any manner giving actual notice.

C. All matters upon which complaint may be founded may be joined in one hearing and a complaint is not defective for misjoinder or nonjoinder of parties or causes, either before the commission or on review by the courts. The persons the commission allows to intervene shall be joined and heard, along with the complainant and the party complained of.

D. The burden shall be on the party complaining to show a violation of a provision of the New Mexico Telecommunications Act or an order or rule of the commission issued pursuant to that act.

E. After conclusion of the hearing, the commission shall make and file an order containing its findings of fact and decision. A copy of the order shall be served upon the party complained of or that party's attorney.

F. Conduct of the hearings and rendering of decisions shall be governed by the rules of practice and procedure promulgated by the commission."

## **Chapter 71 Section 7 Laws 2017**

SECTION 7. A new section of the New Mexico Telecommunications Act is enacted to read:

"COMMISSION REVIEW OF IMPACTS.--The commission shall review the impact of provisions of the New Mexico Telecommunications Act on residential and business consumers in urban and rural areas of the state every three years, the first review to be completed by July 31, 2019, and shall report its findings to the legislature. The review shall investigate the impact on rates, service quality, incumbent local exchange carrier employment, investment in telecommunications infrastructure and the availability and deployment of high speed data services. The review shall also include a report on those wire center serving areas that have been deemed to have effective competition and any wire centers no longer subject to carrier of last resort obligations. For any wire center serving an area deregulated pursuant to the provisions of Section 63-9A-8 NMSA 1978, if the commission finds that reregulation of basic local exchange service is necessary to protect the public interest following a hearing and findings of fact

and conclusions of law, after July 31, 2021, the commission shall regulate basic local exchange service pursuant to the New Mexico Telecommunications Act."

## **Chapter 71 Section 8 Laws 2017**

SECTION 8. REPEAL.--Sections 63-9A-5.1, 63-9A-5.2 and 63-9A-8.2 NMSA 1978 (being Laws 2004, Chapter 3, Sections 4 and 5; and Laws 2000, Chapter 100, Section 4 and Laws 2000, Chapter 102, Section 4, as amended) are repealed.

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Senate Bill 53, aa

Approved April 6, 2017

## **LAWS 2017, CHAPTER 72**

AN ACT

RELATING TO FIDUCIARIES; ENACTING THE REVISED UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT; MAKING CONFORMING TECHNICAL AMENDMENTS TO THE UNIFORM PROBATE CODE.

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

## **Chapter 72 Section 1 Laws 2017**

SECTION 1. SHORT TITLE.--Sections 1 through 18 of this act may be cited as the "Revised Uniform Fiduciary Access to Digital Assets Act".

## **Chapter 72 Section 2 Laws 2017**

SECTION 2. DEFINITIONS.--As used in the Revised Uniform Fiduciary Access to Digital Assets Act:

A. "account" means an arrangement under a terms-of-service agreement in which a custodian carries, maintains, processes, receives or stores a digital asset of the user or provides goods or services to the user;

B. "agent" means an attorney-in-fact granted authority under a durable or nondurable power of attorney;

C. "carries" means engages in the transmission of an electronic communication;

D. "catalogue of electronic communications" means information that identifies each person with which a user has had an electronic communication the time and date of the communication and the electronic address of the person;

E. "conservator" means a person appointed by a court to manage the estate of a living individual. The term includes a limited conservator;

F. "content of an electronic communication" means information concerning the substance or meaning of the communication that:

(1) has been sent or received by a user;

(2) is in electronic storage by a custodian providing an electronic-communication service to the public or is carried or maintained by a custodian providing a remote-computing service to the public; and

(3) is not readily accessible to the public;

G. "court" means the district court;

H. "custodian" means a person that carries, maintains, processes, receives or stores a digital asset of a user;

I. "designated recipient" means a person chosen by a user using an online tool to administer digital assets of the user;

J. "digital asset" means an electronic record in which an individual has a right or interest. The term does not include an underlying asset or liability unless the asset or liability is itself an electronic record;

K. "electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities;

L. "electronic communication" has the meaning set forth in 18 U.S.C. Section 2510(12), as amended;

M. "electronic-communication service" means a custodian that provides to a user the ability to send or receive an electronic communication;

N. "fiduciary" means an original, additional or successor personal representative, conservator, agent or trustee;

O. "information" means data, text, images, videos, sounds, codes, computer programs, software, databases or the like;

P. "online tool" means an electronic service provided by a custodian that allows the user, in an agreement distinct from the terms-of-service agreement between the custodian and user, to provide directions for disclosure or nondisclosure of digital assets to a third person;

Q. "person" means an individual, estate, partnership, association, trust, business or nonprofit entity, public corporation, government or governmental subdivision, agency or instrumentality or other legal or commercial entity;

R. "personal representative" means an executor, administrator, special administrator or person that performs substantially the same function under law of this state other than the Revised Uniform Fiduciary Access to Digital Assets Act;

S. "power of attorney" means a record that grants an agent authority to act in the place of a principal;

T. "principal" means an individual who grants authority to an agent in a power of attorney;

U. "protected person" means an individual for whom a conservator has been appointed. The term includes an individual for whom an application for the appointment of a conservator is pending;

V. "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;

W. "remote-computing service" means a custodian that provides to a user computer-processing services or the storage of digital assets by means of an electronic communications system, as defined in 18 U.S.C. Section 2510(14), as amended;

X. "terms-of-service agreement" means an agreement that controls the relationship between a user and a custodian;

Y. "trustee" means a fiduciary with legal title to property under an agreement or declaration that creates a beneficial interest in another. The term includes a successor trustee;

Z. "user" means a person that has an account with a custodian; and

AA. "will" includes a codicil, testamentary instrument that only appoints an executor and instrument that revokes or revises a testamentary instrument.

## **Chapter 72 Section 3 Laws 2017**

### **SECTION 3. APPLICABILITY.--**

A. The Revised Uniform Fiduciary Access to Digital Assets Act applies to:

(1) a fiduciary acting under a will or power of attorney executed before, on or after July 1, 2017;

(2) a personal representative acting for a decedent who died before, on or after July 1, 2017;

(3) a conservatorship proceeding commenced before, on or after July 1, 2017; and

(4) a trustee acting under a trust created before, on or after July 1, 2017.

B. The Revised Uniform Fiduciary Access to Digital Assets Act applies to a custodian if the user resides in this state or resided in this state at the time of the user's death.

C. The Revised Uniform Fiduciary Access to Digital Assets Act does not apply to a digital asset of an employer used by an employee in the ordinary course of the employer's business.

## **Chapter 72 Section 4 Laws 2017**

### **SECTION 4. USER DIRECTION FOR DISCLOSURE OF DIGITAL ASSETS.--**

A. A user may use an online tool to direct the custodian to disclose to a designated recipient or not to disclose some or all of the user's digital assets, including the content of electronic communications. If the online tool allows the user to modify or delete a direction at all times, a direction regarding disclosure using an online tool overrides a contrary direction by the user in a will, trust, power of attorney or other record.

B. If a user has not used an online tool to give direction under Subsection A of this section or if the custodian has not provided an online tool, the user may allow or prohibit in a will, trust, power of attorney or other record disclosure to a fiduciary of some or all of the user's digital assets, including the content of electronic communications sent or received by the user.

C. A user's direction under Subsection A or B of this section overrides a contrary provision in a terms-of-service agreement that does not require the user to act affirmatively and distinctly from the user's assent to the terms of service.

## **Chapter 72 Section 5 Laws 2017**

### **SECTION 5. TERMS-OF-SERVICE AGREEMENT.--**

A. The Revised Uniform Fiduciary Access to Digital Assets Act does not change or impair a right of a custodian or a user under a terms-of-service agreement to access and use digital assets of the user.

B. The Revised Uniform Fiduciary Access to Digital Assets Act does not give a fiduciary or designated recipient any new or expanded rights other than those held by the user for whom, or for whose estate, the fiduciary or designated recipient acts or represents.

C. A fiduciary's or designated recipient's access to digital assets may be modified or eliminated by a user, by federal law or by a terms-of-service agreement if the user has not provided direction under Section 4 of the Revised Uniform Fiduciary Access to Digital Assets Act.

## **Chapter 72 Section 6 Laws 2017**

### **SECTION 6. PROCEDURE FOR DISCLOSING DIGITAL ASSETS.--**

A. When disclosing digital assets of a user under the Revised Uniform Fiduciary Access to Digital Assets Act, the custodian may at its sole discretion:

(1) grant a fiduciary or designated recipient full access to the user's account;

(2) grant a fiduciary or designated recipient partial access to the user's account sufficient to perform the tasks with which the fiduciary or designated recipient is charged; or

(3) provide a fiduciary or designated recipient a copy in a record of any digital asset that, on the date the custodian received the request for disclosure, the user could have accessed if the user were alive and had full capacity and access to the account.

B. A custodian may assess a reasonable administrative charge for the cost of disclosing digital assets under the Revised Uniform Fiduciary Access to Digital Assets Act.

C. A custodian need not disclose under the Revised Uniform Fiduciary Access to Digital Assets Act a digital asset deleted by a user.

D. If a user directs or a fiduciary requests a custodian to disclose under the Revised Uniform Fiduciary Access to Digital Assets Act some, but not all, of the user's digital assets, the custodian need not disclose the assets if segregation of the assets would impose an undue burden on the custodian. If the custodian believes the direction or request imposes an undue burden, the custodian or fiduciary may seek an order from the court to disclose:

- (1) a subset limited by date of the user's digital assets;
- (2) all of the user's digital assets to the fiduciary or designated recipient;
- (3) none of the user's digital assets; or
- (4) all of the user's digital assets to the court for review in camera.

## **Chapter 72 Section 7 Laws 2017**

**SECTION 7. DISCLOSURE OF CONTENT OF ELECTRONIC COMMUNICATIONS OF DECEASED USER.**--If a deceased user consented to, or a court directs, disclosure of the contents of electronic communications of the user, the custodian shall disclose to the personal representative of the estate of the user the content of an electronic communication sent or received by the user if the representative gives the custodian:

- A. a written request for disclosure in physical or electronic form;
- B. a certified copy of the death certificate of the user;
- C. a certified copy of the letters of administration or letters testamentary of the personal representative or a small estate affidavit pursuant to the provisions of Section 45-3-1201 NMSA 1978;
- D. unless the user provided direction using an online tool, a copy of the user's will, trust, power of attorney or other record evidencing the user's consent to disclosure of the content of electronic communications; and
- E. if requested by the custodian:
  - (1) a number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the user's account;
  - (2) evidence linking the account to the user; or
  - (3) a finding by the court that:
    - (a) the user had a specific account with the custodian, identifiable by the information specified in Paragraph (1) of this subsection;
    - (b) disclosure of the content of electronic communications of the user would not violate 18 U.S.C. Section 2701 et seq., as amended, 47 U.S.C. Section 222, as amended, or other applicable law;

(c) unless the user provided direction using an online tool, the user consented to disclosure of the content of electronic communications; or

(d) disclosure of the content of electronic communications of the user is reasonably necessary for administration of the estate.

## **Chapter 72 Section 8 Laws 2017**

SECTION 8. DISCLOSURE OF OTHER DIGITAL ASSETS OF A DECEASED USER.--Unless the user prohibited disclosure of digital assets or the court directs otherwise, a custodian shall disclose to the personal representative of the estate of a deceased user a catalogue of electronic communications sent or received by the user and digital assets, other than the content of electronic communications, of the user, if the representative gives the custodian:

A. a written request for disclosure in physical or electronic form;

B. a certified copy of the death certificate of the user;

C. a certified copy of the letters of administration or letters testamentary of the personal representative or a small estate affidavit pursuant to the provisions of Section 45-3-1201 NMSA 1978; and

D. if requested by the custodian:

(1) a number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the user's account;

(2) evidence linking the account to the user;

(3) an affidavit stating that disclosure of the user's digital assets is reasonably necessary for administration of the estate; or

(4) a finding by the court that:

(a) the user had a specific account with the custodian, identifiable by the information specified in Paragraph (1) of this subsection; or

(b) disclosure of the user's digital assets is reasonably necessary for administration of the estate.

## **Chapter 72 Section 9 Laws 2017**

SECTION 9. DISCLOSURE OF CONTENT OF ELECTRONIC COMMUNICATIONS OF PRINCIPAL.--To the extent a power of attorney expressly grants an agent authority over the content of electronic communications sent or

received by the principal and unless directed otherwise by the principal or the court, a custodian shall disclose to the agent the content if the agent gives the custodian:

- A. a written request for disclosure in physical or electronic form;
- B. an original or copy of the power of attorney expressly granting the agent authority over the content of electronic communications of the principal;
- C. a certification by the agent, under penalty of perjury, that the power of attorney is in effect; and
- D. if requested by the custodian:
  - (1) a number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the principal's account; or
  - (2) evidence linking the account to the principal.

## **Chapter 72 Section 10 Laws 2017**

SECTION 10. DISCLOSURE OF OTHER DIGITAL ASSETS OF PRINCIPAL.-- Unless otherwise ordered by the court, directed by the principal or provided by a power of attorney, a custodian shall disclose to an agent with specific authority over digital assets or general authority to act on behalf of a principal a catalogue of electronic communications sent or received by the principal and digital assets, other than the content of electronic communications, of the principal if the agent gives the custodian:

- A. a written request for disclosure in physical or electronic form;
- B. an original or a copy of the power of attorney that gives the agent specific authority over digital assets or general authority to act on behalf of the principal;
- C. a certification by the agent, under penalty of perjury, that the power of attorney is in effect; and
- D. if requested by the custodian:
  - (1) a number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the principal's account; or
  - (2) evidence linking the account to the principal.

## **Chapter 72 Section 11 Laws 2017**

SECTION 11. DISCLOSURE OF DIGITAL ASSETS HELD IN TRUST WHEN TRUSTEE IS AN ORIGINAL USER.--Unless otherwise ordered by the court or provided

in a trust, a custodian shall disclose to a trustee that is an original user of an account any digital asset of the account held in trust, including a catalogue of electronic communications of the trustee and the content of electronic communications.

## **Chapter 72 Section 12 Laws 2017**

**SECTION 12. DISCLOSURE OF CONTENTS OF ELECTRONIC COMMUNICATIONS HELD IN TRUST WHEN TRUSTEE IS NOT AN ORIGINAL USER.**--Unless otherwise ordered by the court, directed by the user or provided in a trust, a custodian shall disclose to a trustee that is not an original user of an account the content of an electronic communication sent or received by an original or successor user and carried, maintained, processed, received or stored by the custodian in the account of the trust if the trustee gives the custodian:

- A. a written request for disclosure in physical or electronic form;
- B. a certified copy of the trust instrument or a certified copy of the trust instrument or a certification of trust under Section 46A-10-1013 NMSA 1978 that includes consent to disclosure of the content of electronic communications to the trustee;
- C. a certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust; and
- D. if requested by the custodian:
  - (1) a number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the trust's account; or
  - (2) evidence linking the account to the trust.

## **Chapter 72 Section 13 Laws 2017**

**SECTION 13. DISCLOSURE OF OTHER DIGITAL ASSETS HELD IN TRUST WHEN TRUSTEE IS NOT AN ORIGINAL USER.**--Unless otherwise ordered by the court, directed by the user or provided in a trust, a custodian shall disclose, to a trustee that is not an original user of an account, a catalogue of electronic communications sent or received by an original or successor user and stored, carried or maintained by the custodian in an account of the trust and any digital assets, other than the content of electronic communications, in which the trust has a right or interest if the trustee gives the custodian:

- A. a written request for disclosure in physical or electronic form;
- B. a certified copy of the trust instrument or a certified copy of the trust instrument or a certification of trust under Section 46A-10-1013 NMSA 1978;

C. a certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust; and

D. if requested by the custodian:

(1) a number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the trust's account; or

(2) evidence linking the account to the trust.

## **Chapter 72 Section 14 Laws 2017**

### **SECTION 14. DISCLOSURE OF DIGITAL ASSETS TO CONSERVATOR OF A PROTECTED PERSON.--**

A. After an opportunity for a hearing under Chapter 45, Article 5 NMSA 1978, the court may grant a conservator access to the digital assets of a protected person.

B. Unless otherwise ordered by the court or directed by the user, a custodian shall disclose to a conservator the catalogue of electronic communications sent or received by a protected person and any digital assets, other than the content of electronic communications, in which the protected person has a right or interest if the conservator gives the custodian:

(1) a written request for disclosure in physical or electronic form;

(2) a certified copy of the court order that gives the conservator authority over the digital assets of the protected person; and

(3) if requested by the custodian:

(a) a number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the account of the protected person; or

(b) evidence linking the account to the protected person.

C. A conservator with general authority to manage the assets of a protected person may request a custodian of the digital assets of the protected person to suspend or terminate an account of the protected person for good cause. A request made under this section shall be accompanied by a certified copy of the court order giving the conservator authority over the protected person's property.

## **Chapter 72 Section 15 Laws 2017**

## SECTION 15. FIDUCIARY DUTY AND AUTHORITY.--

A. The legal duties imposed on a fiduciary charged with managing tangible property apply to the management of digital assets, including:

- (1) the duty of care;
- (2) the duty of loyalty; and
- (3) the duty of confidentiality.

B. A fiduciary's or designated recipient's authority with respect to a digital asset of a user:

(1) except as otherwise provided in Section 4 of the Revised Uniform Fiduciary Access to Digital Assets Act, is subject to the applicable terms of service;

(2) is subject to other applicable law, including copyright law;

(3) in the case of a fiduciary, is limited by the scope of the fiduciary's duties; and

(4) may not be used to impersonate the user.

C. A fiduciary with authority over the property of a decedent, protected person, principal or settlor has the right to access any digital asset in which the decedent, protected person, principal or settlor had a right or interest and that is not held by a custodian or subject to a terms-of-service agreement.

D. A fiduciary acting within the scope of the fiduciary's duties is an authorized user of the property of the decedent, protected person, principal or settlor for the purpose of applicable computer-fraud and unauthorized-computer-access laws, including the Computer Crimes Act.

E. A fiduciary with authority over the tangible, personal property of a decedent, protected person, principal or settlor:

(1) has the right to access the property and any digital asset stored in it; and

(2) is an authorized user for the purpose of computer-fraud and unauthorized-computer-access laws, including those offenses enumerated in the Computer Crimes Act.

F. A custodian may disclose information in an account to a fiduciary of the user when the information is required to terminate an account used to access digital assets licensed to the user.

G. A fiduciary of a user may request a custodian to terminate the user's account. A request for termination shall be in writing, in either physical or electronic form, and accompanied by:

(1) if the user is deceased, a certified copy of the death certificate of the user;

(2) a certified copy of the letters of administration or letters testamentary of the personal representative or a small estate affidavit pursuant to the provisions of Section 45-3-1201 NMSA 1978, court order, power of attorney or trust giving the fiduciary authority over the account; and

(3) if requested by the custodian:

(a) a number, username, address or other unique subscriber or account identifier assigned by the custodian to identify the user's account;

(b) evidence linking the account to the user; or

(c) a finding by the court that the user had a specific account with the custodian, identifiable by the information specified in Subparagraph (a) of this paragraph.

## **Chapter 72 Section 16 Laws 2017**

### **SECTION 16. CUSTODIAN COMPLIANCE AND IMMUNITY.--**

A. Not later than sixty days after receipt of the information required under Sections 7 through 15 of the Revised Uniform Fiduciary Access to Digital Assets Act, a custodian shall comply with a request under the Revised Uniform Fiduciary Access to Digital Assets Act from a fiduciary or designated recipient to disclose digital assets or terminate an account. If the custodian fails to comply, the fiduciary or designated recipient may apply to the court for an order directing compliance.

B. An order under Subsection A of this section directing compliance shall contain a finding that compliance is not in violation of 18 U.S.C. Section 2702, as amended.

C. A custodian may notify the user that a request for disclosure or to terminate an account was made under the Revised Uniform Fiduciary Access to Digital Assets Act.

D. A custodian may deny a request under the Revised Uniform Fiduciary Access to Digital Assets Act from a fiduciary or designated recipient for disclosure of digital assets or to terminate an account if the custodian is aware of any lawful access to the account following the receipt of the fiduciary's request.

E. The Revised Uniform Fiduciary Access to Digital Assets Act does not limit a custodian's ability to obtain or require a fiduciary or designated recipient requesting disclosure or termination under the Revised Uniform Fiduciary Access to Digital Assets Act to obtain a court order that:

(1) specifies that an account belongs to the protected person or principal;

(2) specifies that there is sufficient consent from the protected person or principal to support the requested disclosure; and

(3) contains a finding required by law other than the Revised Uniform Fiduciary Access to Digital Assets Act.

F. A custodian and its officers, employees and agents are immune from liability for an act or omission done with reasonable care in compliance with the Revised Uniform Fiduciary Access to Digital Assets Act.

## **Chapter 72 Section 17 Laws 2017**

SECTION 17. UNIFORMITY OF APPLICATION AND CONSTRUCTION.--In applying and construing the Revised Uniform Fiduciary Access to Digital Assets Act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

## **Chapter 72 Section 18 Laws 2017**

SECTION 18. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.--The Revised Uniform Fiduciary Access to Digital Assets Act modifies, limits or 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).

## **Chapter 72 Section 19 Laws 2017**

SECTION 19. Section 45-3-711 NMSA 1978 (being Laws 1975, Chapter 257, Section 3-711) is amended to read:

"45-3-711. POWERS OF PERSONAL REPRESENTATIVES--IN GENERAL.--

A. Until termination of a personal representative's appointment, a personal representative has the same power over the title to property of the estate that an absolute owner would have, in trust however, for the benefit of creditors whose claims have been allowed and others interested in the estate. This power may be exercised without notice, hearing or order of court.

B. A personal representative has access to and authority over a digital asset of the decedent to the extent provided by the Revised Uniform Fiduciary Access to Digital Assets Act."

## **Chapter 72 Section 20 Laws 2017**

SECTION 20. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 2018.

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Senate Bill 60, aa

Approved April 6, 2017

## **LAWS 2017, CHAPTER 73**

AN ACT

RELATING TO PUBLIC SCHOOLS; AMENDING THE PUBLIC SCHOOL CODE TO CLARIFY THE USES OF "EDUCATION TECHNOLOGY IMPROVEMENTS" IN THE PUBLIC SCHOOL CAPITAL IMPROVEMENTS ACT AND THE PUBLIC SCHOOL BUILDINGS ACT.

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

## **Chapter 73 Section 1 Laws 2017**

SECTION 1. Section 22-25-2 NMSA 1978 (being Laws 1975 (S.S.), Chapter 5, Section 2, as amended) is amended to read:

"22-25-2. DEFINITIONS.--As used in the Public School Capital Improvements Act:

A. "program unit" means the product of the program element multiplied by the applicable cost differential factor, as defined in Section 22-8-2 NMSA 1978; and

B. "capital improvements" means expenditures, including payments made with respect to lease-purchase arrangements as defined in the Education Technology

Equipment Act or the Public School Lease Purchase Act but excluding any other debt service expenses, for:

(1) erecting, remodeling, making additions to, providing equipment for or furnishing public school buildings;

(2) purchasing or improving public school grounds;

(3) maintenance of public school buildings or public school grounds, including the purchasing or repairing of maintenance equipment and participating in the facility information management system as required by the Public School Capital Outlay Act and including payments under contracts with regional education cooperatives for maintenance support services and expenditures for technical training and certification for maintenance and facilities management personnel, but excluding salary expenses of school district employees;

(4) purchasing activity vehicles for transporting students to extracurricular school activities;

(5) purchasing computer software and hardware for student use in public school classrooms; and

(6) purchasing and installing education technology improvements, excluding salary expenses of school district employees, but including tools used in the educational process that constitute learning and administrative resources, and which may also include:

(a) satellite, copper and fiber-optic transmission; computer and network connection devices; digital communication equipment, including voice, video and data equipment; servers; switches; portable media devices, such as discs and drives to contain data for electronic storage and playback; and the purchase or lease of software licenses or other technologies and services, maintenance, equipment and computer infrastructure information, techniques and tools used to implement technology in schools and related facilities; and

(b) improvements, alterations and modifications to, or expansions

of, existing buildings or tangible personal property necessary or advisable to house or otherwise accommodate any of the tools listed in this paragraph."

## **Chapter 73 Section 2 Laws 2017**

SECTION 2. Section 22-26-2 NMSA 1978 (being Laws 1983, Chapter 163, Section 2, as amended) is amended to read:

"22-26-2. DEFINITION.--As used in the Public School Buildings Act, "capital improvements" means expenditures, including payments made with respect to lease-purchase arrangements as defined in the Education Technology Equipment Act but excluding any other debt service expenses, for:

A. erecting, remodeling, making additions to, providing equipment for or furnishing public school buildings;

B. payments made pursuant to 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 payments made;

C. purchasing or improving public school grounds;

D. purchasing activity vehicles for transporting students to and from extracurricular school activities; provided that this authorization for expenditure does not apply to school districts with a student MEM greater than sixty thousand;

E. administering the projects undertaken pursuant to Subsections A and C of this section, including expenditures for facility maintenance software, project management software, project oversight and district personnel specifically related to administration of projects funded by the Public School Buildings Act; provided that expenditures pursuant to this subsection shall not exceed five percent of the total project costs; and

F. purchasing and installing education technology improvements, excluding salary expenses of school district employees, but including tools used in the educational process that constitute learning and administrative resources, and which may also include:

(1) satellite, copper and fiber-optic transmission; computer and network connection devices; digital communication equipment, including voice, video and data equipment; servers; switches; portable media devices, such as discs and drives to contain data for electronic storage and playback; and purchase or lease of software licenses or other technologies and services, maintenance, equipment and computer infrastructure information, techniques and tools used to implement technology in schools and related facilities; and

(2) improvements, alterations and modifications to, or expansions of, existing buildings or tangible personal property necessary or advisable to house or otherwise accommodate any of the tools listed in this subsection."

Approved April 6, 2017

## **LAWS 2017, CHAPTER 74**

AN ACT

RELATING TO COURT ADMINISTRATION; CREATING THE LANGUAGE ACCESS FUND TO PROVIDE FOR LANGUAGE ACCESS SERVICES IN THE COURTS AND REMOVING LANGUAGE ACCESS SERVICES FROM THE JURY AND WITNESS FEE FUND.

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

### **Chapter 74 Section 1 Laws 2017**

SECTION 1. A new section of Chapter 34, Article 9 NMSA 1978 is enacted to read:

"LANGUAGE ACCESS FUND--CREATED.--

A. There is created in the state treasury the "language access fund" to be administered by the administrative office of the courts.

B. All balances in the language access fund may be expended only upon appropriation by the legislature to the administrative office of the courts for the purpose of paying the costs of:

(1) court interpreters;

(2) operating and staffing the New Mexico center for language access to accomplish its mission to provide and support programs that will help the courts obtain, improve or increase the availability of language access services;

(3) operating and staffing language access services for the administrative office of the courts;

(4) training for the purpose of enhancing language access services in the courts; and

(5) additional activities deemed necessary by the director of the administrative office of the courts to meet constitutional and statutory requirements for language access services in the courts and for court-related activities.

C. All fees and other revenue collected by the

New Mexico center for language access and interest earned on money in the language access fund shall be credited to the fund. Payments shall be made upon certification by judicial agencies of eligible amounts. No part of the fund shall revert at the end of any fiscal year.

D. Payments from the language access fund shall be made upon vouchers issued and signed by the director of the administrative office of the courts or the director's designee upon warrants drawn by the secretary of finance and administration."

## **Chapter 74 Section 2 Laws 2017**

SECTION 2. Section 34-9-11 NMSA 1978 (being Laws 1993, Chapter 106, Section 1, as amended) is amended to read:

"34-9-11. JURY AND WITNESS FEE FUND CREATED--ADMINISTRATION--DISTRIBUTION.--

A. There is created in the state treasury the "jury and witness fee fund" to be administered by the administrative office of the courts.

B. All balances in the jury and witness fee fund may be expended only upon

appropriation by the legislature to the administrative office of the courts for the purpose of paying the costs of:

(1) jurors and prospective jurors;

(2) witnesses of fact or character subpoenaed by the court, the prosecution or the defense;

(3) expert witnesses for grand juries and magistrate courts; and

(4) defending persons whom the court has ordered a public defender to represent, when those persons do not meet the public defender department's indigency standards.

C. All jury fees that the courts collect from parties requesting civil juries, except for jury demand fees as set forth in Section 35-6-1 NMSA 1978, and interest earned on money in the jury and witness fee fund shall be credited to the fund. Payments shall be made upon certification by judicial agencies of eligible amounts. No part of the fund shall revert at the end of any fiscal year.

D. Payments from the jury and witness fee fund shall be made upon vouchers issued and signed by the director of the administrative office of the courts or

the director's designee upon warrants drawn by the secretary of finance and administration."

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Senate Bill 65

Approved April 6, 2017

## **LAWS 2017, CHAPTER 75**

AN ACT

RELATING TO MOTOR VEHICLES; RESTRICTING THE USE OF RED FLASHING LIGHTS BY CERTAIN MOTOR VEHICLES; REQUIRING THAT DRIVERS MOVE OVER OR SLOW DOWN FOR CERTAIN VEHICLES DISPLAYING FLASHING EMERGENCY OR HAZARD LIGHTS.

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

### **Chapter 75 Section 1 Laws 2017**

SECTION 1. Section 66-3-835 NMSA 1978 (being Laws 1978, Chapter 35, Section 141) is amended to read:

"66-3-835. SPECIAL RESTRICTIONS ON LAMPS.--

A. Lighted lamps or illuminating devices upon a motor vehicle, other than headlamps, spot lamps, auxiliary lamps, flashing turn signals, emergency vehicle warning lamps and school bus warning lamps, that project a beam of light of an intensity greater than three hundred candle power shall be directed so that no part of the high-intensity portion of the beam strikes the level of the roadway on which the vehicle stands at a distance of more than seventy-five feet from the vehicle.

B. A person shall not drive or move upon a highway a vehicle or equipment with a lamp or device displaying a red light visible from directly in front of the center of the vehicle or equipment, except as expressly authorized or required by the Motor Vehicle Code.

C. Flashing lights are prohibited except as provided in this section and except on authorized emergency vehicles, school buses, snow-removal equipment and highway-marking equipment. Except as otherwise provided in this section, flashing red lights may be used as warning lights on disabled or parked vehicles and on any vehicle as a means of indicating a turn.

D. A recovery or repair vehicle standing on a highway for the purpose of removing, and actually engaged in removing, a disabled vehicle and while engaged in towing a disabled vehicle may display flashing lights in any color except red. This provision shall not be construed as permitting the use of flashing lights by recovery or repair vehicles in going to or returning from the location of disabled vehicles unless actually engaged in towing a disabled vehicle.

E. Only fire department vehicles, law enforcement agency vehicles, ambulances and school buses may display flashing red lights visible from the front of the vehicle. All other vehicles authorized by the Motor Vehicle Code to display flashing lights visible from the front of the vehicle may use any other color of light that is visible."

## **Chapter 75 Section 2 Laws 2017**

SECTION 2. 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 MOVING AUTHORIZED EMERGENCY VEHICLES--OPERATION OF VEHICLES ON APPROACH OF CERTAIN STATIONARY 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, 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 or a recovery or repair vehicle displaying flashing emergency or hazard lights, unless otherwise directed, the driver of a vehicle shall:

(1) if reasonably safe to do so, drive in a lane not adjacent to the stationary vehicle, 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 the stationary vehicle, 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 or the driver of any other vehicle from the duty to drive and park with due regard for the safety of all persons using the highway."

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Senate Bill 76, aa

Approved April 6, 2017

## **LAWS 2017, CHAPTER 76**

AN ACT

RELATING TO INSURANCE; DEFINING "PUBLIC ADJUSTER" AND CERTAIN OTHER TERMS; REMOVING REFERENCES TO TEMPORARY LICENSES; ELIMINATING THE ISSUANCE OF TEMPORARY ADJUSTER LICENSES; ALLOWING INSURERS AND PUBLIC ADJUSTERS TO REQUEST PERMISSION IN AN EMERGENCY TO USE ADJUSTERS LICENSED IN ANOTHER STATE; PERMITTING THE SUPERINTENDENT OF INSURANCE TO ALLOW ADJUSTERS TO OBTAIN CONTINUING EDUCATION THROUGH INSTRUCTION PROVIDED ONLINE OR THROUGH THE MAIL REGARDLESS OF WHERE THE ADJUSTER IS LOCATED; PROHIBITING ADJUSTERS WHO ARE CONTRACTORS FROM ADJUSTING CLAIMS; PROVIDING STANDARDS OF CONDUCT FOR PUBLIC ADJUSTERS; IMPOSING REQUIREMENTS ON CONTRACTS BETWEEN PUBLIC ADJUSTERS AND INSURED; REQUIRING PUBLIC ADJUSTERS TO DEPOSIT FUNDS RECEIVED FOR INSURED IN ESCROW OR TRUST ACCOUNTS; IMPOSING REQUIREMENTS ON THE RECORDS THAT PUBLIC ADJUSTERS MUST MAINTAIN; ALLOWING THE SUPERINTENDENT OF INSURANCE TO REVIEW REPORTS OF INSURANCE FRAUD SUBMITTED BY PUBLIC ADJUSTERS.

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

### **Chapter 76 Section 1 Laws 2017**

SECTION 1. Section 59A-13-2 NMSA 1978 (being Laws 1984, Chapter 127, Section 230, as amended) is amended to read:

"59A-13-2. DEFINITIONS.--

A. For the purposes of Chapter 59A, Article 13 NMSA 1978:

(1) "adjuster" means a person that:

(a) investigates, negotiates, settles or adjusts a loss or claim arising under an insurance contract on behalf of an insurer, insured or self-insurer, for a fee, commission or other compensation; however, an adjuster acting on behalf of an insured shall not investigate, negotiate, settle or adjust a claim involving personal injury to the insured; and

(b) advises the insured of the insured's rights to settlement and the insured's rights to settle, arbitrate and litigate the dispute;

(2) "automated claims adjudication system" means a preprogrammed computer system designed for the collection, data entry, calculation and final resolution of portable electronics insurance claims that shall:

(a) only be used by a licensed independent adjuster, licensed agent or supervised individuals operating pursuant to Subsection C of Section 59A-13-3 NMSA 1978;

(b) comply with all claims payment requirements of the Insurance Code; and

(c) be certified as compliant with the Portable Electronics Insurance Act by a licensed independent adjuster who is an officer of a licensed business entity pursuant to the Insurance Code;

(3) "business entity" means a corporation, association, partnership, limited liability company, limited liability partnership or other legal entity;

(4) "home state" means the District of Columbia and any state or territory of the United States in which the adjuster's principal place of residence or principal place of business is located. If neither the state in which the adjuster maintains the principal place of residence nor the state in which the adjuster maintains the principal place of business has substantially similar laws governing adjusters, the adjuster may declare another state in which it becomes licensed and acts as an adjuster to be the home state;

(5) "independent adjuster" means an adjuster who is not a staff adjuster or a public adjuster and includes a representative and an employee of an independent adjuster;

(6) "public adjuster" means an adjuster who acts or aids, solely in relation to first-party claims arising under insurance contracts that insure the real or personal property of the insured, on behalf of an insured in negotiating for, or effecting the settlement of, a claim for loss or damage covered by an insurance contract;

(7) "resident adjuster" means an adjuster who resides principally in New Mexico and who conducts business primarily in New Mexico; and

(8) "staff adjuster" means an adjuster individual who is a salaried employee of an insurer or affiliate of the employer insurer, representing and adjusting claims solely under the authority of the employer insurer.

B. Except as otherwise provided, "adjuster" does not include:

(1) an attorney-at-law who adjusts insurance losses or claims from time to time incidental to practice of law and who does not advertise or represent as an adjuster;

(2) a licensed agent or general agent of an authorized insurer or an employee of an agent or general agent who adjusts claims or losses under specific authority from the insurer and solely under policies issued by the insurer;

(3) an agent or employee of a life or health insurer who adjusts claims or losses under the insurer's policies or contracts to administer policies or benefits of that type;

(4) a salaried or part-time claims agent or investigator employed by a self-insured person;

(5) an individual who, for purposes of portable electronics insurance claims, collects claim information from, or furnishes claim information to, insureds or claimants, and who conducts data entry, including entering data into an automated claims adjudication system; provided that the individual is an employee of a licensed independent adjuster or its affiliate where no more than twenty-five such persons are under the supervision of one licensed independent adjuster or licensed agent who is exempt from licensure pursuant to Paragraph (2) of this subsection;

(6) a property damage appraiser or other individual who is employed by an insurer, third-party administrator, independent adjuster or self-insurer who inspects and provides monetary estimates of damages sustained by an insured or third party and does not investigate, negotiate, settle or adjust claims;

(7) a person who is employed solely for the purpose of obtaining facts surrounding a loss or furnishing technical assistance to an adjuster, such as a photographer, estimator, private investigator, engineer or handwriting expert;

(8) a licensed health care provider or employee of a licensed health care provider who prepares or files a health claim on behalf of a patient;

(9) a person who settles subrogation claims between insurers;

(10) a person who is employed to investigate suspected fraudulent insurance claims but does not adjust losses or determine claim payments; or

(11) an employee of an insurer who receives loss reports from insureds and who may advise an insured regarding the claim process or coverage available to the insured but who does not act as an adjuster on the claim."

## **Chapter 76 Section 2 Laws 2017**

SECTION 2. Section 59A-13-3.1 NMSA 1978 (being Laws 2016, Chapter 89, Section 55) is amended to read:

"59A-13-3.1. EXAMINATION FOR LICENSE.--

A. An individual applying for a license as an adjuster shall, prior to issuance of a license, personally take and pass a written examination. The examination shall test the knowledge of the individual concerning the duties and responsibilities of an adjuster and the insurance laws and rules of this state. Examinations required by this section shall be developed and conducted under rules prescribed by the superintendent.

B. The superintendent may contract with an outside testing service for administering examinations and collecting the nonrefundable fee set forth in Section 59A-6-1 NMSA 1978.

C. Each individual applying for an examination shall remit a nonrefundable fee as prescribed by the superintendent as set forth in Section 59A-6-1 NMSA 1978.

D. An individual who fails to appear for an examination as scheduled or fails to pass the examination shall reapply for an examination and remit all required fees and forms before being rescheduled for another examination.

E. No examination shall be required:

(1) for renewal or continuation of an existing license, except as provided in Subsection D of Section 59A-11-10 NMSA 1978; or

(2) if the applicant took and passed a similar examination in a state in which the applicant is already licensed, subject to Section 59A-5-33 NMSA 1978."

### **Chapter 76 Section 3 Laws 2017**

SECTION 3. Section 59A-13-4 NMSA 1978 (being Laws 1984, Chapter 127, Section 232, as amended) is amended to read:

"59A-13-4. QUALIFICATIONS FOR LICENSE AS ADJUSTER.--

A. The superintendent shall license as an adjuster only an individual who is otherwise in compliance with Chapter 59A, Articles 11 and 13 NMSA 1978 and who has furnished evidence satisfactory to the superintendent that the applicant for license:

(1) is not less than eighteen years of age;

(2) is a bona fide resident of this state, or of a state or country that permits residents of this state to act as adjusters therein, except that under

circumstances of necessity the superintendent may waive the requirement of reciprocity;

(3) can demonstrate a good business reputation, and intends to engage in a bona fide manner in the business of adjusting insurance claims;

(4) has passed any examination required for licensing; and

(5) has filed the bond required under Section 59A-13-5 NMSA 1978.

B. Paragraphs (2) and (5) of Subsection A of this section shall not apply as to staff adjusters.

C. Individuals holding licenses as adjusters on the effective date of the Insurance Code shall be deemed to meet the qualifications for the license except as provided in Chapter 59A, Articles 11 and 13 NMSA 1978.

D. A business entity applying for an independent adjuster license for the purposes of portable electronics insurance in New Mexico shall submit the names, addresses, social security numbers, criminal and administrative histories, background checks, biographical statements and fingerprints of all executive officers and directors of the applicant and of all executive officers and directors of entities owning and any individuals owning, directly or indirectly, fifty-one percent or more of the outstanding voting securities of the applicant. Any nonresident business entity applicant whose resident state has enacted into law provisions that are substantively duplicative of the provisions of this subsection shall not be required to submit criminal histories, background checks, biographical statements and fingerprints for its executive officers, directors and owners of outstanding voting securities."

## **Chapter 76 Section 4 Laws 2017**

SECTION 4. Section 59A-13-5 NMSA 1978 (being Laws 1984, Chapter 127, Section 233) is amended to read:

"59A-13-5. BOND.--

A. With application for license as an adjuster other than as staff adjuster, the applicant shall file with the superintendent a surety bond in favor of the superintendent in aggregate amount of not less than ten thousand dollars (\$10,000), conditioned to pay actual damages resulting to the state of New Mexico or any member of the public in New Mexico from violation of law by the licensee while acting as an adjuster. The bond shall be one executed by an authorized surety insurer.

B. The bond shall remain in effect for the duration of the license, or until the surety is released from liability by the superintendent, or until canceled by the

surety. Without prejudice to any liability accrued prior to cancellation, the surety may cancel a bond by giving written notice to the superintendent at least thirty days prior to effective date of cancellation.

C. The applicant or licensee may file with the superintendent a cash bond in like amount, in lieu of surety bond."

## **Chapter 76 Section 5 Laws 2017**

SECTION 5. Section 59A-13-6 NMSA 1978 (being Laws 1984, Chapter 127, Section 234) is amended to read:

### "59A-13-6. EMERGENCY ADJUSTERS.--

A. In the event of an emergency requiring the immediate expansion of adjuster services in New Mexico, an insurer or a public adjuster licensed in New Mexico may request authority from the superintendent to employ adjusters to assist with the emergency who are not licensed in New Mexico but who have fulfilled all licensing requirements in their home state and are in good standing in their home state. An insurer or public adjuster requesting such authority shall provide the superintendent with the following information:

(1) the nature of the emergency and the affected region of the state;

(2) a list of the adjusters that the insurer or public adjuster shall use that are not licensed in New Mexico. This list shall include each adjuster's name, home address, last four digits of social security number, national producer number, home state and the effective date of the contract between the adjuster and the insurer or public adjuster;

(3) the name, contact information, national producer number and New Mexico license number for the individual designated by the insurer or public adjuster who will be responsible for the conduct of these adjusters; and

(4) any other information that the superintendent may require.

B. The adjustment of claims by the adjusters listed in Paragraph (2) of Subsection A of this section shall be limited to claims arising from the emergency.

C. Use of the listed adjusters shall be limited to the ninety days immediately following the emergency, unless an extension of time is requested by the insurer or public adjuster and granted by the superintendent.

D. A request by an insurer or public adjuster to employ adjusters to assist with an emergency who are not licensed in New Mexico but who are currently licensed

and in good standing in their home state shall be deemed approved if such a request is not disapproved by the superintendent within three business days of its submission to the superintendent.

E. An insurer or public adjuster that requests authorization pursuant to this section may commence employing the adjusters listed in Paragraph (2) of Subsection A of this section while awaiting the superintendent's decision on their request."

## **Chapter 76 Section 6 Laws 2017**

SECTION 6. Section 59A-13-12 NMSA 1978 (being Laws 2016, Chapter 89, Section 56) is amended to read:

"59A-13-12. CONTINUING EDUCATION.--

A. The superintendent shall require as a condition to continuation of an adjuster license that during the twenty-four months next preceding expiration of the current license period, the licensee has attended the minimum number of hours of formal class instruction, lectures or seminars required and approved by the superintendent.

B. Instruction shall be designed to refresh the licensee's understanding of basic principles and coverages involved, recent and prospective changes, applicable laws and rules of the superintendent, proper conduct of the licensee's business and duties and responsibilities of the licensee.

C. The superintendent may permit licensees to successfully complete an equivalent course of study and instruction online or by mail.

D. The superintendent may impose a penalty not to exceed fifty dollars (\$50.00) for a licensee's failure to timely report continuing education credits.

E. The superintendent shall charge, at the time of certifying each licensee's continuing education credits as a condition of continuation of license, a fee of one dollar (\$1.00) per credit hour of continuing education; provided that the superintendent may contract with an independent agency to receive and review a continuing education compliance report, and in such a case, the fee shall be a reasonable amount fixed by the superintendent and payable to the contracting agency."

## **Chapter 76 Section 7 Laws 2017**

SECTION 7. A new section of Chapter 59A, Article 13 NMSA 1978 is enacted to read:

"PROHIBITED CONDUCT REGARDING THE ADJUSTMENT AND REPAIR OF PROPERTY DAMAGE.--

A. An adjuster may not adjust a loss related to physical damage of a property on which the adjuster is also a contractor, acts as a contractor or is employed as a contractor, including a roofing contractor, building contractor or plumbing contractor, or otherwise provides building repairs or products, including building or plumbing repairs or products, for compensation or is a controlling person in a business relating to such contracting.

B. A contractor or a roofing contractor may not act as an adjuster or advertise to adjust claims for any property for which the contractor is providing or may provide roofing, building, plumbing or other contractor services, regardless of whether the contractor is a licensed adjuster.

C. In those instances in which an adjuster who is also a contractor is performing either as an adjuster or as a contractor on behalf of an insured, the adjuster shall provide the insured with a disclaimer, on a form promulgated by the superintendent and signed by the adjuster, indicating in which of these two capacities the adjuster is serving the insured and affirming that the adjuster is not serving the insured in the other capacity. The adjuster shall retain copies of such signed disclaimers and make them available to the superintendent upon the superintendent's request."

## **Chapter 76 Section 8 Laws 2017**

SECTION 8. A new section of Chapter 59A, Article 13 NMSA 1978 is enacted to read:

### **"STANDARDS OF CONDUCT.--**

A. All adjusters shall adhere to the following standards of conduct:

(1) an adjuster shall not permit an unlicensed employee or representative of the adjuster to conduct business for which a license is required pursuant to the Insurance Code;

(2) an adjuster shall not pay a commission, service fee or other valuable consideration to a person for investigating or settling claims in New Mexico if that person is required to be licensed pursuant to the Insurance Code and is not so licensed;

(3) an adjuster shall not undertake the adjustment of any claim if the adjuster is not competent and knowledgeable as to the terms and conditions of the insurance coverage, or which otherwise exceeds the adjuster's current experience;

(4) an adjuster shall not have a direct or indirect financial interest in any aspect of the claim, other than the salary, fee, commission or other consideration established in a written contract; unless, in the case of a public adjuster, full written

disclosure has been made to the insured as set forth in Subsection G of Section 9 of this 2017 act;

(5) an adjuster shall not acquire any interest in salvage of property subject to adjustment; unless, in the case of a public adjuster, written permission is obtained from the insured; and

(6) an adjuster shall disclose to an insured if the adjuster has any interest or will be compensated by any construction firm, salvage firm, building appraisal firm, motor vehicle repair shop or any other business entity that performs any work in conjunction with damages caused by the insured loss.

B. Public adjusters shall also adhere to the following standards of conduct:

(1) a public adjuster is obligated, under the public adjuster's license, to serve with objectivity and complete loyalty in the interest of the public adjuster's client alone and to render to the insured such information, counsel and service, as within the knowledge, understanding and opinion in good faith of the public adjuster, as will best serve the insured's insurance claim needs and interest;

(2) a public adjuster shall not solicit, or attempt to solicit, an insured during the progress of a loss-producing occurrence, as defined in the insured's insurance contract;

(3) the public adjuster shall abstain from referring or directing the insured to get needed repairs or services in connection with a loss from any person, unless disclosed to the insured:

(a) with whom the public adjuster has a financial interest; or

(b) from whom the public adjuster may receive direct or indirect compensation for the referral;

(4) any compensation or anything of value in connection with an insured's specific loss that will be received by a public adjuster shall be disclosed by the public adjuster to the insured in writing, including the source and amount of any such compensation;

(5) a public adjuster shall not agree to any settlement without the insured's knowledge and consent;

(6) no public adjuster, while so licensed by the superintendent, shall represent or act as a staff adjuster or an independent adjuster;

(7) the contract shall not be construed to prevent an insured from pursuing any civil remedy after the three-business day revocation or cancellation period; and

(8) a public adjuster shall ensure that all contracts for the public adjuster's services are in writing and set forth all terms and conditions of the engagement.

C. A person shall not accept a commission, service fee or other valuable consideration for investigating or settling claims in New Mexico if that person is required to be licensed under the Insurance Code and is not so licensed."

## **Chapter 76 Section 9 Laws 2017**

SECTION 9. A new section of Chapter 59A, Article 13 NMSA 1978 is enacted to read:

"CONTRACT BETWEEN PUBLIC ADJUSTER AND INSURED.--

A. Public adjusters shall ensure that all contracts for their service are in writing and contain the following terms:

- (1) legible full name of the adjuster signing the contract, as specified in the office of superintendent of insurance records;
- (2) permanent home state business name and phone number;
- (3) office of superintendent of insurance license number;
- (4) title of "Public Adjuster Contract";
- (5) the insured's full name, street address, insurance company name and policy number, if known or upon notification;
- (6) description of the loss and its location, if applicable;
- (7) description of services to be provided to the insured;
- (8) signatures of the public adjuster and the insured;
- (9) date the contract was signed by the public adjuster and date the contract was signed by the insured;
- (10) attestation language stating that the public adjuster is fully bonded; and

(11) full salary, fee, commission, compensation or other considerations the public adjuster is to receive for services.

B. The contract may specify that the public adjuster shall be named as a co-payee on an insurer's payment of a claim.

C. If the compensation is based on a share of the insurance settlement, the exact percentage shall be specified.

D. Initial expenses to be reimbursed to the public adjuster from the proceeds of the claim payment shall be specified by type, with dollar estimates set forth in the contract and with any additional expenses first approved by the insured.

E. Compensation provisions in the public adjusting contract shall not be redacted in any copy of the contract provided to the superintendent.

F. If the insurer, not later than seventy-two hours after the date on which the loss is reported to the insurer, either pays or commits in writing to pay to the insured the policy limit of the insurance policy, the public adjuster shall:

(1) inform the insured that, due to the insurer's payment or commitment to pay the policy limit, the loss recovery amount might not be increased by the insurer;

(2) not receive a commission consisting of a percentage of the total amount paid by an insurer to resolve the claim; and

(3) be entitled only to reasonable compensation from the insured for the time spent and expenses incurred on the claim by the public adjuster, until the claim is paid or the insured receives a written commitment to pay from the insurer.

G. A public adjuster shall provide the insured a written disclosure concerning any direct or indirect financial interest that the public adjuster has with any party that is involved in any aspect of the claim, other than the salary, fee, commission or other consideration established in the written contract with the insured, including any ownership of, other than as a minority stockholder, or any compensation expected to be received from, any construction firm, salvage firm, building appraisal firm, motor vehicle repair shop or any other business entity that provides estimates for work, or that performs any work, in conjunction with damages caused by the insured loss on which the public adjuster is engaged.

H. A public adjuster contract may not contain any contract term that:

(1) allows the public adjuster's percentage fee to be collected when money is due from but not yet paid by an insurance company;

(2) allows a public adjuster to collect the entire fee from the first check issued by an insurance company, rather than as percentage of each check issued by an insurance company;

(3) requires the insured to authorize an insurance company to issue a check only in the name of the public adjuster;

(4) imposes collection costs or late fees; or

(5) precludes a public adjuster from pursuing civil remedies.

I. Prior to the signing of the contract, the public adjuster shall provide the insured with a separate disclosure document regarding the claim process that states the following:

"(1) Your public adjuster is forbidden by law from acting as your contractor on this claim.

(2) You must notify your insurance company of your loss and submit a claim. The insurance company will assign an adjuster to handle your claim. You may allow their adjuster to handle your claim or you may hire a public adjuster at your own expense.

(3) Public adjusters do not work for insurance companies. They work for you to assist you in the preparation, presentation and settlement of your claim. You hire them by signing a contract agreeing to pay them a fee or commission. Their compensation is often based on a percentage of the settlement.

(4) You are not required to hire a public adjuster, but you have the right to do so.

(5) You have the right to contact your attorney, your insurance company, your insurance company's adjuster or attorney, or any other person regarding the settlement of your claim.

(6) The public adjuster does not work for your insurance company and is not paid by your insurance company. You are solely responsible for paying the public adjuster."

J. Subsection I of this section shall not apply to a public adjuster providing public adjuster services on behalf of a financial institution, a mortgage company or other default servicer.

K. The contract shall be executed in duplicate to provide an original contract to the public adjuster and an original contract to the insured. The public

adjuster's original contract shall be available at all times for inspection without notice by the superintendent.

L. The public adjuster shall provide the insurer with a notification letter, which has been signed by the insured, authorizing the public adjuster to represent the insured's interest.

M. The insured has the right to rescind the contract within three business days after the date the contract was signed. The rescission shall be in writing and mailed or delivered to the public adjuster at the address in the contract within the three-business-day period.

N. If the insured exercises the right to rescind the contract, anything of value given by the insured under the contract will be returned to the insured within fifteen business days following the receipt by the public adjuster of the cancellation notice."

## **Chapter 76 Section 10 Laws 2017**

SECTION 10. A new section of Chapter 59A, Article 13 NMSA 1978 is enacted to read:

"ESCROW OR TRUST ACCOUNTS.--A public adjuster who receives, accepts or holds any funds on behalf of an insured toward the settlement of a claim for loss or damage shall deposit the funds in a non-interest-bearing escrow or trust account in a financial institution that is insured by an agency of the federal government in the public adjuster's home state or where the loss occurred."

## **Chapter 76 Section 11 Laws 2017**

SECTION 11. A new section of Chapter 59A, Article 13 NMSA 1978 is enacted to read:

"RECORDS OF PUBLIC ADJUSTER.--

A. A public adjuster shall maintain a complete record of each transaction as a public adjuster. The records required by this section shall include the following:

- (1) the name of the insured;
- (2) the date, location and amount of the loss;
- (3) a copy of the contract between the public adjuster and the insured;

(4) the name of the insurer, amount, expiration date and number of each policy carried with respect to the loss;

(5) an itemized statement of the insured's recoveries;

(6) an itemized statement of all of the compensation received by the public adjuster, from any source whatsoever, in connection with the loss;

(7) a register of all of the money received, deposited, disbursed or withdrawn in connection with a transaction with an insured, including fees, transfers and disbursements from a trust account and all transactions concerning all interest-bearing accounts;

(8) the name of the public adjuster who executed the contract; and

(9) the name of the attorney representing the insured, if applicable, and the name of the claims representatives of the insurance company.

B. Records shall be maintained for at least five years after the termination of the transaction with an insured and shall be open to examination by the superintendent at all times.

C. Records submitted to the superintendent pursuant to this section that contain information identified in writing as proprietary by the public adjuster and accepted as confidential by the superintendent shall be treated as confidential by the superintendent, shall not be subject to the Inspection of Public Records Act, shall not be subject to subpoena and shall not be subject to discovery or admissible as evidence in any private civil action."

## **Chapter 76 Section 12 Laws 2017**

SECTION 12. Section 59A-16C-4 NMSA 1978 (being Laws 1998, Chapter 115, Section 4) is amended to read:

"59A-16C-4. SUPERINTENDENT'S DUTIES.--The superintendent shall:

A. initiate inquiries and conduct investigations when the superintendent has reason to believe that insurance fraud may have been or is being committed;

B. respond to notifications or complaints of suspected insurance fraud generated by state and local police or other law enforcement authorities and governmental units, including the federal government and any other person;

C. review notices and reports of insurance fraud submitted by authorized insurers, their employees, agents or producers or by public adjusters and select those

incidents of alleged fraud that, in the superintendent's judgment, require further investigation and conduct the investigations;

D. conduct independent investigations and examinations of insurance transactions and alleged insurance fraud, conduct studies to determine the extent of insurance fraud, deceit or intentional misrepresentation of any kind in the insurance process and publish information and reports on the office of superintendent of insurance's examinations and studies;

E. report incidents of alleged insurance fraud supported by investigations and examinations to the appropriate district attorney and any other appropriate law enforcement, administrative, regulatory or licensing agency and assemble evidence, prepare charges and otherwise assist any prosecutorial authority having jurisdiction over insurance fraud enforcement;

F. assist any official or agency of this state, any other state or the federal government that requests assistance in investigating insurance fraud;

G. maintain records and information in order to produce an annual report of the superintendent's activities undertaken in connection with carrying out the provisions of the Insurance Fraud Act; and

H. conduct, in cooperation with the attorney general and the department of public safety, public outreach and awareness programs on the costs of insurance fraud to the public and how members of the public can assist themselves, the superintendent and law enforcement officials in preventing and prosecuting insurance fraud."

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SJC/Senate Bill 88  
Approved April 6, 2017

## **LAWS 2017, CHAPTER 77**

AN ACT

RELATING TO CIVIL ACTIONS FOR CHILDHOOD SEXUAL ABUSE; REVISING LIMITATIONS FOR AN ACTION FOR DAMAGES BASED ON PERSONAL INJURY CAUSED BY CHILDHOOD SEXUAL ABUSE; DECLARING AN EMERGENCY.

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

### **Chapter 77 Section 1 Laws 2017**

SECTION 1. Section 37-1-30 NMSA 1978 (being Laws 1993, Chapter 136, Section 1, as amended) is amended to read:

"37-1-30. ACTION FOR DAMAGES DUE TO CHILDHOOD SEXUAL ABUSE--  
LIMITATION ON ACTIONS.--

A. An action for damages based on personal injury caused by childhood sexual abuse shall be commenced by a person before the latest of the following dates:

(1) the first instant of the person's twenty-fourth birthday; or

(2) three years from the date that a person first disclosed the person's childhood sexual abuse to a licensed medical or mental health care provider in the context of receiving health care from the provider.

B. As used in this section, "childhood sexual abuse" means conduct that, if prosecuted in a criminal matter, would constitute a violation of:

(1) Section 30-9-11 NMSA 1978, regarding criminal sexual penetration of a minor;

(2) Section 30-9-13 NMSA 1978, regarding criminal sexual contact of a minor; or

(3) the Sexual Exploitation of Children Act.

C. The provisions of Section 37-1-8 NMSA 1978 and any statutes of limitation therein shall not apply to causes of action for childhood sexual abuse."

## **Chapter 77 Section 2 Laws 2017**

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

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SJC/Senate Bill 91, w/ec

Approved April 6, 2017

## **LAWS 2017, CHAPTER 78**

AN ACT

RELATING TO PUBLIC EDUCATION; AMENDING THE PUBLIC SCHOOL FINANCE ACT TO REQUIRE THE PUBLIC EDUCATION DEPARTMENT TO TAKE CREDIT FOR CERTAIN STATE-CHARTERED CHARTER SCHOOLS' IMPACT AID RECEIPTS.

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

## Chapter 78 Section 1 Laws 2017

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 its operating revenue, including its local

and federal revenues as defined in this section, is at least equal to the school district's program cost. For state-chartered charter schools, the state equalization guarantee distribution is the difference between the state-chartered charter school's program cost and the two percent withheld by the department for administrative services.

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 or state-chartered charter school, 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 or charter school is entitled using an average of the MEM on the second and third reporting dates of the prior year; or

(2) calculate the number of program units to which a school district or charter school 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 or charter school with a MEM of two hundred or less is entitled by using an average of the MEM on the second and third reporting dates 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 or charter school;

(5) for school districts and state-chartered charter schools, 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.

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) 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 or charter school has received more state equalization guarantee funds than its entitlement, a refund shall be made by the school district or charter school to the state general fund."

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SEC/Senate Bill 135

Approved April 6, 2017

## **LAWS 2017, CHAPTER 79**

AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; AMENDING THE IGNITION INTERLOCK LICENSING REQUIREMENT TO PROVIDE THAT A PERSON WITH ONLY ONE PRIOR CONVICTION FOR DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS IN ANOTHER JURISDICTION MAY OBTAIN A NEW MEXICO DRIVER'S LICENSE UPON PROOF OF COMPLETION OF ALL CONDITIONS OF THE PERSON'S SENTENCE.

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

### **Chapter 79 Section 1 Laws 2017**

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 older who is enrolled in and attending or has completed a driver education course approved by the bureau that includes a DWI education and prevention component;

(2) a provisional license to a 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 as provided in Section 66-5-8 NMSA 1978; and

(b) who has successfully completed a practice driving component;

(3) a driver's license to a person sixteen years and six months of age or older:

(a) who has had a provisional license for at least a twelve-month period immediately preceding the date of the application for the driver's license as provided in Section 66-5-9 NMSA 1978;

(b) who has complied with restrictions on that license; and

(c) who has not been adjudicated for an offense involving the use of alcohol or drugs during the twelve-month period immediately preceding the application for the driver's license and who has no pending adjudications alleging an offense involving the use of alcohol or drugs at the time of application; and

(4) to a 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 that:

(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 was convicted on or after June 17, 2005 of driving a motor vehicle while under the influence of intoxicating liquor or drugs pursuant to the laws or ordinances of any other state or any governmental subdivision thereof, unless the person obtains an ignition interlock license as provided in the Ignition Interlock Licensing Act for a period of one year for a first conviction; a period of two years for a second conviction; a period of three years for a third conviction; or the remainder of the offender's life for a fourth or subsequent conviction, subject to a five-year review as provided in Subsection D of this section. Upon presentation of proof satisfactory to the division, the division may credit time spent by a person operating a motor vehicle with an ignition interlock or comparable device, as a condition of the person's sentence for a conviction in another jurisdiction, against the ignition interlock time requirements imposed by this subsection. The division shall promulgate rules necessary for granting credit to persons who participate in comparable out-of-state programs following a conviction for driving a motor vehicle while under the influence of intoxicating liquor or drugs. The requirements of this subsection shall not apply to a person who:

(1) has only one conviction for driving a motor vehicle while under the influence of intoxicating liquor or drugs that did not result in great bodily harm or death, and that conviction is pursuant to the laws or ordinances of any other state or any governmental subdivision thereof and who presents proof satisfactory to the division that the person completed all conditions of the person's sentence for the conviction in the other jurisdiction, whether or not installation of an ignition interlock device was a condition of the sentence; provided, however, that at least twelve months have passed since the person's conviction; or

(2) applies for a driver's license ten years or more from the date of the person's last conviction, except for a person who is subject to lifetime driver's license revocation for a conviction in another jurisdiction pursuant to this subsection;

F. who has previously been afflicted with or who is suffering from any mental disability or disease that would render the person unable to drive a motor vehicle with safety upon the highways and who has not, at the time of application, been restored to health;

G. who is required by the Motor Vehicle Code to take an examination, unless the person has successfully passed the examination;

H. who is required under the laws of this state to deposit proof of financial responsibility and who has not deposited the proof;

I. 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

J. 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 79 Section 2 Laws 2017**

SECTION 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2017.

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Senate Bill 136, aa

Approved April 6, 2017

## **LAWS 2017, CHAPTER 80**

AN ACT

RELATING TO FINANCE; MAKING A DISTRIBUTION FROM THE TOBACCO SETTLEMENT PERMANENT FUND TO THE TOBACCO SETTLEMENT PROGRAM FUND.

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

## **Chapter 80 Section 1 Laws 2017**

SECTION 1. Section 6-4-9 NMSA 1978 (being Laws 1999, Chapter 207, Section 1, as amended) is amended to read:

"6-4-9. TOBACCO SETTLEMENT PERMANENT FUND--INVESTMENT--DISTRIBUTION.--

A. The "tobacco settlement permanent fund" is created in the state treasury. The fund shall consist of money distributed to the state pursuant to the master settlement agreement entered into between tobacco product manufacturers and various states, including New Mexico, and executed November 23, 1998 or any money released to the state from a qualified escrow fund or otherwise paid to the state as authorized by Sections 6-4-12 and 6-4-13 NMSA 1978, enacted pursuant to the master settlement agreement or as otherwise authorized by law. Money in the fund shall be invested by

the state investment officer in accordance with the limitations in Article 12, Section 7 of the constitution of New Mexico. Income from investment of the fund shall be credited to the fund. Money in the fund shall not be expended for any purpose, except as provided in this section.

B. In fiscal year 2007 and in each fiscal year thereafter, an annual distribution shall be made from the tobacco settlement permanent fund to the tobacco settlement program fund of an amount equal to fifty percent of the total amount of money distributed to the tobacco settlement permanent fund in that fiscal year until that amount is less than an amount equal to four and seven-tenths percent of the average of the year-end market values of the tobacco settlement permanent fund for the immediately preceding five calendar years. Thereafter, the amount of the annual distribution shall be four and seven-tenths percent of the average of the year-end market values of the tobacco settlement permanent fund for the immediately preceding five calendar years. In the event that the actual amount distributed to the tobacco settlement program fund in a fiscal year is insufficient to meet appropriations from that fund for that fiscal year, the secretary of finance and administration shall proportionately reduce each appropriation accordingly.

C. In addition to the distribution made pursuant to Subsection B of this section, in fiscal years 2009 through 2013, 2016 and 2018, the remaining fifty percent of the total amount of money distributed to the tobacco settlement permanent fund in that fiscal year shall be distributed from the tobacco settlement permanent fund to the tobacco settlement program fund.

D. In addition to the distribution made pursuant to Subsections B and E of this section, in fiscal year 2014, twenty-five percent of the total amount of money distributed pursuant to the master settlement agreement to the tobacco settlement permanent fund in that fiscal year shall be distributed from the tobacco settlement permanent fund to the lottery tuition fund.

E. In addition to the distribution made pursuant to Subsections B and D of this section, in fiscal year 2014, twenty-five percent of the total amount of money distributed to the tobacco settlement permanent fund in that fiscal year shall be distributed from the tobacco settlement permanent fund to the tobacco settlement program fund for appropriation for direct services provided by early childhood care and education programs administered by the children, youth and families department.

F. The tobacco settlement permanent fund is a reserve fund of the state. Money in the tobacco settlement permanent fund may be expended:

(1) in the event that general fund balances, including all authorized revenues and transfers to the general fund and balances in the general fund operating reserve, the appropriation contingency fund and the tax stabilization reserve, will not meet the level of appropriations authorized from the general fund for a fiscal year. In that event, in order to avoid an unconstitutional deficit, the legislature may authorize a

transfer from the tobacco settlement permanent fund to the general fund but only in an amount necessary to meet general fund appropriations; or

(2) as provided in Laws 2016 (2nd S.S.), Chapter 4, Section 2."

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Senate Bill 154

Approved April 6, 2017

## **LAWS 2017, CHAPTER 81**

### **AN ACT**

RELATING TO HUMAN RIGHTS; AMENDING SECTIONS OF THE LONG-TERM CARE OMBUDSMAN ACT TO ESTABLISH LIMITATIONS ON REFERRAL IN CASES OF ABUSE, NEGLECT OR EXPLOITATION OF PERSONS RESIDING IN LONG-TERM CARE FACILITIES; REMOVING THE REQUIREMENT FOR THIRD-PARTY WITNESSING WHEN RESIDENTS OF LONG-TERM CARE FACILITIES ORALLY CONSENT TO RELEASE OF MEDICAL, PERSONAL, FINANCIAL AND OTHER NONMEDICAL RECORDS FOR OFFICE OF THE STATE LONG-TERM CARE OMBUDSMAN INVESTIGATIONS.

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

### **Chapter 81 Section 1 Laws 2017**

SECTION 1. Section 28-17-1 NMSA 1978 (being Laws 1989, Chapter 208, Section 1) is amended to read:

"28-17-1. SHORT TITLE.--Chapter 28, Article 17 NMSA 1978 may be cited as the "Long-Term Care Ombudsman Act"."

### **Chapter 81 Section 2 Laws 2017**

SECTION 2. Section 28-17-3 NMSA 1978 (being Laws 1989, Chapter 208, Section 3, as amended) is amended to read:

"28-17-3. DEFINITIONS.--As used in the Long-Term Care Ombudsman Act:

A. "adult protective services" means the agency's adult protective services division that receives and investigates reports of adult abuse, neglect or exploitation;

B. "agency" means the aging and long-term services department;

C. "care" means assistance with the activities of daily living, including eating, dressing, oral hygiene, bathing, mobility, toileting, grooming, taking medications, transferring from a bed or chair and walking;

D. "director" means the secretary of aging and long-term services;

E. "informed consent" means an agreement by a resident or a resident's surrogate decision-maker to allow a disclosure of information, made with full knowledge of the risks involved and the available alternatives, that is made in writing or through the use of auxiliary aids and services or communicated by a resident or a resident's surrogate decision-maker orally, visually or through the use of auxiliary aids and services and such consent is documented contemporaneously by a representative of the office;

F. "licensing and certification" means the licensing and certification bureau of the department of health;

G. "long-term care facility" means any residential facility that provides care to one or more persons unrelated to the owner or operator of the facility, including:

(1) a skilled nursing facility;

(2) an intermediate care nursing facility, including an intermediate care facility for the intellectually disabled;

(3) a nursing facility;

(4) an adult residential shelter care home;

(5) a boarding home;

(6) any other adult care home or adult residential care facility;

(7) a continuing care community;

(8) any swing bed in an acute care facility or extended care facility;

and

(9) any adult daycare facility;

H. "office" means the office of the state long-term care ombudsman;

I. "Older Americans Act" means the federal Older Americans Act of 1965;

J. "ombudsman" means an employee or volunteer of the office who is trained and certified to act as a representative of the office;

K. "ombudsman coordinator" means the coordinator of a regional or local ombudsman program designated by the office;

L. "program" means the New Mexico long-term care ombudsman program;

M. "resident" means any patient, client or person residing in and receiving care in a long-term care facility;

N. "state ombudsman" means the individual who heads the office and supervises the ombudsmen; and

O. "surrogate decision-maker" means any of the following:

(1) an individual chosen by a resident to act on the resident's behalf to support the resident in decision-making; accessing medical, social or other personal information of the resident; managing financial matters; or receiving notifications;

(2) an individual authorized by state or federal law, including an agent pursuant to a power of attorney, a representative payee or other fiduciary of the resident, to act on behalf of a resident to support the resident in decision-making; accessing medical, social or other personal information of the resident; managing financial matters; or receiving notifications;

(3) a resident's legal representative; or

(4) the court-appointed guardian or conservator of a resident."

## **Chapter 81 Section 3 Laws 2017**

SECTION 3. Section 28-17-9 NMSA 1978 (being Laws 1989, Chapter 208, Section 9, as amended) is amended to read:

"28-17-9. REFERRALS.--

A. When abuse, neglect or exploitation of a resident of a long-term care facility is witnessed or suspected, the state ombudsman or an ombudsman shall personally discuss the matter with the resident, or, if the resident is unable to communicate informed consent, the resident's surrogate decision-maker, if applicable, and:

(1) if the resident communicates informed consent to referral and disclosure of identifying information to the long-term care facility, law enforcement or one or more of the entities listed in Subsection B of this section, the state ombudsman or an ombudsman shall assist the resident in reporting the allegation, or the state ombudsman or an ombudsman shall make the report directly. The method of reporting

is at the sole discretion of the resident, though the state ombudsman or an ombudsman may counsel the resident regarding the method of reporting. If the resident is capable of informed consent and chooses not to refer the matter and not to disclose identifying information, the state ombudsman or an ombudsman shall not make a referral or disclose this information;

(2) if the state ombudsman or an ombudsman determines that the resident is not able to communicate informed consent, the state ombudsman or the ombudsman shall consult with the resident's surrogate decision-maker, if any. If the surrogate decision-maker chooses to make a referral and disclose relevant identifying information with respect to the resident, the state ombudsman or an ombudsman shall assist the surrogate decision-maker in reporting the allegation or the state ombudsman or an ombudsman shall make the report directly. The method of reporting is at the sole discretion of the resident's surrogate decision-maker, though the state ombudsman or an ombudsman may counsel the surrogate decision-maker regarding the method of reporting. If the surrogate decision-maker chooses not to refer the matter and not to disclose identifying information, the state ombudsman or an ombudsman shall not make a referral or disclose this information unless the state ombudsman or the ombudsman has reasonable cause to believe that the surrogate decision-maker has taken an action, failed to act or made a decision that may adversely affect the health, safety, welfare or rights of the resident, in which case, the state ombudsman or the ombudsman shall follow the procedure established in Paragraph (3) of this subsection as if the resident did not have a surrogate decision-maker; or

(3) if the state ombudsman or an ombudsman determines that the resident is not able to communicate informed consent and does not have a surrogate decision-maker, an ombudsman, with the consent of the state ombudsman, may make a referral and disclose relevant identifying information about the resident if the state ombudsman or the ombudsman has reasonable cause to believe that it is in the best interest of the resident to make a referral and has no evidence indicating that the resident would not want a referral to be made. In the event that these conditions are met and the abuse, neglect or exploitation has been personally witnessed by the state ombudsman or an ombudsman, the state ombudsman or the ombudsman shall make the report and the disclosure directly to the long-term care facility, law enforcement or the entities set forth in Subsection B of this section.

B. The following state agencies or boards shall endeavor to give priority to any complaint referred to them by the office:

(1) the facilities management division of the general services department;

(2) licensing and certification;

(3) adult protective services;

(4) the New Mexico medical board;

(5) the board of nursing;

(6) the board of nursing home administrators;

(7) the board of pharmacy;

(8) the office of the attorney general; and

(9) the medical assistance division of the human services department.

C. Any state agency or board that responds to a complaint against a long-term care facility or licensed individual that was referred to the agency by the office shall forward to the office copies of related inspection reports and plans of correction and notice of any citations or sanctions levied against the long-term care facility or the licensed individual."

## **Chapter 81 Section 4 Laws 2017**

SECTION 4. Section 28-17-13 NMSA 1978 (being Laws 1989, Chapter 208, Section 13, as amended) is amended to read:

"28-17-13. ACCESS TO RECORDS OF PATIENTS, RESIDENTS OR CLIENTS.-

A. In order for the office to carry out its responsibilities, including conducting investigations, under the Long-Term Care Ombudsman Act, the office shall have full and immediate access to readily available medical, personal, financial and other nonmedical records, which include administrative records, policies, procedures or documents that concern, involve or pertain to a resident's diet, comfort, health, safety or welfare, but do not include internal quality assurance and risk management reports, of a patient, resident or client of a long-term care facility that are retained by the facility or the facility's parent corporation or owner. If the records are not readily available, they are to be provided to the office within twenty-four hours of the request. If the patient, resident or client:

(1) has the ability to consent in writing, access may only be obtained by the written consent of the patient, resident or client;

(2) is unable to consent in writing, oral consent may be given;

(3) has a legally appointed surrogate decision-maker authorized to approve review of records, the office shall obtain the permission of the surrogate

decision-maker for review of the records, unless any of the following apply:

(a) the existence of the surrogate decision-maker is unknown to the office or the facility;

(b) the surrogate decision-maker cannot be reached within five working days;

(c) access to the records is necessary to investigate or evaluate a complaint; or

(d) the surrogate decision-maker refuses to give the permission and a representative of the office has reasonable cause to believe that the surrogate decision-maker is not following the wishes of the resident; and

(4) is unable to express written or oral consent and there is no surrogate decision-maker or the notification of the surrogate decision-maker is not applicable for reasons set forth in Paragraph (3) of this subsection or the patient, resident or client is deceased, inspection of records may be made by employees of the office, ombudsman coordinators and by ombudsmen approved by the ombudsman coordinator or the state ombudsman.

B. Copies of records may be reproduced by the office. If investigation of records is sought pursuant to this section, the ombudsman shall upon request produce a statement signed by the ombudsman coordinator or state ombudsman authorizing the ombudsman to review the records. Facilities providing copies of records pursuant to this section may charge the office for the actual copying cost for each page copied.

C. Upon request by the office, a long-term care facility shall provide to the office the name, address and telephone number of the guardian, conservator, attorney-in-fact, legal representative or next-of-kin of any patient, resident or client and a copy of any document granting legal decision-making power over a resident.

D. The long-term care facility and personnel who disclose records pursuant to this section shall not be liable for the disclosure.

E. In order to carry out its responsibilities as a health oversight agency, the office shall establish procedures to protect the confidentiality of records obtained pursuant to this section and in accordance with the federal Health Insurance Portability and Accountability Act of 1996 regulations."

Approved April 6, 2017

## **LAWS 2017, CHAPTER 82**

AN ACT

RELATING TO TAXATION; ALLOWING THE HIGHER EDUCATION DEPARTMENT TO BE A CLAIMANT UNDER THE TAX REFUND INTERCEPT PROGRAM ACT AND ESTABLISHING THE PRIORITY OF ITS CLAIMS.

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

### **Chapter 82 Section 1 Laws 2017**

SECTION 1. Section 7-2C-3 NMSA 1978 (being Laws 1985, Chapter 106, Section 3, as amended by Laws 2006, Chapter 52, Section 2 and by Laws 2006, Chapter 53, Section 2) is amended to read:

"7-2C-3. DEFINITIONS.--As used in the Tax Refund Intercept Program Act:

A. "claimant agency" means the taxation and revenue department or any of its divisions, the human services department, the workforce transition services division of the workforce solutions department, the higher education department, the workers' compensation administration, any corporation authorized to be formed under the Educational Assistance Act, a district, magistrate or municipal court or the Bernalillo county metropolitan court;

B. "debt" means a legally enforceable obligation of an employer subject to the Unemployment Compensation Law, the Workers' Compensation Act and the Workers' Compensation Administration Act, or an individual to pay a liquidated amount of money that:

(1) is equal to or more than one hundred dollars (\$100);

(2) is due and owing a claimant agency, which a claimant agency is obligated by law to collect or which, in the case of an educational loan, a claimant agency has lawfully contracted to collect;

(3) has accrued through contract, tort, subrogation or operation of law; and

(4) either:

(a) has been secured by a warrant of levy and lien for amounts due under the Unemployment Compensation Law or workers' compensation fees due under the Workers' Compensation Administration Act; or

(b) has been reduced to judgment for all other cases;

C. "debtor" means any employer subject to the Unemployment Compensation Law, the Workers' Compensation Act and the Workers' Compensation Administration Act, or any individual owing a debt;

D. "department" or "division" means, unless the context indicates otherwise, the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

E. "educational loan" means any loan for educational purposes owned by a public post-secondary educational institution, originated and owned by the higher education department or owned or guaranteed by any corporation authorized to be formed under the Educational Assistance Act;

F. "medical support" means amounts owed to the human services department pursuant to the provisions of Subsection B of Section 40-4C-12 NMSA 1978;

G. "public post-secondary educational institution" means a publicly owned or operated institution of higher education or other publicly owned or operated post-secondary educational facility located within New Mexico;

H. "spouse" means an individual who is or was a spouse of the debtor and who has joined with the debtor in filing a joint return of income tax pursuant to the provisions of the Income Tax Act, which joint return has given rise to a refund that may be subject to the provisions of the Tax Refund Intercept Program Act; and

I. "refund" means a refund, including any amount of tax rebates or credits, under the Income Tax Act or the Corporate Income and Franchise Tax Act that the department has determined to be due to an individual or corporation."

## **Chapter 82 Section 2 Laws 2017**

SECTION 2. Section 7-2C-11 NMSA 1978 (being Laws 1985, Chapter 106, Section 11, as amended by Laws 2006, Chapter 52, Section 4 and by Laws 2006, Chapter 53, Section 4) is amended to read:

### **"7-2C-11. PRIORITY OF CLAIMS.--**

A. Claims of the department take precedence over the claim of any competing claimant agency, whether the department asserts a claim or sets off an asserted debt under the provisions of the Tax Refund Intercept Program Act or under the provisions of any other law that authorizes the department to apply amounts of tax owed against any refund due an individual pursuant to the Income Tax Act.

B. After claims of the department, claims shall take priority in the following order before claims of any competing claimant agency:

(1) claims of the human services department resulting from child support enforcement liabilities;

(2) claims of the human services department resulting from medical support liabilities;

(3) claims resulting from educational loans made under the Educational Assistance Act;

(4) claims of the human services department resulting from temporary assistance for needy families liabilities;

(5) claims of the human services department resulting from supplemental nutrition assistance program liabilities;

(6) claims of the workforce transition services division of the workforce solutions department arising under the Unemployment Compensation Law;

(7) claims of a district court for fines, fees or costs owed to that court;

(8) claims of a magistrate court for fines, fees or costs owed to that court;

(9) claims of the Bernalillo county metropolitan court for fines, fees or costs owed to that court;

(10) claims of a municipal court for fines, fees or costs owed to that court;

(11) claims of the workers' compensation administration arising under the Workers' Compensation Act or the Workers' Compensation Administration Act; and

(12) claims from educational loans made by the higher education department."

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Senate Bill 181, aa

Approved April 6, 2017

# **LAWS 2017, CHAPTER 83**

## **AN ACT**

RELATING TO HIGHER EDUCATION; PROVIDING FOR LOAN REPAYMENT ASSISTANCE BY THE HIGHER EDUCATION DEPARTMENT FOR MINORITY DOCTORAL DEGREE RECIPIENTS TEACHING IN CERTAIN ACADEMIC DISCIPLINES AT PUBLIC POST-SECONDARY EDUCATIONAL INSTITUTIONS IN NEW MEXICO.

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

### **Chapter 83 Section 1 Laws 2017**

SECTION 1. Section 21-211-1 NMSA 1978 (being Laws 1990 (1st S.S.), Chapter 8, Section 1, as amended) is amended to read:

"21-211-1. SHORT TITLE.--Chapter 21, Article 211 NMSA 1978 may be cited as the "Minority Doctoral Loan Repayment Assistance Act"."

### **Chapter 83 Section 2 Laws 2017**

SECTION 2. Section 21-211-2 NMSA 1978 (being Laws 1990 (1st S.S.), Chapter 8, Section 2, as amended) is amended to read:

"21-211-2. PURPOSE.--The purpose of the Minority Doctoral Loan Repayment Assistance Act is to increase the number of ethnic minorities and women available to teach engineering, physical or life sciences, mathematics and other academic disciplines in which ethnic minorities or women are demonstrably underrepresented in New Mexico colleges and universities. Additionally, the purpose of the Minority Doctoral Loan Repayment Assistance Act is to create a partnership between the state, higher education institutions and students that will lead to greater participation of ethnic minorities and women in the ranks of college and university faculties, enhancing educational opportunities and quality for all New Mexico residents."

### **Chapter 83 Section 3 Laws 2017**

SECTION 3. Section 21-211-3 NMSA 1978 (being Laws 1990 (1st S.S.), Chapter 8, Section 3, as amended) is amended to read:

"21-211-3. DEFINITIONS.--As used in the Minority Doctoral Loan Repayment Assistance Act:

A. "department" means the higher education department;

B. "eligible institution" means an accredited institution of higher education that offers a doctoral degree-granting program in the fields of engineering, physical or life sciences, mathematics or other academic disciplines in which ethnic minorities or women are demonstrably underrepresented;

C. "loan" means a grant of money pursuant to a contract between a recipient and a lender requiring repayment of principal with interest. A lender may include the federal government, a bank or the state; and

D. "recipient" means an individual who is a member of an ethnic minority or is a woman and who has successfully completed a doctoral degree-granting program at an eligible institution in the field of engineering, physical or life sciences or mathematics or another academic discipline in which ethnic minorities or women are underrepresented."

## **Chapter 83 Section 4 Laws 2017**

SECTION 4. Section 21-211-4 NMSA 1978 (being Laws 1990 (1st S.S.), Chapter 8, Section 4, as amended) is amended to read:

"21-211-4. CONDITIONS FOR ELIGIBILITY.--

A. The department may award a minority doctoral loan repayment assistance grant to a recipient who:

(1) has been hired by a public

post-secondary educational institution in New Mexico for a full-time, tenure-track faculty position;

(2) has complied with all of the rules adopted by the department pursuant to the Minority Doctoral Loan Repayment Assistance Act; and

(3) is a citizen of the United States.

B. The department shall give preference to a recipient who has completed a post-secondary degree at an institution designated in Article 12, Section 11 of the constitution of New Mexico."

## **Chapter 83 Section 5 Laws 2017**

SECTION 5. Section 21-211-5 NMSA 1978 (being Laws 1990 (1st S.S.), Chapter 8, Section 5) is amended to read:

"21-211-5. MINORITY DOCTORAL LOAN REPAYMENT CONTRACTS AND TERMS.--

A. A minority doctoral loan repayment assistance grant shall be evidenced by a contract between the recipient and the department and shall be signed by the recipient and an authorized representative of the department.

B. The contract shall provide that, in consideration for the department's payment of up to

twenty-five thousand dollars (\$25,000) per year for up to four years to a lender on behalf of the recipient, the recipient shall teach in a full-time faculty position at a public post-secondary educational institution in New Mexico for a minimum of one year for each year a minority doctoral loan repayment assistance grant is awarded.

C. Grant funds received by a recipient who fails to complete the contract terms shall be converted to a loan with an applied annual interest rate equal to the treasury note rate in existence at the time the contract is entered into plus two percent. The loan shall become due to the department on behalf of the state immediately upon the recipient's termination or breach of the contract.

D. The department is vested with full and complete authority and power to sue in its own name for any balance due it and the state from a recipient violating the terms of a contract under the Minority Doctoral Loan Repayment Assistance Act.

E. The following debts incurred by a recipient are not eligible for payment by the department under the Minority Doctoral Loan Repayment Assistance Act:

(1) amounts incurred as a result of participation in state loan-for-service programs or other state programs whose purpose states that service is to be provided in exchange for financial assistance;

(2) scholarships that have a service component or obligation;

(3) personal loans from individuals;

(4) loans that exceed individual standard school expense levels;  
and

(5) loans that are eligible for another state or federal loan repayment program."

## **Chapter 83 Section 6 Laws 2017**

SECTION 6. Section 21-211-7 NMSA 1978 (being Laws 1990 (1st S.S.), Chapter 8, Section 7, as amended) is repealed and a new Section 21-211-7 NMSA 1978 is enacted to read:

"21-211-7. RULEMAKING.--The department shall adopt rules to implement the provisions of the Minority Doctoral Loan Repayment Assistance Act. The rules:

A. shall provide procedures for awarding minority doctoral loan repayment assistance grants;

B. shall provide procedures for determining the amount of each minority doctoral loan repayment assistance grant; and

C. may provide for the disbursement of funds to a lender on behalf of a recipient in annual or other periodic installments."

## **Chapter 83 Section 7 Laws 2017**

SECTION 7. REPEAL.--Section 21-211-6 NMSA 1978 (being Laws 1990 (1st S.S.), Chapter 8, Section 6) is repealed.

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SFC/Senate Bill 197

Approved April 6, 2017

## **LAWS 2017, CHAPTER 84**

AN ACT

RELATING TO VETERANS AFFAIRS; TRANSFERRING OVERSIGHT OF THE NEW MEXICO STATE VETERANS' HOME FROM THE DEPARTMENT OF HEALTH TO THE VETERANS' SERVICES DEPARTMENT; CREATING THE HEALTH CARE COORDINATION DIVISION OF THE VETERANS' SERVICES DEPARTMENT; REPEALING THE VETERANS' SERVICES ADVISORY BOARD.

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

## **Chapter 84 Section 1 Laws 2017**

SECTION 1. Section 9-22-3 NMSA 1978 (being Laws 2004, Chapter 19, Section 3, as amended) is amended to read:

"9-22-3. DEFINITIONS.--As used in the Veterans' Services Department Act:

A. "department" means the veterans' services department;

B. "gold star parent" means a surviving parent of a member of the armed forces of the United States who is missing in action or whose death was related to the member's service in the armed forces of the United States;

C. "secretary" means the secretary of veterans' services; and

D. "veteran" means a New Mexico resident who:

(1) was regularly enlisted, drafted, inducted or commissioned in the:

(a) armed forces of the United States and was accepted for and assigned to active duty in the armed forces of the United States;

(b) army reserve, navy reserve, marine corps reserve, air force reserve, coast guard reserve, army national guard or air national guard and was accepted for and assigned to duty for a minimum of six continuous years; or

(c) United States public health service commissioned corps or the national oceanic and atmospheric administration commissioned officer corps and served in the capacity of a commissioned officer while on active duty in defense of the United States; and

(2) was not separated from such service under circumstances amounting to dishonorable discharge."

## **Chapter 84 Section 2 Laws 2017**

SECTION 2. Section 9-22-4 NMSA 1978 (being Laws 2004, Chapter 19, Section 4) is amended to read:

"9-22-4. DEPARTMENT ESTABLISHED.--The "veterans' services department" is created in the executive branch. The department is a cabinet department and includes the following divisions:

A. the administrative services division;

B. the field services division;

C. the health care coordination division; and

D. the state benefits division."

## **Chapter 84 Section 3 Laws 2017**

SECTION 3. Section 9-22-7 NMSA 1978 (being Laws 2004, Chapter 19, Section 7) is amended to read:

"9-22-7. DEPARTMENT RESPONSIBILITIES.--The department is responsible for:

A. assisting veterans and their surviving spouses, children and gold star parents in the preparation, presentation and prosecution of claims against the United States arising by reason of military or naval service;

B. assisting veterans and their surviving spouses, children and gold star parents in establishing the rights and the procurement of benefits that have accrued or may accrue to them pursuant to state law;

C. disseminating information regarding laws beneficial to veterans and their surviving spouses, children and gold star parents; and

D. cooperating with agencies of the United States that are or may be established for the beneficial interest of veterans, to which end the department may enter into agreements or contracts with the United States for the purpose of protecting or procuring rights or benefits for veterans."

## **Chapter 84 Section 4 Laws 2017**

SECTION 4. Section 9-22-11 NMSA 1978 (being Laws 2004, Chapter 19, Section 11) is amended to read:

"9-22-11. ADMINISTRATIVE SERVICES DIVISION--DUTIES.--

A. The administrative services division shall provide administrative services to the department, including:

(1) keeping all official records of the department;

(2) providing clerical services in the areas of personnel and budget preparation;

(3) providing clerical, recordkeeping and administrative support to agencies administratively attached to the department at their request;

(4) coordinating short- and long-term planning of the department;  
and

(5) administering programs and grants that have been assigned to the department by the secretary or governor or by statute, including management of the state approving bureau.

B. The administrative services division shall provide fiduciary services, including acting as either

court-appointed conservator or representative payee for veterans adjudicated as unable to handle their own financial affairs without assistance. The division shall manage fiduciary funds and safeguard the assets for veterans and their dependents."

## **Chapter 84 Section 5 Laws 2017**

SECTION 5. Section 9-22-13 NMSA 1978 (being Laws 2004, Chapter 19, Section 13) is amended to read:

"9-22-13. STATE APPROVING BUREAU.--

A. The state approving bureau is created within the administrative services division of the department and is the state approving agency for the purposes of 38 USCA Section 3671.

B. The state approving bureau shall evaluate and approve educational programs and training programs for all persons and veterans eligible for educational assistance pursuant to the provisions of Title 38 of the United States Code. Approval of courses, educational programs and training programs, including training on the job, by the state approving bureau shall be in accordance with the provisions of Title 38 of the United States Code."

## **Chapter 84 Section 6 Laws 2017**

SECTION 6. Section 9-22-14 NMSA 1978 (being Laws 2004, Chapter 19, Section 14) is amended to read:

"9-22-14. STATE BENEFITS DIVISION.--The state benefits division shall:

A. provide oversight of veterans' service organizations;

B. develop or coordinate veterans' programs and outreach, including economic development; and

C. determine eligibility for, conduct or oversee state-funded veterans' services and benefits, including determining eligibility for veteran property tax exemptions, hunting and fishing licensing and motor vehicle license plate programs; managing the Vietnam and children of deceased veterans scholarship programs; and overseeing the military honors burial program and state veterans' cemeteries, monuments and museums."

## **Chapter 84 Section 7 Laws 2017**

SECTION 7. A new section of the Veterans' Services Department Act is enacted to read:

"HEALTH CARE COORDINATION DIVISION.--The health care coordination division shall:

A. develop and coordinate veterans programs and outreach, including transitional living, housing and health care programs;

B. provide oversight of the New Mexico state veterans' home; and

C. advise and coordinate with the secretary regarding all health care-related issues for veterans and veterans' families."

## **Chapter 84 Section 8 Laws 2017**

SECTION 8. Section 23-4-1 NMSA 1978 (being Laws 1974 (S.S.), Chapter 2, Section 1, as amended) is amended to read:

"23-4-1. VETERANS' HOME CREATED--ADVISORY BOARD.--

A. The "New Mexico state veterans' home" located near Truth or Consequences, New Mexico, is declared to be a state home for veterans of service in the armed forces of the United States and their qualifying spouses, surviving spouses and gold star parents.

B. The "Fort Bayard medical center veterans' unit", a separate and distinct unit of the Fort Bayard medical center, located near Silver City, New Mexico, is declared to be a state home for veterans of service in the armed forces of the United States.

C. There is created the "New Mexico veterans' home advisory board". The advisory board shall consist of nine members as follows:

(1) the secretary of health or the secretary's designee;

(2) the director of the health care coordination division of the veterans' services department;

(3) the secretary of aging and long-term services or the secretary's designee;

(4) the administrator of a private nursing home;

(5) a registered health care professional who is employed by a public or private nursing home;

(6) the state commander of the department of New Mexico veterans of foreign wars or the department commander's designee;

(7) the department commander of the American legion or the department commander's designee;

(8) the state commander of disabled American veterans or the state commander's designee; and

(9) a member of any other congressionally recognized veteran service organization.

D. The governor shall appoint the members designated in Paragraphs (4), (5) and (9) of Subsection C of this section, and their terms shall be for three years each.

E. The New Mexico state veterans' home shall be under the control of the veterans' services department.

F. The New Mexico veterans' home advisory board shall provide advice to the secretaries of veterans' services and health and the administrators of the New Mexico state veterans' home and the Fort Bayard medical center regarding veterans' services."

## **Chapter 84 Section 9 Laws 2017**

SECTION 9. Section 23-4-3 NMSA 1978 (being Laws 1974 (S.S.), Chapter 2, Section 4, as amended) is amended to read:

### **"23-4-3. ELIGIBILITY FOR CARE--STANDARDS.--**

A. Occupancy in the New Mexico state veterans' home and the Fort Bayard medical center veterans' unit shall be for veterans of service in the armed forces of the United States who have served on active duty pursuant to rules adopted by the secretary of veterans' services consistent with federal guidelines. To be eligible for admission and continued occupancy, a veteran must be a citizen of the United States who enlisted or was drafted, inducted or commissioned in the armed forces of the United States, who was accepted for and assigned to active duty in the armed forces and was not separated from the armed forces under circumstances amounting to a dishonorable discharge from the armed forces.

B. Additionally, no more than twenty-five percent of the occupancy in the New Mexico state veterans' home shall consist of nonveterans from the following categories:

(1) spouses;

(2) surviving spouses; and

(3) gold star parents, as defined in the Veterans' Services Department Act.

C. Whenever a law, rule or regulation of the United States department of veterans affairs or any other law permits the state to receive federal funds for the use and benefit of the New Mexico state veterans' home, upon acceptance of a veteran of the armed forces of the United States not meeting the requirements of Subsection A of this section, the New Mexico veterans' home advisory board may adopt rules to authorize such veteran's acceptance."

## **Chapter 84 Section 10 Laws 2017**

SECTION 10. REPEAL.--Section 9-22-15 NMSA 1978 (being Laws 2004, Chapter 19, Section 15) is repealed.

## **Chapter 84 Section 11 Laws 2017**

SECTION 11. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2017.

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Senate Bill 204, aa

Approved April 6, 2017

# **LAWS 2017, CHAPTER 85**

AN ACT

RELATING TO PUBLIC SCHOOLS; AMENDING THE PUBLIC SCHOOL CODE TO REQUIRE THE SENDING SCHOOL DISTRICT AND THE RECEIVING SCHOOL DISTRICT ENROLLING A HIGH SCHOOL STUDENT WHO HAS EXPERIENCED DISRUPTION IN THE EDUCATION PROCESS THROUGH NO FAULT OF THE STUDENT TO PROVIDE THAT STUDENT WITH OPPORTUNITIES TO PARTICIPATE IN COMPARABLE SCHOOL ACADEMIC PROGRAMS AND EXTRACURRICULAR ACTIVITIES FOR WHICH THE STUDENT IS ELIGIBLE AND TO EARN CREDITS AND GRADUATE FROM HIGH SCHOOL.

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

## **Chapter 85 Section 1 Laws 2017**

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

"TIMELY GRADUATION AND SUPPORT FOR STUDENTS WHO EXPERIENCE DISRUPTION IN THE STUDENT'S EDUCATION.--

A. For purposes of this section, "a student who has experienced disruption in the student's education" means a student who experiences one or more changes in school or school district enrollment during a single school year as the result of:

(1) homelessness as defined in the federal McKinney-Vento Homeless Assistance Act as determined by the school or school district;

(2) adjudication:

(a) as an abused or neglected child as determined by the children, youth and families department pursuant to the Abuse and Neglect Act;

(b) as part of a family in need of court-ordered services voluntary placement pursuant to the Family Services Act; or

(c) as a delinquent if the parent wishes to disclose the adjudication of delinquency; or

(3) placement in a mental health treatment facility or habilitation program for developmental disabilities pursuant to the Children's Mental Health and Developmental Disabilities Act or placement in treatment foster care.

B. When a student who has experienced a disruption in the student's education transfers to a new public school or school district, the receiving school or school district shall communicate with the sending school district within two days of the student's enrollment. The sending school or school district shall provide the receiving school or school district with any requested records within two days of having received the receiving school's or school district's communication.

C. A student who has experienced a disruption in the student's education transferring to a new school as the result of circumstances set forth in this section shall have:

(1) priority placement in classes that meet state graduation requirements; and

(2) timely placement in elective classes that are comparable to those in which the student was enrolled at the student's previous school or schools as soon as the school or school district receives verification from the student's records.

D. For a student who has experienced disruption in the student's education at any time during the student's high school enrollment, a school district and public schools shall ensure:

(1) acceptance of the student's state graduation requirements for a diploma of excellence pursuant to the Public School Code;

(2) equal access to participation in sports and other extracurricular activities, career and technical programs or other special programs for which the student qualifies;

(3) timely assistance and advice from counselors to improve the student's college or career readiness; and

(4) that the student receives all special education services to which the student is entitled."

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Senate Bill 213, aa

Approved April 6, 2017

## **LAWS 2017, CHAPTER 86**

AN ACT

RELATING TO SPORTS MEDICINE; AMENDING THE ATHLETIC TRAINER PRACTICE ACT; PROVIDING ADDITIONAL DEFINITIONS; AMENDING THE SCOPE OF PRACTICE.

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

### **Chapter 86 Section 1 Laws 2017**

SECTION 1. Section 61-14D-3 NMSA 1978 (being Laws 1993, Chapter 325, Section 3) is amended to read:

"61-14D-3. DEFINITIONS.--As used in the Athletic Trainer Practice Act:

A. "athlete" means a person trained to participate in exercise requiring physical agility and stamina;

B. "athletic trainer" means a person who, with the advice and consent of a licensed physician, practices the treatment, prevention, care and rehabilitation of injuries incurred by athletes;

C. "board" means the athletic trainer practice board;

D. "clinical assessment" means obtaining a history of an athletic injury, inspection and palpation of an injured part and associated structures and performance of testing techniques related to stability and function to determine the extent of an injury;

E. "department" means the regulation and licensing department;

F. "district" means an area having the same boundaries as a congressional district in the state;

G. "emergency care" means the application of first aid, determination of whether an injury is life-threatening and referral to an appropriately licensed health care provider if an injury requires further definitive care or the injury or condition is outside an athletic trainer's scope of practice;

H. "licensed physician" means a chiropractor, osteopath or physician licensed pursuant to Article 4, 6 or 10 of Chapter 61 NMSA 1978;

I. "preventive services" means treatment of injuries through pre-activity screening and evaluation, educational programs, application of commercial products, use of protective equipment and physical conditioning and reconditioning programs; and

J. "therapeutic intervention and rehabilitation" means treatment of injuries through the application of exercise, the use of physical modalities such as heat, light, sound, cold, electricity or mechanical devices, therapeutic activities, preventive services and standard reassessment techniques and procedures in accordance with established, written athletic training service plans and upon the order or protocol of a licensed physician."

## **Chapter 86 Section 2 Laws 2017**

SECTION 2. Section 61-14D-6 NMSA 1978 (being Laws 1993, Chapter 325, Section 6) is amended to read:

"61-14D-6. SCOPE OF PRACTICE.--The practice of athletic training includes preventive services, emergency care, clinical assessment, therapeutic intervention and rehabilitation of injuries and medical conditions of athletes. Athletic trainers act as allied medical providers through collaboration with licensed physicians, pursuant to the written prescription, standing order or protocol of a licensed physician."

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SPAC/Senate Bill 221

Approved April 6, 2017

## **LAWS 2017, CHAPTER 87**

## AN ACT

RELATING TO HEALTH; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978 RELATING TO ESSENTIAL HEALTH SERVICES AND DEPARTMENT OF HEALTH FUNCTIONS, SEXUALLY TRANSMITTED INFECTIONS, CONDITIONS OF PUBLIC HEALTH IMPORTANCE, COMMUNICABLE DISEASES, ISOLATION AND QUARANTINE AND SCHOOL HEALTH CARE OVERSIGHT.

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

### **Chapter 87 Section 1 Laws 2017**

SECTION 1. Section 9-7-4.1 NMSA 1978 (being Laws 2004, Chapter 51, Section 1, as amended by Laws 2007, Chapter 46, Section 6 and by Laws 2007, Chapter 279, Section 1) is amended to read:

"9-7-4.1. STATE HEALTH IMPROVEMENT PLAN.--

A. The department shall develop a state health improvement plan that meets accreditation standards of the public health accreditation board or its successor in interest.

B. The department shall conduct state health assessments in order to inform the development, adoption and implementation of the state health improvement plan.

C. The department shall publish the state health improvement plan on September 1, 2018 and at least every five years thereafter. By September 1 of each even-numbered year, the department shall review and update or amend the plan in response to changes and developments.

D. The department shall include the legislature and other agencies and commissions as the department deems necessary in its development of the state health improvement plan so as to give geographic representation to all areas of the state. The department shall ensure that public participation and public input are integrated into the planning process. The department shall convene regional meetings on the proposed plan to allow public review and comment, including oral and written testimony, pursuant to the Open Meetings Act.

E. The department shall consult with the governments of Native American nations, tribes and pueblos located wholly or partially within New Mexico in the development of the state health improvement plan."

### **Chapter 87 Section 2 Laws 2017**

SECTION 2. Section 9-7-6 NMSA 1978 (being Laws 1977, Chapter 253, Section 7, as amended) is amended to read:

"9-7-6. SECRETARY--DUTIES AND GENERAL POWERS.--

A. The secretary is responsible to the governor for the operation of the department. It is 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 secretary's duties, the secretary has every power expressly enumerated in the laws, whether granted to the secretary or the department or any division of the department, except where authority conferred upon any division is explicitly exempted from the secretary's authority by statute. In accordance with these provisions, the secretary shall:

(1) except as otherwise provided in the Department of Health Act, exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and rules;

(2) delegate authority to subordinates as the secretary deems necessary and appropriate, clearly delineating such delegated authority and the limitations thereto;

(3) organize the department into those organizational units the secretary deems will enable it to function most efficiently, subject to any provisions of law requiring or establishing specific organizational units;

(4) within the limitations of available appropriations and applicable laws, employ and fix the compensation of those persons necessary to discharge the secretary's duties;

(5) take administrative action by issuing orders and instructions, not inconsistent with the law, to assure implementation of and compliance with the provisions of law for which administration or execution 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 operations of the department and the provision of services to the citizens of the state;

(7) conduct quality assurance and quality improvement activities, which may include participation in a nationally recognized accreditation program for public health agencies that is based on the ability of an agency to provide essential public health services and functions;

(8) provide courses of instruction and practical training for employees of the department and other persons involved in the administration of programs with the objective of improving the operations and efficiency of administration;

(9) prepare an annual budget of the department;

(10) appoint, with the governor's consent, a "director" for each division. These appointed positions are exempt from the provisions of the Personnel Act. Persons appointed to these positions shall serve at the pleasure of the secretary;

(11) give bond in the penal sum of twenty-five thousand dollars (\$25,000) and require directors to each give bond in the penal sum of ten thousand dollars (\$10,000) conditioned upon the faithful performance of duties, as provided in the Surety Bond Act. The department shall pay the costs of those bonds; and

(12) require performance bonds of such department employees and officers as the secretary deems necessary, as provided in the Surety Bond Act. The department shall pay the costs of those bonds.

C. The secretary may apply for and receive, with the governor's approval, in the name of the department any public or private funds, including United States government funds, available to the department to carry out its programs, duties or services.

D. The secretary shall be responsible for providing appropriate educational programs for all school-age persons, as defined in Section 22-1-2 NMSA 1978, who are clients, as defined in Section 43-1-3 NMSA 1978, of institutions under the secretary's authority as follows:

(1) the secretary shall arrange with school districts for the enrollment of all school-age residents of institutions under the secretary's authority who have been evaluated and recommended for placement in a public school according to the provisions of the Department of Health Education Act. The secretary shall notify the secretary of public education prior to public school enrollment of any school-age resident under the secretary's authority; and

(2) the secretary shall provide educational programs, in accordance with the special education rules of the public education department, for school-age persons who are clients of institutions under the secretary's authority but who are enrolled in a public school by:

(a) using the facilities and personnel of the department;

(b) contracting with a school district for the provision of educational services; or

(c) using a combination of Subparagraphs (a) and (b) of this paragraph.

E. The secretary may make and adopt such reasonable procedural rules as may be necessary to carry out the duties of the department and its divisions. No rule promulgated by the director of any division in carrying out the functions and duties of the division shall be effective until approved by the secretary unless otherwise provided by statute. Unless otherwise provided by statute, no rule affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by the secretary. 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 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 87 Section 3 Laws 2017**

SECTION 3. Section 14-8-9.1 NMSA 1978 (being Laws 2011, Chapter 134, Section 21) is amended to read:

"14-8-9.1. PUBLIC RECORDS--INSPECTION--EXCEPTIONS.--

A. Except as provided in this section, all documents filed and recorded in the office of the county clerk are public records.

B. The county clerk shall publicly post in the office of the county clerk and on the county's web page a notice that documents recorded in the office of the county clerk are public records, subject to inspection and disclosure.

C. Before purchasing or digitizing of documents by third parties, protected personal identifier information, as defined in the Inspection of Public Records Act, shall be redacted.

D. Documents containing health information that relates to and identifies specific individuals as patients are exempt as a public record pursuant to Section 14-6-1

NMSA 1978.

E. Discharge papers of a veteran of the armed forces of the United States recorded in the office of the county clerk shall be segregated from public records in the office of the county clerk. Discharge papers recorded before July 1, 2005 that have

been commingled with public records and that remain unsegregated are available for inspection in the office of the county clerk but shall not be purchased, copied or digitized by any third party, except by those persons authorized in this section. As the technology becomes available, county clerks shall segregate commingled discharge papers from the public records in the office of the county clerk. Discharge papers recorded in the office of the county clerk are available only to:

- (1) the veteran who filed the papers;
- (2) the veteran's next of kin;
- (3) the deceased veteran's properly appointed personal representative or executor;
- (4) a person holding the veteran's general power of attorney; or
- (5) a person designated by the veteran in an acknowledged statement to receive the records.

F. Death certificates that have been recorded in the office of the county clerk may be inspected, but shall not be purchased, copied or digitized by any third party unless fifty years have elapsed after the date of death. Death certificates and other vital records recorded in the office of the county clerk are exempt from the restrictions contained in Subsection A of Section 24-14-27 NMSA 1978. The act of recording a death certificate in the office of the county clerk is considered a convenience; provided that no person shall be required to record a death certificate in the office of the county clerk to effect change of title or interest in property."

## **Chapter 87 Section 4 Laws 2017**

SECTION 4. Section 24-1-2 NMSA 1978 (being Laws 1973, Chapter 359, Section 2, as amended by Laws 2015, Chapter 61, Section 1 and by Laws 2015, Chapter 153, Section 1) is amended to read:

"24-1-2. DEFINITIONS.--As used in the Public Health Act:

A. "condition of public health importance" means an infection, a disease, a syndrome, a symptom, an injury or other threat that is identifiable on an individual or community level and can reasonably be expected to lead to adverse health effects in the community;

B. "crisis triage center" means a health facility that:

- (1) is licensed by the department of health;

(2) is not physically part of an inpatient hospital or included in a hospital's license; and

(3) provides stabilization of behavioral health crises, including short-term residential stabilization;

C. "department" means:

(1) the department of health; or

(2) the children, youth and families department as to child care centers, residential treatment centers that serve persons up to twenty-one years of age, community mental health centers that serve only persons up to twenty-one years of age, day treatment centers that serve persons up to twenty-one years of age, shelter care homes and those outpatient facilities that are also community-based behavioral health facilities serving only persons up to twenty-one years of age;

D. "director" means the secretary;

E. "health care provider" means an individual licensed to provide health care in the ordinary course of business, except as otherwise defined in the Public Health Act;

F. "health facility" means a public hospital, profit or nonprofit private hospital, general or special hospital, outpatient facility, crisis triage center, freestanding birth center, adult daycare facility, nursing home, intermediate care facility, assisted living facility, boarding home not under the control of an institution of higher learning, child care center, shelter care home, diagnostic and treatment center, rehabilitation center, infirmary, community mental health center that serves both children and adults or adults only, residential treatment center that serves persons up to twenty-one years of age, community mental health center that serves only persons up to twenty-one years of age and day treatment center that serves persons up to twenty-one years of age or a health service organization operating as a freestanding hospice or a home health agency. The designation of these entities as health facilities is only for the purposes of definition in the Public Health Act and does not imply that a freestanding hospice or a home health agency is considered a health facility for the purposes of other provisions of state or federal laws. "Health facility" also includes those facilities that, by federal regulation, must be licensed by the state to obtain or maintain full or partial, permanent or temporary federal funding. It does not include the offices and treatment rooms of licensed private practitioners;

G. "screening" means a preliminary procedure, including a test or examination, that:

(1) may require further investigation; and

(2) can identify individuals with unrecognized health risk factors or asymptomatic disease conditions in populations;

H. "secretary" means:

(1) the secretary of health; or

(2) the secretary of children, youth and families as to child care centers, residential treatment centers that serve persons up to twenty-one years of age, community mental health centers that serve only persons up to twenty-one years of age, day treatment centers that serve persons up to twenty-one years of age, shelter care homes and those outpatient facilities that are also community-based behavioral health facilities serving only persons up to twenty-one years of age; and

I. "test" means any diagnostic or investigative analysis or medical procedure that determines the presence of, absence of or exposure to a condition of public health importance or its precursor in an individual."

## **Chapter 87 Section 5 Laws 2017**

SECTION 5. Section 24-1-3 NMSA 1978 (being Laws 1973, Chapter 359, Section 3, as amended) is amended to read:

"24-1-3. POWERS AND AUTHORITY OF DEPARTMENT.--The department has authority to:

A. receive such grants, subsidies, donations, allotments or bequests as may be offered to the state by the federal government or any department thereof or by any public or private foundation or individuals;

B. supervise the health and hygiene of the people of the state and identify ways to evaluate and address community health problems;

C. investigate, control and abate the causes of disease, especially epidemics, sources of mortality and other conditions of public health;

D. establish, maintain and enforce isolation and quarantine;

E. close any public place and forbid gatherings of people when necessary for the protection of the public health;

F. respond to public health emergencies and assist communities in recovery;

G. establish programs and adopt rules to prevent infant mortality, birth defects and morbidity;

- H. prescribe the duties of public health nurses and school nurses;
- I. provide educational programs and disseminate information on public health;
- J. maintain and enforce rules for the licensure of health facilities;
- K. ensure the quality and accessibility of health care services and the provision of health care when health care is otherwise unavailable;
- L. ensure a competent public health workforce;
- M. bring action in court for the enforcement of health laws and rules and orders issued by the department;
- N. enter into agreements with other states to carry out the powers and duties of the department;
- O. cooperate and enter into contracts or agreements with the federal government or any other person to carry out the powers and duties of the department;
- P. cooperate and enter into contracts or agreements with Native American nations, tribes and pueblos and off-reservation groups to coordinate the provision of essential public health services and functions;
- Q. maintain and enforce rules for the control of conditions of public health importance;
- R. maintain and enforce rules for immunization against conditions of public health importance;
- S. maintain and enforce such rules as may be necessary to carry out the provisions of the Public Health Act and to publish the rules;
- T. supervise state public health activities, operate a dental public health program and operate state laboratories for the investigation of public health matters;
- U. sue and, with the consent of the legislature, be sued;
- V. regulate the practice of midwifery;
- W. administer legislation enacted pursuant to Title 6 of the Public Health Service Act, as amended and supplemented;
- X. inspect such premises or vehicles as necessary to ascertain the existence or nonexistence of conditions dangerous to public health or safety;

Y. request and inspect, while maintaining federal and state confidentiality requirements, copies of:

(1) medical and clinical records reasonably required for the department's quality assurance and quality improvement activities; and

(2) all medical and clinical records pertaining to the individual whose death is the subject of inquiry by the department's mortality review activities; and

Z. do all other things necessary to carry out its duties."

## **Chapter 87 Section 6 Laws 2017**

SECTION 6. Section 24-1-4 NMSA 1978 (being Laws 1973, Chapter 359, Section 4) is amended to read:

"24-1-4. CREATION OF HEALTH REGIONS--APPOINTMENT OF HEALTH OFFICERS--POWERS AND DUTIES OF HEALTH OFFICERS.--

A. The director shall establish health regions and may modify and create new health regions as the director deems necessary.

B. A regional health officer shall provide medical oversight to school nurses in the regional health officer's region. A school nurse shall make reports relating to public health as the regional health officer in the school nurse's region requires.

C. As used in this section, "medical oversight" means advice and direction that is provided by a regional health officer or under the direction of a regional health officer to a school nurse, or a school nurse's designee, who performs nursing activities in a school setting."

## **Chapter 87 Section 7 Laws 2017**

SECTION 7. 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, that has received certification for participation in federal reimbursement programs and that has been fully accredited by a national accrediting organization approved by the federal centers for medicare and medicaid services or the department shall be granted a license renewal based on that accreditation. A freestanding birth center that has been inspected and licensed by the department and is accredited by the commission for accreditation of birth centers or its successor accreditation body shall be granted a license renewal based on that accreditation. Health facilities receiving less than full accreditation by an approved accrediting body 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. The name and information regarding the person making a complaint pursuant to this section shall not be disclosed absent the consent of the informant or a court order.

O. 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.

P. 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 87 Section 8 Laws 2017**

SECTION 8. Section 24-1-7 NMSA 1978 (being Laws 1973, Chapter 359, Section 7, as amended) is repealed and a new Section 24-1-7 NMSA 1978 is enacted to read:

### "24-1-7. SEXUALLY TRANSMITTED INFECTIONS--REPORTS OF CASES.--

A. The department shall make available a list of sexually transmitted infections for which reporting is required.

B. Reports of sexually transmitted infections shall be made in accordance with department rules.

C. Every health care provider that makes a diagnosis of, treats or prescribes for or otherwise has knowledge of a case of sexually transmitted infection for which reporting is required by department rules shall report the case immediately.

D. As used in this section, "health care provider" means:

(1) a person licensed to provide health care in the ordinary course of business;

(2) a superintendent or manager of a health care clinic;

(3) a dispensary, a charitable or penal institution or a municipal or county detention center; or

(4) a laboratory that performs testing for sexually transmitted infections."

## **Chapter 87 Section 9 Laws 2017**

SECTION 9. Section 24-1-9 NMSA 1978 (being Laws 1973, Chapter 359, Section 9, as amended) is amended to read:

"24-1-9. CAPACITY TO CONSENT TO EXAMINATION AND TREATMENT FOR A SEXUALLY TRANSMITTED INFECTION.--Any person regardless of age has the capacity to consent to an examination and treatment by a licensed health care provider for any sexually transmitted infection."

## **Chapter 87 Section 10 Laws 2017**

SECTION 10. Section 24-1-9.1 NMSA 1978 (being Laws 1993, Chapter 341, Section 4) is amended to read:

"24-1-9.1. SEXUALLY TRANSMITTED INFECTIONS--TESTING OF PERSONS CONVICTED OF CERTAIN CRIMINAL OFFENSES.--

A. A test designed to identify any sexually transmitted infection may be performed on an offender convicted pursuant to state law of any criminal offense:

- (1) involving contact between the penis and the vulva;
- (2) involving contact between the penis and anus;
- (3) involving contact between the mouth and penis;
- (4) involving contact between the mouth and vulva;
- (5) involving contact between the mouth and anus; or

(6) when the court determines from the facts of the case that there was a transmission or likelihood of transmission of bodily fluids from the offender to the victim of the criminal offense.

B. When consent to perform a test on an offender cannot be obtained, the victim of a criminal offense described in Subsection A of this section may petition the court to order that a test be performed on the offender. When the victim of the criminal offense is a minor or incompetent, the parent or legal guardian of the victim may petition the court to order that a test be performed on the offender. The court shall order and the test shall be administered to the offender within ten days after the petition is filed by the victim or the victim's parent or guardian. Except for disclosures made pursuant to

Section 24-1-7 NMSA 1978, the results of the test shall be disclosed only to the offender and to the victim or the victim's parent or legal guardian."

## **Chapter 87 Section 11 Laws 2017**

SECTION 11. Section 24-1-9.2 NMSA 1978 (being Laws 1996, Chapter 80, Section 1) is amended to read:

"24-1-9.2. SEXUALLY TRANSMITTED INFECTIONS--TESTING OF PERSONS FORMALLY CHARGED FOR ALLEGEDLY COMMITTING CERTAIN CRIMINAL OFFENSES.--

A. A test designed to identify any sexually transmitted infection may be performed on a person, upon the filing of a complaint, information or an indictment alleging that the person committed a state criminal offense:

- (1) involving contact between the penis and the vulva;
- (2) involving contact between the penis and anus;
- (3) involving contact between the mouth and penis;
- (4) involving contact between the mouth and vulva; or
- (5) involving contact between the mouth and anus.

B. If consent to perform a test on an alleged offender cannot be obtained, the victim of the alleged criminal offense described in Subsection A of this section may petition the court, through the prosecuting office or personally, to order that a test be performed on the alleged offender; provided that the same test is first performed on the victim of the alleged criminal offense. The test may be performed on the alleged offender regardless of the result of the test performed on the victim of the alleged criminal offense. If the victim of the alleged criminal offense is a minor or incompetent, the parent or legal guardian of the victim of the alleged criminal offense may petition the court to order that a test be performed on the alleged offender.

C. The court may issue an order based on a finding of good cause after a hearing at which both the victim of the alleged criminal offense and the alleged offender have the right to be present. During the hearing, only affidavits, counter affidavits and medical reports regarding the facts that support or rebut the issuance of an order shall be admissible. The hearing shall be conducted within

seventy-two hours after the victim petitions the court for the order. The petition and all proceedings in connection therewith shall be under seal. The court shall issue an order and the test shall be administered to the alleged offender within ten days after the

petition is filed by the victim of the alleged criminal offense or the victim's parent or legal guardian.

D. Except for disclosures made pursuant to Section 24-1-7 NMSA 1978, the results of the test shall be disclosed only to the alleged offender and to the victim of the alleged criminal offense or the victim's parent or legal guardian. When the victim of the alleged criminal offense or the alleged offender has a positive test result, both the alleged offender and the victim of the alleged criminal offense shall be provided with counseling.

E. A prosecuting attorney may not use in a criminal proceeding arising out of the alleged criminal offense the fact that a test was administered to the alleged offender or the results of the test.

F. The provisions of this section shall not affect the rights and remedies available to the victim of the alleged criminal offense and the alleged offender in any civil action.

G. The administration of a test to an alleged offender pursuant to the provisions of this section shall not preclude the subsequent administration of another test pursuant to the provisions of Section 24-1-9.1 NMSA 1978."

## **Chapter 87 Section 12 Laws 2017**

SECTION 12. Section 24-1-9.3 NMSA 1978 (being Laws 1996, Chapter 80, Section 2) is amended to read:

"24-1-9.3. SEXUALLY TRANSMITTED INFECTIONS--MANDATORY COUNSELING.--No positive test result for a sexually transmitted infection shall be revealed to the person upon whom the test was performed without the person performing the test or the health facility at which the test was performed providing or referring that person for individual counseling about:

A. the meaning of the test results;

B. the possible need for additional testing;

C. the availability of appropriate health care services, including mental health care, social services and support services; and

D. the benefits of locating and counseling any individual by whom the infected person may have been exposed to the sexually transmitted infection and any individual whom the infected person may have exposed to the sexually transmitted infection."

## **Chapter 87 Section 13 Laws 2017**

SECTION 13. Section 24-1-9.4 NMSA 1978 (being Laws 1996, Chapter 80, Section 3) is amended to read:

"24-1-9.4. SEXUALLY TRANSMITTED INFECTIONS--CONFIDENTIALITY.--

A. Except as provided in Section 24-1-9.2 NMSA 1978, no person or the person's agents or employees who require or administer a test for sexually transmitted infections shall disclose the identity of any person upon whom a test is performed or the result of such a test in a manner that permits identification of the subject of the test, except to the following persons:

(1) the subject of the test or the subject's legally authorized representative, guardian or legal custodian;

(2) any person designated in a legally effective release of the test results executed prior to or after the test by the subject of the test or the subject's legally authorized representative;

(3) an authorized agent, a credentialed or privileged physician or an employee of a health facility or health care provider if the health care facility or health care provider itself is authorized to obtain the test results, the agent or employee provides patient care or handles or processes specimens of body fluids or tissues and the agent or employee has a need to know such information;

(4) the department of health and the centers for disease control and prevention of the United States public health service in accordance with reporting requirements for a diagnosed case of a sexually transmitted infection;

(5) a health facility or health care provider that procures, processes, distributes or uses:

(a) a human body part from a deceased person, with respect to medical information regarding that person;

(b) semen for the purpose of artificial insemination;

(c) blood or blood products for transfusion or injection; or

(d) human body parts for transplant with respect to medical information regarding the donor or recipient;

(6) health facility staff committees or accreditation or oversight review organizations that are conducting program monitoring, program evaluation or service reviews, as long as any identity remains confidential;

(7) authorized medical or epidemiological researchers who may not further disclose any identifying characteristics or information; and

(8) for purposes of application or reapplication for insurance coverage, an insurer or reinsurer upon whose request the test was performed.

B. Whenever disclosure is made, it shall be accompanied by a statement in writing that includes the following or substantially similar language: "This information has been disclosed to you from records whose confidentiality is protected by state law. State law prohibits you from making any further disclosure of this information without the specific written consent of the person to whom this information pertains or as otherwise permitted by law. A person who makes an unauthorized disclosure of this information is guilty of a petty misdemeanor and shall be sentenced to imprisonment in the county jail for a definite term not to exceed six months or the payment of a fine of not more than five hundred dollars (\$500), or both."."

## **Chapter 87 Section 14 Laws 2017**

SECTION 14. Section 24-1-9.6 NMSA 1978 (being Laws 1996, Chapter 80, Section 5) is amended to read:

"24-1-9.6. SEXUALLY TRANSMITTED INFECTIONS--DISCLOSURE.--

A. A victim of a criminal offense or an alleged criminal offense who receives information pursuant to Section 24-1-9.1 or 24-1-9.2 NMSA 1978 may disclose the offender's or alleged offender's test results to the victim's health care provider as is reasonably necessary to protect the victim's health and safety or the health and safety of the victim's family or sexual partner.

B. Nothing in this section shall be construed to prevent a person who has been tested from disclosing in any way to any other person that person's own test results."

## **Chapter 87 Section 15 Laws 2017**

SECTION 15. Section 24-1-9.7 NMSA 1978 (being Laws 1996, Chapter 80, Section 6) is amended to read:

"24-1-9.7. PENALTY.--A person who, in violation of Section 24-1-9.4 NMSA 1978, makes an unauthorized disclosure of the results of a test designed to identify a sexually transmitted infection is guilty of a petty misdemeanor and shall be sentenced to imprisonment in the county jail for a definite term not to exceed six months or the payment of a fine of not more than five hundred dollars (\$500) or both."

## **Chapter 87 Section 16 Laws 2017**

SECTION 16. Section 24-1-15 NMSA 1978 (being Laws 1973, Chapter 359, Section 15, as amended) is amended to read:

"24-1-15. ISOLATION--QUARANTINE--PROTOCOL.--

A. If the secretary or a representative of the department has knowledge that a person is infected with or reasonably believes that a person is infected with or exposed to a threatening communicable disease and the person has refused voluntary treatment, testing, evaluation, detention or observation, the secretary or the secretary's designee shall petition the court for an order to isolate or quarantine the person until the person is no longer a threat to the public health or until the person voluntarily complies with treatment and contagion precautions.

B. The secretary or a representative of the department whom the secretary designates may, by public health order, temporarily isolate or quarantine a person or group of persons if delay in isolating or quarantining would significantly jeopardize the secretary's ability to prevent or limit the transmission to others of a threatening communicable disease. The public health order shall expire at the end of twenty-four hours from the time of the commencement of the isolation or quarantine. The secretary may petition for a court order that authorizes the continued isolation or quarantine of the person or group of persons. In the petition, the secretary shall present facts used to support the need to have issued the public health order to isolate or quarantine.

C. Whether or not a public health order to isolate or quarantine was previously issued, a petition for a court order shall be made under oath or shall be accompanied by a sworn affidavit setting out specific facts showing the basis upon which isolation or quarantine is justified, including whether a person to be isolated or quarantined:

(1) is infected with, reasonably believed to be infected with or exposed to a threatening communicable disease; and

(2) poses a substantial likelihood of transmission of the threatening communicable disease to others because of inadequate separation from others.

D. Upon the filing of a petition, the court shall:

(1) immediately grant ex parte a court order to isolate or quarantine the affected person if there is probable cause from the specific facts shown by the affidavit or by the petition to give the judge reason to believe that the affected person poses a substantial threat to the public health and safety;

(2) cause the court order, notice of hearing and an advisement of the terms of the court order, including the affected person's rights to representation and

re-petition for termination of a court order that removes and detains the affected person, to be immediately served on the affected person; and

(3) within five days after the granting of the court order, hold an evidentiary hearing to determine if the court shall continue the order.

E. A person held pursuant to a court order as set forth in Subsection D of this section shall be:

(1) entitled to representation by counsel at the evidentiary hearing and at all hearings thereafter for the duration of the period of removal and detention; and

(2) permitted to communicate on any matter, including the person's isolation or quarantine, with persons by telephone, or other reasonably available means that do not expose other persons to the risk of infection, for the duration of the period of isolation or quarantine.

F. Counsel may be retained by the person held or shall be appointed by the court if the court determines that the person held cannot afford legal representation or if the court determines that appointment of counsel is required in the interest of justice.

G. At the evidentiary hearing, the court shall review the circumstances surrounding the court order and, if the petitioner can show by clear and convincing evidence that the person being held has not voluntarily complied or will not voluntarily comply with appropriate treatment and contagion precautions, the court may continue the isolation or quarantine. The court shall order regular review of the order to isolate or quarantine by providing the person being held with a subsequent hearing within thirty days of the court order's issuance and every thirty days thereafter. The court order to isolate or quarantine shall be terminated and the affected person shall be released if:

(1) the person being held is certified by a public health official to pose no further risk to the public health;

(2) at a hearing, the petitioner, whose burden of proof continues under a clear and convincing standard, can no longer show that the person being held is infected with, reasonably believed to be infected with or exposed to a threatening communicable disease and that the affected person will not comply with appropriate treatment and contagion precautions voluntarily; or

(3) exceptional circumstances exist warranting the termination of the court order.

H. The provisions of this section do not permit the forcible administration of medications. A person isolated or quarantined pursuant to this section has the right to

refuse to participate in medical treatment, testing, physical or mental examination, vaccination, specimen collection or preventive treatment.

I. A person who is isolated or quarantined pursuant to a court order may petition the court to contest the order or the conditions of isolation or quarantine at any time prior to the expiration of the order. If a petition is filed, the court shall hold a hearing within five days after the date of filing. The filing of a petition for a hearing pursuant to this subsection does not stay a court order for isolation or quarantine. At the hearing, the secretary shall offer clear and convincing evidence that:

(1) the isolation or quarantine is warranted; or

(2) the conditions of isolation or quarantine are compliant with the provisions of this section.

J. When isolating or quarantining an affected person, the secretary shall ensure that:

(1) isolation or quarantine is the least restrictive means necessary to protect against the spread to others of a communicable disease or a potentially threatening communicable disease and may include confinement to the affected person's private home, if practicable, or if not practicable, to a private or public premises;

(2) an isolated person is confined separately from a quarantined person;

(3) the health status of an isolated or quarantined person is monitored regularly to determine whether continued isolation or quarantine is required;

(4) if a quarantined person becomes infected or is reasonably believed to be infected with the threatening communicable disease subsequent to quarantine, that affected person shall be promptly isolated;

(5) the needs of a person isolated or quarantined are addressed in a systematic and orderly manner, including the provision of adequate food, clothing, shelter, sanitation and comfort;

(6) there are methods of communication available to a person placed in isolation or quarantine to enable communication with family members, household members, legal representatives, advocates, the media and any licensed health care provider;

(7) an area of isolation or quarantine is maintained in a manner that minimizes the likelihood of further transmission of infection or other injury to other persons who are isolated or quarantined; and

(8) to the extent possible, cultural and religious beliefs shall be respected in addressing the needs of affected persons and in establishing and maintaining an area of isolation or quarantine.

K. A person shall not enter an area of isolation or quarantine except as authorized by the department. To protect the public health, the department may isolate or quarantine any person who has entered, with or without the secretary's authorization, into an area of isolation or quarantine.

L. Court proceedings shall be on the record and be closed to the general public. The records shall be sealed from public inspection.

M. A person who in good faith reports another person infected with a threatening communicable disease shall not be held liable for civil damages as a result of the report; provided that the person reported as being infected with a threatening communicable disease shall have the right to sue for damages sustained as a result of negligent or intentional reporting of inaccurate information or the disclosure of information to an unauthorized person.

N. During the period of isolation or quarantine, an employer shall not discharge from employment a person who is placed in isolation or quarantine pursuant to this section.

O. The secretary, after consultation with the state medical investigator, the secretary of public safety, the director and the chair of the board of funeral services, may implement and enforce measures that are reasonable and necessary to respond to a threatening communicable disease and provide for the safe disposal of human remains.

P. For purposes of this section:

(1) "area of isolation or quarantine" means the physical environs that the department designates as the area within which to restrict access as required to prevent transmission of a threatening communicable disease;

(2) "court" means:

(a) the district court of the judicial district where the person who is alleged to be infected with a threatening communicable disease resides or is found; or

(b) in the event that a district court cannot adequately provide services, a district court that the New Mexico supreme court designates;

(3) "isolate" means to physically separate for possible medical care a person who is infected or who is reasonably believed to be infected with a threatening communicable disease or potentially threatening communicable disease;

(4) "public health official" means the secretary, a regional health officer, the director of the public health division of the department, a chief medical officer or a representative of the department designated by the secretary to carry out the duties provided in this section;

(5) "quarantine" means the precautionary physical separation of a person who has or may have been exposed to a threatening communicable disease or a potentially threatening communicable disease and who does not show a sign or symptom of a threatening communicable disease from persons who are not quarantined to protect against the transmission of the disease to persons who are not quarantined; and

(6) "threatening communicable disease" means a disease that causes death or great bodily harm, passes from one person to another and for which there is no means by which the public reasonably can avoid the risk of contracting the disease."

## **Chapter 87 Section 17 Laws 2017**

SECTION 17. Section 24-1-15.1 NMSA 1978 (being Laws 2009, Chapter 174, Section 1) is amended to read:

### **"24-1-15.1. PROTOCOL FOR MANAGEMENT OF ACTIVE TUBERCULOSIS.--**

A. When a physician or other person knows that a person has, or is reasonably believed to be infected with, active tuberculosis, the physician or other person shall promptly notify the department.

B. Upon receiving notification that a person has active tuberculosis, the department shall prescribe the person a treatment plan meeting the department's therapeutic specifications for the infectious form of tuberculosis. The treatment plan shall include a notice to the person that failure to comply with the treatment plan will result in immediate initiation of court action to ensure compliance, as set forth in this section.

C. The secretary, or a representative of the department whom the secretary designates, may by public health order temporarily isolate a person or group of persons if delay in isolating the person or group would significantly jeopardize the secretary's ability to prevent or limit the transmission of tuberculosis to others. The public health order shall expire at the end of twenty-four hours from the time of the commencement of isolation. The secretary may petition for a court order that authorizes

the continued isolation. In the petition, the secretary shall present facts used to support the need to have issued the public health order to isolate.

D. Whether or not a public health order was issued pursuant to Subsection C of this section, when the department has knowledge that a person who has active tuberculosis has failed to comply with the department's treatment plan as described in Subsection B of this section, the department shall petition for a court order for the person who has active tuberculosis to comply with whichever of the following courses of action the department deems appropriate:

- (1) a program of directly observed therapy;
- (2) isolation; or
- (3) directly observed therapy and isolation.

E. A petition for a court order shall be made under oath or shall be accompanied by a sworn affidavit setting out specific facts showing the basis upon which isolation is justified, including whether the person to be isolated:

- (1) has active tuberculosis or presents a substantial likelihood of having active tuberculosis based on credible medical evidence;
- (2) after being advised of the condition and the risks posed thereby, has failed to comply with the department's treatment plan; and
- (3) poses a substantial likelihood of transmission of tuberculosis to others because the person is actively infectious or poses a risk of relapse or development of a therapy-resistant strain of tuberculosis.

F. Upon the filing of a petition for a court order, the court shall:

(1) in cases where there is probable cause established by the petition to give the judge reason to believe that the person who has been alleged to have active tuberculosis poses a substantial threat to the public health and safety because the person is actively infectious, or poses a risk of relapse or development of a therapy-resistant strain of tuberculosis because of a history of noncompliance, immediately grant ex parte a court order to:

- (a) administer a program of directly observed therapy;
- (b) isolate the person and administer a program of directly observed therapy; or
- (c) isolate the person, if the person refuses a program of directly observed therapy;

(2) cause the court order, notice of hearing and an advisement of the terms of the court order, including the rights of the person alleged to have active tuberculosis to representation and re-petition for termination of a court order, to be immediately served on the person alleged to have active tuberculosis; and

(3) within five days after the granting of the court order, hold an evidentiary hearing to determine if the court shall continue the court order.

G. A person held pursuant to a court order as set forth in Subsection F of this section shall be:

(1) entitled to representation by counsel at the evidentiary hearing and at all hearings thereafter for the duration of the period of isolation or program of directly observed therapy; and

(2) permitted to communicate on any matter, including the person's isolation or program of directly observed therapy, with persons by telephone or other reasonably available means that do not expose other persons to the risk of infection, for the duration of the period of isolation or program of directly observed therapy.

H. Counsel may be retained by the person under the court order or shall be appointed by the court if the court determines that the person held cannot afford legal representation or if the court determines that appointment of counsel is required in the interest of justice.

I. At the evidentiary hearing, the court shall review the circumstances surrounding the court order, and, if the petitioner can show by clear and convincing evidence that the person being held has not complied or will not comply with appropriate treatment and contagion precautions as the department deems necessary, the court shall continue the court order for the person who has active tuberculosis until completion of therapy, as deemed by the department. The court shall order regular review of the order by providing the person under a court order with a subsequent hearing within ninety days of the court order's issuance and every ninety days thereafter. The court order shall be terminated and the person shall be released if:

(1) at a hearing, the petitioner has not met its burden of showing by clear and convincing proof that the person under a court order has not completed therapy; or

(2) exceptional circumstances exist warranting the termination of the court order.

J. The provisions of this section do not permit the forcible administration of medications.

K. A person isolated pursuant to this section has the right to refuse any medical treatment, physical or mental examination, treatment program or invasive specimen collection. A person who has been directed by the secretary to submit to medical procedures and protocols because the person has active tuberculosis and refuses to submit to the procedures and protocols may be subject to continued isolation pursuant to this section.

L. A person who is isolated pursuant to a court order may petition the court to contest the order or the conditions of isolation at any time prior to the expiration of the court order. If a petition is filed, the court shall hold a hearing within five business days after the date of filing. At a hearing pursuant to a petition to contest, the secretary shall offer:

(1) clear and convincing evidence that the isolation is warranted; or

(2) proof that the conditions of isolation are compliant with the provisions of this section.

M. When isolating a person or group of persons, the secretary shall ensure that:

(1) isolation is imposed by the least restrictive means necessary to protect against the spread of tuberculosis to others and may include confinement to the isolated person's private home, if practicable, or, if not practicable, a private or public premises;

(2) the health status of an isolated person is monitored regularly to determine if continued isolation is required;

(3) the needs of a person isolated are addressed in a systematic and orderly manner, including the provision of adequate food, clothing, shelter, sanitation and comfort;

(4) there are methods of communication available to a person placed in isolation to enable communication with family members, household members, legal representatives, advocates, the media and any licensed health care provider;

(5) the premises used for isolation are maintained in a manner that minimizes the likelihood of further transmission of infection or other injury to other persons who are isolated; and

(6) to the extent possible, cultural and religious beliefs shall be respected in addressing the needs of persons and establishing and maintaining isolation premises.

N. The proceedings of any hearing held pursuant to this section shall be recorded stenographically, electronically or mechanically or by other appropriate means. The proceedings shall be closed to the general public and the records shall be sealed from public inspection.

O. A person who in good faith reports that another person has active tuberculosis shall not be held liable for civil damages as a result of the report; provided that the person reported as having active tuberculosis shall have the right to sue for damages sustained as a result of negligent or intentional reporting of inaccurate information or the disclosure of information to an unauthorized person.

P. During the period of isolation, an employer shall not discharge from employment a person who is placed in isolation pursuant to this section.

Q. For purposes of this section:

(1) "active tuberculosis" means a disease caused by mycobacterium tuberculosis or other members of the mycobacterium tuberculosis complex family that has been determined, through current clinical, bacteriological or radiographic evidence, or whichever diagnostic procedures the department deems appropriate, to be present in a person who has not completed an appropriate course of antituberculosis medication, regardless of the state of communicability of the disease. A person with active tuberculosis includes a person with:

(a) tuberculosis that is resistant to the prescribed treatment plan;

(b) infectious tuberculosis or who presents a substantial likelihood of having infectious tuberculosis based on credible medical evidence;

(c) noninfectious tuberculosis who is at high risk of developing an infectious form of tuberculosis; and

(d) pulmonary or extrapulmonary tuberculosis;

(2) "completion of therapy" means completion of the prescribed therapy, as determined by the department based upon published national consensus tuberculosis treatment guidelines;

(3) "court" means the district court of the judicial district where the person who is alleged to have active tuberculosis resides or is found or a district court designated by the New Mexico supreme court;

(4) "department" means the department of health or a person designated by the secretary of health to carry out the duties provided in this section;

(5) "directly observed therapy" means a methodology for promoting patient adherence in which a health care provider or trained designee witnesses the patient ingest each dose of medication until the completion of prescribed therapy for tuberculosis; and

(6) "isolation" means:

(a) home isolation;

(b) home isolation with electronic monitoring;

(c) isolation in a hospital or other health care facility negative pressure room where appropriate security measures are undertaken to prevent the transmission of tuberculosis; or

(d) isolation in a prison or detention center negative pressure room with an appropriate level of medical care."

## **Chapter 87 Section 18 Laws 2017**

SECTION 18. A new section of the Public Health Act is enacted to read:

"CONDITIONS OF PUBLIC HEALTH IMPORTANCE--REPORTING.--

A. The secretary shall establish by rule a list of reportable conditions of public health importance. The list shall include conditions of humans or animals caused by exposure to toxic substances, microorganisms or any other pathogens or conditions that arise due to injury. The secretary shall:

(1) prescribe the manner of and the person responsible for reporting conditions of public health importance;

(2) classify each reportable condition of public health importance according to the urgency of reporting; and

(3) revise the list of reportable conditions of public health importance as necessary.

B. The secretary may enter into agreements or other arrangements with federal and tribal public health agencies for receipt and sharing of information regarding reportable conditions of public health importance.

C. The department shall disseminate reporting requirements to health care providers and other persons required to report conditions of public health importance.

D. A person with knowledge of a reportable condition of public health importance shall report the condition to the department."

## **Chapter 87 Section 19 Laws 2017**

SECTION 19. A new section of the Public Health Act is enacted to read:

"CONDITIONS OF PUBLIC HEALTH IMPORTANCE--TESTING--SCREENING.--

A. The department shall establish testing and screening procedures and programs to identify conditions of public health importance among individuals or among the general population of the state. The department shall:

(1) prior to testing or screening, explain to the individual the nature, scope, purposes, benefits, risks and possible outcomes of the test or screening, except as otherwise provided pursuant to this section or by state law;

(2) have a valid and reliable test for the condition of public health importance;

(3) when administering a test or screening, identify a condition of public health importance that poses a threat to an individual's or the public's health and that may be avoided, cured, alleviated or made less contagious through safe and effective treatment, modifications in individual behavior or public health interventions; and

(4) fully inform the individual of the individual's results, the meaning of the results, the possible need for additional testing and the availability of appropriate health care services, including mental health care and social and support services. If appropriate, the department shall provide counseling or inform the individual where such counseling services are available.

B. The department may petition for the issuance of a court order to require testing or medical examination of any individual who has or may have been exposed to a condition of public health importance that poses a significant risk or threat to the individual or others or to the public's health, in accordance with procedures established by department rules."

SECTION 20. A new section of the Public Health Act is enacted to read:

## **Chapter 87 Section 20 Laws 2017**

"INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION--CONDITIONS OF PUBLIC HEALTH IMPORTANCE--CONFIDENTIALITY--USE--DISCLOSURE.--

A. Any use of individually identifiable health information pursuant to this section shall be limited to the minimum amount of information reasonably necessary to accomplish a public health purpose.

B. Individually identifiable health information received by the department shall not be public information and shall not be disclosed without the authorization of the individual who is the subject of the information, except as otherwise provided in state or federal law.

C. In accordance with state and federal law, the secretary shall adopt and promulgate rules to allow an individual to have access to, inspect and obtain copies of the individual's individually identifiable health information.

D. Nothing in this section shall be construed to prevent an individual from disclosing that individual's own individually identifiable health information.

E. As used in this section, "individually identifiable health information" means information related to the provision of health care or public health services to an individual that:

(1) is directly related to diseases or a condition of public health importance; and

(2) can be used to identify the individual recipient of health care or public health services."

## **Chapter 87 Section 21 Laws 2017**

SECTION 21. Section 24-4-2 NMSA 1978 (being Laws 1935, Chapter 131, Section 7, as amended) is amended to read:

"24-4-2. LOCAL PUBLIC HEALTH OFFICES--REGIONAL DIRECTOR--HEALTH OFFICER--EXPENSES.--

A. The board of county commissioners of each county shall provide suitable quarters for:

(1) the local public health offices, including office space for the administrative staff, office space for health care personnel and clinic space and waiting space for patients, their friends and families; and

(2) the regional director and regional health officer, including office space for the administrative staff.

B. The boards of county commissioners shall make proper provision for all office and other expense, including utilities and maintenance but excluding janitorial

services, incurred in enforcing the health laws and regulations within the counties in which the expense is incurred.

C. The board of county commissioners of each county may, upon adoption of a resolution approved by the department of finance and administration, deposit such county funds as are provided in this section with the state treasurer to the credit of the department of health for such purposes as are provided in this section at such times as such funds are available; provided the depositing of such funds with the state treasurer is upon a voucher approved by the board of county commissioners subject to all statutes and regulations covering the disbursement of county funds, excepting that such funds may be so deposited prior to said payments being due and payable; and provided further that no such deposits shall be in excess of any line item of the approved county health budget."

## **Chapter 87 Section 22 Laws 2017**

SECTION 22. Section 24-4-3 NMSA 1978 (being Laws 1920 (S.S.), Chapter 2, Section 1, as amended) is amended to read:

"24-4-3. ADDITIONAL HEALTH OFFICERS--OFFICES--EXPENSES.--

A. Whenever, in the opinion of the director of the public health division of the department of health, conditions require the employment of persons in addition to the district health officer to properly execute the health laws and regulations in any county, the board of county commissioners of such county, with the approval of the secretary of health, shall provide suitable quarters for such additional persons. The boards of county commissioners shall make proper provision for all office expenses and other expenses, including utilities and maintenance, for such additional persons.

B. The board of county commissioners of such county may, upon adoption of a resolution approved by the secretary of finance and administration, deposit county funds for such purposes as are provided pursuant to this section with the state treasurer to the credit of the department of health for such purposes as are provided in this section at such time as such funds are available. The depositing of such funds with the state treasurer shall be upon a voucher approved by the board of county commissioners subject to all statutes and regulations covering the disbursement of county funds except that such funds may be so deposited prior to disbursement being due and payable. No such deposits shall be in excess of the approved budget for this purpose."

## **Chapter 87 Section 23 Laws 2017**

SECTION 23. Section 24-10A-2.1 NMSA 1978 (being Laws 1994, Chapter 61, Section 2, as amended by Laws 2001, Chapter 258, Section 2 and by Laws 2001, Chapter 273, Section 2) is amended to read:

"24-10A-2.1. DEFINITIONS.--As used in the Emergency Medical Services Fund Act:

A. "bureau" means the emergency medical systems bureau of the department;

B. "committee" means the statewide emergency medical services advisory committee appointed pursuant to the provisions of Section 24-10B-7 NMSA 1978;

C. "department" means the department of health;

D. "fund" means the emergency medical services fund;

E. "local recipient" means a publicly owned or contracted ambulance or air ambulance service, medical rescue service, fire department rescue service, regionalized emergency medical service agency; or other prehospital emergency medical service care provider based in the state:

(1) that routinely responds to an individual's need for immediate medical care in order to prevent loss of life or aggravation of physical or psychological illness or injury;

(2) whose application for funding through the Emergency Medical Services Fund Act is sponsored by a municipality or county; and

(3) that meets department guidelines for certification, including:

(a) personnel training;

(b) participation in emergency medical service data collection and submission to the state emergency medical systems database;

(c) participation in local design and planning for efficient delivery of emergency medical services;

(d) participation in mutual aid agreements and medical control; and

(e) participation in medical control for emergency medical services;

F. "municipality" means an incorporated city, town or village;

G. "regionalized emergency medical service agency" means a rural or frontier emergency medical service agency composed of multiple geographic districts with response area populations of fewer than two hundred fifty people per square mile;

H. "secretary" means the secretary of health; and

I. "tribe" means a federally recognized Native American nation, tribe or pueblo located wholly or partially in the state."

## **Chapter 87 Section 24 Laws 2017**

SECTION 24. Section 24-10A-3 NMSA 1978 (being Laws 1978, Chapter 178, Section 3, as amended by Laws 2001, Chapter 258, Section 3 and by Laws 2001, Chapter 273, Section 3) is amended to read:

### **"24-10A-3. EMERGENCY MEDICAL SERVICES FUND CREATED--FUNDING.--**

A. The "emergency medical services fund" is created in the state treasury. Money in the fund shall not revert at the end of any fiscal year. Money appropriated to the fund or accruing to it through gifts, grants, fees or bequests shall be deposited in the fund. Interest earned on investment of the fund shall be credited to the general fund. Disbursements from the fund shall be made upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary or the secretary's authorized representative.

B. The bureau shall administer the fund and provide for the distribution of the fund pursuant to the Emergency Medical Services Fund Act and rules adopted pursuant to the provisions of that act.

C. In any fiscal year, no less than seventy-five percent of the money in the fund shall be used for the local emergency medical services funding program to support the cost of supplies and equipment and operational costs other than salaries and benefits for emergency medical services personnel. This money shall be distributed to municipalities and counties on behalf of eligible local recipients, using a formula established pursuant to rules adopted by the department. The formula shall determine each municipality's and county's share of the fund based on the relative geographic size and population of each county. The formula shall also base the distribution of money for each municipality and county on the relative number of runs of each local recipient eligible to participate in the distribution.

D. In any fiscal year, no more than:

(1) twenty-two percent of the fund may be used for emergency medical services system improvement projects, including the purchase of emergency medical services vehicles, local and statewide emergency medical services system support projects, the statewide trauma care system program and the emergency medical dispatch agency support program; and

(2) three percent of the fund may be used by the bureau for administrative costs, including monitoring and providing technical assistance.

E. In any fiscal year, money in the fund that is not distributed pursuant to the provisions of Subsection D of this section may be distributed pursuant to the provisions of Subsection C of this section."

## **Chapter 87 Section 25 Laws 2017**

SECTION 25. Section 24-10A-4.2 NMSA 1978 (being Laws 1994, Chapter 61, Section 11) is amended to read:

"24-10A-4.2. MUTUAL AID AGREEMENTS--REGIONALIZED, INTEGRATED RESPONSE PLANS.--Municipalities, counties, tribes and local recipients may develop mutual aid agreements and regionalized, integrated response plans with other municipalities, counties, tribes and local recipients for the purpose of ensuring that adequate emergency medical services coverage exists throughout the state. For the benefit of the public, equipment and other emergency medical services resources obtained through money from the fund shall be shared among the parties to a mutual aid agreement or regionalized, integrated response plan."

## **Chapter 87 Section 26 Laws 2017**

SECTION 26. Section 24-10A-5 NMSA 1978 (being Laws 1978, Chapter 178, Section 5, as amended) is amended to read:

"24-10A-5. FUNDING PROGRAM--AWARDS--APPEALS.--The bureau shall promptly notify each municipality and county that has applied for money and the local recipient of the bureau's determination to grant or deny an application for funding through the local emergency medical services funding program. A municipality or county may appeal a determination of the bureau within ten working days after notification of the determination. The bureau shall refer the appeal to the committee for its review and recommendation. The committee shall make its recommendation to the secretary, who shall make a final determination about whether to grant or deny an application for funding. The secretary shall notify the appellant of the secretary's decision within thirty days of the date on which the committee has notified the secretary of its recommendation."

## **Chapter 87 Section 27 Laws 2017**

SECTION 27. Section 24-10A-6 NMSA 1978 (being Laws 1978, Chapter 178, Section 6, as amended by Laws 2001, Chapter 258, Section 6 and by Laws 2001, Chapter 273, Section 6) is amended to read:

"24-10A-6. DISTRIBUTION OF FUND.--On or before August 31, the local emergency medical services funding program distribution shall be made to each municipality and county as determined by the department. No more than one percent of the amount appropriated to the local emergency medical services funding program shall be distributed from the fund to the benefit of a single local recipient in any fiscal

year pursuant to the local emergency medical services funding program, with the exception of a regionalized emergency medical service agency, to ensure that appropriate emergency medical service is available statewide."

## **Chapter 87 Section 28 Laws 2017**

SECTION 28. Section 24-10A-8 NMSA 1978 (being Laws 1978, Chapter 178, Section 8, as amended) is amended to read:

"24-10A-8. FUNDING PROGRAM--CONTROL OF EXPENDITURES.--Money distributed from the fund shall be expended only for the purposes stated in the application to the bureau and shall be expended on the authorization of the chief executive of the municipality or county upon vouchers issued by its treasurer."

## **Chapter 87 Section 29 Laws 2017**

SECTION 29. Section 24-14-27 NMSA 1978 (being Laws 1961, Chapter 44, Section 25, as amended) is amended to read:

"24-14-27. DISCLOSURE OF RECORDS.--

A. The state registrar or other custodian of vital records shall not permit inspection of or disclosure of information contained in vital records or copying or issuance of a copy of all or part of any record except as authorized by law.

B. The department shall provide access to record level data required by the New Mexico health policy commission. The New Mexico health policy commission may only release record level data obtained from vital records in the aggregate. For the purposes of this subsection, "record level data" means one or more unique and non-aggregated data elements relating to a single identifiable individual. The department may authorize the disclosure of data contained in vital records for other research purposes.

C. When one hundred years have elapsed after the date of birth or fifty years have elapsed after the date of death, the vital records of these events in the custody of the state registrar shall become open public records, and information shall be made available in accordance with regulations that provide for the continued safekeeping of the records; provided that vital records of birth shall not become open public records prior to the individual's death."

## **Chapter 87 Section 30 Laws 2017**

SECTION 30. Section 24-14-31 NMSA 1978 (being Laws 1961, Chapter 44, Section 29, as amended) is amended to read:

"24-14-31. PENALTIES.--

A. Except for violations of Section 24-14-18 NMSA 1978, any person is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978, who willfully and knowingly:

(1) makes any false statement or supplies any false information in a report, record or certificate required to be filed;

(2) with the intent to deceive, alters, amends, counterfeits, copies or mutilates any report, record or certificate, application or supporting documentation;

(3) uses or attempts to use or furnishes to another for use for any purpose of deception any certificate, record, report or certified copy that has been altered, amended or mutilated or that contains false information in whole or in part, or that is related to the birth or death of another person, whether living or dead; or

(4) neglects or violates any of the provisions of the Vital Statistics Act or refuses to perform any of the duties imposed upon the person by that act.

B. Any person who willfully and knowingly permits inspection of or discloses information contained in vital statistics records of adoptions or induced abortions or copies or issues a copy of all or part of any record of an adoption or induced abortion, except as authorized by law, is guilty of a fourth degree felony and shall be sentenced in accordance with the provisions of the Criminal Sentencing Act."

## **Chapter 87 Section 31 Laws 2017**

SECTION 31. REPEAL.--Sections 3-43-1, 3-43-2, 22-10A-34, 23-1-9, 23-1-10, 24-1-8, 24-1-9.5 and 24-5-14 NMSA 1978 (being Laws 1965, Chapter 300, Sections 14-44-1 and 14-44-2, Laws 1967, Chapter 16, Section 112, Laws 1941, Chapter 69, Sections 1 and 2, Laws 1973, Chapter 359, Section 8, Laws 1996, Chapter 80, Section 4 and Laws 2004, Chapter 45, Section 9, as amended) are repealed.

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Senate Bill 223, aa

Approved April, 6, 2017

## **LAWS 2017, CHAPTER 88**

AN ACT

RELATING TO THE CORRECTIONS INDUSTRIES DIVISION OF THE  
CORRECTIONS DEPARTMENT; REMOVING THE PRICE LIMIT FOR SELLING  
PRODUCTS; REMOVING THE LIMIT OF TWICE-YEARLY SALES.

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

## **Chapter 88 Section 1 Laws 2017**

SECTION 1. Section 33-8-12 NMSA 1978 (being Laws 1981, Chapter 127, Section 12, as amended) is amended to read:

"33-8-12. PRODUCTS--SALE--LABELING REQUIREMENT--PENALTY--EXCEPTIONS.--

A. Except as otherwise provided in this section, no product or service manufactured or provided in whole or in part by inmate labor shall be sold or furnished except to a qualified purchaser; provided that such products may be resold by the user for purposes of salvage. As used in this subsection, "qualified purchaser" means:

- (1) a state agency;
- (2) local public bodies;
- (3) the state agencies of other states and their local public bodies;
- (4) agencies of the federal government;
- (5) tribal and pueblo governments;
- (6) nonprofit organizations properly registered under state law and supported wholly or in part by funds derived from public taxation;
- (7) persons, partnerships, corporations or associations that provide public school transportation services to a state agency or local public body pursuant to contract;
- (8) any business engaged primarily in the manufacture or resale of the same type of product;
- (9) a person, partnership, corporation or association that provides correctional services to the department pursuant to a contract; and
- (10) a person, partnership, corporation or association that houses inmates on behalf of the department.

B. Every product manufactured pursuant to the provisions of the Corrections Industries Act shall be distinctively identified as inmate-made by brand, label or mark consistent with the type and character of the product. Every product manufactured pursuant to the provisions of the Corrections Industries Act may be

certified pursuant to the federal private sector prison industry enhancement certification program.

C. A person who violates the provisions of Subsection A of this section is guilty of a misdemeanor and upon conviction shall be sentenced to imprisonment in the county jail for a definite term not to exceed six months or to the payment of a fine of not more than one thousand dollars (\$1,000) or to both imprisonment and fine in the discretion of the judge.

D. The provisions of this section shall not apply to products produced pursuant to Section 33-8-13 NMSA 1978.

E. Notwithstanding the provisions of Subsection A of this section, to assure the most effective use of state-owned land, produce from agricultural and animal husbandry enterprises may be sold to commercial sources upon review and recommendation of the commission and pursuant to procedures, including audit, established by the secretary of finance and administration.

F. The corrections industries division of the department may sell products manufactured pursuant to the provisions of the Corrections Industries Act to the general public; provided that all inmate labor used in the production of any products offered to the general public is voluntary and not compelled. All sales to the general public shall take place on corrections industries division property. Sales to the general public shall not be conducted online or by mail order. Proceeds from the sales shall be placed into the corrections industries revolving fund; a portion of the proceeds placed into the corrections industries revolving fund pursuant to this subsection shall be placed into the crime victims reparation fund."

## **Chapter 88 Section 2 Laws 2017**

SECTION 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2017.

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Senate Bill 298, aa

Approved April 6, 2017

## **LAWS 2017, CHAPTER 89**

AN ACT

RELATING TO TELECOMMUNICATIONS; AMENDING A SECTION OF THE RURAL TELECOMMUNICATIONS ACT OF NEW MEXICO TO UPDATE STATE RURAL UNIVERSAL SERVICE FUND PROVISIONS AND ESTABLISH A BROADBAND

PROGRAM ADMINISTERED BY THE PUBLIC REGULATION COMMISSION TO FACILITATE EXPANSION OF BROADBAND SERVICE IN RURAL AREAS.

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

## **Chapter 89 Section 1 Laws 2017**

SECTION 1. Section 63-9H-6 NMSA 1978 (being Laws 1999, Chapter 295, Section 6, as amended) is amended to read:

### **"63-9H-6. STATE RURAL UNIVERSAL SERVICE FUND--ESTABLISHMENT.--**

A. The commission shall implement and maintain a "state rural universal service fund" to maintain and support universal service that is provided by eligible telecommunications carriers, including commercial mobile radio services carriers, as are determined by the commission. As used in this section, "universal service" means basic local exchange service, comparable retail alternative services at affordable rates, service pursuant to a low-income telephone assistance plan and broadband internet access service to unserved and underserved areas as determined by the commission.

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, including commercial mobile radio services and voice over internet protocol services, at a competitively and technologically neutral rate or rates to be determined by the commission. The commission may establish the surcharge as a percentage of intrastate retail public telecommunications services revenue or as a fixed amount applicable to each communication connection. For purposes of this section, a "communication connection" means a voice-enabled telephone access line, wireless voice connection, unique voice over internet protocol service connection or other uniquely identifiable functional equivalent as determined by the commission. Such surcharges shall be competitively and technologically neutral. 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; to an Indian nation, tribe or pueblo; or to Native American customers who reside on tribal or pueblo land.

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 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 universal 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 and areas 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 may consider at least the following items:

(1) the impact of designation of an additional eligible carrier on the size of the fund;

(2) the unique advantages and disadvantages of the competitor's service offering; and

(3) any commitments made regarding the quality of telephone service.

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. The rules shall enumerate the appropriate uses of fund support and any restrictions on the use of fund support by eligible telecommunications carriers. The rules shall require that an eligible telecommunications carrier receiving support from the fund pursuant to Subsection K, L or M of this section must expend no less than sixty percent of the support it receives to deploy and maintain broadband internet access services in rural areas of the state. The rules also shall provide for annual reporting by eligible telecommunications carriers verifying that the reporting carrier continues to meet the requirements for designation as an eligible telecommunications carrier for purposes of the fund and is in compliance with the commission's rules, including the provisions regarding use of support from the fund.

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 universal service as determined by the commission at affordable rates in rural areas of the state; provided, however, that nothing in this section shall be construed as granting any authority to the commission to impose the surcharge on or otherwise regulate broadband internet access services.

I. 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.

J. To ensure that providers of intrastate retail communications service contribute to the fund and to further ensure that the surcharge determined pursuant to Subsection B of this section to be paid by the end-user customer will be held to a minimum, 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. Beginning in 2018, the commission shall make access reduction support payments in the amount made from the fund in base year 2014, adjusted each year thereafter by:

(1) the annual percentage change in the number of access lines served by the incumbent local exchange carriers receiving such support for the prior calendar year, as compared to base year 2014; and

(2) changes in the affordability benchmark rates that have occurred since 2014.

L. The commission shall determine the methodology to be used to authorize payments to all other carriers that apply for and receive eligible carrier status; provided, however, that nothing in this section shall limit the commission's authority to adopt rules pursuant to Subsection F of this section regarding appropriate uses of fund support and any restrictions on the use of the fund support by eligible telecommunications carriers.

M. The commission may also authorize payments from the fund to incumbent rural telecommunications carriers or to telecommunications carriers providing comparable retail alternative services that have been designated as eligible telecommunications carriers serving in rural areas of the state upon a finding, based on factors that may include a carrier's regulated revenues, expenses or investment, by the commission that such payments are needed to ensure the widespread availability and affordability of universal service. The commission shall decide cases filed pursuant to this subsection with reasonable promptness, with or without a hearing, but no later than six months following the filing of an application seeking payments from the fund, unless the commission finds that a longer time will be required, in which case the commission may extend the period for an additional three months.

N. The commission shall adopt rules that establish and implement a broadband program to provide funding to eligible telecommunications carriers for the construction and maintenance of facilities capable of providing broadband internet access service. Such rules shall require that the commission consider applications for funding on a technology-neutral basis and shall require that the awards of support be consistent with federal universal service support programs and be based on the best use of the fund for rural areas of the state. Each year, a minimum of five million dollars (\$5,000,000) of the fund shall be dedicated to the broadband program.

O. The total obligations of the fund determined by the commission pursuant to this section, plus administrative expenses and a prudent fund balance, shall not exceed a cap of thirty million dollars (\$30,000,000) per year. The commission shall evaluate the amount of the cap in an appropriate proceeding to be completed by June 30, 2019 and consider whether, based on the then-current status of the fund, the cap should be modified, maintained or eliminated.

P. By December 31, 2019, the commission shall make a report to the legislature regarding the status of the fund, including relevant data relating to implementation of the broadband program and expansion of broadband internet access services in rural areas of the state. The report shall also make recommendations for any changes to the structure, size and purposes of the fund and whether the cap on the fund provided for in Subsection O of this section should be modified, maintained or eliminated."

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Senate Bill 308, aa

Approved April 6, 2017

## **LAWS 2017, CHAPTER 90**

AN ACT

RELATING TO VETERANS' SERVICES; TRANSFERRING THE OPERATIONAL AUTHORITY AND PERSONAL PROPERTY OF VIETNAM VETERANS MEMORIAL STATE PARK IN COLFAX COUNTY FROM THE ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT TO THE VETERANS' SERVICES DEPARTMENT UPON THE TRANSFER OF THE REAL PROPERTY OF VIETNAM VETERANS MEMORIAL STATE PARK IN COLFAX COUNTY FROM THE ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT TO THE GENERAL SERVICES DEPARTMENT.

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

### **Chapter 90 Section 1 Laws 2017**

SECTION 1. TEMPORARY PROVISION--TRANSFERS OF FUNCTIONS, PERSONNEL, APPROPRIATIONS, MONEY, PROPERTY, CONTRACTUAL OBLIGATIONS AND REFERENCES.--

A. Upon ratification of the transfer of the real property of Vietnam Veterans Memorial state park in Colfax county from the energy, minerals and natural resources department to the general services department, all programs, functions, personnel, appropriations, money, records, furniture, equipment, supplies and other property belonging to the energy, minerals and natural resources department pertaining to Vietnam Veterans Memorial state park in Colfax county shall be transferred to the veterans' services department.

B. Upon ratification of the transfer of the real property of Vietnam Veterans Memorial state park in Colfax county from the energy, minerals and natural resources department to the general services department, all contractual obligations of the energy, minerals and natural resources department pertaining to any of the functions delineated in Subsection A of this section shall be transferred to the veterans' services department.

C. Upon ratification of the transfer of the real property of Vietnam Veterans Memorial state park in Colfax County from the energy, minerals and natural resources department to the general services department, all references in law to the energy, minerals and natural resources department pertaining to any of the functions delineated in Subsection A of this section shall be transferred to the veterans' services department.

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Senate Bill 320

Approved April 6, 2017

## **LAWS 2017, CHAPTER 91**

AN ACT

RELATING TO HEALTH; AMENDING SECTIONS OF THE HEALTH PROFESSIONAL LOAN REPAYMENT ACT AND THE NURSING PRACTICE ACT TO PROVIDE NURSES IN ADVANCED PRACTICE WITH LOAN REPAYMENT ASSISTANCE THROUGH NURSING LICENSE RENEWAL SURCHARGE FEES; MAKING AN APPROPRIATION.

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

### **Chapter 91 Section 1 Laws 2017**

SECTION 1. Section 21-22D-3 NMSA 1978 (being Laws 1995, Chapter 144, Section 18) is amended to read:

"21-22D-3. DEFINITIONS.--As used in the Health Professional Loan Repayment Act:

A. "department" means the higher education department;

B. "health professional" means a primary care physician, optometrist, podiatrist, physician's assistant, dentist, nurse, member of an allied health profession as defined in the Allied Health Student Loan for Service Act or a licensed or certified health professional as determined by the department;

C. "loan" means a grant of money to defray the costs incidental to a health education, under a contract between the federal government or a commercial lender and a health professional, requiring either repayment of principal and interest or repayment in services; and

D. "nurse in advanced practice" means a registered nurse, including a:

(1) certified nurse practitioner, certified registered nurse anesthetist or clinical nurse specialist, authorized pursuant to the Nursing Practice Act to function beyond the scope of practice of professional registered nursing; or

(2) certified nurse-midwife licensed by the department of health."

## **Chapter 91 Section 2 Laws 2017**

SECTION 2. A new section of the Health Professional Loan Repayment Act is enacted to read:

"NURSES IN ADVANCED PRACTICE--NURSING EXCELLENCE PROGRAM--LICENSE RENEWAL SURCHARGE--ELIGIBILITY FOR LOAN REPAYMENT ASSISTANCE FUNDED BY OTHER SOURCES.--

A. The department shall apply funds appropriated to the department from the nursing excellence program license renewal surcharge established pursuant to Subsection B of Section 61-3-10.5 NMSA 1978 exclusively for health professional loan repayment assistance for nurses in advanced practice who practice in areas that the department has designated as underserved.

B. Eligibility for loan repayment assistance pursuant to the provisions of Subsection A of this section shall not render nurses in advanced practice ineligible for loan repayment assistance pursuant to the Health Professional Loan Repayment Act that derives from any other source of funding."

## **Chapter 91 Section 3 Laws 2017**

SECTION 3. Section 61-3-10.5 NMSA 1978 (being Laws 2003, Chapter 276, Section 2) is amended to read:

"61-3-10.5. NURSING EXCELLENCE PROGRAM--LICENSE RENEWAL SURCHARGE.--

A. The board may establish a "nursing excellence program" that provides strategies to:

(1) enhance recruitment and retention of professional nurses, increase career and educational opportunities and improve interaction with health facilities administrations, the medical profession and institutions of higher education; and

(2) fund loan repayment assistance pursuant to Section 2 of this 2017 act.

B. The board may impose a license renewal surcharge for each nursing license renewed in an amount not to exceed twenty dollars (\$20.00) to implement and maintain the nursing excellence program. The surcharge shall be used as follows:

(1) fifty percent of each license renewal surcharge shall be deposited in the nursing excellence fund to be used by the board to carry out the provisions of Paragraph (1) of Subsection A of this section; and

(2) fifty percent of each license renewal surcharge shall be appropriated to the higher education department in accordance with the provisions of Section 2 of this 2017 act to fund loan repayment assistance for nurses in advanced practice who practice in areas of New Mexico that the higher education department has designated as underserved.

C. The board shall transfer the portion of the license renewal surcharge to be appropriated to the higher education department in accordance with the provisions of Paragraph (2) of Subsection B of this section by July 1, 2018 and by each July 1 thereafter."

## **Chapter 91 Section 4 Laws 2017**

SECTION 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2017.

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Senate Bill 333

Approved April 6, 2017

## **LAWS 2017, CHAPTER 92**

AN ACT

RELATING TO PROCUREMENT; INCREASING THE DOLLAR AMOUNT LIMITS FOR MULTIPLE SOURCE CONTRACTS FOR PROCUREMENT OF ARCHITECTURAL AND ENGINEERING SERVICES AND CONSTRUCTION AND FOR PURCHASE ORDERS UNDER THOSE CONTRACTS.

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

## **Chapter 92 Section 1 Laws 2017**

SECTION 1. Section 13-1-154.1 NMSA 1978 (being Laws 2007, Chapter 312, Section 1, as amended) is amended to read:

"13-1-154.1. MULTIPLE SOURCE CONTRACTS--ARCHITECTURAL AND ENGINEERING SERVICES CONTRACTS--INDEFINITE QUANTITY CONSTRUCTION CONTRACTS.--

A. A state agency or local public body may procure multiple architectural or engineering services contracts for multiple projects under a single qualifications-based request for proposals; provided that the total amount of multiple contracts and all

renewals for a single contractor does not exceed six million dollars (\$6,000,000) over four years and that a single contract, including any renewals, does not exceed five hundred thousand dollars (\$500,000).

B. A state agency or local public body may procure multiple indefinite quantity construction contracts pursuant to a price agreement for multiple projects under a single request for proposals; provided that the total amount of a contract and all renewals does not exceed ten million dollars (\$10,000,000) over three years and the contract provides that any one purchase order under the contract may not exceed one million dollars (\$1,000,000).

C. A state agency or local public body may make procurements in accordance with the provisions of Subsection A or B of this section if:

(1) the advertisement and request for proposals states that multiple contracts may or will be awarded, states the number of contracts that may or will be awarded and describes the services or construction to be performed under each contract;

(2) there is a single selection process for all of the multiple contracts, except that for each contract there may be a separate final list and a separate negotiation of contract terms;

(3) each of the multiple contracts for architectural or engineering services has a term not exceeding four years, or for construction, has a term not exceeding three years, each including all extensions and renewals;

(4) a contract to be awarded pursuant to this section to a firm that is currently performing under a contract issued pursuant to this section will not cause the total amount of all contracts issued pursuant to this section to that firm to exceed:

(a) six million dollars (\$6,000,000) in any four-year period for architectural or engineering services; or

(b) ten million dollars (\$10,000,000) in any three-year period for construction; and

(5) the procurement is subject to the limitations of Sections 13-1-150 through 13-1-154 NMSA 1978."

## **Chapter 92 Section 2 Laws 2017**

SECTION 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2017.

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## **LAWS 2017, CHAPTER 93**

### AN ACT

RELATING TO MILITARY AFFAIRS; AUTHORIZING ACTIVATION OF THE NATIONAL GUARD IN THE CASE OF CYBERSECURITY THREATS; PLACING LIMITS ON THE AUTHORITY EXERCISED PURSUANT TO SUCH ACTIVATIONS; PROHIBITING THE INCURRENCE OF DEBT FOR SUCH ACTIVATIONS; DECLARING AN EMERGENCY.

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

### **Chapter 93 Section 1 Laws 2017**

SECTION 1. Section 20-2-3 NMSA 1978 (being Laws 1987, Chapter 318, Section 10, as amended) is amended to read:

"20-2-3. GOVERNOR--POWER TO CALL OUT MILITIA.--

A. The governor may, in case of insurrection, invasion, riot or breach of the peace or of imminent danger thereof or in case of other emergency, order into active service of the state the militia or any components or parts thereof that have not been called into federal service. As used in this section, "emergency" includes any man-made or natural disaster causing or threatening widespread physical or economic harm that is beyond local control and requiring the resources of the state.

B. The governor may also order any member of the national guard to active state service for a period not to exceed a cumulative total of four months within a calendar year for any individual member for the following reasons:

(1) to protect critical infrastructure in the state from a cybersecurity threat or security vulnerability;

(2) to protect an information system owned or operated by the state from a cybersecurity threat or security vulnerability;

(3) to protect information that is stored on, processed by or transiting on an information system owned or operated by the state from a cybersecurity threat or security vulnerability; or

(4) to identify the source of a cybersecurity threat.

C. A member of the national guard called to active service pursuant to the provisions of Subsection B of this section shall not have any police powers or arrest authority. "Subsection B of Section 20-2-3 NMSA 1978" shall be cited on all orders, vouchers and payroll documents submitted for reimbursement pursuant to Section 20-1-6 NMSA 1978 in support of all actions authorized by Subsection B of this section. In no case shall an activation ordered pursuant to Subsection B of this section be used to incur a debt under Article 9, Section 7 of the constitution of New Mexico.

D. In case of any breach of the peace, tumult, riot or resistance to process of this state or imminent danger thereof, the sheriff of a county may call for aid from the governor as commander-in-chief of the national guard. If it appears to the governor that the power of the county is insufficient to enable the sheriff to preserve the peace and protect the lives and property of the peaceful residents of the county or to overcome the resistance to process of this state, the

governor shall, on application of the sheriff, order out such military force as is necessary.

E. When any portion of the militia is called out for the purpose of suppressing an unlawful or riotous assembly, the commander of the troops shall cooperate with the civil officers to the fullest extent consistent with the accomplishment of the object for which the troops were called. The civil officials may express to the commander of the troops the general or specific objective that the civil officials desire to accomplish, but the tactical direction of the troops, the kind and extent of force to be used and the particular means to be employed to accomplish the object specified by the civil officers shall be left solely to the commander of the troops present on duty.

F. When any portion of the militia is ordered into active service pursuant to this section in case of an emergency, the militia may provide those resources and services necessary to avoid or minimize economic or physical harm until a situation becomes stabilized and again under local self-support and control, including the provision, on a temporary, emergency basis, for lodging, sheltering, health care, food and any transportation or shipping necessary to protect lives or public property; or for any other action necessary to protect the public health, safety and welfare.

G. In the event of the exercise by the governor of the powers under this section, the governor shall first utilize the personnel and assets of the national guard and only in their absence or insufficiency utilize the personnel and assets of the state defense force."

## **Chapter 93 Section 2 Laws 2017**

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

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Senate Bill 380, aa, w/ec  
Approved April 6, 2017

## **LAWS 2017, CHAPTER 94**

AN ACT

RELATING TO PUBLIC SCHOOL TRANSPORTATION; AMENDING THE PUBLIC SCHOOL CODE TO ALLOW CERTAIN SCHOOL DISTRICTS TO TRANSPORT CERTAIN STUDENTS BY ALTERNATIVE MEANS OF TRANSPORTATION; MAKING CONFORMING CHANGES TO THE DEFINITION OF "SCHOOL BUS" IN THE MOTOR VEHICLE CODE.

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

### **Chapter 94 Section 1 Laws 2017**

SECTION 1. Section 22-16-4 NMSA 1978 (being Laws 1967, Chapter 16, Section 222, as amended) is amended to read:

"22-16-4. SCHOOL BUS ROUTES--LIMITATIONS--EXCEPTIONS--MINIMUM REQUIREMENTS.--

A. Bus routes shall be established by the local school district.

B. Except as provided in Subsections C and E of this section, no school bus route shall be maintained for distances less than:

(1) one mile one way for students in grades kindergarten through six;

(2) one and one-half miles one way for students in grades seven through nine; and

(3) two miles one way for students in grades ten through twelve.

C. In school districts having hazardous walking conditions as determined by the local school board and confirmed by the state transportation director, students of any grade may be transported a lesser distance than that provided in Subsection B of this section. General standards for determining hazardous walking conditions shall be established by the state transportation division of the department with the approval of the department, but the standards shall be flexibly and not rigidly applied by the local school board and the state transportation director to prevent accidents and help ensure student safety.

D. A school district with from one to six students enrolled in the school district whose residence, within the boundaries of the school district, is five or more miles from the student's or students' school or schools shall be able to provide transportation to and from school by means of a school-district-owned, minimum six-passenger, full-size, extended-length, sport utility vehicle driven by a school district employee certified as an activity driver by the district with both the vehicle and driver insured by the public school insurance authority; provided that the local superintendent is able to demonstrate a need. The department shall adopt rules to provide for the safety of students transported in a sport utility vehicle pursuant to this section.

E. Exceptional children whose handicaps require transportation and three- and four-year-old children who meet the department-approved criteria and definition of developmentally disabled may be transported a lesser distance than that provided in Subsection B of this section."

## **Chapter 94 Section 2 Laws 2017**

SECTION 2. Section 66-1-4.16 NMSA 1978 (being Laws 1990, Chapter 120, Section

17, as amended) is amended to read:

"66-1-4.16. DEFINITIONS.--As used in the Motor Vehicle Code:

A. "safety glazing materials" means glazing materials 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;

(3) operated as a per capita feeder as provided in Section 22-16-6 NMSA 1978; or

(4) that is a minimum six-passenger, full-size, extended-length, sport utility vehicle operated by a school district employee pursuant to Subsection D of Section 22-16-4 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 any state of the Republic of Mexico or the Federal District of Mexico 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."

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## **LAWS 2017, CHAPTER 95**

### AN ACT

RELATING TO TAXATION; INCLUDING CERTAIN INCOME RECEIVED BY A CAPTIVE REAL ESTATE INVESTMENT TRUST IN BASE INCOME FOR PURPOSES OF THE CORPORATE INCOME AND FRANCHISE TAX ACT; DEFINING "CAPTIVE REAL ESTATE INVESTMENT TRUST" AND "REAL ESTATE INVESTMENT TRUST" IN THAT ACT.

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

### **Chapter 95 Section 1 Laws 2017**

SECTION 1. Section 7-2A-2 NMSA 1978 (being Laws 1986, Chapter 20, Section 33, as amended) is amended to read:

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

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

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

C. "base income" means that part of the taxpayer's income defined as taxable income and upon which the federal income tax is calculated in the Internal Revenue Code for income tax purposes plus:

(1) for taxable years beginning on or after January 1, 1991, the amount of the net operating loss deduction allowed by Section 172(a) of the Internal Revenue Code, as that section may be amended or renumbered, and claimed by the taxpayer for that year;

(2) interest received on a state or local bond; and

(3) the amount of any deduction claimed in calculating taxable income for all expenses and costs directly or indirectly paid, accrued or incurred to a captive real estate investment trust;

D. "captive real estate investment trust" means a corporation, trust or association taxed as a real estate investment trust pursuant to Section 857 of the

Internal Revenue Code, the shares or beneficial interests of which are not regularly traded on an established securities market; provided that more than fifty percent of any class of beneficial interests or shares of the real estate investment trust are owned directly, indirectly or constructively by the taxpayer during all or a part of the taxpayer's taxable year;

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

F. "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;

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

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

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

(1) income from obligations of the

United States less expenses incurred to earn that income;

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

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

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

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

(4) for taxable years beginning on or after January 1, 1991 and prior to January 1, 2013, an amount equal to the sum of any net operating loss carryover deductions to that year claimed and allowed; provided that the amount of any

net operating loss carryover from a taxable year beginning on or after January 1, 1991 and prior to

January 1, 2013 may be excluded only as follows:

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

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

(c) in either case, if the net operating loss carryover exceeds the amount of net income exclusive of the net operating loss carryover for the taxable year to which the exclusion first applies, in the next four succeeding taxable years in turn until the net operating loss carryover is exhausted for any net operating loss carryover from a taxable year prior to January 1, 2013; in no event may a net operating loss carryover from a taxable year beginning prior to January 1, 2013 be excluded in any taxable year after the fourth taxable year beginning after the taxable year to which the exclusion first applies; and

(5) for taxable years beginning on or after January 1, 2013, an amount equal to the sum of any net operating loss carryover deductions to that year claimed and allowed; provided that the amount of any net operating loss carryover may be excluded only as follows:

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

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

(c) in either case, if the net operating loss carryover exceeds the amount of net income exclusive of the net operating loss carryover for the taxable year to which the exclusion first applies, in the next nineteen succeeding taxable years in turn until the net operating loss carryover is exhausted for any net operating loss carryover from a taxable year beginning on or after January 1, 2013; in no event shall a net operating loss carryover from a taxable year beginning: 1) prior to January 1, 2013 be excluded in any taxable year after the fourth taxable year beginning after the taxable year to which the exclusion first applies; and 2) on or after January 1, 2013 be excluded in any taxable year after the nineteenth taxable year beginning after the taxable year to which the exclusion first applies;

J. "net operating loss" means any net operating loss, as defined by Section 172(c) of the Internal Revenue Code, as that section may be amended or

renumbered, for a taxable year as further increased by the income, if any, from obligations of the United States for that year less related expenses;

K. "net operating loss carryover" means the amount, or any portion of the amount, of a net operating loss for any taxable year that, pursuant to Paragraph (3), (4) or (5) of Subsection I of this section, may be excluded from base income;

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

M. "real estate investment trust" has the meaning ascribed to the term in Section 856 of the Internal Revenue Code, as that section may be amended or renumbered;

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

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

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

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

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

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

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

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

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

## **Chapter 95 Section 2 Laws 2017**

SECTION 2. APPLICABILITY.--The provisions of this act apply to taxable years beginning on or after January 1, 2017.

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Senate Bill 391  
Approved April 6, 2017

## **LAWS 2017, CHAPTER 96**

AN ACT

RELATING TO TELECOMMUNICATIONS; EXPANDING THE APPLICATION OF THE TELECOMMUNICATIONS RELAY SERVICE SURCHARGE TO INCLUDE MODERN TELECOMMUNICATIONS TECHNOLOGIES; EXEMPTING CERTAIN TELECOMMUNICATIONS SERVICES CUSTOMERS FROM THE SURCHARGE; CLARIFYING PROVISIONS OF THE TELECOMMUNICATIONS ACCESS ACT.

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

## **Chapter 96 Section 1 Laws 2017**

SECTION 1. Section 63-9F-3 NMSA 1978 (being Laws 1993, Chapter 54, Section 3, as amended) is amended to read:

"63-9F-3. DEFINITIONS.--As used in the Telecommunications Access Act:

A. "commission" means the commission for deaf and hard-of-hearing persons;

B. "communications assistant" means an individual who translates conversation from text to voice and from voice to text between two end users of a telecommunications service;

C. "home service provider" means a facilities-based carrier or reseller with which a customer contracts for the provision of wireless communications services;

D. "impaired" means having an impairment of or deficit in the ability to hear or speak, or both;

E. "interconnected voice over internet protocol service" means a service that:

- (1) enables real-time, two-way voice communications;
- (2) requires a broadband connection from the user's location;
- (3) requires internet protocol-compatible customer premises equipment; and
- (4) permits users generally to receive calls that originate on the public-switched telephone network and to terminate calls to the public-switched telephone network;

F. "intrastate telecommunications service":

- (1) means the provision of access lines, special services and intrastate toll services, including for telephone calls originating and terminating in the state; and
- (2) does not include interconnected voice over internet protocol service or wireless communications service;

G. "place of primary use" means the street address representative of where a customer's use of a wireless communications service primarily occurs and that is:

- (1) the residential street address or the primary business street address of the customer; and
- (2) within the licensed service area of the home service provider;

H. "prepaid consumer" means a person who purchases prepaid wireless communications service in a retail transaction;

I. "prepaid wireless communications service" means a wireless communications service that must be paid for in advance and is sold in predetermined units or dollars of which the

number declines with use in a known amount;

J. "retail transaction" means the purchase of prepaid wireless communications service from a seller for any purpose other than for resale;

K. "seller" means a person who sells prepaid wireless communications service to another person;

L. "specialized telecommunications equipment" means devices that enable or assist an impaired individual to communicate with another individual using the telephone network;

M. "telecommunications company" means an individual, corporation, partnership, joint venture, company, firm, association, proprietorship or other entity that provides public telecommunications services, and includes cellular service companies as defined in Subsection B of Section 63-9B-3 NMSA 1978;

N. "telecommunications relay system" means a statewide telecommunications system through which an impaired individual using specialized telecommunications equipment is able to send or receive messages to and from an individual who is not impaired and whose telephone is not equipped with specialized telecommunications equipment and through which the unimpaired individual is able, by using voice communications, to send and receive messages to and from an impaired person; and

O. "wireless communications service" means a commercial mobile radio service as defined by Section 20.3 of Title 47 of the Code of Federal Regulations, as amended, but excludes internet access service."

## **Chapter 96 Section 2 Laws 2017**

SECTION 2. Section 63-9F-11 NMSA 1978 (being Laws 1993, Chapter 54, Section 11, as amended) is amended to read:

### **"63-9F-11. IMPOSITION OF SURCHARGE.--**

A. A telecommunications relay service surcharge of thirty-three hundredths percent is imposed on the gross amount paid:

(1) by customers, except customers whose telephone service rates are reduced as authorized by the Low Income Telephone Service Assistance Act, for intrastate telecommunications services provided in this state;

(2) by customers for the intrastate portion of interconnected voice over internet protocol service;

(3) by customers for intrastate mobile telecommunications services that originate and terminate in the same state, regardless of where the mobile telecommunications services originate, terminate or pass through, provided by home service providers to customers whose place of primary use is in New Mexico; and

(4) by a prepaid consumer in a retail transaction.

B. The telecommunications relay service surcharge shall be included on the monthly bill of each customer of a local exchange company or other telecommunications company providing intrastate telecommunications services, interconnected voice over internet protocol services or intrastate mobile telecommunications services and paid at the time of payment of the monthly bill. Receipts from selling those services to any other telecommunications company or provider for resale are not subject to the surcharge. The customer is liable for the payment of the surcharge to the provider of intrastate mobile telecommunications services, the provider of interconnected voice over internet protocol services or the local exchange company or other telecommunications company providing intrastate telecommunications services to the customer.

C. For the purposes of the surcharge imposed on a retail transaction pursuant to Paragraph (4) of Subsection A of this section:

(1) the surcharge shall be collected by the seller from the prepaid consumer with respect to each retail transaction occurring in this state. The amount of the surcharge shall be either separately stated on an invoice, receipt or other similar document that is provided to the prepaid consumer by the seller or otherwise disclosed to the prepaid consumer;

(2) for the purposes of Paragraph (1) of this subsection, a retail transaction that is effected in person by a prepaid consumer at a business location of the seller shall be treated as occurring in this state if that business location is in this state, and any other retail transaction is treated as occurring in this state if the retail transaction is treated as occurring in this state for purposes of the Gross Receipts and Compensating Tax Act;

(3) the surcharge is the liability of the prepaid consumer and not of the seller or any provider, except that the seller shall be liable to remit all surcharges collected from the prepaid consumer as provided in this subsection, including all such surcharges that the seller is deemed to collect where the amount of the surcharge has not been separately stated on an invoice, receipt or other similar document provided to the prepaid consumer by the seller;

(4) the amount of the surcharge that is collected by a seller from a prepaid consumer, if such amount is separately stated on an invoice, receipt or other similar document provided to the prepaid consumer by the seller, shall not be included in the base for measuring any tax, fee, surcharge or other charge that is imposed by this state, any political subdivision of this state or any intergovernmental agency;

(5) when prepaid wireless communications service is sold with one or more other products or services for a single, non-itemized price, the percentage

specified in Subsection A of this section shall apply to the entire non-itemized price unless the seller elects to apply such percentage to:

(a) if the amount of the prepaid wireless communications service is disclosed to the prepaid consumer as a dollar amount, such dollar amount; or

(b) if the seller can identify the portion of the price that is attributable to the prepaid wireless communications service by reasonable and verifiable standards from its books and records that are kept in the regular course of business for other purposes, including non-tax purposes, such portion;

(6) if a minimal amount of prepaid wireless communications service is sold with a prepaid wireless device for a single, non-itemized price, the seller may elect not to apply the percentage specified in Subsection A of this section to such transaction. For the purposes of this paragraph, an amount of service denominated as ten minutes or less, or five dollars (\$5.00) or less, is minimal;

(7) surcharges collected by sellers shall be remitted to the taxation and revenue department at the times and in the manner provided with respect to the Gross Receipts and Compensating Tax Act. The department shall establish registration and payment procedures that substantially coincide with the registration and payment procedures that apply to the Gross Receipts and Compensating Tax Act. A seller shall be permitted to deduct and retain three percent of surcharges that are collected by the seller from the prepaid consumer;

(8) the audit and appeal procedures applicable to the Gross Receipts and Compensating Tax Act shall apply to the surcharge;

(9) the taxation and revenue department shall establish procedures by which a seller of prepaid wireless communications services may document that a sale is not a retail transaction, which procedures shall substantially coincide with the procedures for documenting sale for resale transactions for the Gross Receipts and Compensating Tax Act; and

(10) notwithstanding Paragraph (1) of this subsection, if a 911 surcharge is imposed on prepaid wireless communications service pursuant to the Enhanced 911 Act, the taxation and revenue department shall promulgate rules to permit sellers to combine the surcharge imposed pursuant to this section and the surcharge imposed pursuant the Enhanced 911 Act into a single surcharge on the invoice, receipt or other similar document that is provided to the prepaid consumer. The department shall ensure that appropriate surcharge revenues are directed proportionately to the respective 911 and telecommunications relay service funds.

D. A telecommunications company providing intrastate telecommunications services, a home service provider providing intrastate mobile telecommunications services and a seller of interconnected voice over internet protocol

services shall, on sales subject to the telecommunications relay service surcharge, assess and collect the surcharge and remit the surcharge collected monthly to the taxation and revenue department on or before the twenty-fifth day of the month following collection. The department shall administer and enforce the collection of the surcharge in accordance with the Tax Administration Act.

E. The taxation and revenue department shall transfer to the telecommunications access fund the amount of the telecommunications relay service surcharge collected less any amount deducted in accordance with Subsection F of this section. Transfer of the net receipts from the surcharge to the telecommunications access fund shall be made within the month following the month in which the surcharge is collected.

F. The taxation and revenue department may deduct an amount not to exceed three percent of the telecommunications relay service surcharge collected as a charge for the administrative costs of collection and shall remit that amount to the state treasurer for deposit in the general fund each month.

G. The commission shall report to the revenue stabilization and tax policy committee annually by September 30 the following information with respect to the prior fiscal year:

(1) the amount and source of revenue received by the telecommunications access fund;

(2) the amount and category of expenditures from the fund; and

(3) the balance of the fund on that June 30."

## **Chapter 96 Section 3 Laws 2017**

SECTION 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2017.

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SCORC/Senate Bill 411  
Approved April 6, 2017

## **LAWS 2017, CHAPTER 97**

AN ACT

RELATING TO HIGHER EDUCATION; PROVIDING A SIXTEEN-MONTH GRACE PERIOD FOR STUDENTS TO QUALIFY FOR A LEGISLATIVE LOTTERY TUITION SCHOLARSHIP.

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

## **Chapter 97 Section 1 Laws 2017**

SECTION 1. Section 21-21N-2 NMSA 1978 (being Laws 2014, Chapter 80, Section 2, as amended) is amended to read:

"21-21N-2. DEFINITIONS.--As used in the Legislative Lottery Tuition Scholarship Act:

A. "community college" means a branch community college of a four-year state educational institution, a two-year state educational institution or a community college or technical and vocational institute established pursuant to Chapter 21, Article 13 or 16 NMSA 1978, respectively;

B. "comprehensive institution" means eastern New Mexico university, western New Mexico university, New Mexico highlands university or northern New Mexico college;

C. "department" means the higher education department;

D. "full time" means fifteen or more credit hours each semester of the regular academic year in state educational institutions and twelve or more credit hours each semester of the regular academic year in community colleges or for legacy students in any program semester;

E. "fund" means the lottery tuition fund;

F. "legacy student" means a full-time resident student who has received for three or more program semesters by the end of fiscal year 2014 the legislative lottery scholarship awarded pursuant to the former provisions of Sections 21-1-4.3, 21-13-10 and 21-16-10.1 NMSA 1978 prior to the enactment of the Legislative Lottery Tuition Scholarship Act;

G. "program semesters" means those semesters for which a legacy or qualified student may receive a tuition scholarship and excludes the first semester of attendance at a public post-secondary educational institution;

H. "public post-secondary educational institution" means a four-year state educational institution or a community college;

I. "qualified student" means a full-time student who graduated from a public or accredited private New Mexico high school or who received a high school equivalency credential while maintaining residency in New Mexico and who:

(1) either:

(a) within sixteen months of graduation or receipt of a high school equivalency credential, was accepted for entrance to and attended a public post-secondary educational institution; or

(b) within four months of graduation or receipt of a high school equivalency credential, began service in the United States armed forces and within sixteen months of completion of honorable service or medical discharge from the service, attended a

public post-secondary educational institution; and

(2) successfully completed the first semester at a public post-secondary educational institution with a grade point average of 2.5 or higher on a 4.0 scale during the first semester of full-time enrollment;

J. "research institution" means the university of New Mexico, New Mexico state university or New Mexico institute of mining and technology;

K. "state educational institution" means an institution of higher education enumerated in Article 12, Section 11 of the constitution of New Mexico; and

L. "tuition scholarship" means the scholarship that provides tuition assistance per program semester for a qualified student or legacy student attending a public post-secondary educational institution."

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Senate Bill 420  
Approved April 6, 2017

## **LAWS 2017, CHAPTER 98**

### **AN ACT**

RELATING TO LAW ENFORCEMENT; REQUIRING THE DEPARTMENT OF PUBLIC SAFETY FORENSIC LABORATORIES BUREAU TO ASSIST LOCAL LAW ENFORCEMENT CRIME LABORATORIES WITH TESTING SAMPLES OF BIOLOGICAL MATERIAL COLLECTED PURSUANT TO A MEDICAL EXAMINATION OF A SEXUAL ASSAULT VICTIM AND ALLOWING THE BUREAU TO CHARGE A FEE FOR ASSISTING; CREATING THE SEXUAL ASSAULT EXAMINATION KIT FUND; MAKING AN APPROPRIATION.

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

**Chapter 98 Section 1 Laws 2017**

SECTION 1. Section 29-3-4 NMSA 1978 (being Laws 1935, Chapter 149, Section 7, as amended) is amended to read:

**"29-3-4. STATE AGENCIES--COOPERATION.--**

A. It is the duty of the university of New Mexico, the human services department, the department of health and all other state departments, divisions, bureaus, boards, commissions, institutions and officials, free of charge or reward, to cooperate with the law enforcement officers of the state and the New Mexico state police, and to render to them such services and assistance relative to microanalysis, handwriting, toxicology, chemistry, photography, medicine, ballistics and all other sciences and matters relating to or that would aid in controlling crime and the detection, apprehension, identification and prosecution of criminals.

B. Beginning July 1, 2018 and through June 30, 2021, the department of public safety forensic laboratories bureau shall assist a law enforcement agency crime laboratory in a class A county with a population greater than six hundred thousand according to the most recent federal decennial census by processing and testing sexual assault examination kits that consist of one or more samples of biological material collected pursuant to a medical examination of a sexual assault victim for that laboratory. The bureau may charge a laboratory that the bureau assists as provided in this subsection a fee of up to eight hundred dollars (\$800) for each sexual assault examination kit that the bureau processes and tests. Fees collected by the bureau in accordance with this subsection shall be deposited in the sexual assault examination kit fund.

C. As used in this section, "biological material" means material that is derived from a human body and includes bodily fluids, hair and skin cells."

## **Chapter 98 Section 2 Laws 2017**

SECTION 2. SEXUAL ASSAULT EXAMINATION KIT FUND.--The "sexual assault examination kit fund" is created in the state treasury. The fund consists of fees paid to the department of public safety for the testing of sexual assault examination kits, 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. The department of public safety shall administer the fund, and money in the fund is appropriated to the department of public safety for expenses related to the testing of sexual assault examination kits in accordance with Subsection B of Section 29-3-4 NMSA 1978. Money in the fund shall be disbursed on warrants signed by the secretary of finance and administration pursuant to vouchers signed by the secretary of public safety or the secretary's authorized representative.

## **Chapter 98 Section 3 Laws 2017**

SECTION 3. TEMPORARY PROVISION.--On July 1, 2021, the unexpended and unencumbered balance of the sexual assault examination kit fund is transferred to the general fund.

## **Chapter 98 Section 4 Laws 2017**

SECTION 4. DELAYED REPEAL.--Section 2 of this act is repealed effective July 1, 2021.

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SPAC/Senate Bill 474, aa  
Approved April 6, 2017

# **LAWS 2017, CHAPTER 99**

AN ACT

RELATING TO SEXUAL ASSAULT; REQUIRING LAW ENFORCEMENT AGENCIES TO DEVELOP AND IMPLEMENT POLICIES RELATED TO HANDLING AND TESTING OF SEXUAL ASSAULT EXAMINATION KITS; REQUIRING TESTING OF SEXUAL ASSAULT EXAMINATION KITS WITHIN THIRTY DAYS; REQUIRING REPORTING.

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

## **Chapter 99 Section 1 Laws 2017**

SECTION 1. Section 30-9-19 NMSA 1978 (being Laws 2006, Chapter 104, Section 10) is amended to read:

"30-9-19. SEXUAL ASSAULT--LAW ENFORCEMENT AGENCY POLICIES--SUBMISSION OF DNA SAMPLES BY LAW ENFORCEMENT AND LABORATORIES.--

A. By October 1, 2017, every law enforcement agency shall develop and implement a policy that:

(1) prescribes how the agency handles a sample of biological material collected pursuant to a medical examination of a sexual assault victim who reported the sexual assault to law enforcement that is received by the agency;

(2) provides how the agency prioritizes a sample for DNA testing by the agency's servicing laboratory; and

(3) requires the agency to send a sample of biological material collected pursuant to a medical examination of a sexual assault victim who reported the

sexual assault to law enforcement to that agency's servicing laboratory for DNA testing as soon as practicable after receiving the sample and, in all cases, within thirty days of the agency's receipt of the sample.

B. Records derived from DNA testing that qualify for insertion into CODIS shall be submitted by the servicing laboratory to the administrative center.

C. By November 1 of each year, a law enforcement agency's servicing laboratory shall report to the legislature if, at the end of the immediately preceding fiscal year, the laboratory had in its possession three hundred or more untested samples of biological material collected pursuant to medical examinations of sexual assault victims.

D. As used in this section:

(1) "administrative center" means the law enforcement agency or unit that administers and operates the DNA identification system pursuant to the provisions of the DNA Identification Act;

(2) "biological material" means material that is derived from a human body and includes bodily fluids, hair and skin cells;

(3) "CODIS" means the federal bureau of investigation's "combined DNA index system", a national DNA index system for storage and exchange of DNA records submitted by forensic DNA laboratories;

(4) "DNA" means deoxyribonucleic acid;

(5) "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; and

(6) "sample" means a sample of biological material sufficient for DNA testing."

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Senate Bill 475, aa  
Approved April 6, 2017

## **LAWS 2017, CHAPTER 100**

AN ACT

MAKING AN APPROPRIATION FOR WASTEWATER SYSTEM FINANCING.

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

## **Chapter 100 Section 1 Laws 2017**

SECTION 1. APPROPRIATION.--One million three hundred thousand dollars (\$1,300,000) is appropriated from the public project revolving fund to the wastewater facility construction loan fund pursuant to Section 6-21-6.1 NMSA 1978 for expenditure in fiscal year 2018 and subsequent fiscal years to provide state matching funds for federal Clean Water Act of 1977 projects and to carry out the purposes of the Wastewater Facility Construction Loan Act. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the public project revolving fund.

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House Bill 64  
Approved April 6, 2017

## **LAWS 2017, CHAPTER 101**

AN ACT

RELATING TO ELECTIONS; REQUIRING THE SECRETARY OF STATE TO ESTABLISH PROCEDURES BY WHICH BLIND OR VISUALLY IMPAIRED VOTERS MAY INDEPENDENTLY MARK THEIR BALLOTS; PROVIDING FOR ONLINE APPLICATION FOR ABSENTEE BALLOTS; CHANGING DEADLINES FOR BALLOT CHANGES AND MAKING CONFORMING AMENDMENTS; CHANGING REGISTRATION CLOSURE TIMES; CHANGING REQUIREMENTS FOR THE INVALIDATION OF NOMINATING PETITIONS; PROVIDING FOR REPLACEMENT BALLOTS FOR ABSENTEE VOTERS; CHANGING DEADLINES FOR TESTING OF NEW VOTING SYSTEMS.

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

## **Chapter 101 Section 1 Laws 2017**

SECTION 1. Section 1-2-1 NMSA 1978 (being Laws 1969, Chapter 240, Section 22, as amended) is amended to read:

"1-2-1. SECRETARY OF STATE--CHIEF ELECTION OFFICER--RULES.--

- A. The secretary of state is the chief election officer of the state.
- B. The secretary of state shall:

(1) obtain and maintain uniformity in the application, operation and interpretation of the Election Code; and

(2) subject to the State Rules Act, make rules pursuant to the provisions of, and necessary to carry out the purposes of, the Election Code and shall furnish to the county clerks copies of such rules; provided that no rule is adopted or amended within the sixty-three days before a primary or a general election.

C. No forms or procedures shall be used in any election held pursuant to the Election Code without prior approval of the secretary of state."

## **Chapter 101 Section 2 Laws 2017**

SECTION 2. Section 1-4-8 NMSA 1978 (being Laws 1969, Chapter 240, Section 66, as amended) is amended to read:

"1-4-8. DUTIES OF COUNTY CLERK--ACCEPTANCE OF REGISTRATION--CLOSE OF REGISTRATION--LATE REGISTRATION.--For qualified electors, the following provisions shall apply:

A. the county clerk shall receive certificates of registration at all times during normal working hours, except that the clerk shall close registration at the end of the twenty-eighth day immediately preceding any election at which the registration books are to be furnished to the precinct board;

B. registration shall be reopened on the Monday following the election;

C. for purposes of a municipal or school election, the registration period for those precincts within the municipality or school district is closed at the end of the twenty-eighth day immediately preceding the municipal or school election and is opened again on the Monday following the election;

D. during the period when registration is closed, the county clerk shall receive

certificates of registration and other documents pertaining thereto but shall not file any certificate of registration in the registration book until the Monday following the election, at which time a voter information document shall be mailed to the registrant at the address shown on the certificate of registration;

E. when the twenty-eighth day prior to any election referred to in this section is a Saturday, Sunday or legal holiday, registration shall be closed at the end of the next succeeding regular business day for the office of the county clerk; and

F. 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:

(1) received by the county clerk by the end of the regular business day for the office of the county clerk on the Friday immediately following the close of registration;

(2) mailed and postmarked not less than twenty-eight days prior to any election referred to in this section; or

(3) accepted at a state agency designated pursuant to Section 1-4-5.2 NMSA 1978."

## **Chapter 101 Section 3 Laws 2017**

SECTION 3. Section 1-6-4 NMSA 1978 (being Laws 1969, Chapter 240, Section 130, as amended) is amended to read:

"1-6-4. ABSENTEE BALLOT APPLICATION.--

A. Application by a voter for an absentee ballot shall be made only on a paper form or its electronic equivalent as prescribed by the secretary of state. The form shall identify the applicant and contain information to establish the applicant's 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.

B. Each application for an absentee ballot shall be signed by the applicant and shall require the applicant's printed name, registration address and year of birth to be supplied by the applicant, which shall constitute the required form of identification, except for new registrants who have registered by mail and at that time did not provide acceptable identification. The secretary of state shall issue rules to exempt voters from submitting identification only as required by federal law and shall review and, if necessary, update these rules no later than March 15 of even-numbered years.

C. A person who willfully and with knowledge and intent to deceive or mislead any voter, precinct board, canvassing board, county clerk or other election official and who falsifies any information on an absentee ballot request form or who affixes a signature or mark other than the person's own on an absentee ballot request form is guilty of a fourth degree felony."

## **Chapter 101 Section 4 Laws 2017**

SECTION 4. Section 1-6-16.2 NMSA 1978 (being Laws 1993, Chapter 353, Section 1, as amended) is amended to read:

"1-6-16.2. ADDITIONAL EMERGENCY PROCEDURE FOR VOTING.--

A. After the close of the period for requesting absentee ballots by mail, any voter who is unable to go to the polls due to unforeseen illness or disability resulting in the voter's confinement in a hospital, sanatorium, nursing home or residence and who is unable to vote in person may request in writing that a provisional paper ballot be made available to the voter. The written request shall be signed by the voter and a health care provider under penalty of perjury.

B. The provisional paper ballot shall be made available by the county clerk of the county in which the voter resides to any authorized representative of the voter who through the representative has presented the written request to the office of the county clerk.

C. Before releasing the provisional paper ballot, the county clerk shall compare the signature on the written request with the signature on the voter's affidavit of registration. If the county clerk determines that the signature on the written request is not the signature of the voter, the county clerk shall reject the request for a provisional paper ballot.

D. The voter shall mark the provisional paper ballot, place it in an identification envelope, fill out and sign the envelope and return the ballot to the office of the county clerk of the county in which the voter resides no later than the time of closing of the polls on election day. A provisional paper ballot issued pursuant to this section shall be qualified and tabulated once the county clerk determines that the person did not cast any other ballot and if no challenge is successfully interposed."

## **Chapter 101 Section 5 Laws 2017**

SECTION 5. Section 1-6-22.1 NMSA 1978 (being Laws 2009, Chapter 251, Section 1 and Laws 2009, Chapter 274, Section 1, as amended) is amended to read:

"1-6-22.1. MAIL BALLOT ELECTION PRECINCT--ABSENTEE VOTING IN LIEU OF POLLING PLACE.--

A. Notwithstanding the provisions of Sections 1-1-11 and 1-1-12 NMSA 1978, not later than the first Monday in November of each odd-numbered year, a board of county commissioners may designate a precinct as a mail ballot election precinct if, upon a written request of the county clerk, it finds that the precinct has fewer than one hundred voters and the nearest polling place for an adjoining precinct is more than twenty miles driving distance from the boundary for the precinct in question.

B. If a precinct is designated a mail ballot election precinct, in addition to the notice required pursuant to Section 1-3-8 NMSA 1978, the county clerk shall notify by mail with delivery confirmation all voters in that precinct at least forty-two days before an election that each voter will be sent an absentee ballot twenty-eight days before the election and that there will be no polling place for the precinct on election day. The county clerk shall include in the notice a card informing the voter that if the voter does

not want to receive an absentee ballot for that election, the voter should return the card before the date the county clerk is scheduled to mail out absentee ballots. The notice shall also inform the voter that a voting system equipped for persons with disabilities will be available at all early voting sites before election day and in the office of the county clerk on election day in case the voter prefers to vote in person and not by mail. In addition, the notice shall inform the voter if the county is consolidating precincts on election day and, if so, the ability of the voter to cast a ballot at any consolidated precinct on election day if the voter chooses not to receive an absentee ballot, or to cast a provisional ballot at any consolidated precinct if the voter does not receive an absentee ballot, which will be counted upon confirmation that the voter has not returned the absentee ballot.

C. The county clerk shall mail each voter in the mail ballot election precinct an absentee ballot on the twenty-eighth day before an election, unless the voter has requested otherwise, along with a notice that there will be no polling place in that precinct on election day.

D. The county clerk shall keep a sufficient number of ballots from a mail ballot election precinct such that a voter from that precinct may vote on a replacement or provisional paper ballot pursuant to Section 1-6-16 NMSA 1978 or on an emergency paper ballot pursuant to Section 1-6-16.2 NMSA 1978."

## **Chapter 101 Section 6 Laws 2017**

SECTION 6. Section 1-8-4 NMSA 1978 (being Laws 1969, Chapter 240, Section 154, as amended by Laws 2014, Chapter 40, Section 4 and by Laws 2014, Chapter 81, Section 4) is amended to read:

"1-8-4. SECRETARY OF STATE--CERTIFICATION OF NOMINEES--MINOR POLITICAL PARTY.--

A. Upon receipt of certificates of nomination of any minor political party and nominating petitions, and no later than 5:00 p.m. on the first Tuesday following the filing date, the proper filing officer shall:

(1) determine whether the method of nomination used by the certifying political party complies with the current rules of that party on file in the secretary of state's office;

(2) determine whether the number of signatures required have been submitted and all the requirements of Sections 1-8-1 through 1-8-3 NMSA 1978 have been complied with; and

(3) if such determinations are answered in the affirmative, mail notice to the certifying party and the candidate no later than 5:00 p.m. on the Tuesday following the filing date that the certificates of nomination and nominating petitions are in

proper order and that the candidate, based on those documents, is qualified to have the candidate's name placed on the ballot.

B. If a minor political party candidate is notified by the proper filing officer that the candidate is not qualified to have the candidate's name appear on the ballot, the candidate may challenge the decision by filing a petition with the district court within ten days of the notification. The district court shall hear and render a decision on the matter within ten days after the petition is filed. The decision of the district court may be appealed to the supreme court within five days after the decision is rendered. The supreme court shall hear and render a decision no later than sixty-three days prior to the general election.

C. Any voter may file a court action challenging a minor political party candidate's nominating petitions pursuant to the provisions of Section 1-8-35 NMSA 1978."

## **Chapter 101 Section 7 Laws 2017**

SECTION 7. Section 1-8-7 NMSA 1978 (being Laws 1969, Chapter 240, Section 157, as amended) is amended to read:

"1-8-7. VACANCY ON GENERAL ELECTION BALLOT--DEATH OF CANDIDATE OR RESIGNATION OR DEATH OF OFFICE HOLDER BEFORE PRIMARY.--

A. Vacancies on the general election ballot may be filled as provided in Subsection B of this section if after a primary election there is no nominee of a major political party for a public office to be filled in the general election and if the vacancy was caused by:

(1) the death of a candidate after filing of the declaration of candidacy or after certification as a convention-designated nominee and before the primary election; or

(2) the resignation or death of a person holding a public office after the last Friday before the first Tuesday in March, when such office was not included in the governor's proclamation and is required by law to be filled at the next succeeding general election after the vacancy is created.

B. The vacancy may be filled subsequent to the primary election by the central committee of the state or county political party, as the case may be, as provided by Subsection A of Section 1-8-8 NMSA 1978. The name of the person to fill the vacancy on the general election ballot shall be filed with the proper filing officer on a form approved by the secretary of state within fifteen days after the primary election, and when so filed, it shall be placed on the general election ballot as the political party's nominee for such office."

## **Chapter 101 Section 8 Laws 2017**

SECTION 8. Section 1-8-8 NMSA 1978 (being Laws 1969, Chapter 240, Section 158, as amended) is amended to read:

"1-8-8. VACANCY ON GENERAL ELECTION BALLOT--OCCURRING AFTER PRIMARY.--

A. If after a primary election, but seventy or more days before the general election, a vacancy occurs, for any cause, in the list of the nominees of a qualified political party for any public office to be filled in the general election, or a vacancy occurs because of the resignation or death of a person holding a public office not included in the governor's proclamation and which office is required by law to be filled at the next succeeding general election, or a vacancy occurs because a new public office is created and was not included in the governor's proclamation but is capable by law of being filled at the next succeeding general election, the vacancy on the general election ballot may be filled by:

(1) the central committee of the state political party filing the name of its nominee for the office with the proper filing officer when the office is a federal office, state office, district office or multicounty legislative district office; and

(2) the central committee of the county political party filing the name of its nominee for the office with the proper filing officer when the office is a magistrate office, county office or legislative district office where the district is entirely within the boundaries of a single county.

B. Appointments made pursuant to Subsection A of this section shall qualify pursuant to Section 1-8-18 NMSA 1978.

C. The county or state central committee members making the appointment pursuant to Subsection A of this section shall be as provided for in the rules of the respective party; provided that, at a minimum, the committee shall include those members residing within the boundaries of the area to be represented by the public office.

D. Appointments to fill vacancies in the list of a party's nominees shall be made and filed with the proper filing officer using a form approved by the secretary of state at least sixty-three days prior to the general election.

E. When the name of a nominee is filed as provided in this section, the name shall be placed on the general election ballot as the party's candidate for that office."

## **Chapter 101 Section 9 Laws 2017**

SECTION 9. Section 1-8-9 NMSA 1978 (being Laws 1975, Chapter 255, Section 104, as amended) is amended to read:

"1-8-9. GENERAL ELECTION--WITHDRAWAL OF CANDIDATES.--No candidate shall withdraw from a general election unless the candidate withdraws at least seventy days prior to that election and the candidate files a signed and notarized statement of withdrawal with the proper filing officer."

## **Chapter 101 Section 10 Laws 2017**

SECTION 10. Section 1-8-31 NMSA 1978 (being Laws 1973, Chapter 228, Section 5, as amended) is amended to read:

"1-8-31. NOMINATING PETITION--SIGNATURES TO BE COUNTED.--

A. A person who signs a nominating petition shall sign only one petition for the same office unless more than one candidate is to be elected to that office, and in that case, a person may sign not more than the number of nominating petitions equal to the number of candidates to be elected to the office.

B. A person who signs a nominating petition shall indicate the person's registration address. If the person does not have a standard street address, the person may provide the mailing address as shown on the person's certificate of registration.

C. A signature shall be counted on a nominating petition unless there is evidence presented that the person signing:

(1) failed to provide information required by the nominating petition;

(2) is not a voter of the state, district, county or area to be represented by the office for which the person seeking the nomination is a candidate;

(3) has signed more than one petition for the same office, except as provided in Subsection A of this section, or has signed one petition more than once;

(4) is not of the same political party as the candidate named in the nominating petition as shown by the signer's certificate of registration; or

(5) is not the person whose name appears on the nominating petition.

D. The following information shall be listed in the appropriate space at the top of the nominating petition before the petition has been signed by any voter:

(1) the party affiliation of voters signing the petition;

(2) the candidate's name;

(3) the office sought by the candidate; and

(4) the district of the office sought, or, if the office sought is a judicial division office within a judicial district, the judicial division number.

E. With or without a showing of fraud or reasonable opportunity for fraud, a nominating petition, including all signatures on the petition page, shall be invalid if any of the information required by Subsection D of this section is not listed on the petition before the petition is signed by a voter or if any of the required information is altered.

F. The procedures set forth in this section shall be used to validate signatures on any petition required by the Election Code, except that Paragraph (4) of Subsection C of this section shall not apply to petitions filed by unaffiliated candidates or petitions filed by candidates of minor political parties."

## **Chapter 101 Section 11 Laws 2017**

SECTION 11. Section 1-9-7.1 NMSA 1978 (being Laws 2005, Chapter 270, Section 56, as amended) is amended to read:

"1-9-7.1. VOTING SYSTEM--USE OF PAPER BALLOT--ACCESS FOR BLIND OR VISUALLY IMPAIRED VOTERS.--

A. All voting systems used in elections covered by the Election Code shall use a paper ballot on which the voter physically or electronically marks the voter's choices on the ballot itself.

B. The secretary of state shall purchase the paper ballots for all counties to use for primary and general elections. If a system designed to print ballots at a polling location is certified and the voting system certification committee finds that its use in a polling place would result in cost savings, the secretary of state shall acquire such systems and paper ballot stock in lieu of fully preprinted paper ballots for those polling places where cost savings would be realized.

C. The paper ballot shall be used in a recount proceeding, and in case of a discrepancy, the paper ballot shall be considered the true and correct record of the voter's choices.

D. The secretary of state shall establish by rule procedures to enable blind or visually impaired voters to independently mark a paper ballot using nonvisual access or low vision access technology, whether voting in a polling place or by absentee ballot."

## **Chapter 101 Section 12 Laws 2017**

SECTION 12. Section 1-9-7.2 NMSA 1978 (being Laws 2005, Chapter 270, Section 57, as amended) is amended to read:

"1-9-7.2. 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 the United States election assistance commission. Tests and inspections conducted pursuant to this section shall follow the procedures in Section 1-9-14 NMSA 1978; provided, however, 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 101 Section 13 Laws 2017**

SECTION 13. Section 1-9-14 NMSA 1978 (being Laws 1983, Chapter 226, Section 1, as amended) is amended to read:

"1-9-14. VOTING SYSTEMS--AUTHORITY OF THE SECRETARY OF STATE TO TEST--CERTIFICATION.--

A. The secretary of state shall provide for the testing and evaluation of voting systems designed for the purpose of recording and tabulating votes within polling places in New Mexico. All voting systems certified for use in the state shall be tested by an independent authority and shall comply with all requirements in the Election Code and the most recent voluntary voting system guidelines adopted by the United States election assistance commission.

B. Any person who has a voting system that is designed for the purpose of recording and tabulating votes within a polling place may apply on or before June 1 of any odd-numbered year to the secretary of state to have the equipment examined and tested for certification. At the time application is made for initial certification, the applicant shall pay for testing each system in an amount that reflects the actual cost of such test. Upon receipt of the application, the secretary of state shall examine and study the voting system to ensure that it complies with all requirements in the Election Code and the most recent voluntary voting system guidelines adopted by the United States election assistance commission. As part of the examination, the secretary of state shall require the system to be independently inspected by persons or testing laboratories technically qualified to evaluate and test the operation and component parts of voting systems and shall require a written report on the results of such testing. The secretary of state may authorize field testing of the equipment in one or more polling places in any state or local government election; provided that such field tests shall be conducted at no cost to the state or any local government.

C. Upon completion of all tests and examination of all written test reports, the secretary of state shall make a written report of the result of the findings and shall file that report, together with the written test reports, in the office of the secretary of state

and post them on the secretary of state's website. The secretary of state shall accept public comment during the twenty-one days following the filing of the written report.

D. Following the period of public comment, the secretary of state shall submit the filed reports and any public comments for consideration by the voting system certification committee. The voting system certification committee shall make recommendations regarding the suitability and reliability of the use of such equipment in the conduct of elections under the Election Code.

E. The voting system certification committee shall recommend that a voting system be certified for use in the state only if it complies with all requirements in the Election Code and the most recent voluntary voting system guidelines adopted by the United States election assistance commission.

F. If the voting system certification committee report finds that the voting system does not comply with all requirements in the Election Code or does not meet federal election standards, the secretary of state shall allow thirty days for an appeal of the findings to be filed or for the deficiencies to be corrected, following which the secretary of state shall report back to the voting system certification committee with a written final report.

G. The voting system certification committee shall reconvene to consider the final report of the secretary of state and shall make final recommendations regarding the suitability and reliability of the use of such equipment in the conduct of elections under the Election Code.

H. If the voting system certification committee recommends that the voting system is suitable for use in elections in New Mexico, within thirty days of receiving the recommendation, the secretary of state shall certify or recertify the equipment for use in elections in this state.

I. If the voting system certification committee does not recommend that the voting system for recording and tabulating votes is suitable for use in elections in New Mexico, within thirty days of receiving the recommendation, the secretary of state shall deny the application or decertify the equipment for use in elections in this state."

## **Chapter 101 Section 14 Laws 2017**

SECTION 14. Section 1-10-4 NMSA 1978 (being Laws 1977, Chapter 222, Section 27, as amended) is amended to read:

"1-10-4. BALLOTS--PREPARATION.--

A. Not less than sixty-three days before the primary election, each proper filing officer shall group all candidates for each party by themselves and prepare in

writing a separate ballot for each party and certify the candidates for each ballot position to the printer.

B. Not less than sixty-three days before the general election, each proper filing officer shall prepare in writing the ballot containing the name of each candidate that has been certified and filed as the nominee of a party and any constitutional amendments, questions or other propositions that are to be voted on and certify all such information to the ballot printer. A copy of each certification shall be kept on file in the office of the secretary of state.

C. Upon request of the county chair of a political party participating in the election, the county clerk shall furnish proof sheets or a copy of the proof sheets of the ballot as soon as they become available."

## **Chapter 101 Section 15 Laws 2017**

SECTION 15. Section 1-12-25.2 NMSA 1978 (being Laws 2003, Chapter 356, Section 3, as amended) 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 presiding judge or 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 secretary of state shall provide a free access system, such as a toll-free telephone number or internet website, 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 and how to appeal the decision pursuant to rules issued by the secretary of state. Access to information about an individual voter's provisional paper ballot through the free access system 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 mail each person whose provisional paper 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."

## **Chapter 101 Section 16 Laws 2017**

SECTION 16. Section 1-15-3 NMSA 1978 (being Laws 1969, Chapter 240, Section 353, as amended) is amended to read:

### "1-15-3. PRESIDENTIAL ELECTORS--NOMINATION.--

A. Any qualified political party in New Mexico desiring to have candidates for president and vice president on the general election ballot in a presidential election year shall, at a state party convention held in the year of such election, choose from the voters of the party the number of presidential electors required by law and no more.

B. The presidential electors shall be nominated by the state convention according to the rules of that party on file with the secretary of state.

C. Upon the nomination of presidential electors, the chair and secretary of the convention shall certify the names and addresses of the nominees not less than sixty-three days prior to the election to the secretary of state. The secretary of state shall record the nominees' names in the secretary's office as the presidential elector nominees of that party."

### **Chapter 101 Section 17 Laws 2017**

SECTION 17. Section 1-15A-7 NMSA 1978 (being Laws 1977, Chapter 230, Section 6, as amended by Laws 1980, Chapter 13, Section 2 and also by Laws 1980, Chapter 43, Section 2) is amended to read:

"1-15A-7. NOTIFICATION TO CANDIDATES.--The secretary of state shall contact each person who has been nominated by the committee or by petition and notify the person in writing by certified mail, with return receipt requested, that the person's name will be printed as a candidate on the New Mexico presidential primary ballot unless the person requests in writing otherwise at least sixty-three days prior to the election."

### **Chapter 101 Section 18 Laws 2017**

SECTION 18. Section 1-16-3 NMSA 1978 (being Laws 1969, Chapter 240, Section 376, as amended) is amended to read:

"1-16-3. STATE CONSTITUTIONAL AMENDMENTS--CERTIFICATION.--Whenever a proposed constitutional amendment or other question is to be submitted to the voters of the entire state, the secretary of state, not less than sixty-three days before the election at which it is to be submitted, shall certify the proposed constitutional amendment or question to the county clerk of each county."

### **Chapter 101 Section 19 Laws 2017**

SECTION 19. Section 1-24-2 NMSA 1978 (being Laws 1989, Chapter 295, Section 2, as amended) is amended to read:

"1-24-2. SPECIAL ELECTION PROCEDURES--PROCLAMATION--  
PUBLICATION.--

A. Whenever a local government special election is to be called or is required by law, the governing body shall by resolution issue a public proclamation calling the election. The proclamation shall forthwith be filed with the county clerk. The proclamation shall specify:

- (1) the date on which the special election will be held;
- (2) the purpose for which the special election is called;
- (3) if officers are to be elected or positions on the governing body are to be filled, the date on which declarations of candidacy are to be filed;
- (4) if a question is to be voted upon, the text of that question;
- (5) the precincts in each county in which the election is to be held and the location of each polling place in the precinct;
- (6) the hours that each polling place will be open; and
- (7) the date and time of closing the registration books by the county clerk as required by law.

B. After filing with the county clerk the proclamation issued pursuant to Subsection A of this section, and not less than sixty-three days before the date of the election, the governing body shall publish the proclamation once each week for two consecutive weeks in a newspaper of general circulation within the boundaries of the local government or special district. The proclamation shall conform to the requirements of the federal Voting Rights Act of 1965, as amended.

C. Whenever a statewide special election is to be called or is required by law, the governor shall by resolution issue a public proclamation calling the election. Whenever an election to fill a vacancy in the office of United States representative is to be called or is required by law, the governor shall by resolution issue a public proclamation calling the election pursuant to the requirements of Section 1-15-18.1 NMSA 1978. The proclamation shall forthwith be filed with the secretary of state. The proclamation shall specify:

- (1) the date on which the special election will be held;
- (2) the purpose for which the special election is called;
- (3) if a vacancy in the office of United States representative is to be filled, the date on which declarations of candidacy are to be filed;

(4) if a question is to be voted upon, the text of that question; and

(5) the date and time of closing the registration books by the county clerk as required by law.

D. After the proclamation issued pursuant to Subsection C of this section is filed with the secretary of state, the secretary of state shall within five days certify the proclamation to each county clerk in the state. Not less than sixty-three days before the date of the election, the county clerk shall publish the proclamation once each week for two consecutive weeks in a newspaper of general circulation, which shall include the precincts in the county in which the election is to be held and the location of each polling place in the precinct and the hours that each polling place will be open. For an election called pursuant to Subsection F of Section 1-15-18.1 NMSA 1978, the proclamation shall be published consistent with this subsection not less than thirty-six days before the date of the election. The proclamation shall conform to the requirements of the federal Voting Rights Act of 1965, as amended."

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House Bill 98, aa  
Approved April 6, 2017

## **LAWS 2017, CHAPTER 102**

### **AN ACT**

RELATING TO TRADE PRACTICES; ENACTING THE DISTRIBUTED GENERATION DISCLOSURE ACT; PROVIDING MINIMUM DISCLOSURES FOR THE LEASE OR SALE OF A DISTRIBUTED ENERGY GENERATION SYSTEM; PROVIDING FOR AN EXCEPTION; PROVIDING FOR REGULATIONS AND FORM DISCLOSURE STATEMENTS; EXEMPTING BROKERS, AGENTS AND FINANCIAL INSTITUTIONS; ENACTING A NEW SECTION OF THE REAL ESTATE DISCLOSURE ACT.

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

### **Chapter 102 Section 1 Laws 2017**

SECTION 1. A new section of Chapter 57 NMSA 1978 is enacted to read:

"SHORT TITLE.--Sections 1 through 5 of this act may be cited as the "Distributed Generation Disclosure Act"."

### **Chapter 102 Section 2 Laws 2017**

SECTION 2. A new section of Chapter 57 NMSA 1978 is enacted to read:

"DEFINITIONS.--As used in the Distributed Generation Disclosure Act:

A. "annual percentage rate" means the cost of credit, expressed as a yearly rate, that relates the amount and timing of value received by the consumer to the amount and timing of payments made;

B. "business day" means any day Monday through Friday, unless such day falls on a legal holiday, in which case "business day" means the next day that is not a Saturday, Sunday or legal holiday;

C. "buyer" means a person that purchases a distributed energy generation system from a seller or marketer and includes a power purchaser;

D. "distributed energy generation system" means a device or system that is used to generate or store electricity, that has an electric delivery capacity, individually or in connection with other similar devices or systems, greater than one kilowatt or one kilowatt-hour, and that is used primarily for on-site consumption, but does not include an electric generator that is intended for occasional use;

E. "energized" means that a distributed energy generation system is installed and operational for its intended purposes of generating or storing electricity;

F. "interconnected" means that a distributed energy generation system is connected to the power grid and is able to transfer electricity to the power grid;

G. "lessee" means a person that leases a distributed energy generation system from the owner of the distributed energy generation system;

H. "person" means an individual person, corporation, trust, partnership, association, cooperative association, club, company, firm, joint venture or syndicate;

I. "power purchaser" means a buyer that agrees to purchase the power generated by a distributed energy generation system from the owner of the distributed energy generation system;

J. "renewable energy certificate" means a certificate or other record, in a format

approved by the public regulation commission, that represents all the environmental attributes from one kilowatt-hour of electricity generation from a renewable energy resource; and

K. "seller or marketer" means a person acting through its officers, employees, brokers or agents that markets, sells or solicits the sale or lease of distributed energy generation systems or the sale of power to a power purchaser or

negotiates or enters into agreements for the sale or lease of distributed energy generation systems or the sale of power to a power purchaser."

## **Chapter 102 Section 3 Laws 2017**

SECTION 3. A new section of Chapter 57 NMSA 1978 is enacted to read:

"DISTRIBUTED ENERGY GENERATION SYSTEM DISCLOSURES--  
EXCEPTION.--

A. Beginning thirty days after publication in the New Mexico register of the form disclosure statements issued by the attorney general pursuant to Section 5 of the Distributed Generation Disclosure Act, any agreement governing the financing, sale or lease of a distributed energy generation system, or the sale of power to a power purchaser, shall include a written statement with font no smaller than ten points and no more than four pages, unless a font larger than ten points is used, separate from the agreement and separately signed by the buyer or lessee, that includes the following provisions:

(1) the name, address, telephone number and email address of the buyer or lessee;

(2) the name, address, telephone number, email address and valid state contractor license number of the person responsible for installing the distributed energy generation system;

(3) the name, address, telephone number, email address and a valid state contractor license number of the distributed energy generation system maintenance provider, if different from the person responsible for installing the system;

(4) a provision notifying the buyer or lessee of the right to rescind the agreement for a period ending not less than three business days after the agreement is signed;

(5) a description of the distributed energy generation system design assumptions, including system size, estimated first-year production and estimated annual system production decreases, including the overall percentage degradation over the life of the distributed energy generation system;

(6) a description of any performance guarantees that a seller or marketer may include in an agreement;

(7) the purchase price of the distributed energy generation system, total projected lease or power purchase payments;

(8) a description of any one-time or recurring fees, including the circumstances triggering any late fees, estimated system removal fees, maintenance fees, Uniform Commercial Code notice removal and refiling fees, internet connection fees and automated clearing house fees;

(9) if the seller is financing or leasing the distributed energy generation system, the total amount financed, the total number of payments, the payment frequency, the amount of the payment expressed in dollars, the payment due dates and the applicable annual percentage rate; except that in the case of financing arrangements subject to state or federal lending disclosure requirements, disclosure of the annual percentage rate shall be made in accordance with the applicable state or federal lending disclosure requirements;

(10) if a seller or marketer uses a tax incentive or rebate in determining the price, a provision identifying each state and federal tax incentive or rebate used;

(11) a description of the ownership and transferability of any tax credits, rebates, incentives or renewable energy certificates in connection with the distributed energy generation system;

(12) a list of the following tax obligations that the buyer may be required to pay or incur as a result of the contract's provisions, including:

(a) the cost of any business personal property taxes assessed on the distributed energy generation system in the event of a power purchase agreement or lease;

(b) gross receipts taxes for any equipment purchased and services rendered;

(c) obligations of the power purchaser or lessee to transfer tax credits or tax incentives of the distributed energy generation system to any other person; and

(d) in the case of a commercial installation, a change in assessed property taxes in the event of a purchase of a distributed energy generation system;

(13) a disclosure regarding whether the warranty or maintenance obligations related to the distributed energy generation system may be sold or transferred to a third party;

(14) a disclosure regarding any restrictions pursuant to the agreement on the buyer's or lessee's ability to modify or transfer ownership of the distributed energy generation system, including whether any modification or transfer is

subject to review or approval by a third party and the name, mailing address and telephone number of the entity responsible for approving the modification or transfer, if known to the seller or marketer at the time the agreement is made;

(15) a description of all options available to the buyer or lessee in connection with the continuation, termination or transfer of the agreement between the buyer or lessee and the seller or marketer in the event of the transfer of the real property to which the distributed energy generation system is affixed;

(16) a description of the assumptions used for any savings estimates that were provided to the buyer or lessee;

(17) a disclosure that states: "Actual utility rates may go up or down and actual savings may vary. For further information regarding rates, you may contact your local utility or the public regulation commission. Tax and other state and federal incentives are subject to change.";

(18) a disclosure notifying the buyer or the lessee of transferability of any warranty obligations to subsequent buyers or lessees; and

(19) a disclosure notifying the buyer or lessee that interconnection requirements, including time lines, are established by rules of the public regulation commission and may be obtained from either the public regulation commission or the local utility.

B. The seller or marketer shall provide the buyer or lessee with proof that, within thirty days of completion of installation or modification:

(1) all permits required for the installation or any modification of the distributed energy generation system were obtained prior to installation; and

(2) installation or any modification of the distributed energy generation system received the approval of an inspector authorized by the governmental authority having jurisdiction over the permitting and enforcement authority.

C. In the event that a seller or marketer causes a financing statement to be filed pursuant to the Uniform Commercial Code-Secured Transactions, the seller or marketer, or any successor in interest to the seller or marketer, shall provide to the buyer or lessee a copy of the filed financing statement within thirty calendar days of the filing.

D. If a promotional document or sales presentation related to a distributed energy generation system states that the system will result in certain financial savings for the buyer or lessee, the document or sales presentation shall provide the assumptions and calculations used to derive those savings.

E. If a promotional document or sales presentation related to a distributed energy generation system states that the system will result in certain energy savings in terms of production, the document or sales presentation shall provide the assumptions and calculations used to derive those energy savings and any comparative estimates. If historical information is used, it shall be accompanied by the following statement: "Historical data are not necessarily representative of future results." "

## **Chapter 102 Section 4 Laws 2017**

SECTION 4. A new section of Chapter 57 NMSA 1978 is enacted to read:

"ADDITIONAL REQUIREMENTS--EXCEPTION.--

A. Recurring payments under a distributed energy generation system lease or purchase agreement shall not begin until the distributed energy generation system is energized and interconnected.

B. The Distributed Generation Disclosure Act does not apply to an individual or company, acting through its officers, employees, brokers or agents, that markets, sells, solicits, negotiates or enters into an agreement for the sale, financing or lease of a distributed energy generation system as part of a transaction involving the sale or transfer of the real property to which the distributed energy generation system is or will be affixed.

C. The Distributed Generation Disclosure Act does not apply to third-party financial institutions that enter into an agreement for the financing of a distributed energy generation system."

## **Chapter 102 Section 5 Laws 2017**

SECTION 5. A new section of Chapter 57 NMSA 1978 is enacted to read:

"DISCLOSURE STATEMENT FORMS.--

A. The attorney general shall adopt rules necessary to implement and enforce the provisions of the Distributed Generation Disclosure Act. The attorney general shall, by January 1, 2018, issue form disclosure statements that may be used to provide the disclosures required by the Distributed Generation Disclosure Act for agreements with buyers or lessees.

B. Disclosure statements provided in substantially the form issued by the attorney general shall be regarded as complying with the disclosure statements required by Subsection A of Section 3 of the Distributed Generation Disclosure Act."

## **Chapter 102 Section 6 Laws 2017**

SECTION 6. A new section of the Real Estate Disclosure Act is enacted to read:

"DISCLOSURE OF CERTAIN DISTRIBUTED ENERGY GENERATION SYSTEMS.--The requirements of the Distributed Generation Disclosure Act shall not apply to a transaction involving the sale or transfer of the real property on which the distributed energy generation system is located."

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HJC/House Bill 199, aa  
Approved April 6, 2017

## **LAWS 2017, CHAPTER 103**

AN ACT

RELATING TO THE PRACTICE OF MEDICINE; PROVIDING FOR COLLABORATION BETWEEN A PHYSICIAN ASSISTANT AND A LICENSED PHYSICIAN.

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

### **Chapter 103 Section 1 Laws 2017**

SECTION 1. Section 61-6-6 NMSA 1978 (being Laws 1973, Chapter 361, Section 1, as amended) is amended to read:

"61-6-6. DEFINITIONS.--As used in Chapter 61, Article 6 NMSA 1978:

A. "approved postgraduate training program" means a program approved by the accreditation council for graduate medical education;

B. "board" means the New Mexico medical board;

C. "collaboration" means the process by which a licensed physician and a physician assistant jointly contribute to the health care and medical treatment of patients; provided that:

(1) each collaborator performs actions that the collaborator is licensed or otherwise authorized to perform; and

(2) collaboration shall not be construed to require the physical presence of the licensed physician at the time and place services are rendered;

D. "licensed physician" means a medical doctor licensed under the Medical Practice Act to practice medicine in New Mexico;

E. "licensee" means a medical doctor, physician assistant, polysomnographic technologist, anesthesiologist assistant or naprapath licensed by the board to practice in New Mexico;

F. "medical college or school in good standing" means a board-approved medical college or school that has as high a standard as that required by the association of American medical colleges and the council on medical education of the American medical association;

G. "medical student" means a student enrolled in a board-approved medical college or school in good standing;

H. "physician assistant" means a health professional who is licensed by the board to practice as a physician assistant and who provides services to patients with the supervision of or in collaboration with a licensed physician as set forth in rules promulgated by the board;

I. "intern" means a first-year postgraduate student upon whom a degree of doctor of medicine and surgery or equivalent degree has been conferred by a medical college or school in good standing;

J. "resident" means a graduate of a medical college or school in good standing who is in training in a board-approved and accredited residency training program in a hospital or facility affiliated with an approved hospital and who has been appointed to the position of "resident" or "fellow" for the purpose of postgraduate medical training;

K. "the practice of medicine" consists of:

(1) advertising, holding out to the public or representing in any manner that one is authorized to practice medicine in this state;

(2) offering or undertaking to administer, dispense or prescribe a drug or medicine for the use of another person, except as authorized pursuant to a professional or occupational licensing statute set forth in Chapter 61 NMSA 1978;

(3) offering or undertaking to give or administer, dispense or prescribe a drug or medicine for the use of another person, except as directed by a licensed physician;

(4) offering or undertaking to perform an operation or procedure upon a person;

(5) offering or undertaking to diagnose, correct or treat in any manner or by any means, methods, devices or instrumentalities any disease, illness,

pain, wound, fracture, infirmity, deformity, defect or abnormal physical or mental condition of a person;

(6) offering medical peer review, utilization review or diagnostic service of any kind that directly influences patient care, except as authorized pursuant to a professional or occupational licensing statute set forth in Chapter 61 NMSA 1978; or

(7) acting as the representative or agent of a person in doing any of the things listed in this subsection;

L. "the practice of medicine across state lines" means:

(1) the rendering of a written or otherwise documented medical opinion concerning diagnosis or treatment of a patient within this state by a physician located outside this state as a result of transmission of individual patient data by electronic, telephonic or other means from within this state to the physician or the physician's agent; or

(2) the rendering of treatment to a patient within this state by a physician located outside this state as a result of transmission of individual patient data by electronic, telephonic or other means from within this state to the physician or the physician's agent;

M. "sexual contact" means touching the primary genital area, groin, anus, buttocks or breast of a patient or allowing a patient to touch another's primary genital area, groin, anus, buttocks or breast in a manner that is commonly recognized as outside the scope of acceptable medical practice;

N. "sexual penetration" means sexual intercourse, cunnilingus, fellatio or anal intercourse, whether or not there is any emission, or introducing any object into the genital or anal openings of another in a manner that is commonly recognized as outside the scope of acceptable medical practice; and

O. "United States" means the fifty states, its territories and possessions and the District of Columbia."

## **Chapter 103 Section 2 Laws 2017**

SECTION 2. Section 61-6-7 NMSA 1978 (being Laws 1973, Chapter 361, Section 3, as amended) is amended to read:

"61-6-7. SHORT TITLE--LICENSURE AS A PHYSICIAN ASSISTANT--SCOPE OF PRACTICE--BIENNIAL REGISTRATION OF SUPERVISION--LICENSE RENEWAL--FEES.--

A. Sections 61-6-7 through 61-6-10 NMSA 1978 may be cited as the "Physician Assistant Act".

B. The board may license as a physician assistant a qualified person who has graduated from a physician assistant program accredited by the national accrediting body as established by rule and has passed a physician assistant national certifying examination as established by rule. The board may also license as a physician assistant a person who passed the physician assistant national certifying examination administered by the national commission on certification of physician assistants prior to 1986.

C. A person shall not perform, attempt to perform or hold the person's own self out as a physician assistant without first applying for and obtaining a license from the board.

D. Physician assistants may prescribe, administer, dispense and distribute dangerous drugs other than controlled substances in Schedule I of the Controlled Substances Act pursuant to rules adopted by the board after consultation with the board of pharmacy if the prescribing, administering, dispensing and distributing are done with the supervision of a licensed physician or in collaboration with a licensed physician. The distribution process shall comply with state laws concerning prescription packaging, labeling and recordkeeping requirements.

E. A physician assistant shall perform only the acts and duties that are within the physician assistant's scope of practice.

F. An applicant for licensure as a physician assistant shall complete application forms supplied by the board and shall pay a licensing fee as provided in Section 61-6-19 NMSA 1978.

G. A physician assistant shall biennially submit proof of current certification by the national commission on certification of physician assistants or another certifying agency as designated by rules promulgated by the board and shall renew the license and registration of supervision of the physician assistant with the board.

H. A physician assistant shall not practice medicine until the physician assistant has established a supervising or collaborating relationship with a licensed physician in accordance with rules adopted by the board.

I. Each biennial renewal of licensure shall be accompanied by a fee as provided in Section 61-6-19 NMSA 1978."

## **Chapter 103 Section 3 Laws 2017**

SECTION 3. Section 61-6-9 NMSA 1978 (being Laws 1973, Chapter 361, Section 5, as amended) is amended to read:

"61-6-9. PHYSICIAN ASSISTANTS--RULES.--The board may adopt and enforce reasonable rules for:

A. education, skill and experience for licensure of a person as a physician assistant and providing forms and procedures for biennial license renewal;

B. examining and evaluating an applicant for licensure as a physician assistant as to skill, knowledge and experience of the applicant in the field of medical care;

C. establishing when and for how long physician assistants are permitted to prescribe, administer, dispense and distribute dangerous drugs other than controlled substances in Schedule I of the Controlled Substances Act pursuant to rules adopted by the board after consultation with the board of pharmacy;

D. allowing a supervising or collaborating licensed physician to temporarily delegate supervision or collaboration responsibilities for a physician assistant to another licensed physician;

E. establishing when a physician assistant may engage in the practice of medicine in collaboration with a licensed physician; and

F. carrying out all other provisions of the Physician Assistant Act."

## **Chapter 103 Section 4 Laws 2017**

SECTION 4. Section 61-6-10 NMSA 1978 (being Laws 1973, Chapter 361, Section 6, as amended) is amended to read:

"61-6-10. SUPERVISING OR COLLABORATING LICENSED PHYSICIAN--RESPONSIBILITY.--

A. As a condition of licensure, all physician assistants practicing in New Mexico shall be supervised by a physician licensed pursuant to the Medical Practice Act. The physician assistant shall inform the board of the name of the licensed physician under whose supervision the physician assistant will practice. All supervising physicians shall be licensed pursuant to the Medical Practice Act and shall be approved by the board.

B. Every licensed physician supervising a licensed physician assistant shall be individually responsible and liable for the performance of the acts and omissions delegated to the physician assistant the physician supervises. Nothing in this section shall be construed to relieve the physician assistant of responsibility and liability

for the acts and omissions of the physician assistant. Rules promulgated pursuant to the Physician Assistant Act shall:

(1) require that a physician assistant whose practice is a specialty care, as defined by the board, shall be supervised by a licensed physician in accordance with requirements established by the board; and

(2) allow a physician assistant whose practice is primary care, as defined by the board, to collaborate with a licensed physician in accordance with requirements established by the board for different practice settings.

C. A physician assistant shall be supervised by or collaborate with a physician in accordance with rules adopted by the board."

## **Chapter 103 Section 5 Laws 2017**

SECTION 5. Section 61-6-17 NMSA 1978 (being Laws 1973, Chapter 361, Section 8, as amended) is amended to read:

"61-6-17. EXCEPTIONS TO ACT.--The Medical Practice Act shall not apply to or affect:

A. gratuitous services rendered in cases of emergency;

B. the domestic administration of family remedies;

C. the practice of midwifery as regulated in this state;

D. commissioned medical officers of the armed forces of the United States and medical officers of the commissioned corps of the United States public health service or the United States department of veterans affairs in the discharge of their official duties or within federally controlled facilities; provided that such persons who hold medical licenses in New Mexico shall be subject to the provisions of the Medical Practice Act; and provided further that all such persons shall be fully licensed to practice medicine in one or more jurisdictions of the United States;

E. the practice of medicine by a physician, unlicensed in New Mexico, who performs emergency medical procedures in air or ground transportation on a patient from inside of New Mexico to another state or back; provided that the physician is duly licensed in that state;

F. the practice, as defined and limited under their respective licensing laws, of:

(1) osteopathy;

- (2) dentistry;
- (3) podiatry;
- (4) nursing;
- (5) optometry;
- (6) psychology;
- (7) chiropractic;
- (8) pharmacy;
- (9) acupuncture and oriental medicine; or
- (10) physical therapy;

G. an act, task or function performed by a physician assistant, at the direction of and with the supervision of or in collaboration with, a licensed physician, when:

- (1) the physician assistant is currently licensed by the board;
- (2) the act, task or function is performed with the supervision of a licensed physician or in collaboration with a licensed physician in accordance with rules promulgated by the board; and
- (3) the acts of the physician assistant are within the scope of duties assigned or delegated by the supervising or collaborating licensed physician and the acts are within the scope of the physician assistant's training;

H. an act, task or function of laboratory technicians or technologists, x-ray technicians, nurse practitioners, medical or surgical assistants or other technicians or qualified persons permitted by law or established by custom as part of the duties delegated to them by:

- (1) a licensed physician or a hospital, clinic or institution licensed or approved by the public health division of the department of health or an agency of the federal government; or
- (2) a health care program operated or financed by an agency of the state or federal government;

I. a properly trained medical or surgical assistant or technician or professional licensee performing under the physician's employment and direct

supervision or a visiting physician or surgeon operating under the physician's direct supervision a medical act that a reasonable and prudent physician would find within the scope of sound medical judgment to delegate if, in the opinion of the delegating physician, the act can be properly and safely performed in its customary manner and if the person does not hold the person's own self out to the public as being authorized to practice medicine in New Mexico. The delegating physician shall remain responsible for the medical acts of the person performing the delegated medical acts;

J. the practice of the religious tenets of a church in the ministrations to the sick or suffering by mental or spiritual means as provided by law; provided that the Medical Practice Act shall not be construed to exempt a person from the operation or enforcement of the sanitary and quarantine laws of the state;

K. the acts of a physician licensed under the laws of another state of the United States who is the treating physician of a patient and orders home health or hospice services for a resident of New Mexico to be delivered by a home and community support services agency licensed in this state; provided that a change in the condition of the patient shall be physically reevaluated by the treating physician in the treating physician's jurisdiction or by a licensed New Mexico physician;

L. a physician licensed to practice under the laws of another state who acts as a consultant to a New Mexico-licensed physician on an irregular or infrequent basis, as defined by rule of the board; and

M. a physician who engages in the informal practice of medicine across state lines without compensation or expectation of compensation; provided that the practice of medicine across state lines conducted within the parameters of a contractual relationship shall not be considered informal and is subject to licensure and rule by the board."

## **Chapter 103 Section 6 Laws 2017**

SECTION 6. A new section of the Physician Assistant Act is enacted to read:

"PHYSICIAN ASSISTANT COLLABORATION WITH LICENSED PHYSICIANS--  
SCOPE OF PRACTICE--MEDICAL MALPRACTICE INSURANCE.--

A. A physician assistant may perform the acts and duties that are within the physician assistant's scope of practice in collaboration with a licensed physician, if the physician assistant has:

(1) completed three years of clinical practice as a physician assistant with the supervision of a licensed physician; and

(2) complied with rules adopted by the board establishing qualifications for when a physician assistant may engage in the practice of medicine in collaboration with a licensed physician.

B. A physician assistant practicing in collaboration with a licensed physician shall, at a minimum, maintain a policy of malpractice liability insurance that will qualify the physician assistant under the provisions of the Medical Malpractice Act."

## **Chapter 103 Section 7 Laws 2017**

SECTION 7. Section 61-6-19 NMSA 1978 (being Laws 1989, Chapter 269, Section 15, as amended) is amended to read:

"61-6-19. FEES.--

A. The board shall impose the following fees:

(1) an application fee not to exceed four hundred dollars (\$400) for licensure by endorsement as provided in Section 61-6-13 NMSA 1978;

(2) an application fee not to exceed four hundred dollars (\$400) for licensure by examination as provided in Section 61-6-11 NMSA 1978;

(3) a triennial renewal fee not to exceed four hundred fifty dollars (\$450);

(4) a fee of twenty-five dollars (\$25.00) for placing a physician's license or a physician assistant's license on inactive status;

(5) a late fee not to exceed one hundred dollars (\$100) for physicians who renew their license within forty-five days after the required renewal date;

(6) a late fee not to exceed two hundred dollars (\$200) for physicians who renew their licenses between forty-six and ninety days after the required renewal date;

(7) a reinstatement fee not to exceed six hundred dollars (\$600) for reinstatement of a revoked, suspended or inactive license;

(8) a reasonable administrative fee for verification and duplication of license or registration and copying of records;

(9) a reasonable publication fee for the purchase of a publication containing the names of all practitioners licensed under the Medical Practice Act;

(10) an impaired physician fee not to exceed one hundred fifty dollars (\$150) for a three-year period;

(11) an interim license fee not to exceed one hundred dollars (\$100);

(12) a temporary license fee not to exceed one hundred dollars (\$100);

(13) a postgraduate training license fee not to exceed fifty dollars (\$50.00) annually;

(14) an application fee not to exceed one hundred fifty dollars (\$150) for physician assistants applying for initial licensure;

(15) a licensure fee not to exceed one hundred fifty dollars (\$150) for physician assistants biennial license renewal and registration of supervising or collaborating licensed physician;

(16) a late fee not to exceed fifty dollars (\$50.00) for physician assistants who renew their licensure within forty-five days after the required renewal date;

(17) a late fee not to exceed seventy-five dollars (\$75.00) for physician assistants who renew their licensure between forty-six and ninety days after the required renewal date;

(18) a reinstatement fee not to exceed one hundred dollars (\$100) for physician assistants who reinstate an expired license;

(19) a fee not to exceed three hundred dollars (\$300) annually for a physician supervising a clinical pharmacist;

(20) an application and renewal fee for a telemedicine license not to exceed four hundred dollars (\$400);

(21) a reasonable administrative fee, not to exceed the current cost of application for a license, that may be charged for reprocessing applications and renewals that include minor but significant errors and that would otherwise be subject to investigation and possible disciplinary action; and

(22) a reasonable fee as established by the department of public safety for nationwide and statewide criminal history screening of applicants and licensees.

B. All fees are nonrefundable and shall be used by the board to carry out its duties efficiently."

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HJC/HHHC/House Bill 215  
Approved April 6, 2017

## **LAWS 2017, CHAPTER 104**

AN ACT

RELATING TO FINANCIAL INSTITUTIONS; INCREASING THE THRESHOLD AMOUNT OF REVENUE EARNED FROM CHECK CASHING SERVICES THAT REQUIRES A PERSON TO BE LICENSED PURSUANT TO THE UNIFORM MONEY SERVICES ACT.

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

### **Chapter 104 Section 1 Laws 2017**

SECTION 1. Section 58-32-301 NMSA 1978 (being Laws 2016, Chapter 88, Section 301) is amended to read:

"58-32-301. LICENSE REQUIRED.--

A. A person shall not engage in check cashing or advertise, solicit or hold itself out as providing check cashing for which the person receives at least two thousand five hundred dollars (\$2,500) within a thirty-day period unless the person:

(1) is licensed pursuant to Article 3 of the Uniform Money Services Act;

(2) is licensed for money transmission pursuant to Article 2 of the Uniform Money Services Act;

(3) is licensed for currency exchange pursuant to Article 4 of the Uniform Money Services Act; or

(4) is an authorized delegate of a person licensed pursuant to Article 2 of the Uniform Money Services Act.

B. A license pursuant to Article 3 of the Uniform Money Services Act is not transferable or assignable."

## **Chapter 104 Section 2 Laws 2017**

SECTION 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2017.

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HSIVC/House Bill 276  
Approved April 6, 2017

## **LAWS 2017, CHAPTER 105**

AN ACT

RELATING TO AGRICULTURE; AUTHORIZING INSPECTIONS FOR COMPLIANCE WITH FOOD SAFETY LAWS.

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

### **Chapter 105 Section 1 Laws 2017**

SECTION 1. Section 76-1-2 NMSA 1978 (being Laws 1974, Chapter 35, Section 2, as amended) is amended to read:

"76-1-2. POWERS AND AUTHORITY OF BOARD OF REGENTS.--In addition to all other powers and authority that the board of regents of New Mexico state university may have in other areas, the board of regents of New Mexico state university, relative to the New Mexico department of agriculture, has power and authority to:

A. administer and enforce all laws of this state over which the board of regents or its agents have been granted jurisdiction and authority;

B. adopt rules of procedure for the adoption of regulations;

C. adopt, and file in accordance with the State Rules Act, regulations as may be necessary to carry out its duties;

D. administer or enforce, through the New Mexico department of agriculture, all regulations adopted by the board of regents;

E. cooperate and enter into contracts or agreements with local, state and federal government agencies or with any other person to assist the carrying out of the duties of the New Mexico department of agriculture;

F. employ and fix the salaries of employees of the New Mexico department of agriculture;

G. institute legal proceedings in any court of this state, of any other state or of the United States;

H. certify to the appropriate district attorney or to the attorney general of New Mexico any violation of the provisions of law or any rules and regulations administered and enforced by it, when necessary to carry out its duties;

I. accept and administer on behalf of the New Mexico department of agriculture such grants, subsidies, donations, allotments or bequests as may be offered to the state by the federal government or any department thereof or by any public or private foundation or individuals;

J. accept and administer funds or other assets for the New Mexico department of agriculture;

K. make and perform or direct the performance of such inspections and analyses as are necessary to carry out its duties;

L. issue or direct the issuance of such licenses, permits and other documents as are necessary to carry out its duties;

M. authorize the New Mexico department of agriculture to establish and publish a schedule of fees and collect those fees to recover the cost of services performed at the request of a person or firm. Fees imposed shall be just and equitable and shall not exceed the department's cost for performing the service;

N. authorize the New Mexico department of agriculture to enter onto public or private property after notice of inspection to collect physical or documentary samples and to review records and documents to verify compliance with the federal FDA Food Safety Modernization Act; and

O. do all other things necessary as permitted by statute to carry out its duties."

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House Bill 305, aa  
Approved April 6, 2017

## **LAWS 2017, CHAPTER 106**

AN ACT

RELATING TO SECURITIES; ENACTING THE PROTECTING VULNERABLE ADULTS FROM FINANCIAL EXPLOITATION ACT.

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

**Chapter 106 Section 1 Laws 2017**

SECTION 1. SHORT TITLE.--This act may be cited as the "Protecting Vulnerable Adults from Financial Exploitation Act".

**Chapter 106 Section 2 Laws 2017**

SECTION 2. DEFINITIONS.--As used in the Protecting Vulnerable Adults from Financial Exploitation Act:

A. "agencies" means the securities division of the regulation and licensing department and the adult protective services division of the aging and long-term services department;

B. "agent" means an individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities, or represents an issuer in effecting or attempting to effect purchases or sales of the issuer's securities, but a partner, officer or director of a broker-dealer or issuer, or an individual having a similar status or performing similar functions, is an agent only if the individual otherwise comes within the term. "Agent" does not include an individual excluded by rule adopted pursuant to the New Mexico Uniform Securities Act;

C. "broker-dealer" means a person engaged in the business of effecting transactions in securities for the account of others or for the person's own account. "Broker-dealer" does not include:

(1) an agent;

(2) an issuer;

(3) a bank or savings institution if:

(a) its activities as a broker-dealer are limited to those specified in: 1) Subsections 3(a)(4)(B)(i) through (vi) and (viii) through (ix) of the federal Securities Exchange Act of 1934, and they are unsolicited transactions; 2) Subsection 3(a)(5)(B) of that act; or 3) Subsection 3(a)(5)(C) of that act; or

(b) the bank satisfies the conditions described in Subsection 3(a)(4)(E) of the federal Securities Exchange Act of 1934;

(4) an international banking institution; or

(5) a person excluded by rule adopted pursuant to the New Mexico Uniform Securities Act;

D. "eligible adult" means:

(1) a person sixty-five years of age or older; or

(2) an incapacitated person who is eighteen years of age or older;

E. "financial exploitation" means:

(1) the wrongful or unauthorized taking, withholding, appropriation or use

of money, assets or property of an eligible adult; or

(2) any act or omission taken by a person, including through the use of a power of attorney, guardianship or conservatorship of an eligible adult, to:

(a) obtain control, through deception, intimidation or undue influence, over the eligible adult's money, assets or property to deprive the eligible adult of the ownership, use, benefit or possession of the eligible adult's money, assets or property; or

(b) convert money, assets or property of the eligible adult to deprive such eligible adult of the ownership, use, benefit or possession of the eligible adult's money, assets or property;

F. "incapacitated person" means a person with a mental, physical or developmental condition that substantially impairs the person's ability to provide adequately for the person's own care or protection;

G. "investment adviser" means a person that, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing or selling securities or that, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" includes a financial planner or other person that, as an integral component of other financially related services, provides investment advice to others for compensation as part of a business or that holds itself out as providing investment advice to others for compensation. "Investment adviser" does not include:

(1) an investment adviser representative;

(2) a lawyer, accountant, engineer or teacher whose performance of investment advice is solely incidental to the practice of the person's profession;

(3) a broker-dealer or its agents whose performance of investment advice is solely incidental to the conduct of business as a broker-dealer and that does not receive special compensation for the investment advice;

(4) a publisher, employee or columnist of a bona fide newspaper, news magazine or business or financial publication of general and regular circulation or an owner operator, producer or employee of a cable, radio or television network, station or production facility, if, in either case:

(a) the financial or business news or advice is contained in a publication or broadcast disseminated to the general public; and

(b) the content does not consist of rendering advice on the basis of the specific investment situation of each client;

(5) a federal covered investment adviser;

(6) a bank or a savings institution; or

(7) any other person excluded by rule adopted pursuant to the New Mexico Uniform Securities Act;

H. "investment adviser representative" means an individual employed by or associated with a New Mexico investment adviser or federal covered investment adviser and who makes recommendations or otherwise gives investment advice regarding securities, manages accounts or portfolios of clients, determines which recommendation or advice regarding securities should be given, provides investment advice or holds herself or himself out as providing investment advice, receives compensation to solicit, offer or negotiate for the sale of or for selling investment advice or supervises employees who perform any of the foregoing. "Investment adviser representative" does not include an individual who:

(1) performs only clerical or ministerial acts;

(2) is an agent whose performance of investment advice is solely incidental to the individual acting as an agent and who does not receive special compensation for investment advisory services;

(3) is employed by or associated with a federal covered investment adviser, unless the individual has a place of business in New Mexico, as "place of business" is defined by rule adopted pursuant to Section 203A of the federal Investment Advisers Act of 1940 and is:

(a) an investment adviser representative, as "investment adviser representative" is defined by rule adopted pursuant to Section 203A of the federal Investment Advisers Act of 1940; or

(b) not a supervised person as "supervised person" is defined in Section 202(a)(25) of the federal Investment Advisers Act of 1940; or

(4) is excluded by rule adopted pursuant to the New Mexico Uniform Securities Act;

I. "issuer" means a person that issues or proposes to issue a security, subject to the following:

(1) the issuer of a voting trust certificate, collateral trust certificate, certificate of deposit for a security or share in an investment company without a board of directors or individuals performing similar functions is the person performing the acts and assuming the duties of depositor or manager pursuant to the trust or other agreement or instrument under which the security is issued;

(2) the issuer of an equipment trust certificate or similar security serving the same purpose is the person by which the property is or will be used or to which the property or equipment is or will be leased or conditionally sold or that is otherwise contractually responsible for assuring payment of the certificate; and

(3) the issuer of a fractional undivided interest in an oil, gas or other mineral lease or in payments out of production pursuant to a lease, right or royalty is the owner of an interest in the lease or in payments out of production pursuant to a lease, right or royalty, whether whole or fractional, that creates fractional interests for the purpose of sale;

J. "qualified individual" means an agent, investment adviser representative or person who serves in a supervisory, compliance or legal capacity for a broker-dealer or investment adviser; and

K. "savings institution" means an institution organized or chartered pursuant to the laws of a state or of the United States, authorized to receive deposits and supervised and examined by an official or agency of a state or the United States if its deposits or share accounts are insured to the maximum amount authorized by statute by the federal deposit insurance corporation, the national credit union share insurance fund or a successor authorized by federal law, or a receiver, conservator or other liquidating agent of such institutions or entities. "Savings institution" does not include:

(1) an insurance company or other organization primarily engaged in the business of insurance;

(2) a Morris plan bank; or

(3) an industrial loan company that is not an "insured depository institution" as defined in Section 3(c)(2) of the Federal Deposit Insurance Act or any successor federal statute.

## **Chapter 106 Section 3 Laws 2017**

### SECTION 3. THIRD-PARTY AND AGENCY DISCLOSURE.--

A. If a broker-dealer, investment adviser or qualified individual reasonably believes that financial exploitation of an eligible adult may have occurred, may have been attempted or is being attempted, a broker-dealer, investment adviser or qualified individual:

(1) shall promptly notify the agencies;

(2) shall attempt to notify a third-party previously designated by the eligible adult; and

(3) may attempt to notify a third-party that is not designated but is reasonably associated with the eligible adult.

B. Disclosure shall not be made to a designated third-party that is at the time of disclosure suspected of financial exploitation or other abuse of the eligible adult.

## **Chapter 106 Section 4 Laws 2017**

SECTION 4. IMMUNITY FOR DISCLOSURES.--A broker-dealer, investment adviser or qualified individual who, in exercising reasonable care, complies with Section 3 of the Protecting Vulnerable Adults from Financial Exploitation Act and has completed the training required pursuant to Section 7 of that act shall be immune from any administrative or civil liability that might otherwise arise from such disclosure.

## **Chapter 106 Section 5 Laws 2017**

### SECTION 5. DELAYING DISBURSEMENTS OR TRANSACTIONS.--

A. A broker-dealer or investment adviser may delay a disbursement or transaction from an account of an eligible adult or an account on which an eligible adult is a beneficiary if:

(1) the broker-dealer, investment adviser or qualified individual reasonably believes, after initiating an internal review of the requested disbursement or transaction and the suspected financial exploitation, that the requested disbursement or transaction may result in financial exploitation of an eligible adult; and

(2) the broker-dealer or investment adviser:

(a) immediately, but in no event more than two business days after the requested disbursement or transaction, provides written notification of the delay and the reason for the delay to all parties authorized to transact business on the account, unless any such party is reasonably believed to have engaged in suspected or attempted financial exploitation of the eligible adult;

(b) immediately, but in no event more than two business days after the requested disbursement or transaction, notifies the agencies; and

(c) provides, upon a request by the securities division of the regulation and licensing department, a status report of the internal review required pursuant to Paragraph (1) of this subsection.

B. Any delay of a disbursement or transaction as authorized by this section will expire upon the sooner of:

(1) a determination by the broker-dealer or investment adviser that the disbursement or transaction will not result in financial exploitation of the eligible adult; or

(2) fifteen business days after the date on which the broker-dealer or investment adviser first delayed disbursement or transaction, unless either of the agencies requests that the broker-dealer or investment adviser extend the delay, in which case the delay shall expire no more than twenty-five business days after the date on which the broker-dealer or investment adviser first delayed disbursement or transaction unless otherwise terminated or extended by either of the agencies or an order of a court of competent jurisdiction.

C. A court of competent jurisdiction may enter an order extending the delay of the disbursement or transaction or may order other protective relief based on the petition of the director of the securities division of the regulation and licensing department, the director of the adult protective services division of the aging and long-term services department, the broker-dealer or investment adviser that initiated the delay under this section, or other interested party.

## **Chapter 106 Section 6 Laws 2017**

SECTION 6. IMMUNITY FOR DELAYING DISBURSEMENTS OR TRANSACTIONS.--A broker-dealer or investment adviser that, in exercising reasonable care, complies with Section 5 of the Protecting Vulnerable Adults from Financial Exploitation Act and has completed the training required pursuant to Section 7 of that act, shall be immune from any administrative or civil liability that might otherwise arise from such delay in a disbursement or transaction in accordance with this section.

## **Chapter 106 Section 7 Laws 2017**

## SECTION 7. TRAINING.--

A. The director of the securities division of the regulation and licensing department shall promulgate, by rule, training guidelines or a standardized training curriculum that broker-dealers and investment advisers may use. A broker-dealer or investment adviser may develop the broker-dealer's or investment adviser's own training as approved by the director. The training required by this section may include indicators of financial exploitation of an eligible adult and the process for reporting suspected financial exploitation both internally and to the agencies.

B. A broker-dealer or investment adviser shall provide training concerning the financial exploitation of eligible adults to its employees who are required to be registered in New Mexico as agents or investment adviser representatives and who have contact with eligible adults and access to account information on a regular basis and as part of their job.

## **Chapter 106 Section 8 Laws 2017**

SECTION 8. RECORDS.--A broker-dealer or investment adviser shall provide access to or copies of records that are relevant to the suspected or attempted financial exploitation of an eligible adult to the agencies and to law enforcement, either as part of a referral to the agencies, as part of a referral to law enforcement or upon request of the agencies or law enforcement pursuant to an investigation. The records may include historical records as well as records relating to the most recent transaction or transactions that may comprise financial exploitation of an eligible adult. All records made available pursuant to this section shall not be considered a public record as defined in Subsection G of Section 14-2-6 NMSA 1978. Nothing in this provision shall limit or otherwise impede the authority of the director of the securities division of the regulation and licensing department to access or examine the books and records of broker-dealers and investment advisers as otherwise provided by law.

## **Chapter 106 Section 9 Laws 2017**

SECTION 9. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2017.

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HJC/HJC/House Bill 326  
Approved April 6, 2017

# **LAWS 2017, CHAPTER 107**

AN ACT

RELATING TO ARCHITECTURE; REAUTHORIZING AND AMENDING THE ARCHITECTURAL ACT; PROVIDING FOR PENALTIES FOR VIOLATIONS OF THE ARCHITECTURAL ACT.

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

## **Chapter 107 Section 1 Laws 2017**

SECTION 1. Section 61-15-4 NMSA 1978 (being Laws 1931, Chapter 155, Section 3, as amended) is amended to read:

"61-15-4. POWERS AND DUTIES OF THE BOARD.--

A. The board shall hold at least four regular meetings each year. Any board member failing to attend three consecutive regular meetings is automatically removed as a member of the board. A majority of the board members constitutes a quorum.

B. A board member may participate in a meeting of the board by means of a conference telephone or other similar communications equipment when it is otherwise difficult or impossible for the member to attend the meeting in person if:

(1) each member participating by conference telephone can be identified when speaking;

(2) all participants are able to hear each other at the same time;  
and

(3) members of the public attending the meeting are able to hear all board members who speak during the hearing.

C. The board may establish committees to carry out the provisions of the Architectural Act. The board or any committee of the board shall have the power to subpoena any witness, to administer oaths and to take testimony concerning matters within its jurisdiction. It is within the jurisdiction of the board to determine and prescribe by rules the professional and technical qualifications necessary for the practice of architecture in New Mexico. The board shall adopt and have an official seal, which shall be affixed to all certificates of registration granted, and may make rules not inconsistent with law.

D. The board may offer, engage in and promote educational and other activities as it deems necessary to fulfill its duty to promote the public welfare.

E. The board may, for the purpose of protecting the citizens of New Mexico and promoting current architectural knowledge and practice, adopt rules establishing continuing education requirements as a condition of registration renewal.

F. Members of the board shall receive per diem and mileage as provided in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance. All expenses certified by the board as properly and necessarily incurred in the discharge of its duties, including authorized reimbursement and necessary expenses incident to cooperation with like boards of other states, shall be paid by the state treasurer out of the "fund of the board of examiners for architects" on the warrant of the secretary of finance and administration issued upon vouchers signed by the chair or the chair's designee; provided, however, that at no time

shall the total warrants issued exceed the total amount of funds accumulated under the Architectural Act. All money derived from the operation of the Architectural Act shall be deposited with the state treasurer, who shall keep the money in the fund of the board of examiners for architects.

G. The board shall by rule provide for the examinations required for registration. The board shall keep a complete record of all examinations.

H. Upon application for registration, upon a prescribed form and upon payment by the applicant of a fee set by the board, the board shall consider the application and, in cases as herein authorized, shall issue a certificate of registration as an architect to any person who submits evidence satisfactory to the board that the person is fully qualified to practice architecture.

I. It is the duty of the board to report to the district attorney of the district where the offense was committed any criminal violation of the Architectural Act.

J. The board may deny, review, suspend or revoke a registration to practice architecture and may censure, fine, reprimand and place on probation and stipulation any architect in accordance with the Uniform Licensing Act for any cause as stated in the Architectural Act.

K. The board, in cooperation with the state board of licensure for professional engineers and professional surveyors 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 public welfare, the purpose of the committee is to promote and develop the highest professional standards in design, planning and construction and the resolution of ambiguities concerning the professions. The composition of the committee and its duties and powers shall be in accordance with identical resolutions adopted by each board.

L. Pursuant to the notice and hearing requirements of the Uniform Licensing Act, the board may impose a civil penalty in an amount not to exceed seven thousand five hundred dollars (\$7,500) for each violation on any individual found to be engaging in the practice of architecture without being registered pursuant to the Architectural Act."

## **Chapter 107 Section 2 Laws 2017**

SECTION 2. Section 61-15-5 NMSA 1978 (being Laws 1931, Chapter 155, Section 4, as amended) is amended to read:

"61-15-5. ADDITIONAL DUTIES OF THE BOARD.--

A. The board shall keep a record of its proceedings. The records of the board shall be prima facie evidence of the proceedings of the board set forth in the record and a transcript of the record, duly certified by the board under seal, shall be admissible in evidence with the same force and effect as if the original were produced.

B. The board shall keep a register of all applications for registration, which shall show the name, age and residence of each applicant, the date of application, the applicant's place of business, the applicant's educational and other qualifications, whether an examination was required, whether the applicant was rejected, whether a certificate of registration was granted, the date of the action of the board and any other information deemed necessary by the board.

C. Annually, the board shall submit to the governor a report of its transactions of the preceding year accompanied by a complete statement of the receipts and expenditures of the board. The report shall be available to the public.

D. Board records and papers that are of a confidential nature and are not public records include examination material for examinations not yet given, file records of examination problem solutions, letters of inquiry and references concerning applicants, board inquiry forms concerning applicants and investigation files. All data, communications and information acquired by the board relating to actual or potential disciplinary action is confidential and shall not be disclosed except to the extent necessary to fulfill the duties of the board.

E. A roster showing the names and addresses of all registered architects shall be prepared annually by the board and shall be made available to each registered architect and placed on file with the secretary of state. Copies of the roster may be distributed or sold to the public.

F. The board shall, by rule, set application, registration, renewal, examination and other fees.

G. The board may, by rule, set criteria for the training of intern architects."

## **Chapter 107 Section 3 Laws 2017**

SECTION 3. Section 61-15-6 NMSA 1978 (being Laws 1931, Chapter 155, Section 5, as amended) is amended to read:

"61-15-6. REQUIREMENTS FOR REGISTRATION.--

A. To be eligible for registration, a person shall be of good character and repute.

B. An applicant for registration shall submit evidence satisfactory to the board that the applicant is fully qualified to practice architecture in New Mexico.

C. All applicants for registration shall be required to pass any examinations required by the board.

D. All applicants for registration shall be required to complete all forms and affidavits required by the board.

E. An applicant for registration by examination shall have:

(1) a professional degree from an architectural program accredited by the national architectural accreditation board or its equivalent as prescribed by rule;

(2) certified completion of the architectural experience program of the national council of architectural registration boards; and

(3) passed all divisions of the architectural registration examination.

F. A person registered as an architect in another jurisdiction who has been certified by the national council of architectural registration boards may apply for registration without an examination by presenting for review by the board:

(1) a certificate of good standing issued by the national council of architectural registration boards or its equivalent as prescribed by rule;

(2) evidence satisfactory to the board of qualification in comprehensive design as prescribed by rule of the board; and

(3) evidence satisfactory to the board of meeting all of the requirements prescribed by rule of the board.

G. A person registered as an architect in another jurisdiction who has held the registration in a position of responsibility for a period of time as prescribed by the rule of the board and who does not have a certificate issued by the national council of architectural registration boards may apply for registration by presenting evidence of broad experience as an architect, as required by rule of the board, of academic training and work experience directly related to architecture, including evidence satisfactory to the board of qualification in comprehensive design.

H. No sole proprietorship, partnership, corporation, association or other business entity shall be registered under the Architectural Act. No sole proprietorship, partnership, corporation, association or other business entity shall practice or offer to practice architecture in the state except as provided in Subsections I, J and K of this section.

I. Registered architects may practice under the Architectural Act as individuals or through partnerships, associations, corporations or other business entities.

J. In the case of practice through a business entity primarily offering architectural services, at least one of the owners shall be a registered architect under the Architectural Act, and registered architects shall control a majority interest in the business entity. All plans, designs, drawings, specifications or reports issued by or for the business entity for a project physically located within New Mexico shall bear the seal of a registered architect who shall be responsible for such work.

K. In the case of practice through a business entity primarily offering engineering services, registrants under the Architectural Act or licensees under the Engineering and Surveying Practice Act may offer architectural services; provided that:

(1) an architect registered in New Mexico is in responsible charge of the architectural services of the business entity and has the authority to bind the entity by contract;

(2) the architect in responsible charge provides the board with an affidavit documenting the architect's authority;

(3) all plans, designs, drawings, specifications or reports that are involved in the practice and issued by or for the business shall bear the seal and signature of the architect in responsible charge of the work when issued; and

(4) the architect shall notify the board of a termination of the architect's authority.

L. A business entity that offers project delivery through a teaming of architectural and construction services may render architectural services only with an architect in responsible charge who is registered in New Mexico. This provision does not apply to business entities providing services that are exempted by Section 61-15-9 NMSA 1978."

## **Chapter 107 Section 4 Laws 2017**

SECTION 4. Section 61-15-8 NMSA 1978 (being Laws 1931, Chapter 155, Section 7, as amended by Laws 1999, Chapter 263, Section 6 and by Laws 1999, Chapter 272, Section 28) is amended to read:

"61-15-8. EXEMPTIONS--FROM REGISTRATION.--

A. The following are exempt from the provisions of the Architectural Act:

(1) architects who have no established places of business in this state and who are not registered pursuant to the Architectural Act may act as consulting associates of an architect registered under the provisions of the Architectural Act; provided that the architects are registered as architects in another jurisdiction; and

(2) architects acting solely as officers or employees of the United States or any interstate railroad system or architects acting on a federally owned site where architectural services are performed only on that site and are subject to federal jurisdiction.

B. Nothing in the Architectural Act shall prevent a registered architect from employing non-registrants to work under the architect's responsible charge."

## **Chapter 107 Section 5 Laws 2017**

SECTION 5. Section 61-15-9 NMSA 1978 (being Laws 1931, Chapter 155, Section 8, as amended by Laws 1999, Chapter 263, Section 7 and by Laws 1999, Chapter 272, Section 29) is amended to read:

"61-15-9. PROJECT EXEMPTIONS.--

A. The state and its political subdivisions are not exempt from the requirements of the Architectural Act.

B. A person who is not an architect may prepare building plans and specifications, unless the building plans and specifications involve public safety or health, but the work shall be done only on:

(1) single-family dwellings not more than two stories in height;

(2) multiple dwellings not more than two stories in height containing not more than four dwelling units of wood-frame construction; provided that this paragraph shall not be construed to allow a person who is not registered under the Architectural Act to design multiple clusters of up to four dwelling units each to form apartment or condominium complexes where the total exceeds four dwelling units on any lawfully divided lot;

(3) garages or other structures not more than two stories in height that are appurtenant to buildings described in Paragraphs (1) and (2) of this subsection;  
or

(4) nonresidential buildings, as defined in applicable state or local building codes, unless the building code official having jurisdiction has found that the submission of plans, drawings, specifications or calculations prepared and designed by an architect or engineer licensed by the state is necessary to obtain compliance with minimum standards governing the preparation of building plans and specifications adopted by the construction industries division of the regulation and licensing department. The construction industries division shall set, by rule, minimum standards for preparation of building plans and specifications pursuant to this paragraph.

C. Nothing in the Architectural Act shall require the state or a political subdivision of the state to secure the services of an architect or engineer for a public work project that consists of repair, replacement or remodeling if the alteration does not affect structural or life safety features of a building and does not require the issuance of a building permit under any applicable code.

D. A New Mexico registered professional engineer who has complied with all the laws of New Mexico relating to the practice of engineering has a right to engage in the incidental practice, as defined by rule, of activities properly classified as architectural services; provided that the engineer does not make any representation as being an architect or as performing architectural services; and further provided that the engineer performs only that part of the work for which the engineer is professionally qualified and uses qualified professional engineers, architects or others for those portions of the work in which the contracting professional engineer is not qualified. The engineer shall assume all responsibility for compliance with all laws, codes, rules and ordinances of the state or its political subdivisions pertaining to documents bearing an engineer's professional seal."

## **Chapter 107 Section 6 Laws 2017**

SECTION 6. Section 61-15-10 NMSA 1978 (being Laws 1979, Chapter 362, Section 8, as amended) is amended to read:

"61-15-10. VIOLATIONS--PENALTIES.--

A. Any person who knowingly uses a forged architectural registration seal on any document for the purpose of permitting the constructing of any building for human habitation or occupancy is guilty of a fourth degree felony, punishable pursuant to Section 31-18-15 NMSA 1978.

B. Each of the following acts committed by any person constitutes a misdemeanor, punishable pursuant to Section 31-19-1 NMSA 1978:

(1) willfully forging or giving false evidence of any kind to the board or any board member for the purpose of obtaining a certificate of registration as an architect;

(2) using or attempting to use an expired, suspended or revoked certificate of registration as an architect;

(3) using or permitting another to use the person's official architect's seal to stamp or seal any documents that have not been prepared either by the architect or the architect's responsible charge;

(4) engaging or offering to engage in the practice of architecture, unless exempted or duly registered to do so under the Architectural Act;

(5) using a designation tending to imply to the public that the person is an architect unless:

(a) the person is duly registered to do so under the provisions of the Architectural Act;

(b) the title containing the designation is allowed by rule of the board; or

(c) the title containing the designation does not imply that the person using the designation, when describing occupation, business name or services, is offering to perform architectural services; or

(6) procuring, aiding or abetting any violation of the provisions of the Architectural Act or the rules adopted by the board.

C. If, after a disciplinary hearing, the board determines that, based on the evidence, a person committed a violation pursuant to the Architectural Act, the board, in addition to any other sanction, shall issue an order that imposes a civil penalty not to exceed seven thousand five hundred dollars (\$7,500) for each violation on the person. In determining the amount of the civil penalty, the board shall consider:

(1) the seriousness of the violation;

(2) the degree of harm inflicted on individuals or the public;

(3) the economic benefit received by the person due to the violation;

(4) the person's history of violations; and

(5) any other aggravating or mitigating factors relating to the violation."

## **Chapter 107 Section 7 Laws 2017**

SECTION 7. Section 61-15-12 NMSA 1978 (being Laws 1979, Chapter 362, Section 9, as amended) is amended to read:

"61-15-12. DISCIPLINARY ACTIONS.--

A. In accordance with the provisions of the Uniform Licensing Act, the board may refuse to issue, may suspend or may revoke any certificate of registration as an architect, and the board may impose disciplinary conditions, including a letter of censure or reprimand, a civil penalty pursuant to Section 61-15-10 NMSA 1978, probation, peer review, remedial education and testing and other conditions as deemed necessary by the board to promote the public welfare, upon satisfactory proof being made to the board that the registrant has:

(1) engaged in any fraud or deceit in obtaining a certificate of registration;

(2) made a false statement under oath or a false affidavit to the board;

(3) engaged in gross negligence, incompetency or misconduct in the practice of architecture as set forth by rule;

(4) stamped with the registrant's official seal any plans, specifications, plats or reports in violation of the Architectural Act;

(5) practiced architecture without a valid and current registration in the jurisdiction in which the practice took place;

(6) made any representation as being an architect without having a valid and current certificate of registration as an architect in the jurisdiction in which the representation took place;

(7) violated any provisions of the Architectural Act or the rules adopted by the board;

(8) refused to accept or to respond to a certified mail communication from the board;

(9) failed to provide the board or its representatives in a timely manner all documentation or information in the registrant's possession or knowledge that has been requested by the board for the purposes of investigation of an alleged violation of the Architectural Act or the rules adopted by the board;

(10) procured, aided or abetted a violation of the Architectural Act or the rules adopted by the board;

(11) failed to comply with the minimum standards of the practice of architecture;

(12) habitually or excessively used intoxicants or controlled substances; or

(13) failed to report to the board any adverse actions taken against the registrant by another jurisdiction, any professional organization, any governmental or law enforcement agency or any court for an act or conduct that would constitute grounds for actions as provided by this section.

B. The board may deny access to examination, may refuse to issue, may suspend or may revoke any certificate of registration as an architect:

(1) for any applicant found to have violated any provision of the Architectural Act or the rules adopted by the board; or

(2) for any registrant or applicant who is convicted of a felony.

C. Disciplinary proceedings may be instituted by any person, shall be instituted by sworn complaint 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 the costs for the copy.

D. The board may modify any prior order of revocation, suspension or refusal to issue a certificate of registration of an architect, but only upon a finding by the board that there no longer exist any grounds for disciplinary action; provided, however, that any cessation of the practice of architecture for twelve months or more shall require the architect to undergo such additional examination as the board determines necessary.

E. Nothing in the Architectural Act shall be construed as requiring the board to report, for the institution of proceedings, minor violations of that act; provided that the board, after an informal hearing, determines that the public interest will be adequately served by a suitable written notice or warning or by the suspension of the offender's license or certificate of registration for a period not to exceed thirty days.

F. The applicant or registrant shall be liable for all costs of disciplinary proceedings unless exonerated and shall be liable for all costs associated with monitoring compliance with any disciplinary action."

## **Chapter 107 Section 8 Laws 2017**

SECTION 8. 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, 2023 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, 2024. Effective July 1, 2024, the Architectural Act is repealed."

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House Bill 330, aa  
Approved April 6, 2017

## **LAWS 2017, CHAPTER 108**

### AN ACT

RELATING TO LICENSING; PROVIDING FOR AN EXEMPTION FROM A COSMETOLOGY LICENSE FOR EYEBROW THREADING.

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

### **Chapter 108 Section 1 Laws 2017**

SECTION 1. Section 61-17A-2 NMSA 1978 (being Laws 1993, Chapter 171, Section 2, as amended) is amended to read:

"61-17A-2. DEFINITIONS.--As used in the Barbers and Cosmetologists Act:

A. "barber" means a person, other than a student, who for compensation engages in barbering;

B. "board" means the board of barbers and cosmetologists;

C. "cosmetologist" means a person, other than a student, who for compensation engages in cosmetology;

D. "electrologist" means a person, other than a student, who for compensation removes hair from or destroys hair on the human body through the use of an electric current applied to the body with a needle-shaped electrode or probe;

E. "enterprise" means a business venture, firm or organization;

F. "establishment" means an immobile beauty shop, barber shop, electrology clinic, salon or similar place of business in which cosmetology, barbering, eyebrow threading or electrolysis is performed;

G. "esthetician" means a person, other than a student, who for compensation:

(1) uses cosmetic preparations, including makeup applications, antiseptics, powders, oils, clays or creams, for the purpose of preserving the health and beauty of the skin and body;

(2) massages, cleans, stimulates or manipulates the skin for the purpose of preserving the health and beauty of the skin and body; or

(3) performs activities similar to the activities described in Paragraph (1) or (2) of this subsection on any part of the body of a person;

H. "eyebrow threading" means a method of hair removal in which a thin thread is doubled, twisted and then rolled over areas of unwanted hair, plucking the hair at the follicle level;

I. "manicurist-pedicurist" means a person, other than a student, who for compensation performs work on the nails of a person and applies nail extensions or products to the nails for the purpose of strengthening or preserving the health and beauty of the hands or feet;

J. "sanitation" means the maintenance of sanitary conditions to promote hygiene and the prevention of disease through the use of chemical agents or products;

K. "school" means a public or private instructional facility approved by the board that teaches cosmetology or barbering; and

L. "student" means a person enrolled in a school to learn or be trained in cosmetology, barbering or electrolysis."

## **Chapter 108 Section 2 Laws 2017**

SECTION 2. Section 61-17A-22 NMSA 1978 (being Laws 1993, Chapter 171, Section 22) is amended to read:

"61-17A-22. EXEMPTIONS.--The following persons are exempt from the provisions of the Barbers and Cosmetologists Act while in the discharge of their professional duties:

A. persons licensed by the law of this state to practice medicine and surgery or chiropractic;

B. commissioned medical or surgical officers of the United States army, navy or marine hospital service;

- C. registered nurses;
- D. funeral service practitioners; and
- E. persons providing only eyebrow-threading services."

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House Bill 341, aa  
Approved April 6, 2017

## **LAWS 2017, CHAPTER 109**

### **AN ACT**

RELATING TO MOTOR CARRIER SERVICES; REMOVING APPLICABILITY OF THE MOTOR CARRIER ACT TO COMMUTER SERVICES.

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

### **Chapter 109 Section 1 Laws 2017**

SECTION 1. Section 65-2A-3 NMSA 1978 (being Laws 2003, Chapter 359, Section 3, as amended by Laws 2013, Chapter 73, Section 2 and by Laws 2013, Chapter 77, Section 2) is amended to read:

"65-2A-3. DEFINITIONS.--As used in the Motor Carrier Act:

A. "ability to provide certificated service" means that an applicant or carrier can provide reasonably continuous and adequate transportation service of the type required by its application or its operating authority in the territory authorized or sought to be authorized;

B. "ambulance service" means the intrastate transportation of sick or injured persons in an ambulance meeting the standards established by the commission under the Ambulance Standards Act;

C. "amendment of a certificate or permit" means a permanent change in the type or nature of service, territory or terms of service authorized by an existing certificate or permit;

D. "antitrust laws" means the laws of this state relating to combinations in restraint of trade;

E. "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 unified carrier registration system;

F. "cancellation of an operating authority" means the voluntary, permanent termination of all or part of an operating authority;

G. "certificate" means the authority issued by the commission to a person that authorizes the person to offer and provide a certificated service as a motor carrier;

H. "certificated service" means one of the following transportation services:

- (1) an ambulance service;
- (2) a household goods service;
- (3) a shuttle service;
- (4) a specialized passenger service; or
- (5) a taxicab service;

I. "change in a certificate or permit" means the voluntary amendment, cancellation, change in form of legal entity of the holder, lease, reinstatement, transfer or voluntary suspension of a certificate or permit;

J. "charter service" means the compensated transportation of a group of persons in a motor vehicle who, pursuant to a common purpose, under a single contract, at a fixed charge for the motor vehicle and driver, have acquired the exclusive use of the motor vehicle to travel together under an itinerary either specified in advance or modified after having left the place of

origin;

K. "commission" means the public regulation commission;

L. "commuter service" means the intrastate transportation of passengers in motor vehicles having a capacity of seven to fifteen persons, including the driver, provided to a volunteer-driver commuter group that shares rides to and from the workplace or training site, where participation is incidental to the primary work or training-related purposes of the commuter group, and where the fees paid by the participants do not exceed the costs for transportation, including gas and other trip-related expenses;

M. "continuous and adequate service" means:

(1) for full-service carriers, reasonably continuous availability, offering and provision of transportation services through motor vehicles, equipment and resources satisfying safety and financial responsibility requirements under the Motor Carrier Act and commission rule, that are reasonably adequate to serve the entire full-service territory authorized in the certificate, with reasonable response to all requests for service for the nature of passenger service authorized, based on the nature of public need, expense and volume of demand for the type of service authorized during seasonal periods; and

(2) for general-service carriers, reasonably continuous availability and offering of transportation services through motor vehicles, equipment and resources satisfying safety and financial responsibility requirements under the Motor Carrier Act and commission rule for the nature of the transportation service authorized in the certificate;

N. "contract driver" means a person who contracts with a motor carrier as an independent contractor to drive a vehicle pursuant to an operating authority issued to the motor carrier;

O. "endorsement" means the specification in a certificate of the territory in which the carrier is authorized to operate, the nature of service to be provided by a certificated passenger service and any additional terms of service that may be reasonably granted or required by the commission for the particular authority granted;

P. "fare" means the full compensation charged for transportation by a tariffed passenger service;

Q. "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;

R. "fitness to provide a transportation service" means that an applicant or carrier complies with state law as provided in the Motor Carrier Act or by rule of the commission;

S. "for hire" means that transportation is offered or provided to the public for remuneration, compensation or reward of any kind, paid or promised, either directly or indirectly;

T. "full service" means one of the following certificated passenger services that are endorsed and required to meet specific standards for the provision of service to or throughout a community:

(1) an ambulance service;

(2) a scheduled shuttle service; or

(3) a municipal taxicab service;

U. "general service" means one of the following certificated services that provides transportation services of the type authorized, but is not required to provide unprofitable or marginally profitable carriage:

(1) a general shuttle service;

(2) a general taxicab service;

(3) a specialized passenger service; or

(4) a household goods service;

V. "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;

W. "holder of an operating authority" means the grantee of the operating authority or a person that currently holds all or part of the right to exercise the authority through a transfer by operation of law;

X. "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 to or from a factory or store, other than property the householder has purchased to use in the householder's dwelling that is transported at the request of, and the transportation charges are paid to the carrier by, the householder;

Y. "household goods service" means the intrastate transportation, packing and storage of household goods for hire;

Z. "interested person" means a motor carrier operating in the territory involved in an application or grant of temporary authority, a person affected by an order of the commission or a rule proposed for adoption by the commission or a person the commission may deem interested in a particular matter;

AA. "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;

BB. "intrastate motor carrier" means a motor carrier offering or providing transportation for hire by motor vehicle between points and places in the state;

CC. "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;

DD. "lease of a certificate or permit" means an agreement by which the holder of a certificate or permit grants to another person the exclusive right to use all or part of the certificate or permit for a specified period of time in exchange for consideration, but does not include an agreement between a motor carrier and its contract driver;

EE. "lease of equipment" means an agreement whereby a motor carrier obtains equipment owned by another person for use by the motor carrier in the exercise of its operating authority, but does not include an agreement between a motor carrier and its contract driver;

FF. "motor carrier" or "carrier" means a person offering or providing transportation of persons, property or household goods for hire by motor vehicle, whether in intrastate or interstate commerce;

GG. "motor carrier organization" means an organization approved by the commission to represent motor carriers and to discuss and propose industry interests and matters other than rates, as well as discussing and proposing rates and other matters pertaining to statewide tariffs;

HH. "motor vehicle" or "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, household goods or persons, but does not include a vehicle, locomotive or car operated exclusively on rails;

II. "nature of service" means the type of transportation service to be provided by a certificated passenger service as set forth in Subsection A of Section 65-2A-8 NMSA 1978;

JJ. "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;

KK. "notice period" means the period of time specified in Section 65-2A-6 NMSA 1978 following publication of notice during which the commission may not act;

LL. "objection" means a document filed with the commission by an interested person or a member of the public during the notice period for an application for a certificate or a permit, or for amendment, lease or transfer of a certificate or permit, that expresses an objection to, or provides information concerning, the matter before the commission;

MM. "operating authority" means a certificate, permit, warrant, unified carrier registration or temporary authority issued by the commission to a motor carrier;

NN. "passenger" means a person other than the driver of a motor vehicle transported in a motor vehicle;

OO. "passenger service" means a transportation service offered or provided for the transportation of passengers by motor vehicle;

PP. "permit" means the authority issued by the commission to a person that authorizes the person to offer and provide a permitted service as a motor carrier;

QQ. "permitted service" means the intrastate transportation of passengers or household goods for hire pursuant to a contract between the motor carrier and another person;

RR. "predatory rate or practice" means the knowing and willful requirement by a carrier that a passenger or shipper pay a rate, fare or other charge in excess of the rates and charges or in a manner other than in accordance with terms of service as provided by law, as provided in a tariff governing the carrier or as provided in a preexisting written contract regarding the carriage, when such charge is made:

(1) by a passenger carrier as a prior condition for the provision of transportation or continued transportation of a passenger; or

(2) as a prior condition by a towing service carrier performing nonconsensual tows or a household goods service carrier for delivery of, release of or access to vehicles or household goods by the shipper or registered owner;

SS. "process" means, in the context of legal process, an order, subpoena or notice issued by the commission or an order, subpoena, notice, writ or summons issued by a court;

TT. "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;

UU. "protest" means a document in the form of a pleading filed with the commission by a full-service carrier that expresses an objection to an application before the commission for a certificate for passenger service or for a permit for ambulance service or for passenger service pursuant to a public-charge contract or for amendment, lease or transfer of such a certificate or permit;

(1) when the territory involved in the application includes all or a portion of the full-service territory of the protesting carrier; and

(2) for a carrier other than an ambulance service carrier, when the grant of the application will, or presents a reasonable potential to, impair, diminish or otherwise adversely affect its existing provision of full-service passenger service to the public within its full-service territory;

VV. "public-charge contract" means a contract or contractual arrangement between a motor carrier and a third party for passenger service that requires or allows the motor carrier to charge passengers a fare for the transportation service to be provided pursuant to the contract;

WW. "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;

XX. "record of a motor carrier" means an account, correspondence, memorandum, tape, disc, paper, book or transcribed information, or electronic data information, including the electronic hardware or software necessary to access the electronic data information in its document form, regarding the operation of a motor carrier;

YY. "registration year" means a calendar year;

ZZ. "revocation" means the involuntary, permanent termination of all or part of an operating authority ordered by the commission for cause;

AAA. "shipper" means a person who consigns or receives property or household goods for transportation;

BBB. "shuttle service" means the intrastate transportation of passengers for hire pursuant to a set fare for each passenger between two or more specified terminal points or areas and includes both scheduled shuttle service and general shuttle service as follows:

(1) "scheduled shuttle service" means a shuttle service that transports passengers to and from an airport both through prior arrangement and through presentment at terminal locations, on the basis of a daily time schedule filed with the commission, that must be met in a timely fashion with a vehicle present at the terminal location regardless of the number of passengers carried on any run, if any, and that includes general shuttle service; and

(2) "general shuttle service" means a shuttle service that is not required to operate on a set schedule, that may optionally use a grid map to specify

distant or adjacent terminal areas and that is not required to accept passengers other than pre-arranged passengers;

CCC. "specialized passenger service" means the intrastate transportation for hire of passengers with special physical needs by specialized types of vehicles, or for specialized types of service to the public or community, as the commission may by rule provide;

DDD. "tariff" means a document filed by a tariffed service carrier 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 of service and applicable time schedules relating to those services;

EEE. "tariffed service" means one of the following transportation services authorized by the commission for the provision of service on the basis of rates and terms of service contained in a tariff approved by the commission:

- (1) an ambulance service;
- (2) a household goods service;
- (3) a shuttle service;
- (4) a specialized passenger service;
- (5) a taxicab service; or
- (6) a towing service performing nonconsensual tows;

FFF. "taxicab association" means an association, cooperative or other legal entity whose members are taxicab drivers, which shall be treated in the same manner as any other applicant with regard to applications for a certificate for general taxicab service or for full-service municipal taxicab service and which shall be subject in the same manner to all other provisions, requirements and limitations of the Motor Carrier Act;

GGG. "taxicab service" means intrastate transportation of passengers for hire in a motor vehicle having a capacity of not more than eight persons, including the driver, for which the passenger or other person engaging the vehicle is allowed to specify not only the origin and destination points of the trip but also, within reason, the route taken by the vehicle, any intermediate stop, any optional waiting at a stop and any other passengers transported during the trip and that charges a fare for use of the vehicle primarily on the basis of a drop-flag fee, cumulative mileage and cumulative wait time through a taxicab meter used to cumulate and display the fare to the passenger and includes both municipal taxicab service and general taxicab service, as follows:

(1) "municipal taxicab service" means a taxicab service that deploys vehicles at all times of the day and year, is centrally dispatched and reasonably responds to all calls for service within its endorsed full-service territory regardless of profitability of the individual trip, in addition to the transportation service provided by a general taxicab service; and

(2) "general taxicab service" means a taxicab service that need not be dispatched, that may pick up on-demand passengers through flagging or at a taxicab stand or queue, that need not deploy vehicles in any particular manner and that may charge for trips to destination points or places outside of the taxicab service's certificated territories on the basis of a set fare;

HHH. "terms of service" means all terms, aspects, practices, limitations, conditions and schedules of service other than specific rate amounts pertaining to a tariffed service;

III. "towing service" means the use of specialized equipment, including repossession services using towing equipment, to transport or store:

(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;

JJJ. "transfer of a certificate or permit" means a permanent conveyance of all or part of a certificate or permit;

KKK. "transfer by operation of law" means that all or a part of a grantee's interest in an operating authority passes to a fiduciary or other person by application of established rules of law;

LLL. "transportation service" means transportation subject to the jurisdiction of the commission, offered or provided by a motor carrier, that requires the carrier to obtain an operating authority from the commission under the Motor Carrier

Act, regardless of whether the motor carrier has obtained appropriate operating authority from the commission;

MMM. "verification" means a notarized signature verifying the contents of the document or other filing or a signature verifying the contents of the document or other filing under penalty of perjury, expressly providing that the signatory swears or affirms the contents under penalty of perjury as provided in Subsection A of Section 65-2A-33 NMSA 1978;

NNN. "voluntary suspension" means the commission-authorized cessation of use of all or part of a certificate or permit at the request of the holder for a specified period of time, not to exceed twelve consecutive months;

OOO. "warrant" means the authority issued by the commission to a person that authorizes the person to offer and provide a warranted service as a motor carrier;

PPP. "warranted service" means one of the following intrastate transportation services offered or provided for hire:

- (1) a charter service;
- (2) a property transportation service; or
- (3) a towing service; and

QQQ. "weight-bumping" means the knowing and willful statement of a fraudulent weight on a shipment of household goods."

## **Chapter 109 Section 2 Laws 2017**

SECTION 2. Section 65-2A-12 NMSA 1978 (being Laws 2003, Chapter 359, Section 12, as amended by Laws 2013, Chapter 73, Section 11 and by Laws 2013, Chapter 77, Section 11) is amended to read:

"65-2A-12. WARRANTS.--

A. The commission shall issue a warrant that allows a person to provide warranted service as a charter service, towing service or motor carrier of property if the commission finds that the applicant is in compliance with the financial responsibility and safety requirements of the Motor Carrier Act and the rules of the commission.

B. A towing service carrier performing nonconsensual tows is subject to tariff rates and terms of service. A towing service carrier performing nonconsensual tows shall not use the same motor vehicles, equipment and facilities used by another warranted towing service carrier performing nonconsensual tows.

C. A warrant shall not be transferred or leased to another person.

D. The commission may without notice or a public hearing cancel a warrant if the owner fails to operate under the warrant for twelve consecutive months or fails to provide proof of financial responsibility as required by the commission for four consecutive months."

## **Chapter 109 Section 3 Laws 2017**

SECTION 3. Section 65-2A-19 NMSA 1978 (being Laws 2003, Chapter 359, Section 19, as amended by Laws 2013, Chapter 73, Section 17 and by Laws 2013, Chapter 77, Section 17) is amended to read:

"65-2A-19. SAFETY REQUIREMENTS FOR MOTOR VEHICLES AND DRIVERS.--

A. A motor carrier shall provide safe and adequate service, equipment and facilities for the rendition of transportation services in this state.

B. The commission shall prescribe safety requirements for drivers and for motor vehicles weighing twenty-six thousand pounds or less or carrying fifteen or fewer persons, including the driver, used by intrastate motor carriers operating in this state. The commission may prescribe additional requirements related to safety, including driver safety training programs, vehicle preventive maintenance programs, inquiries regarding the safety of the motor vehicles and drivers employed by a motor carrier, and the appropriateness of the motor vehicles and equipment for the transportation services to be provided by the motor carrier.

C. The New Mexico state police division of the department of public safety may immediately order, without notice or a public hearing, a motor vehicle to be taken out of service for violation of a federal or state law or rule relating to safety if the violation would endanger the public health or safety.

D. The commission shall implement rules requiring carriers to obtain criminal background reports for all employed or contract drivers of certificated service carriers and for all other persons employed by certificated household goods service carriers who enter private dwellings in the course of household goods service."

## **Chapter 109 Section 4 Laws 2017**

SECTION 4. Section 65-2A-38 NMSA 1978 (being Laws 2003, Chapter 359, Section 38, as amended by Laws 2013, Chapter 73, Section 32 and by Laws 2013, Chapter 77, Section 32) is amended to read:

"65-2A-38. EXEMPTIONS.--The Motor Carrier Act shall not apply to:

A. school buses, provided that school buses shall be subject to applicable school bus safety provisions established by the state transportation director;

B. United States mail carriers, unless they are engaged in other business as motor carriers of persons or household goods;

C. hearses, funeral coaches or other motor vehicles belonging to or operated in connection with the business of a funeral service practitioner licensed by the state;

D. a county or municipal public bus transportation system;

E. private carriers; or

F. commuter services."

## **Chapter 109 Section 5 Laws 2017**

SECTION 5. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2017.

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House Bill 345, aa  
Approved April 6, 2017

## **LAWS 2017, CHAPTER 110**

AN ACT

RELATING TO FINANCIAL INSTITUTIONS; LIMITING FEES AND CHARGES FOR CERTAIN INSTALLMENT LOANS; PROVIDING FOR REPORTING TO CREDIT AGENCIES; AMENDING CHAPTER 56, ARTICLE 8 NMSA 1978, THE NEW MEXICO SMALL LOAN ACT OF 1955 AND THE NEW MEXICO BANK INSTALLMENT LOAN ACT OF 1959; REPEALING SECTIONS OF THE NEW MEXICO SMALL LOAN ACT OF 1955; CREATING THE FINANCIAL LITERACY FUND; MAKING AN APPROPRIATION.

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

## **Chapter 110 Section 1 Laws 2017**

SECTION 1. Section 56-8-9 NMSA 1978 (being Laws 1957, Chapter 209, Section 1, as amended) is amended to read:

"56-8-9. EXCESSIVE CHARGES PROHIBITED--APPLICABILITY OF MAXIMUM RATES--DEFINITION.--

A. Unless otherwise provided by law, no person, corporation or association, directly or indirectly, shall take, reserve, receive or charge any interest, discount or other advantage for the loan of money or credit or the forbearance or postponement of the right to receive money or credit except at the rates permitted in Sections 56-8-1 through 56-8-21 NMSA 1978.

B. No provision of law prescribing maximum rates of interest that may be charged in any transaction shall apply to a transaction in which a corporation, limited liability corporation or other business entity is a debtor, regardless of the purpose for which the corporation was formed and regardless of the fact that an individual is codebtor, endorser, guarantor, surety or accommodation party. No corporation or its codebtor, endorser, guarantor, surety or accommodation party shall have a cause of action or affirmatively plead, counterclaim, set off or set up the defense of usury in any action to recover damages or enforce a remedy on any obligation executed by the corporation, and no civil or criminal penalty that would otherwise be applicable except as provided in Sections 30-43-1 through 30-43-5 NMSA 1978 shall apply on any obligation executed by the corporation.

C. A lender may, in the case of business or commercial loans for business or commercial purposes in the amount of five hundred thousand dollars (\$500,000) or more, take, receive, reserve or charge on any loan or discount made, or upon any note, bill of exchange or other evidence of debt, interest at a rate agreed to by the parties.

D. In addition to the maximum interest or discount that a lender is permitted to charge by law, the lender may charge, take, reserve or receive a premium or points in an amount up to but not exceeding three percent of the face amount of the loan on interim construction loans. The lender may charge and require the borrower to pay the premium upon execution of the loan agreement, whether the proceeds are delivered to the borrower immediately or whether there are to be obligatory or permissive future advances. The lender shall not be required to refund this charge in the event of prepayment of the obligation. For the purposes of this section,

"interim construction loan" means a loan secured by a first mortgage and used by the borrower primarily for financing the construction of buildings, structures or improvements on or to the real property on which the first mortgage has been taken.

E. A lender may charge, take, reserve or receive points or a premium on any loan secured by real property; provided the points or premium together with the interest or discount charged, taken, reserved or received do not exceed the maximum interest or discount permitted by law. The lender shall not be required to refund this charge in the event of prepayment even if the prepayment would result in a higher charge to the borrower than permitted by law.

F. A loan in an amount equal to five thousand dollars (\$5,000) or less shall be made only pursuant to the New Mexico Bank Installment Loan Act of 1959 or the New Mexico Small Loan Act of 1955."

## **Chapter 110 Section 2 Laws 2017**

SECTION 2. Section 58-7-1 NMSA 1978 (being Laws 1959, Chapter 327, Section 1) is amended to read:

"58-7-1. SHORT TITLE.--Chapter 58, Article 7 NMSA 1978 may be cited as the "New Mexico Bank Installment Loan Act of 1959"."

## **Chapter 110 Section 3 Laws 2017**

SECTION 3. Section 58-7-3 NMSA 1978 (being Laws 1995, Chapter 190, Section 15) is amended to read:

"58-7-3. LOANS COVERED BY ACT.--

A. The New Mexico Bank Installment Loan Act of 1959 applies to a loan that is a precomputed loan repayable in installments and that is clearly identified on the loan documents as being made under that act.

B. A loan in an amount equal to five thousand dollars (\$5,000) or less shall be made only pursuant to the New Mexico Bank Installment Loan Act of 1959 or the New Mexico Small Loan Act of 1955.

C. The provisions of this section shall not apply to a federally insured depository institution."

## **Chapter 110 Section 4 Laws 2017**

SECTION 4. Section 58-7-3.1 NMSA 1978 (being Laws 1983, Chapter 96, Section 1) is amended to read:

"58-7-3.1. PRECOMPUTED LOAN.--In a precomputed loan transaction, the interest charge shall be calculated on the assumption that all scheduled payments will be made when due, and the effect of prepayment is governed by the provisions of rebate upon prepayment in Section 58-7-5 NMSA 1978."

## **Chapter 110 Section 5 Laws 2017**

SECTION 5. Section 58-7-6 NMSA 1978 (being Laws 1959, Chapter 327, Section 6, as amended) is amended to read:

"58-7-6. PERMITTED CHARGES--LIMITATION ON PRESENTMENT.--

A. No amount, other than the total finance charge, which consists solely of interest and a fully earned processing fee not to exceed the lesser of two hundred dollars (\$200) or ten percent of the principal, shall be charged or contracted for, directly or indirectly, on or in connection with any such installment loan except as follows:

(1) delinquency charges not to exceed five cents (\$.05) for each one dollar (\$1.00) of each installment more than ten days in arrears; provided that the total of delinquency charges on any such installment shall not exceed ten dollars (\$10.00) and that only one delinquency charge shall be made on any one installment regardless of the period during which the installment remains unpaid;

(2) the lender may charge for only the actual cost of any insurance; provided, however, all insurance shall be written by companies licensed to operate within the state and at rates no higher than those approved by the superintendent of insurance; and provided further that the lender shall not require any insurance to be written or provided by or through any particular agent, broker or insurer as a condition to making the loan but shall, at the borrower's option, permit the insurance to be procured from any reputable insurer or through any reputable agent authorized by law to provide it;

(3) in the event that a borrower fails to maintain in effect any insurance required in connection with a loan transaction, the lender may purchase the required insurance or lender's single interest insurance covering the lender's interest in the property, and the cost of that insurance shall be added to the loan and may accrue interest as provided for in the New Mexico Bank Installment Loan Act of 1959;

(4) such amounts as are necessary to reimburse the lender for fees paid to a public officer for filing, recording or releasing any instrument or lien;

(5) if a loan under the New Mexico Bank Installment Loan Act of 1959 is secured and if the borrower fails to pay any governmental or other levy arising after the date of the loan that would create a lien superior to the lien of the lender on the property standing as security, the lender, at the lender's option, may pay the levy and add the amount so paid to the balance due from the borrower;

(6) the actual expenditures, including reasonable attorney fees, for legal process or proceedings to collect any such installment loan; provided, however, that no attorney fees are permitted where the loan is referred for collection to an attorney who is a salaried employee of the holder of the contract; and

(7) the actual cost of charges incurred in making a real estate loan secured by a mortgage on real estate, including the charges for an abstract of title, title examination, title insurance premiums, property survey, appraisal fees, notary fees,

preparation of deeds, mortgages or other documents, escrow charges, credit reports and filing and recording fees.

B. If there are insufficient funds to pay a check or other type of debit on the date of presentment by the lender, a check or debit authorization request shall not be presented to a financial institution by a lender for payment more than one time unless the consumer agrees in writing, after a check or other type of debit has been dishonored, to one additional presentment or deposit.

C. The charges permitted under this section may be added to the balance due from the borrower."

## **Chapter 110 Section 6 Laws 2017**

SECTION 6. Section 58-7-7 NMSA 1978 (being Laws 1959, Chapter 327, Section 8, as amended) is amended to read:

### **"58-7-7. RESTRICTIONS.--**

A. No lender shall make a loan pursuant to the New Mexico Bank Installment Loan Act of 1959 to a borrower who is also indebted to that lender under the New Mexico Small Loan Act of 1955 unless the loan made under the New Mexico Small Loan Act of 1955 is paid and released at the time the loan is made.

B. No lender other than a federally insured depository institution shall make a loan pursuant to the New Mexico Bank Installment Loan Act of 1959 if a loan has an initial stated maturity of less than one hundred twenty days.

C. No lender other than a federally insured depository institution shall make a loan pursuant to the New Mexico Bank Installment Loan Act of 1959 unless the loan is repayable in a minimum of four substantially equal installment payments of principal and interest.

D. No lender, other than a federally insured depository institution, shall make a loan pursuant to the New Mexico Bank Installment Loan Act of 1959 that has an annual percentage rate greater than one hundred seventy-five percent, calculated pursuant to 12 CFR Part 1026, known as "Regulation Z".

E. The provisions of Subsections B and C of this section shall not apply to refund anticipation loans. As used in this subsection, "refund anticipation loan" means a loan that is secured by or that the creditor arranges or expects to be repaid, directly or indirectly, from the proceeds of the consumer's federal or state personal income tax refunds or tax credits, including any sale, assignment or purchase of a tax refund or tax credit at a discount or for a fee."

## **Chapter 110 Section 7 Laws 2017**

SECTION 7. Section 58-7-8 NMSA 1978 (being Laws 1959, Chapter 327, Section 9) is amended to read:

"58-7-8. PENALTIES AND FORFEITURES.--

A. Any person, corporation or association willfully violating any of the provisions of the New Mexico Bank Installment Loan Act of 1959 is guilty of a misdemeanor and upon conviction shall be fined not less than one hundred dollars (\$100) or more than five thousand dollars (\$5,000) or imprisoned for not more than six months or both, in the discretion of the court.

B. The taking, receiving or reserving of a rate of charge, discount or advantage greater than allowed by the New Mexico Bank Installment Loan Act of 1959, when knowingly done, is deemed a forfeiture of the entire amount of the rate of charge or advantage that the note, bill or other evidence of debt carries with it or that has been agreed to be paid on it. In case the greater rate of charge has been paid, the person by whom it has been paid or the person's legal representatives may recover by civil action twice the amount of the rate of charge paid from the person, corporation or association taking or receiving it, provided that the action is commenced within two years from the time the transaction occurred.

C. A violation of the provisions of the New Mexico Bank Installment Loan Act of 1959, which violation consists of a false or misleading oral or written representation of any kind knowingly made in the extension of credit that may, tends to or does deceive or mislead any person to whom the extension of credit is made, constitutes an unfair or deceptive trade practice pursuant to the Unfair Practices Act."

## **Chapter 110 Section 8 Laws 2017**

SECTION 8. Section 58-7-9 NMSA 1978 (being Laws 1959, Chapter 327, Section 10, as amended) is amended to read:

"58-7-9. CONSTRUCTION.--

A. None of the provisions of the New Mexico Small Loan Act of 1955 are amended or repealed by the New Mexico Bank Installment Loan Act of 1959."

B. None of the provisions of the New Mexico Bank Installment Loan Act of 1959 apply to the assignment or purchase of retail installment contracts originated under the provisions of Sections 58-19-1 through 58-19-14 NMSA 1978 or originated under the provisions of Sections 56-1-1 through 56-1-15 NMSA 1978.

C. In the event of a conflict between a requirement of the New Mexico Bank Installment Loan Act of 1959 and a requirement of the Home Loan Protection Act, the requirement of the Home Loan Protection Act shall control.

D. As used in the New Mexico Bank Installment Loan Act of 1959:

(1) "year" means three hundred sixty-five days;

(2) "month" means one-twelfth of a year; and

(3) "consumer reporting agency" means any person that, for monetary fees or dues or on a cooperative nonprofit basis, regularly engages in the practice of assembling or evaluating, and maintaining, for the purpose of furnishing consumer reports to third parties bearing on a consumer's creditworthiness, credit standing or credit capacity, each of the following regarding consumers:

(a) public record information; or

(b) credit account information from persons who furnish that information regularly and in the ordinary course of business.

E. The director of the financial institutions division of the regulation and licensing department shall issue and file as required by law interpretive regulations to effectuate the purposes of the New Mexico Bank Installment Loan Act of 1959. In issuing, amending or repealing interpretive regulations, the director shall issue the regulation amendment or repeal of the regulation as a proposed regulation amendment or repeal of a regulation and file it for public inspection in the office of the director of the financial institutions division. Distribution thereof shall be made to interested persons, and their comments shall be invited. After the proposed regulation has been on file for not less than two months, the director may issue it as a final regulation by filing as required by law. Any person who is or may be adversely affected by the adoption, amendment or repeal of a regulation under this section may file an appeal of that action in the district court in Santa Fe county within thirty days after the filing of the adopted regulation, amendment or repeal as required by law.

F. Any person, corporation or association complying with the regulations adopted by the director of the financial institutions division of the regulation and licensing department is deemed to have complied with the provisions of the New Mexico Bank Installment Loan Act of 1959."

## **Chapter 110 Section 9 Laws 2017**

SECTION 9. A new section of the New Mexico Bank Installment Loan Act of 1959 is enacted to read:

"REPORTING OF CREDIT REQUIRED.--For each installment loan made pursuant to the New Mexico Bank Installment Loan Act of 1959, a lender shall report to a consumer reporting agency the terms of the loan and the borrower's performance pursuant to those terms."

## **Chapter 110 Section 10 Laws 2017**

SECTION 10. A new section of the New Mexico Bank Installment Loan Act of 1959 is enacted to read:

"PREEMPTION.--The state has exclusive jurisdiction and authority regarding the terms and conditions of loans to which the New Mexico Bank Installment Loan Act of 1959 is applicable, and counties, municipalities and other political subdivisions of the state are preempted from any regulation of terms and conditions of such loans by ordinance, resolution or otherwise."

## **Chapter 110 Section 11 Laws 2017**

SECTION 11. Section 58-15-2 NMSA 1978 (being Laws 1955, Chapter 128, Section 2, as amended) is amended to read:

"58-15-2. DEFINITIONS.--The following words and terms when used in the New Mexico Small Loan Act of 1955 have the following meanings unless the context clearly requires a different meaning. The meaning ascribed to the singular form applies also to the plural:

A. "consumer" means a person who enters into a loan agreement and receives the loan proceeds in New Mexico;

B. "consumer reporting agency" means any person that, for monetary fees or dues or on a cooperative nonprofit basis, regularly engages in the practice of assembling or evaluating, and maintaining, for the purpose of furnishing consumer reports to third parties bearing on a consumer's creditworthiness, credit standing or credit capacity, each of the following regarding consumers:

(1) public record information; or

(2) credit account information from persons who furnish that information regularly and in the ordinary course of business;

C. "debit authorization" means an authorization signed by a consumer to electronically transfer or withdraw funds from the consumer's account for the specific purpose of repaying a loan;

D. "division" means the financial institutions division of the regulation and licensing department;

E. "director" means the director of the division;

F. "installment loan" means a loan in an amount less than or equal to five thousand dollars (\$5,000) that is to be repaid in a minimum of four substantially equal

payments of principal and interest to pay off a loan in its entirety with an initial stated maturity of not less than one hundred twenty days to maturity. "Installment loan" does not mean a refund anticipation loan;

G. "license" means a permit issued under the authority of the New Mexico Small Loan Act of 1955 to make loans and collect charges therefor strictly in accordance with the provisions of that act at a single place of business. It shall constitute and shall be construed as a grant of a revocable privilege only to be held and enjoyed subject to all the conditions, restrictions and limitations contained in the New Mexico Small Loan Act of 1955 and lawful regulations promulgated by the director and not otherwise;

H. "licensee" means a person to whom one or more licenses have been issued pursuant to the New Mexico Small Loan Act of 1955 upon the person's written application electing to become a licensee and consenting to exercise the privilege of a licensee solely in conformity with the New Mexico Small Loan Act of 1955 and the lawful regulations promulgated by the director under that act and whose name appears on the face of the license;

I. "person" includes an individual, copartner, association, trust, corporation and any other legal entity;

J. "refund anticipation loan" means a loan that is secured by or that the creditor arranges or expects to be repaid, directly or indirectly, from the proceeds of the consumer's federal or state personal income tax refunds or tax credits, including any sale, assignment or purchase of a tax refund or tax credit at a discount or for a fee;

K. "simple interest" means a method of calculating interest in which the amount of interest is calculated based on the annual interest rate disclosed in the loan agreement and is computed only on the outstanding principal balance of the loan."

## **Chapter 110 Section 12 Laws 2017**

SECTION 12. Section 58-15-3 NMSA 1978 (being Laws 1955, Chapter 128, Section 3, as amended) is amended to read:

"58-15-3. APPLICABILITY OF ACT--EXEMPTIONS--EVASIONS--PENALTY.--

A. A person shall not engage in the business of lending in amounts of five thousand dollars (\$5,000) or less for a loan without first having obtained a license from the director. Nothing contained in this subsection shall restrict or prohibit a licensee under the New Mexico Small Loan Act of 1955 from making loans in any amount under the New Mexico Bank Installment Loan Act of 1959 in accordance with the provisions of Section 58-7-2 NMSA 1978.

B. Nothing in the New Mexico Small Loan Act of 1955 shall apply to a person making individual advances of five thousand dollars (\$5,000) or less under a written agreement providing for a total loan or line of credit in excess of five thousand dollars (\$5,000).

C. A banking corporation, savings and loan association or credit union operating under the laws of the United States or of a state shall be exempt from the licensing requirements of the New Mexico Small Loan Act of 1955, nor shall that act apply to business transacted by any person under the authority of and as permitted by any such law nor to any bona fide pawnbroking business transacted under a pawnbroker's license nor to bona fide commercial loans made to dealers upon personal property held for resale. Nothing contained in the New Mexico Small Loan Act of 1955 shall be construed as abridging the rights of any of those exempted from the operations of that act from contracting for or receiving interest or charges not in violation of an existing applicable statute of this state.

D. The provisions of Subsection A of this section apply to:

(1) a person who owns an interest, legal or equitable, in the business or profits of a licensee and whose name does not specifically appear on the face of the license, except a stockholder in a corporate licensee; and

(2) a person who seeks to evade its application by any device, subterfuge or pretense whatsoever, including but not thereby limiting the generality of the foregoing:

(a) the loan, forbearance, use or sale of credit (as guarantor, surety, endorser, comaker or otherwise), money, goods or things in action;

(b) the use of collateral or related sales or purchases of goods or services or agreements to sell or purchase, whether real or pretended;

(c) receiving or charging compensation for goods or services, whether or not sold, delivered or provided; and

(d) the real or pretended negotiation, arrangement or procurement of a loan through any use or activity of a third person, whether real or fictitious.

E. A person, copartnership, trust or a trustee or beneficiary thereof or an association or corporation or a member, officer, director, agent or employee thereof who violates or participates in the violation of a provision of Subsection A of this section is guilty of a petty misdemeanor and upon conviction shall be sentenced pursuant to the provisions of Subsection B of Section 31-19-1 NMSA 1978. A contract or loan in the making or collection of which an act is done that violates Subsection A or D of this

section is void and the lender has no right to collect, receive or retain any principal, interest or charges whatsoever.

F. A loan in an amount equal to five thousand dollars (\$5,000) or less shall be made only pursuant to the New Mexico Bank Installment Loan Act of 1959 or the New Mexico Small Loan Act of 1955.

G. A violation of the provisions of the New Mexico Small Loan Act of 1955, which violation consists of a false or misleading oral or written representation of any kind knowingly made in the extension of credit that may, tends to or does deceive or mislead any person to whom the extension of credit is made, constitutes an unfair or deceptive trade practice pursuant to the Unfair Practices Act."

## **Chapter 110 Section 13 Laws 2017**

SECTION 13. Section 58-15-5 NMSA 1978 (being Laws 1978, Chapter 6, Section 1, as amended) is amended to read:

"58-15-5. LICENSES--INVESTIGATION OF APPLICATION--ISSUANCE--DENIAL--ISSUANCE OF RENEWAL LICENSE--DENIAL OF RENEWAL LICENSE--FITNESS AND CHARACTER OF APPLICANT--LICENSE FEES--LICENSEE BOUND BY ACT.--

A. Upon the filing of an application, whether it is an original or a renewal, the director shall investigate the facts concerning the application and the requirements provided in this section.

B. An applicant for license, upon written notice to do so by the director, shall, within twenty days after service of the notice, furnish in writing, under oath, to the director all additional information required by the director that may be relevant or, in the opinion of the director, helpful in conducting the investigation.

C. Failure to comply with the director's requirement for supplemental information or the willful furnishing of false information is sufficient grounds for denial of license.

D. False or misleading information willfully and intentionally furnished to the director prior to the issuance of any license is grounds for suspension or revocation of any license in accordance with the procedures for suspension or revocation of license in the New Mexico Small Loan Act of 1955.

E. The director shall grant or deny each application for an original license within sixty days from the filing of the application with the required information and fees, unless the period is extended by written agreement between the applicant and the director.

F. In the event the director finds that:

(1) the financial responsibility, character and general fitness of the applicant for an original license and of the individual members and beneficiaries thereof, if the applicant is a copartnership, association or trust, and of the officers and directors thereof, if the applicant is a corporation, are such as to command the confidence of the public and to warrant belief that the business will be operated lawfully, honestly, fairly and efficiently within the declared purposes and spirit of the New Mexico Small Loan Act of 1955;

(2) allowing the applicant to engage in business will promote the convenience and advantage of the community in which the business of the applicant is to be conducted; and

(3) the applicant has available for operation of the business at the specified location cash or its equivalent, convertible securities or receivables of thirty thousand dollars (\$30,000) or any combination thereof; the director shall enter an order granting the application, file the director's findings and, upon payment of the license fee of five hundred dollars (\$500), issue and deliver a license to the applicant.

G. If the director does not make the findings enumerated in Subsection F of this section, the director shall enter an order denying the application, notify the applicant of the denial and retain the application fee. Within thirty days after the entry of such an order, the director shall prepare written findings and shall deliver a copy to the applicant.

H. A written application for license renewal shall be filed on or before March 31 of each year, and thereupon the director shall investigate the facts and review the files of examinations of the applicant made by the director's office and of complaints filed by borrowers, if any. The director shall deliver a renewal license to the applicant if the director finds that:

(1) no valid complaints of violations or abuses of the New Mexico Small Loan Act of 1955 or of the regulations of the director promulgated under that act have been filed by borrowers;

(2) examinations of the affairs of the applicant indicate that the business has been conducted and operated lawfully and efficiently within the declared purposes and spirit of the New Mexico Small Loan Act of 1955; and

(3) the financial responsibility, experience and general fitness and character of the applicant remain such as to command the confidence of the public and to warrant the belief that the business will continue to be operated lawfully and efficiently within the purposes and spirit of the New Mexico Small Loan Act of 1955.

I. If the director does not make the findings enumerated in Subsection H of this section, the director may grant a temporary extension of the license not exceeding sixty days pending a hearing; shall enter an order fixing a date for hearing upon the application; shall notify the licensee thereof, specifying the particular complaints, violations or abuses or other reasons for the director's contemplated refusal to renew the license; and shall afford to the applicant an opportunity to be heard. At the hearing, the director shall produce evidence to establish the truth of the charges of violation or other grounds specified in the notice, and the applicant shall be accorded the right to produce evidence or other matters of defense. If after the hearing the director finds that the complaints of violations or other grounds specified in the notice are not well-founded, the director shall issue the renewal license. If the director finds that the complaints of violations or other grounds are well-founded, the director shall enter an order denying the renewal application and notify the applicant of the denial, returning the renewal license fee tendered with the application. Within thirty days after the entry of such an order, the director shall prepare written findings and shall deliver a copy of the findings to the applicant. The order shall be subject to review as provided in Section 58-15-25 NMSA 1978. The court in its discretion and upon proper showing may order a temporary extension of the license pending disposition of the review proceedings.

J. In connection with the determination of fitness and character of an applicant pursuant to the provisions of this section, the fact that the applicant or licensee is a member of or interested financially in, connected or affiliated with, controls or is controlled by or owns or is owned by other corporations, partnerships, trusts, associations or other legal entities engaged in the lending of money whose policies and practices as to rates of interest, charges and fees and general dealing with borrowers are questionable or would constitute violation of the general usury statutes of this state or of the declared purposes and spirit of the New Mexico Small Loan Act of 1955 shall be given such consideration and weight as the director determines.

K. At the time of issuance of original license and each annual renewal thereof, the licensee for each licensed office shall pay to the director as a license fee for the period covered by the license the sum of five hundred dollars (\$500) as a minimum, plus an additional seventy-five cents (\$.75) for each one thousand dollars (\$1,000) or fraction thereof of loans outstanding as of December 31 next preceding, as shown on the applicant's annual report. In the event that the application for annual renewal of the license is delinquent, the licensee shall also pay a delinquency fee of ten dollars (\$10.00) per day for each day the licensee is delinquent in filing the application for renewal.

L. In addition to the fees provided for in Subsection K of this section, at the time of issuance of original license and each annual renewal thereof, the licensee for each licensed office shall pay to the director as an additional fee for the period covered by the license the sum of two hundred dollars (\$200), which fee shall be deposited into the financial literacy fund.

M. A licensee by accepting a license that is issued or renewed or by continuing to operate a licensed office under the New Mexico Small Loan Act of 1955 shall by such action be deemed to have consented to be bound by the lawful provisions of that act and all lawful requirements, regulations and orders of the director promulgated or issued pursuant to any authorization granted in that act."

## **Chapter 110 Section 14 Laws 2017**

SECTION 14. Section 58-15-9 NMSA 1978 (being Laws 1955, Chapter 128, Section 9, as amended) is amended to read:

"58-15-9. EXAMINATION OF LICENSEE'S BOOKS AND RECORDS--  
WITNESSES.--

A. At least once each year, the director or the director's authorized representative shall make an examination of the place of business of each licensee and the loans, transactions, books, papers and records of the licensee insofar as they pertain to the business licensed under the New Mexico Small Loan Act of 1955 as the director may deem necessary. The licensee shall pay to the director for such annual examination a fee of two hundred dollars (\$200).

B. Within a reasonable time after the completion of an examination of a licensed office, the director shall mail to the licensee a copy of the report of the examination, together with any comments, exceptions, objections or criticisms of the director concerning the conduct of the licensee and the operation of the licensed office.

C. For the purpose of discovering violations of the New Mexico Small Loan Act of 1955 or of securing information lawfully required under that act, the director or the director's authorized representative may at any time investigate the business and examine the books, accounts, papers and records used therein, including income tax returns or other reports filed in the office of the director of the revenue processing division of the taxation and revenue department of:

(1) any licensee;

(2) any other person engaged in the business described in Subsection A of Section 58-15-3 NMSA 1978 or participating in such business as principal, agent, broker or otherwise; and

(3) any person whom the director has reasonable cause to believe is violating any provision of the New Mexico Small Loan Act of 1955, whether the person claims to be within the authority or beyond the scope of that act.

D. For the purposes of this section, a person who advertises, solicits or makes any representation as being willing to make loan transactions in any amount, except persons, financial institutions or lending agencies operating under charters or

licenses issued by a state or federal agency or under any special statute, shall be subject to investigation under the New Mexico Small Loan Act of 1955 and shall be presumed to be engaged in the business described in Subsection A of Section 58-15-3 NMSA 1978 as to any loans of five thousand dollars (\$5,000) or less.

E. To facilitate the examinations and investigations by the director and fully disclose the operations and methods of operation of each licensed office, the licensee shall, in each licensed office, keep on file as part of the records of the office all office manuals, communications or directives containing statements of loan policy to office managers and employees. If the licensee is an individual, corporation, trust or association, the licensee shall keep in at least one office for information of the director a record of the several individuals, firms, beneficiaries of any trust and corporations deriving or receiving any part of the benefits, net income or profits from the operation of the licensee within New Mexico.

F. For the purposes of this section, the director or the director's authorized representative shall have and be given free access to the offices and places of business, files, safes and vaults of all licensees and shall have authority to require the attendance of any person and to examine the person under oath relative to such loans or business or to the subject matter of any examination, investigation or hearing as provided in the New Mexico Small Loan Act of 1955. Notices to appear before the director for examination under oath may be served by registered mail. If the party notified to appear is the licensee, any person named on the face of the license being investigated or any agent, employee or manager participating in the licensee's business and the party fails to appear for examination or refuses to answer questions submitted, the director may, forthwith and without further notice to the licensee, suspend the license involved pending compliance with the notice. Upon failure of any other person to appear or to answer questions, the director may apply to and invoke the aid of any district court of New Mexico in compelling the attendance and testimony of any such person and the production of books, records, written instruments and documents relating to the business of the licensee. The district court whose aid is so invoked by the director may, in case of contumacy or refusal to obey any order of the district court issued to compel the attendance of the person or the production of books, records, written instruments and documents, punish the person as for contempt of court.

G. The director shall prescribe rules of procedure for all hearings, examinations or investigations provided for in the New Mexico Small Loan Act of 1955. The director is not bound by the usual common law or statutory rules of evidence or by any technical or formal rules of procedure or pleading and specification of charges other than as specifically provided in the New Mexico Small Loan Act of 1955 but may conduct hearings, examinations and investigations in the manner best calculated to ascertain the substantial rights of the parties interested.

H. The director has the power to administer oaths, certify official acts and records of the director's office, issue subpoenas for witnesses in the name of and under the seal of the director's office and compel the production of papers, books, accounts

and documents. The director shall issue subpoenas at the instance of any party to a hearing before the division upon payment of a fee of two dollars fifty cents (\$2.50) for each subpoena so issued.

I. Depositions may be taken with or without a commission, and written interrogatories may be submitted in the same manner and on the same grounds provided by law for the taking of depositions or submission of written interrogatories in civil actions pending in the district courts of this state.

J. Each witness who appears before the director by the director's order shall receive the fees and mileage provided for witnesses in civil actions in the district court. Fees and mileage shall be paid by the state, but no witness subpoenaed at the instance of parties other than the director is entitled to compensation from the state for attendance or mileage unless the director certifies that the witness' testimony is material.

K. Whenever the director has reasonable cause to believe that a person is violating a provision of the New Mexico Small Loan Act of 1955, the director may, in addition to all actions provided for in that act and without prejudice thereto, enter an order requiring the person to desist or to refrain from the violation. An action may be brought on the relation of the attorney general and the director to enjoin the person from engaging in or continuing the violation or from doing any act in furtherance of the violation. In any such action, an order or judgment may be entered awarding a preliminary or final injunction as may be deemed proper. In addition to all other means provided by law for the enforcement of a temporary restraining order, temporary injunction or final injunction, the court in which such action is brought shall have power and jurisdiction to impound and to appoint a receiver for the property and business of the defendants, including books, papers, documents and records pertaining thereto or so much thereof as the court may deem reasonably necessary to prevent further violations of the New Mexico Small Loan Act of 1955 through or by means of the use of the property and business. The receiver, when appointed and qualified, shall have powers and duties as to custody, collection, administration, winding up and liquidation of the property and business as are from time to time conferred upon the receiver by the court."

## **Chapter 110 Section 15 Laws 2017**

SECTION 15. Section 58-15-10.1 NMSA 1978 (being Laws 2011, Chapter 105, Section 1, as amended) is amended to read:

"58-15-10.1. LICENSEE REPORTING REQUIREMENTS--PENALTIES.--

A. Licensees shall file with the director each year a report containing at least the following information for the preceding calendar year in an aggregated, nonidentifying consumer manner:

(1) as of December 31 of each calendar year, aggregated for loans of one thousand dollars (\$1,000) or less, for loans more than one thousand dollars (\$1,000) but not more than three thousand dollars (\$3,000) and for loans more than three thousand dollars (\$3,000) but not more than five thousand dollars (\$5,000):

- (a) the total number of outstanding loans;
- (b) the dollar value of outstanding loans net of unearned charges;
- (c) the total number of loans that are more than sixty days delinquent; and
- (d) the dollar value of loans that are more than sixty days delinquent net of unearned charges;

(2) for the calendar year ending December 31, the total aggregate number of customers of licensees and of secured and unsecured loans made by licensees and the total dollar value of those loans net of unearned charges;

(3) the total amount of finance charges collected during the calendar year ending December 31;

(4) the total number of vehicles repossessed during the calendar year ending December 31; and

(5) the total bad debt expense incurred during the calendar year ending December 31.

B. The report required pursuant to Subsection A of this section shall be submitted to the director on or before the fifteenth day of April each year.

C. The report required pursuant to Subsection A of this section shall be accompanied by a sworn statement by the licensee under penalty of perjury that the report is complete and accurate.

D. A licensee that fails to timely submit a complete and accurate report as required pursuant to Subsection A of this section may:

(1) be fined an amount not to exceed one thousand five hundred dollars (\$1,500) per day for each day after the fifteenth day of April, a complete and accurate report is not filed; and

(2) have a license required pursuant to the New Mexico Small Loan Act of 1955 suspended pursuant to Section 58-15-8 NMSA 1978, if a complete and accurate report has not been filed by the fifteenth day of April."

## **Chapter 110 Section 16 Laws 2017**

SECTION 16. Section 58-15-12 NMSA 1978 (being Laws 1955, Chapter 128, Section 12, as amended) is amended to read:

"58-15-12. ADVERTISING.--A licensee or other person subject to the New Mexico Small Loan Act of 1955 shall not advertise, display, distribute or broadcast or cause or permit to be advertised, displayed, distributed or broadcast in any manner whatsoever a false, misleading or deceptive statement or representation with regard to the charges, terms or conditions for loans in the amount or of the value of five thousand dollars (\$5,000) or less. The director may require that charges or rates of charge, if stated by a licensee, be stated fully and clearly in such manner as the director deems necessary to prevent misunderstanding by prospective borrowers. The director may permit or require licensees to refer in their advertising to the fact that their business is under state supervision, subject to conditions imposed by the director to prevent erroneous impressions as to the scope or degree of protection provided by the New Mexico Small Loan Act of 1955."

## **Chapter 110 Section 17 Laws 2017**

SECTION 17. Section 58-15-17 NMSA 1978 (being Laws 1955, Chapter 128, Section 15, as amended) is amended to read:

"58-15-17. REQUIREMENTS FOR MAKING AND PAYING OF LOANS--  
INCOMPLETE INSTRUMENTS--LIMITATIONS ON CHARGES AFTER JUDGMENT  
AND INTEREST.--

A. Every licensee shall:

(1) at the time a loan is made within the provisions of the New Mexico Small Loan Act of 1955, deliver to the borrower or, if there are two or more borrowers on the same obligation, to one of them, a statement in English or Spanish, as required by federal law, on which shall be printed a copy of Section 58-15-14.1 NMSA 1978 and that discloses in clear and distinct terms:

- (a) the amount of the loan;
- (b) the date the loan was made;
- (c) a schedule or a description of the payments;
- (d) the type of the security, if any, for the loan;
- (e) the name and address of the licensed office;
- (f) the name of the person primarily obligated for the loan;

(g) the amount of principal;

(h) the annual interest rate as disclosed pursuant to 12 CFR Part 1026, known as "Regulation Z", and the amount in dollars and cents;

(i) all other disclosures required pursuant to state and federal law; and

(j) other items allowable pursuant to that act, so stated as to clearly show the allocation of each item included;

(2) for each payment made on account of any such loan, give to the person making it a plain and complete receipt specifying the date and amount of the payment, the amount applied to interest and principal and the balance unpaid. When payment is made in any other manner than by the borrower in person, by an agent of the borrower or by check or money order, the licensee shall mail the receipt to the borrower's last known address or hold the receipt for delivery upon request of the borrower. A copy of all receipts shall be kept on file in the office of the licensee as a part of the licensee's records; and

(3) upon payment of the loan in full, mark plainly every note and promise to pay signed by any obligor with the word "paid" or "canceled" and promptly file or record a release of any mortgage if the mortgage has been recorded, restore any pledge and cancel and return any note and any assignment given to the licensee. A licensee may mark and return a copy of the note, promise to pay or any assignment if the copy accurately reproduces the complete original.

B. A licensee shall not take a note or promise to pay that does not disclose the amount of the loan, a schedule of payments, or a description thereof, and the agreed charge or rate of charge or any instrument in which blanks are left to be filled in after execution.

C. If judgment is obtained against a party on a loan made pursuant to the provisions of the New Mexico Small Loan Act of 1955, neither the judgment nor the loan shall carry, from the date of the judgment, charges against a party to the loan other than costs, attorney fees and post-judgment interest as provided by law.

D. Any loan made under the provisions of the New Mexico Small Loan Act of 1955 that is filed and approved as a claim in any bankruptcy proceeding shall, from a date ninety days subsequent to the date of adjudication, bear interest at the rate of ten percent a year only. This limitation shall not apply when the bankrupt is not discharged in bankruptcy or to any obligation not dischargeable under the provisions of the United States Bankruptcy Code presently in force or as hereafter amended.

E. No loan made under the provisions of the New Mexico Small Loan Act of 1955 shall bear interest after ninety days from the date of the death of the borrower in excess of a rate of ten percent a year on the unpaid principal balance of the loan.

F. No loan made under the provisions of the New Mexico Small Loan Act of 1955 shall bear interest after twelve months from the date of maturity of the loan in excess of ten percent a year upon the unpaid principal balance of the loan.

G. No lender shall make a loan pursuant to the New Mexico Small Loan Act of 1955 if a loan has an initial stated maturity of less than one hundred twenty days unless the loan is a refund anticipation loan.

H. No lender shall make a loan pursuant to the New Mexico Small Loan Act of 1955 unless the loan is an installment loan or a refund anticipation loan.

I. No lender shall make a loan pursuant to the New Mexico Small Loan Act of 1955, other than a refund anticipation loan, unless the loan is repayable in a minimum of four substantially equal installment payments of principal and interest.

J. No lender shall make a loan pursuant to the New Mexico Small Loan Act of 1955 that has an annual percentage rate greater than one hundred seventy-five percent, calculated pursuant to 12 CFR Part 1026, known as "Regulation Z".

## **Chapter 110 Section 18 Laws 2017**

SECTION 18. Section 58-15-21 NMSA 1978 (being Laws 1955, Chapter 128, Section 19, as amended) is amended to read:

"58-15-21. WHAT CONSTITUTES LOAN OF MONEY--WAGE PURCHASES.-- The payment of five thousand dollars (\$5,000) or less in money, credit, goods or things in action, as consideration for any sale or assignment of or order for the payment of wages, salary, commission or other compensation for services, whether earned or to be earned, shall, for the purposes of regulation under the New Mexico Small Loan Act of 1955, be deemed a loan of money secured by such sale, assignment or order. The amount by which compensation so sold, assigned or ordered paid exceeds the amount of consideration actually paid shall for the purpose of regulation under the New Mexico Small Loan Act of 1955 be deemed interest or charges upon the loan from the date of payment to the date the compensation is payable. Such transaction shall be governed by and subject to the provisions of the New Mexico Small Loan Act of 1955."

## **Chapter 110 Section 19 Laws 2017**

SECTION 19. Section 58-15-24 NMSA 1978 (being Laws 1955, Chapter 128, Section 22, as amended) is amended to read:

"58-15-24. LOANS MADE ELSEWHERE.--No loan made outside this state to a resident of New Mexico in the amount or of the value of five thousand dollars (\$5,000) or less for which a greater rate of interest, consideration, charge or compensation to the lender than is permitted by the general laws of New Mexico in force governing money, interest and usury has been charged, contracted for or received shall be enforced in this state. Every person in any way participating in such a loan in this state is subject to the provisions of the New Mexico Small Loan Act of 1955. Any loan made to a nonresident of New Mexico in conformity with the law of the state where made may be enforced in this state."

## **Chapter 110 Section 20 Laws 2017**

SECTION 20. A new section of the New Mexico Small Loan Act of 1955 is enacted to read:

"INSTALLMENT LOANS--REFUND ANTICIPATION LOANS--INSUFFICIENT FUNDS--PERMITTED CHARGES.--

A. If there are insufficient funds to pay a check or other type of debit on the date of presentment by the licensee, a check or debit authorization request shall not be presented to a financial institution by a licensee for payment more than one time unless the consumer agrees in writing, after a check or other type of debit has been dishonored, to one additional presentment or deposit.

B. A licensee shall not charge a consumer for fees, interest or charges of any kind other than those permitted pursuant to Sections 58-15-16, 58-15-17 and 58-15-20 NMSA 1978."

## **Chapter 110 Section 21 Laws 2017**

SECTION 21. A new section of the New Mexico Small Loan Act of 1955 is enacted to read:

"REPORTING OF CREDIT REQUIRED.--For each installment loan and refund anticipation loan made pursuant to the New Mexico Small Loan Act of 1955, a lender shall report to a consumer reporting agency the terms of the loan and the borrower's performance pursuant to those terms."

## **Chapter 110 Section 22 Laws 2017**

SECTION 22. A new section of the New Mexico Small Loan Act of 1955 is enacted to read:

"FINANCIAL LITERACY FUND.--The "financial literacy fund" is created in the state treasury. The fund shall consist of appropriations, gifts, grants, donations and bequests made to the fund and fees received pursuant to Subsection L of Section 58-

15-5 NMSA 1978. Income from the fund shall be credited to the fund, and money in the fund shall not revert or be transferred to any other fund at the end of a fiscal year. Money in the fund is appropriated to the regulation and licensing department for the purposes of developing and implementing financial literacy programs as provided for in Subsection C of Section 58-15-39 NMSA 1978. Expenditures from the fund shall be made on warrant of the secretary of finance and administration pursuant to vouchers signed by the superintendent of regulation and licensing."

## **Chapter 110 Section 23 Laws 2017**

SECTION 23. Section 58-15-39 NMSA 1978 (being Laws 2007, Chapter 86, Section 21, as amended) is amended to read:

"58-15-39. DUTIES OF DIVISION.--

A. The division shall:

(1) maintain a list of licensees, which list shall be available to interested persons and the public; and

(2) establish a complaint process whereby an aggrieved consumer or other person may file a complaint against a licensee.

B. The division shall compile from reports filed by licensees pursuant to Section 58-15-10.1 NMSA 1978 an annual report by July 1 of each year containing data regarding loans entered into by licensees, which data shall be aggregated for all licensees. Annual reports shall be made available to interested parties and the general public and published on the division's website. Consistent with state law, the report shall include, at a minimum, nonidentifying consumer data from the preceding calendar year, including:

(1) as of December 31 of each calendar year, aggregated for loans of one thousand dollars (\$1,000) or less, for loans more than one thousand dollars (\$1,000) but not more than three thousand dollars (\$3,000) and for loans more than three thousand dollars (\$3,000) but not more than five thousand dollars (\$5,000):

(a) the total number of outstanding loans;

(b) the dollar value of outstanding loans net of unearned charges;

(c) the total number of loans that are more than sixty days delinquent; and

(d) the dollar value of loans that are more than sixty days delinquent net of unearned charges;

(2) for the calendar year ending December 31, the total aggregate number of customers of licensees and secured and unsecured loans made by licensees and the total dollar value of those loans net of unearned charges;

(3) the total amount of finance charges collected during the calendar year ending December 31;

(4) the total number of vehicles repossessed during the calendar year ending December 31; and

(5) the total bad debt expense incurred during the calendar year ending December 31.

C. The division shall, in cooperation with the office of the attorney general, develop and implement curriculum for a financial literacy program with elements that shall include a basic understanding of budgets, checking and savings accounts, credit and interest and considerations in deciding how and when to use financial services, including installment loans and refund anticipation loans. The financial literacy program developed pursuant to this subsection may be implemented through the adult basic education division of the higher education department and nonprofit public interest organizations."

## **Chapter 110 Section 24 Laws 2017**

SECTION 24. A new section of the New Mexico Small Loan Act of 1955 is enacted to read:

"PREEMPTION.--The state has exclusive jurisdiction and authority regarding the terms and conditions of permitted installment loans and refund anticipation loans, and counties, municipalities and other political subdivisions of the state are preempted from any regulation of terms and conditions of permitted installment loans and refund anticipation loans by ordinance, resolution or otherwise."

## **Chapter 110 Section 25 Laws 2017**

SECTION 25. REPEAL.--Sections 58-15-18 and 58-15-32 through 58-15-38 NMSA 1978 (being Laws 1955, Chapter 128, Section 16 and Laws 2007, Chapter 86, Sections 14 through 20, as amended) are repealed.

## **Chapter 110 Section 26 Laws 2017**

SECTION 26. APPLICABILITY.--The provisions of this act shall apply to loans subject to the New Mexico Small Loan Act of 1955 and the New Mexico Bank Installment Loan Act of 1959 executed on or after January 1, 2018.

## **Chapter 110 Section 27 Laws 2017**

SECTION 27. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 2018.

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HJC/HBIC/House Bill 347, aa  
Approved April 6, 2017

## **LAWS 2017, CHAPTER 111**

AN ACT

RELATING TO BANKING; REDUCING THE REQUIRED NUMBER OF NEW MEXICO RESIDENT DIRECTORS OF A STATE BANK.

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

### **Chapter 111 Section 1 Laws 2017**

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

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

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

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

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

person or persons, according to the number of directors to be elected, having the largest number of votes shall be elected.

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

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

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

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House Bill 361  
Approved April 6, 2017

## **LAWS 2017, CHAPTER 112**

### **AN ACT**

RELATING TO LICENSING; AMENDING AND ENACTING SECTIONS OF THE BARBERS AND COSMETOLOGISTS ACT TO PROVIDE FOR A HAIRSTYLIST LICENSE; REVISING THE COMPOSITION OF THE BOARD OF BARBERS AND COSMETOLOGISTS TO INCLUDE A HAIRSTYLIST.

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

### **Chapter 112 Section 1 Laws 2017**

SECTION 1. A new section of the Barbers and Cosmetologists Act is enacted to read:

"HAIRSTYLING DEFINED.--Hairstyling includes any one or any combination of the following practices when done upon the upper part of the male or female human body for cosmetic purposes for the public generally, using the hands or manual, mechanical or electrical implements or appliances:

A. cleansing, massaging or stimulating the scalp with oils, creams, lotions or other cosmetic or chemical preparations;

B. applying cosmetic or chemical preparations, antiseptics, powders, oils, clays or lotions to the scalp;

C. cutting, arranging, applying hair extensions to or styling the hair by any means;

D. cleansing, coloring, lightening, waving or straightening the hair with cosmetic or chemical preparations; or

E. trimming a person's beard."

## **Chapter 112 Section 2 Laws 2017**

SECTION 2. A new section of the Barbers and Cosmetologists Act is enacted to read:

### "LICENSURE REQUIREMENTS--HAIRSTYLISTS.--

A. Except as provided in Subsection B of this section, a hairstylist license shall be issued to a person who files a completed application, accompanied by the required fees and documentation, and who:

(1) has an education equivalent to the completion of the second year of high school;

(2) is at least seventeen years of age;

(3) has completed a course in hairstyling of at least one thousand two hundred hours in a school; and

(4) has passed an examination approved by the board.

B. A hairstylist license shall be issued to a person who files a completed application, accompanied by the required fees and documentation, and meets the requirements of Paragraphs (1) through (4) of Subsection A of this section.

C. The holder of a hairstylist license has the right and privilege to use the title "hairstylist".

## Chapter 112 Section 3 Laws 2017

SECTION 3. Section 61-17A-2 NMSA 1978 (being Laws 1993, Chapter 171, Section 2, as amended) is amended to read:

"61-17A-2. DEFINITIONS.--As used in the Barbers and Cosmetologists Act:

A. "barber" means a person, other than a student, who for compensation engages in barbering;

B. "board" means the board of barbers and cosmetologists;

C. "cosmetologist" means a person, other than a student, who for compensation engages in cosmetology;

D. "electrologist" means a person, other than a student, who for compensation removes hair from or destroys hair on the human body through the use of an electric current applied to the body with a needle-shaped electrode or probe;

E. "enterprise" means a business venture, firm or organization;

F. "establishment" means an immobile beauty shop, barber shop, electrology clinic, salon or similar place of business in which cosmetology, barbering, hairstyling or electrolysis is performed;

G. "esthetician" means a person, other than a student, who for compensation:

(1) uses cosmetic preparations, including makeup applications, antiseptics, powders, oils, clays or creams, for the purpose of preserving the health and beauty of the skin and body;

(2) massages, cleans, stimulates or manipulates the skin for the purpose of preserving the health and beauty of the skin and body; or

(3) performs activities similar to the activities described in Paragraph (1) or (2) of this subsection on any part of the body of a person;

H. "hairstylist" means a person, other than a student, who for compensation engages in hairstyling;

I. "manicurist-pedicurist" means a person, other than a student, who for compensation performs work on the nails of a person and applies nail extensions or products to the nails for the purpose of strengthening or preserving the health and beauty of the hands or feet;

J. "sanitation" means the maintenance of sanitary conditions to promote hygiene and the prevention of disease through the use of chemical agents or products;

K. "school" means a public or private instructional facility approved by the board that teaches cosmetology, barbering or hairstyling; and

L. "student" means a person enrolled in a school to learn or be trained in cosmetology, barbering, hairstyling or electrolysis."

## **Chapter 112 Section 4 Laws 2017**

SECTION 4. Section 61-17A-5 NMSA 1978 (being Laws 1993, Chapter 171, Section 5, as amended) is amended to read:

"61-17A-5. LICENSE REQUIRED.--

A. Unless licensed pursuant to the Barbers and Cosmetologists Act or exempted from the provisions of that act, no person shall practice barbering, hairstyling or cosmetology for compensation either directly or indirectly.

B. Unless licensed pursuant to the Barbers and Cosmetologists Act, no person shall operate a school or establishment for compensation.

C. Unless licensed pursuant to the Barbers and Cosmetologists Act or exempted from the provisions of that act, no person shall teach barbering, hairstyling, cosmetology or electrology for compensation.

D. Unless licensed by the board pursuant to the Barbers and Cosmetologists Act, no person shall practice as a manicurist-pedicurist, esthetician or electrologist for compensation."

## **Chapter 112 Section 5 Laws 2017**

SECTION 5. Section 61-17A-6 NMSA 1978 (being Laws 1993, Chapter 171, Section 6, as amended) is amended to read:

"61-17A-6. BOARD CREATED--MEMBERSHIP.--

A. The "board of barbers and cosmetologists" is created. The board is administratively attached to the regulation and licensing department. The board consists of seven members appointed by the governor. Members shall serve three-year terms; provided that at the time of initial appointment, the governor shall appoint members to abbreviated terms to allow staggering of subsequent appointments. Vacancies shall be filled in the manner of the original appointment.

B. Of the seven members of the board, five shall be licensed pursuant to the Barbers and Cosmetologists Act and shall have at least five years' practical experience in their respective occupations. Of those five, one member shall be a licensed barber, one member shall be a licensed hairstylist, two members shall be licensed cosmetologists and one member shall represent school owners. The remaining two members shall be public members. Neither the public members nor their spouses shall have ever been licensed pursuant to the provisions of the Barbers and Cosmetologists Act or similar prior legislation or have a financial interest in a school or establishment.

C. Members of the board shall be reimbursed pursuant to the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

D. The board shall elect from among its members a chair and such other officers as it deems necessary. The board shall meet at the call of the chair, not less than four times each year. A majority of members currently serving shall constitute a quorum for the conduct of business.

E. No board member shall serve more than two full consecutive terms and any member who fails to attend, after proper notice, three meetings shall automatically be recommended for removal unless excused for reasons set forth by board rule."

## **Chapter 112 Section 6 Laws 2017**

SECTION 6. Section 61-17A-7 NMSA 1978 (being Laws 1993, Chapter 171, Section 7, as amended) is amended to read:

"61-17A-7. BOARD POWERS AND DUTIES.--

A. The board shall:

(1) adopt and file, in accordance with the State Rules Act, rules necessary to carry out the provisions of the Barbers and Cosmetologists Act;

(2) establish fees;

(3) provide for the examination, licensure and license renewal of applicants for licensure;

(4) establish standards for and provide for the examination, licensure and license renewal of manicurists-pedicurists, estheticians and electrologists;

(5) adopt a seal;

(6) furnish copies of rules and sanitary requirements adopted by the board to each owner or manager of an establishment, enterprise or school;

(7) keep a record of its proceedings and a register of applicants for licensure;

(8) provide for the licensure of barbers, hairstylists, cosmetologists, manicurists-pedicurists, estheticians, electrologists, instructors, schools, enterprises and establishments;

(9) establish administrative penalties and fines;

(10) create and establish standards and fees for special licenses;

(11) establish guidelines for schools to calculate tuition refunds for withdrawing students; and

(12) issue cease and desist orders to persons violating the provisions of the Barbers and Cosmetologists Act and rules promulgated in accordance with that act.

B. The board may establish continuing education requirements as requirements for licensure.

C. A member of the board, its employees or agents may enter and inspect a school, enterprise or establishment at any time during regular business hours for the purpose of determining compliance with the Barbers and Cosmetologists Act."

## **Chapter 112 Section 7 Laws 2017**

SECTION 7. Section 61-17A-16 NMSA 1978 (being Laws 1993, Chapter 171, Section 16, as amended) is amended to read:

"61-17A-16. FEES.--The board may, by rule, establish initial license and renewal fees not to exceed the following:

establishment license	\$200
school license	\$600
relocation of a school	\$300
cosmetologist license	\$ 50.00
barber license	\$ 50.00
hairstylist license	\$ 50.00
specialty license	\$ 50.00

instructor license	\$ 50.00
duplicate license	\$ 50.00
temporary license	\$ 25.00
administrative fee	\$100
limited license fee	\$100
licensure through reciprocity	\$200
transcript	\$ 50.00
examinations	\$100."

## Chapter 112 Section 8 Laws 2017

SECTION 8. Section 61-17A-20 NMSA 1978 (being Laws 1993, Chapter 171, Section 20, as amended) is amended to read:

"61-17A-20. DURATION, RESTORATION AND RENEWAL OF LICENSES.--

A. The original issuance and renewal of licenses to practice as a barber, hairstylist, cosmetologist, instructor, esthetician, manicurist-pedicurist or electrologist shall be for a period of one year or less from the date of issuance. If the licensee fails to renew the license for the next year, the license is void; provided the license may be restored at any time during the year following expiration upon the payment of the appropriate fee and a late charge not to exceed one hundred dollars (\$100) as set forth by board rules. If the licensee fails to restore the license within one year following its expiration, the licensee may request restoration of the license pursuant to rules promulgated by the board.

B. The original issuance and annual renewal of licenses to operate an establishment or school shall be for a period of twelve months or less following the issuance of the license. If the licensee fails to renew the license within thirty days after its expiration, the license is void, and, to again obtain a license, an application, required documentation, payment of the renewal fee and a late fee not to exceed one hundred dollars (\$100) as established by board rules is required.

C. The board may establish a staggered system of license expiration."

# **LAWS 2017, CHAPTER 113**

AN ACT

RELATING TO AGRICULTURE; REPEALING SECTION 76-21A-3 NMSA 1978 (BEING LAWS 2011, CHAPTER 29, SECTION 3).

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

## **Chapter 113 Section 1 Laws 2017**

SECTION 1. REPEAL.--Section 76-21A-3 NMSA 1978 (being Laws 2011, Chapter 29, Section 3) is repealed.

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House Bill 387  
Approved April 6, 2017

# **LAWS 2017, CHAPTER 114**

AN ACT

RELATING TO PUBLIC FINANCE; MAKING STATE AGENCIES ELIGIBLE FOR FUNDING FOR WASTEWATER PROJECTS PURSUANT TO THE WASTEWATER FACILITY CONSTRUCTION LOAN ACT.

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

## **Chapter 114 Section 1 Laws 2017**

SECTION 1. Section 74-6A-2 NMSA 1978 (being Laws 1986, Chapter 72, Section 2, as amended) is amended to read:

"74-6A-2. PURPOSE.--The purpose of the Wastewater Facility Construction Loan Act is to provide state agencies and local authorities in New Mexico with low-cost financial assistance in the construction of necessary wastewater facilities through the creation of a self-sustaining program so as to improve and protect water quality and public health."

## **Chapter 114 Section 2 Laws 2017**

SECTION 2. Section 74-6A-3 NMSA 1978 (being Laws 1986, Chapter 72, Section 3, as amended) is amended to read:

"74-6A-3. DEFINITIONS.--As used in the Wastewater Facility Construction Loan Act:

A. "administrative fee" means a fee assessed and collected by the department from a state agency or local authority on each loan and expressed as a percentage per year on the outstanding principal amount of the loan, payable by the borrower on the same date that principal and interest on the loan are due, for deposit in the clean water administrative fund;

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

C. "division" or "department" means the department of environment;

D. "financial assistance" means loans, the purchase or refinancing of existing state agency or local political subdivision obligations, loan guarantees, credit enhancement techniques to reduce interest on loans and bonds, bond insurance and bond guarantees or any combination of these purposes;

E. "fund" means the wastewater facility construction loan fund;

F. "local authority" means any municipality, county, incorporated county, mutual domestic water consumers association as defined by the Sanitary Projects Act, sanitation district, water and sanitation district or any similar district, recognized Indian tribe or other issuing agency created pursuant to a joint powers agreement acting on behalf of any entity listed in this subsection;

G. "operate and maintain" means to perform all necessary activities, including replacement of equipment or appurtenances, to ensure the dependable and economical function of a wastewater facility in accordance with its intended purpose;

H. "wastewater facility" means a publicly owned system for treating or disposing of sewage or wastes either by surface or underground methods, including any equipment, plant, treatment works, structure, machinery, apparatus or land, in any combination, that is acquired, used, constructed or operated for the storage, collection, reduction, recycling, reclamation, disposal, separation or treatment of water or wastes or for the final disposal of residues resulting

from the treatment of water or wastes, such as pumping and ventilating stations, facilities, plants and works, outfall sewers, interceptor sewers and collector sewers and other real or personal property and appurtenances incident to their use or operation. "Wastewater facility" also includes a nonpoint source water pollution control project as eligible under the Clean Water Act;

I. "account" means the wastewater suspense account;

J. "board" means the state board of finance;

K. "bonds" means wastewater bonds or other obligations authorized by the commission to be issued by the board pursuant to the Wastewater Facility Construction Loan Act;

L. "Clean Water Act" means the federal Clean Water Act of 1977 and its subsequent amendments or successor provisions;

M. "federal securities" means direct obligations of the United States, or obligations the principal and interest of which are unconditionally guaranteed by the United States, or an ownership interest in either of the foregoing;

N. "force account construction" means construction performed by the employees of a local authority rather than through a contractor;

O. "holders" means persons who are owners of bonds, whether registered or not, issued pursuant to the Wastewater Facility Construction Loan Act;

P. "issuing resolution" means a formal statement adopted by the board to issue bonds pursuant to the Wastewater Facility Construction Loan Act, including any trust agreement, trust indenture or similar instrument providing terms and conditions for the bonds to be issued;

Q. "recommending resolution" means a formal statement adopted by the commission recommending to the board that bonds be issued pursuant to the Wastewater Facility Construction Loan Act, including any trust agreement, trust indenture or similar instrument providing the terms and conditions for the bonds that are issued; and

R. "state agency" means an agency or department of the executive branch of government."

## **Chapter 114 Section 3 Laws 2017**

SECTION 3. Section 74-6A-8 NMSA 1978 (being Laws 1991, Chapter 172, Section 6, as amended) is amended to read:

"74-6A-8. FINANCIAL ASSISTANCE--CRITERIA.--

A. Financial assistance shall be provided only to state agencies and local authorities that:

(1) meet the requirements for financial capability set by the division to assure sufficient revenues to operate and maintain the wastewater facility for its useful life and to repay the financial assistance;

(2) agree to operate and maintain the wastewater facility so that the facility will function properly over its structural and material design life;

(3) agree to maintain separate project accounts, to maintain project accounts properly in accordance with generally accepted governmental accounting standards and to conduct an audit of the project's financial records;

(4) provide a written assurance, signed by an attorney, that the state agency or local authority has or will acquire proper title, easements and rights of way to the property upon or through which the wastewater facility proposed for funding is to be constructed or extended;

(5) require the contractor of the wastewater facility construction project to post a performance and payment bond in accordance with the requirements of Section 13-4-18 NMSA 1978 and its subsequent amendments and successor provisions;

(6) provide a written notice of completion and start of operation of the wastewater facility;

(7) appear on the priority list of the fund, regardless of rank on such list; and

(8) provide such information to the division as required by the commission in order to comply with the provisions of the Clean Water Act and state law.

B. Loans shall be made only to state agencies and local authorities that establish one or more dedicated sources of revenue to repay the money received from the commission and to provide for operation, maintenance and equipment replacement expenses. A state agency or local authority, any existing statute to the contrary notwithstanding, may do any of the following:

(1) obligate itself to pay to the commission at periodic intervals a sum sufficient to provide all or any part of bond debt service with respect to the bonds recommended by the commission and issued by the board to fund the loan for the wastewater facility project of the state agency or local authority and pay over the debt service to the account of the wastewater facility project for deposit to the fund;

(2) fulfill any obligation to pay the commission by the issuance of bonds, notes or other obligations in accordance with the laws authorizing issuance of state or local authority obligations; provided, however, that, notwithstanding the provisions of Section 4-54-3 or 6-15-5 NMSA 1978 or other statute or law requiring the public sale of local authority obligations, such obligations may be sold at private sale to the commission at the price and upon the terms and conditions the local authority shall determine;

(3) levy, collect and pay over to the commission and obligate itself to continue to levy, collect and pay over to the commission the proceeds of one or more of the following:

- (a) sewer or waste disposal service fees or charges;
- (b) licenses, permits, taxes and fees;
- (c) special assessments on the property served or benefited by the wastewater facility project; or
- (d) other revenue available to the state agency or local authority;

(4) undertake and obligate itself to pay its contractual obligation to the commission solely from the proceeds from any of the sources specified in Paragraph (3) of this subsection or, in accordance with the laws authorizing issuance of state agency or local authority obligations, impose upon itself a general obligation pledge to the commission additionally secured by a pledge of any of the sources specified in Paragraph (3) of this subsection; or

(5) enter into agreements, perform acts and delegate functions and duties as its governing body shall determine is necessary or desirable to enable the division as agent for the commission to fund a loan to the state agency or local authority to aid it in the construction or acquisition of a wastewater facility project.

C. Each loan made by the division as agent for the commission shall provide that repayment of the loan shall begin not later than one year after completion of construction of the wastewater facility project for which the loan was made and shall be repaid in full no later than thirty years after completion of the construction. All principal and interest on loan payments shall be deposited in the fund.

D. Financial assistance shall be made with an annual interest rate to be five percent or less as determined by the commission.

E. A zero-percent interest rate may be approved by the division when the following conditions have been met by the local authority:

(1) the local authority's average user cost is at least fifteen dollars (\$15.00) per month or a higher amount as determined by the commission; and

(2) the local authority's median household income is less than three-fourths of the statewide nonmetropolitan median household income.

F. A local authority may use the proceeds from financial assistance received under the Wastewater Facility Construction Loan Act to provide a local match

or any other nonfederal share of a wastewater facility construction project as allowed pursuant to the Clean Water Act.

G. Financial assistance received pursuant to the Wastewater Facility Construction Loan Act shall not be used by a state agency or local authority on any wastewater facility project constructed in fulfillment or partial fulfillment of requirements made of a subdivider under the provisions of the Land Subdivision Act or the New Mexico Subdivision Act.

H. Financial assistance shall be made only to state agencies and local authorities that employ or contract with a professional engineer to provide and be responsible for engineering services on the wastewater facility project. Such services include but are not limited to an engineering report, construction contract documents, supervision of construction and start-up services.

I. Financial assistance shall be made only for eligible items. For financial assistance composed entirely of state funds, eligible items include but are not limited to the costs of engineering feasibility reports, contracted engineering design, inspection of construction, special engineering services, start-up services, contracted construction, materials purchased or equipment leased for force account construction, land or acquisition of existing facilities, but eligible items do not include the costs of water rights and local authority administrative costs. For financial assistance made from federal funds, eligible items are those identified pursuant to the Clean Water Act.

J. In the event of default by the state agency or local authority, the commission may enforce its rights by suit or mandamus or may utilize all other available remedies under state law."

## **Chapter 114 Section 4 Laws 2017**

SECTION 4. Section 74-6A-9 NMSA 1978 (being Laws 1991, Chapter 172, Section 7) is amended to read:

"74-6A-9. COMMISSION--POWERS.--

A. In administering the Wastewater Facility Construction Loan Act, the commission shall have the following powers, which may be implemented by the division, in addition to those specified in the Water Quality Act:

(1) to provide financial assistance to state agencies or local authorities to finance all or part of a wastewater facility, including all forms of assistance for which the fund may be used pursuant to the Wastewater Facility Construction Loan Act;

(2) to adopt resolutions recommending that the board issue bonds or refunding bonds pursuant to the provisions of the Wastewater Facility Construction Loan Act;

(3) to execute agreements concerning state contributions to the fund made pursuant to the Clean Water Act, including obligating the commission to pay a portion of the estimated reasonable cost of a wastewater facility of a local authority as may be required to meet the water quality goals of the Clean Water Act and the state;

(4) to foreclose upon, attach or condemn any wastewater facility, property or interest in the facility pledged, mortgaged or otherwise available as security for a project financed in whole or in part pursuant to the Wastewater Facility Construction Loan Act in the event of a default by a state agency or local authority;

(5) to acquire and hold title to or leasehold interest in real and personal property and to sell, convey or lease that property for the purpose of satisfying a default or enforcing the provisions of a loan agreement;

(6) through its agent the division, to manage the fund, to grant and administer financial assistance to local authorities and to apply for and accept grants, including but not limited to capitalization grant awards made to the state in accordance with the Clean Water Act and the Wastewater Facility Construction Loan Act;

(7) to appoint and employ attorneys, financial advisors, underwriters and other experts and agents and employees as the business of the commission may require;

(8) to sue or be sued and to prosecute and defend, at law or in equity, in any court having jurisdiction over the subject matter and the parties to the matter;

(9) to collect application, origination and administrative fees from the state agency or local authority, the total of which for any loan shall not exceed four percent of the value of the loan requested or authorized;

(10) to adopt regulations necessary and appropriate to implement the provisions of the Wastewater Facility Construction Loan Act; and

(11) to have and exercise all the rights and powers necessary, incidental to or implied from the specific powers enumerated in this section.

B. Specific powers enumerated in this section shall not limit any power necessary or appropriate to carry out the purposes and intent of the Wastewater Facility Construction Loan Act.

C. The commission shall use accounting, audit and fiscal procedures conforming to generally accepted government accounting standards and shall otherwise prepare audits and budgets in accordance with state law. The fiscal year of the commission shall coincide with the fiscal year of the state.

D. The commission shall deliver an annual report during the first week of each regular session of the legislature on the status of the wastewater facility construction loan program and the fund to the governor and legislature."

## **Chapter 114 Section 5 Laws 2017**

SECTION 5. Section 74-6A-12 NMSA 1978 (being Laws 1991, Chapter 172, Section 10) is amended to read:

"74-6A-12. COMMISSION BONDS.--

A. The board, upon recommendation from the commission, may issue and sell bonds or other obligations recommended by the commission to provide funds for any purpose enumerated in the Wastewater Facility Construction Loan Act or for payment of obligations incurred or temporary loans made to accomplish any purpose of that act. As prescribed in the recommending resolution, bonds may be issued in one or more series; shall bear prescribed dates; shall be in the form provided in the Supplemental Public Securities Act; shall be issued in prescribed denominations; shall have terms and maturities that do not exceed twenty-five years from the date of issue of each series; shall bear interest at prescribed rates; shall be payable and evidenced in the manner and times as set by the board; 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. As security for the payment of the principal and interest on bonds recommended by the commission and issued by the board, the commission is authorized to pledge, transfer and assign after consultation with the board:

(1) any obligations of each state agency or local authority, payable to the commission;

(2) the security for the state agency or local authority obligations;

(3) any grant, subsidy or contribution from the United States or any of its agencies or instrumentalities; or

(4) any income, revenues, funds or other money of the commission from any other source appropriated or authorized for use for the purpose of implementing the provisions of the Wastewater Facility Construction Loan Act.

C. The bonds and other obligations recommended by the commission and issued by the board may be sold at any time the commission and the board agree upon. The bonds may be sold at private or public sale at prices as provided in the Public Securities Act and in a manner agreed upon by the board and the commission. The commission may apply the proceeds of the sale of the bonds it recommends that have been issued by the board to:

(1) the purposes of the Wastewater Facility Construction Loan Act or the purposes for which the fund may be used;

(2) the payment of interest on bonds recommended by the commission and issued by the board for a period not to exceed three years from the date of issuance of the bonds; and

(3) the payment of all expenses, including publication and printing charges, attorney fees, financial advisory and underwriter fees, and premiums or commissions that the commission or the board determines are necessary or advantageous in connection with the recommendation, advertisement, sale, creation and issuance of commission-recommended obligations.

The board retains the power to fix the date of sale of the bonds and to take all actions necessary to sell and deliver the bonds.

D. In anticipation of the issuance of bonds, the board or the commission may borrow such sums as may be needed for any of the purposes enumerated in Subsection C of this section, obligate itself by certificate or promissory note, bearing interest at a rate to be specified by the commission and maturing within fifteen months from the date of the certificate or promissory note. The certificates or promissory notes shall be payable solely from the proceeds of the bonds recommended by the commission and issued by the board and from the funds from which commission-recommended bonds are payable. In the event that commission funds are not available for a loan for a wastewater facility project when application is made, in order to accelerate the completion of any wastewater facility project, the local authority may, with the approval of the commission, obligate such local authority to provide local funds to pay that portion of the cost of the wastewater facility project that the commission agrees to make available by loan, and the commission may refund the amount expended on its behalf by the local authority.

E. The commission may recommend that the board issue and sell refunding bonds for the purpose of paying, defeasing or refunding the principal of, interest on and any redemption premiums on any matured or unmatured outstanding bonds recommended by the commission and issued by the board or any matured or unmatured bonds of the state issued to finance wastewater facility projects constructed pursuant to the Clean Water Act grant program. Refunding bonds issued by the board pursuant to a recommendation by the commission shall be subject to the provisions of the Wastewater Facility Construction Loan Act in the same manner and to the same

extent as other bonds issued pursuant to that act. The holders of refunding bonds shall be subrogated and entitled to all priorities, rights and pledges to which the bonds refunded thereby were entitled.

F. Except as otherwise provided in the Wastewater Facility Construction Loan Act, the proceeds of refunding bonds shall be immediately applied to the retirement of the bonds to be refunded or be placed in escrow or trust in one or more trust banks within or without the state to be applied to the payment of the refunded bonds or the refunding bonds, or both, in such priority and in the manner that the commission and the board may determine.

G. The incidental costs of refunding bonds may be paid by the purchaser of the refunding bonds or be defrayed from other available revenues of the commission, from the proceeds of the refunding bonds, from the interest or other yield derived from the investment of any refunding bond proceeds or other money in escrow or trust, from any other sources legally available for that purpose or from any combination of sources as the commission may determine.

H. Any accrued interest and any premium appertaining to a sale of refunding bonds may be applied to the payment of the interest or the principal of the bonds, or to both interest and principal, may be deposited in the account or in the fund and expended solely for the purposes of this subsection, may be used to refund bonds by deposit in escrow, trust or otherwise or may be used to defray any incidental costs appertaining to the refunding or any combination thereof, as the commission may determine.

I. An escrow or trust shall be limited to proceeds of refunding bonds.

J. A trust bank accounting for federal securities and other securities issued by the federal government in escrow or trust may place those securities for safekeeping wholly or in part in one or more trust banks within or without the state. Proceeds in escrow or trust may be invested or reinvested in federal securities and, in the case of an escrow or trust for the refunding of outstanding bonds or securities, in other securities issued by the federal government if the recommending and issuing resolutions expressly permit the investment or reinvestment in securities issued by the federal government other than federal securities.

K. A trust bank shall continuously secure, by a pledge of federal securities in an amount at all times at least equal to the total uninvested amount of the money, any money placed in escrow or trust in that trust bank, or by that trust bank in one or more trust banks within or without the state, and not invested or reinvested in federal securities and other securities issued by the federal government.

L. Proceeds and investments in escrow or trust, together with interest or gain to be derived from that investment, shall be in an amount at all times sufficient to pay principal, interest, prior redemption premiums due, charges of the escrow agent or

trustee and other incidental expenses, except to the extent otherwise provided for, as such obligations become due at their respective maturities or due at designated prior redemption dates in connection with which the commission has exercised or is obligated to exercise a prior redemption option.

M. The computations made in determining sufficiency shall be verified by a certified public accountant.

N. A purchaser of a refunding bond issued pursuant to this section shall not be responsible for the application of the proceeds by the commission or any of the officers, agents or employees of the commission.

O. The state treasurer may invest any idle or surplus money of the state in bonds recommended by the commission and issued by the board. The governing body of any public entity in the state may invest any idle or surplus money held in its treasury in bonds recommended by the commission and issued by the board. Bonds recommended by the commission and issued by the board shall be legal investments for executors, administrators, trustees and other fiduciaries, unless otherwise directed by the court having jurisdiction of the fiduciary relation or by the document that is the source of the fiduciary's authority, and for savings banks and insurance companies organized under the laws of the state.

P. Bonds or other obligations recommended by the commission and issued by the board and the interest applicable thereto and the income therefrom and all projects or parts thereof and all assets of the commission shall be exempt from taxation in the state.

Q. Bonds may be issued under the provisions of the Wastewater Facility Construction Loan Act only with the approval of the commission and the board pursuant to authority provided in that act.

R. Commission members or employees or board members or employees and any person executing bonds issued pursuant to the Wastewater Facility Construction Loan Act shall not be liable personally on the bonds or be subject to any personal liability or accountability by reason of the issuance of the bonds.

S. All bonds recommended by the commission and issued by the board, while registered, are declared and shall be construed to be negotiable instruments.

T. All bonds, notes and certificates recommended by the commission and issued by the board shall be special obligations of the board, payable solely from the revenue, income, fees or charges that may, pursuant to the provisions of the Wastewater Facility Construction Loan Act, be pledged to the payment of such obligations, and the bonds, notes or certificates shall not create an obligation, debt or liability of the state. No breach of any pledge, obligation or agreement of the

commission shall impose a pecuniary liability upon the state or a charge upon its general credit or taxing power.

U. Any recommending or issuing resolution shall provide that each bond recommended or authorized shall recite that it is issued by the board under recommendation of the commission. The recital shall clearly state that the bonds are in full compliance with all of the provisions of the Wastewater Facility Construction Loan Act, and all bonds issued containing such recital shall be incontestable for any cause whatsoever after their delivery for value."

## **Chapter 114 Section 6 Laws 2017**

SECTION 6. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2017.

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House Bill 415  
Approved April 6, 2017

## **LAWS 2017, CHAPTER 115**

AN ACT

RELATING TO TAXATION; REDESIGNATING TAX CONTRIBUTIONS FOR THE OPERATION, MAINTENANCE AND IMPROVEMENT OF THE VIETNAM VETERANS MEMORIAL NEAR ANGEL FIRE; PROVIDING FOR A DISTRIBUTION.

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

## **Chapter 115 Section 1 Laws 2017**

SECTION 1. Section 7-1-6.59 NMSA 1978 (being Laws 2009, Chapter 175, Section 1) is amended to read:

"7-1-6.59. DISTRIBUTION--VIETNAM VETERANS MEMORIAL OPERATION, MAINTENANCE AND IMPROVEMENT.--A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the veterans' services department in an amount equal to the money designated pursuant to the Income Tax Act as contributions to the veterans' services department for the operation, maintenance and improvement of the Vietnam veterans memorial near Angel Fire, New Mexico."

## **Chapter 115 Section 2 Laws 2017**

SECTION 2. Section 7-2-30.4 NMSA 1978 (being Laws 2009, Chapter 175, Section 2) is amended to read:

"7-2-30.4. OPTIONAL DESIGNATION OF TAX REFUND CONTRIBUTION--VIETNAM VETERANS MEMORIAL.--

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 taxation and revenue 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 veterans' services department for the operation, maintenance and improvement of the Vietnam veterans memorial near Angel Fire, New Mexico. 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:

"Vietnam Veterans Memorial - Check [ ] if you wish to contribute a part or all of your tax refund to the veterans' services department for the operation, maintenance and improvement of the Vietnam Veterans Memorial near Angel Fire, New Mexico. 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."

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House Bill 444

Approved April 6, 2017

## **LAWS 2017, CHAPTER 116**

### **AN ACT**

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;  
PROVIDING FOR THE OPTIONAL DESIGNATION OF A TAX REFUND  
CONTRIBUTION TO THE SEXUAL ASSAULT EXAMINATION KIT PROCESSING  
GRANT FUND AND THE DEPARTMENT OF HEALTH TO PROVIDE SEXUAL  
ASSAULT SERVICES; ESTABLISHING THE SEXUAL ASSAULT EXAMINATION KIT  
PROCESSING GRANT PROGRAM; PROVIDING POWERS AND DUTIES; CREATING  
A FUND.

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

## **Chapter 116 Section 1 Laws 2017**

SECTION 1. A new section of the Income Tax Act is enacted to read:

"OPTIONAL DESIGNATION OF TAX REFUND CONTRIBUTION--SEXUAL ASSAULT EXAMINATION KIT PROCESSING GRANT FUND--SEXUAL ASSAULT SERVICES.--

A. An 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 that individual for that tax year may designate a portion of the income tax refund due to the individual to be paid to the sexual assault examination kit processing grant fund for the department of public safety to award grants to law enforcement agencies for the processing of sexual assault examination kits and to the department of health to fund sexual assault services provided by sexual assault service providers. In the case of a joint return, both individuals must make that designation.

B. The department shall revise the state income tax form to allow the designation of a contribution in the following form:

"Sexual Assault Examination Kit Processing Grant Fund and Sexual Assault Services - Check [ ] if you wish to contribute a part or all of your tax refund to the Sexual Assault Examination Kit Processing Grant Fund for the processing of sexual assault examination kits and to the Department of Health for the provision of sexual assault services by sexual assault service providers. Enter here \$\_\_\_\_\_ the amount of your contribution.".

C. Instructional materials shall provide that contributions to the sexual assault examination kit processing grant fund may be made directly to the department of public safety and contributions to fund sexual assault services by sexual assault service providers may be made directly to the department of health.

D. The provisions of this section do not apply to an income tax refund subject to interception under the provisions of the Tax Refund Intercept Program Act, and a designation made pursuant to the provisions of this section to that refund is void.

E. The department shall distribute the tax refund contributions pursuant to this section as follows:

(1) fifty percent to the state treasury for credit to the sexual assault examination kit processing grant fund for distribution by the department of public safety to law

enforcement agencies pursuant to the sexual assault examination kit processing grant program; and

(2) fifty percent to the department of health to fund sexual assault services provided by sexual assault service providers."

## **Chapter 116 Section 2 Laws 2017**

### **SECTION 2. SEXUAL ASSAULT EXAMINATION KIT PROCESSING GRANT PROGRAM--POWERS AND DUTIES--SEXUAL ASSAULT EXAMINATION KIT PROCESSING GRANT FUND CREATED.--**

A. As used in this section:

(1) "department" means the department of public safety; and

(2) "grant program" means the sexual assault examination kit processing grant program established pursuant to this section.

B. The department shall establish and administer a grant program to award funds to state and local law enforcement agencies for the processing of sexual assault examination kits.

C. Grant funds may be used only for the processing by a state or municipal crime laboratory of biological evidence that was collected in relation to a sexual assault.

D. The department:

(1) shall establish:

(a) grant program application procedures;

(b) guidelines for the grant amounts to be awarded; and

(c) criteria for evaluating grant program applications; and

(2) may establish additional eligibility criteria for grant program applications.

E. Annually, on or before January 1, the department shall provide a report to the taxation and revenue department detailing the results and performance of the grant program.

F. The "sexual assault examination kit processing grant fund" is created in the state treasury. The fund consists of voluntary tax refund contributions, gifts, grants

and donations. Balances remaining in the fund at the end of a fiscal year shall not revert to any other fund. The department shall administer the fund, and money in the fund is subject to appropriation by the legislature to the department to administer the grant program. Disbursements from the fund shall be made by warrant of the secretary of finance and administration pursuant to vouchers signed by the secretary of public safety or the secretary's authorized representative.

G. A person may make a gift or donation to the sexual assault examination kit processing grant fund through the department.

### **Chapter 116 Section 3 Laws 2017**

SECTION 3. DELAYED REPEAL.--Section 1 of this act is repealed effective January 1, 2023.

### **Chapter 116 Section 4 Laws 2017**

SECTION 4. APPLICABILITY.--The provisions of Section 1 of this act apply to taxable years beginning on or after January 1, 2017.

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HAFC/HJC/House Bill 536

Approved April 6, 2017

## **LAWS 2017, CHAPTER 117**

AN ACT

RELATING TO EDUCATION; ENACTING THE HUNGER-FREE STUDENTS' BILL OF RIGHTS ACT; PROVIDING FOR THE RIGHTS OF STUDENTS AND RESPONSIBILITIES OF SCHOOLS PARTICIPATING IN FREE OR REDUCED-FEE MEAL PROGRAMS.

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

### **Chapter 117 Section 1 Laws 2017**

SECTION 1. SHORT TITLE.--This act may be cited as the "Hunger-Free Students' Bill of Rights Act".

### **Chapter 117 Section 2 Laws 2017**

SECTION 2. DEFINITIONS.--As used in the Hunger-Free Students' Bill of Rights Act:

A. "meal application" means an application for free or reduced-fee meals pursuant to the national school lunch program and school breakfast program; and

B. "school" means a public school district, a public school, a private school or a religious school.

## **Chapter 117 Section 3 Laws 2017**

SECTION 3. MEAL APPLICATION AVAILABILITY AND CLARITY.--

A. A school shall provide:

(1) a free, printed meal application in every school enrollment packet, or if the school chooses to use an electronic meal application, provide in school enrollment packets an explanation of the electronic meal application process and instructions for how parents or guardians may request a paper application at no cost; and

(2) meal applications and instructions in a language that parents and guardians understand. If a parent or guardian cannot read or understand a meal application, the school shall offer assistance in completing the application.

B. If a school becomes aware that a student who has not submitted a meal application is eligible for free or reduced-fee meals, the school shall complete and file an application for the student under the authority granted by Title 7, Section 245.6(d) of the Code of Federal Regulations.

C. Subsections A and B of this section do not apply to a school that provides free meals to all students in a year in which the school does not collect meal applications from students.

D. The liaison required of a school pursuant to the federal McKinney-Vento Homeless Assistance Act shall coordinate with the nutrition department to make sure that a homeless student receives free school meals and shall be appropriately coded and entered in the student-teacher accountability reporting system. The requirements of this subsection do not apply to a private or religious school.

## **Chapter 117 Section 4 Laws 2017**

SECTION 4. REQUIREMENT TO PROVIDE MEALS AND ENSURE THAT ELIGIBLE STUDENTS ARE ENROLLED.--

A. Regardless of whether or not a student has money to pay for a meal or owes money for earlier meals, a school:

(1) shall provide a United States department of agriculture reimbursable meal to a student who requests one, unless the student's parent or guardian has specifically provided written permission to the school to withhold a meal; and

(2) shall not require that a student throw away a meal after it has been served because of the student's inability to pay for the meal or because money is owed for earlier meals.

B. If a student owes money for five or more meals, a school shall:

(1) check the state list of students categorically eligible for free meals to determine if the student is categorically eligible;

(2) make at least two attempts, not including the application or instructions included in a school enrollment packet, to reach the student's parent or guardian and have the parent or guardian fill out a meal application; and

(3) require a principal, assistant principal or counselor to contact the parent or guardian to offer assistance with a meal application, determine if there are other issues within the household that have caused the child to have insufficient funds to purchase a school meal and offer any other assistance that is appropriate.

## **Chapter 117 Section 5 Laws 2017**

### **SECTION 5. ANTI-STIGMATIZATION AND ANTI-DISCRIMINATION PRACTICES.--**

A. A school shall not:

(1) publicly identify or stigmatize a student who cannot pay for a meal or who owes a meal debt by, for example, requiring that a student wear a wristband or hand stamp; or

(2) require a student who cannot pay for a meal or who owes a meal debt to do chores or other work to pay for meals; provided that chores or work required of all students regardless of a meal debt is permitted.

B. A school shall direct communications about a student's meal debt to a parent or guardian and not the student. Nothing in this subsection prohibits a school from sending a student home with a letter addressed to a parent or guardian.

## **Chapter 117 Section 6 Laws 2017**

SECTION 6. DEBT COLLECTION PRACTICES--UNCOLLECTABLE DEBT.--A school shall not require a parent or guardian to pay fees or costs from collection agencies hired to collect a meal debt.

## **Chapter 117 Section 7 Laws 2017**

SECTION 7. APPLICABILITY.--The Hunger-Free Students' Bill of Rights Act applies to a public school district, a public school, a private school or a religious school that participates in the national school lunch program or school breakfast program.

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Senate Bill 374, aa

Approved April 6, 2017

# **LAWS 2017, CHAPTER 118**

AN ACT

RELATING TO PUBLIC SAFETY; PROVIDING FOR REMEDIATION OF THE DANGER POSED BY THE CARLSBAD BRINE WELL; CREATING THE CARLSBAD BRINE WELL REMEDIATION ADVISORY AUTHORITY; CREATING THE CARLSBAD BRINE WELL REMEDIATION FUND.

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

## **Chapter 118 Section 1 Laws 2017**

SECTION 1. CARLSBAD BRINE WELL REMEDIATION ADVISORY AUTHORITY--CREATED--MEMBERSHIP--ADMINISTRATION OF THE CARLSBAD BRINE WELL REMEDIATION.--

A. The "Carlsbad brine well remediation advisory authority" is created. The authority is a governmental entity of the state. The membership of the board of directors of the authority shall consist of the following eight members:

(1) the mayor of the city of Carlsbad or the mayor's designee, who shall serve as chair of the board;

(2) the chair of the Eddy county board of county commissioners or the chair's designee;

(3) the secretary of energy, minerals and natural resources or the secretary's designee;

- (4) the secretary of environment or the secretary's designee;
- (5) the secretary of transportation or the secretary's designee;
- (6) the manager of the Carlsbad irrigation district or the manager's designee;
- (7) the state engineer or the state engineer's designee; and
- (8) the attorney general or the attorney general's designee.

B. The advisory authority:

(1) shall recommend policy for and advise the oil conservation division of the energy, minerals and natural resources department on the remediation of the Carlsbad brine well located at: Unit Letter M (SW/4 of the SW/4) in Section 17, Township 22 South, Range 27 East, NMPM; Eddy County, New Mexico; and

(2) is granted all powers necessary and appropriate to provide advice to the division for a revenue source dedicated to the Carlsbad brine well remediation fund.

C. Nothing in this section shall be construed as a waiver or alteration of the immunity from liability granted pursuant to the Tort Claims Act or as a waiver of any other immunity or privilege under law.

## **Chapter 118 Section 2 Laws 2017**

### **SECTION 2. CARLSBAD BRINE WELL REMEDIATION FUND--CREATED--PURPOSE--CONDITIONS.--**

A. There is created the "Carlsbad brine well remediation fund". The energy, minerals and natural resources department shall administer the fund. The fund shall be used by

the oil conservation division of the energy, minerals and natural resources department to the extent that revenues are available to remediate the Carlsbad brine well.

B. Money in the fund may consist of federal grants, appropriations, donations, earnings from investment of the fund and other revenue that from time to time may accrue to the fund from other sources for remediation of the Carlsbad brine well.

C. Money in the fund shall be subject to appropriation by the legislature and shall not revert at the end of any fiscal year.

D. Money in the fund shall be disbursed on warrants signed by the secretary of finance and administration pursuant to vouchers signed by the secretary of energy, minerals and natural resources or the secretary's authorized representative.

### **Chapter 118 Section 3 Laws 2017**

SECTION 3. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The Carlsbad brine well remediation advisory authority is terminated on July 1, 2029 pursuant to the Sunset Act. The advisory authority shall continue to operate according to the provisions of this act until July 1, 2030. Effective July 1, 2030, this act is repealed.

### **Chapter 118 Section 4 Laws 2017**

SECTION 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2017.

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Senate Bill 4, aa

Approved April 6, 2017

## **LAWS 2017, CHAPTER 119**

AN ACT

RELATING TO PUBLIC HEALTH; REQUIRING THE DEPARTMENT OF HEALTH TO ADOPT RULES REQUIRING HOSPITALS AND FREESTANDING BIRTH CENTERS TO PROVIDE TRAINING AND EDUCATION TO PREVENT SHAKEN BABY SYNDROME TO EVERY PARENT OF EVERY NEWBORN BEFORE DISCHARGE.

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

### **Chapter 119 Section 1 Laws 2017**

SECTION 1. SHAKEN BABY SYNDROME PREVENTION.--The department of health shall adopt rules, no later than December 31, 2017, requiring every hospital and freestanding birthing center to provide training and education to prevent shaken baby syndrome to every parent of every newborn before discharge of the newborn from the health facility. The rules shall require the health facility to maintain records to demonstrate compliance with this requirement and to report such information as the department deems appropriate regarding the training and education provided by such health facility. The department, in collaboration with the university of New Mexico health sciences center's department of pediatrics, shall approve training and instructional

materials in both English and Spanish and shall include the use of shaken baby simulation dolls in the required curriculum.

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Senate Bill 21

Approved April 6, 2017

## **LAWS 2017, CHAPTER 120**

### **AN ACT**

RELATING TO PUBLIC SECURITIES; ALLOWING PUBLIC BODIES TO DELEGATE AUTHORITY FOR MAKING CERTAIN DETERMINATIONS REGARDING SALES OF PUBLIC SECURITIES; CLARIFYING THE DEFINITIONS OF "PUBLIC BODY" AND "PUBLIC SECURITIES"; REQUIRING REPORTING TO THE NEW MEXICO FINANCE AUTHORITY OVERSIGHT COMMITTEE.

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

### **Chapter 120 Section 1 Laws 2017**

SECTION 1. Section 6-14-9 NMSA 1978 (being Laws 1983, Chapter 265, Section 2) is amended to read:

"6-14-9. DEFINITIONS.--As used in the Supplemental Public Securities Act:

A. "authorizing instrument" means the ordinance, resolution, other official action or any applicable combination thereof by which public securities are authorized to be issued by a public body;

B. "public body" means this state or any department, board, agency or instrumentality of the state, any county, city, town, village, school district, other district or educational institution or any other governmental agency or political subdivision of the state or the New Mexico finance authority;

C. "public securities" means any bonds, notes, loans, warrants or other obligations now or hereafter authorized to be issued by any public body pursuant to the provisions of any general or special statute, any constitutional or statutory charter or any other law; and

D. "registrar" means the treasurer or any other officer of the public body or of any other public body or any corporate or other trustee, registrar, paying agent, transfer agent, custodian or other financial intermediary within the United States as may be appointed or designated in the authorizing instrument."

## Chapter 120 Section 2 Laws 2017

SECTION 2. A new section of the Supplemental Public Securities Act is enacted to read:

### "DELEGATION OF AUTHORITY BY PUBLIC BODY--AUTHORIZING INSTRUMENT.--

A. A public body may adopt an authorizing instrument that delegates to one or more members, officers or employees of the public body, acting in a fiduciary capacity within the scope of authority and the parameters and conditions for the public securities set forth by the public body in the authorizing instrument as described in Subsection B of this section, the authority to sign a contract for the purchase or sale of public securities or to accept a binding bid for public securities and to determine the final terms for public securities to be issued pursuant to Subsection C of this section. The authorizing instrument shall be effective for one hundred twenty days or for a specified shorter period.

B. An authorizing instrument delegating authority pursuant to Subsection A of this section shall establish the parameters and conditions for the public securities, including:

- (1) the public purpose for which the public securities are to be issued;
- (2) the maximum par amount of the public securities;
- (3) the maximum term for which the public securities may be outstanding;
- (4) the maximum interest rate that the public securities may bear;
- (5) each tax or revenue source that is pledged to or that shall secure payment for the public securities;
- (6) whether the public securities will be sold at a public or a private sale;
- (7) the minimum sales price or the maximum sales price of the public securities;
- (8) the maximum amount of underwriting discount, if any, as a percentage of the aggregate principal amount of the public securities;
- (9) the form of the public securities, subject to the final terms described in Subsection C of this section;

(10) the public securities that may be refunded, if any; and

(11) the appointment of a trustee, paying agent, registrar, escrow agent, tender agent, remarketing agent, dissemination agent or any other agent or service provider required for the sale, issuance and delivery of the public securities and the form of agreement for each appointment.

C. Subject to the parameters and conditions established in Subsection B of this section, a delegatee may be authorized, pursuant to the authorizing instrument, to determine any or all of the following final terms of the public securities:

(1) the interest and principal payment dates;

(2) the principal amount, denominations and maturity amortization;

(3) the sale price;

(4) the interest rate;

(5) the interest payment periods;

(6) the redemption and tender provisions;

(7) the procurement of municipal bond insurance and any related covenants or agreements;

(8) the creation of any capitalized interest or debt service reserve funds, including the size and funding of the funds;

(9) the amount of underwriting discount, if any;

(10) the public securities to be refunded, if any; and

(11) the final terms of agreements, if any, with one or more trustee, paying agent, registrar, escrow agent, tender agent, remarketing agent, dissemination agent or any other agent or service provider required for the purchase, sale, issuance and delivery of the public securities.

D. The public body shall determine and approve any term not listed in Subsection C of this section.

E. The delegatee shall certify in writing, prior to the delivery of the public securities, that the final terms determined pursuant to Subsection C of this section comply with the parameters and conditions established in the authorizing instrument pursuant to Subsection B of this section. The delegatee shall present the written certification containing the final terms of the public securities to the public body in a

timely manner, before or after the delivery of the public securities, at a regularly scheduled meeting of the public body held in compliance with the Open Meetings Act.

F. A public body need not approve a determination made by the delegatee pursuant to Subsection C of this section if the determination complies with the parameters and conditions established in the authorizing instrument pursuant to Subsection B of this section. A determination made by the delegatee pursuant to this section has the same force and effect as a determination made by the public body. The delegatee, while acting within the scope of the delegatee's authority and the parameters and conditions established in the authorizing instrument pursuant to Subsection B of this section, shall not be subject to any personal liability for any action taken or omitted within that scope of authority.

G. A public body's adoption of an authorizing instrument that includes a delegation of authority pursuant to this section constitutes final passage of the authorizing instrument for the purposes of any applicable general or special law or any constitutional or statutory provision or municipal charter related to any referendum or petition right."

## **Chapter 120 Section 3 Laws 2017**

SECTION 3. A new section of the New Mexico Finance Authority Act is enacted to read:

"REPORT TO LEGISLATURE--AUTHORIZING INSTRUMENT--DELEGATION OF AUTHORITY FOR PUBLIC SECURITIES ISSUANCES.--By September 30 of each year, the authority shall report to the New Mexico finance authority oversight committee about the authority's public securities issuances, completed in the prior twelve months, that involved a delegation of authority through an authorizing instrument pursuant to Section 2 of this 2017 act."

## **Chapter 120 Section 4 Laws 2017**

SECTION 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2017.

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Senate Bill 43

Approved April 6, 2017

# **LAWS 2017, CHAPTER 121**

AN ACT

RELATING TO PARENTAL RIGHTS; PROVIDING A PROCESS FOR TERMINATION OF PARENTAL RIGHTS WITH RESPECT TO A CHILD CONCEIVED AS A RESULT OF CRIMINAL SEXUAL PENETRATION; PROVIDING A PENALTY.

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

## **Chapter 121 Section 1 Laws 2017**

SECTION 1. A new section of Chapter 40 NMSA 1978 is enacted to read:

"TERMINATION OF PARENTAL RIGHTS--CONCEPTION RESULTING FROM CRIMINAL SEXUAL PENETRATION.--

A. At any time, a biological parent may petition the court for termination of the parental rights of a child's other biological parent, where that other biological parent has been convicted of criminal sexual penetration and where the criminal sexual penetration resulted in the conception and birth of the child. The court shall grant the petition if the court determines by clear and convincing evidence that the child was conceived as a result of the criminal sexual penetration for which the other biological parent was convicted.

B. In a proceeding that involves 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 that act, and the court shall, in a termination order, make specific findings that those requirements were met.

C. A determination pursuant to Subsection A of this section or proof pursuant to Subsection B of this section creates a presumption that termination of parental rights is in the best interest of the child.

D. As used in this section, "criminal sexual penetration" means aggravated criminal sexual penetration in the first degree and criminal sexual penetration in the first, second or third degree pursuant to the laws of this state or an equivalent offense pursuant to the laws of another jurisdiction, territory or possession of the United States or an Indian nation, tribe or pueblo."

## **Chapter 121 Section 2 Laws 2017**

SECTION 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2017.

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Senate Bill 45 aa

Approved April 6, 2017

# LAWS 2017, CHAPTER 122

## AN ACT

RELATING TO COMMUNICATIONS; AMENDING, REPEALING AND ENACTING SECTIONS OF THE ENHANCED 911 ACT AND AMENDING A SECTION OF THE ENHANCED 911 BOND ACT TO PROVIDE FOR SURCHARGES TO BE IMPOSED ON COMMUNICATIONS SERVICES, INCLUDING VOICE-OVER-INTERNET PROTOCOL SUBSCRIPTIONS AND ELECTRONIC DATA NETWORKS.

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

### Chapter 122 Section 1 Laws 2017

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 call" means any real-time communication, message, signal or transmission between a person needing assistance and a public safety answering point call-taker by dialing 9-1-1 or its equivalent;

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. "communication service" means any service that:

(1) is capable of and required by law to access, connect with or interface with the enhanced 911 system by directly dialing, initializing or otherwise activating the enhanced 911 system regardless of the transmission medium or technology employed; and

(2) provides or enables real-time or interactive communication;

H. "communications service provider" means any entity that provides communication services;

I. "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;

J. "department" means the taxation and revenue department;

K. "division" means the local government division of the department of finance and administration;

L. "enhanced 911 surcharge" means the monthly uniform charge assessed on each access line in the state, on each active number for a commercial mobile radio service subscriber and on the number of VoIP lines for which the VoIP service provider enables the capacity for simultaneous calls, regardless of actual usage, to be connected to the public switched telephone network during the period for which the fixed charge is imposed for a VoIP service subscriber in New Mexico and the charge assessed on any other consumer purchase of communication service provided by a communications service provider that enables communication between a person needing assistance and a public safety answering point call-taker by dialing 9-1-1 or its equivalent; provided that an enhanced 911 surcharge shall not be assessed on the provision of broadband internet access service;

M. "enhanced 911 system" means, regardless of the technology used, a landline, wireless, NG-911 or ESInet system consisting of network switching equipment, database, mapping and on-premises equipment, or the functional equivalent thereof, 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, text or data, or any combination of these, and may feature limited or open access and may employ appropriate analog, digital switching or transmission technologies;

(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; and

(5) manage or administer the functions listed in Paragraphs (1) through (4) of this subsection;

N. "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;

O. "equipment supplier" means a person who provides or offers to provide communications equipment necessary for the establishment of enhanced 911 services;

P. "ESInet" means emergency services internet protocol network, an internet-protocol-based, multipurpose inter-network supporting local, regional, state and national public safety communications services in addition to 911;

Q. "fiscal agent" means the local governing body that administers grants from the fund for a given locality or region by agreement;

R. "fund" means the enhanced 911 fund;

S. "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;

T. "NG-911" means a next generation 911 system consisting of network, hardware, software, data and operational policies and procedures that:

(1) provides standardized interfaces from call and message services;

(2) processes all types of emergency calls, including non-voice (multimedia) messages;

(3) acquires and integrates additional data useful to call routing and handling;

(4) delivers the calls, messages and data to appropriate public safety answering points and other appropriate emergency entities;

(5) supports data and communications needs for coordinated incident response and management; and

(6) provides a secure environment for emergency communications;

U. "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 communications service provider; and provided further that "proprietary information" does not include individual payments made by the division or any list of names and identifying information of subscribers who have not paid the surcharge;

V. "public safety answering point" means a twenty-four-hour local communications facility that receives 911 service communications and directly dispatches emergency response services or that relays communications to the appropriate public or private safety agency;

W. "subscriber" means a person who purchases communication services at retail from a communications service provider that are capable of originating a 911 communication;

X. "surcharge" means the 911 emergency surcharge;

Y. "surcharge collected" means the amount of enhanced 911 surcharge billed or received or deemed to have been received by the seller or provider, consistent with the seller's or provider's method of accounting, including accrual or cash;

Z. "telecommunications company" means a person who provides wire telecommunications services that are capable of originating a 911 communication;

AA. "vendor" means a person that provides 911 equipment, service or network support;

BB. "VoIP" means "interconnected voice-over-internet protocol service" as defined in the Code of Federal Regulations, Title 47, Part 9, Section 9.3, as amended; and

CC. "VoIP service provider" or "interconnected voice-over-internet protocol service provider" means an entity that provides interconnected voice-over-internet protocol service to end users."

## **Chapter 122 Section 2 Laws 2017**

SECTION 2. 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 communications service provider, on each active number for a commercial mobile radio service subscriber and on the number of VoIP lines for which the VoIP service provider enables the capacity for simultaneous calls, regardless of actual usage, to be connected to the public switched telephone network during the period for which the fixed charge is imposed. The surcharge is imposed on all subscribers whose place of primary use, as defined in the federal Mobile Telecommunications Sourcing Act, 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; and provided further that the surcharge shall not apply to prepaid wireless communication service; and provided further that a 911 emergency surcharge shall not be assessed on the provision of broadband internet access service.

B. All communications 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. The surcharge required to be collected by the communications service provider shall be added to and stated clearly and separately in the billings to the subscriber. The surcharge collected by the communications service provider shall not be considered revenue of the communications service provider.

C. A billed subscriber is liable for payment of the 911 emergency surcharge until it has been paid to the communications service provider.

D. A communications service provider 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 communications service provider, 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 communications service provider to be nonpayment of the surcharge. The communications service provider shall not be held liable for uncollected surcharge amounts."

### **Chapter 122 Section 3 Laws 2017**

SECTION 3. 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 communications service provider shall agree upon. A communications 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 communications 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 122 Section 4 Laws 2017**

SECTION 4. 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 and communications service providers for their costs of providing enhanced 911 service. A person who purchases communication services from a communications service provider 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 communications 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 communications service providers for their costs of providing enhanced 911 service. If a communications service provider 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 122 Section 5 Laws 2017**

SECTION 5. 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 or communications service provider 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 and communications service providers.

F. All rules shall be filed in accordance with the State Rules Act."

## **Chapter 122 Section 6 Laws 2017**

SECTION 6. 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 intentional acts, the local governing body, public agency, equipment supplier, communications service provider and their officers, directors, vendors, employees and agents are not liable for damages resulting from installing, maintaining or providing enhanced 911 systems or transmitting 911 calls."

## **Chapter 122 Section 7 Laws 2017**

SECTION 7. 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 provided by a communications service provider, 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 communications service provider is not public information and may not be released to any person without the express permission of the submitting provider, except that information may be released or published as aggregated data that does not identify the number of subscribers or identify enhanced 911 system costs attributable to an individual communications service provider."

## **Chapter 122 Section 8 Laws 2017**

SECTION 8. Section 63-9D-11.1 NMSA 1978 (being Laws 1993, Chapter 48, Section 13) is amended to read:

"63-9D-11.1. VIOLATION--PENALTIES.--

A. Any person who knowingly dials 911 for the purpose of reporting a false alarm, making a false complaint or reporting false information that results in an emergency response by any public safety agency is guilty of a petty misdemeanor and shall be punished by a fine of not more than five hundred dollars (\$500) or imprisonment for a term not to exceed six months, or both.

B. A municipality or a county may adopt an ordinance making it a violation for any person to knowingly dial 911 for the purpose of reporting a false alarm, making a false complaint or reporting false information that results in an emergency response by any public safety agency. The municipality may adopt and enforce the ordinance pursuant to the authority provided in Section 3-17-1 NMSA 1978. The county may adopt and enforce the ordinance pursuant to the authority provided in Section 4-37-1 NMSA 1978."

## **Chapter 122 Section 9 Laws 2017**

SECTION 9. 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 communications service provider 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 122 Section 10 Laws 2017**

SECTION 10. A new section of the Enhanced 911 Act is enacted to read:

"PREPAID WIRELESS ENHANCED 911 SURCHARGE--COLLECTION AND ADMINISTRATION OF SURCHARGE--LIABILITY OF SELLERS--EXCLUSIVITY OF SURCHARGE.--

A. As used in this section:

(1) "consumer" means a person who purchases prepaid wireless communication service in a retail transaction;

(2) "prepaid wireless communication service" means a wireless communication service that allows a caller to dial 911 to access the 911 system, which service must be paid for in advance and is sold in predetermined units or dollars of which the number declines with use in a known amount;

(3) "prepaid wireless enhanced 911 surcharge" means the charge that is required to be collected by a seller from a consumer in the amount established under Subsection B of this section;

(4) "provider" means a person that provides prepaid wireless communication service pursuant to a license issued by the federal communications commission;

(5) "retail transaction" means the purchase of prepaid wireless communication service from a seller for any purpose other than resale;

(6) "seller" means a person who sells prepaid wireless communication service to another person; and

(7) "wireless communication service" means commercial mobile radio service as defined by Section 20.3 of Title 47 of the Code of Federal Regulations, as amended.

B. A prepaid wireless enhanced 911 surcharge of one and thirty-eight hundredths percent is imposed on the gross value of each retail transaction. The prepaid wireless enhanced 911 surcharge shall be collected by the seller from the consumer with respect to each retail transaction occurring in this state. The amount of the prepaid wireless enhanced 911 surcharge shall be either separately stated on an invoice, receipt or other similar document that is provided to the consumer by the seller, or otherwise disclosed to the consumer.

C. For purposes of Subsection B of this section, a retail transaction that is effected in person by a consumer at a business location of the seller shall be treated as occurring in this state if that business location is in this state, and any other retail transaction shall be treated as occurring in this state if the retail transaction is treated as occurring in this state for purposes of the Gross Receipts and Compensating Tax Act.

D. The prepaid wireless enhanced 911 surcharge is the liability of the consumer and not of the seller or of any provider, except that the seller shall be liable to remit all prepaid wireless enhanced 911 surcharges that the seller collects from consumers as provided in this section, including all such surcharges that the seller is deemed to collect where the amount of the surcharge has not been separately stated on an invoice, receipt or other similar document provided to the consumer by the seller.

E. The amount of the prepaid wireless enhanced 911 surcharge that is collected by a seller from a consumer, if such amount is separately stated on an invoice, receipt or other similar document provided to the consumer by the seller, shall not be included in the base for measuring any tax, fee, surcharge or other charge that is imposed by this state, any political subdivision of this state or any intergovernmental agency.

F. When prepaid wireless communication service is sold with one or more other products or services for a single, non-itemized price, the percentage specified in Subsection B of this section shall apply to the entire non-itemized price unless the seller elects to apply such percentage to:

(1) if the amount of the prepaid wireless communication service is disclosed to the consumer as a dollar amount, such dollar amount; or

(2) if the seller can identify the portion of the price that is attributable to the prepaid wireless communication service by reasonable and verifiable standards from its books and records that are kept in the regular course of business for other purposes, including non-tax purposes, such portion.

G. However, if a minimal amount of prepaid wireless communication service is sold with a prepaid wireless device for a single, non-itemized price, the seller may elect not to apply the percentage specified in Subsection B of this section to such transaction. For purposes of this subsection, an amount of service denominated as ten minutes or less, or five dollars (\$5.00) or less, is minimal.

H. Prepaid wireless enhanced 911 surcharges collected by sellers shall be remitted to the department at the times and in the manner provided with respect to the Gross Receipts and Compensating Tax Act. The department shall establish registration and payment procedures that substantially coincide with the registration and payment procedures that apply to the Gross Receipts and Compensating Tax Act. A seller shall be permitted to deduct and retain three percent of prepaid wireless enhanced 911 surcharges that are collected by the seller from the consumer.

I. The audit and appeal procedures applicable to the Gross Receipts and Compensating Tax Act shall apply to prepaid wireless enhanced 911 surcharges.

J. The department shall establish procedures by which a seller of prepaid wireless communication services may document that a sale is not a retail transaction, which procedures shall substantially coincide with the procedures for documenting sale for resale transactions for the Gross Receipts and Compensating Tax Act.

K. No provider or seller of prepaid wireless communication services shall be liable for damages to any person resulting from or incurred in connection with the provision of, or failure to provide, 911 or enhanced 911 service, or for identifying, or failing to identify, the telephone number, address, location or name associated with any person or device that is accessing or attempting to access 911 or enhanced 911 service.

L. No provider or seller of prepaid wireless communication services shall be liable for damages to any person resulting from or incurred in connection with the provision of any assistance to any investigative or law enforcement officer of the United States, this or any other state, or any political subdivision of this or any other state, in connection with any investigation or other law enforcement activity by such law enforcement officer.

M. In addition to the protection from liability provided by Subsections K and L of this section, each provider and seller shall be entitled to the further protection from liability as provided pursuant to Section 63-9D-10 NMSA 1978.

N. The prepaid wireless enhanced 911 surcharge applies to retail transactions occurring on or after July 1, 2017."

## **Chapter 122 Section 11 Laws 2017**

SECTION 11. REPEAL.--Section 63-9D-4.1 NMSA 1978 (being Laws 2003, Chapter 339, Section 1) is repealed.

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SCORC/Senate Bill 46, aa

Approved April 6, 2017

## **LAWS 2017, CHAPTER 123**

AN ACT

RELATING TO HEALTH CARE; MAKING CERTAIN PROVISIONS IN HEALTH CARE PRACTITIONER AGREEMENTS VOID, UNENFORCEABLE AND AGAINST PUBLIC POLICY; INCLUDING CERTIFIED NURSE PRACTITIONERS AND CERTIFIED NURSE-MIDWIVES IN THE DEFINITION OF "HEALTH CARE PRACTITIONER"; DECLARING AN EMERGENCY.

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

## **Chapter 123 Section 1 Laws 2017**

SECTION 1. Section 24-11-1 NMSA 1978 (being Laws 2015, Chapter 96, Section 1) is amended to read:

"24-11-1. DEFINITIONS.--As used in Chapter 24, Article 11 NMSA 1978:

A. "agreement" means a written contract to which a health care practitioner is a party; and

B. "health care practitioner" means:

(1) a dentist;

(2) an osteopathic physician;

- (3) a physician;
- (4) a podiatrist;
- (5) a certified registered nurse anesthetist;
- (6) a certified nurse practitioner; and
- (7) a certified nurse-midwife."

## **Chapter 123 Section 2 Laws 2017**

SECTION 2. Section 24-11-2 NMSA 1978 (being Laws 2015, Chapter 96, Section 2) is amended to read:

"24-11-2. ENFORCEABILITY OF A NON-COMPETE PROVISION--OTHER PROVISIONS VOID.--

A. A non-compete provision in an agreement, which provision restricts the right of a health care practitioner to provide clinical health care services in this state, shall be unenforceable upon the termination of:

- (1) the agreement;
- (2) a renewal or extension of the agreement; or
- (3) a health care practitioner's employment with a party seeking to enforce the agreement.

B. A provision in an agreement for clinical health care services to be rendered in this state is void, unenforceable and against public policy if the provision:

- (1) makes the agreement subject to the laws of another state; or
- (2) requires any litigation arising out of the agreement to be conducted in another state."

## **Chapter 123 Section 3 Laws 2017**

SECTION 3. Section 24-11-5 NMSA 1978 (being Laws 2015, Chapter 96, Section 5) is amended to read:

"24-11-5. APPLICABILITY.--

A. Chapter 24, Article 11 NMSA 1978 does not apply to agreements between health care practitioners who are shareholders, owners, partners or directors of a health care practice.

B. Except as provided by Subsection C of this section, the provisions of Chapter 24, Article 11 NMSA 1978 apply to agreements, or renewals or extensions of agreements, executed on or after July 1, 2015.

C. The provisions of Subsection B of Section 24-11-2 NMSA 1978 apply to agreements, or renewals or extensions of agreements, executed on or after the effective date of this 2017 act."

## **Chapter 123 Section 4 Laws 2017**

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

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SPAC/Senate Bills 82 and 128, aa, w/ec

Approved April 6, 2017

## **LAWS 2017, CHAPTER 124**

AN ACT

RELATING TO SPECIAL DISTRICTS; AMENDING A SECTION OF THE NMSA 1978; PROVIDING THAT WATER RIGHTS SHALL BE COMBINED AND COMMINGLED AMONG CONTIGUOUS MERGING COMPONENTS OF THE LOWER RIO GRANDE PUBLIC WATER WORKS AUTHORITY; PROVIDING FOR UTILITY CHARGES OF THE LOWER RIO GRANDE PUBLIC WATER WORKS AUTHORITY AS A LIEN AGAINST PROPERTY SERVED.

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

## **Chapter 124 Section 1 Laws 2017**

SECTION 1. Section 73-26-1 NMSA 1978 (being Laws 2009, Chapter 100, Section 1) is amended to read:

"73-26-1. LOWER RIO GRANDE PUBLIC WATER WORKS AUTHORITY.--

A. The "Lower Rio Grande public water works authority" is created. The authority is a political subdivision of the state and shall be an independent public body.

The authority is composed of Berino mutual domestic water consumers and mutual sewage works association, Desert Sands mutual domestic water consumers association, La Mesa mutual domestic water consumers association, Mesquite mutual domestic water consumers and mutual sewage works association and Vado mutual domestic water consumers association, all serving unincorporated communities within Dona Ana county. The voting community membership of the five founding entities have approved by resolution the development of the authority.

B. The authority may adopt rules and resolutions, governance policies and procedures necessary to exercise the powers conferred pursuant to this section.

C. All functions, appropriations, money, records and equipment and all personal property and real property, including water rights, easements, permits and infrastructure, as well as all encumbrances, debts and liabilities pertaining to or owned by the founding entities shall be transferred to the authority.

D. The authority's service area shall consist of the founding entities' existing place of use on file with and approved by the state engineer and shall be filed in the public records of Dona Ana county. An application shall be filed with the state engineer to combine and commingle water rights and to combine the existing entities' place of use into the authority's service area. In the event that another entity elects to merge into the authority, the authority's service area shall be amended to include that entity's place of use and shall be filed with the state engineer. The authority's initial service area and any subsequent amendments to its service area shall be designated in a plat filed in the public records of Dona Ana county. If the service area of the merging entity is contiguous with the service area of the authority, the merger shall include the combining and commingling of water rights with the authority by application filed with the state engineer.

E. The authority may provide for water and wastewater services, road improvements for the protection of the authority's infrastructure or renewable energy projects that

are integral to the operation and maintenance of the authority's facilities or any combination or parts thereof.

F. The authority shall exercise all powers allowed pursuant to law, including:

(1) regulating, supervising and operating the authority's facilities;

(2) establishing rates and imposing assessments, fees and charges and taking action necessary for the enforcement thereof;

(3) assessing a standby charge for the privilege of connection into the authority's service at some date in the future if the property line is within three

hundred feet of the authority's service lines and the property line is located within the boundaries of the authority. This section applies to new connections after the enactment of this act;

(4) acquiring, from a willing seller only, holding and using water rights in an amount necessary to meet its reasonable needs not to exceed forty years pursuant to Section 72-1-9 NMSA 1978;

(5) shutting off, after notice, unauthorized connections, illegal connections or a connection for which charges are delinquent in payment;

(6) entering into contracts for services with private entities, the state, municipalities, counties and the federal government and other public bodies to further its public purposes;

(7) entering into joint powers agreements with other governmental entities;

(8) acquiring and disposing of real property, personal property and rights of way;

(9) condemning property pursuant to the Eminent Domain Code as the last resort and only for the purposes of construction, maintenance and operations of the authority's infrastructure;

(10) hiring and retaining agents, employees and consultants, as needed;

(11) adopting and using a governmental seal;

(12) placing a lien on property for unpaid assessments, charges and fees and enforcing the lien in a manner pursuant to this section;

(13) suing and being sued and being a party to suits, actions and proceedings; and

(14) having and exercising all rights and powers necessary, incidental to or implied from the specific powers granted in this section.

G. As a political subdivision of the state and a member-owned community water system, the authority shall be subject to the:

(1) applicable rules and regulations of the department of environment, and in its discretion the department may:

(a) conduct periodic reviews of the operation of the authority;

(b) require the authority to submit information to the department;

(c) upon department of environment discretion or upon a petition of twenty-five percent of the members of the authority, conduct an investigation as it deems necessary to ensure the authority's compliance with all applicable statutes, rules, regulations and reporting requirements; and

(d) after a hearing, set and collect rates and fees and use the same for the proper operation and management of the authority;

(2) applicable rules and regulations of the department of finance and administration, local government division and budget and finance bureau;

(3) Open Meetings Act;

(4) Inspection of Public Records Act;

(5) Audit Act;

(6) Procurement Code;

(7) Governmental Conduct Act;

(8) special election procedures pursuant to Chapter 1, Article 24 NMSA 1978;

(9) Chapter 72 NMSA 1978; and

(10) applicable rules and regulations of the state engineer.

H. The authority is a political subdivision of the state and a member-owned community water system and shall not be subject to the jurisdiction of the public regulation commission or the provisions of the Public Utility Act.

I. The authority may issue utility system revenue bonds and obligations for acquiring real and personal property needed for the utility system and for extending, enlarging, renovating, repairing or otherwise improving its facilities. The authority may issue revenue anticipation notes with maturities and terms to be approved by the board of directors of the authority. The authority may pledge irrevocably net revenues from the operation of the utility system for payment of the principal, premiums and interest on the bonds. The 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 forty years after the date of issuance;

(4) may be serial in form and maturity, 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.

J. The authority's board of directors 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 authority's board of directors. Utility revenue bonds and the resolution authorizing their issuance shall be subject to voter approval with oversight from the department of finance and administration and the New Mexico finance authority. The bonds authorized by the authority and their income shall be exempt from taxation by the state and its political subdivisions.

K. Except for the purpose of refunding previous utility system revenue bond issues, the authority shall 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.

L. The authority shall be governed by a board of directors. The directors of the initial board shall consist of five directors representing each of the founding entities. The directors of the initial board shall serve until their successors are elected. After the terms of the initial directors are completed, the succeeding board of directors shall be elected by districts from a minimum of five and a maximum of seven electoral districts. Each director, at the time of election, shall reside within the electoral district of the authority from which that member is elected. The boundaries and the number of electoral districts shall be established by the initial board within two years of the creation of the authority. The board may in its governance document provide for redistricting upon any change in the authority's boundary. The elected board of directors shall serve staggered terms to be established in the governance document developed by the initial board. Elections shall be conducted in accordance with the special election procedures

pursuant to Chapter 1, Article 24 NMSA 1978 and may be conducted by the Dona Ana county elections bureau.

M. If the authority places a lien on property for nonpayment of money owed, the authority shall file in the office of the county clerk of the county or counties in which the property is located a notice of lien, which shall include:

- (1) identification of the outstanding debt to the authority;
- (2) the fact that a lien is established;
- (3) the general purpose of the lien;
- (4) the name of the owner of the property against which the lien is established as determined from the records of the county assessor;
- (5) a description of the property against which the lien is established;
- (6) the amount of the lien; and
- (7) if the lien is for more than one period of time, the date for which the lien is established.

N. A lien for multiple charges or assessments on a property owner may be included in the same notice of lien, and it shall not be necessary to file separate liens against the separate properties. The lien shall be attested in the name of the authority. The principal amount of any lien imposed for a charge or assessment shall bear interest at the rate of twelve percent per year from the date of filing the notice of lien unless otherwise provided by law.

O. After the filing of the notice of lien in the office of the county clerk, the authority shall have a lien upon the property described in the notice of lien. The filing of the notice of lien shall be notice to all the world of the existence of the lien and of the contents of the notice of lien. No such lien shall affect the title or rights to or in any real estate, of any purchaser, mortgagee in good faith or judgment lien creditor, without knowledge of the existence of such lien, unless the notice of lien is filed in accordance with this section in the office of the county clerk of the county in which the real estate is situated. All authority liens shall be first and prior liens on the property subject only to the lien of federal, state and county taxes. The authority may release a lien against any specific property by:

- (1) entering and signing a receipt of payment upon the notice of lien filed in the office of the county clerk; or

(2) issuing a separate receipt that recites that payment of the lien with any accrued interest and penalty has been made.

P. The authority may, in a single suit, foreclose the liens against all persons named in the notice of liens or against the property if the owners are unknown. The complaint filed shall:

- (1) expressly name each defendant, if known;
- (2) describe the property against which the lien is established; and
- (3) set forth the amount of the lien.

Q. The judgment or decree rendered in said cause shall be several against the named defendants and against the several properties for the amounts decreed to be due by each.

A lien against real estate may be foreclosed in the same manner that mortgages or other liens against real estate are foreclosed with like rights of redemption. In the foreclosure of any lien created by the authority, reasonable attorney fees may be ordered by the court as part of the costs in favor of the prevailing party.

R. The authority shall prepare and sign a notice of foreclosure, which shall also bear the signature and mailing address of an attorney representing the authority. The proceeds of the sale of the property by the authority pursuant to a foreclosure sale on a lien shall be applied as follows:

- (1) first, to the payment of costs in giving notice of the sale and of conducting the sale;
- (2) second, to the indebtedness claimed under a lien on the property for federal, state, county, municipal or ad valorem taxes;
- (3) third, to the indebtedness claimed under the lien of the authority;
- (4) fourth, to all other special assessments having a lien on the property; and
- (5) fifth, after all such costs, liens, assessments and taxes are paid, to the former owner, mortgage holder or parties having an interest in the tract or parcel, upon such persons providing satisfactory proof to the court of such interest and upon approval of the court.

S. As used in this section, "public water works authority" means a utility organized as a political subdivision of the state for the purposes of constructing infrastructure and furnishing water and wastewater services for domestic, commercial or

industrial uses, road improvements for the protection of the authority's infrastructure and renewable energy projects; and entering into agreements with other entities for the provision of other services, including water conservation and reclamation, source water protection, drainage, flood control, solid waste, planning and zoning."

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Senate Bill 110, aa

Approved April 6, 2017

## **LAWS 2017, CHAPTER 125**

AN ACT

RELATING TO SERVICE CONTRACTS; AMENDING THE SERVICE CONTRACT REGULATION ACT; ADDING AND AMENDING DEFINITIONS; PROVIDING FOR SURETY THROUGH INSURANCE POLICIES; SPECIFYING INFORMATION TO BE INCLUDED IN CONTRACTS.

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

### **Chapter 125 Section 1 Laws 2017**

SECTION 1. Section 59A-58-1 NMSA 1978 (being Laws 2001, Chapter 206, Section 1) is amended to read:

"59A-58-1. SHORT TITLE.--Chapter 59A, Article 58 NMSA 1978 may be cited as the "Service Contract Regulation Act".

### **Chapter 125 Section 2 Laws 2017**

SECTION 2. Section 59A-58-2 NMSA 1978 (being Laws 2001, Chapter 206, Section 2, as amended) is amended to read:

"59A-58-2. DEFINITIONS.--As used in the Service Contract Regulation Act:

A. "administrator" means a person who is responsible for administering a service contract that is issued, sold or offered for sale by a provider or sold by a seller;

B. "consumer" means a person who purchases, other than for resale, property used primarily for personal, family or household purposes and not for business or research purposes;

C. "holder" means a resident of this state who:

(1) purchases a service contract; or

(2) is legally in possession of a service contract and is entitled to enforce the rights of the original purchaser of the service contract;

D. "incidental costs" means expenses specified in a warranty that are incurred by the warranty holder due to the failure of the product to perform as provided in the contract. Incidental costs may include, without limitation, insurance policy deductibles, rental vehicle charges, the difference between the actual value of a motor vehicle at the time of failure and the cost of a replacement vehicle, gross receipts taxes, registration fees, transaction fees and mechanical inspection fees. Incidental costs may be reimbursed in either a fixed amount specified in the warranty or by use of a formula itemizing specific incidental costs incurred by the warranty holder;

E. "maintenance agreement" means a contract for a limited period that provides only for scheduled maintenance;

F. "major manufacturing company" means a person who:

(1) manufactures or produces and sells products under its own name or label or is a wholly owned subsidiary or affiliate of the person who manufactures or produces products; and

(2) maintains, or its parent company maintains, a net worth or stockholders' equity of at least one hundred million dollars (\$100,000,000);

G. "property" means all property, whether movable at the time of purchase or a fixture, that is used primarily for personal, family or household purposes;

H. "provider" means a person who is contractually obligated to a holder or to indemnify the holder for the costs of repairing, replacing or performing maintenance on property;

I. "reimbursement insurance policy" means a policy of insurance issued to a provider to either provide reimbursement to the provider under the terms of the insured service contracts issued or sold by the provider or, in the event of the provider's non-performance, to pay on behalf of the provider all covered contractual obligations incurred by the provider under the terms of the insured service contracts issued or sold by the provider;

J. "road hazard" means a hazard that is encountered while driving a motor vehicle and that may include potholes, rocks, wood debris, metal parts, glass, plastic, curbs or composite scraps;

K. "seller" means a person who sells service contracts that contractually obligate another party or parties;

L. "service contract" means a contract pursuant to which a provider, in exchange for separately stated consideration, is obligated for a specified period to a holder to repair, replace or perform maintenance on, or indemnify or reimburse the holder for the costs of repairing, replacing or performing maintenance on, property that is described in the service contract and that has an operational or structural failure as a result of a defect in materials, workmanship or normal wear and tear, including a contract that provides or includes one or more of the following:

(1) incidental payment of indemnity under limited circumstances, including towing, rental and emergency road service and food spoilage;

(2) the repair, replacement or maintenance of property for damages that result from power surges or accidental damage from handling;

(3) the repair or replacement of tires and wheels on a motor vehicle damaged as a result of coming into contact with road hazards;

(4) the removal of dents, dings or creases on a motor vehicle that can be repaired using the process of paintless dent removal without affecting the existing paint finish and without replacing vehicle body panels, sanding, bonding or painting;

(5) the repair of chips or cracks in motor vehicle windshields or the replacement of motor vehicle windshields as a result of damage caused by road hazards;

(6) the replacement of a motor vehicle key or key fob in the event the key or key fob becomes inoperable or is lost or stolen; and

(7) other services approved by the superintendent if not inconsistent with other provisions of the Service Contract Regulation Act; and

M. "warranty" means a warranty provided solely by a manufacturer, importer or seller of property for which the manufacturer, importer or seller did not receive separate consideration and that:

(1) is not negotiated or separated from the sale of the property;

(2) is incidental to the sale of the property; and

(3) guarantees to indemnify the consumer for defective parts, mechanical or electrical failure, labor or other remedial measures required to repair or replace the property and may provide specified incidental costs."

## **Chapter 125 Section 3 Laws 2017**

SECTION 3. Section 59A-58-4 NMSA 1978 (being Laws 2001, Chapter 206, Section 4) is amended to read:

"59A-58-4. PROHIBITION OF SALE OF SERVICE CONTRACT UNLESS REGISTERED.--A provider shall not issue, sell or offer for sale service contracts in this state unless the provider has been registered with the superintendent pursuant to the provisions of the Service Contract Regulation Act. However, an administrator or seller of a service contract is not required to be registered. The provisions of this section shall not apply to major manufacturing companies' service contracts."

### **Chapter 125 Section 4 Laws 2017**

SECTION 4. Section 59A-58-5 NMSA 1978 (being Laws 2001, Chapter 206, Section 5) is amended to read:

"59A-58-5. REGISTRATION REQUIREMENTS.--

A. A provider who wishes to issue, sell or offer for sale service contracts in this state must submit to the superintendent:

(1) a registration application on a form prescribed by the superintendent;

(2) proof that the provider has complied with the requirements for security pursuant to Section 59A-58-6 NMSA 1978;

(3) the name, address and telephone number of each administrator with whom the provider intends to contract, if any; and

(4) a fee of five hundred dollars (\$500).

B. A provider's registration is valid for one year after the date the registration is filed. A provider may renew the provider's registration if, before the registration expires, the provider submits to the superintendent an application on a form prescribed by the superintendent and a fee of five hundred dollars (\$500).

C. The provisions of this section shall not apply to major manufacturing companies' service contracts.

D. Service contract forms are not required to be filed with the superintendent."

### **Chapter 125 Section 5 Laws 2017**

SECTION 5. Section 59A-58-6 NMSA 1978 (being Laws 2001, Chapter 206, Section 6, as amended) is amended to read:

"59A-58-6. SECURITY REQUIRED FOR REGISTRATION OF PROVIDER.--

A. To ensure the faithful performance of a provider's obligations to the provider's service contract holders, a provider shall comply with the requirements of one of the following:

(1) maintain a deposit with the superintendent as provided in this paragraph:

(a) a provider of a service contract shall deposit fifty thousand dollars (\$50,000) unless the contract covers the following, in which case the provider shall deposit one hundred thousand dollars (\$100,000): 1) a motor vehicle; and 2) mechanical, plumbing and electrical systems and appliances at a residential dwelling when the service contract was sold in conjunction with the sale of the residential dwelling;

(b) deposits required pursuant to Subparagraph (a) of this paragraph shall be: 1) a surety bond issued by a surety company authorized to do business in New Mexico on a form acceptable to the superintendent;

2) securities of the type eligible for deposit by an insurance company; or 3) a clean and irrevocable letter of credit issued by a financial institution acceptable to the superintendent; and

(c) additional deposits may be required of any provider when it is determined by the superintendent that an additional deposit is necessary for the protection of the public; or

(2) insure all service contracts under a reimbursement insurance policy issued by an insurer licensed, registered or otherwise authorized to do business in this state, and who either:

(a) at the time the policy is filed with the superintendent, and continuously thereafter: 1) maintains a surplus as to policyholders and paid-in capital of at least fifteen million dollars (\$15,000,000); and 2) annually files copies of the insurer's financial statements, its national association of insurance commissioners annual statement and the actuarial certification required by and filed in the insurer's state of domicile; or

(b) at the time the policy is filed with the superintendent, and continuously thereafter: 1) maintains a surplus as to policyholders and paid-in capital of less than fifteen million dollars (\$15,000,000) but at least equal to ten million dollars (\$10,000,000);

2) demonstrates to the satisfaction of the superintendent that the company maintains a ratio of net written premiums, wherever written, to surplus as to policyholders and paid-

in capital of not greater than three to one; and 3) annually files copies of the insurer's audited financial statements, its national association of insurance commissioners annual statement and the actuarial certification required by and filed in the insurer's state of domicile.

B. Except for the requirements specified in this section, no other financial security requirements shall be required by the superintendent.

C. The provisions of this section shall not apply to major manufacturing companies' service contracts."

## **Chapter 125 Section 6 Laws 2017**

SECTION 6. Section 59A-58-10 NMSA 1978 (being Laws 2001, Chapter 206, Section 10) is amended to read:

"59A-58-10. INFORMATION REQUIRED IN SERVICE CONTRACT.--

A. A service contract shall:

(1) be written in language that is understandable and printed in a typeface that is easy to read;

(2) include the amount, if applicable, of any deductible that the holder is required to pay;

(3) include the name, address and telephone number of the provider and, if applicable:

(a) the name, address and telephone number of the administrator;

(b) the name of the holder, if provided by the holder; and

(c) the name, address and telephone number of the seller; however, the names and addresses of the foregoing persons are not required to be preprinted on the service contract and may be added to the service contract at the time of the sale;

(4) include the purchase price of the service contract; however, the purchase price of the service contract is not required to be preprinted on the service contract and may be added to the service contract at the time of the sale;

(5) include a description of the property covered by the service contract;

(6) specify the duties of the provider and any limitations, exceptions or exclusions;

(7) if the service contract covers a motor vehicle, indicate whether replacement parts that are not made for or by the original manufacturer of the motor vehicle may be used to comply with the terms of the service contract;

(8) include, if applicable, any restrictions on transferring or renewing the service contract;

(9) include the terms, restrictions or conditions for canceling the service contract before it expires and the procedure for canceling the service contract. The conditions for canceling the service contract shall include the provisions of Section 59A-58-12 NMSA 1978;

(10) include the duties of the holder under the contract, including the duty to protect against damage to the property covered by the service contract or to comply with any instructions included in the owner's manual for the property;

(11) indicate whether the service contract authorizes the holder to recover consequential damages; and

(12) indicate whether any defect in the property covered by the service contract existing on the date the contract is purchased is not covered under the service contract.

B. A provider shall not allow, make or cause to be made a false or misleading statement in any of the provider's service contracts or intentionally omit a material statement that causes a service contract to be misleading. The superintendent may require the provider to amend any service contract that the superintendent determines is false or misleading."

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SCORC/Senate Bill 220

Approved April 6, 2017

## **LAWS 2017, CHAPTER 126**

AN ACT

RELATING TO OCCUPATIONAL HEALTH AND SAFETY; ADJUSTING THE PENALTIES FOR VIOLATIONS OF THE OCCUPATIONAL HEALTH AND SAFETY ACT TO CONFORM WITH FEDERAL LAW; REQUIRING THE DEPARTMENT OF

ENVIRONMENT TO ADJUST PENALTIES ON AN ANNUAL BASIS TO ACCOUNT FOR INFLATION; DECLARING AN EMERGENCY.

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

## **Chapter 126 Section 1 Laws 2017**

SECTION 1. Section 50-9-24 NMSA 1978 (being Laws 1975, Chapter 290, Section 14, as amended) is amended to read:

"50-9-24. PENALTIES.--

A. Any employer who willfully or repeatedly violates any provision of the Occupational Health and Safety Act or any regulation or order promulgated pursuant to that act may be assessed a civil penalty not to exceed one hundred twenty-six thousand seven hundred forty-nine dollars (\$126,749) for each violation; provided that a civil penalty shall not be less than nine thousand fifty-four dollars (\$9,054) for each willful violation.

B. Any employer who has received a citation for a serious violation of any provision of the Occupational Health and Safety Act or any regulation or order promulgated pursuant to that act shall be assessed a civil penalty not to exceed twelve thousand six hundred seventy-five dollars (\$12,675) for each violation.

C. Any employer who has received a citation for a violation of any provision of the Occupational Health and Safety Act or any regulation or order promulgated pursuant to that act that is determined not to be of a serious nature may be assessed a civil penalty of up to twelve thousand six hundred seventy-five dollars (\$12,675) for each violation.

D. Any employer who fails to correct a violation for which a citation has been issued within the period permitted for its correction, which period shall not begin to run until the date of the final order of the commission in the case of any review proceeding provided for in Section 50-9-17 NMSA 1978 initiated by the employer in good faith and not solely for delay or avoidance of penalties, may be assessed a civil penalty not to exceed twelve thousand six hundred seventy-five dollars (\$12,675) for each day during which the failure or violation continues.

E. Any civil penalty assessed against the state, a political subdivision of the state or any agency of either pursuant to Subsection B, C or G of this section shall not be collected during the time permitted for correction of the violation, and if the violation is corrected within such time, the civil penalty shall be deemed paid without further action of the state, political subdivision or agency.

F. For purposes of this section, a serious violation shall be deemed to exist in a place of employment if there is a substantial probability that death or serious

physical harm could result from a condition that exists or from one or more practices, means, methods, operations or

processes that have been adopted or are in use in the place of employment unless the employer did not and could not with the exercise of reasonable diligence know of the presence of the violation.

G. Any employer who violates any of the posting requirements as prescribed by the Occupational Health and Safety Act shall be assessed a civil penalty not to exceed twelve thousand six hundred seventy-five dollars (\$12,675) for each violation.

H. The commission has authority to assess all civil penalties provided in this section, giving due consideration to the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer and the history of previous violations.

I. Civil penalties imposed pursuant to the provisions of this section shall be paid into the general fund.

J. No later than April 1 of each year, the secretary shall adjust as necessary the minimum and maximum penalty amounts established in Subsections A through D and G of this section to account for inflation. The amounts shall be increased by the percentage of the preceding calendar year's increase of the consumer price index for all urban consumers, United States city average for all items, published by the United States department of labor. The amount of the increase, if any, shall be rounded to the nearest dollar, but shall not exceed one hundred fifty percent of the current penalty amount. The secretary may issue rules to carry out the provisions of this subsection that conform with the federal Occupational Safety and Health Act of 1970.

K. Any employer who willfully violates any provision of the Occupational Health and Safety Act or any regulation or order promulgated pursuant to that act causing death to any employee by that violation shall, upon conviction, be punished by a fine of not more than ten thousand dollars (\$10,000) or by imprisonment for not more than six months or by both; except that if the conviction is for a violation committed after a first conviction of the person, punishment shall be by a fine of not more than twenty thousand dollars (\$20,000) or by imprisonment for less than one year or by both.

L. Any person who gives advance notice of any inspection to be conducted under the Occupational Health and Safety Act without authority of the secretary shall, upon conviction, be punished by a fine of not more than one thousand dollars (\$1,000) or by imprisonment for not more than six months or by both.

M. Whoever knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to the Occupational Health and Safety Act shall, upon

conviction, be punished by a fine of not more than ten thousand dollars (\$10,000) for each such violation or by imprisonment for not more than six months or by both.

N. A person who reveals a trade secret in violation of Section 50-9-21 NMSA 1978 violates this subsection and shall, upon conviction, be punished by a fine of not more than ten thousand dollars (\$10,000) or by imprisonment for less than one year or both."

## **Chapter 126 Section 2 Laws 2017**

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

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Senate Bill 229, aa, w/ec

Approved April 6, 2017

## **LAWS 2017, CHAPTER 127**

AN ACT

RELATING TO UTILITIES; PROVIDING FOR MINIMUM STANDARDS FOR THE FORMATION OF NEW ASSOCIATIONS FORMED UNDER THE SANITARY PROJECTS ACT.

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

## **Chapter 127 Section 1 Laws 2017**

SECTION 1. Section 3-29-5 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-28-5, as amended) is amended to read:

"3-29-5. RESTRICTIONS ON FORMING AN ASSOCIATION.--

A. A new association shall not be formed under the Sanitary Projects Act by original incorporation after January 1, 2000, and a new association shall not be formed by reorganization after January 1, 2000, unless the preceding entity was in existence on January 1, 2000, if the service area of either association includes property contiguous to an incorporated municipality or an unincorporated area currently served by a municipality or by a water and sanitation district. The restrictions on forming an association set forth in this subsection shall not apply if the contiguous incorporated municipality or water and sanitation district does not provide the services or cannot

provide the services to be provided by the association at or below the cost proposed by the association.

B. An association shall not construct with state funds a project required in order to allow creation of a subdivision under the provisions of the Land Subdivision Act, the New Mexico Subdivision Act or Section 47-5-9 NMSA 1978; however, an association may construct a project serving a previously approved subdivision in the service area of the association.

C. After July 1, 2006, a new association shall not be formed as a capital stock corporation.

D. A new association shall not be formed under the Sanitary Projects Act after July 1, 2017 unless the association will service at least fifteen connections or a population of at least twenty-five people for at least six months of the year."

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Senate Bill 233

Approved April 6, 2017

## **LAWS 2017, CHAPTER 128**

### **AN ACT**

RELATING TO PIPELINE SAFETY; ENHANCING CIVIL PENALTIES FOR VIOLATION OF THE PIPELINE SAFETY ACT.

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

### **Chapter 128 Section 1 Laws 2017**

SECTION 1. Section 70-3-19 NMSA 1978 (being Laws 1969, Chapter 71, Section 9, as amended) is amended to read:

"70-3-19. ENFORCEMENT--PENALTIES.--

A. If as a result of investigation the commission has good cause to believe that any person is violating any provision of Subsection A of Section 70-3-18 NMSA 1978 or any regulation adopted by the commission under the Pipeline Safety Act, the commission shall, when practicable and except in the case of a knowing and willful violation, give the person notice of the violation and an opportunity to comply. If the commission is unable within a reasonable time to obtain voluntary cooperation to prevent the continuing violation, the commission may apply for an injunction in the district court of the county in which the violation occurs to secure compliance. The

failure to give notice and afford an opportunity to comply shall not preclude the granting of injunctive relief.

B. The trial before the district court shall be before the court without jury, and the court shall enter judgment and orders enforcing the judgment as the public interest and equities of the case may require.

C. Any person owning or operating gas pipeline facilities or engaged in the transportation of gas or owning or operating oil pipeline facilities or engaged in the transportation of oil who has been determined by order of the commission after hearing to have violated any provision of Subsection A of Section 70-3-18 NMSA 1978 or any regulation promulgated under the Pipeline Safety Act applicable to intrastate pipeline facilities shall be subject to a civil penalty in an amount not to exceed one hundred thousand dollars (\$100,000) for each violation for each day that the violation persists, except that the maximum civil penalty shall not exceed one million dollars (\$1,000,000) for any related series of violations.

D. In determining the amount of the penalty, the commission shall consider the nature, circumstances and gravity of the violation and, with respect to the person found to have committed the violation, the degree of culpability, any history of prior violations, the effect on ability to continue to do business, any good faith in attempting to achieve compliance, ability to pay the penalty and other matters as justice may require.

E. Judicial review of any provision of this section may be accomplished in the same manner as is found in Section 70-3-15 NMSA 1978.

F. Any person who willfully and knowingly injures or destroys or attempts to injure or destroy an intrastate pipeline facility shall upon conviction be subject for each offense to a fine not to exceed twenty-five thousand dollars (\$25,000) or imprisonment for a term not to exceed fifteen years, or both.

G. Any person who willfully and knowingly damages, removes or destroys any pipeline sign, right-of-way marker required by the Pipeline Safety Act or any regulation or

order issued pursuant to that act shall upon conviction be subject for each offense to a fine of not more than five thousand dollars (\$5,000) or imprisonment for a term not to exceed one year, or both."

## **Chapter 128 Section 2 Laws 2017**

SECTION 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2017.

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Senate Bill 303, aa

Approved April 6, 2017

## **LAWS 2017, CHAPTER 129**

### **AN ACT**

RELATING TO LIVESTOCK; AMENDING A SECTION OF THE LIVESTOCK CODE TO PROVIDE FOR ENFORCEMENT OF LIVESTOCK RUNNING AT LARGE PROHIBITIONS; REPEALING SECTIONS 77-14-4 THROUGH 77-14-6, 77-14-8 THROUGH 77-14-24 and 77-14-35 NMSA 1978 (BEING LAWS 1909, CHAPTER 146, SECTIONS 1 THROUGH 3, LAWS 1919, CHAPTER 88, SECTIONS 1 THROUGH 5 AND 7 THROUGH 18 AND LAWS 1901, CHAPTER 54, SECTION 1, AS AMENDED) OF THE LIVESTOCK CODE TO ELIMINATE UNNECESSARY AND OUTDATED PROVISIONS FROM TERRITORIAL LAW.

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

### **Chapter 129 Section 1 Laws 2017**

SECTION 1. Section 77-14-7 NMSA 1978 (being Laws 1909, Chapter 146, Section 4, as amended) is amended to read:

"77-14-7. LIVESTOCK RUNNING AT LARGE--WHEN UNLAWFUL--  
IMPOUNDING--SALE--SUIT FOR DAMAGES.--

A. It is unlawful for the owners of livestock to willfully allow the livestock to run at large within the town, conservancy district, irrigation district or military reservation or enclave. An owner who willfully allows livestock to run at large is guilty of a misdemeanor and upon conviction shall be punished in accordance with the provisions of Section 31-19-1 NMSA 1978 for each offense.

B. The sheriff or other peace officer or proper military authority or the board shall impound livestock found running at large and sell the livestock at public auction to the highest bidder for cash after giving notice of the time and place of sale in some newspaper published in the county where the violation occurred three days prior to the day of sale; provided that in the case of a military reservation or enclave, the sale shall be conducted by the board pursuant to the procedure set forth in Section 77-14-36 NMSA 1978. The proceeds up to ten dollars (\$10.00) per day for each animal shall be retained by the impounding authority to cover its expense and fees. The balance, if any, shall be paid to the general fund.

C. The owner of livestock impounded may redeem the livestock at any time prior to sale by paying the impound fees and costs incurred for each day or portion of a day that the livestock has been in custody; provided that in the case of a military

reservation or enclave, redemption shall be allowed pursuant to Section 77-14-36 NMSA 1978.

D. A person claiming damages for violation of the order may file suit to recover damages as in other civil cases; provided that such damages, in the case of a violation involving a military reservation or enclave, shall include direct, indirect, incidental and consequential damages."

## **Chapter 129 Section 2 Laws 2017**

SECTION 2. REPEAL.--Sections 77-14-4 through 77-14-6, 77-14-8 through 77-14-24 and 77-14-35 NMSA 1978 (being Laws 1909, Chapter 146, Sections 1 through 3, Laws 1919, Chapter 88, Sections 1 through 5 and 7 through 18 and Laws 1901, Chapter 54, Section 1, as amended) are repealed.

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Senate Bill 349, aa

Approved April 6, 2017

## **LAWS 2017, CHAPTER 130**

### **AN ACT**

RELATING TO INSURANCE; AMENDING SECTIONS OF THE NEW MEXICO INSURANCE CODE; AMENDING REQUIREMENTS RELATED TO EXAMINATION REPORTS AND INVESTIGATORY HEARINGS; CHANGING ANNUAL FINANCIAL STATEMENT FILING PENALTIES; REMOVING STOP-LOSS INSURANCE FROM THE LIST OF ACCIDENT AND HEALTH INSURANCE PRODUCTS; ALLOWING ACCIDENT AND HEALTH INSURERS TO WRITE STOP-LOSS INSURANCE; ALLOWING CASUALTY INSURERS TO CONTINUE TO WRITE ACCIDENT AND HEALTH INSURANCE; REVISING VARIOUS REQUIREMENTS RELATED TO SURPLUS LINES INSURANCE; ALLOWING INSURERS TO PAY CLAIMS BY ELECTRONIC FUND TRANSFER; AMENDING THE INSURANCE FRAUD ACT TO ESTABLISH A FEE PAYMENT DEADLINE AND LATE PAYMENT PENALTY; INCLUDING STUDENT HEALTH POLICIES WITHIN PROVISIONS RELATING TO INDIVIDUAL HEALTH INSURANCE; REMOVING STUDENT HEALTH PLANS FROM THE LIST OF BLANKET HEALTH INSURANCE PRODUCTS AND FROM THE LIST OF PRODUCTS THAT ARE NOT MANAGED HEALTH CARE PLANS; EXTENDING THE SUPERINTENDENT OF INSURANCE'S REVIEW PERIOD FOR MARKETING MATERIALS AND FOR CREDIT LIFE AND CREDIT HEALTH PRODUCT FILINGS; REPEALING THE SURPLUS LINES INSURANCE MULTISTATE COMPLIANCE COMPACT.

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

## **Chapter 130 Section 1 Laws 2017**

SECTION 1. Section 59A-4-9 NMSA 1978 (being Laws 1984, Chapter 127, Section 53, as amended) is amended to read:

"59A-4-9. EXAMINATION REPORT--CONTENTS.--No later than sixty days following completion of an examination, the examiner in charge shall file with the office of superintendent of insurance a verified, written examination report. The examination report shall comprise only facts appearing upon the books, records or other documents of the person examined, or from information provided to the examiner during the course of the examination by the examinee's officers or agents and other individuals examined concerning its affairs, together with the conclusions and recommendations of the examiners as may reasonably be warranted from the facts. The examination report shall be verified by the oath of the examiner in charge of the examination."

## **Chapter 130 Section 2 Laws 2017**

SECTION 2. Section 59A-4-10 NMSA 1978 (being Laws 1984, Chapter 127, Section 54, as amended) is amended to read:

"59A-4-10. EXAMINATION REPORT--CONFERENCE--ADOPTION ORDERS--INVESTIGATORY HEARINGS.--

A. Upon completion of the examination and receipt of the examination report, the superintendent shall transmit the report to the person examined and shall allow the person a reasonable period, but not to exceed twenty days, within which to review the report and to file

with the superintendent in writing requested corrections or modifications, with the reasons therefor. For good reason shown, the superintendent may grant reasonable extension of the review period.

B. Within twenty days after the superintendent's receipt of the request, the person examined shall confer with the superintendent and examiner relative to requested corrections and modification.

C. Within thirty days of the end of the period allowed for the receipt of written submissions or rebuttals, the superintendent shall fully consider and review the examination report, together with any written submission or rebuttal, any conference and any relevant portion of the examiner's work papers and shall enter an order. An order entered pursuant to this subsection shall be accompanied by findings of fact and conclusions of law resulting from the superintendent's consideration and review of the examination report, any written submission or rebuttal, any conferences and any relevant portion of the examiner's work papers. An order shall be considered a final administrative decision that may be appealed pursuant to Section 59A-4-20 NMSA

1978. An order shall be served on all parties by certified mail, together with a copy of the adopted examination report. An order issued pursuant to this subsection shall:

(1) adopt the examination report as filed or with modification or corrections. If the examination report reveals that the person is operating in violation of statute, rule or prior order of the superintendent, the superintendent may order the person to take any action that the superintendent considers necessary and appropriate to cure the violation;

(2) reject the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation or information and refile pursuant to Section 59A-4-9 NMSA 1978; or

(3) call for an investigatory hearing with no less than twenty days' notice to the person for purposes of obtaining additional documentation, data, information or testimony.

D. An investigatory hearing held pursuant to Paragraph (3) of Subsection C of this section:

(1) may be conducted by the superintendent or the superintendent may authorize a representative to conduct the hearing; provided that the superintendent shall not authorize an examiner to conduct the hearing;

(2) shall be conducted for the resolution of any inconsistency, discrepancy or disputed issue apparent upon the face of the examination report or raised by or as a result of the superintendent's review of work papers and conferences or by the written submission or rebuttal of the person;

(3) shall proceed expeditiously with discovery by the person limited to those work papers of the examiner that tend to substantiate any assertions set forth in any written submission or rebuttal; and

(4) shall be confidential, unless confidentiality is waived by the person being examined.

E. Relating to an investigatory hearing held pursuant to Paragraph (3) of Subsection C of this section, the superintendent or the superintendent's representative may issue a subpoena to compel the attendance of any witness or the production of any document that the superintendent or the superintendent's representative deems relevant to the investigation, whether the document is under the control of the office of superintendent of insurance, the person being examined or any other person. Documents produced shall be included in the record and testimony taken by the superintendent or the superintendent's representative and shall be made under oath and preserved for the record. The person being examined and the office of superintendent of insurance shall be permitted to make closing statements and may be

represented by counsel. Nothing in this section shall be construed to require the office of superintendent of insurance to disclose any information or record that would indicate or demonstrate the existence or content of any investigation or activity of a criminal justice agency.

F. Within twenty days of the conclusion of an investigatory hearing pursuant to Paragraph (3) of Subsection C of this section, the superintendent shall enter an order in accordance with Paragraph (1) of Subsection C of this section."

## **Chapter 130 Section 3 Laws 2017**

SECTION 3. Section 59A-4-12 NMSA 1978 (being Laws 1984, Chapter 127, Section 56) is amended to read:

"59A-4-12. EXAMINATION REPORT--INFORMATION TO MANAGEMENT OF DOMESTIC ENTITIES.--If the examination is of a domestic insurer or other person domiciled in New Mexico, when the examination report has been filed for public inspection, the chief executive officer of the insurer or person shall cause to be delivered to each member of the examinee's board of directors, or other similar governing body, a copy of the report, or summary thereof, and of its recommendations approved by the superintendent. Within ninety days of the issuance of the adopted report or within fifteen days after the first board meeting after the issuance of the adopted report, whichever occurs first, the insurer shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related orders."

## **Chapter 130 Section 4 Laws 2017**

SECTION 4. Section 59A-5-30 NMSA 1978 (being Laws 1984, Chapter 127, Section 97) is amended to read:

"59A-5-30. PENALTIES FOR LATE, FALSE ANNUAL STATEMENTS.--

A. Any insurer failing, without just cause reasonably beyond control of the insurer, to file its annual statement as required in Section 59A-5-29 NMSA 1978 shall be required to pay a penalty of one hundred dollars (\$100) for each day's delay, but not to exceed five thousand dollars (\$5,000) in aggregate amount. This penalty may be in addition to any refusal to continue, or suspension or revocation of, the insurer's certificate of authority for such failure.

B. Any director, officer, agent or employee of any insurer who subscribes to, makes or concurs in making or publishing any annual or other statement of the insurer required by law, knowing the same to contain any material statement that is false, shall upon conviction thereof be guilty of a misdemeanor and upon conviction shall be sentenced to a fine of not more than one thousand dollars (\$1,000), unless by its extent and nature the offense is punishable under other statutes as a felony."

## Chapter 130 Section 5 Laws 2017

SECTION 5. Section 59A-7-3 NMSA 1978 (being Laws 2016, Chapter 89, Section 6) is amended to read:

"59A-7-3. ACCIDENT AND HEALTH INSURANCE.--

A. Accident and health includes:

- (1) accident;
- (2) accidental death and dismemberment;
- (3) blanket accident and sickness;
- (4) credit disability;
- (5) critical illness;
- (6) dental;
- (7) disability income;
- (8) home health care;
- (9) hospital indemnity;
- (10) long-term care;
- (11) major medical;
- (12) medical expense;
- (13) medicare supplement;
- (14) prescription drug;
- (15) sickness;
- (16) specified disease;
- (17) vision; and
- (18) similar products relating to accident and health matters.

B. An insurer or a health maintenance organization authorized to transact accident and health insurance may write stop-loss liability insurance as listed in Paragraph (51) of Subsection A of Section 59A-7-6 NMSA 1978."

## **Chapter 130 Section 6 Laws 2017**

SECTION 6. Section 59A-7-6 NMSA 1978 (being Laws 2016, Chapter 89, Section 8) is amended to read:

"59A-7-6. CASUALTY.--

A. Casualty includes:

- (1) aircraft liability;
- (2) auto commercial liability;
- (3) auto private passenger liability;
- (4) auto warranty contract;
- (5) boiler and machinery;
- (6) burglary and theft;
- (7) collateral protection;
- (8) commercial excess/umbrella liability;
- (9) commercial general liability;
- (10) congenital defects;
- (11) contractual liability;
- (12) credit;
- (13) credit property;
- (14) creditor-placed dual/single interest;
- (15) crime;
- (16) directors and officers liability;
- (17) employers liability;

- (18) elevator;
- (19) entertainment;
- (20) errors and omissions;
- (21) failure to file instrument;
- (22) farm and ranch liability;
- (23) fidelity bonds;
- (24) fidelity insurance;
- (25) financial guaranty;
- (26) gap;
- (27) garage liability;
- (28) glass;
- (29) involuntary unemployment;
- (30) kidnap and ransom;
- (31) leakage and fire-extinguishing equipment;
- (32) legal liability;
- (33) liquor liability;
- (34) livestock;
- (35) mechanical breakdown;
- (36) medical malpractice;
- (37) mobile homes under transport;
- (38) money and securities;
- (39) motor club service contracts;
- (40) mortgage guaranty;

- (41) personal excess/umbrella liability;
- (42) personal effects;
- (43) personal liability;
- (44) personal property floater;
- (45) pollution liability;
- (46) premises and operations;
- (47) product liability;
- (48) products and completed operations;
- (49) professional liability;
- (50) owners and contractors;
- (51) stop loss liability;
- (52) surety;
- (53) title;
- (54) vandalism and malicious mischief;
- (55) workers' compensation; and
- (56) similar products relating to casualty matters.

B. An insurer authorized to transact casualty insurance may write accident and health insurance as those terms are defined in Section 59A-7-3 NMSA 1978."

## **Chapter 130 Section 7 Laws 2017**

SECTION 7. Section 59A-14-2 NMSA 1978 (being Laws 1991, Chapter 125, Section 12, as amended) is amended to read:

"59A-14-2. DEFINITIONS.--As used in Chapter 59A, Article 14 NMSA 1978:

A. "affiliate" means, with respect to an insured, any entity that controls, is controlled by or is under common control with the insured;

B. "affiliated group" means any group of entities that are all affiliated;

C. "association" means the national association of insurance commissioners or any successor entity;

D. "authorized insurer" means, with respect to New Mexico, an insurer holding a valid and subsisting certificate of authority, issued by the superintendent, to transact insurance in New Mexico;

E. "control" means that an entity:

(1) directly or indirectly or acting through one or more other persons owns, controls or has the power to vote twenty-five percent or more of any class of voting securities of another entity; or

(2) controls in any manner the election of a majority of the directors or trustees of another entity;

F. "eligible surplus lines insurer" means a qualified nonadmitted insurer with which a surplus lines broker may place surplus lines insurance pursuant to Section 59A-14-4 NMSA 1978;

G. "exempt commercial purchaser" means any person purchasing commercial insurance that, at the time of placement, meets the following requirements:

(1) the person employs or retains a qualified risk manager to negotiate insurance coverage;

(2) the person has paid aggregate nationwide commercial property and casualty insurance premiums in excess of one hundred thousand dollars (\$100,000) in the immediately preceding twelve months; and

(3) the person:

(a) possesses a net worth in excess of twenty million dollars (\$20,000,000), provided that this amount shall be adjusted every five years by rule of the superintendent to account for the percentage change in the consumer price index;

(b) generates annual revenues in excess of fifty million dollars (\$50,000,000), provided that this amount shall be adjusted every five years by rule of the superintendent to account for the percentage change in the consumer price index;

(c) employs more than five hundred full-time or full-time-equivalent employees per insured entity or is a member of an affiliated group employing more than one thousand employees in the aggregate;

(d) is a not-for-profit organization or public entity generating annual budgeted expenditures of at least thirty million dollars (\$30,000,000), provided that this amount shall be adjusted every five years by rule of the superintendent to account for the percentage change in the consumer price index; or

(e) is a municipality with a population in excess of fifty thousand persons;

H. "export" means to place insurance with a nonadmitted insurer;

I. "home state" means, with respect to an insured:

(1) the state:

(a) in which an insured maintains its principal place of business or, in the case of an individual, the individual's principal residence; or

(b) to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated, if one hundred percent of the insured risk is located out of the state referred to in Subparagraph (a) of this paragraph; or

(2) if more than one insured from an affiliated group are named insureds on a single nonadmitted insurance contract, "home state" means the home state, as determined pursuant to Paragraph (1) of this subsection, of the member of the affiliated group that has the largest percentage of premium attributed to it under the insurance contract;

J. "independently procured insurance" means insurance procured directly by an insured from a nonadmitted insurer;

K. "nonadmitted insurance" means any property and casualty insurance permitted to be placed through a surplus lines broker with an eligible surplus lines insurer;

L. "nonadmitted insurer" means an insurer not licensed to engage in the business of insurance in New Mexico but does not include a risk retention group, as "risk retention group" is defined in the federal Liability Risk Retention Act of 1986;

M. "premium tax" means, with respect to surplus lines, any tax, fee, assessment or other charge imposed by a government entity directly or indirectly based on any payment made as consideration for an insurance contract for such insurance, including premium deposits, assessments, registration fees and any other compensation given in consideration for a contract of insurance;

N. "principal place of business" means, with respect to determining the home state of the insured, the state where the insured maintains its headquarters and

where the insured's high-level officers direct, control and coordinate the business activities of the insured;

O. "producing broker" means the broker or agent dealing directly with the person seeking insurance if the home state of the person seeking insurance is New Mexico;

P. "professional designation" means:

(1) a designation as a chartered property and casualty underwriter issued by the American institute for chartered property and casualty underwriters;

(2) a designation as an associate in risk management issued by the insurance institute of America;

(3) a designation as a certified risk manager issued by the national alliance for insurance education and research;

(4) a designation as a RIMS fellow issued by the global risk management institute; or

(5) any other designation, certification or license determined by the superintendent to demonstrate minimum competency in risk management;

Q. "qualified risk manager" means, with respect to an exempt commercial purchaser, a person who:

(1) is an employee of, or a third-party consultant retained by, the exempt commercial purchaser;

(2) provides skilled services in loss prevention, loss reduction, risk and insurance coverage analysis and purchase of insurance; and

(3) has:

(a) a bachelor's degree or higher from an accredited college or university in risk management, business administration, finance, economics or any other field determined by the superintendent to demonstrate minimum competence in risk management and either: 1) three years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis or purchase of commercial lines of insurance; or 2) a professional designation;

(b) a professional designation and at least seven years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis or purchase of commercial lines of insurance;

(c) at least ten years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis or purchase of commercial lines of insurance; or

(d) a graduate degree from an accredited college or university in risk management, business administration, finance, economics or any other field determined by the superintendent to demonstrate minimum competence in risk management;

R. "reinsurance" means the assumption by an insurer of all or part of a risk undertaken originally by another insurer;

S. "surplus lines broker" means an individual, firm or corporation licensed under Chapter 59A, Article 14 NMSA 1978 to place insurance with eligible surplus lines insurers;

T. "surplus lines insurance" means any insurance permitted to be exported through a surplus lines broker in accordance with the provisions of Chapter 59A, Article 14 NMSA 1978;

U. "type of insurance" means one of the types of insurance required to be reported in the annual statement that must be filed with the superintendent by authorized insurers; and

V. "unauthorized insurer" means a nonadmitted insurer."

## **Chapter 130 Section 8 Laws 2017**

SECTION 8. Section 59A-14-4 NMSA 1978 (being Laws 1991, Chapter 125, Section 14, as amended) is amended to read:

### **"59A-14-4. ELIGIBLE SURPLUS LINES INSURERS REQUIRED.--**

A. No person shall export insurance on behalf of an insured whose home state is New Mexico except as authorized by and in accordance with Chapter 59A, Article 14 NMSA 1978.

B. No surplus lines broker shall transact surplus lines insurance with an insurer other than an eligible surplus lines insurer.

C. To qualify as an eligible surplus lines insurer, a nonadmitted insurer shall file information demonstrating to the superintendent's satisfaction that:

(1) the insurer is authorized to write the particular line of business in the state in which it is domiciled and:

(a) the insurer has capital and surplus or their equivalent that equals the greater of: 1) fifteen million dollars (\$15,000,000); or 2) the minimum capital and surplus required in this state for that particular line of business; or

(b) the insurer has capital and surplus less than the amounts required in Subparagraph (a) of this paragraph but the superintendent affirmatively finds that the insurer is acceptable as an eligible surplus lines insurer. The finding shall be based upon such factors as quality of management, capital and surplus of any parent company, company underwriting profit and investment income trends and company record and reputation within the industry. In no event shall the superintendent make an affirmative finding of acceptability when the surplus lines insurer's capital and surplus is less than four million five hundred thousand dollars (\$4,500,000);

(2) the insurer is a member of an "insurance exchange", which is an association of syndicates or insurers created by the laws of individual states, and shall maintain capital and surplus, or the equivalent thereof, of not less than fifty million dollars (\$50,000,000) in the aggregate. For insurance exchanges that maintain funds for the protection of all insurance exchange policyholders, each individual syndicate shall maintain minimum capital and surplus, or the equivalent thereof, of not less than five million dollars (\$5,000,000). In the event the insurance exchange does not maintain funds for the protection of all insurance exchange policyholders, each individual syndicate shall meet the minimum capital and surplus requirements of Subparagraph (a) of Paragraph (1) of this subsection;

(3) if the insurer is an alien insurer, the insurer is listed on the quarterly listing of alien insurers maintained by the international insurers department of the association; or

(4) if, pursuant to law, New Mexico has joined a compact or multistate agreement for the regulation of surplus lines insurance and the state, through the compact commission, has adopted nationwide uniform eligibility requirements, the insurer is in compliance with those requirements.

D. The superintendent shall maintain a list of eligible surplus line insurers from those qualified nonadmitted insurers that file information to satisfy the criteria established under Subsection C of this section. In addition to the requirements of Subsection C of this section, in order to appear on the list of eligible surplus lines insurers, a nonadmitted insurer shall provide annually to the superintendent a copy of the insurer's most current annual statement certified and sworn to by the insurer, unless the annual statement is available to the superintendent through the national association of insurance commissioners or from public sources. The statement shall be provided or made available at the same time it is provided to the insurer's domicile, but in no event more than nine months after the close of the period reported upon, and shall be either:

(1) filed with and approved by the regulatory authority in the insurer's domicile; or

(2) certified as correct and in accordance with applicable accounting principles by a public accounting firm licensed in the insurer's domicile.

In the case of an insurance exchange, the statement may be an aggregate combined statement of all underwriting syndicates operating during the period reported.

E. The listing described by Subsection D of this section shall not be deemed to constitute or evidence the superintendent's guaranty as to the financial condition or business practices of the insurer, and no insurer or other person shall allege orally or in writing that any such listing constitutes or implies the superintendent's approval.

F. The superintendent may adopt rules fixing reasonable conditions to be met by insurers for the listing. For good cause shown, the superintendent may in writing waive the requirements of this section to permit insurance to be placed as to a particular risk and insurer if the insurance is not otherwise reasonably obtainable."

## **Chapter 130 Section 9 Laws 2017**

SECTION 9. Section 59A-14-4.1 NMSA 1978 (being Laws 1991, Chapter 125, Section 15) is amended to read:

"59A-14-4.1. WITHDRAWAL OF ELIGIBILITY FROM A SURPLUS LINES INSURER.--The superintendent may at any time declare an eligible surplus lines insurer to be ineligible if the superintendent has reason to believe that the insurer:

- A. is in unsound financial condition;
- B. is subject to delinquency proceedings in this state or any other jurisdiction;
- C. is no longer eligible under Section 59A-14-4 NMSA 1978;
- D. has violated the laws of this state, including any violation of the Insurance Code or the superintendent's orders;
- E. does not make reasonably prompt payment of loss claims or other obligations in this state or elsewhere;
- F. has failed within sixty days to satisfy a final judgment rendered against it or against an insured for which it is legally liable under the terms of a contract of surplus lines insurance; or
- G. has failed to satisfy the superintendent that it is fit to be allowed to continue to do business in this state.

The superintendent shall promptly mail notice of all such declarations to the insurer and to every surplus lines broker. Notice sent pursuant to this subsection to a licensed surplus lines broker may, at the option of the surplus lines broker, be sent by the superintendent via electronic mail."

## **Chapter 130 Section 10 Laws 2017**

SECTION 10. Section 59A-14-11 NMSA 1978 (being Laws 1991, Chapter 125, Section 17, as amended) is amended to read:

"59A-14-11. DUTY TO FILE REPORTS AND AFFIDAVITS.--

A. The producing broker shall complete, execute and provide to the surplus lines broker a signed statement in substantially the form required by the superintendent, as to the diligent efforts to place the coverage with authorized insurers and the results thereof. The statement shall affirm that the insured was expressly advised prior to placement of the insurance and in the insurance policy that:

(1) the surplus lines insurer with which the insurance was to be placed is not an authorized insurer in this state and is not subject to the superintendent's supervision; and

(2) in the event the surplus lines insurer becomes insolvent, claims will not be paid nor will unearned premiums be returned by any New Mexico insurance guaranty fund.

B. The surplus lines broker shall preserve the original producing broker statements in compliance with Section 59A-14-11 NMSA 1978. The declaration pages shall be confidential and shall not be subject to public inspection. The superintendent's copy of the statements shall be open to public inspection. If the producing broker has failed to provide the producing broker statement, the surplus lines broker shall at the time of quarterly filing notify the superintendent of the producing broker's failure to comply.

C. Each surplus lines broker shall, within sixty days after expiration of each calendar quarter, file with the superintendent a statement under the surplus lines broker's oath of all surplus lines insurance business transacted during such calendar quarter. The statement shall be on forms as prescribed and furnished by the superintendent and shall contain such information relative to the surplus lines insurance transaction as the superintendent may reasonably require for the purposes of Chapter 59A, Article 14 NMSA 1978."

## **Chapter 130 Section 11 Laws 2017**

SECTION 11. Section 59A-14-12 NMSA 1978 (being Laws 1984, Chapter 127, Section 250, as amended) is amended to read:

"59A-14-12. PREMIUM TAX ON SURPLUS LINES INSURANCE.--

A. Within sixty days after expiration of a calendar quarter, the surplus lines broker shall pay to the superintendent for the use of the state a tax on gross premiums received, less returned premiums, on surplus lines business where New Mexico is the home state of the insured transacted under the surplus lines broker's license during such calendar quarter as shown by the quarterly statement filed with the superintendent pursuant to Section 59A-14-11 NMSA 1978. The tax shall be at the same rate as is applicable to premiums of authorized insurers under Section 59A-6-2 NMSA 1978.

B. For purposes of this section, "premiums" shall include any additional amount charged the insured, including policy fees, risk purchasing group fees and inspection fees; but "premiums" shall not include any additional amount charged the insured for local, state or federal tax; regulatory authority fee; or examination fee, if any.

C. The superintendent may require surplus lines brokers to file tax allocation reports annually detailing the portion of the nonadmitted insurance policy premiums attributable to properties, risks or exposures located in each state.

D. A penalty of ten percent of the amount of tax originally due, plus one percent of such tax amount for each month or fraction thereof of delinquency after the first thirty days of delinquency, shall be paid by the surplus lines broker for failure to pay the tax in full within sixty days after expiration of the calendar quarter as provided in Subsection A of this section; except that the superintendent may waive or remit the penalty if the superintendent finds that the failure or delay in payment arose from excusable mistake or excusable inadvertence.

E. For a surplus lines policy issued to an insured whose home state is New Mexico and where only a portion of the risk is located in New Mexico, the entire premium tax shall be paid to the superintendent in accordance with this section. If the superintendent finds that it would increase the efficiency of the surplus lines insurance marketplace as well as the regulation of the surplus lines market, the superintendent may enter into a compact or multistate surplus lines agreement relating to eligibility for placement of surplus lines insurance and the payment, reporting, collection and apportionment of surplus lines premium taxes. If a surplus lines policy covers risks or exposures only partially in New Mexico and the superintendent has entered into an agreement with other states for the apportionment of premium taxes for multistate risks, the tax payable pursuant to this section shall be computed and paid upon the proportion of the premium that is properly allocable to the risks or exposures located in New Mexico in accordance with the terms of any such agreement."

## **Chapter 130 Section 12 Laws 2017**

SECTION 12. Section 59A-16-21 NMSA 1978 (being Laws 1984, Chapter 127, Section 287, as amended) is amended to read:

"59A-16-21. PAYMENT OF CLAIM BY CHECK, DRAFT OR ELECTRONIC TRANSFER--FAILURE TO PAY--INTEREST.--

A. An insurer shall pay claims arising under its policies with checks or drafts, or, if a claimant requests, may pay by electronic transfer of funds, that are promptly paid. Without amending other statutes dealing with checks, drafts or electronic transfer of funds, a resident of New Mexico is granted a cause of action for ten percent of the amount of any check, draft or electronic transfer of funds that is not paid or lawfully rejected within ten days of forwarding by a New Mexico financial institution, but in no case to be less than five hundred dollars (\$500) plus costs of suit and attorney fees. The insurer shall not be required to pay such civil damages for delay if it proves that the delay in processing and payment was caused by a financial institution or postal or delivery service and the check, draft or electronic transfer of funds was paid or lawfully rejected within forty-eight hours of actual receipt of the draft, check or electronic transfer of funds by the person on whom drawn.

B. Notwithstanding any provision of the Insurance Code, any insurer issuing any policy, certificate or contract of insurance, surety, guaranty or indemnity of any kind or nature that fails for a period of forty-five days, after required proof of loss has been furnished, to pay to the person entitled the amount justly due shall be liable for the amount due and unpaid with interest on that amount at the rate of one and one-half times the prime lending rate, as determined by the superintendent, for New Mexico banks per year during the period the claim is unpaid.

C. Subsection B of this section shall not apply to any claims in arbitration or litigation."

## **Chapter 130 Section 13 Laws 2017**

SECTION 13. Section 59A-16C-14 NMSA 1978 (being Laws 1998, Chapter 115, Section 14, as amended) is amended to read:

"59A-16C-14. INSURANCE FRAUD FUND CREATED--APPROPRIATION.--

A. There is created an "insurance fraud fund" in the state treasury. All fees collected pursuant to the provisions of the Insurance Fraud Act shall be deposited in the fund and are subject to appropriation for use in paying the expenses incurred by the superintendent in carrying out the provisions of the Insurance Fraud Act. Interest on the fund shall be credited to the fund. The fund is a continuing, nonreverting fund.

B. To implement the provisions of the Insurance Fraud Act, the superintendent shall determine a rate of assessment and collect a fee from authorized insurers in an amount not less than two hundred dollars (\$200) and not exceeding one-tenth of one percent of the correctly reported direct written premiums on policies written in New Mexico by the authorized insurers. The fee shall be due annually pursuant to rules promulgated by the superintendent. The failure of an insurer to pay this fee when

due shall subject the insurer to a penalty of one thousand dollars (\$1,000) per month or part thereof in which the fee remains unpaid. The superintendent, after taking into account unexpended money produced by collection of the fee, shall adjust the rate of assessment each year to produce the amount of money that the superintendent estimates will be necessary to pay expenses incurred by the superintendent in carrying out the provisions of the Insurance Fraud Act.

C. In calculating the direct written premiums for an insurer pursuant to the provisions of this section, all direct written premiums for workers' compensation insurance and for all types of insurance that are exempted by federal law shall be excluded from the calculation.

D. The fees required by this section are in addition to all other taxes and fees now imposed or that may be subsequently imposed."

## **Chapter 130 Section 14 Laws 2017**

SECTION 14. Section 59A-22-1 NMSA 1978 (being Laws 1984, Chapter 127, Section 422) is amended to read:

"59A-22-1. SCOPE OF ARTICLE.--Chapter 59A, Article 22 NMSA 1978 applies generally to policies of individual health insurance, including student health plan policies. Nothing in that article shall apply to or affect:

A. any policy of workers' compensation insurance or any policy of liability insurance with or without supplementary expense coverage therein;

B. life insurance, endowment or annuity contracts or contracts supplemental thereto that contain only such provisions relating to health insurance as:

(1) provide additional benefits in case of death by accident; and

(2) operate to safeguard such contracts against lapse or to give a special surrender value or special benefit or annuity in event the insured or annuitant becomes totally and permanently disabled, as defined by the contract or supplemental contract;

C. group or blanket health insurance, except as stated in Chapter 59A, Article 23 NMSA 1978; or

D. reinsurance."

## **Chapter 130 Section 15 Laws 2017**

SECTION 15. Section 59A-23-2 NMSA 1978 (being Laws 1984, Chapter 127, Section 461) is amended to read:

"59A-23-2. BLANKET HEALTH INSURANCE.--

A. Blanket health insurance is declared to be that form of health insurance covering special groups of not fewer than ten persons as enumerated in one of the following paragraphs:

(1) under a policy or contract issued to a common carrier, which shall be deemed the policyholder, covering a group defined as all persons who may become passengers on the common carrier;

(2) under a policy or contract issued to an employer that shall be deemed the policyholder, covering a group of employees defined by reference to exceptional hazards incident to employment;

(3) under a policy or contract issued to a college, school or other institution of learning or to the head or principal thereof, who or which shall be deemed the policyholder, covering students and teachers;

(4) under a policy or contract issued in the name of a volunteer fire department or first aid or other such volunteer group, which shall be deemed the policyholder, covering all of the members of the department or group; or

(5) under a policy or contract issued to any other substantially similar group that, in the discretion of the superintendent, may be subject to the issuance of a blanket health policy or contract.

B. An individual application shall not be required from a person covered under a blanket sickness or accident policy or contract.

C. All benefits under any blanket sickness and accident policy shall be payable to the person insured or the person's agent, or to the person's designated beneficiary or beneficiaries, or to the person's estate, except that if the person insured is a minor, such benefits may be made payable to the minor's parent, guardian or other person actually supporting the minor.

D. A blanket sickness or accident policy or contract issued to a college, school or other institution of learning or to the head or principal thereof shall not be identified or sold as a student health plan."

## **Chapter 130 Section 16 Laws 2017**

SECTION 16. Section 59A-23B-5 NMSA 1978 (being Laws 1991, Chapter 111, Section 5) is amended to read:

"59A-23B-5. POLICY OR PLAN DISCLOSURE REQUIREMENTS.--

A. Upon offering coverage under a policy or plan for any individual, family or group member, an insurer, fraternal benefit society, health maintenance organization or nonprofit healthcare plan shall provide the individual, family or group member with a written disclosure statement containing at least the following:

(1) a general explanation of those mandated benefits and providers not covered by the policy or plan;

(2) an explanation of the managed care and cost control features of the policy or plan, along with all appropriate mailing addresses and telephone numbers to be utilized by the insured or enrollees seeking information or authorization; and

(3) an explanation of the primary and preventive care features of the policy or plan.

B. Any disclosure statement provided pursuant to Subsection A of this section shall be written in a clear and understandable form and format and shall be separate from the insurance policy or certificate or other evidence of coverage provided to the individual, family and group member.

C. Before any insurer, fraternal benefit society, health maintenance organization or nonprofit healthcare plan issues a policy or plan contract, the insurer, fraternal benefit society, health maintenance organization or nonprofit healthcare plan shall obtain from the prospective policyholder, contract holder or member a signed written statement in which the prospective policyholder, contract holder or member:

(1) certifies as to the eligibility of the individual, family or group for coverage under the policy or plan;

(2) acknowledges the limited nature of the coverage, including the managed care and cost control features of the policy or plan;

(3) acknowledges that if misrepresentations are made regarding eligibility for coverage under a policy or plan, the person making such misrepresentations shall forfeit coverage provided by the policy or plan if the insurer, fraternal benefit society, health maintenance organization or nonprofit healthcare plan relied upon the misrepresentation to its detriment; and

(4) acknowledges that the prospective policyholder, contract holder or member had, at the time of application for the policy or plan, been offered the opportunity to purchase coverage that included all applicable mandated benefits and the prospective policyholder, contract holder or member rejected such coverage.

D. A copy of the written statement required by Subsection C of this section shall be provided to the prospective policyholder, contract holder or member no later than at the time of delivery of the policy or plan and the original signed written statement

shall be retained in the files of the insurer, fraternal benefit society, health maintenance organization or nonprofit healthcare plan while the policy or plan remains in effect or for three years, whichever is less.

E. Any material statement made by an applicant for coverage under a policy or plan that falsely certifies to the applicant's eligibility for coverage shall serve as the basis for termination of coverage under the policy or plan if the insurer, fraternal benefit society, health maintenance organization or nonprofit healthcare plan detrimentally relied upon the misrepresentation.

F. All printed, radio or television communication intended to be used for marketing a policy or plan in the state and the disclosures required by Subsection A of this section shall be submitted for review and approval by the superintendent prior to use. The superintendent shall complete the review within sixty days or else the materials submitted shall be deemed approved for use."

## **Chapter 130 Section 17 Laws 2017**

SECTION 17. Section 59A-25-8 NMSA 1978 (being Laws 1984, Chapter 127, Section 479) is amended to read:

"59A-25-8. FILING, APPROVAL AND WITHDRAWAL OF FORMS.--

A. All policies, certificates of insurance, notice of proposed insurance, applications for insurance, endorsements and riders delivered or issued for delivery in this state and the schedules of premium rates pertaining to them shall be filed by the insurer with the superintendent.

B. The superintendent shall, within sixty days after the filing of any such policies, certificates of insurance, notice of proposed insurance, applications for insurance, endorsements and riders, disapprove any form if the benefits provided therein are not reasonable in relation to the premium charge or if it contains provisions that are unjust, unfair, inequitable, misleading, deceptive or encourage misrepresentation of the coverage or that are contrary to a provision of the Insurance Code or of a rule or regulation promulgated thereunder.

C. If the superintendent notifies the insurer that the form is disapproved, it is unlawful thereafter for the insurer to issue or use the form. In the notice, the superintendent shall specify the reason for disapproval and state that a hearing will be granted within twenty days after request in writing by the insurer. No such policy, certificate of insurance, notice of proposed insurance, nor any application, endorsement or rider, shall be issued or used until the expiration of thirty days after it has been filed, unless the superintendent gives prior written approval thereto.

D. The superintendent may, at any time after a hearing held not less than twenty days after written notice to the insurer, withdraw approval of a form on any

ground set forth in Subsection B of this section. The written notice of hearing shall state the reason for the proposed withdrawal.

E. The insurer shall not issue the forms or use them after the effective date of withdrawal.

F. If a group policy of credit life insurance or credit health insurance has been or is delivered in another state, the insurer shall be required to file only the group certificate and notice of proposed insurance delivered or issued for delivery in this state as specified in

Subsections B and D of Section 59A-25-7 NMSA 1978, and the forms shall be approved by the superintendent if they conform with the requirements specified in such subsections and if the schedules of premium rates applicable to the insurance evidenced by the certificate or notice are not in excess of the insurer's schedules of premium rates filed with the superintendent."

## **Chapter 130 Section 18 Laws 2017**

SECTION 18. Section 59A-57-3 NMSA 1978 (being Laws 1998, Chapter 107, Section 3) is amended to read:

"59A-57-3. DEFINITIONS.--As used in the Patient Protection Act:

A. "continuous quality improvement" means an ongoing and systematic effort to measure, evaluate and improve a managed health care plan's process in order to improve continually the quality of health care services provided to enrollees;

B. "covered person", "enrollee", "patient" or "consumer" means an individual who is entitled to receive health care benefits provided by a managed health care plan;

C. "department" means the office of superintendent of insurance;

D. "emergency care" means health care procedures, treatments or services delivered to a covered person after the sudden onset of what reasonably appears to be a medical condition that manifests itself by symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could be reasonably expected by a reasonable layperson to result in jeopardy to a person's health, serious impairment of bodily functions, serious dysfunction of a bodily organ or part or disfigurement to a person;

E. "health care facility" means an institution providing health care services, including a hospital or other licensed inpatient center; an ambulatory surgical or treatment center; a skilled nursing center; a residential treatment center; a home health

agency; a diagnostic, laboratory or imaging center; and a rehabilitation or other therapeutic health setting;

F. "health care insurer" means a person that has a valid certificate of authority in good standing under the Insurance Code to act as an insurer, health maintenance organization, nonprofit health care plan or prepaid dental plan;

G. "health care professional" means a physician or other health care practitioner, including a pharmacist, who is licensed, certified or otherwise authorized by the state to provide health care services consistent with state law;

H. "health care provider" or "provider" means a person that is licensed or otherwise authorized by the state to furnish health care services and includes health care professionals and health care facilities;

I. "health care services" includes, to the extent offered by the plan, physical health or community-based mental health or developmental disability services, including services for developmental delay;

J. "managed health care plan" or "plan" means a health care insurer or a provider service network when offering a benefit that either requires a covered person to use, or creates incentives, including financial incentives, for a covered person to use, health care providers managed, owned, under contract with or employed by the health care insurer or provider service network. "Managed health care plan" or "plan" does not include a health care insurer or provider service network offering a traditional fee-for-service indemnity benefit or a benefit that covers only short-term travel, accident-only, limited benefit or specified disease policies;

K. "person" means an individual or other legal entity;

L. "point-of-service plan" or "open plan" means a managed health care plan that allows enrollees to use health care providers other than providers under direct contract with or employed by the plan, even if the plan provides incentives, including financial incentives, for covered persons to use the plan's designated participating providers;

M. "provider service network" means two or more health care providers affiliated for the purpose of providing health care services to covered persons on a capitated or similar prepaid flat-rate basis that hold a certificate of authority pursuant to the Provider Service Network Act;

N. "superintendent" means the superintendent of insurance; and

O. "utilization review" means a system for reviewing the appropriate and efficient allocation of health care services given or proposed to be given to a patient or group of patients."

## **Chapter 130 Section 19 Laws 2017**

SECTION 19. REPEAL.--Sections 59A-14A-1 and 59A-14A-2 NMSA 1978 (being Laws 2011, Chapter 156, Sections 1 and 2) are repealed.

## **Chapter 130 Section 20 Laws 2017**

SECTION 20. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2017.

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Senate Bill 367, aa

Approved April 6, 2017

# **LAWS 2017, CHAPTER 131**

## **AN ACT**

RELATING TO PROFESSIONAL LICENSURE; AMENDING THE REQUIREMENTS FOR A QUALIFYING BROKER'S LICENSE UNDER SECTION 61-29-9 NMSA 1978 (BEING LAWS 1959, CHAPTER 226, SECTION 8, AS AMENDED); INCREASING THE NUMBER OF YEARS OF EXPERIENCE IN REAL ESTATE REQUIRED FOR MANAGERIAL BROKERAGE LICENSURE AND ALLOWING THE NEW MEXICO REAL ESTATE COMMISSION TO REQUIRE ADDITIONAL EDUCATIONAL COURSES BY RULE.

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

## **Chapter 131 Section 1 Laws 2017**

SECTION 1. Section 61-29-9 NMSA 1978 (being Laws 1959, Chapter 226, Section 8, as amended) is amended to read:

"61-29-9. QUALIFICATIONS FOR LICENSE.--

A. Licenses shall be granted only to persons who 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 broker's examination approved by the commission and shall:

(1) furnish the commission with certificates of completion of ninety hours of classroom instruction consisting of commission-approved thirty-hour courses in real estate principles and practice, real estate law and broker basics; or

(2) in the case of an out-of-state applicant, furnish the commission with a certified license history from the real estate licensing jurisdiction in the state or states in which the applicant is currently or has been previously licensed as a real estate broker, or certificates of completion of those courses issued by the course sponsor or provider, certifying that the applicant has or had a license in that state and has completed the equivalent of sixty classroom hours of prelicensing education approved by that licensing jurisdiction in real estate principles and practice and real estate law. Upon receipt of such documentation, the commission may waive sixty hours of the ninety hours of prelicensing education required to take the New Mexico real estate broker's examination and may waive the national portion of the examination. The applicant shall complete the commission-approved thirty-hour broker basics class to be eligible to take the state portion of the New Mexico real estate broker's examination.

C. An applicant for a qualifying broker's license shall have passed the New Mexico real estate broker's examination and had an active associate broker's license or equivalent real estate license for at least two of the last five years immediately preceding application for a qualifying broker's license and shall furnish the commission with a certificate of completion of the commission-approved thirty-hour brokerage office administration course and any additional

educational courses required by the commission by rule.

D. Notwithstanding Subsection C of this section, a qualifying broker shall not supervise associate brokers until the qualifying broker has had an active associate broker's or qualifying broker's license or equivalent real estate license for at least four years. Licensees who hold an active or inactive qualifying broker's license on January 1, 2018 are exempt from this subsection.

E. The commission shall require the information it deems necessary from every applicant to determine that applicant's honesty, trustworthiness and competency."

## **Chapter 131 Section 2 Laws 2017**

SECTION 2. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 2018.

Approved April 6, 2017

## **LAWS 2017, CHAPTER 132**

### **AN ACT**

RELATING TO PROFESSIONAL SERVICES; ENACTING NEW SECTIONS OF THE UNIFORM LICENSING ACT, THE NURSING PRACTICE ACT, THE MEDICAL PRACTICE ACT, THE PROFESSIONAL PSYCHOLOGIST ACT, THE OSTEOPATHIC MEDICINE ACT, THE COUNSELING AND THERAPY PRACTICE ACT AND THE SOCIAL WORK PRACTICE ACT TO LIST CONVERSION THERAPY AS GROUNDS FOR DISCIPLINARY ACTION.

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

### **Chapter 132 Section 1 Laws 2017**

SECTION 1. A new section of the Uniform Licensing Act is enacted to read:

"CONVERSION THERAPY--GROUNDS FOR DISCIPLINARY ACTION.--

A. A person licensed pursuant to provisions of Chapter 61 NMSA 1978 shall not provide conversion therapy to any person under eighteen years of age. The provision of conversion therapy in violation of the provisions of this subsection shall be grounds for disciplinary action by a board in accordance with the provisions of the Uniform Licensing Act.

B. As used in this section:

(1) "conversion therapy" means any practice or treatment that seeks to change a person's sexual orientation or gender identity, including any effort to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward persons of the same sex. "Conversion therapy" does not mean:

(a) counseling or mental health services that provide acceptance, support and understanding of a person without seeking to change gender identity or sexual orientation; or

(b) mental health services that facilitate a person's coping, social support, sexual orientation or gender identity exploration and development, including an intervention to prevent or address unlawful conduct or unsafe sexual practices, without seeking to change gender identity or sexual orientation;

(2) "gender identity" means a person's self-perception, or perception of that person by another, of the person's identity as a male or female based

upon the person's appearance, behavior or physical characteristics that are in accord with or opposed to the person's physical anatomy, chromosomal sex or sex at birth; and

(3) "sexual orientation" means heterosexuality, homosexuality or bisexuality, whether actual or perceived."

## **Chapter 132 Section 2 Laws 2017**

SECTION 2. Section 61-3-28 NMSA 1978 (being Laws 1968, Chapter 44, Section 24, as amended) is amended to read:

"61-3-28. DISCIPLINARY PROCEEDINGS--JUDICIAL REVIEW--APPLICATION OF UNIFORM LICENSING ACT--LIMITATION.--

A. In accordance with the procedures contained in the Uniform Licensing Act, the board may deny, revoke or suspend any license held or applied for under the Nursing Practice

Act, reprimand or place a licensee on probation or deny, limit or revoke the multistate licensure privilege of a nurse desiring to practice or practicing professional registered nursing or licensed practical nursing as provided in the Nurse Licensure Compact upon grounds that the licensee, applicant or nurse:

(1) is guilty of fraud or deceit in procuring or attempting to procure a license or certificate of registration;

(2) is convicted of a felony;

(3) is unfit or incompetent;

(4) is intemperate or is addicted to the use of habit-forming drugs;

(5) is mentally incompetent;

(6) is guilty of unprofessional conduct as defined by the rules and regulations adopted by the board pursuant to the Nursing Practice Act;

(7) has willfully or repeatedly violated any provisions of the Nursing Practice Act, including any rule or regulation adopted by the board pursuant to that act;

(8) was licensed to practice nursing in any jurisdiction, territory or possession of the United States or another country and was the subject of disciplinary action as a licensee for acts similar to acts described in this subsection. A certified copy of the record of the jurisdiction, territory or possession of the United States or another country taking the disciplinary action is conclusive evidence of the action; or

(9) uses conversion therapy on a minor.

B. Disciplinary proceedings may be instituted by any person, shall be by complaint and shall conform with the provisions of the Uniform Licensing Act. Any party to the hearing may obtain a copy of the hearing record upon payment of costs for the copy.

C. Any person filing a complaint shall be immune from liability arising out of civil action if the complaint is filed with reasonable care.

D. The board shall not initiate a disciplinary action more than two years after the date that it receives a complaint.

E. The time limitation contained in Subsection D of this section shall not be tolled by any civil or criminal litigation in which the licensee or applicant is a party, arising substantially from the same facts, conduct, transactions or occurrences that would be the basis for the board's disciplinary action.

F. The board may recover the costs associated with the investigation and disposition of a disciplinary proceeding from the nurse who is the subject of the proceeding if the nurse is practicing professional registered nursing or licensed practical nursing pursuant to a multistate licensure privilege as provided in the Nurse Licensure Compact.

G. As used in this section:

(1) "conversion therapy" means any practice or treatment that seeks to change a person's sexual orientation or gender identity, including any effort to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward persons of the same sex. "Conversion therapy" does not mean:

(a) counseling or mental health services that provide acceptance, support and understanding of a person without seeking to change gender identity or sexual orientation; or

(b) mental health services that facilitate a person's coping, social support, sexual orientation or gender identity exploration and development, including an intervention to prevent or address unlawful conduct or unsafe sexual practices, without seeking to change gender identity or sexual orientation;

(2) "gender identity" means a person's self-perception, or perception of that person by another, of the person's identity as a male or female based upon the person's appearance, behavior or physical characteristics that are in accord or opposed to the person's physical anatomy, chromosomal sex or sex at birth;

(3) "minor" means a person under eighteen years of age; and

(4) "sexual orientation" means heterosexuality, homosexuality or bisexuality, whether actual or perceived."

## **Chapter 132 Section 3 Laws 2017**

SECTION 3. Section 61-6-15 NMSA 1978 (being Laws 1969, Chapter 46, Section 6, as amended by Laws 2008, Chapter 53, Section 12 and by Laws 2008, Chapter 54, Section 13) 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, practice as a physician assistant or an anesthesiologist assistant, practice genetic counseling or engage in the practice of polysomnography, 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;
- (11) aiding or abetting the practice of a person not licensed by the board;
- (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;

(21) failure to report to the board any adverse action taken against the licensee by:

(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;

(38) willfully or negligently divulging privileged information or a professional secret; or

(39) the use of conversion therapy on a minor.

E. As used in this section:

(1) "conversion therapy" means any practice or treatment that seeks to change a person's sexual orientation or gender identity, including any effort to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward persons of the same sex. "Conversion therapy" does not mean:

(a) counseling or mental health services that provide acceptance, support and understanding of a person without seeking to change gender identity or sexual orientation; or

(b) mental health services that facilitate a person's coping, social support, sexual orientation or gender identity exploration and development, including an intervention to prevent or address unlawful conduct or unsafe sexual practices, without seeking to change gender identity or sexual orientation;

(2) "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;

(3) "gender identity" means a person's self-perception, or perception of that person by another, of the person's identity as a male or female based upon the person's appearance, behavior or physical characteristics that are in accord with or opposed to the person's physical anatomy, chromosomal sex or sex at birth;

(4) "minor" means a person under eighteen years of age; and

(5) "sexual orientation" means heterosexuality, homosexuality or bisexuality, whether actual or perceived.

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 132 Section 4 Laws 2017**

SECTION 4. Section 61-9-13 NMSA 1978 (being Laws 1963, Chapter 92, Section 12, as amended) is amended to read:

"61-9-13. DENIAL, REVOCATION OR SUSPENSION OF LICENSE.--

A. The board, by an affirmative vote of at least five of its eight members, shall withhold, deny, revoke or suspend a psychologist or psychologist associate license issued or applied for in accordance with the provisions of the Professional Psychologist Act or otherwise discipline a licensed psychologist or psychologist associate upon proof that the applicant, licensed psychologist or psychologist associate:

(1) has been convicted of a felony or an offense involving moral turpitude, the record of conviction being conclusive evidence thereof;

(2) is using a drug, substance or alcoholic beverage to an extent or in a manner dangerous to the psychologist or psychologist associate, any other person or the public or to an extent that the use impairs the psychologist's or psychologist associate's ability to perform the work of a professional psychologist or psychologist associate with safety to the public;

(3) has impersonated another person holding a psychologist or psychologist associate license or allowed another person to use the psychologist's or psychologist associate's license;

(4) has used fraud or deception in applying for a license or in taking an examination provided for in the Professional Psychologist Act;

(5) has accepted commissions or rebates or other forms of remuneration for referring clients to other professional persons;

(6) has allowed the psychologist's or psychologist associate's name or license issued under the Professional Psychologist Act to be used in connection with a person who performs psychological services outside of the area of that person's training, experience or competence;

(7) is legally adjudicated insane or mentally incompetent, the record of such adjudication being conclusive evidence thereof;

(8) has willfully or negligently violated the provisions of the Professional Psychologist Act;

(9) has violated any code of conduct adopted by the board;

(10) has been disciplined by another state for acts similar to acts described in this subsection, and a certified copy of the record of discipline of the state imposing the discipline is conclusive evidence;

(11) is incompetent to practice psychology;

(12) has failed to furnish to the board or its representative information requested by the board;

(13) has abandoned patients or clients;

(14) has failed to report to the board adverse action taken against the licensee by:

(a) another licensing jurisdiction;

(b) a professional psychologist association of which the psychologist or psychologist associate is or has been a member;

(c) a government agency; or

(d) a court for actions or conduct similar to acts or conduct that would constitute grounds for action as described in this subsection;

(15) has failed to report to the board surrender of a license or other authorization to practice psychology in another jurisdiction or surrender of membership on a health care staff or in a professional association following a disciplinary investigation, or in lieu of or while under a disciplinary investigation, by any of those authorities for acts or conduct that would constitute grounds for action as defined in this subsection;

(16) has failed to adequately supervise a psychologist associate;

(17) has employed abusive billing practices;

(18) has aided or abetted the practice of psychology by a person not licensed by the board; or

(19) uses conversion therapy on a minor.

B. A person who has been refused a license or whose license has been restricted or suspended under the provisions of this section may reapply for licensure after more than two years have elapsed from the date the restriction or suspension is terminated.

C. As used in this section:

(1) "conversion therapy" means any practice or treatment that seeks to change a person's sexual orientation or gender identity, including any effort to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward persons of the same sex. "Conversion therapy" does not mean:

(a) counseling or mental health services that provide acceptance, support and understanding of a person without seeking to change gender identity or sexual orientation; or

(b) mental health services that facilitate a person's coping, social support, sexual orientation or gender identity exploration and development, including an intervention to prevent or address unlawful conduct or unsafe sexual practices, without seeking to change gender identity or sexual orientation;

(2) "gender identity" means a person's self-perception, or perception of that person by another, of the person's identity as a male or female based upon the person's appearance, behavior or physical characteristics that are in accord with or opposed to the person's physical anatomy, chromosomal sex or sex at birth;

(3) "minor" means a person under eighteen years of age; and

(4) "sexual orientation" means heterosexuality, homosexuality or bisexuality, whether actual or perceived."

## **Chapter 132 Section 5 Laws 2017**

SECTION 5. 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 the licensee, registrant or applicant or any other person or the public or to an extent that the use impairs the licensee's, registrant's or applicant's 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;

(11) knowingly and willfully practices beyond the scope of practice, as defined by the board; or

(12) uses conversion therapy on a minor.

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.

E. As used in this section:

(1) "conversion therapy" means any practice or treatment that seeks to change a person's sexual orientation or gender identity, including any effort to change behaviors or gender expressions or to eliminate or reduce sexual or romantic

attractions or feelings toward persons of the same sex. "Conversion therapy" does not mean:

(a) counseling or mental health services that provide acceptance, support and understanding of a person without seeking to change gender identity or sexual orientation; or

(b) mental health services that facilitate a person's coping, social support, sexual orientation or gender identity exploration and development, including an intervention to prevent or address unlawful conduct or unsafe sexual practices, without seeking to change gender identity or sexual orientation;

(2) "gender identity" means a person's self-perception, or perception of that person by another, of the person's identity as a male or female based upon the person's appearance, behavior or physical characteristics that are in accord with or opposed to the person's physical anatomy, chromosomal sex or sex at birth;

(3) "minor" means a person under eighteen years of age; and

(4) "sexual orientation" means heterosexuality, homosexuality or bisexuality, whether actual or perceived."

## **Chapter 132 Section 6 Laws 2017**

SECTION 6. Section 61-10-15.1 NMSA 1978 (being Laws 2016, Chapter 90, Section 20) is amended to read:

"61-10-15.1. LICENSURE--SUMMARY SUSPENSION--SUMMARY RESTRICTION--GROUNDS.--

A. The board may suspend or restrict a license to practice osteopathic medicine in New Mexico issued by the board without a hearing, simultaneously or at any time after the initiation of proceedings for a hearing provided pursuant to the Uniform Licensing Act, if the board finds that evidence in its possession indicates that the licensee:

(1) poses a clear and immediate danger to the public health and safety if the licensee continues to practice;

(2) has been adjudged mentally incompetent by a final order or adjudication by a court of competent jurisdiction;

(3) has pled guilty to or has been found guilty of any offense relating to the practice of osteopathic medicine or any violent criminal offense in this state or a substantially equivalent criminal offense in another jurisdiction; or

(4) uses conversion therapy on a minor.

B. A licensee shall not be required to comply with a summary suspension or restriction of a license until notice has been served in accordance with procedures established in board rules or the licensee has actual knowledge of an order of suspension or restriction, whichever occurs first.

C. A licensee whose license is suspended or restricted pursuant to this section shall be entitled to a hearing before the board pursuant to the Uniform Licensing Act within fifteen days from the date the licensee requests a hearing.

D. As used in this section:

(1) "conversion therapy" means any practice or treatment that seeks to change a person's sexual orientation or gender identity, including any effort to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward persons of the same sex. "Conversion therapy" does not mean:

(a) counseling or mental health services that provide acceptance, support and understanding of a person without seeking to change gender identity or sexual orientation; or

(b) mental health services that facilitate a person's coping, social support, sexual orientation or gender identity exploration and development, including an intervention to prevent or address unlawful conduct or unsafe sexual practices, without seeking to change gender identity or sexual orientation;

(2) "gender identity" means a person's self-perception, or perception of that person by another, of the person's identity as a male or female based upon the person's appearance, behavior or physical characteristics that are in accord with or opposed to the person's physical anatomy, chromosomal sex or sex at birth;

(3) "minor" means a person under eighteen years of age; and

(4) "sexual orientation" means heterosexuality, homosexuality or bisexuality, whether actual or perceived."

## **Chapter 132 Section 7 Laws 2017**

SECTION 7. Section 61-31-17 NMSA 1978 (being Laws 1989, Chapter 51, Section 17) is amended to read:

"61-31-17. LICENSE DENIAL, SUSPENSION OR REVOCATION.--

A. In accordance with procedures contained in the Uniform Licensing Act, the board may deny, revoke or suspend any license held or applied for under the Social Work Practice Act, upon grounds that the licensee or applicant:

(1) is guilty of fraud, deceit or misrepresentation in procuring or attempting to procure any license or certification provided for in the Social Work Practice Act;

(2) has been adjudicated as mentally incompetent by regularly constituted authorities;

(3) has been convicted of a felony;

(4) is guilty of unprofessional or unethical conduct;

(5) is habitually or excessively using controlled substances or alcohol;

(6) has repeatedly and persistently violated any of the provisions of the Social Work Practice Act or regulations of New Mexico or any other state or territory and has been convicted thereof;

(7) has been convicted of the commission of any illegal operation;

(8) is grossly negligent or incompetent in the practice of social work;

(9) has had a license to practice social work revoked, suspended or denied in any jurisdiction, territory or possession of the United States or another country for acts of the licensee similar to acts described in this subsection. A certified copy of the record of the jurisdiction, territory or possession of the United States or another country making such revocation, suspension or denial shall be conclusive evidence thereof; or

(10) uses conversion therapy on a minor.

B. Disciplinary proceedings may be instituted by sworn complaint of any person, including members of the board, and shall conform with 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. As used in this section:

(1) "conversion therapy" means any practice or treatment that seeks to change a person's sexual orientation or gender identity, including any effort to change behaviors or gender expressions or to eliminate or reduce sexual or romantic

attractions or feelings toward persons of the same sex. "Conversion therapy" does not mean:

(a) counseling or mental health services that provide acceptance, support and understanding of a person without seeking to change gender identity or sexual orientation; or

(b) mental health services that facilitate a person's coping, social support, sexual orientation or gender identity exploration and development, including an intervention to prevent or address unlawful conduct or unsafe sexual practices, without seeking to change gender identity or sexual orientation;

(2) "gender identity" means a person's self-perception, or perception of that person by another, of the person's identity as a male or female based upon the person's appearance, behavior or physical characteristics that are in accord with or opposed to the person's physical anatomy, chromosomal sex or sex at birth;

(3) "minor" means a person under eighteen years of age; and

(4) "sexual orientation" means heterosexuality, homosexuality or bisexuality, whether actual or perceived."

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Senate Bill 121, aa

Approved April 7, 2017

## **LAWS 2017, CHAPTER 133**

### **AN ACT**

RELATING TO CAPITAL EXPENDITURES; REAUTHORIZING OR REAPPROPRIATING BALANCES, EXPANDING OR CHANGING PURPOSES, EXTENDING CERTIFICATION PERIODS, EXTENDING EXPENDITURE PERIODS, CHANGING AGENCIES AND ESTABLISHING CONDITIONS FOR THE REVERSION OR TRANSFER OF UNEXPENDED BALANCES OF APPROPRIATIONS MADE BY THE LEGISLATURE IN PRIOR YEARS; DECLARING AN EMERGENCY.

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

### **Chapter 133 Section 1 Laws 2017**

#### **SECTION 1. SEVERANCE TAX BONDS--REVERSION OF PROCEEDS.--**

A. Except as otherwise provided in another section of this act:

(1) the unexpended balance from the proceeds of severance tax bonds issued for a project that has been reauthorized in this act shall revert to the severance tax bonding fund:

(a) at the end of the expenditure period as set forth in this act, if the expenditure period is changed in this act; or

(b) if the expenditure period is not changed in this act, pursuant to the time frame set forth in the law that originally authorized the severance tax bonds or the time frame set forth in any law that has previously reauthorized the expenditure of the proceeds, whichever is later; and

(2) all remaining balances from the proceeds of severance tax bonds issued for a project that has been reauthorized in this act shall revert to the severance tax bonding fund three months after the reversion date for the unexpended balances.

B. 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 133 Section 2 Laws 2017**

### **SECTION 2. GENERAL FUND AND OTHER FUND APPROPRIATIONS--REVERSIONS.--**

A. Except as otherwise provided in another section of this act:

(1) the unexpended balance of an appropriation from the general fund or other state fund that has been changed in this act shall revert:

(a) at the end of the expenditure period as set forth in this act, if the expenditure period is changed in this act; or

(b) if the expenditure period is not changed in this act, pursuant to the time frame set forth in the law in which the original appropriation was made or the time frame set forth in any law that has previously changed the appropriation, whichever is later; and

(2) all remaining balances of an appropriation from the general fund or other state fund that has been changed in this act shall revert three months after the reversion date for the unexpended balance.

B. Except as provided in Subsection C of this section, the balance of an appropriation made from the general fund or other state fund shall revert pursuant to Subsection A of this section to the originating fund.

C. The balance of an appropriation made from the general fund or other state fund to the Indian affairs department or the aging and long-term services department for a project located on lands of an Indian nation, tribe or pueblo shall revert pursuant to Subsection A of this section to the tribal infrastructure project fund.

D. For the purpose of this section, "unexpended balance" means the remainder of an appropriation after reserving for unpaid costs and expenses covered by binding written obligations to third parties.

### **Chapter 133 Section 3 Laws 2017**

SECTION 3. ROUTE 66 VISITORS CENTER ON WEST CENTRAL AVENUE--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the local government division project in Subsection 15 of Section 31 of Chapter 226 of Laws 2013 to purchase, plan, design, construct and equip a route 66 visitors center on west Central avenue in Bernalillo county is extended through fiscal year 2019.

### **Chapter 133 Section 4 Laws 2017**

SECTION 4. SECOND STREET AND RIO BRAVO INTERSECTION IMPROVEMENTS IN BERNALILLO COUNTY--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the department of transportation project in Subsection 2 of Section 36 of Chapter 226 of Laws 2013 to purchase rights of way for and to plan, design and construct improvements to the intersection of Second street and Rio Bravo boulevard in Bernalillo county is extended through fiscal year 2019.

### **Chapter 133 Section 5 Laws 2017**

SECTION 5. BERNALILLO COUNTY ATRISCO VALLEY LITTLE LEAGUE FACILITY IMPROVEMENTS--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the local government division project in Subsection 2 of Section 31 of Chapter 226 of Laws 2013 to purchase equipment and to plan, design and construct improvements to the Atrisco Valley little league facility and parking lot in Bernalillo county is extended through fiscal year 2019.

### **Chapter 133 Section 6 Laws 2017**

SECTION 6. BERNALILLO COUNTY PAJARITO MESA PLAYGROUND AND EQUIPMENT--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the local government division project in Subsection 7 of Section 31 of Chapter 226 of Laws 2013 to plan, design and construct the playground and purchase and install equipment at Pajarito mesa in Bernalillo county is extended through fiscal year 2019.

### **Chapter 133 Section 7 Laws 2017**

SECTION 7. ROUTE 66 VISITORS' CENTERS ON EAST AND WEST CENTRAL AVENUE--CHANGE TO WEST CENTRAL AVENUE--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 58 of Section 31 of Chapter 226 of Laws 2013 to purchase, plan, design, construct and equip route 66 visitors' centers on east and west Central avenue in Bernalillo county shall not be expended for the original purpose but is changed to purchase, plan, design, construct and equip route 66 visitors' centers on west Central avenue in Bernalillo county. The time of expenditure is extended through fiscal year 2019.

### **Chapter 133 Section 8 Laws 2017**

SECTION 8. SOUTHWEST PRIMARY LEARNING CENTER PORTABLE CLASSROOM--CHANGE TO SECOND JUDICIAL DISTRICT ATTORNEY EQUIPMENT AND INFORMATION TECHNOLOGY--CHANGE AGENCY--EXTEND TIME--

SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the public education department in Subsection 19 of Section 18 of Chapter 226 of Laws 2013 to purchase and construct a portable classroom for Southwest Primary learning center in Albuquerque in Bernalillo county shall not be expended for the original purpose but is appropriated to the second judicial district attorney to purchase and install communications equipment and information technology, including related equipment, furniture and infrastructure, in the office of the second judicial district attorney in Albuquerque in Bernalillo county. The time of expenditure is extended through fiscal year 2019.

### **Chapter 133 Section 9 Laws 2017**

SECTION 9. ALBUQUERQUE ERNIE PYLE LIBRARY RENOVATION--CHANGE TO SECOND JUDICIAL DISTRICT ATTORNEY EQUIPMENT AND INFORMATION TECHNOLOGY--CHANGE AGENCY--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 20 of Section 31 of Chapter 226 of Laws 2013 to renovate, upgrade, furnish and equip the Ernie Pyle library in Albuquerque in Bernalillo county shall not be expended for the original purpose but is appropriated to the second judicial district attorney to purchase and install communications equipment and information technology, including related equipment, furniture and infrastructure, in the office of the second judicial district attorney in Albuquerque in Bernalillo county. The time of expenditure is extended through fiscal year 2019.

### **Chapter 133 Section 10 Laws 2017**

SECTION 10. ALBUQUERQUE PEDESTRIAN AND BICYCLE PATH CONSTRUCTION--CHANGE TO SECOND JUDICIAL DISTRICT ATTORNEY EQUIPMENT AND INFORMATION TECHNOLOGY--CHANGE AGENCY--EXTEND

TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 31 of Section 31 of Chapter 226 of Laws 2013 to plan, design and construct a pedestrian and bicycle path between Old Town and the biopark in Albuquerque in Bernalillo county shall not be expended for the original purpose but is appropriated to the second judicial district attorney to purchase and install communications equipment and information technology, including related equipment, furniture and infrastructure, in the office of the second judicial district attorney in Albuquerque in Bernalillo county. The time of expenditure is extended through fiscal year 2019.

### **Chapter 133 Section 11 Laws 2017**

SECTION 11. ALBUQUERQUE WEST CENTRAL METROPOLITAN REDEVELOPMENT DISTRICT COMMUNITY DEVELOPMENT FACILITY--CHANGE TO SECOND JUDICIAL DISTRICT ATTORNEY EQUIPMENT AND INFORMATION TECHNOLOGY--CHANGE AGENCY--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 44 of Section 31 of Chapter 226 of Laws 2013 to plan, purchase, construct, equip and furnish a community development facility in the west Central metropolitan redevelopment district in Albuquerque in Bernalillo county shall not be expended for the original purpose but is appropriated to the second judicial district attorney to purchase and install communications equipment and information technology, including related equipment, furniture and infrastructure, in the office of the second judicial district attorney in Albuquerque in Bernalillo county. The time of expenditure is extended through fiscal year 2019.

### **Chapter 133 Section 12 Laws 2017**

SECTION 12. BERNALILLO COUNTY BARELAS AFFORDABLE HOUSING REHABILITATION--CHANGE TO SECOND JUDICIAL DISTRICT ATTORNEY EQUIPMENT AND INFORMATION TECHNOLOGY--CHANGE AGENCY--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 49 of Section 31 of Chapter 226 of Laws 2013 to purchase equipment and to plan, design and rehabilitate affordable housing for low-income seniors and families pursuant to the Affordable Housing Act in the Barelas neighborhood in Albuquerque in Bernalillo county shall not be expended for the original purpose but is appropriated to the second judicial district attorney to purchase and install communications equipment and information technology, including related equipment, furniture and infrastructure, in the office of the second judicial district attorney in Albuquerque in Bernalillo county. The time of expenditure is extended through fiscal year 2019.

### **Chapter 133 Section 13 Laws 2017**

SECTION 13. AFRICAN AMERICAN PERFORMING ARTS CENTER EXHIBITS AND EQUIPMENT--EXTEND TIME--SEVERANCE TAX BONDS.--The time of

expenditure for the state fair commission project originally authorized in Subsection 1 of Section 24 of Chapter 226 of Laws 2013 and for which the time of expenditure was extended in Laws 2016, Chapter 83, Section 8 to purchase, install and acquire exhibits, displays, storage for art and exhibitions and equipment at the African American performing arts center at the New Mexico state fairgrounds in Albuquerque in Bernalillo county is extended through fiscal year 2019.

### **Chapter 133 Section 14 Laws 2017**

SECTION 14. AFRICAN AMERICAN PERFORMING ARTS CENTER IMPROVEMENTS AND EQUIPMENT--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the state fair commission project originally authorized in Subsection 2 of Section 24 of Chapter 226 of Laws 2013 to make infrastructure improvements and to purchase and install equipment at the African American performing arts center at the New Mexico state fairgrounds in Albuquerque in Bernalillo county and reauthorized in Laws 2014, Chapter 64, Section 6 to include planning, designing and constructing improvements at that center is extended through fiscal year 2019.

### **Chapter 133 Section 15 Laws 2017**

SECTION 15. ARENAL DRAIN BLUFF PARK CONSTRUCTION--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the local government division project in Subsection 1 of Section 31 of Chapter 226 of Laws 2013 to purchase, plan, design and construct a park and outdoor facilities along the bluff area of the Arenal drain from west Central avenue to Bridge street, both within and outside the city limits of Albuquerque in Bernalillo county, is extended through fiscal year 2019.

### **Chapter 133 Section 16 Laws 2017**

SECTION 16. ALBUQUERQUE EXPLORA CENTER ADDITION AND EXHIBITS--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the local government division project in Subsection 21 of Section 31 of Chapter 226 of Laws 2013 to plan, design, construct, furnish and equip phase 2 of a building addition and to design, construct, purchase and install exhibits, furnishings and equipment for the Explora science center and children's museum in Albuquerque in Bernalillo county is extended through fiscal year 2019.

### **Chapter 133 Section 17 Laws 2017**

SECTION 17. ALBUQUERQUE FOOD BANK WAREHOUSE EQUIPMENT--EXPAND PURPOSE--EXTEND TIME--SEVERANCE TAX BONDS.--The local government division project in Subsection 23 of Section 22 of Chapter 81 of Laws 2016 to purchase food bank warehouse equipment and related equipment in Albuquerque in Bernalillo county may include the design, purchase, assembly and equipping of expanded freezer and cooler space, including compressors, wall and ceiling panels, and

planning, design and construction of infrastructure improvements, including lighting, electrical, roof and building modifications and a fire suppression system. The time of expenditure is extended through fiscal year 2019.

### **Chapter 133 Section 18 Laws 2017**

SECTION 18. ALBUQUERQUE COMMERCIAL DRIVER'S LICENSE TRAINING PROGRAM VEHICLES AND EQUIPMENT--CHANGE TO FOOD BANK WAREHOUSE EQUIPMENT--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 23 of Section 28 of Chapter 3 of Laws 2015 (1st S.S.) to purchase vehicles and equipment for the commercial driver's license training program in Albuquerque in Bernalillo county shall not be expended for the original purpose but is changed to plan, design, purchase, assemble and equip expanded freezer and cooler space, including compressors and wall and ceiling panels, and to plan, design, construct and make improvements to facility infrastructure, including lighting, electrical, roof and building modifications and the purchase and installation of a fire suppression system, in a food bank warehouse in Albuquerque in Bernalillo county. The time of expenditure is extended through fiscal year 2019.

### **Chapter 133 Section 19 Laws 2017**

SECTION 19. ALBUQUERQUE MCKINLEY NEIGHBORHOOD MULTI-USE COMMUNITY CENTER--CHANGE TO IMPROVEMENTS TO LOS ALTOS PARK--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 42 of Section 28 of Chapter 3 of Laws 2015 (1st S.S.) to plan, design and construct a multi-use community center and bike shop in the McKinley neighborhood of Albuquerque in Bernalillo county shall not be expended for the original purpose but is changed to plan, design, construct and make improvements to Los Altos park in Albuquerque.

### **Chapter 133 Section 20 Laws 2017**

SECTION 20. ALBUQUERQUE WEST CENTRAL METROPOLITAN REDEVELOPMENT DISTRICT FIFTY-SEVENTH STREET AND CENTRAL AVENUE IMPROVEMENTS PHASE 2--CHANGE TO WEST CENTRAL AVENUE PHASE 2 INFRASTRUCTURE IMPROVEMENTS--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 45 of Section 31 of Chapter 226 of Laws 2013 to plan, design and construct phase 2 infrastructure improvements for the economic development project at Fifty-seventh street and Central avenue in the west Central metropolitan redevelopment district in Albuquerque in Bernalillo county shall not be expended for the original purpose but is changed to plan, design and construct phase 2 infrastructure improvements for an economic development project along west Central avenue in Albuquerque in Bernalillo county. The time of expenditure is extended through fiscal year 2019.

## **Chapter 133 Section 21 Laws 2017**

SECTION 21. GILBERT L. SENA CHARTER HIGH SCHOOL LAND AND BUILDING--CHANGE TO BUILDINGS, GROUNDS AND EQUIPMENT--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the public education department in Subsection 1 of Section 15 of Chapter 3 of Laws 2015 (1st S.S.) to acquire land and a building and to plan, design, construct, renovate and equip facilities for Gilbert L. Sena charter high school in Bernalillo county shall not be expended for the original purpose but is changed to plan, design, construct, renovate, furnish and equip buildings and grounds and to purchase and install related equipment, including fencing, information technology, wiring and infrastructure, for that school.

## **Chapter 133 Section 22 Laws 2017**

SECTION 22. MARTIN LUTHER KING, JR. COMMISSION MUSEUM AND LIBRARY--CHANGE TO INFORMATION TECHNOLOGY AND OFFICE EQUIPMENT--CHANGE AGENCY--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the capital program fund in Subsection 3 of Section 6 of Chapter 3 of Laws 2015 (1st S.S.) to plan, design and construct a civil rights museum and a library for the Martin Luther King, Jr. commission in Albuquerque in Bernalillo county shall not be expended for the original purpose but is appropriated to the commission to purchase office equipment and to purchase and install information technology, including related equipment, furniture and infrastructure, for the commission in Albuquerque.

## **Chapter 133 Section 23 Laws 2017**

SECTION 23. MONTESSORI ELEMENTARY SCHOOL BUS--CHANGE TO BUILDINGS, GROUNDS AND EQUIPMENT--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the public education department in Subsection 14 of Section 14 of Chapter 81 of Laws 2016 to purchase and equip a bus for the Montessori elementary school in Albuquerque in Bernalillo county shall not be expended for the original purpose but is changed to plan, design, construct, renovate, furnish and equip buildings and grounds and to purchase and install related equipment, fencing, information technology, wiring and infrastructure for that school. The time of expenditure is extended through fiscal year 2019.

## **Chapter 133 Section 24 Laws 2017**

SECTION 24. NEW MEXICO INTERNATIONAL SCHOOL SECURITY SYSTEM--EXPAND PURPOSE--EXTEND TIME--SEVERANCE TAX BONDS.--The public education department project in Subsection 16 of Section 15 of Chapter 3 of Laws 2015 (1st S.S.) to plan and design a security system and upgrades at New Mexico international school in Albuquerque in Bernalillo county may include the purchase and installation of security cameras and equipment. The time of expenditure is extended through fiscal year 2019.

## **Chapter 133 Section 25 Laws 2017**

SECTION 25. NEW MEXICO STATE FAIR AFRICAN AMERICAN PERFORMING ARTS CENTER IMPROVEMENTS--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the state fair commission project in Subsection 1 of Section 21 of Chapter 3 of Laws 2015 (1st S.S.) to purchase and install equipment and to purchase the permanent art exhibit and digital, video, sound and lighting equipment and an air conditioner for the sound room for the African American performing arts center at the New Mexico state fair in Albuquerque in Bernalillo county is extended through fiscal year 2019.

## **Chapter 133 Section 26 Laws 2017**

SECTION 26. NEW MEXICO STATE FAIR AFRICAN AMERICAN PAVILION STAGE--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the state fair commission project in Subsection 1 of Section 17 of Chapter 66 of Laws 2014 to plan, design and construct a stage for the African American pavilion at the New Mexico state fairgrounds in Albuquerque in Bernalillo county is extended through fiscal year 2019.

## **Chapter 133 Section 27 Laws 2017**

SECTION 27. NEW MEXICO STATE FAIR AFRICAN AMERICAN PERFORMING ARTS CENTER EXHIBITS--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the state fair commission project in Subsection 2 of Section 17 of Chapter 66 of Laws 2014 to design, construct, purchase and install exhibits and to acquire art, artifacts and equipment for the New Mexico state fair African American performing arts center in Albuquerque in Bernalillo county is extended through fiscal year 2019.

## **Chapter 133 Section 28 Laws 2017**

SECTION 28. NEW MEXICO STATE FAIR AFRICAN AMERICAN PERFORMING ARTS CENTER--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the state fair commission project originally authorized in Subsection 1 of Section 16 of Chapter 92 of Laws 2008 and reauthorized in Laws 2012, Chapter 63, Section 16 and again in Laws 2014, Chapter 64, Section 5 and again in Laws 2016, Chapter 83, Section 22 for exhibits, displays and equipment and for audiovisual and digital equipment and information technology, including related equipment, furniture and infrastructure, at the African American performing arts center in Albuquerque in Bernalillo county is extended through fiscal year 2019.

## **Chapter 133 Section 29 Laws 2017**

SECTION 29. NEW MEXICO STATE FAIRGROUNDS ALICE FAYE HOPPES STAGE--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the state fair commission project originally authorized in Subsection 1 of Section 16 of Chapter 92 of Laws 2008 and reauthorized in Laws 2012, Chapter 63, Section 14 and for which the time of expenditure was extended in Laws 2014, Chapter 64, Section 8 and again in Laws 2016, Chapter 83, Section 23 to design and construct a stage at the Alice Faye Hoppes pavilion at the New Mexico state fairgrounds in Albuquerque in Bernalillo county is extended through fiscal year 2019.

### **Chapter 133 Section 30 Laws 2017**

SECTION 30. NEW MEXICO STATE FAIRGROUNDS INFRASTRUCTURE IMPROVEMENTS--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the state fair commission project originally authorized in Subsection 1 of Section 16 of Chapter 92 of Laws 2008 and reauthorized in Laws 2012, Chapter 63, Section 15 and further reauthorized in Laws 2013, Chapter 202, Section 5 and for which the time of expenditure was extended in Laws 2014, Chapter 64, Section 16 and again in Laws 2016, Chapter 83, Section 24 to make infrastructure and other improvements at the New Mexico state fairgrounds in Albuquerque in Bernalillo county is extended through fiscal year 2019.

### **Chapter 133 Section 31 Laws 2017**

SECTION 31. STATE FAIR COMMISSION DEFERRED MAINTENANCE AND INFRASTRUCTURE IMPROVEMENTS--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the state fair commission project in Subsection 3 of Section 24 of Chapter 226 of Laws 2013 to plan, design and construct infrastructure improvements and deferred maintenance to facilities at the New Mexico state fairgrounds in Albuquerque in Bernalillo county is extended through fiscal year 2019.

### **Chapter 133 Section 32 Laws 2017**

SECTION 32. SOUTH VALLEY ECONOMIC DEVELOPMENT CENTER FURNISH--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the local government division project in Subsection 70 of Section 22 of Chapter 66 of Laws 2014 to furnish the South Valley economic development center in Albuquerque in Bernalillo county is extended through fiscal year 2019.

### **Chapter 133 Section 33 Laws 2017**

SECTION 33. SOUTH VALLEY PREPARATORY SCHOOL CONSTRUCTION--EXPAND PURPOSE--SEVERANCE TAX BONDS.--The public education department project in Subsection 17 of Section 14 of Chapter 81 of Laws 2016 to acquire land for and to plan, design, construct, equip and furnish the South Valley preparatory school in Albuquerque in Bernalillo county may include the purchase of modular buildings.

## **Chapter 133 Section 34 Laws 2017**

SECTION 34. TIWA BUILDING PHASE 1--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the capital program fund project originally authorized in Subsection 4 of Section 9 of Chapter 226 of Laws 2013 and reauthorized in Laws 2015, Chapter 147, Section 9 to plan, design, construct, renovate, equip and furnish phase 1 of the Tiwa building in Albuquerque in Bernalillo county is extended through fiscal year 2019.

## **Chapter 133 Section 35 Laws 2017**

SECTION 35. UNIVERSITY OF NEW MEXICO LINGUISTICS LAB--CHANGE TO CONSTRUCT AND RENOVATE CLASSROOMS--SEVERANCE TAX BONDS.-- The unexpended balance of the appropriation to the board of regents of the university of New Mexico in Subsection 9 of Section 31 of Chapter 81 of Laws 2016 to plan, design, construct, renovate, furnish and equip the linguistics laboratory at the university of New Mexico in Albuquerque in Bernalillo county shall not be expended for the original purpose but is changed to plan, design, construct, renovate, furnish and equip classrooms at the university of New Mexico in Albuquerque.

## **Chapter 133 Section 36 Laws 2017**

SECTION 36. OTERO COUNTY SLASH PIT--CHANGE TO DEL NORTE HIGH SCHOOL FINE ARTS BUILDING, FACILITIES AND PERFORMING ARTS CENTER PHASE 2--CHANGE AGENCY--EXTEND TIME--SEVERANCE TAX BONDS.--Ten thousand dollars (\$10,000) of the unexpended balance of the appropriation to the energy, minerals and natural resources department in Subsection 1 of Section 14 of Chapter 66 of Laws 2014 for land acquisition and to plan, design and construct a slash pit in Otero county shall not be expended for the original purpose but is appropriated to the public education department to plan, design, construct, renovate, purchase and install improvements and equipment to the fine arts building and facilities and performing arts center at Del Norte high school in the Albuquerque public school district in Bernalillo county. The time of expenditure is extended through fiscal year 2019.

## **Chapter 133 Section 37 Laws 2017**

SECTION 37. OTERO COUNTY SLASH PIT--CHANGE TO SANDIA HIGH SCHOOL PERFORMING ARTS FACILITIES IMPROVE--CHANGE AGENCY--EXTEND TIME--SEVERANCE TAX BONDS.--Ten thousand dollars (\$10,000) of the unexpended balance of the appropriation to the energy, minerals and natural resources department in Subsection 1 of Section 14 of Chapter 66 of Laws 2014 for land acquisition and to plan, design and construct a slash pit in Otero county shall not be expended for the original purpose but is appropriated to the public education department to plan, design, construct, renovate, purchase and install improvements and equipment at the performing arts centers and facilities at Sandia high school in the Albuquerque public

school district in Bernalillo county. The time of expenditure is extended through fiscal year 2019.

### **Chapter 133 Section 38 Laws 2017**

SECTION 38. PUEBLO OF ISLETA WASTEWATER TREATMENT PLANT--EXPAND PURPOSE--SEVERANCE TAX BONDS.--The Indian affairs department project in Subsection 30 of Section 25 of Chapter 3 of Laws 2015 (1st S.S.) to plan and design upgrades to the west side wastewater treatment plant at the Pueblo of Isleta in Bernalillo county may include construction.

### **Chapter 133 Section 39 Laws 2017**

SECTION 39. FOURTH STREET IMPROVEMENTS IN LOS RANCHOS DE ALBUQUERQUE--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the department of transportation project in Subsection 15 of Section 36 of Chapter 226 of Laws 2013 to plan, design and construct improvements to Fourth street in Los Ranchos de Albuquerque in Bernalillo county is extended through fiscal year 2019.

### **Chapter 133 Section 40 Laws 2017**

SECTION 40. RESERVE MULTIPURPOSE FACILITY FLOORING INSTALLATION--CHANGE TO RESERVE WASTEWATER SYSTEM IMPROVEMENTS--CHANGE AGENCY--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 61 of Section 31 of Chapter 226 of Laws 2013 to plan, design, purchase and install flooring in the multipurpose facility in Reserve in Catron county shall not be expended for the original purpose but is appropriated to the department of environment to plan, design, construct, equip and furnish wastewater system improvements in Reserve. The time of expenditure is extended through fiscal year 2019.

### **Chapter 133 Section 41 Laws 2017**

SECTION 41. GALLUP COMMUNITY PANTRY IMPROVEMENTS--CHANGE TO CIBOLA COUNTY COMPLEX EMERGENCY AND DISPATCH OFFICES--EXTEND TIME--SEVERANCE TAX BONDS.--Fifty thousand dollars (\$50,000) of the unexpended balance of the appropriation to the department of transportation originally authorized in Subsection 45 of Section 36 of Chapter 226 of Laws 2013 and reauthorized to the local government division in Laws 2015, Chapter 147, Section 30 for improvements, including tile and roof replacement, to the community pantry in Gallup in McKinley county shall not be expended for the original or reauthorized purpose but is changed to plan, design, construct, renovate, furnish and equip the Cibola county dispatch office and office of the emergency manager, including relocation, fencing, parking lot and site improvements, for a county complex in Grants in Cibola county. The time of expenditure is extended through fiscal year 2019.

## **Chapter 133 Section 42 Laws 2017**

SECTION 42. DONA ANA COUNTY DEL CERRO COMMUNITY CENTER ROOF--CHANGE TO HEATING, VENTILATION AND AIR CONDITIONING UNITS--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 104 of Section 28 of Chapter 3 of Laws 2015 (1st S.S.) to plan, design and construct a roof at the Del Cerro community center in Dona Ana county shall not be expended for the original purpose but is changed to plan, design, construct, renovate, purchase and install heating, ventilation and air conditioning units in that community center.

## **Chapter 133 Section 43 Laws 2017**

SECTION 43. LA UNION MUTUAL DOMESTIC SEWER AND WATER ASSOCIATION WATER STORAGE TANK--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the department of environment project in Subsection 28 of Section 16 of Chapter 66 of Laws 2014 to acquire easements and rights of way for and to plan, design, construct, purchase and install a storage tank for La Union mutual domestic sewer and water association in Dona Ana county is extended through fiscal year 2019.

## **Chapter 133 Section 44 Laws 2017**

SECTION 44. ARTESIA GUADALUPE PARK IMPROVEMENTS--CHANGE TO ARTESIA UNITED STATES HIGHWAY 285 RIGHT-OF-WAY IMPROVEMENTS--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 100 of Section 22 of Chapter 81 of Laws 2016 to plan, design, construct, purchase and install improvements to Guadalupe park in Artesia in Eddy county shall not be expended for the original purpose but is changed to plan, design, construct, purchase and install improvements to the right of way on United States highway 285 from Eagle Draw park north to Richey avenue in Artesia in Eddy county.

## **Chapter 133 Section 45 Laws 2017**

SECTION 45. OIL CONSERVATION DIVISION DISTRICT OFFICE IN ARTESIA--CHANGE AGENCY--SEVERANCE TAX BONDS.--The agency for the energy, minerals and natural resources department project originally authorized in Subsection 1 of Section 15 of Chapter 81 of Laws 2016 for site improvements and to plan, design, construct, equip and furnish the oil conservation division district office in Artesia in Eddy county is changed to the capital program fund.

## **Chapter 133 Section 46 Laws 2017**

SECTION 46. NEW MEXICO STATE UNIVERSITY CARLSBAD CAMPUS CHILD DEVELOPMENT EDUCATION CENTER DESIGN--CHANGE TO PLAN, DESIGN, CONSTRUCT, RENOVATE, FURNISH, EQUIP AND IMPROVE INFRASTRUCTURE--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the board of regents of New Mexico state university in Subsection 7 of Section 42 of Chapter 226 of Laws 2013 to plan and design a child development education center at the Carlsbad campus of New Mexico state university in Carlsbad in Eddy county shall not be expended for the original purpose but is changed to plan, design, construct, renovate, furnish, equip and improve infrastructure at that campus. The time of expenditure is extended through fiscal year 2019.

### **Chapter 133 Section 47 Laws 2017**

SECTION 47. BAYARD RECREATION IMPROVEMENTS--CHANGE TO BAYARD RECREATION FACILITY IMPROVEMENTS--SEVERANCE TAX BONDS.-- The unexpended balance of the appropriation to the local government division in Subsection 107 of Section 22 of Chapter 81 of Laws 2016 to plan, design and construct recreational facility improvements, including landscaping and the purchase of equipment and furnishings, in Bayard in Grant county shall not be expended for the original purpose but is changed to plan, design and construct improvements to recreational facilities and areas, including site work and the purchase of equipment and furnishings, in Bayard.

### **Chapter 133 Section 48 Laws 2017**

SECTION 48. EUNICE MAINSTREET IMPROVEMENTS--CHANGE TO SURFACE STREET IMPROVEMENTS--CHANGE AGENCY--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 116 of Section 22 of Chapter 81 of Laws 2016 to plan, design, construct and equip mainstreet improvements in Eunice in Lea county shall not be expended for the original purpose but is appropriated to the department of transportation to plan, design, construct and equip surface street improvements, including curbs, gutters, drainage, milling, paving and sidewalks, in Eunice.

### **Chapter 133 Section 49 Laws 2017**

SECTION 49. EUNICE MAIN STREET BEAUTIFICATION--CHANGE TO STREET IMPROVEMENTS--CHANGE AGENCY--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 121 of Section 31 of Chapter 226 of Laws 2013 to design, construct, equip and furnish the downtown beautification project on Main street from avenue M to avenue O in Eunice in Lea county shall not be expended for the original purpose but is appropriated to the department of transportation to plan, design, construct and equip surface street improvements, including curbs, gutters, drainage, milling, paving and sidewalks, in Eunice. The time of expenditure is extended through fiscal year 2019.

## **Chapter 133 Section 50 Laws 2017**

SECTION 50. EUNICE STREET IMPROVEMENTS--CHANGE TO SURFACE STREET IMPROVEMENTS--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the department of transportation in Subsection 41 of Section 33 of Chapter 3 of Laws 2015 (1st S.S.) to plan, design and construct street improvements, including curbs, gutters, drainage and sidewalks, in Eunice in Lea county shall not be expended for the original purpose but is changed to plan, design, construct and equip surface street improvements, including curbs, gutters, drainage, milling, paving and sidewalks, in Eunice.

## **Chapter 133 Section 51 Laws 2017**

SECTION 51. CARRIZOZO DUMP TRUCK AND TRAILER--EXPAND PURPOSE--EXTEND TIME--SEVERANCE TAX BONDS.--The local government division project in Subsection 124 of Section 22 of Chapter 81 of Laws 2016 to purchase and equip a dump truck and dump trailer for Carrizozo in Lincoln county may include the purchase of slide trailers and a generator for Carrizozo. The time of expenditure is extended through fiscal year 2019.

## **Chapter 133 Section 52 Laws 2017**

SECTION 52. ALTO LAKE DAM IMPROVEMENTS--CHANGE TO IMPROVEMENTS TO THE ALTO WATER TREATMENT PLANT IN RUIDOSO--CHANGE AGENCY--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the office of the state engineer in Subsection 9 of Section 15 of Chapter 66 of Laws 2014 to plan, design, renovate and construct improvements to the Alto Lake dam in Lincoln county shall not be expended for the original purpose but is appropriated to the department of environment to plan, design, construct and equip improvements to the Alto water treatment plant in Ruidoso in Lincoln county. The time of expenditure is extended through fiscal year 2019.

## **Chapter 133 Section 53 Laws 2017**

SECTION 53. MCKINLEY COUNTY ROAD 43/SUPERMAN CANYON ROAD IMPROVEMENTS--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the department of transportation project in Subsection 43 of Section 36 of Chapter 226 of Laws 2013 to plan, design and construct improvements, including right-of-way acquisition, to Superman Canyon road, also known as county road 43, in McKinley county is extended through fiscal year 2019.

## **Chapter 133 Section 54 Laws 2017**

SECTION 54. BAAHAALI CHAPTER POWERLINE EXTENSION--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the Indian affairs

department project in Subsection 8 of Section 28 of Chapter 226 of Laws 2013 to extend a powerline and construct house wiring improvements in the Baahaali chapter of the Navajo Nation in McKinley county is extended through fiscal year 2019.

### **Chapter 133 Section 55 Laws 2017**

SECTION 55. BAAHAALI-CHICHILTAH TRANSFER STATION BATHROOM--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the department of environment project in Subsection 60 of Section 16 of Chapter 66 of Laws 2014 to plan, design and construct a bathroom addition and cistern system for the Baahaali-Chichiltah regional solid waste transfer station office in McKinley county is extended through fiscal year 2019.

### **Chapter 133 Section 56 Laws 2017**

SECTION 56. GALLUP COMMUNITY PANTRY IMPROVEMENTS--CHANGE TO CHICHILTAH CHAPTER HOUSE IMPROVEMENTS--CHANGE AGENCY--EXTEND TIME--SEVERANCE TAX BONDS.--Twenty-five thousand dollars (\$25,000) of the unexpended balance of the appropriation to the department of transportation originally authorized in Subsection 45 of Section 36 of Chapter 226 of Laws 2013 and reauthorized to the local government division in Laws 2015, Chapter 147, Section 30 for improvements, including tile and roof replacement, to the community pantry in Gallup in McKinley county shall not be expended for the original or reauthorized purpose but is appropriated to the Indian affairs department to plan, design, construct and make improvements, including the purchase of equipment and furniture, to the chapter house in the Chichiltah chapter of the Navajo Nation in McKinley county. The time of expenditure is extended through fiscal year 2019.

### **Chapter 133 Section 57 Laws 2017**

SECTION 57. COYOTE CANYON CHAPTER REHABILITATION CENTER RENOVATION--CHANGE TO ACQUIRE EASEMENTS AND RIGHTS OF WAY AND TO PLAN, DESIGN AND CONSTRUCT POWER LINES--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the Indian affairs department in Subsection 9 of Section 20 of Chapter 81 of Laws 2016 to construct and renovate the rehabilitation center in the Coyote Canyon chapter of the Navajo Nation in McKinley county shall not be expended for the original purpose but is changed to acquire easements and rights of way and to plan, design and construct power lines in that chapter.

### **Chapter 133 Section 58 Laws 2017**

SECTION 58. GALLUP HILLCREST CEMETERY AND VETERANS MEMORIAL--CHANGE TO CEMETERY IMPROVEMENTS--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 143 of Section 22 of Chapter 66 of Laws 2014 to plan, design and

construct a veterans memorial and cemetery at the Hillcrest cemetery in Gallup in McKinley county shall not be expended for the original purpose but is changed to plan, design and make improvements to Hillcrest cemetery in Gallup. The time of expenditure is extended through fiscal year 2019.

### **Chapter 133 Section 59 Laws 2017**

SECTION 59. GALLUP SKATE PARK--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the department of environment appropriation originally authorized in Subsection 39 of Section 23 of Chapter 226 of Laws 2013 and reauthorized to the local government division in Laws 2015, Chapter 147, Section 36 to plan, design and construct a skate park in Gallup in McKinley county is extended through fiscal year 2019.

### **Chapter 133 Section 60 Laws 2017**

SECTION 60. GALLUP NORTHSIDE SENIOR CENTER IMPROVEMENTS--CHANGE TO STATE VETERANS CEMETERY ACCESS ROAD AND IMPROVEMENTS--CHANGE AGENCY--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the aging and long-term services department in Subsection 39 of Section 3 of Chapter 3 of Laws 2015 (1st S.S.) to plan, design and construct improvements to the Northside senior center in Gallup in McKinley county shall not be expended for the original purpose but is appropriated to the department of transportation to plan, design and construct an access road and other improvements to the state veterans cemetery in Gallup in McKinley county.

### **Chapter 133 Section 61 Laws 2017**

SECTION 61. THOREAU COMMUNITY CENTER KITCHEN RENOVATION--CHANGE TO GALLUP VETERANS MEMORIAL CONSTRUCTION AND REPAIR--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 138 of Section 31 of Chapter 226 of Laws 2013 to renovate the kitchen in the community center in Thoreau in McKinley county shall not be expended for the original purpose but is changed to plan, design, repair, construct and make improvements, including the purchase and installation of pillars, for the veterans memorial in Gallup in McKinley county. The time of expenditure is extended through fiscal year 2019.

### **Chapter 133 Section 62 Laws 2017**

SECTION 62. TWO GREY HILLS CHAPTER VETERANS' MEMORIAL PARK--CHANGE TO THOREAU CHAPTER VETERANS' SERVICE CENTER CONSTRUCTION--SEVERANCE TAX BONDS.--Eleven thousand dollars (\$11,000) of the unexpended balance of the appropriation to the Indian affairs department in Subsection 38 of Section 20 of Chapter 81 of Laws 2016 to plan, design, construct and equip a veterans' memorial park and modular facility, including fencing, in the Two Grey

Hills chapter of the Navajo Nation in San Juan county shall not be expended for the original purpose but is changed to plan, design and construct a veterans' service center in the Thoreau chapter of the Navajo Nation in McKinley county.

### **Chapter 133 Section 63 Laws 2017**

SECTION 63. TOADLENA-TWO GREY HILLS CHAPTER COMMUNITY CEMETERIES--CHANGE TO THOREAU CHAPTER VETERANS' SERVICE CENTER CONSTRUCTION--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the Indian affairs department in Subsection 45 of Section 25 of Chapter 3 of Laws 2015 (1st S.S.) to plan, design and construct improvements to community cemeteries in the Toadlena-Two Grey Hills chapter of the Navajo Nation in San Juan county shall not be expended for the original purpose but is changed to plan, design and construct a veterans' service center in the Thoreau chapter of the Navajo Nation in McKinley county.

### **Chapter 133 Section 64 Laws 2017**

SECTION 64. CROWNPOINT WELLNESS CENTER--CHANGE TO TOHATCHI CHAPTER POWERLINE EXTENSIONS--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the Indian affairs department originally appropriated in Subsection 43 of Section 66 of Chapter 42 of Laws 2007 and for which the time of expenditure was extended in Laws 2011, Chapter 183, Section 58 and in Laws 2013, Chapter 202, Section 25 and again in Laws 2015, Chapter 147, Section 35 to plan, design, construct, equip and furnish a wellness center, including purchasing a modular building, in Crownpoint in McKinley county shall not be expended for the original purpose but is changed to plan, design and construct powerline extensions in the Tohatchi chapter of the Navajo Nation in McKinley county. The time of expenditure is extended through fiscal year 2019.

### **Chapter 133 Section 65 Laws 2017**

SECTION 65. TOHATCHI CHAPTER RECREATIONAL FACILITIES AND FIELDS--CHANGE TO POWERLINE EXTENSIONS--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation originally made to the local government division in Subsection 154 of Section 26 of Chapter 2 of Laws 2007 and reappropriated to the Indian affairs department in Laws 2009, Chapter 128, Section 312 and for which the time of expenditure was extended in Laws 2011, Chapter 183, Section 66 and in Laws 2013, Chapter 202, Section 26 and again in Laws 2015, Chapter 147, Section 39 to plan, design, construct, renovate and equip a skateboard park, volleyball park, picnic area, playground area, trails and landscaping in the Tohatchi chapter of the Navajo Nation in McKinley county shall not be expended for the original or reappropriated purpose but is changed to plan, design and construct powerline extensions in the Tohatchi chapter. The time of expenditure is extended through fiscal year 2019.

## **Chapter 133 Section 66 Laws 2017**

SECTION 66. TOHATCHI CHAPTER RED WILLOW FARM WATER WELL AND WATER SYSTEM IMPROVEMENTS--CHANGE TO WATER AND POWER LINES CONSTRUCTION AND ROAD IMPROVEMENTS--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the Indian affairs department in Subsection 17 of Section 20 of Chapter 81 of Laws 2016 to plan, design and construct a water well and system improvements to Red Willow farm in the Tohatchi chapter of the Navajo Nation in McKinley county shall not be expended for the original purpose but is changed to plan, design, construct and make improvements to water lines, power lines and roads for Red Willow farm in the Tohatchi chapter.

## **Chapter 133 Section 67 Laws 2017**

SECTION 67. TOHATCHI CHAPTER RED WILLOW FARMLAND PUMP SYSTEM--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the department of environment project in Subsection 41 of Section 23 of Chapter 226 of Laws 2013 to construct a water drill well pump system at the Red Willow farmland in the Tohatchi chapter of the Navajo Nation in McKinley county is extended through fiscal year 2019.

## **Chapter 133 Section 68 Laws 2017**

SECTION 68. CANNON AIR FORCE BASE IMPROVEMENTS--CHANGE TO CANNON AIR FORCE BASE AND MELROSE AIR FORCE RANGE IMPROVEMENTS--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation originally authorized in Subsection 2 of Section 15 of Chapter 111 of Laws 2006 and reauthorized in Laws 2007, Chapter 341, Section 98 and further reauthorized to the office of military base planning and support in Laws 2010 (2nd S.S.), Chapter 4, Section 22 and subsequently reauthorized in Laws 2014, Chapter 64, Section 20 and then reauthorized in Laws 2016, Chapter 83, Section 36 to purchase land and water rights and to develop infrastructure and to plan, design, construct and improve Cannon air force base in Curry county shall not be expended for the original or reauthorized purposes but is changed to purchase land and water rights, to develop infrastructure and road access and to plan, design, construct and improve Cannon air force base in Curry county and Melrose air force range in Curry and Roosevelt counties. The time of expenditure is extended through fiscal year 2019.

## **Chapter 133 Section 69 Laws 2017**

SECTION 69. PASEO DEL VOLCAN BYPASS FROM UNSER BOULEVARD TO INTERSTATE 40--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the department of transportation project originally authorized in Subsection 54 of Section 36 of Chapter 226 of Laws 2013 and reauthorized in Laws 2015, Chapter 147, Section 62 to acquire rights of way for and to plan, design and

construct a Paseo del Volcan loop bypass road from Unser boulevard to interstate 40 in Bernalillo and Sandoval counties is extended through fiscal year 2019.

### **Chapter 133 Section 70 Laws 2017**

SECTION 70. DEPARTMENT OF HEALTH FACILITIES PATIENT HEALTH AND SAFETY UPGRADES--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the capital program fund project in Subsection 8 of Section 9 of Chapter 226 of Laws 2013 to plan, design, construct, install and equip patient health and safety upgrades at the New Mexico behavioral health institute in Las Vegas in San Miguel county, the New Mexico state veterans' home in Truth or Consequences in Sierra county, the Sequoyah facility in Albuquerque in Bernalillo county, the Los Lunas facility in Valencia county and Fort Bayard medical center in Santa Clara in Grant county is extended through fiscal year 2019.

### **Chapter 133 Section 71 Laws 2017**

SECTION 71. DEPARTMENT OF HEALTH FACILITIES UPGRADES--EXPAND PURPOSE--EXTEND TIME--SEVERANCE TAX BONDS.--The capital program fund project in Subsection 9 of Section 9 of Chapter 226 of Laws 2013 for facilities upgrades at the

New Mexico behavioral health institute in Las Vegas in San Miguel county, the New Mexico state veterans' home in Truth or Consequences in Sierra county and the Sequoyah facility in Albuquerque in Bernalillo county may include upgrades to Fort Bayard medical center in Santa Clara in Grant county. The time of expenditure is extended through fiscal year 2019.

### **Chapter 133 Section 72 Laws 2017**

SECTION 72. RIO ARRIBA COUNTY FOOD HUB ECONOMIC DEVELOPMENT INITIATIVE, HUNTER FORD BUILDING AND COUNTY DETENTION CENTER--CHANGE TO NORTHERN NEW MEXICO FOOD HUB INITIATIVE, GREENHOUSES AND AGRICULTURAL FACILITIES--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 158 of Section 22 of Chapter 66 of Laws 2014 to remodel and equip the Hunter Ford building to accommodate a food hub economic development initiative, to construct greenhouses at the county detention center and to purchase and install information technology upgrades in community centers in Rio Arriba county shall not be expended for the original purpose but is changed to plan, design, construct, renovate and equip facilities to accommodate a northern New Mexico food hub economic development initiative and to plan, design, construct and equip greenhouses and agricultural facilities in Rio Arriba county and in Espanola in Rio Arriba and Santa Fe counties and to purchase and install information technology upgrades in community centers in Rio Arriba county.

### **Chapter 133 Section 73 Laws 2017**

SECTION 73. SPACEPORT SOUTHERN ACCESS ROAD--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the spaceport authority project in Laws 2013, Chapter 226, Section 33 to plan, design and construct, including rights of way, easements and archaeological studies, the southern access road to Spaceport America in Dona Ana and Sierra counties is extended through fiscal year 2019.

### **Chapter 133 Section 74 Laws 2017**

SECTION 74. CRYSTAL CHAPTER PARKING LOT IMPROVEMENTS--CHANGE TO CRYSTAL CHAPTER WATER STORAGE TANK AND FIRE PUMP--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the Indian affairs department in Subsection 32 of Section 20 of Chapter 81 of Laws 2016 to plan, design and construct improvements, including site improvements, to a parking lot at the chapter house of the Crystal chapter of the Navajo Nation in San Juan and McKinley counties shall not be expended for the original purpose but is changed to purchase and install a water storage tank and fire pump in the Crystal chapter.

### **Chapter 133 Section 75 Laws 2017**

SECTION 75. CRYSTAL CHAPTER WATER TANK CONSTRUCTION AND FIRE PUMP PURCHASE--CHANGE TO WATER TANK AND FIRE PUMP PURCHASE AND INSTALLATION--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the Indian affairs department in Subsection 38 of Section 25 of Chapter 3 of Laws 2015 (1st S.S.) to plan, design and construct a water storage tank and to purchase and install a fire pump for the multipurpose facility at the Crystal chapter of the Navajo Nation in San Juan county shall not be expended for the original purpose but is changed to purchase and install a water storage tank and fire pump in the Crystal chapter of the Navajo Nation in San Juan and McKinley counties.

### **Chapter 133 Section 76 Laws 2017**

SECTION 76. MORIARTY-EDGEWOOD MUNICIPAL SCHOOL DISTRICT TRI-COUNTY YOUTH FACILITY--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the local government division project originally authorized in Subsection 214 of Section 31 of Chapter 226 of Laws 2013 and reauthorized to the public education department in Laws 2015, Chapter 147, Section 44 to plan, design, purchase, construct, renovate and equip a multipurpose facility for tri-county youth and their families in the Moriarty-Edgewood municipal school district in Tarrant and Santa Fe counties is extended through fiscal year 2019.

### **Chapter 133 Section 77 Laws 2017**

SECTION 77. NEW MEXICO SCHOOL FOR THE BLIND AND VISUALLY IMPAIRED WATKINS EDUCATION CENTER RENOVATION--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the board of regents of the New Mexico school for the blind and visually impaired project in Subsection 3 of Section

54 of Chapter 226 of Laws 2013 to plan, design, renovate and equip the Watkins education center and to demolish the San Andres building at the New Mexico school for the blind and visually impaired in Alamogordo in Otero county is extended through fiscal year 2018.

### **Chapter 133 Section 78 Laws 2017**

SECTION 78. CLOUDCROFT COMMUNITY CENTER CONSTRUCTION--CHANGE TO REPAIR, RENOVATE AND FURNISH--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 152 of Section 22 of Chapter 66 of Laws 2014 to plan, design, construct, furnish and equip a community center and library in Cloudcroft in Otero county shall not be expended for the original purpose but is changed to plan, design, construct, equip, furnish, repair, renovate and rehabilitate a community center and library in Cloudcroft. The time of expenditure is extended through fiscal year 2019.

### **Chapter 133 Section 79 Laws 2017**

SECTION 79. TIMBERON WATER AND SANITATION DISTRICT MAINTENANCE BARN ELECTRICAL SYSTEM--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the department of environment project in Subsection 46 of Section 23 of Chapter 226 of Laws 2013 to plan, design and construct improvements to the electrical system in the Timberon water and sanitation district maintenance barn in Otero county is extended through fiscal year 2019.

### **Chapter 133 Section 80 Laws 2017**

SECTION 80. LA MADERA MUTUAL DOMESTIC WATER CONSUMERS ASSOCIATION WATER SYSTEM IMPROVEMENTS--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the department of environment project in Subsection 49 of Section 23 of Chapter 226 of Laws 2013 to plan, design and construct water system improvements, including tanks, pumps, hydrants, lines and meters, for La Madera mutual domestic water consumers association in Rio Arriba county is extended through fiscal year 2019.

### **Chapter 133 Section 81 Laws 2017**

SECTION 81. CUMBRES AND TOLTEC SCENIC RAILROAD COMMISSION WATER TANK SUPPLY SYSTEM--CHANGE TO RAILROAD PASSENGER CAR REHABILITATION AND CONSTRUCTION--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the Cumbres and Toltec scenic railroad commission in Subsection 2 of Section 9 of Chapter 3 of Laws 2015 (1st S.S.) to plan, design and construct repairs and improvements to the water supply system for the railroad water tank in Sublette in Rio Arriba county shall not be expended for the original purpose but is changed to construct, rehabilitate, equip and furnish railroad passenger

cars for the Cumbres and Toltec scenic railroad operating between New Mexico and Colorado.

### **Chapter 133 Section 82 Laws 2017**

SECTION 82. CUMBRES AND TOLTEC SCENIC RAILROAD COMMISSION LAND AND BUILDING FOR VISITOR GATEWAY CENTER--CHANGE TO RAILROAD PASSENGER CARS REHABILITATION AND CONSTRUCTION--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the Cumbres and Toltec scenic railroad commission in Subsection 3 of Section 9 of Chapter 3 of Laws 2015 (1st S.S.) to purchase land and to plan, design and construct a visitor gateway center for the Cumbres and Toltec scenic railroad commission in Chama in Rio Arriba county shall not be expended for the original purpose but is changed to construct, rehabilitate, equip and furnish railroad passenger cars for the Cumbres and Toltec scenic railroad operating between New Mexico and Colorado.

### **Chapter 133 Section 83 Laws 2017**

SECTION 83. CUMBRES AND TOLTEC SCENIC RAILROAD COMMISSION SAND HOUSE REPAIR--CHANGE TO RAILROAD PASSENGER CAR REHABILITATION AND CONSTRUCTION--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the Cumbres and Toltec scenic railroad commission in Subsection 4 of Section 9 of Chapter 3 of Laws 2015 (1st S.S.) to plan, design and construct repairs and improvements to the sand house facility in the Cumbres and Toltec scenic railroad yard in Chama in Rio Arriba county shall not be expended for the original purpose but is changed to construct, rehabilitate, equip and furnish railroad passenger cars for the Cumbres and Toltec scenic railroad operating between New Mexico and Colorado.

### **Chapter 133 Section 84 Laws 2017**

SECTION 84. LOS LUCEROS FACILITIES AND GROUNDS IMPROVEMENT--CHANGE TO NEW MEXICO STATE UNIVERSITY ALCALDE SUSTAINABLE AGRICULTURE SCIENCE CENTER RENOVATION AND STABILIZATION--CHANGE AGENCY--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the board of regents of New Mexico state university originally authorized in Subsection 13 of Section 39 of Chapter 3 of Laws 2015 (1st S.S.) and reauthorized to the cultural affairs department in Laws 2016, Chapter 83, Section 75 for improvements and renovations to the facilities and grounds at the Los Luceros property in Rio Arriba county shall not be expended for the original or reauthorized purpose but is appropriated to the board of regents of New Mexico state university to plan, design, renovate, furnish and equip, including stabilization, the sustainable agriculture science center at Alcalde in Rio Arriba county.

### **Chapter 133 Section 85 Laws 2017**

SECTION 85. DEPARTMENT OF PUBLIC SAFETY ESPANOLA STATE POLICE DISTRICT OFFICE--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the capital program fund project in Subsection 10 of Section 9 of Chapter 226 of Laws 2013 to construct, renovate, expand, furnish and equip the state police district office in Espanola in Rio Arriba county is extended through fiscal year 2018.

### **Chapter 133 Section 86 Laws 2017**

SECTION 86. RIO ARRIBA COUNTY DISABLED AMERICAN VETERANS CHAPTER 22 VEHICLE--CHANGE TO ESPANOLA RIVERSIDE DRIVE WATER LINES UPGRADE--CHANGE AGENCY--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 159 of Section 22 of Chapter 81 of Laws 2016 to purchase and equip a vehicle for the disabled American veterans chapter 22 in Espanola in Rio Arriba county shall not be expended for the original purpose but is appropriated to the department of environment to plan, design, construct and upgrade water lines on Riverside drive in Espanola in Rio Arriba county. The time of expenditure is extended through fiscal year 2019.

### **Chapter 133 Section 87 Laws 2017**

SECTION 87. RIO ARRIBA COUNTY VETERANS' TRANSPORTATION VAN--CHANGE TO ESPANOLA RIVERSIDE DRIVE WATER LINE IMPROVEMENTS--CHANGE AGENCY--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 179 of Section 28 of Chapter 3 of Laws 2015 (1st S.S.) to purchase a van for disabled veterans' transportation services in Espanola in Rio Arriba county shall not be expended for the original purpose but is appropriated to the department of environment to plan, design, construct and improve water lines on Riverside drive in Espanola. The time of expenditure is extended through fiscal year 2019.

### **Chapter 133 Section 88 Laws 2017**

SECTION 88. VELARDE TREATMENT CENTER INFORMATION TECHNOLOGY--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the local government division project originally authorized in Subsection 158 of Section 31 of Chapter 226 of Laws 2013 and for which the time of expenditure was extended in Laws 2015, Chapter 147, Section 48 to purchase and install information technology, including related furniture, equipment and infrastructure, and office equipment for a residential substance abuse treatment and recovery program in Velarde in Rio Arriba county is extended through fiscal year 2019.

### **Chapter 133 Section 89 Laws 2017**

SECTION 89. ELIDA MUNICIPAL SCHOOL DISTRICT BUS PURCHASE--CHANGE TO VANS AND SPORT UTILITY VEHICLES--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the public education department in Subsection 172 of Section 14 of Chapter 81 of Laws 2016 to purchase and equip a bus for the Elida municipal school district in Roosevelt county shall not be expended for the original purpose but is changed to purchase and equip vans and sport utility vehicles for that school district. The time of expenditure is extended through fiscal year 2019.

### **Chapter 133 Section 90 Laws 2017**

SECTION 90. FLORA VISTA MUTUAL DOMESTIC WATER ASSOCIATION WASTEWATER SYSTEM CONSTRUCTION--CHANGE TO REGIONAL WATER SYSTEMS IN SAN JUAN COUNTY--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the department of environment in Subsection 55 of Section 18 of Chapter 81 of Laws 2016 to plan, design and construct a wastewater system for the Flora Vista mutual domestic water association in San Juan county shall not be expended for the original purpose but is changed to plan, design and construct regional water systems in San Juan county.

### **Chapter 133 Section 91 Laws 2017**

SECTION 91. LAKE VALLEY CHAPTER HOUSE CONSTRUCTION--EXPAND PURPOSE--SEVERANCE TAX BONDS.--The Indian affairs department project in Subsection 40 of Section 25 of Chapter 3 of Laws 2015 (1st S.S.) to plan, design and construct a new chapter house for the Lake Valley chapter of the Navajo Nation in San Juan county may include renovating a chapter building.

### **Chapter 133 Section 92 Laws 2017**

SECTION 92. SHIPROCK IRRIGATION COMPOUND SECURITY FENCING--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the Indian affairs department project in Subsection 32 of Section 28 of Chapter 226 of Laws 2013 to design and construct security fencing at the Shiprock irrigation compound in Shiprock in the Navajo Nation in San Juan county is extended through fiscal year 2019.

### **Chapter 133 Section 93 Laws 2017**

SECTION 93. TOO H HALT SOOI CHAPTER BUILDING DEMOLITION AND DISPOSAL--CHANGE TO METAL WAREHOUSE BUILDING--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the Indian affairs department in Subsection 36 of Section 25 of Chapter 3 of Laws 2015 (1st S.S.) for demolition and disposal of abandoned buildings in the Tooh Haltsooi chapter of the Navajo Nation in San Juan county shall not be expended for the original purpose but is changed to plan, design, purchase and construct a metal warehouse building in that chapter.

## **Chapter 133 Section 94 Laws 2017**

SECTION 94. WHITE ROCK CHAPTER VETERANS ADMINISTRATION CENTER ADDITION--EXPAND PURPOSE--SEVERANCE TAX BONDS.--The Indian affairs department project in Subsection 46 of Section 25 of Chapter 3 of Laws 2015 (1st S.S.) to design and construct an addition to the veterans administration and meeting center in the White Rock chapter of the Navajo Nation in San Juan county may include planning, design, construction and renovation of a veterans building in that chapter.

## **Chapter 133 Section 95 Laws 2017**

SECTION 95. ARCHIBEQUE DITCH DESIGN AND CONSTRUCT IMPROVEMENTS--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the interstate stream commission project in Subsection 21 of Section 29 of Chapter 226 of Laws 2013 to design and construct improvements to the Archibeque ditch in Sandoval county is extended through fiscal year 2019.

## **Chapter 133 Section 96 Laws 2017**

SECTION 96. BERNALILLO WATER LINE ADDITION--CHANGE TO WELL 2 ARSENIC TREATMENT SYSTEM--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the department of environment in Subsection 59 of Section 20 of Chapter 3 of Laws 2015 (1st S.S.) to acquire rights of way and to plan, design and construct a river crossing water line for Bernalillo in Sandoval county shall not be expended for the original purpose but is changed to purchase and install an arsenic treatment system for municipal drinking water well 2 in Bernalillo in Sandoval county.

## **Chapter 133 Section 97 Laws 2017**

SECTION 97. PUEBLO OF JEMEZ FIRE APPARATUS BAYS CONSTRUCTION--CHANGE TO FIRE STATION PARKING LOT--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the Indian affairs department in Subsection 37 of Section 28 of Chapter 226 of Laws 2013 to construct fire apparatus bays for the Pueblo of Jemez in Sandoval county shall not be expended for the original purpose but is changed to plan, design and construct a parking lot for the fire station in the Pueblo of Jemez. The time of expenditure is extended through fiscal year 2019.

## **Chapter 133 Section 98 Laws 2017**

SECTION 98. PUEBLO OF JEMEZ VETERANS' BUILDING--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the Indian affairs department project in Subsection 38 of Section 28 of Chapter 226 of Laws 2013 to plan, design,

purchase, install and prepare the site for a veterans' building in the Pueblo of Jemez in Sandoval county is extended through fiscal year 2019.

### **Chapter 133 Section 99 Laws 2017**

SECTION 99. SANDIA PUEBLO PUBLIC WORKS EQUIPMENT AND STREET SWEEPER--CHANGE AGENCY--SEVERANCE TAX BONDS.--The agency for the local government division project originally authorized in Subsection 189 of Section 22 of Chapter 81 of Laws 2016 to purchase equipment for public works maintenance and to purchase and equip a street sweeper for the Pueblo of Sandia in Sandoval county is changed to the Indian affairs department.

### **Chapter 133 Section 100 Laws 2017**

SECTION 100. ACEQUIA DE LOS CHUPADEROS IMPROVEMENTS--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the interstate stream commission project in Subsection 26 of Section 29 of Chapter 226 of Laws 2013 for improvements, including restoration of the pond and acequia and the installation of head gates, for the acequia de los Chupaderos in Santa Fe county is extended through fiscal year 2019.

### **Chapter 133 Section 101 Laws 2017**

SECTION 101. EL GUICU DITCH CONSTRUCTION AND IMPROVEMENTS--EXTEND CERTIFICATION PERIOD AND EXPENDITURE PERIOD--SEVERANCE TAX BONDS.--The period of time for the interstate stream commission to certify to the state board of finance when the money from the proceeds of severance tax bonds appropriated is needed for the interstate stream commission project in Subsection 22 of Section 27 of Chapter 3 of Laws 2015 (1st S.S.) to plan, design, renovate, construct, purchase and equip improvements to El Guicu ditch in the La Cienega area of Santa Fe county is extended through fiscal year 2019. The time of expenditure is extended through fiscal year 2021.

### **Chapter 133 Section 102 Laws 2017**

SECTION 102. ART IN PUBLIC PLACES FUND WORKS OF ART--CHANGE TO MUSEUM OF INDIAN ARTS AND CULTURE EXHIBITS--SEVERANCE TAX BONDS.--Notwithstanding the provisions of the Art in Public Places Act to the contrary, three hundred thousand dollars (\$300,000) of the unexpended balance of severance tax bond appropriations remaining in the art in public places fund shall not be expended for the original purpose but is appropriated to the cultural affairs department for expenditure in fiscal years 2017 through 2019 for capital expenditures to upgrade exhibits at the museum of Indian arts and culture in Santa Fe in Santa Fe county. Any unexpended or unencumbered balance remaining at the end of fiscal year 2019 shall revert to the art in public places fund.

## **Chapter 133 Section 103 Laws 2017**

SECTION 103. ACEQUIA DE LA CIENEGA IMPROVEMENTS--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the interstate stream commission project in Subsection 31 of Section 29 of Chapter 226 of Laws 2013 to construct improvements, including replacement of valves and pipeline, to the acequia de la Cienega in La Cienega in Santa Fe county is extended through fiscal year 2019.

## **Chapter 133 Section 104 Laws 2017**

SECTION 104. SAN ILDEFONSO PUEBLO RECREATION AND COMMUNITY CENTER--CHANGE TO SAN ILDEFONSO PUEBLO WASTEWATER FACILITY AND SYSTEM--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the Indian affairs department in Subsection 60 of Section 25 of Chapter 3 of Laws 2015 (1st S.S.) to plan, design and construct a recreational and community center in the Pueblo of San Ildefonso in Santa Fe county shall not be expended for the original purpose but is changed to plan, design and construct a wastewater facility and system at that pueblo.

## **Chapter 133 Section 105 Laws 2017**

SECTION 105. AGUA FRIA WATER BOARD OFFICE EQUIPMENT--CHANGE TO AGUA FRIA WATER SYSTEM CONSTRUCTION--CHANGE AGENCY--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 205 of Section 28 of Chapter 3 of Laws 2015 (1st S.S.) to equip and furnish the building and to purchase and install information technology, including related equipment, furniture and infrastructure, at the Agua Fria association water board office building in Agua Fria in Santa Fe county shall not be expended for the original purpose but is appropriated to the department of environment to plan, design, construct and improve a water distribution system in Agua Fria in Santa Fe county. The time of expenditure is extended through fiscal year 2019.

## **Chapter 133 Section 106 Laws 2017**

SECTION 106. SANTA FE COUNTY FAIRGROUNDS IMPROVEMENTS--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the local government division project in Subsection 188 of Section 22 of Chapter 66 of Laws 2014 to plan, design and construct improvements to the fairgrounds in Santa Fe county is extended through fiscal year 2019.

## **Chapter 133 Section 107 Laws 2017**

SECTION 107. SANTA FE COUNTY FAIRGROUNDS IMPROVEMENTS--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the local government division project in Subsection 182 of Section 31 of Chapter 226 of Laws

2013 to plan, design, construct, equip and furnish improvements to the fairgrounds, including utilities and construction of an extension office, in Santa Fe in Santa Fe county is extended through fiscal year 2019.

### **Chapter 133 Section 108 Laws 2017**

SECTION 108. SANTA FE DANCE BARN IMPROVEMENTS--CHANGE TO DANCE BARN EQUIPMENT--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 213 of Section 28 of Chapter 3 of Laws 2015 (1st S.S.) to plan, design, construct and improve the dance barns facility in Santa Fe in Santa Fe county shall not be expended for the original purpose but is changed to purchase and install equipment for that facility.

### **Chapter 133 Section 109 Laws 2017**

SECTION 109. SANTA FE FARMERS' MARKET IMPROVEMENTS--EXPAND PURPOSE--EXTEND TIME--SEVERANCE TAX BONDS.--The local government division project in Subsection 186 of Section 31 of Chapter 226 of Laws 2013 to design, construct, equip and furnish the pavilion, including lighting, and to design, purchase and install a counter in the cafe at the concession facility at the Santa Fe farmers' market in Santa Fe in Santa Fe county may include the purchase and installation of ovens and hood assemblies, a convection oven, a griddle, gas ranges, sinks, refrigerators and related equipment and infrastructure. The time of expenditure is extended through fiscal year 2019.

### **Chapter 133 Section 110 Laws 2017**

SECTION 110. SANTA FE INDIAN SCHOOL WELLNESS AND EDUCATION CENTER--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the Indian affairs department project in Subsection 49 of Section 28 of Chapter 226 of Laws 2013 to plan, design, construct, equip and furnish a regional wellness and education center, including classrooms and laboratories, at the Santa Fe Indian school in Santa Fe in Santa Fe county is extended through fiscal year 2019.

### **Chapter 133 Section 111 Laws 2017**

SECTION 111. STATE LAND OFFICE CEILING AND SPRINKLER SYSTEM REPLACEMENT--CHANGE TO PARKING LOT, SIDEWALK AND GROUNDS IMPROVEMENTS--STATE LANDS MAINTENANCE FUND.--The unexpended balance of the appropriation to the state land office in Subsection 2 of Section 48 of Chapter 66 of Laws 2014 to replace the ceiling and sprinkler system at the state land office in Santa Fe in Santa Fe county shall not be expended for the original purpose but is changed to plan, design, excavate, replace and construct the parking lot and sidewalks and to maintain and improve the grounds at that office.

## **Chapter 133 Section 112 Laws 2017**

SECTION 112. AGUA FRIA ELEMENTARY SCHOOL EARLY LEARNING CENTER--CHANGE TO KAUNE ELEMENTARY SCHOOL EARLY LEARNING CENTER--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the public education department in Subsection 242 of Section 15 of Chapter 3 of Laws 2015 (1st S.S.) to plan, design, construct, furnish and equip improvements at the early learning center at Agua Fria elementary school in the Santa Fe public school district in Santa Fe county shall not be expended for the original purpose but is changed to plan, design, construct, furnish and equip improvements, including the purchase and development of outdoor learning spaces and the installation of related equipment, furniture and infrastructure, at the early learning center at Kaune elementary school in the Santa Fe public school district.

## **Chapter 133 Section 113 Laws 2017**

SECTION 113. NYE EARLY CHILDHOOD CENTER PLAYGROUND IMPROVEMENTS--EXPAND PURPOSE--EXTEND TIME--SEVERANCE TAX BONDS.-  
-The public education department project in Subsection 236 of Section 13 of Chapter 66 of Laws 2014 to design, construct, equip and furnish improvements to the playground areas at Nye early childhood center in the Santa Fe public school district in Santa Fe county may include improvements to the grounds and buildings at that center. The time of expenditure is extended through fiscal year 2019.

## **Chapter 133 Section 114 Laws 2017**

SECTION 114. NYE EARLY CHILDHOOD CENTER PLAYGROUND--CHANGE TO PURCHASE AND INSTALL PLAYGROUND EQUIPMENT AND MAKE IMPROVEMENTS TO THE GROUNDS AND BUILDINGS--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the public education department in Subsection 251 of Section 15 of Chapter 3 of Laws 2015 (1st S.S.) to plan, design, construct, purchase and install a playground for the medically fragile at the Nye early childhood center in the Santa Fe public school district in Santa Fe is changed to plan, design, construct, purchase and install playground equipment and to make improvements to the grounds and buildings for the medically fragile at the Nye early childhood center.

## **Chapter 133 Section 115 Laws 2017**

SECTION 115. AGUA FRIA ELEMENTARY SCHOOL EARLY LEARNING CENTER--CHANGE TO SANTA FE PUBLIC SCHOOL DISTRICT EARLY LEARNING CENTER--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the public education department in Subsection 234 of Section 13 of Chapter 66 of Laws 2014 to prepare the site for and to plan, design and construct an early learning center at Agua Fria elementary school in the Santa Fe public school district in Santa Fe county shall not be expended for the original purpose but is changed

to prepare the site for and to plan, design, construct, equip and furnish an early learning center in that school district. The time of expenditure is extended through fiscal year 2019.

### **Chapter 133 Section 116 Laws 2017**

SECTION 116. ACEQUIA WATER STORAGE PROJECTS--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the office of the state engineer project originally authorized in Subsection 48 of Section 3 of Chapter 7 of Laws 2009 (1st S.S.) and for which the expenditure period was extended in Laws 2013, Chapter 202, Section 48 and again in Laws 2015, Chapter 147, Section 74 to repair and rehabilitate acequia water storage projects statewide is extended through fiscal year 2018.

### **Chapter 133 Section 117 Laws 2017**

SECTION 117. COMMISSION FOR THE BLIND INDEPENDENT LIVING FACILITY IN ALAMOGORDO--CHANGE TO COMMISSION FACILITIES STATEWIDE--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the capital program fund in Subsection 10 of Section 6 of Chapter 3 of Laws 2015 (1st S.S.) for a fourplex apartment unit for an independent living environment, including site and infrastructure improvements, for the commission for the blind in Alamogordo in Otero county shall not be expended for the original purpose but is changed to plan, design, construct, renovate, equip and furnish commission for the blind facilities statewide.

### **Chapter 133 Section 118 Laws 2017**

SECTION 118. CHILDREN, YOUTH AND FAMILIES DEPARTMENT YOUTH DIAGNOSTIC AND DEVELOPMENT CENTER VISITOR CENTER AND WAREHOUSE--EXPAND PURPOSE--SEVERANCE TAX BONDS.--The capital program fund project in Subsection 2 of Section 6 of Chapter 3 of Laws 2015 (1st S.S.) to plan, design, construct, furnish and equip a visitor center and warehouse-commissary facility at the youth diagnostic and development center in Albuquerque in Bernalillo county may include planning, designing, constructing, renovating, equipping and furnishing children, youth and families department facilities statewide.

### **Chapter 133 Section 119 Laws 2017**

SECTION 119. FIREFIGHTER TRAINING BURN BUILDING--TRANSFER UNEXPENDED BALANCE--FIRE PROTECTION FUND.--Notwithstanding the requirements for reversion in Laws 2015 (1st S.S.), Chapter 3, the unexpended balance of the appropriation from the fire protection fund to the public regulation commission in Laws 2015 (1st S.S.), Chapter 3, Section 60 to plan, design and construct a firefighter training burn building at the firefighter training academy in Socorro in Socorro county shall not be expended for the original purpose but shall be transferred on the effective date of this act to the general fund.

## **Chapter 133 Section 120 Laws 2017**

SECTION 120. FIREFIGHTER TRAINING BURN BUILDING--TRANSFER UNEXPENDED BALANCE--FIRE PROTECTION GRANT FUND.--Notwithstanding the requirements for reversion in Laws 2015 (1st S.S.), Chapter 3, the unexpended balance of the appropriation from the fire protection grant fund to the public regulation commission in Laws 2015 (1st S.S.), Chapter 3, Section 59 to plan, design and construct a firefighter training burn building at the firefighter training academy in Socorro in Socorro county shall not be expended for the original purpose but shall be transferred on the effective date of this act to the general fund.

## **Chapter 133 Section 121 Laws 2017**

SECTION 121. ART IN PUBLIC PLACES FUND WORKS OF ART--CHANGE TO STATE MUSEUMS IMPROVEMENTS AND EXHIBITS--SEVERANCE TAX BONDS.--Notwithstanding the provisions of the Art in Public Places Act to the contrary, the unexpended balance up to one million two hundred fifty-five thousand two hundred dollars (\$1,255,200) of severance tax bond appropriations remaining in the art in public places fund shall not be expended for the original purpose but is appropriated to the state museums improvements and exhibits fund for capital expenditures by the cultural affairs department in fiscal years 2017 through 2019 for repairs and upgrades to state museum facilities and to exhibitions at state museums statewide, in accordance with Section 9-4A-22 NMSA 1978. Any unexpended or unencumbered balance remaining at the end of fiscal year 2019 shall revert to the art in public places fund.

## **Chapter 133 Section 122 Laws 2017**

SECTION 122. ACEQUIA DE SAN JUAN DE NEPUMUCENO IMPROVEMENTS--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the interstate stream commission project in Subsection 38 of Section 29 of Chapter 226 of Laws 2013 for improvements, including the installation of piping, for the acequia de San Juan de Nepumuceno in Taos county is extended through fiscal year 2019.

## **Chapter 133 Section 123 Laws 2017**

SECTION 123. LAS TRAMPAS MUTUAL DOMESTIC WATER CONSUMERS AND MUTUAL SEWAGE WORKS ASSOCIATION WATER METERS--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the department of environment project originally authorized in Subsection 81 of Section 23 of Chapter 226 of Laws 2013 and reauthorized in Laws 2015, Chapter 147, Section 75 to purchase and install water meters for Las Trampas mutual domestic water consumers and mutual sewage works association in Taos county is extended through fiscal year 2019.

## **Chapter 133 Section 124 Laws 2017**

SECTION 124. SAN CRISTOBAL FIRE STATION CONSTRUCTION--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the local government division project in Subsection 209 of Section 31 of Chapter 226 of Laws 2013 to plan, design and construct a fire station for the San Cristobal fire department in Taos county is extended through fiscal year 2019.

### **Chapter 133 Section 125 Laws 2017**

SECTION 125. TALPA IRRIGATION RESERVOIR FENCE--CHANGE TO QUESTA VETERANS MEMORIAL--CHANGE AGENCY--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the interstate stream commission originally authorized in Subsection 39 of Section 29 of Chapter 226 of Laws 2013 and reauthorized in Laws 2014, Chapter 64, Section 59 to plan, design and construct a fence at the Talpa irrigation reservoir in Taos county shall not be expended for the original or reauthorized purpose but is appropriated to the local government division to plan, design and construct a memorial to veterans of World War II and the Korean conflict in Questa in Taos county. The time of expenditure is extended through fiscal year 2019.

### **Chapter 133 Section 126 Laws 2017**

SECTION 126. QUESTA WATER RIGHTS PURCHASE--CHANGE TO WATER WELLS AND WATER SYSTEM--CHANGE AGENCY--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the office of the state engineer in Subsection 6 of Section 18 of Chapter 3 of Laws 2015 (1st S.S.) to purchase water rights in Questa in Taos county shall not be expended for the original purpose but is appropriated to the department of environment to plan, design, construct and make improvements, including the purchase and installation of equipment, to water wells and the water system in Questa.

### **Chapter 133 Section 127 Laws 2017**

SECTION 127. RED RIVER WASTEWATER PLANT AND SYSTEM IMPROVEMENTS--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the local government division project originally authorized in Subsection 141 of Section 16 of Chapter 64 of Laws 2012 and reauthorized to the department of environment in Laws 2015, Chapter 147, Section 77 to plan, design and construct improvements to the wastewater plant and system in Red River in Taos county is extended through fiscal year 2019.

### **Chapter 133 Section 128 Laws 2017**

SECTION 128. RED RIVER WASTEWATER SYSTEM AND PLANT IMPROVEMENTS--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the local government division project originally authorized in Subsection 207 of Section 31 of Chapter 226 of Laws 2013 and reauthorized to the department of

environment in Laws 2015, Chapter 147, Section 78 to plan, design and construct improvements to the wastewater plant and system in Red River in Taos county is extended through fiscal year 2019.

### **Chapter 133 Section 129 Laws 2017**

SECTION 129. RED RIVER CONFERENCE CENTER IMPROVEMENTS--CHANGE TO WASTEWATER SYSTEM IMPROVEMENTS--CHANGE AGENCY--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 228 of Section 28 of Chapter 3 of Laws 2015 (1st S.S.) to plan, design and construct improvements to the town conference center in Red River in Taos county shall not be expended for the original purpose but is appropriated to the department of environment to plan, design and construct improvements to the wastewater plant and system in Red River.

### **Chapter 133 Section 130 Laws 2017**

SECTION 130. TAOS COUNTY YOUTH CORPS VEHICLES PURCHASE--CHANGE TO TAOS MUNICIPAL SCHOOL DISTRICT VEHICLES PURCHASE--CHANGE AGENCY--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 230 of Section 28 of Chapter 3 of Laws 2015 (1st S.S.) to purchase and equip vehicles for use by a youth corps in Taos in Taos county shall not be expended for the original purpose but is appropriated to the public education department to purchase and equip vehicles for the Taos municipal school district in Taos county. The time of expenditure is extended through fiscal year 2019.

### **Chapter 133 Section 131 Laws 2017**

SECTION 131. FRED LUNA SENIOR CENTER IMPROVEMENTS--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the aging and long-term services department project originally authorized in Subsection 64 of Section 5 of Chapter 226 of Laws 2013 and reauthorized in Laws 2014, Chapter 64, Section 61 to plan, design and make improvements for building code compliance, including purchase and installation of equipment, to the Fred Luna senior center in Valencia county is extended through fiscal year 2019.

### **Chapter 133 Section 132 Laws 2017**

SECTION 132. VALENCIA COUNTY MEADOW LAKE FIRE SUBSTATION--CHANGE TO INCLUSIVE COMMUNITY PARK--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division originally authorized in Subsection 244 of Section 28 of Chapter 3 of Laws 2015 (1st S.S.) and reauthorized in Laws 2016, Chapter 83, Section 109 to plan, design and construct a Meadow Lake fire substation in Valencia county shall not be expended for the original or

reauthorized purpose but is changed to plan, design, construct and expand an inclusive community park at the Meadow Lake community center in Valencia county.

### **Chapter 133 Section 133 Laws 2017**

SECTION 133. BERNALILLO SENIOR CENTER CONSTRUCTION--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the aging and long-term services department project in Subsection 44 of Section 5 of Chapter 226 of Laws 2013 to plan, design and construct a senior center in Bernalillo in Sandoval county is extended through fiscal year 2018.

### **Chapter 133 Section 134 Laws 2017**

SECTION 134. PUEBLO OF SANTA CLARA SENIOR CENTER IMPROVEMENTS--CHANGE TO PUEBLO OF SANTA CLARA ADULT DAY CARE CENTER IMPROVEMENTS--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the aging and long-term services department in Subsection 48 of Section 3 of Chapter 3 of Laws 2015 (1st S.S.) to purchase and install equipment and make improvements for code compliance, repair and repaint walls, purchase and install a heating, ventilation and air conditioning system and carpet and make roof repairs at the Pueblo of Santa Clara senior center in Rio Arriba county shall not be expended for the original purpose but is changed to renovate and make improvements, including purchase and installation of equipment, at the Pueblo of Santa Clara adult day care center in Rio Arriba county.

### **Chapter 133 Section 135 Laws 2017**

SECTION 135. CHURCH ROCK CHAPTER SENIOR CENTER--EXPAND PURPOSE--EXTEND TIME--SEVERANCE TAX BONDS.--The aging and long-term services department project in Subsection 16 of Section 5 of Chapter 226 of Laws 2013 to plan and design the senior center in the Church Rock chapter of the Navajo Nation in McKinley county may include construction of the center. The time of expenditure is extended through fiscal year 2018.

### **Chapter 133 Section 136 Laws 2017**

SECTION 136. TAOS SENIOR CENTERS COMMUNICATIONS AND RADIO EQUIPMENT--CHANGE TO PURCHASE AND EQUIP VEHICLES FOR TAOS MUNICIPAL SCHOOL DISTRICT--CHANGE AGENCY--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division of the department of finance and administration in Subsection 223 of Section 28 of Chapter 3 of Laws 2015 (1st S.S.) to plan, design, construct, purchase and install communications and radio equipment and infrastructure for senior centers in Taos county shall not be expended for the original purpose but is appropriated to the public education department to purchase and equip vehicles for the Taos municipal school district in Taos county.

## **Chapter 133 Section 137 Laws 2017**

SECTION 137. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

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SFC/Senate Bill 362, aa, w/ec

Approved April 7, 2017

## **LAWS 2017, CHAPTER 134**

AN ACT

RELATING TO ECONOMIC DEVELOPMENT; ENACTING THE BIOSCIENCE DEVELOPMENT ACT; CREATING THE BIOSCIENCE DEVELOPMENT FUND.

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

### **Chapter 134 Section 1 Laws 2017**

SECTION 1. SHORT TITLE.--This act may be cited as the "Bioscience Development Act".

### **Chapter 134 Section 2 Laws 2017**

SECTION 2. DEFINITIONS.--As used in the Bioscience Development Act:

A. "authority" means the New Mexico bioscience authority;

B. "bioscience" means the scientific areas represented by life sciences and biotechnology that are included in the five industries recognized by the United States department of labor:

- (1) drugs and pharmaceuticals;
- (2) medical devices and equipment;
- (3) research testing and medical laboratories;
- (4) bioscience-related distribution; and
- (5) agriculture and chemicals related to bioscience;

C. "board of directors" means the board of directors of the authority;

D. "financial assistance" means tax incentives, grants, loans and other financial benefits provided for projects to a qualified entity on terms and conditions approved by the authority;

E. "national laboratories" means Los Alamos national laboratory and Sandia national laboratories; and

F. "research institutions" means the university of New Mexico, New Mexico state university and the New Mexico institute of mining and technology.

## **Chapter 134 Section 3 Laws 2017**

### **SECTION 3. NEW MEXICO BIOSCIENCE AUTHORITY CREATED--BOARD OF DIRECTORS--MEMBERSHIP.--**

A. The "New Mexico bioscience authority" is created as a public-private partnership, which shall be formed pursuant to the Nonprofit Corporation Act, representing a collaborative among state government, research institutions, national laboratories and private industry in New Mexico. The authority is administratively attached to and shall be considered an affiliated supporting organization of the university of New Mexico health sciences center pursuant to Section 6-5A-1 NMSA 1978. The authority shall constitute a public body corporate by the name set forth in the incorporation certificate and by such name may sue and be sued, have the capacity to make contracts, acquire, hold, enjoy, dispose of and convey property real and personal, accept grants and donations, borrow money, incur indebtedness, impose fees and assessments and do any other act or thing necessary or proper for carrying out the purposes of the Bioscience Development Act.

B. The authority shall be governed, and all of its functions, powers and duties

shall be exercised, by the board of directors. The board of directors shall consist of thirteen voting members as follows:

(1) two representatives of the university of New Mexico health sciences center with experience in conducting research in bioscience, to be appointed by the president of the university of New Mexico;

(2) two representatives of New Mexico state university with experience in conducting research in bioscience, to be appointed by the president of the university;

(3) one representative of the New Mexico institute of mining and technology with experience in conducting research in bioscience, to be appointed by the president of the institute;

(4) the secretary of economic development or the secretary's designee;

(5) the executive director of the spaceport authority or the executive director's designee; and

(6) six members of the public who have experience working in bioscience as follows:

(a) two members appointed by the governor with the advice and consent of the senate; and

(b) four members appointed by the New Mexico legislative council with the advice and consent of the senate; provided that no more than two members shall be members of the same political party.

C. The public members appointed pursuant to Paragraph (5) of Subsection B of this section by the governor and the New Mexico legislative council 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 by the governor shall serve terms as follows: one member for two years and one member for four years. Initial appointees by the New Mexico legislative council shall be appointed to serve terms as follows: one member for one year, one member for two years, one member for three years and one member for four years.

D. Members shall receive no compensation, perquisite or allowance for serving as a member of the board of directors.

E. The board of directors shall adopt bylaws, in accordance with the Nonprofit Corporation Act, which bylaws shall govern the conduct of the authority. Members of the board of directors shall elect a chair of the board, any other officers from the membership that the board determines to be appropriate and an executive director as set forth in the bylaws.

F. The chair and four voting members of the board of directors appointed by the chair, two of whom shall be public members, shall constitute the "bioscience authority executive committee". The executive director and chair of the board of directors shall be a nonvoting member of the executive committee. The executive committee shall have powers and duties as delegated to it by the board of directors.

G. If a vacancy occurs among the appointed voting members of the board of directors, the appointing authority of the former member shall appoint a replacement to serve out the term of that member. If an appointed member's term expires, the member shall continue to serve until another member is appointed.

H. The board of directors shall meet at the call of the chair and shall meet at least once every three months.

I. The board of directors 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 134 Section 4 Laws 2017**

### **SECTION 4. LIMITATIONS ON DIRECTOR ACTIVITIES.--**

A. Except as provided in Subsection B of this section, members of the board of directors are public officers subject to the provisions of the Governmental Conduct Act.

B. Members of the board of directors shall not, within one year of having served as a director, accept employment with an entity that has benefited from a contractual or other activity with the authority. Any person who knowingly and willfully violates the provisions of this subsection is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; provided, however, that nothing contained herein shall be construed to prohibit a member of the board of directors who is employed by a research institution, a national laboratory or the spaceport authority that may have benefited from a contractual or other activity with the authority from continuing in that employment nor to have violated this section continuing in such employment. An alleged violation of this subsection may be reported to the attorney general or district attorney for enforcement.

## **Chapter 134 Section 5 Laws 2017**

### **SECTION 5. AUTHORITY POWERS AND DUTIES.--**

A. The authority shall:

(1) advise the governor, the economic development department, the legislature and the New Mexico finance authority oversight committee on methods, proposals, programs and initiatives that may stimulate investment in bioscience industries and provide additional employment opportunities for New Mexico residents;

(2) make and execute all contracts and other instruments necessary or convenient to the exercise of its powers and duties;

(3) create programs to expand bioscience economic opportunities within New Mexico, including potential means of providing financial assistance and incentives for bioscience industries and facilities;

(4) create avenues of communication between New Mexico and representatives of bioscience industries;

(5) promote legislation that will further the goals of the authority and development of bioscience industries and facilities;

(6) oversee, produce or cause to have produced promotional literature related to explanation and fulfillment of the authority's goals;

(7) identify science and technology trends that are significant to bioscience enterprises and act as a clearinghouse for bioscience enterprise issues and information;

(8) coordinate and expedite the involvement of the state executive branch's bioscience-related development efforts;

(9) perform or cause to be performed environmental, transportation, communication, land use and other technical studies necessary or advisable for bioscience projects or programs; and

(10) actively recruit industries and establish programs that will result in the location and relocation of new bioscience industries in the state.

B. The authority may:

(1) solicit and accept federal, state, local and private grants of funds, property or financial or other aid in any form for the purpose of carrying out the provisions of the Bioscience Authority Act; and

(2) act as an applicant for bioscience facilities and assist in carrying out all tasks and functions for the acquisition or construction of bioscience facilities, including filing all necessary documents and follow-up of such filings with appropriate agencies.

C. In exercising its authority, the authority shall not incur debt as a general obligation of the state or pledge the full faith and credit of the state to repay debt.

## **Chapter 134 Section 6 Laws 2017**

### **SECTION 6. AUTHORITY STAFF--CONTRACTS.--**

A. The executive director shall, in consultation with the board of directors, direct the affairs and business of the authority.

B. The authority may contract with any other competent private or public organization or individual to assist in the fulfillment of its duties.

## **Chapter 134 Section 7 Laws 2017**

### **SECTION 7. FUND CREATED.--**

A. The "bioscience development fund" is created in the state treasury. Separate accounts within the fund may be created for any project. Money in the fund, subject to appropriation by the legislature, may be expended by the authority for the purposes of carrying out the provisions of the Bioscience Development Act. Any general fund balance from money appropriated by the legislature in the fund shall revert at the end of a fiscal year.

B. Except as provided in this section, money received by the authority shall be deposited in the fund, including:

- (1) money appropriated by the legislature;
- (2) interest earned upon money in the fund;
- (3) property or securities acquired through the use of money belonging to the fund;
- (4) all earnings of property or securities acquired pursuant to Paragraph (3) of this subsection;
- (5) all of the money received by the authority from a public or private source; and
- (6) fees, rents or other charges imposed and collected by the authority.

C. Disbursements from the bioscience development fund shall be made only upon warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of economic development or the secretary's designee pursuant to the Bioscience Development Act.

## **Chapter 134 Section 8 Laws 2017**

**SECTION 8. REPORT TO THE GOVERNOR AND THE LEGISLATURE.--**The authority shall submit a report of its activities to the governor and to the appropriate interim committees of the legislature not later than October 1 of each year.

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SJC/Senate Bill 478, aa

Approved April 7, 2017

## **LAWS 2017, CHAPTER 135**

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 135 Section 1 Laws 2017**

Section 1. SHORT TITLE.--This act may be cited as the "General Appropriation Act of 2017".

### **Chapter 135 Section 2 Laws 2017**

Section 2. DEFINITIONS.--As used in the General Appropriation Act of 2017:

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;]~~ *LINE-ITEM VETO*

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 Leasing Act;

E. "full-time equivalent" means one or more authorized positions that alone or together receives or receive compensation for not more than two thousand eighty hours worked in fiscal year 2018. 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 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) balances in agency internal service fund accounts appropriated by the General Appropriation Act of 2017;

I. "other state funds" means:

(1) nonreverting balances in agency accounts, other than in internal service funds accounts, appropriated by the General Appropriation Act of 2017;

(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;] LINE-ITEM VETO~~

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.] *LINE-ITEM VETO*

## **Chapter 135 Section 3 Laws 2017**

### **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 2017, or so much as may be necessary, are appropriated from the indicated source for expenditure in fiscal year 2018 for the objects expressed.

D. Unexpended balances in agency accounts remaining at the end of fiscal year 2017 shall revert to the general fund by October 1, 2017 unless otherwise indicated in the General Appropriation Act of 2017 or otherwise provided by law.

E. Unexpended balances in agency accounts remaining at the end of fiscal year 2018 shall revert to the general fund by October 1, 2018 unless otherwise indicated in the General Appropriation Act of 2017 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 2017, appropriations are made in this act for the expenditures of agencies and for other purposes as required by existing law for fiscal year 2018. If any other act of the first session of the fifty-third 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 2017 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 2018 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.]~~ *LINE-ITEM VETO*

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. 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 2017 may be expended for payment of agency-issued credit card invoices.

K. For the purpose of administering the General Appropriation Act of 2017, 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.

## Chapter 135 Section 4 Laws 2017

Section 4. FISCAL YEAR 2018 APPROPRIATIONS.--

Item	General State Fund	Other Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total/Target
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### [A. LEGISLATIVE

LEGISLATIVE COUNCIL SERVICE:

Appropriations: 5,660.0 5,660.0

Subtotal 5,660.0

LEGISLATURE:

Appropriations: 1,386.0 1,386.0

Subtotal 1,386.0

~~LEGISLATIVE FINANCE COMMITTEE:~~

Appropriations: 4,220.3 4,220.3

Subtotal 4,220.3

~~SENATE CHIEF CLERK:~~

Appropriations: 1,130.3 1,130.3

Subtotal 1,130.3

~~HOUSE CHIEF CLERK:~~

Appropriations: 1,097.7 1,097.7

Subtotal 1,097.7

~~LEGISLATIVE EDUCATION STUDY COMMITTEE:~~

Appropriations: 1,233.4 1,233.4

Subtotal 1,233.4

~~LEGISLATIVE COUNCIL SERVICE:~~

~~(1) Legislative building services:~~

Appropriations: 4,054.9 4,054.9

Subtotal 4,054.9

TOTAL LEGISLATIVE 18,782.6 18,782.6] *LINE-ITEM*  
*VETO*

**B. JUDICIAL**

**SUPREME COURT LAW LIBRARY:**

The purpose of the supreme court law library is to provide and produce legal information for the judicial, legislative and executive branches of state government, the legal community and the public at large so they may have equal access to the law, effectively address the courts, make laws and write regulations, better understand the legal system and conduct their affairs in accordance with the principles of law.

Appropriations:

(a)	Operations	1,507.6	2.2	1,509.8
	Subtotal			1,509.8

**NEW MEXICO COMPILATION COMMISSION:**

The purpose of the New Mexico compilation commission 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. The commission ensures the accuracy and reliability of its publications.

Appropriations:

(a)	Operations	1,453.4	400.0	1,853.4
	Subtotal			1,853.4

**JUDICIAL STANDARDS COMMISSION:**

The purpose of the judicial standards commission program is to provide a public review process addressing complaints involving judicial misconduct to preserve the integrity and impartiality of the judicial process.

Appropriations:

(a)	Operations	818.3		818.3
	Subtotal			818.3

**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 to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a)	Operations	5,718.5	1.0	5,719.5
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Performance measures:

(a)	Outcome: Cases disposed as a percent of cases filed	100%
	Subtotal	5,719.5

## 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 to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

### Appropriations:

(a) Operations	3,302.0	3,302.0
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Notwithstanding the provisions of Sections 35-8-7 and 38-5-15 NMSA 1978, the supreme court has the authority to reduce juror pay as needed to stay within the appropriation for the jury and witness fund.

### Performance measures:

(a) Outcome: Cases disposed as a percent of cases filed	98%
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Subtotal	3,302.0
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## 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	4,022.2	61.4	133.4	4,217.0	
(b) Contractual services	412.5	100.0	231.0	652.5	1,396.0
(c) Other	5,460.6	2,025.0	18.5	52.0	7,556.1

The general fund appropriation to the administrative support program of the administrative office of the courts includes nine hundred forty-five thousand six hundred dollars (\$945,600) in the other category for the jury and witness fund.

### Performance measures:

(a) Output: Average cost per juror	\$55
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### (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	2,790.1	2,389.1	5,179.2
(b)	Contractual services		980.0	980.0
(c)	Other	839.4	1,838.4	2,677.8

(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 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	17,822.8	2,939.4	300.0	21,062.2
(b)	Contractual services	446.0	86.2		532.2
(c)	Other	9,288.7	450.5		9,739.2

The internal service funds/interagency transfers appropriation to the magistrate court program of the administrative office of the courts includes three hundred thousand dollars (\$300,000) from the local DWI grant fund. Any unexpended balances from appropriations made from the local DWI grant fund remaining at the end of fiscal year 2018 shall revert to the local DWI grant fund.

Performance measures:

- (a) Outcome: Bench warrant revenue collected annually, in millions \$3.3
- (b) Explanatory: Cases disposed as a percent of cases filed

(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 tem; and to adjudicate water rights disputes so the constitutional rights and safety of citizens, especially children and families, are protected.

Appropriations:

(a)	Court-appointed special advocate	1,356.7		1,356.7
(b)	Supervised visitation	881.1		881.1
(c)	Water rights	317.0	621.9	938.9
(d)	Court-appointed attorneys	5,787.1		5,787.1
(e)	Children's mediation	276.4		276.4
(f)	Judges pro tem	30.3		30.3
(g)	Access to justice	124.7		124.7
(h)	Statewide alternative dispute resolution	3.3		3.3
(i)	Drug court	1,484.6	1,300.0	2,784.6

The internal service funds/interagency transfers appropriation to the special court services program of the administrative office of the courts includes one million three hundred thousand dollars (\$1,300,000) from the local DWI grant fund for drug courts. Any unexpended balances from appropriations made from the local DWI grant fund remaining at the end of fiscal year 2018 shall revert to the local DWI grant fund.

Performance measures:

(a) Quality: Recidivism rate for drug-court participants statewide 12%

(b) Quality: Recidivism rate for driving-while-intoxicated court  
participants statewide 12%

Subtotal 65,522.8

**SUPREME COURT BUILDING COMMISSION:**

The purpose of the supreme court building commission is to retain custody and control of the supreme court building and its grounds, to provide care, preservation, repair, cleaning, heating and lighting and to hire necessary employees for these purposes.

Appropriations:

(a) Operations 930.7 930.7

Subtotal

930.7

**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 to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a)	Operations	6,904.2	464.4	676.0	8,044.6
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(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 to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a)	Operations	22,721.8	3,071.7	1,231.7	88.4	27,113.6
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(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 to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a)	Operations	6,471.4	187.7	860.8	7,519.9
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(4) Fourth judicial district:

The purpose of the fourth judicial district court program, statutorily created in Mora, San Miguel and Guadalupe 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 to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a)	Operations	2,302.9	25.0	166.8	2,494.7
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(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 to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a)	Operations	6,555.5	125.0	509.1	7,189.6
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(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 to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a)	Operations	3,229.6	34.0	242.1	3,505.7
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(7) Seventh judicial district:

The purpose of the seventh judicial district court program, statutorily created in Torrance, Socorro, Catron and Sierra 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 to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a)	Operations	2,347.6	30.0	404.1	2,781.7
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(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 to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a)	Operations	2,954.4	106.0	178.9	3,239.3
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(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 to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a) Operations 3,365.7 70.5 707.4 4,143.6

(10) Tenth judicial district:

The purpose of the tenth judicial district court program, statutorily created in Quay, De Baca 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 to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a) Operations 911.0 42.8 953.8

(11) Eleventh judicial district:

The purpose of the eleventh judicial district court program, statutorily created in San Juan and McKinley 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 to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a) Operations 6,355.3 149.0 730.9 7,235.2

(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 to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a) Operations 3,369.7 108.2 121.4 3,599.3

(13) Thirteenth judicial district:

The purpose of the thirteenth judicial district court program, statutorily created in Valencia, Sandoval and Cibola 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 to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a) Operations 7,096.9 406.9 717.9 66.0 8,287.7

Subtotal 86,108.7

**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 to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a) Operations	23,011.8	2,377.0	494.9	114.0	25,997.7
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Performance measures:

(a) Explanatory: Cases disposed as a percent of cases filed

Subtotal					25,997.7
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**DISTRICT ATTORNEYS:**

(1) First judicial district:

The purpose of the prosecution program is to provide litigation, special programs and administrative support for the enforcement of 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 Fe, Rio Arriba and Los Alamos counties.

Appropriations:

(a) Personal services and employee benefits	4,881.3		118.2	120.1	5,119.6
(b) Contractual services		22.8			22.8
(c) Other	403.0		403.0		

Performance measures:

(a) Efficiency: Average time from filing of petition to final disposition

for adults, in months 8

(b) Outcome: Average time from filing of petition to final disposition

for juveniles, in months 1.75

(2) Second judicial district:

The purpose of the prosecution program is to provide litigation, special programs and administrative support for the enforcement of 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	17,061.4	453.7	116.8	186.9	17,818.8
(b)	Contractual services		119.1			119.1
(c)	Other	1,011.9	5.5			1,017.4

Performance measures:

- (a) Efficiency: Average time from filing of petition to final disposition  
for juveniles, in months 3
- (b) Efficiency: Average time from filing of petition to final disposition  
for adults, in months 9

(3) Third judicial district:

The purpose of the prosecution program is to provide litigation, special programs and administrative support for the enforcement of state laws as they pertain to the district attorney and to improve and ensure the protection, safety, welfare and health of the citizens within Dona Ana county.

Appropriations:

(a)	Personal services and					
	employee benefits	4,386.0	242.2	99.9	417.6	5,145.7
(b)	Contractual services		19.0			19.0
(c)	Other	273.8				273.8

Performance measures:

- (a) Efficiency: Average time from filing of petition to final disposition  
for adults, in months 6
- (b) Efficiency: Average time from filing of petition to final disposition

for juveniles, in months 3

(4) Fourth judicial district:

The purpose of the prosecution program is to provide litigation, special programs and administrative support for the enforcement of 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	2,910.6		2,910.6
(b) Contractual services	29.3		29.3
(c) Other	158.4	158.4	

Performance measures:

(a) Efficiency:	Average time from filing of petition to final disposition
for adults, in months	6
(b) Efficiency:	Average time from filing of petition to final disposition
for juveniles, in months	6

(5) Fifth judicial district:

The purpose of the prosecution program is to provide litigation, special programs and administrative support for the enforcement of 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	4,686.4	57.5	123.1	98.0	4,965.0
(b) Contractual services	23.0				23.0
(c) Other	222.3	5.2	227.5		

Performance measures:

(a) Efficiency:	Average time from filing of petition to final disposition
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for adults, in months 6

(b) Efficiency: Average time from filing of petition to final disposition

for juveniles, in months 4

(6) Sixth judicial district:

The purpose of the prosecution program is to provide litigation, special programs and administrative support for the enforcement of 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 2,644.6 53.5 93.4 93.6 2,885.1

(b) Contractual services 18.2 18.2

(c) Other 184.6 184.6

Performance measures:

(a) Efficiency: Average time from filing of petition to final disposition

for adults, in months 5

(b) Efficiency: Average time from filing of petition to final disposition

for juveniles, in months <2

(7) Seventh judicial district:

The purpose of the prosecution program is to provide litigation, special programs and administrative support for the enforcement of 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 2,306.9 2,306.9

(b) Contractual services 12.9 12.9

(c) Other 155.2 155.2

Performance measures:

(a) Efficiency: Average time from filing of petition to final disposition

for juveniles, in months 6

(b) Efficiency: Average time from filing of petition to final disposition

for adults, in months 7.5

(8) Eighth judicial district:

The purpose of the prosecution program is to provide litigation, special programs and administrative support for the enforcement of 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 2,525.6 2,525.6

(b) Contractual services 16.8 16.8

(c) Other 140.1 140.1

Performance measures:

(a) Efficiency: Average time from filing of petition to final disposition

for juveniles, in months 6

(b) Efficiency: Average time from filing of petition to final disposition

for adults, in months 9

(9) Ninth judicial district:

The purpose of the prosecution program is to provide litigation, special programs and administrative support for the enforcement of 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 2,802.3 24.6 2,826.9

(b)	Contractual services	21.7	21.7
(c)	Other	133.3	133.3

Performance measures:

(a) Efficiency: Average time from filing of petition to final disposition  
for juveniles, in months <3

(b) Efficiency: Average time from filing of petition to final disposition  
for adults, in months <8

(10) Tenth judicial district:

The purpose of the prosecution program is to provide litigation, special programs and administrative support for the enforcement of 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 De Baca counties.

Appropriations:

(a)	Personal services and employee benefits	1,141.4	1,141.4
(b)	Contractual services	15.9	15.9
(c)	Other	91.6	91.6

Performance measures:

(a) Efficiency: Average time from filing of petition to final disposition  
for juveniles, in months 4

(b) Efficiency: Average time from filing of petition to final disposition  
for adults, in months 9

(11) Eleventh judicial district, division I:

The purpose of the prosecution program is to provide litigation, special programs and administrative support for the enforcement of 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	3,689.5	188.9	178.8	105.5	4,162.7
(b)	Contractual services	63.2				63.2
(c)	Other	161.0	62.6	3.0	1.0	227.6

Performance measures:

- (a) Efficiency: Average time from filing of petition to final disposition  
for adults, in months 8
- (b) Efficiency: Average time from filing of petition to final disposition  
for juveniles, in months 6

(12) Eleventh judicial district, division II:

The purpose of the prosecution program is to provide litigation, special programs and administrative support for the enforcement of 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	2,111.8	149.0		2,260.8
(b)	Contractual services	14.9			14.9
(c)	Other	141.3		141.3	

Performance measures:

- (a) Efficiency: Average time from filing of petition to final disposition  
for juveniles, in months 3
- (b) Efficiency: Average time from filing of petition to final disposition  
for adults, in months 9

(13) Twelfth judicial district:

The purpose of the prosecution program is to provide litigation, special programs and administrative support for the enforcement of 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	2,836.3	35.6	167.3	114.9 3,154.1
(b)	Contractual services	44.4			44.4
(c)	Other	161.0	161.0		

Performance measures:

- (a) Efficiency: Average time from filing of petition to final disposition  
for juveniles, in months 4
- (b) Efficiency: Average time from filing of petition to final disposition  
for adults, in months 12

(14) Thirteenth judicial district:

The purpose of the prosecution program is to provide litigation, special programs and administrative support for the enforcement of 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	4,471.3	147.7	52.8	4,671.8
(b)	Contractual services	101.5			101.5
(c)	Other	421.9	421.9		

Performance measures:

- (a) Efficiency: Average time from filing of petition to final disposition  
for juveniles, in months 3

(b) Efficiency: Average time from filing of petition to final disposition  
for adults, in months 9

Subtotal 66,154.4

**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 they may obtain and access the necessary resources to effectively and efficiently carry out their prosecutorial, investigative and programmatic functions.

Appropriations:

(a)	Personal services and				
	employee benefits	1,251.2	106.3		1,357.5
(b)	Contractual services	276.8	16.9	4.0	297.7
(c)	Other	710.8	137.7	8.0	856.5
	Subtotal				2,511.7

**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 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 sustains New Mexico's statutory and constitutional mandate to adequately fund a statewide indigent defense system.

Appropriations:

(a)	Personal services and				
	employee benefits	29,652.9			29,652.9
(b)	Contractual services	13,687.2	75.0		13,762.2
(c)	Other	5,234.6	200.0		5,434.6

The public defender department shall not expend more than one million dollars (\$1,000,000) in hourly rates for contract attorneys and may only pay hourly rates for capital cases or first degree felonies. The public defender department shall report to the legislative finance committee on cost-containment efforts for contracted hourly rates and on standards of indigence and court appointments of public defendants.

Performance measures:

(a) Quality: Percent of felony cases resulting in a reduction of

original formally filed charges 70%

Subtotal 48,849.7

TOTAL JUDICIAL 274,352.4 21,737.1 10,945.3 2,243.9 309,278.7

**C. GENERAL CONTROL**

**ATTORNEY GENERAL:**

(1) Legal services:

The purpose of the legal services program is to deliver quality legal services including opinions, counsel and representation to state government entities and to enforce state law on behalf of the public so New Mexicans have an open, honest, efficient government and enjoy the protection of state law.

Appropriations:

(a) Personal services and

employee benefits 7,334.7 8,359.5 1,080.1  
16,774.3

(b) Contractual services 681.1 12.7 693.8

(c) Other 1,944.6 271.3 2,215.9

The other state funds appropriation to the legal services program of the attorney general includes eight million three hundred fifty-nine thousand five hundred dollars (\$8,359,500) from the consumer settlement fund of the attorney general's office. Any unexpended balance in the legal services program of the attorney general remaining at the end of fiscal year 2018 from appropriations made from the consumer settlement fund shall revert to the consumer settlement fund.

Performance measures:

(a) Outcome: Percent of inquiries resolved within sixty days of

complaint or referral receipt 70%

(2) Medicaid fraud:

The purpose of the medicaid fraud program is to investigate and prosecute medicaid provider fraud, recipient abuse and neglect in the medicaid program.

Appropriations:

(a)	Personal services and				
	employee benefits	492.1	1.2	1,474.4	1,967.7
(b)	Contractual services	1.8		7.2	9.0
(c)	Other	146.1	438.7	584.8	

Performance measures:

(a) Explanatory: Total medicaid fraud recoveries identified, in thousands

Subtotal 22,245.5

**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	2,308.2	652.7		2,960.9
(b)	Contractual services	46.8			46.8
(c)	Other	335.4	102.3	437.7	

Performance measures:

(a) Explanatory: Percent of audits completed by regulatory due date

Subtotal 3,445.4

**TAXATION AND REVENUE DEPARTMENT:**

(1) Tax administration:

The purpose of the tax administration program is to provide registration and licensure requirements for tax programs and to ensure the administration, collection and compliance of state taxes and fees that provide funding for support services for the general public through appropriations.

Appropriations:

(a)	Personal services and				
	employee benefits	16,046.1	6,929.8		1,298.3
		24,274.2			
(b)	Contractual services	175.1	48.3	13.0	236.4
(c)	Other	4,250.1	887.8	195.5	5,333.4

The office of superintendent of insurance and the taxation and revenue department in consultation with the legislative finance committee and the department of finance and administration shall collaborate to develop and implement a plan to transfer the revenue collection and auditing of the insurance premium tax from the office of superintendent of insurance to the taxation and revenue department. The implementation plan shall be completed and reported to the legislative finance committee and other appropriate interim committees by December 31, 2017.

Performance measures:

- (a) Outcome: Collections as a percent of collectible outstanding balances from the end of the prior fiscal year 18%
- (b) Outcome: Collections as a percent of collectible assessments generated in the current fiscal year plus assessments generated in the last quarter of the prior fiscal year 60%

(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	1,155.6	10,045.0		3,937.6
		15,138.2			
(b)	Contractual services	674.2	2,545.3		1,049.0
		4,268.5			
(c)	Other	2,981.6	1,627.1	1,013.4	5,622.1

(d) Other financing uses	1,265.5	1,265.5
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The other state funds appropriation to the motor vehicle program of the taxation and revenue department in the other financing uses category includes ninety-four thousand five hundred dollars (\$94,500) from the weight distance tax identification permit fund for the law enforcement program of the department of public safety and one million one hundred seventy-one thousand dollars (\$1,171,000) from the weight distance tax identification permit fund for the modal program of the department of transportation.

The internal service funds/interagency transfers appropriations to the motor vehicle program of the taxation and revenue department include six million dollars (\$6,000,000) from the state road fund.

Performance measures:

(a) Outcome: Percent of registered vehicles with liability insurance 92%

(b) Efficiency: Average call center wait time to reach an agent, in minutes  
<5:00

(c) Efficiency: Average wait time in qmatic-equipped offices, in minutes  
<15:00

(d) Quality: Percent of customers rating customer service as good or  
higher 95%

(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	2,505.9	2,505.9
(b) Contractual services	628.0	628.0
(c) Other	662.7	662.7

(4) Compliance enforcement:

The purpose of the compliance enforcement program is to support the overall mission of the taxation and revenue department by enforcing criminal statutes relative to the New Mexico Tax Administration Act and other related financial crimes, as they impact New Mexico state taxes, to encourage and achieve voluntary compliance with state tax laws.

Appropriations:

(a)	Personal services and employee benefits	1,282.5		1,282.5
(b)	Contractual services	7.6		7.6
(c)	Other	265.2	265.2	

Performance measures:

(a)	Outcome: Number of tax investigations referred to prosecutors as a percent of total investigations assigned during the year	85%
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(5) 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 to give agency personnel the resources needed to meet departmental objectives. For the general public, the program conducts hearings for resolving taxpayer protests and provides stakeholders with reliable information regarding the state's tax programs.

Appropriations:

(a)	Personal services and employee benefits	11,946.7	985.4	368.3	13,300.4
(b)	Contractual services	3,147.4	120.3	38.7	3,306.4
(c)	Other	2,769.6	213.6	2,983.2	

Notwithstanding the provisions of the Tax Administration Act or other substantive law, the department shall withhold an administrative fee in the amount of three and twenty-five hundredths percent of the distributions specified in Section 7-1-6.46, 7-1-6.47, and Subsection E of Section 7-1-6.41 NMSA 1978.

Notwithstanding the provisions in the Tax Administration Act or other substantive law, of the amounts withheld, an amount equal to three percent of the distributions specified in Subsection E of Section 7-1-6.41 NMSA 1978 shall be deposited into the general fund and the remainder of the amounts withheld shall be retained by the department and is included in the other state fund appropriations to the department.

Subtotal	81,080.2
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**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 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	3,843.4	3,843.4
(b)	Contractual services	47,746.4	47,746.4
(c)	Other	642.0	642.0

Performance measures:

(a) Outcome: Five-year annualized investment returns to exceed internal benchmarks, in basis points >12.5

(b) Outcome: Five-year annualized percentile performance ranking in endowment investment peer universe <49

Subtotal 52,231.8

**ADMINISTRATIVE HEARINGS OFFICE:**

(1) Administrative hearings:

The purpose of the administrative hearings program is to adjudicate tax-, property- and motor vehicle-related administrative hearings in a fair, efficient and impartial manner independent of the executive agency that is party to the proceedings.

Appropriations:

(a)	Personal services and		
	employee benefits	1,222.0	155.0
			1,377.0
(b)	Contractual services	22.9	22.9
(c)	Other	258.8	258.8

The other state funds appropriation to the administrative hearings office includes one hundred fifty-five thousand dollars (\$155,000) from the motor vehicle suspense fund.

Performance measures:

(a) Outcome: Percent of hearings for implied consent act cases not held  
 within ninety days due to administrative hearings office  
 error <0.5%

Subtotal 1,658.7

**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 and coordinated policy development and analysis and oversight to the governor, the legislature and state agencies so they can advance the state's policies and initiatives using appropriate and accurate data to make informed decisions for the prudent use of the public's tax dollars.

Appropriations:

(a)	Personal services and employee benefits	2,934.2	2,934.2
(b)	Contractual services	83.7	83.7
(c)	Other	117.8	117.8

Performance measures:

(a) Outcome: General fund reserves as a percent of recurring  
 appropriations 10%

(b) Outcome: Error rate for the eighteen-month general fund revenue  
 forecast, gas revenue and corporate income taxes (+/-)3%

(2) Community development, local government assistance and fiscal oversight:

The purpose of the community development, local government assistance and fiscal oversight program is to help counties, municipalities and special districts maintain strong communities through sound fiscal advice and oversight, technical assistance, monitoring of project and program progress and timely processing of payments, grant agreements and contracts.

Appropriations:

(a) Personal services and

	employee benefits	1,665.4	1,027.9	412.4	3,105.7
(b)	Contractual services	2,148.1	1,582.9		2.0
		3,733.0			
(c)	Other	77.9	32,089.2	9,788.9	41,956.0
(d)	Other financing uses		1,900.0		1,900.0

The other state funds appropriations to the community development, local government assistance and fiscal oversight program of the department of finance and administration include thirteen million one hundred thousand dollars (\$13,100,000) from the 911 enhancement fund, twenty-two million dollars (\$22,000,000) from the local DWI grant fund, including one million six hundred thousand dollars (\$1,600,000) for local DWI grant program distributions to be transferred to the administrative office of the courts for drug courts and one million five hundred thousand dollars (\$1,500,000) from the civil legal services fund.

Performance measures:

- (a) Output: Percent of county and municipality budgets approved by the local government division of budgets submitted timely 90%
- (b) Outcome: Number of counties and municipalities local government division assisted during the fiscal year to resolve audit findings and diminish poor audit opinions 5

(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 by providing state agencies and the citizens of New Mexico with timely, accurate and comprehensive information on the financial status and expenditures of the state and approve all state professional service contracts.

Appropriations:

(a)	Personal services and				
	employee benefits	4,773.9			4,773.9
(b)	Contractual services	847.7			847.7
(c)	Other	364.5	364.5		
(d)	Other financing uses		32,800.0	39,000.0	
		71,800.0			

The internal service funds/interagency transfers appropriation to the fiscal management and oversight program of the department of finance and administration in the other financing uses category includes thirty-nine million dollars (\$39,000,000) from the tobacco settlement program fund. Of this amount, nineteen million five hundred thousand dollars (\$19,500,000) is contingent on enactment of Senate Bill 154 or similar legislation of the first session of the fifty-third legislature.

Notwithstanding the provisions of Section 27-10-3 NMSA 1978, the other state funds appropriation in the other financing uses category of the fiscal management and oversight program of the department of finance and administration includes thirty-two million eight hundred thousand dollars (\$32,800,000) from the county-supported medicaid fund.

Performance measures:

(a) Efficiency:           Percent of vouchered vendor payments processed within  
five  
                                  working days 95%

(b) Output:    Percent of bank accounts reconciled on an annual basis       100%

(4) Program support:

The purpose of program support is to provide other department of finance and administration programs with central direction to agency management processes to ensure consistency, legal compliance and financial integrity, to provide human resources support and to administer the executive's exempt salary plan.

Appropriations:

(a)	Personal services and		
	employee benefits	803.4	803.4
(b)	Contractual services	72.1	72.1
(c)	Other	27.5	27.5

(5) Dues and membership fees/special appropriations:

Appropriations:

~~[(a) Council of state governments 95.5 95.5] LINE-  
ITEM VETO~~

(b)	Western interstate commission		
	for higher education	125.2	125.2

(c) Education commission of the

	states	53.7		53.7
(d)	National association of state budget officers	16.4		16.4
<del>(e)</del>	<del>National conference of state legislatures</del>	<del>127.1</del>	<del>127.1</del>	<del>127.1] LINE-ITEM VETO</del>
(f)	Western governors' association	31.9		31.9
<del>(g)</del>	<del>National center for state courts</del>	<del>99.6</del>	<del>99.6</del>	
<del>(h)</del>	<del>National conference of insurance legislators</del>	<del>8.9</del>	<del>8.9</del>	<del>8.9</del>
<del>(i)</del>	<del>National council of legislators from gaming states</del>	<del>2.7</del>	<del>2.7</del>	<del>2.7] LINE- ITEM VETO</del>
(j)	National governors' association	77.9		77.9
(k)	Emergency water supply fund	104.8		104.8
(l)	Fiscal agent contract	1,064.8		1,064.8
(m)	State planning districts	593.0		593.0
(n)	Statewide teen court	17.7	140.0	157.7
(o)	Law enforcement protection fund	14,050.0		14,050.0
(p)	Leasehold community assistance	114.1		114.1

(q)	County detention of prisoners	2,387.5	2,387.5
(r)	Acequia and community ditch education program	398.2	398.2
(s)	New Mexico acequia commission	88.1	88.1
<del>(t)</del>	<del>Regional housing authority oversight</del>	<del>177.0</del>	<del>177.0] LINE-ITEM VETO</del>
(u)	Land grant council	221.9	221.9

On 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, the secretary of the department of finance and administration is authorized to transfer from the general fund operating reserve to the state board of finance emergency fund the amount necessary to meet the emergency. Such transfers shall not exceed an aggregate amount of two million dollars (\$2,000,000) in fiscal year 2018. 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.

The department of finance and administration shall not distribute a general fund appropriation made in items (k) through (u) to a New Mexico agency or local public body that is not current on its audit or financial reporting or otherwise in compliance with the Audit Act.

Subtotal	152,515.5
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#### **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	325,133.6	325,133.6
(b)	Other financing uses	650.0	650.0

Performance measures:

(a) Outcome: Percent change in per-member health claim costs 6%

(b) Outcome: Percent change in medical premium as compared with industry average 5%

(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	70,149.2	70,149.2
(b) Other financing uses	649.9	649.9

Performance measures:

(a) Outcome: Percent of schools in compliance with loss control prevention recommendations 60%

(b) Outcome: Average cost per claim for current fiscal year \$3,500

(3) Program support:

The purpose of program support is to provide administrative support for the benefits and risk programs and to assist the agency in delivering services to its constituents.

Appropriations:

(a) Personal services and employee benefits	985.8	985.8
(b) Contractual services	109.8	109.8
(c) Other	204.3	204.3

Any unexpended balances in program support of the New Mexico public school insurance authority remaining at the end of fiscal year 2018 from this appropriation shall revert to the benefits program and risk program.

Subtotal	397,882.6
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**RETIREE HEALTH CARE AUTHORITY:**

(1) Healthcare benefits administration:

The purpose of the healthcare benefits administration program is to provide fiscally solvent 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	317,091.2	317,091.2
(b)	Other	37.8	37.8
(c)	Other financing uses	2,936.8	2,936.8

Performance measures:

- (a) Output: Minimum number of years of positive fund balance 20
- (b) Outcome: Minimum number of years of projected balanced spending 5

(2) Program support:

The purpose of program support is to provide administrative support for the healthcare benefits administration program to assist the agency in delivering its services to its constituents.

Appropriations:

(a)	Personal services and employee benefits	1,858.8	1,858.8
(b)	Contractual services	544.8	544.8
(c)	Other	533.2	533.2

Any unexpended balance in program support of the retiree health care authority remaining at the end of fiscal year 2018 shall revert to the healthcare benefits administration program.

Subtotal	323,002.6
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**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 and local government employees.

Appropriations:

(a)	Contractual services	21,578.0	21,578.0
(b)	Other	349,470.0	349,470.0
(c)	Other financing uses	2,148.0	2,148.0

Performance measures:

(a) Outcome: Percent of state group prescriptions filled with generic drugs 90%

(b) Outcome: Percent change in the average per-member per-month total healthcare cost <7%

(2) Risk management:

The purpose of the risk management program is to protect the state's assets against property, public liability, workers' compensation, state unemployment compensation, local public bodies unemployment compensation and surety bond losses so agencies can perform their missions in an efficient and responsive manner.

Appropriations:

(a)	Personal services and employee benefits	4,271.1	4,271.1
(b)	Contractual services	150.0	150.0
(c)	Other	378.1	378.1
(d)	Other financing uses	3,295.0	3,295.0

Any unexpended balances in the risk management program of the general services department remaining at the end of fiscal year 2018 from this appropriation shall revert to the public liability fund, public property reserve fund, workers' compensation retention fund, state unemployment compensation fund, local public body unemployment compensation fund and group self-insurance fund based on the proportion of each individual fund's assessment for the risk management program.

Performance measures:

(a) Output: Percent increase in the number of alternative dispute resolution bureau training and outreach events held with

the top twenty loss-producing agencies 5%

(3) Risk management funds:

Appropriations:

(a)	Public liability	45,305.3	45,305.3
(b)	Surety bond	480.0	480.0
(c)	Public property reserve	12,449.9	12,449.9
(d)	Local public body unemployment compensation reserve	1,640.0	1,640.0
(e)	Workers' compensation retention	21,011.9	21,011.9
(f)	State unemployment compensation	6,100.0	6,100.0

Performance measures:

- (a) Outcome: Projected financial position of the public property fund 50%
- (b) Outcome: Projected financial position of the public liability fund 50%
- (c) Outcome: Projected financial position of the workers' compensation  
fund 50%

(4) State printing services:

The purpose of the state printing services program is to provide cost-effective printing and publishing services for governmental agencies.

Appropriations:

(a)	Personal services and employee benefits	461.1	461.1
(b)	Other	656.7	656.7

(c) Other financing uses 42.2 42.2

Performance measures:

(a) Output: Revenue generated per employee compared with the previous  
thirty- or sixty-day legislative session \$175,000

(b) Outcome: Sales growth in state printing revenue compared with the  
previous thirty- or sixty-day legislative session 8%

(5) Facilities management:

The purpose of the facilities management program is to provide employees and the public with effective property management so agencies can perform their missions in an efficient and responsive manner.

Appropriations:

(a) Personal services and employee benefits	6,703.7	6,703.7
(b) Contractual services	270.8	270.8
(c) Other	5,416.4 692.8	6,109.2
(d) Other financing uses	199.6	199.6

The appropriation to the facilities management program of the general services department in the contractual services category includes one hundred fifty thousand dollars (\$150,000) to continue five-year cyclic assessments of state buildings under the control of the facilities management program of the general services department.

Notwithstanding the provisions of Section 15-3B-20 NMSA 1978, the other state funds appropriation to the facilities management program of the general services department includes six hundred ninety-two thousand eight hundred dollars (\$692,800) from the property control reserve fund.

Performance measures:

(a) Efficiency: Percent of capital projects completed on schedule 90%

(b) Outcome: Percent of new office space leases achieving adopted space  
standards 90%

(6) Transportation services:

The purpose of the transportation services program is to provide centralized and effective administration of the state's motor pool and aircraft transportation services so agencies can perform their missions in an efficient and responsive manner.

Appropriations:

(a)	Personal services and employee benefits	290.4	2,061.2		2,351.6
(b)	Contractual services	3.8	184.1		187.9
(c)	Other	242.8	8,813.6	9,056.4	
(d)	Other financing uses	11.6	415.6		427.2

The other state funds appropriations to the transportation services program of the general services department include one hundred thousand dollars (\$100,000) from the aviation services fund for flight costs between home and school for students of the New Mexico school for the blind and visually impaired. Any unexpended balances in the transportation services program of the general services department remaining at the end of fiscal year 2018 from this appropriation shall not revert to the aviation services fund.

Performance measures:

- (a) Efficiency: Average vehicle operation costs per mile, as compared with industry average = \$0.59
- (b) Outcome: Percent of leased vehicles used seven hundred fifty miles per month 95%

(7) Procurement services:

The purpose of the procurement services program is to provide a procurement process for tangible property for government entities to ensure compliance with the Procurement Code so agencies can perform their missions in an efficient and responsive manner.

Appropriations:

(a)	Personal services and employee benefits	615.1	1,320.7		1,935.8
(b)	Contractual services		76.0		76.0
(c)	Other	62.0	108.5	170.5	

(d) Other financing uses	11.6	70.0	81.6
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Performance measures:

(a) Outcome: Percent of executive branch agencies with certified

procurement officers	90%
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(b) Output: Costs avoided due to negotiated savings for construction

procurements	\$200,000
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(8) Program support:

The purpose of program support is to manage the program performance process to demonstrate success.

Appropriations:

(a) Personal services and

employee benefits	3,017.4	3,017.4
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(b) Contractual services	296.6	296.6
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(c) Other	731.6	731.6
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Any unexpended balances in program support of the general services department remaining at the end of fiscal year 2018 from these appropriations shall revert to the procurement services, state printing services, risk management, risk management funds, employee group health benefits, facilities management and transportation services programs based on the proportion of each individual program's final assessment for program support.

Subtotal	501,053.2
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## **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 secure monthly benefits when their careers are finished.

Appropriations:

(a) Personal services and

employee benefits	5,575.5	5,575.5
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(b)	Contractual services		22,413.1	22,413.1
(c)	Other	1,163.8	1,163.8	

Performance measures:

- (a) Outcome: Average rate of return over a cumulative five-year period 7.75%
- (b) Outcome: Funding period of unfunded actuarial accrued liability, in  
years □30

Subtotal		29,152.4	
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**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	495.6	52.0	547.6
(b)	Other	4.0	4.0	
	Subtotal		551.6	

**GOVERNOR:**

(1) Executive management and leadership:

The purpose of the executive management and leadership program is to provide appropriate management and leadership to the executive branch of government to allow for a more efficient and effective operation of the agencies within that branch of government on behalf of the citizens of the state.

Appropriations:

(a)	Personal services and employee benefits	2,779.8		2,779.8
(b)	Contractual services	89.8		89.8
(c)	Other	390.4	390.4	

Subtotal 3,260.0

**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, keep records of activities and submit an annual report to the governor.

Appropriations:

(a)	Personal services and employee benefits	474.9	474.9
(b)	Contractual services	14.6	14.6
(c)	Other	42.9	42.9
	Subtotal		532.4

**DEPARTMENT OF INFORMATION TECHNOLOGY:**

(1) Compliance and project management:

The purpose of the compliance and project management program is to provide information technology strategic planning, oversight and consulting services to New Mexico government agencies so they can improve services provided to New Mexico citizens.

Appropriations:

(a)	Personal services and employee benefits	694.4	694.4
(b)	Other	54.0	54.0
(c)	Other financing uses	96.7	96.7

(2) Enterprise services:

The purpose of the enterprise services program is to provide reliable and secure infrastructure for voice, radio, video and data communications through the state's enterprise data center and telecommunications network.

Appropriations:

(a)	Personal services and employee benefits	12,760.9	137.5	12,898.4
(b)	Contractual services	8,867.5	192.3	9,059.8
(c)	Other	28,038.0	79.4	28,117.4
(d)	Other financing uses	7,919.1	34.8	7,953.9

Performance measures:

- (a) Outcome: Percent of service desk incidents resolved within the  
timeframe specified for their priority level 95%

(3) Equipment replacement revolving funds:

Appropriations:

(a)	Contractual services	2,898.3	2,898.3
(b)	Other	2,101.7	2,101.7

~~[The appropriations to the equipment replacement revolving fund program of the department of information technology are contingent on the submission of an equipment replacement fund plan for fiscal year 2018 and an equipment replacement fund reconciliation report for fiscal year 2017 as required annually by Section 9-27-11 NMSA 1978.] LINE-ITEM VETO~~

(4) Program support:

The purpose of program support is to provide management and ensure cost recovery and allocation services through leadership, policies, procedures and administrative support for the department.

Appropriations:

(a)	Personal services and employee benefits	2,741.2	2,741.2
(b)	Contractual services	33.0	33.0
(c)	Other	276.4	276.4

Performance measures:

- (a) Explanatory: Overall results of the department's annual customer

satisfaction survey

Subtotal 66,925.2

**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 they are entitled to when they retire from public service.

Appropriations:

(a) Personal services and employee benefits	6,431.6	6,431.6
(b) Contractual services	27,411.0	27,411.0
(c) Other	1,549.1	1,549.1

The other state funds appropriation to the pension administration program of the public employees retirement association in the contractual services category includes twenty-five thousand dollars (\$25,000) for fiduciary counsel legal services for the public employees retirement association's board of trustees and does not include funding for the public employees retirement association's board of trustees to retain its own separate legal counsel.

Performance measures:

- (a) Outcome: Funding period of unfunded actuarial accrued liability, in  
years □30
- (b) Outcome: Ten-year annualized investment returns to exceed internal  
benchmark, in basis points □10

Subtotal 35,391.7

**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 use by, and for the benefit of, government agencies, historical record repositories and the public so the state can effectively create, preserve, protect and properly dispose of records, facilitate their use and understanding and protect the interests of the citizens of New Mexico.

Appropriations:

(a)	Personal services and employee benefits	2,293.2		2,293.2
(b)	Contractual services	12.6	48.0	60.6
(c)	Other	170.6	187.6	358.2

Performance measures:

(a) Outcome: Percent of requests for access to public records in custody that the commission is able to satisfy within twenty-four hours 100%

(b) Output: Number of state employees trained on the proper management of public records in compliance with the public records act 450

Subtotal 2,712.0

**SECRETARY OF STATE:**

(1) Administration and operations:

The purpose of the administration and operations program is to provide operational services to commercial and business entities and citizens, including administration of notary public commissions, uniform commercial code filings, trademark registrations and partnerships and to provide administrative services needed to carry out elections.

Appropriations:

(a)	Personal services and employee benefits	3,196.9		3,196.9
(b)	Contractual services	146.4		146.4
(c)	Other	392.4	35.0	427.4

(2) Elections:

The purpose of the elections program is to provide voter education and information on election law and government ethics to citizens, public officials and candidates so they can comply with state law.

Appropriations:

(a)	Personal services and employee benefits	498.3	498.3	
(b)	Contractual services	959.8	959.8	
(c)	Other	2,039.3	640.0	2,679.3

Notwithstanding the provisions of Section 1-19A-10 NMSA 1978, the internal service funds/interagency transfers appropriation to the elections program in the other category of the secretary of state includes six hundred forty thousand dollars (\$640,000) from the public election fund. Any unexpended balances in the elections program of the secretary of state at the end of fiscal year 2018 from appropriations made from the public election fund shall revert to the public election fund.

Performance measures:

- (a) Explanatory: Percent of eligible-but-not-registered voters who respond to the annual outreach mailing conducted by the secretary of state
- (b) Outcome: Percent of reporting individuals in compliance with campaign finance reporting requirements 100%
- (c) Efficiency: Percent of public records requests responded to within the statutory deadline 95%
- (d) Outcome: Percent of eligible voters registered to vote 80%
- Subtotal 7,908.1

**PERSONNEL BOARD:**

(1) Human resource management:

The purpose of the human resource management program is to provide a flexible system of merit-based opportunity, appropriate compensation, human resource accountability and employee development that meets the evolving needs of the agencies, employees, applicants and the public so economy and efficiency in the management of state affairs may be provided while protecting the interest of the public.

Appropriations:

- (a) Personal services and

employee benefits	3,490.8	269.1	3,759.9
(b) Contractual services	37.9		37.9
(c) Other	284.2	284.2	

Performance measures:

(a) Outcome: Average number of days to fill a position from the date of

posting 55

(b) Explanatory: Statewide classified service vacancy rate

(c) Explanatory: Average state classified employee compa-ratio

Subtotal 4,082.0

**PUBLIC EMPLOYEES LABOR RELATIONS BOARD:**

The purpose of the public employee labor relations board is to assure all state and local public body employees have the right to organize and bargain collectively with their employers or to refrain from such.

Appropriations:

(a) Personal services and			
employee benefits	165.5		165.5
(b) Contractual services	5.8		5.8
(c) Other	42.4	42.4	
Subtotal			213.7

**STATE TREASURER:**

The purpose of the state treasurer program 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	2,794.5		2,794.5

(b)	Contractual services	283.7	122.3	406.0
(c)	Other	350.4	4.0	354.4

Performance measures:

(a) Outcome: One-year annualized investment return on general fund core portfolio to exceed internal benchmarks, in basis points 0

Subtotal 3,554.9

TOTAL GENERAL CONTROL 115,348.0 1,487,599.0 71,010.0 15,442.5  
1,689,399.5

## D. COMMERCE AND INDUSTRY

### BOARD OF EXAMINERS FOR ARCHITECTS:

(1) Architectural registration:

The purpose of the architectural registration program is to regulate, through enforcement and licensing, the professional conduct of architects to protect the health, safety and welfare of the general public of the state.

Appropriations:

(a)	Personal services and employee benefits	286.8	286.8
(b)	Contractual services	11.0	11.0
(c)	Other	89.0	89.0
	Subtotal		386.8

### BORDER AUTHORITY:

(1) Border development:

The purpose of the border development program is to encourage and foster trade development in the state by developing port facilities and infrastructure at international ports of entry to attract new industries and business 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	299.5	20.1	319.6
(b)	Contractual services		52.5	52.5
(c)	Other	129.2		129.2

Performance measures:

(a) Outcome: Annual trade share of New Mexico ports within the west

Texas and New Mexico region 25%

(b) Outcome: Commercial and noncommercial vehicular port traffic at New

Mexico ports 1,545,000

Subtotal 501.3

**TOURISM DEPARTMENT:**

(1) Marketing and promotion:

The purpose of the marketing and promotion program is to produce and provide collateral, editorial and special events for the consumer and trade industry so they may increase their awareness of New Mexico as a premier tourist destination.

Appropriations:

(a)	Personal services and employee benefits	1,216.4		1,216.4
(b)	Contractual services		342.5	342.5
(c)	Other	8,950.3	30.0	8,980.3

Performance measures:

(a) Outcome: New Mexico's domestic overnight visitor market share 1.1%

(b) Outcome: Percent change in New Mexico leisure and hospitality

employment 3%

(2) Tourism development:

The purpose of the tourism development program is to provide constituent services for communities, regions and other entities so 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	252.2	96.3	348.5
(b)	Contractual services		5.3	5.3
(c)	Other	780.1	1,128.7	1,908.8

Performance measures:

(a) Output: Number of applicants for grant programs participating in collaborative applications for the cooperative advertising program 115

(b) Outcome: Combined advertising spending of communities and entities using the tourism department's current approved brand, in thousands \$2,200

(3) 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 the audience can learn about New Mexico from a cultural, historical and educational perspective.

Appropriations:

(a)	Personal services and employee benefits		928.5	928.5
(b)	Contractual services		836.1	836.1
(c)	Other	1,414.7		1,414.7

Performance measures:

(a) Output: True adventure guide advertising revenue per year, in

thousands \$500

(b) Output: Advertising revenue per issue, in thousands \$72

(4) 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	835.1	835.1
(b)	Contractual services	80.5	80.5
(c)	Other	158.5	158.5
	Subtotal		17,055.2

#### **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	1,639.9	1,639.9
(b)	Contractual services	2,260.6	2,260.6
(c)	Other	2,228.4	2,228.4

Performance measures:

(a) Outcome: Number of workers trained by the job training incentive  
program 1,850

(b) Output: Number of private sector dollars leveraged by each dollar

through the Local Economic Development Act 12:1

(c) Output: Number of jobs created through the use of Local Economic

Development Act funds 2,200

(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 New Mexico's film industry.

Appropriations:

(a) Personal services and

employee benefits 544.3 544.3

(b) Contractual services 82.8 82.8

(c) Other 78.9 78.9

Performance measures:

(a) Output: Number of film and media worker days 230,000

(b) Outcome: Direct spending by film industry productions, in millions \$260

(3) 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 1,425.0 1,425.0

(b) Contractual services 112.7 112.7

(c) Other 172.0 172.0

Subtotal 8,544.6

## **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	6,768.7	325.9	150.0	17.5	7,262.1
(b)	Contractual services	249.8				249.8
(c)	Other	777.9	62.7	180.0		1,020.6
(d)	Other financing uses		38.5			38.5

Performance measures:

- (a) Outcome: Percent of commercial plans reviewed within ten working days  
90%
- (b) Outcome: Percent of residential plans reviewed within five working days  
95%
- (c) Output: Time to final action, referral or dismissal of complaint,  
in months 8

(2) Financial institutions:

The purpose of the financial institutions program is to issue charters and licenses; perform examinations; investigate complaints; and enforce laws, rules and regulations so that capital formation is maximized and a secure financial infrastructure is available to support economic development.

Appropriations:

(a)	Personal services and					
	employee benefits	539.4	1,126.7	725.5		2,391.6
(b)	Contractual services	3.5	35.0			38.5
(c)	Other	157.1	289.3			446.4
(d)	Other financing uses		112.7			112.7

Notwithstanding the provisions of Section 9-16-15 NMSA 1978, the internal service funds/interagency transfers appropriation to the financial institutions program of the regulation and licensing department includes seven hundred twenty-five thousand five hundred dollars (\$725,500) from the mortgage regulatory fund for the general operation of the financial institutions program.

Performance measures:

(a) Outcome: Percent of statutorily complete applications processed

within a standard number of days by type of application 95%

(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, in cooperation with the department of public safety, enforce the Liquor Control Act to protect the health, safety and welfare of the citizens of and visitors to New Mexico.

Appropriations:

(a) Personal services and

employee benefits	845.8	845.8
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(b) Contractual services	8.9	8.9
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(c) Other	68.1	68.1
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Performance measures:

(a) Output: Number of days to resolve an administrative citation that does not require a hearing 100

(b) Outcome: Number of days to issue a restaurant beer and wine liquor license 100

(4) Securities:

The purpose of the securities program is to protect the integrity of the capital market in New Mexico by setting standards for licensed professionals, investigating complaints, educating the public and enforcing the law.

Appropriations:

(a) Personal services and

employee benefits	687.1	661.2	1,348.3
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(b)	Contractual services	2.7	150.0	152.7
(c)	Other	121.3	208.0	329.3
(d)	Other financing uses		108.7	108.7

Performance measures:

(a) Outcome: Total revenue collected from licensing, in millions \$24

(5) Boards and commissions:

Appropriations:

(a)	Personal services and employee benefits	416.9	1,796.2	3,243.6	5,456.7
(b)	Contractual services	6.0	429.2	435.2	
(c)	Other	7.9	1,505.4	124.3	1,637.6
(d)	Other financing uses	14.8	1,763.0	58.6	1,836.4

(6) 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	1,148.2	1,512.0	2,660.2
(b)	Contractual services	117.3	208.8	326.1
(c)	Other	26.5	610.4	636.9
	Subtotal		27,411.1	

**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 the interests of the consumers and regulated industries are balanced to promote and protect the public interest.

Appropriations:

(a)	Personal services and			
	employee benefits	5,466.1	775.4	6,241.5
(b)	Contractual services	68.2		68.2
(c)	Other	445.9	445.9	

Notwithstanding the provisions of Section 59A-53-5.2 NMSA 1978 or other substantive law, the internal service funds/interagency transfers appropriation to the policy and regulation program of the public regulation commission includes four hundred eighty-eight thousand one hundred dollars (\$488,100) from the fire protection fund.

(2) 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 risk as assigned to the public regulation commission.

Appropriations:

(a)	Personal services and			
	employee benefits	2,834.3	718.4	3,552.7
(b)	Contractual services		287.5	107.0
(c)	Other	817.6	127.6	945.2

Performance measures:

(a)	Outcome: Percent of statewide fire districts with insurance service	
	office ratings of eight or better	90%

(3) 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	673.0	739.6	1,412.6
(b)	Contractual services		35.9	35.9
(c)	Other	13.6	101.5	115.1
	Subtotal			13,211.6

**OFFICE OF SUPERINTENDENT OF INSURANCE:**

(1) Insurance policy:

The purpose of the insurance policy program is to ensure 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		6,471.7	685.7	7,157.4
(b)	Contractual services		1,283.1	20.9	1,304.0
(c)	Other	1,249.2	116.6		1,365.8

The office of superintendent of insurance and the taxation and revenue department in consultation with the legislative finance committee and the department of finance and administration shall collaborate to develop and implement a plan to transfer the revenue collection and auditing of the insurance premium tax from the office of superintendent of insurance to the taxation and revenue department. The implementation plan shall be completed and reported to the legislative finance committee and other appropriate committees by December 31, 2017.

Performance measures:

(a) Efficiency:      Percent of insurance fraud bureau complaints processed  
and  
recommended for further adjudication by a competent court,  
referral to civil division or closure within ninety days      80%

(2) Patient's compensation fund:

Appropriations:

(a)	Personal services and employee benefits	158.7	158.7
(b)	Contractual services	503.9	503.9
(c)	Other	20,412.0	20,412.0
(d)	Other financing uses	665.1	665.1
	Subtotal		31,566.9

### **MEDICAL BOARD:**

#### (1) Licensing and certification:

The purpose of the licensing and certification program is to provide regulation and licensure to healthcare providers regulated by the New Mexico medical board and to ensure competent and ethical medical care to consumers.

#### Appropriations:

(a)	Personal services and employee benefits	1,195.0	1,195.0
(b)	Contractual services	338.0	338.0
(c)	Other	367.0	367.0

#### Performance measures:

(a) Output:	Number of triennial physician licenses issued or renewed	3,850
(b) Output:	Number of biennial physician assistant licenses issued or renewed	450
	Subtotal	1,900.0

### **BOARD OF NURSING:**

#### (1) Licensing and certification:

The purpose of the licensing and certification program is to provide regulations to nurses, hemodialysis technicians, medication aides and their education and training programs so they provide competent and professional healthcare services to consumers.

Appropriations:

(a)	Personal services and employee benefits	1,576.2	1,576.2
(b)	Contractual services	37.2	37.2
(c)	Other	462.4	462.4

Performance measures:

(a) Explanatory: Number of licensed practical nurse, registered nurse and advanced practice nurse licenses and unlicensed assistive personnel certificates issued

Subtotal 2,075.8

**NEW MEXICO 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	5,613.3	5,613.3
(b)	Contractual services	2,960.3	2,960.3
(c)	Other	3,403.4	3,403.4

Performance measures:

(a) Output: Number of paid attendees at annual state fair event 430,000

(b) Output: Number of total attendees at annual state fair event 465,000

Subtotal 11,977.0

**STATE BOARD OF LICENSURE FOR PROFESSIONAL ENGINEERS AND PROFESSIONAL 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	490.2	490.2
(b)	Contractual services	202.8	202.8
(c)	Other	104.9	104.9

Performance measures:

(a) Output:	Number of licenses or certifications issued within one year	815
Subtotal		797.9

**GAMING CONTROL BOARD:**

(1) Gaming control:

The purpose of the gaming control board is to provide strictly regulated gaming activities and to promote responsible gaming to the citizens of New Mexico so they can attain a strong level of confidence in the board's administration of gambling laws and assurance the state has competitive gaming free from criminal and corruptive elements and influences.

Appropriations:

(a)	Personal services and		
	employee benefits	3,671.6	3,671.6
(b)	Contractual services	783.7	783.7
(c)	Other	702.4	702.4
Subtotal			5,157.7

**STATE RACING COMMISSION:**

(1) Horse racing regulation:

The purpose of the horse racing regulation program is to provide regulation in an equitable manner to New Mexico's parimutuel horse racing industry and 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	1,312.4		1,312.4
(b)	Contractual services	450.1	880.0	1,330.1
(c)	Other	219.4	219.4	

Performance measures:

- (a) Outcome: Percent of equine samples testing positive for illegal substances 1%
- (b) Output: Total amount collected from parimutuel revenues, in millions \$1.2

Subtotal 2,861.9

**BOARD OF VETERINARY MEDICINE:**

(1) Veterinary licensing and regulatory:

The purpose of the veterinary licensing and regulatory program is to regulate the profession of veterinary medicine in accordance with the Veterinary Practice Act and to promote continuous improvement in veterinary practices and management to protect the public.

Appropriations:

(a)	Personal services and employee benefits	179.4		179.4
(b)	Contractual services	103.3		103.3
(c)	Other	49.5	49.5	

Performance measures:

- (a) Output: Number of veterinarian licenses issued annually 1,000

Subtotal 332.2

## **CUMBRES AND TOLTEC SCENIC RAILROAD COMMISSION:**

The purpose of the Cumbres and Toltec scenic railroad commission is to provide railroad excursions through, into and over the scenic San Juan mountains.

### Appropriations:

(a)	Personal services and				
	employee benefits	63.7	63.7	127.4	
(b)	Contractual services		29.2	3,426.5	3,455.7
(c)	Other	18.9	153.0	171.9	
	Subtotal			3,755.0	

## **OFFICE OF MILITARY BASE PLANNING AND SUPPORT:**

The purpose of the office of military base planning and support is to provide advice to the governor and lieutenant governor on New Mexico's four military installations, to work with community support groups, to ensure that state initiatives are complementary of community actions and to identify and address appropriate state-level issues that will contribute to the long-term viability of New Mexico military installations.

### Appropriations:

(a)	Personal services and				
	employee benefits	110.7		110.7	
(b)	Contractual services		107.6		107.6
(c)	Other	8.6		8.6	
	Subtotal			226.9	

## **SPACEPORT AUTHORITY:**

The purpose of the spaceport authority is to finance, design, develop, construct, equip and safely operate spaceport America and thereby generate significant high technology economic development throughout the state.

### Appropriations:

(a)	Personal services and				
	employee benefits		1,814.0		1,814.0

(b)	Contractual services	375.9	1,909.8		2,285.7
(c)	Other	1,742.8		1,742.8	
	Subtotal			5,842.5	
TOTAL COMMERCE AND INDUSTRY		47,948.6	61,573.1	22,289.0	
		1,793.7	133,604.4		

## E. AGRICULTURE, ENERGY AND NATURAL RESOURCES

### CULTURAL AFFAIRS DEPARTMENT:

#### (1) Museums and historic sites:

The purpose of the museums and historic sites 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	14,703.5	2,295.1	125.0	91.8
					17,215.4
(b)	Contractual services	504.3	403.9		908.2
(c)	Other	3,504.5	1,574.1		5,078.6

#### (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	573.7	1,568.5	797.5	2,939.7
(b)	Contractual services		105.0	82.9	187.9
(c)	Other	47.4	278.5	204.1	530.0

The other state funds 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 as needed for highway projects.

(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	1,889.0		683.4	2,572.4
(b)	Contractual services	211.8		1.6	213.4
(c)	Other	1,245.2	42.0	774.7	2,061.9

[The general fund appropriation to the library services program of the cultural affairs department in the contractual services category includes seventy-five thousand dollars (\$75,000) to enable and support schools participating statewide in the national history day program.] *LINE-ITEM VETO*

(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	681.5		168.5	850.0
(b)	Contractual services	545.0		398.1	943.1
(c)	Other	88.8	50.1	138.9	

(5) Program support:

The purpose of program support is to deliver effective, efficient, high-quality services in concert with the core agenda of the governor.

Appropriations:

(a)	Personal services and				
	employee benefits	3,386.2			3,386.2
(b)	Contractual services	249.9	33.4		283.3

(c) Other	284.4	284.4	
Subtotal			37,593.4

**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 livestock diseases.

Appropriations:

(a) Personal services and employee benefits	100.0	4,211.3	4,311.3
(b) Contractual services		269.5	269.5
(c) Other	453.7	841.4	1,295.1

Performance measures:

(a) Output: Number of road stops per month	85
(b) Outcome: Number of disease cases per one thousand head inspected	0.1
(c) Outcome: Percent of stolen or missing livestock recovered	21%

Subtotal			5,875.9
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**DEPARTMENT OF GAME AND FISH:**

(1) Field operations:

The purpose of the field operations program is to promote and assist the implementation of law enforcement, habitat and public outreach programs throughout the state.

Appropriations:

(a) Personal services and employee benefits		6,850.2	312.4	7,162.6
(b) Contractual services		128.7		128.7
(c) Other	1,822.9			1,822.9

Performance measures:

(a) Output: Number of conservation officer hours spent in the field

checking for compliance 50,000

(b) Output: Number of hunter and conservation education programs

delivered by field staff 700

(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	4,308.0	5,948.9	10,256.9
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(b) Contractual services

3,582.8

1,504.8

2,078.0

(c) Other 2,411.9

5,376.4

7,788.3

(d) Other financing uses

1,045.6

136.7 1,182.3

The other state funds and federal funds appropriations to the conservation services program of the department of game and fish in the other financing uses category include five hundred thousand dollars (\$500,000) from the game protection fund to support hunting, fishing and trapping activities and wildlife conservation measures on state park properties and five hundred thousand dollars (\$500,000) from the trail safety fund for the state parks program of the energy, minerals and natural resources department. Any unexpended balances in the conservation services program of the department of game and fish remaining at the end of fiscal year 2018 from the appropriation made from the game protection fund shall revert to the game protection fund.

Performance measures:

(a) Outcome: Number of elk licenses offered on an annual basis in New

Mexico 33,000

(b) Outcome: Percent of public hunting licenses drawn by New Mexico

resident hunters 84%

(c) Output: Annual output of fish from the department's hatchery system, in pounds 640,000

(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 and annoyances or risks to public safety caused by protected wildlife.

Appropriations:

(a)	Personal services and		
	employee benefits	288.1	288.1
(b)	Contractual services	125.7	125.7
(c)	Other	606.8	606.8

Performance measures:

(a) Outcome: Percent of depredation complaints resolved within the mandated one-year timeframe 96%

(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	3,745.2	206.2 3,951.4
(b)	Contractual services	443.0	443.0
(c)	Other	2,762.2	2,762.2
	Subtotal		40,101.7

**ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT:**

(1) Energy conservation and management:

The purpose of the energy conservation and management program is to develop and implement clean energy programs to decrease per capita energy consumption; use 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	609.6	479.7	1,089.3
(b)	Contractual services	100.8	252.0	352.8
(c)	Other	56.5	2,167.1	2,223.6

(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	3,162.8	202.3	2,641.9	6,007.0
(b)	Contractual services	70.1	5.0	398.5	473.6
(c)	Other	519.4	363.8	5,635.1	6,518.3
(d)	Other financing uses		46.6		46.6

Performance measures:

- (a) Output: Number of nonfederal wildland firefighters provided  
professional and technical incident command system training 1,650
- (b) Output: Number of acres treated in New Mexico's forest and  
watersheds 15,800

(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	7,426.6	3,749.2	35.0	421.2	11,632.0
(b)	Contractual services		577.8	115.0	692.8	
(c)	Other	10,825.4	2,606.2	2,601.1	16,032.7	
(d)	Other financing uses		604.0		604.0	

The general fund appropriation to the state parks program of the energy, minerals and natural resources department includes seventy-five thousand dollars (\$75,000) to support Rio Grande trail commission efforts to define viable path routes, mitigate challenges and establish the Rio Grande trail to run the length of the state from Colorado to Texas.

The internal service funds/interagency transfers appropriations to the state parks program of the energy, minerals and natural resources department include five hundred thousand dollars (\$500,000) from the game protection fund to support hunting, fishing and trapping activities and wildlife conservation measures on state park properties. Any unexpended balances remaining at the end of fiscal year 2018 from this appropriation shall revert to the game protection fund.

The internal service funds/interagency transfers appropriations to the state parks program of the energy, minerals and natural resources department include five hundred thousand dollars (\$500,000) from the trail safety fund for state park operations. Any unexpended balances remaining at the end of fiscal year 2018 from this appropriation shall not revert to the trail safety fund.

Performance measures:

- (a) Explanatory: Number of visitors to state parks
- (b) Explanatory: Total self-generated revenue

(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	378.8	579.8	79.0	1,881.1	2,918.7
(b)	Contractual services			35.6	4,707.4	4,743.0
(c)	Other	11.7	83.9	17.9	266.3	379.8

(d)	Other financing uses		37.0		37.0
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(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, dynamic regulation.

Appropriations:

(a)	Personal services and				
	employee benefits	1,321.4	3,374.5	222.1	4,918.0
(b)	Contractual services	67.9	2,830.0	450.0	3,347.9
(c)	Other	464.5	259.3	113.3	837.1
(d)	Other financing uses		384.0		384.0

Performance measures:

(a) Output: Number of inspections of oil and gas wells and associated facilities 47,000

(b) Outcome: Number of abandoned oil and gas wells properly plugged 32

(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 their goals.

Appropriations:

(a)	Personal services and				
	employee benefits	2,739.4	1,038.2	621.3	4,398.9
(b)	Contractual services	98.3	24.0	26.7	149.0
(c)	Other	15.8	134.4	200.5	350.7
	Subtotal		68,136.8		

**YOUTH CONSERVATION CORPS:**

The purpose of the youth conservation corps is to provide funding for the employment of New Mexicans between the ages of fourteen and 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	170.6	170.6
(b)	Contractual services	3,470.8	3,470.8
(c)	Other	219.4	219.4

Performance measures:

(a) Output:	Number of youth employed annually	850
Subtotal		3,860.8

**INTERTRIBAL CEREMONIAL OFFICE:**

The purpose of the intertribal ceremonial office is to aid in the planning, coordination and development of a successful intertribal ceremonial event in coordination with the Native American population.

Appropriations:

(a)	Contractual services	50.0	50.0
Subtotal		50.0	

**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	11,505.8	11,505.8
(b)	Contractual services	2,641.0	2,641.0

(c)	Other	1,747.9		1,747.9
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The commissioner of public lands is authorized to hold in suspense amounts received pursuant to agreements entered into for the sale of state royalty interests that, as a result of the sale, became eligible for tax credits under Section 29 of the federal Internal Revenue Code, above those amounts required by law to be transferred to the land grant permanent fund. The commissioner may expend as much of the money so held in suspense, as well as additional money held in escrow accounts resulting from the sales and money held in fund balance, as is necessary to repurchase the royalty interests pursuant to the agreements.

Performance measures:

(a) Outcome: Dollars generated through oil, natural gas and mineral

audit activities, in millions \$2.5

(b) Output: Average income per acre from oil, natural gas and mineral

activities, in dollars \$200

(c) Output: Number of acres restored to desired conditions for future

sustainability 6,000

Subtotal				15,894.7
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**STATE ENGINEER:**

(1) Water resource allocation:

The purpose of the water resource allocation program is to provide for efficient use of the available surface and underground waters of the state to any person so they can maintain their quality of life and to provide safety inspections of all nonfederal dams within the state for owners and operators of such dams so they can operate the dam safely.

Appropriations:

(a) Personal services and

employee benefits	11,436.9	584.2	70.9	12,092.0
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(b) Contractual services

624.7	624.7
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(c) Other 39.1 1,296.6

1,335.7
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The internal service funds/interagency transfers appropriations to the water resource allocation program of the state engineer include one million eight hundred forty-four thousand six hundred dollars (\$1,844,600) from the New Mexico irrigation works construction fund and one hundred forty-seven thousand six hundred dollars (\$147,600) from the improvement of Rio Grande income fund.

Performance measures:

(a) Output: Average number of unprotested new and pending applications

processed per month 85

(b) Outcome: Number of transactions abstracted annually into the water

administration technical engineering resource system

database 23,000

(2) Interstate stream compact compliance and water development:

The purpose of the interstate stream compact compliance and water development program is to provide resolution of federal and interstate water issues and to develop water resources and stream systems for the people of New Mexico so they can have maximum sustained beneficial use of available water resources.

Appropriations:

(a) Personal services and

employee benefits	1,583.5	76.5	2,175.1	3,835.1
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(b) Contractual services

35.0	6,384.0	23.2	6,442.2
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(c) Other

274.3	3,391.6	160.2	3,826.1
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The internal service funds/interagency transfers appropriations to the interstate stream compact compliance and water development program of the state engineer include seven million forty-six thousand four hundred dollars (\$7,046,400) from the New Mexico irrigation works construction fund, two million three hundred eighty-five thousand dollars (\$2,385,000) from the improvement of Rio Grande income fund, one hundred thousand dollars (\$100,000) from the game protection fund for Ute dam operations and eighty-two thousand three hundred dollars (\$82,300) from the game protection fund for Eagle Nest dam operations. Any unexpended balances remaining at the end of fiscal year 2018 from these appropriations shall revert to the appropriate fund.

Revenue from the sale of water to United States government agencies by New Mexico for the emergency drought water agreement, and from contractual reimbursements associated with the interstate stream and compact compliance and water development program of the state engineer use of the revenue, is appropriated to the interstate stream compact compliance and water development program to be used per the agreement with the United States bureau of reclamation.

The appropriations to the interstate stream compact compliance and water development program of the state engineer include one million nine hundred thousand dollars (\$1,900,000): (a) 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 New

Mexico irrigation works construction fund or improvement of Rio Grande income fund and provided that no more than two hundred fifty thousand dollars (\$250,000) shall be allocated to any one acequia or community ditch per fiscal year; and (b) for the construction, restoration, repair and protection from floods of dams, reservoirs, ditches, diversions, flumes and appurtenances of acequias and community ditches in the state through the interstate stream commission 90/10 match program provided that not more than one hundred fifty thousand dollars (\$150,000) of this appropriation shall be used as the state share for any one acequia or community ditch per state fiscal year and capital appropriations shall not be used to meet the acequia's or community ditch's ten percent share of project costs.

The internal service funds/interagency transfers appropriation to the interstate stream compact compliance and water development program of the state engineer in the contractual services category includes up to three hundred thousand dollars (\$300,000) for engineering services for approved acequia or community ditch projects.

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 and 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.

The interstate stream commission's authority to make loans from the New Mexico irrigation works construction fund includes two million dollars (\$2,000,000) for irrigation districts, acequias, conservancy districts and soil and water conservation districts for purchase and installation of meters and measuring equipment. The maximum loan term is five years.

Performance measures:

(a) Outcome: Cumulative state-line delivery credit per the Pecos river

compact and amended decree at the end of the calendar year,  
in acre-feet >0

(b) Outcome: Cumulative state-line delivery credit per the Rio Grande

compact and amended decree at the end of the calendar year,  
in acre-feet >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	957.2	3,602.7	140.2	4,700.1
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(b)	Contractual services		1,435.8	1,435.8
(c)	Other	294.1	294.1	
(d)	Other financing uses		621.9	621.9

The internal service funds/interagency transfers appropriations to the litigation and adjudication program of the state engineer include two million four hundred ninety-two thousand dollars (\$2,492,000) from the New Mexico irrigation works construction fund.

The other state funds appropriation to the litigation and adjudication program of the state engineer includes three million six hundred two thousand seven hundred dollars (\$3,602,700) from the water project fund pursuant to Section 72-4A-9 NMSA 1978.

Performance measures:

(a) Outcome: Number of offers to defendants in adjudications 839

(b) Outcome: Percent of all water rights with judicial determinations 70%

(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	3,330.1		3,330.1
(b)	Contractual services		361.4	361.4
(c)	Other	567.7	567.7	

The internal service funds/interagency transfers appropriations to program support of the state engineer include nine hundred twenty-nine thousand one hundred dollars (\$929,100) from the New Mexico irrigation works construction fund.

Subtotal			39,466.9	
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TOTAL AGRICULTURE, ENERGY AND

NATURAL RESOURCES	62,870.2	85,991.3	21,423.7	40,695.0
	210,980.2			

**F. HEALTH, HOSPITALS AND HUMAN SERVICES**

## 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	475.4		475.4
(b)	Contractual services	126.1		126.1
(c)	Other	127.6	127.6	
	Subtotal			729.1

## 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 serve as a dynamic resource that will enhance the quality of life for deaf and hard-of-hearing citizens of New Mexico by being the recognized advocate on important issues impacting the deaf and hard-of-hearing community, the proactive provider of innovative programs and services and the statewide umbrella and information clearinghouse for interested individuals, organizations, agencies and institutions.

#### Appropriations:

(a)	Personal services and employee benefits		1,121.6		1,121.6
(b)	Contractual services	319.4	768.6	317.6	1,405.6
(c)	Other	319.3	319.3		
(d)	Other financing uses			116.5	116.5

The general fund appropriation to the deaf and hard-of-hearing program of the commission for deaf and hard-of-hearing persons in the contractual services category includes three hundred thousand dollars (\$300,000) for deaf and deaf-blind support service provider programs.

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 ninety-one thousand five hundred dollars (\$91,500) 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 and twenty-five thousand dollars (\$25,000) to transfer to the signed language interpreting practices board of the regulation and licensing department for interpreter licensure services.

Performance measures:

(a) Output: Number of accessible technology equipment distributions 800

Subtotal 2,963.0

**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	143.3		143.3
(b)	Contractual services		12.3	12.3
(c)	Other	137.5		137.5
	Subtotal			293.1

**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	1,101.4	92.9	3,860.7	5,055.0
(b)	Contractual services	76.0	18.6	122.9	217.5
(c)	Other	661.4	4,542.5	280.2	1,946.9
	Subtotal			7,431.0	
(d)	Other financing uses		100.0		100.0

Any unexpended balances in the commission for the blind remaining at the end of fiscal year 2018 from appropriations made from the general fund shall not revert.

The general fund appropriation to the blind services program of the commission for the blind to provide services to the blind or visually impaired citizens of New Mexico in the other financing uses category includes one hundred thousand dollars (\$100,000) to transfer to the rehabilitation services program of the division of vocational rehabilitation to match with federal funds to provide rehabilitation services for the disabled.

Performance measures:

(a) Output: Number of quality employment opportunities obtained for

agency's blind or visually impaired clients 25

(b) Outcome: Average hourly wage for the blind or visually impaired

person \$13.75

(c) Outcome: Number of persons who avoided or delayed moving into a

nursing home or assisted living facility as a result of

receiving independent living services 60

Subtotal 12,803.5

**INDIAN AFFAIRS DEPARTMENT:**

(1) Indian affairs:

The purpose of the Indian affairs program is to coordinate intergovernmental and interagency programs concerning tribal governments and the state.

Appropriations:

(a) Personal services and

employee benefits 1,084.0 1,084.0

(b) Contractual services 486.6 249.3 735.9

(c) Other 669.9 669.9

The internal service funds/interagency transfers appropriation to the Indian affairs program of the Indian affairs department in the contractual services category includes two hundred forty-nine thousand three hundred dollars (\$249,300) from the tobacco settlement program fund for tobacco cessation and prevention programs for Native American communities throughout the state.

The general fund appropriation to the Indian affairs program of the Indian affairs department in the other category includes ~~[sufficient funds for]~~ up to one hundred thousand dollars (\$100,000) for a Native American leadership institute ~~[in Santa Fe county]~~ *LINE-ITEM VETO*.

Performance measures:

(a) Outcome: Percent of capital projects over fifty thousand dollars

completed and closed on schedule 75%

(b) Outcome: Percent of tribal infrastructure fund projects over fifty

thousand dollars completed and closed on schedule 75%

Subtotal 2,489.8

**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 people with disabilities, residents of long-term care facilities and their families and caregivers that allow them to protect their rights and make informed choices about quality services.

Appropriations:

(a) Personal services and

employee benefits 1,449.6 1,010.3 955.5 3,415.4

(b) Contractual services 16.0 59.0 75.0

(c) Other 194.6 333.8 528.4

Performance measures:

(a) Outcome: Percent of residents who remained in the community six

months following a nursing home care transition 90%

(2) Aging network:

The purpose of the aging network program is to provide supportive social and nutrition services for older individuals and people 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 workforce and receive appropriate income and benefits.

Appropriations:

(a)	Personal services and employee benefits	43.4	34.9	78.3	
(b)	Contractual services	621.2	10.0	631.2	
(c)	Other	27,738.0	308.5	10,537.6	38,584.1

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 exiting the federal older worker program who obtain unsubsidized employment 47%
- (b) Outcome: Percent of older New Mexicans whose food insecurity is alleviated by meals received through the aging network 90%
- (c) Outcome: Percent of older New Mexicans receiving services to support caregiving and healthy and productive aging through the aging network 50%

(3) Adult protective services:

The purpose of the adult protective services program is to investigate allegations of abuse, neglect and exploitation of seniors and adults with disabilities and provide in-home support services to adults at high risk of repeat neglect.

Appropriations:

(a)	Personal services and employee benefits	8,290.2	8,290.2	
(b)	Contractual services	1,290.4	2,498.6	3,789.0
(c)	Other	1,351.2	1,351.2	

Performance measures:

(a) Output: Number of adults who receive home care or adult day

services as a result of an investigation of abuse, neglect

or exploitation 1,550

(b) Quality: Percent of contracted homecare and daycare service

providers receiving no deficiencies during annual on-site

audits by adult protective services 98%

(c) Output: Number of adult protective services' investigations of

abuse, neglect or exploitation 6,100

~~[(d) Outcome: Percent of adults with repeat maltreatment 9%]~~

*LINE-ITEM VETO*

(4) 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 3,132.4 610.5 3,742.9

(b) Contractual services 136.5 136.5

(c) Other 135.2 135.2

Subtotal 60,757.4

**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	4,899.2		7,421.5	12,320.7
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(b) Contractual services	11,862.9	1,655.3	759.9	43,053.2
	57,331.3			

(c) Other	797,543.3	56,420.0	214,529.0	4,120,283.2	5,188,775.5
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The appropriations to the medical assistance program of the human services department assume the state will receive an enhanced federal medical assistance percentage rate for those enrolled in the new adult category through fiscal year 2018 as provided for in the federal Patient Protection and Affordable Care Act, as amended by the federal Health Care and Education Reconciliation Act of 2010. Should the federal government reduce or rescind the federal medical assistance percentage rates established by the federal Patient Protection and Affordable Care Act, the human services department shall reduce or rescind eligibility for the new adult category.

The internal service funds/interagency transfers appropriations to the medical assistance program of the human services department include one million two hundred fifty-five thousand four hundred dollars (\$1,255,400) from the tobacco settlement program fund for the breast and cervical cancer treatment program and twenty-eight million sixty-three thousand nine hundred dollars (\$28,063,900) from the tobacco settlement program fund for medicaid programs. Nineteen million five hundred thousand dollars (\$19,500,000) of the internal service funds/interagency transfers appropriations to the medical assistance program of the human services department is contingent on enactment of legislation of the first session of the fifty-third legislature authorizing sufficient tobacco settlement revenue distributions from the tobacco settlement program fund for this appropriation.

The medical assistance program of the human services department shall pursue the necessary federal authority to establish a targeted medicaid funded home-visiting program. The department shall work in collaboration with the early childhood services program of the children, youth and families department and the families first program of the department of health to align home-visiting programs, avoid duplication of services and, to the extent possible, leverage general fund appropriations.

The general fund appropriation of the medical assistance program of the human services department assumes the federal government takes action to eliminate or suspend the health insurance provider fee, thereby reducing the general fund need of the program by seventeen million dollars (\$17,000,000) in fiscal year 2018. Should the federal government not take such action, the program may be required to take other actions to reduce spending in fiscal year 2018, such as reducing provider reimbursement rates, changing benefits or adjusting eligibility.

The general fund appropriation to the medical assistance program of the human services department assumes the department may have to make changes to the amount, duration and scope of covered services and benefits.

Notwithstanding the provisions of Section 27-10-3 NMSA 1978, the internal service funds/interagency transfers appropriations to the medical assistance program of the human services department include twenty-nine million two hundred seventy-five thousand dollars (\$29,275,000) from the county-supported medicaid fund.

Performance measures:



(b) Output: Number of individuals served annually in substance abuse or mental health programs administered through the behavioral

health collaborative and medicaid programs 160,000

(3) 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. Eligibility requirements are established by state law within broad federal statutory guidelines.

Appropriations:

(a) Personal services and

employee benefits	20,717.0	465.5	32,718.5	53,901.0
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(b) Contractual services	4,659.3	58.3	33,358.5	
	38,076.1			

(c) Other	18,392.5	171.7	874,267.7	892,831.9
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The federal funds appropriations to the income support program of the human services department include eleven million five hundred seven thousand seven hundred dollars (\$11,507,700) 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 eighty-seven thousand one hundred dollars (\$87,100) from the general fund and fifty-one million one hundred fifty thousand dollars (\$51,150,000) 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 wage subsidies for participants, two clothing allowances per year, diversion payments and state-funded payments to aliens.

The federal funds appropriations to the income support program of the human services department include twenty million six hundred fifty-one thousand dollars (\$20,651,000) from the federal temporary assistance for needy families block grant for job training and placement and job-related transportation services, employment-related costs and a transitional employment program. The funds for the transitional employment program and the wage subsidy program may be used interchangeably.

The federal funds appropriations to the income support program of the human services department include thirty million five hundred twenty-seven thousand five hundred dollars (\$30,527,500) from the federal temporary assistance for needy families block grant for transfer to the children, youth and families department for childcare programs, five million dollars (\$5,000,000) for home-visiting programs, fourteen million one hundred thousand dollars (\$14,100,000) for prekindergarten and nine hundred thousand dollars (\$900,000) for a pilot supportive housing project.

The federal funds appropriations to the income support program of the human services department include three million five hundred thousand dollars (\$3,500,000) from the federal temporary assistance for needy families block grant for transfer to the public education department for prekindergarten.

The appropriations to the income support program of the human services department include seven million two hundred twenty thousand dollars (\$7,220,000) from the general fund and three million eighty thousand three hundred dollars (\$3,080,300) from federal funds for general assistance.

Any unexpended balances remaining at the end of fiscal year 2018 from the other state funds appropriations derived from reimbursements received from the social security administration for the general assistance program shall not revert.

~~[The general fund appropriations to the income support program of the human services department include two hundred ten thousand nine hundred dollars (\$210,900) for the Navajo sovereign temporary assistance for needy families program and thirty one thousand dollars (\$31,000) for the Zuni sovereign temporary assistance for needy families program.]~~ *LINE-ITEM VETO*

The general fund appropriation to the income support program of the human services department in the contractual services category includes seven hundred forty-one thousand five hundred dollars (\$741,500) for the food banks program.

Performance measures:

(a) Outcome: Percent of parent participants who meet temporary assistance for needy families federal work participation requirements 52%

(b) Outcome: Percent of temporary assistance for needy families two-parent recipients meeting federal work participation requirements 62%

(c) Outcome: Percent of eligible children in families with incomes of one hundred thirty percent of the federal poverty level participating in the supplemental nutrition assistance program 92%

(4) Behavioral health services:

The purpose of the behavioral health services program is to lead and oversee the provision of an integrated and comprehensive behavioral health prevention and treatment system so that the program fosters recovery and supports the health and resilience of all New Mexicans.

Appropriations:

(a) Personal services and

employee benefits	2,031.1		1,023.8	3,054.9
(b) Contractual services	34,336.4			17,197.1
	51,533.5			
(c) Other	672.2	1,012.2	1,684.4	

Performance measures:

(a) Outcome: Percent of individuals discharged from inpatient facilities

who receive follow-up services at thirty days 67%

(b) Outcome: Percent of people with a diagnosis of alcohol or drug

dependency who initiated treatment and received two or more

additional services within thirty days of the initial visit 40%

(5) 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	4,312.3	1,406.7		13,224.4
	18,943.4			

(b) Contractual services	1,578.0	1,026.8		3,889.2
	6,494.0			

(c) Other	1,204.7	958.5	2,871.2	5,034.4
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Performance measures:

(a) Explanatory: Amount of child support collected, in millions

(b) Outcome: Percent of current support owed that is collected 62%

(c) Outcome: Percent of cases with support orders 85%

(d) Outcome: Percent of cases having support arrears due, for which

arrears are collected 67%

(6) Program support:

The purpose of program support is to provide overall leadership, direction and administrative support to each agency program and to assist it in achieving its programmatic goals.

Appropriations:

(a)	Personal services and			
	employee benefits	3,813.5	13,478.3	17,291.8
(b)	Contractual services	6,437.3	12,372.1	
		18,809.4		
(c)	Other	5,058.8	10,767.2	15,826.0
	Subtotal		6,921,782.0	

**WORKFORCE SOLUTIONS DEPARTMENT:**

(1) Unemployment insurance:

The purpose of the unemployment insurance program is to administer an array of demand-driven workforce development services to prepare New Mexicans to meet the needs of business.

Appropriations:

(a)	Personal services and				
	employee benefits	884.4	1,707.9	5,388.7	7,981.0
(b)	Contractual services		63.8	291.0	354.8
(c)	Other	137.8	305.4	943.2	1,386.4

The internal service funds/interagency transfers appropriations to the unemployment insurance program of the workforce solutions department include nine hundred thousand dollars (\$900,000) from the workers' compensation administration fund of the workers' compensation administration.

Performance measures:

- (a) Output: Percent of eligible unemployment insurance claims issued a determination within twenty-one days from the date of claim 80%
- (b) Output: Average wait time to speak to a customer service agent in

the unemployment insurance operation center to file a new  
unemployment insurance claim, in minutes 15

(c) Output: Average wait time to speak to a customer service agent in  
the unemployment insurance operation center to file a  
weekly certification, in minutes 15

(2) Labor relations:

The purpose of the labor relations program is to provide employment rights information and other work-site-based assistance to employers and employees.

Appropriations:

(a)	Personal services and employee benefits	1,233.3	371.4	221.2	1,825.9
(b)	Contractual services	11.7	21.7		33.4
(c)	Other	146.6	1,456.9	2.8	1,606.3

The internal service funds/interagency transfers appropriations to the labor relations program of the workforce solutions department include six hundred thousand dollars (\$600,000) from the workers' compensation administration fund of the workers' compensation administration.

Performance measures:

(a) Output: Average number of days to investigate and issue a  
determination on a charge of discrimination 180

(b) Output: Number of compliance reviews and quality assessments on  
registered apprenticeship programs 6

(3) Workforce technology:

The purpose of the workforce technology program is to provide and maintain customer-focused, effective and innovative information technology services for the department and its service providers.

Appropriations:

(a) Personal services and

	employee benefits	94.9	44.7	3,264.2	3,403.8
(b)	Contractual services	7,536.3	2,997.7	4,158.6	380.0
(c)	Other	1,568.4	1.7	551.1	2,121.2

Performance measures:

- (a) Outcome: Percent of time unemployment insurance benefits are paid within three business days of claimant certification 100%

(4) Employment services:

The purpose of the employment services program is to provide standardized business solution strategies and labor market information through the New Mexico public workforce system that is responsive to the needs of New Mexico businesses.

Appropriations:

(a)	Personal services and				
	employee benefits	1,166.5	84.2	5,889.4	7,140.1
(b)	Contractual services	154.5		2,745.8	2,900.3
(c)	Other	225.3	10.7	2,990.0	3,226.0

Performance measures:

- (a) Outcome: Percent of unemployed individuals employed after receiving Wagner-Peyser employment services 55%
- (b) Outcome: Average six-month earnings of persons entering employment after receiving Wagner-Peyser employment services \$13,500

(5) Program support:

The purpose of program support is to provide overall leadership, direction and administrative support to each agency program to achieve organizational goals and objectives.

Appropriations:

- (a) Personal services and

	employee benefits	195.8	282.8	5,854.7	6,333.3
(b)	Contractual services	5.3	21.3	651.2	677.8
(c)	Other	10.4	318.9	14,390.4	14,719.7

Performance measures:

(a) Output: Number of adult and dislocated workers receiving Workforce Investment Act or Workforce Innovation and Opportunity Act services as administered and directed by the local area workforce board 2,700

(b) Outcome: Percent of individuals who enter employment after receiving Workforce Investment Act or Workforce Innovation and Opportunity Act services as administered and directed by the local area workforce board 70%

(c) Output: Percent of individuals who retain employment after receiving Workforce Investment Act or Workforce Innovation and Opportunity Act services as administered and directed by the local area workforce board 89%

Subtotal 61,246.3

**WORKERS' COMPENSATION ADMINISTRATION:**

(1) Workers' compensation administration:

The purpose of the workers' compensation administration program is to assure the quick and efficient delivery of indemnity and medical benefits to injured and disabled workers at a reasonable cost to employers.

Appropriations:

(a)	Personal services and				
	employee benefits	8,091.1			8,091.1

(b)	Contractual services	327.1	327.1
(c)	Other	1,355.8	1,355.8
(d)	Other financing uses	1,500.0	1,500.0

The other state funds appropriation to the workers' compensation administration program of the workers' compensation administration in the other financing uses category includes nine hundred thousand dollars (\$900,000) from the workers' compensation administration fund for the unemployment insurance program of the workforce solutions department and six hundred thousand dollars (\$600,000) from the workers' compensation administration fund for the labor relations program of the workforce solutions department.

Performance measures:

- (a) Outcome: Rate of serious injuries and illnesses caused by workplace conditions per one hundred workers 0.6
- (b) Outcome: Percent of employers determined to be in compliance with insurance requirements of the Workers' Compensation Act after initial investigations 95%

(2) Uninsured employers' fund:

Appropriations:

(a)	Personal services and employee benefits	329.4	329.4
(b)	Contractual services	100.0	100.0
(c)	Other	461.1	461.1

Performance measures:

- (a) Output: Percent of reimbursements collected to claims expense paid out on a fiscal year basis 33%

Subtotal 12,164.5

**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 they may maximize their employment, economic self-sufficiency, independence and inclusion and integration into society.

Appropriations:

(a)	Personal services and					
	employee benefits			9,224.5		9,224.5
(b)	Contractual services				2,028.5	2,028.5
(c)	Other	4,998.6	400.0	91.5	11,336.3	16,826.4
(d)	Other financing uses			100.0	100.0	200.0

The internal service funds/interagency transfers appropriation to the rehabilitation services program of the division of vocational rehabilitation in the other category includes ninety-one thousand five hundred dollars (\$91,500) to match with federal funds to support and enhance deaf and hard-of-hearing rehabilitation services.

The internal service funds/interagency transfers appropriations to the rehabilitation services program of the division of vocational rehabilitation include one hundred thousand dollars (\$100,000) and the federal funds appropriations to the rehabilitation services program of the division of vocational rehabilitation include one hundred thousand dollars (\$100,000) in the other financing uses category for the commission for the blind for the independent living program to provide services to the blind or visually impaired citizens of New Mexico.

Performance measures:

- (a) Outcome: Number of clients achieving suitable employment for a  
minimum of ninety days      837
- (b) Outcome: Percent of clients achieving suitable employment outcomes  
of all cases closed after receiving planned services      50%

(2) Independent living services:

The purpose of the independent living services program is to increase access for individuals with disabilities to technologies and services needed for various applications in learning, working and home management.

Appropriations:

- (a) Personal services and

employee benefits	70.4		70.4
(b) Other	578.6	150.0	756.1 1,484.7

Performance measures:

(a) Output: Number of independent living plans developed 467

(b) Output: Number of individuals served for independent living 488

(3) Disability determination:

The purpose of the disability determination program is to produce accurate and timely eligibility determinations to social security disability applicants so they may receive benefits.

Appropriations:

(a) Personal services and			
employee benefits		6,290.1	6,290.1
(b) Contractual services		2,102.7	2,102.7
(c) Other	6,314.7	6,314.7	

Performance measures:

(a) Efficiency: Average number of days for completing an initial disability claim 100

(4) Administrative services:

The purpose of the administrative services program is to provide leadership, policy development, financial analysis, budgetary control, information technology services, administrative support and legal services to the division of vocational rehabilitation. The administration program function is to ensure the division achieves a high level of accountability and excellence in services provided to the people of New Mexico.

Appropriations:

(a) Personal services and			
employee benefits		3,422.7	3,422.7
(b) Contractual services		807.2	807.2
(c) Other	1,320.1	1,320.1	

Any unexpended balances in the division of vocational rehabilitation remaining at the end of fiscal year 2017 and fiscal year 2018 from appropriations made from the general fund shall not revert.

Subtotal 50,092.0

**GOVERNOR'S COMMISSION ON DISABILITY:**

(1) Governor's commission on disability:

The purpose of the governor's commission on disability program is to promote policies and programs that focus on common issues faced by New Mexicans with disabilities, regardless of type of disability, age or other factors. The commission educates state administrators, legislators and the general public on the issues facing New Mexicans with disabilities, especially as they relate to Americans with Disabilities Act directives, building codes, disability technologies and disability culture so they can improve the quality of life of New Mexicans with disabilities.

Appropriations:

(a)	Personal services and				
	employee benefits	698.6	206.0	904.6	
(b)	Contractual services	117.6	96.4	214.0	
(c)	Other	156.8 100.0	142.1	398.9	

Performance measures:

(a) Outcome: Percent of requested architectural plan reviews and site inspections completed 95%

(2) Brain injury advisory council:

The purpose of the brain injury advisory council program is to provide guidance on the use and implementation of programs provided through the human services department's brain injury services fund so the department may align service delivery with needs identified by the brain injury community.

Appropriations:

(a)	Personal services and				
	employee benefits	69.4	69.4		
(b)	Contractual services	66.3	66.3		
(c)	Other	58.6	58.6		

Subtotal 1,711.8

**DEVELOPMENTAL DISABILITIES PLANNING COUNCIL:**

(1) Developmental disabilities planning council:

The purpose of the developmental disabilities planning council program is to provide and produce opportunities for people with disabilities so they may realize their dreams and potential and become integrated members of society.

Appropriations:

(a)	Personal services and				
	employee benefits	381.8	211.3	593.1	
(b)	Contractual services	18.3	267.6	285.9	
(c)	Other	303.9	75.0	5.0	383.9

Performance measures:

(a) Outcome: Percent of developmental disabilities planning council  
funded projects promoting meaningful employment  
opportunities and public awareness 100%

(2) Office of guardianship:

The purpose of the office of guardianship is to enter into, monitor and enforce guardianship contracts for income-eligible persons and to help file, investigate and resolve complaints about guardianship services provided by contractors to maintain the dignity, safety and security of the indigent and incapacitated adults of the state.

Appropriations:

(a)	Personal services and				
	employee benefits	520.0	520.0		
(b)	Contractual services	3,728.5	258.3	550.0	4,536.8
(c)	Other	119.9	119.9		

Any unexpended balances in the office of guardianship program of the developmental disabilities planning council remaining at the end of fiscal year 2018 from appropriations made from the general fund and internal service funds/interagency transfers shall not revert.

Performance measures:

- (a) Outcome: Percent of protected persons served by court-appointed guardians in the least restrictive environment as evidenced by annual technical compliance reviews 95%

Subtotal 6,439.6

**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 | 17,669.9 | 17,669.9 |
| (b) | Contractual services                    | 3,700.0  | 3,700.0  |
| (c) | Other                                   | 2,292.7  | 6,000.0  |
|     |   | 474.6    | 8,767.3  |

~~[The other state funds appropriation to the healthcare program of the miners' hospital of New Mexico in the other category includes up to five hundred thousand dollars (\$500,000) from patient revenue to transfer to the medical assistance program of the human services department for the state share of medical expenditures.] LINE-ITEM VETO~~

The internal service funds/interagency transfers appropriation to the healthcare program of miners' hospital of New Mexico in the other category includes six million dollars (\$6,000,000) from the miners' trust fund.

Performance measures:

- (a) Outcome: Rate of unassisted patient falls per one thousand patient days in the long-term care facility <4%
- (b) Output: Percent occupancy in acute care facility based on number of licensed beds 35%

Subtotal 30,137.2

**DEPARTMENT OF HEALTH:**

(1) Public health:

The purpose of the public health program is to provide a coordinated system of community-based public health services focusing on disease prevention and health promotion to improve health status, reduce disparities and ensure timely access to quality, culturally competent health care.

Appropriations:

(a)	Personal services and				
	employee benefits	22,029.7	3,251.6	2,990.0	23,564.3
		51,835.6			
(b)	Contractual services	15,317.1	5,049.5		13,554.4
		11,669.7	45,590.7		
(c)	Other	12,037.4	34,315.9	245.1	36,844.1
					83,442.5
(d)	Other financing uses		462.3		462.3

The internal service funds/interagency transfers appropriations to the public health program of the department of health include five million four hundred thirty-five thousand two hundred dollars (\$5,435,200) from the tobacco settlement program fund for smoking cessation and prevention programs, seven hundred fifteen thousand five hundred dollars (\$715,500) from the tobacco settlement program fund for diabetes prevention and control services, two hundred ninety-three thousand dollars (\$293,000) from the tobacco settlement program fund for human immunodeficiency virus/acquired immune deficiency syndrome prevention, services and medicine and one hundred twenty-eight thousand six hundred dollars (\$128,600) from the tobacco settlement program fund for breast and cervical cancer screening.

Performance measures:

~~[(a) Output: Number of teens ages fifteen to seventeen receiving family planning services in clinics funded by the department of health 2,000]~~

*LINE-ITEM VETO*

(b) Quality: Percent of female family planning clients ages fifteen to nineteen provided most or moderately effective contraceptives 68%

(c) Explanatory: Number of births to teens ages fifteen to nineteen per one

thousand females ages fifteen to nineteen

(d) Output: Percent of preschoolers ages nineteen to thirty-five months

who are fully immunized 78%

(e) Output: Number of teens who successfully complete a teen outreach

program class =448

~~[(f) Quality: Percent of students using school-based health centers who~~

~~receive a comprehensive well exam 26%]~~

### *LINE-ITEM VETO*

(2) Epidemiology and response:

The purpose of the epidemiology and response program is to monitor health, provide health information, prevent disease and injury, promote health and healthy behaviors, respond to public health events, prepare for health emergencies and provide emergency medical and vital registration services to New Mexicans.

Appropriations:

(a) Personal services and

employee benefits	3,938.2	254.1	602.1	8,906.8	13,701.2
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(b) Contractual services	3,522.7	45.3	84.9	4,575.8
	8,228.7			

(c) Other	4,541.8	108.3	79.2	1,529.5	6,258.8
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The epidemiology and response program of the department of health shall not distribute any trauma system fund appropriations to a level one trauma center.

Performance measures:

(a) Outcome: Percent of vital records customers satisfied with the

service they receive 95%

~~[(b) Outcome: Ratio of infant pertussis rate to total pertussis rate 4:4]~~

### *LINE-ITEM VETO*

(c) Outcome: Percent of retail pharmacies that dispense naloxone 55%

(3) Laboratory services:

The purpose of the laboratory services program is to provide laboratory analysis and scientific expertise for policy development for tax-supported public health, environment and toxicology programs in the state of New Mexico to provide timely identification of threats to the health of New Mexicans.

Appropriations:

(a) Personal services and

employee benefits	5,246.0	1,238.7	103.0	1,359.5
	7,947.2			

(b) Contractual services	260.9	93.2	5.0	25.9	385.0
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(c) Other	2,092.7	75.6	1,143.1	1,260.6	4,572.0
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(4) Facilities management:

The purpose of the facilities management program is to provide oversight for department of health facilities that provide health and behavioral healthcare services, including mental health, substance abuse, nursing home and rehabilitation programs in both facility- and community-based settings, and serve as the safety net for the citizens of New Mexico.

Appropriations:

(a) Personal services and

employee benefits	44,027.3	49,903.5	907.1	7,133.0
	101,970.9			

(b) Contractual services	4,441.2	8,409.7		107.7
	12,958.6			

(c) Other	9,676.3	13,846.4	211.1	104.8	23,838.6
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Performance measures:

(a) Efficiency: Percent of eligible third-party revenue collected at all agency facilities 93%

~~(b) Explanatory: Dollar amount of uncompensated care at all agency facilities, in millions~~

~~(c) Outcome: Percent of long-term care residents with  
healthcare-acquired pressure ulcers — 4%]~~

*LINE-ITEM VETO*

(d) Efficiency: Vacancy rate for direct care positions 10%

(e) Quality: Percent of long-term care residents experiencing one or  
more falls with major injury 3%

(5) Developmental disabilities support:

The purpose of the developmental disabilities support program is to administer a statewide system of community-based services and support to improve the quality of life and increase the independence and interdependence of individuals with developmental disabilities and children with or at risk for developmental delay or disability and their families.

Appropriations:

(a)	Personal services and employee benefits	6,434.9	6,105.1	577.3	13,117.3
(b)	Contractual services	8,420.0	1,200.0	1,114.3	
		1,161.2	11,895.5		
(c)	Other	21,531.0	400.0	911.0	1,080.7
					23,922.7
(d)	Other financing uses		109,878.3		109,878.3

~~[The general fund appropriation to the developmental disabilities support program of the department of health in the contractual services category includes sufficient funding for evidence-based job training services from the special services program of the Roswell branch of eastern New Mexico university.]~~

*LINE-ITEM VETO*

Performance measures:

(a) Explanatory: Number of individuals receiving developmental disabilities  
waiver services

(b) Explanatory: Number of individuals on the developmental disabilities  
waiver waiting list

(c) Outcome: Percent of adults receiving community inclusion services

through the developmental disabilities waiver who receive  
employment services 34%

(6) Health certification, licensing and oversight:

The purpose of the health certification, licensing and oversight program is to provide health facility licensing and certification surveys, community-based oversight and contract compliance surveys and a statewide incident management system so that people in New Mexico have access to quality health care and that vulnerable populations are safe from abuse, neglect and exploitation.

Appropriations:

(a) Personal services and

employee benefits	3,502.5	1,368.3	2,718.3	2,103.3
	9,692.4			

(b) Contractual services 253.2 414.2 113.2 88.1 868.7

(c) Other 436.9 111.0 516.9 421.6 1,486.4

Performance measures:

(a) Outcome: Re-abuse rate for developmental disabilities waiver and mi  
via waiver clients =9%

~~[(b) Explanatory: Percent of long stay nursing home residents who are  
receiving psychoactive drugs but do not have evidence of  
psychotic or related conditions] LINE-ITEM VETO~~

(7) Medical cannabis:

The purpose of the medical cannabis program is to provide qualified patients with the means to legally and beneficially consume medical cannabis in a regulated system for alleviating symptoms caused by debilitating medical conditions and their medical treatments and to regulate a system of production and distribution of medical cannabis to ensure an adequate supply.

Appropriations:

(a) Personal services and

employee benefits	1,400.0	1,400.0
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(b) Contractual services 234.0 234.0

(c)	Other	1,116.0		1,116.0
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(8) Administration:

The purpose of the administration program is to provide leadership, policy development, information technology, administrative and legal support to the department of health so it achieves a high level of accountability and excellence in services provided to the people of New Mexico.

Appropriations:

(a)	Personal services and				
	employee benefits	4,596.9	668.4	6,262.3	11,527.6
(b)	Contractual services	144.7	28.6	612.4	785.7
(c)	Other	496.5	60.5	760.6	1,317.6
	Subtotal			548,434.3	

**DEPARTMENT OF ENVIRONMENT:**

(1) Resource protection:

The purpose of the resource protection program is to monitor and provide regulatory oversight of the generation, storage, transportation and disposal of wastes in New Mexico. The program also oversees the investigation and cleanup of environmental contamination covered by the Resource Conservation and Recovery Act.

Appropriations:

(a)	Personal services and				
	employee benefits	1,226.1	6,212.1	2,471.5	9,909.7
(b)	Contractual services	2.0	862.2	1,011.5	1,875.7
(c)	Other	137.0	1,050.9	597.6	1,785.5

Performance measures:

(a) Outcome: Percent of underground storage tank facilities in significant operational compliance with release prevention and release detection requirements 77%

(2) Water protection:

The purpose of the water protection program is to protect and preserve the ground, surface and drinking water resources of the state for present and future generations. The program also helps New Mexico communities develop sustainable and secure water, wastewater and solid waste infrastructure through funding, technical assistance and project oversight.

Appropriations:

(a) Personal services and

employee benefits	1,631.9	234.2	5,445.3	6,566.3
	13,877.7			

(b) Contractual services	398.1		3,575.3	6,986.2
	10,959.6			

(c) Other	148.1	3.6	744.3	1,150.7	2,046.7
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Performance measures:

(a) Output: Percent of facilities operating under a groundwater

discharge permit inspected each year 65%

(3) Environmental protection:

The purpose of the environmental protection program is to ensure New Mexicans breathe healthy air; to protect public health and the environment through specific programs that provide regulatory oversight of food service and food processing facilities, on-site treatment and disposal of liquid wastes, public swimming pools and baths and medical radiation and radiological technologist certification; and to ensure every employee has safe and healthful working conditions.

Appropriations:

(a) Personal services and

employee benefits	4,306.3		9,939.6	2,486.4
	16,732.3			

(b) Contractual services	12.3		1,402.1	429.5	1,843.9
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(c) Other	926.5	1,719.3	1,191.0	3,836.8
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(4) Resource management:

The purpose of the resource management program is to provide overall leadership, administrative, legal and information management support to all programs within the department. This support allows the

department to operate in the most responsible, efficient and effective manner so the public can receive the information it needs to hold the department accountable.

Appropriations:

(a)	Personal services and				
	employee benefits	2,015.4		3,143.7	1,319.2
		6,478.3			
(b)	Contractual services	253.3		172.0	79.0
(c)	Other	315.5	231.0	451.3	997.8

Performance measures:

(a) Output: Percent of enforcement actions initiated within one year of inspection or documentation of violation 98%

(5) Special revenue funds:

Appropriations:

(a)	Contractual services		3,500.0		3,500.0
(b)	Other	16,899.2		16,899.2	
	Subtotal		91,247.5		

**OFFICE OF THE NATURAL RESOURCES TRUSTEE:**

(1) Natural resource damage assessment and restoration:

The purpose of the natural resources damage assessment and restoration program is to restore or replace natural resources injured or lost due to releases of hazardous substances or oil into the environment.

Appropriations:

(a)	Personal services and				
	employee benefits	247.5	37.6	285.1	
(b)	Contractual services		1,996.0		1,996.0
(c)	Other	18.8		18.8	

Subtotal 2,299.9

**VETERANS' SERVICES DEPARTMENT:**

(1) Veterans' services:

The purpose of the veterans' services program is to carry out the mandates of the New Mexico legislature and the governor to provide information and assistance to veterans and their eligible dependents to obtain the benefits to which they are entitled to improve their quality of life.

Appropriations:

(a)	Personal services and				
	employee benefits	2,818.2		251.0	3,069.2
(b)	Contractual services		510.0		510.0
(c)	Other	347.9	239.7	208.0	795.6

Performance measures:

(a) Output: Number of businesses established by veterans with assistance provided by the veterans' business outreach center 16

Subtotal 4,374.8

**CHILDREN, YOUTH AND FAMILIES DEPARTMENT:**

(1) Juvenile justice facilities:

The purpose of the juvenile justice facilities program is to provide rehabilitative services to youth committed to the department, including medical, educational, mental health and other services that will support their rehabilitation.

Appropriations:

(a)	Personal services and					
	employee benefits	54,505.5		1,490.5	55,996.0	
(b)	Contractual services		12,587.6	423.9	327.6	13,339.1
(c)	Other	6,011.5	26.0	72.4		6,109.9

The general fund appropriation to the juvenile justice facilities program of the children, youth and families department in the contractual services category includes two-million one hundred thirty-two thousand four hundred dollars (\$2,132,400) for one-on-one youth mentoring programs and six hundred twenty-one thousand one hundred dollars (\$621,100) for group youth mentoring programs.

Performance measures:

- (a) Outcome: Turnover rate for youth care specialists 15%
- (b) Outcome: Percent of clients who successfully complete formal probation 84%
- (c) Outcome: Percent of clients recommitted to a children, youth and families department facility within two years of discharge from facilities 8%
- (d) Output: Number of physical assaults in juvenile justice facilities <275

(2) Protective services:

The purpose of the protective services program is to receive and investigate referrals of child abuse and neglect and provide family preservation and treatment and legal services to vulnerable children and their families to ensure their safety and well-being.

Appropriations:

(a)	Personal services and				
	employee benefits	43,167.0	1,002.5	11,818.2	
		55,987.7			
(b)	Contractual services	13,788.5	834.2	979.4	9,258.5
		24,860.6			
(c)	Other	31,262.3	1,643.2	194.0	31,771.3
					64,870.8

The internal service funds/interagency transfers appropriations to the protective services program of the children, youth and families department include nine hundred thousand dollars (\$900,000) from the temporary assistance for needy families block grant to New Mexico for supportive housing.

Performance measures:

- (a) Outcome: Percent of adult victims or survivors receiving domestic violence services who have an individualized safety plan 94%

(b) Output: Turnover rate for protective service workers 20%

(c) Outcome: Percent of children who are not the subject of substantiated maltreatment within six months of a prior determination of substantiated maltreatment 92%

(d) Output: Percent of children who are not the subject of substantiated maltreatment while in foster care 99.8%

(3) Early childhood services:

The purpose of the early childhood services program is to provide quality childcare, nutrition services, early childhood education and training to enhance the physical, social and emotional growth and development of children.

Appropriations:

(a)	Personal services and				
	employee benefits	4,056.3		5,181.4	9,237.7
(b)	Contractual services	24,635.8	1,184.8		19,100.0
		16,219.5	61,140.1		
(c)	Other	31,679.7	500.0	30,527.5	88,991.8
					151,699.0

The internal service funds/interagency transfers appropriations to the early childhood services program of the children, youth and families department include forty-nine million six hundred twenty-seven thousand five hundred dollars (\$49,627,500) from the federal temporary assistance for needy families block grant, including thirty million five hundred twenty-seven thousand five hundred dollars (\$30,527,500) for childcare, fourteen million one hundred thousand dollars (\$14,100,000) for prekindergarten and five million dollars (\$5,000,000) for home visiting.

~~[The early childhood services program of the children, youth and families department shall include matching nongovernmental funds as an evaluation criterion in any request for proposals for home visiting services.]~~ *LINE-ITEM VETO*

Performance measures:

(a) Outcome: Percent of children in state-funded prekindergarten showing measurable progress on the preschool readiness kindergarten tool 94%

(b) Outcome: Percent of parents who demonstrate progress in practicing positive parent-child interactions 45%

(4) Behavioral health services:

The purpose of the behavioral health services program is to provide coordination and management of behavioral health policy, programs and services for children.

Appropriations:

(a)	Personal services and			
	employee benefits	2,042.9	251.0	2,293.9
(b)	Contractual services	12,178.4		1,620.9
		13,799.3		
(c)	Other	164.0	34.3	145.6
			343.9	

Performance measures:

(a) Quality: Percent of youth receiving community-based and juvenile detention center behavioral health services who perceive they are doing better in school or work because of the behavioral health services they have received 80%

(5) Program support:

The purpose of program support 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	8,351.8	4,180.5	12,532.3
(b)	Contractual services	1,246.8	57.8	254.3
				1,558.9
(c)	Other	3,539.0	1,612.3	5,151.3
	Subtotal		478,920.5	



(b)	Contractual services	7.5	7.5
(c)	Other 137.3	137.3	

Performance measures:

(a) Efficiency: Percent of revocation hearings held within thirty days of a parolee's return to the corrections department 95%

Subtotal 476.2

**JUVENILE PUBLIC SAFETY ADVISORY BOARD:**

The purpose of the juvenile public safety advisory board is to monitor each youth's rehabilitative process through therapy and support services to assure a low risk for reoffending or re-victimizing the community.

Appropriations:

(a)	Contractual services	4.9	4.9
(b)	Other 8.3	8.3	
	Subtotal	13.2	

**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	94,476.5	13,742.1	970.2	109,188.8
(b)	Contractual services	53,119.6			53,119.6
(c)	Other 108,463.2	950.5	109.0	109,522.7	

The other state funds appropriations to the inmate management and control program include one million dollars (\$1,000,000) from the corrections industries revolving fund. Any remaining balance at the end of fiscal year 2018 shall revert to the corrections industries revolving fund.

The corrections department may use unspent funds that have been appropriated in the inmate management and control program to address pay compaction resulting from changes to the correctional officer salary structure.

Performance measures:

(a) Explanatory: Percent of participating inmates who have completed adult basic education

(b) Explanatory: Percent of residential drug abuse program graduates reincarcerated within thirty-six months of release

(c) Output: Number of inmate-on-inmate assaults with serious injury 10

(d) Output: Number of inmate-on-staff assaults with serious injury 4

(e) Outcome: Percent of release-eligible female inmates still incarcerated past their scheduled release date 5%

(f) Outcome: Percent of release-eligible male inmates still incarcerated past their scheduled release date 5%

(g) Outcome: Percent of prisoners reincarcerated within thirty-six months 40%

(2) Corrections industries:

The purpose of the corrections industries program is to provide training and work experience opportunities for inmates 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	1,569.0	1,569.0
(b)	Contractual services	287.4	287.4
(c)	Other	7,515.1	7,515.1

Performance measures:

(a) Output: Percent of eligible inmates employed by corrections

industries 25%

(3) 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	19,322.4	124.4	19,446.8
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(b) Contractual services	6,246.7	812.7	64.0	7,123.4
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(c) Other	3,495.0	3,040.0	111.6	6,646.6
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Performance measures:

(a) Outcome: Percent of contacts per month made with high-risk offenders

in the community 95%

(b) Quality: Average standard caseload per probation and parole officer 100

(c) Output: Percent of male offenders who graduated from the men's

recovery center and are reincarcerated within thirty-six

months 20%

(d) Output: Percent of female offenders who graduated from the women's

recovery center and are reincarcerated within thirty-six

months 20%

(4) 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	9,989.3		9,989.3
(b)	Contractual services	340.2	215.0	555.2
(c)	Other	1,827.9	154.8 41.1	2,023.8

Performance measures:

- (a) Outcome: Vacancy rate of probation and parole officers 15%
- (b) Outcome: Vacancy rate of correctional officers in public facilities 15%

Subtotal 326,987.7

**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	948.0		948.0
(b)	Contractual services	198.9		198.9
(c)	Other	1,177.1	899.2	2,076.3

Performance measures:

- (a) Outcome: Percent of payment for care and support paid to individual victims 100%

(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		392.6	392.6
(b)	Contractual services		81.9	81.9
(c)	Other	16,159.9	16,159.9	

Performance measures:

(a) Efficiency: Percent of subgrantees who receive compliance monitoring  
via desk audits 90%

(b) Efficiency: Percent of site visits conducted 40%

Subtotal 19,857.6

**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	80,073.5	995.0	2,802.1	6,256.5
		90,127.1			
(b)	Contractual services	1,176.3	5.0	105.0	1,293.5
		2,579.8			
(c)	Other	21,550.9	1,390.0	1,022.2	1,698.9
					25,662.0

The internal service funds/interagency transfers appropriations to the law enforcement program of the department of public safety include ninety-four thousand five hundred dollars (\$94,500) from the weight distance tax identification permit fund. Any unexpended balances in the law enforcement program of the department of public safety remaining at the end of fiscal year 2018 from appropriations made from the weight distance tax identification permit fund shall revert to the weight distance tax identification permit fund.

Performance measures:

(a) Output: Number of data-driven traffic-related enforcement projects  
held 1,700

(b) Output: Number of driving-while-intoxicated saturation patrols

conducted 975

(c) Output: Number of commercial motor vehicle safety inspections

conducted 70,000

(d) Output: Number of driving-while-intoxicated arrests 2,250

(2) Statewide law enforcement support program:

The purpose of the statewide law enforcement support program is to promote a safe and secure environment for the state of New Mexico through intelligently led policing practices, vital scientific and technical support, current and relevant training and innovative leadership for the law enforcement community.

Appropriations:

(a) Personal services and

employee benefits 8,508.3 1,520.7 406.4 646.8 11,082.2

(b) Contractual services 856.9 743.5 174.5 20.0 1,794.9

(c) Other 2,835.9 3,249.3 477.1 115.4 6,677.7

Performance measures:

(a) Outcome: Percent of forensic firearm and toolmark cases completed 90%

(b) Outcome: Percent of forensic latent fingerprint cases completed 90%

(c) Outcome: Percent of forensic chemistry cases completed 90%

(d) Outcome: Percent of forensic biology and DNA cases completed 65%

(3) Program support:

The purpose of program support is to manage the agency's financial resources, assist in attracting and retaining a quality workforce and provide sound legal advice and a clean, pleasant working environment.

Appropriations:

(a) Personal services and

employee benefits 3,549.1 45.9 52.5 608.8 4,256.3

(b)	Contractual services	147.3	5.0	152.3
(c)	Other	370.6	350.0	6.7
		3,022.4	3,749.7	
	Subtotal		146,082.0	

**HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT:**

(1) Homeland security and emergency management program:

The purpose of the homeland security and 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 New Mexico.

Appropriations:

(a)	Personal services and				
	employee benefits	1,788.4	24.7	86.6	2,950.3
					4,850.0
(b)	Contractual services	203.8		1,291.8	1,495.6
(c)	Other	489.2	85.3	64.2	9,245.1
					9,883.8

Performance measures:

(a) Outcome: Percent compliance of all federal grants measuring visits 100%

Subtotal	16,229.4
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TOTAL PUBLIC SAFETY	428,201.6	37,471.9	6,690.9	60,004.6
	532,369.0			

**H. TRANSPORTATION**

**DEPARTMENT OF TRANSPORTATION:**

(1) Project design and construction:

The purpose of the project design and construction program is to provide improvements and additions to the state's highway infrastructure to serve the interest of the general public. These improvements include those activities directly related to highway planning, design and construction necessary for a complete system of highways in the state.

Appropriations:

(a) Personal services and

	employee benefits	22,092.2	3,376.6	25,468.8
(b)	Contractual services	70,996.0		248,380.1
				319,376.1
(c)	Other	73,885.7	114,326.1	188,211.8

Notwithstanding the provisions of Article 21 of Chapter 6 NMSA 1978, any funds received by the New Mexico finance authority from the department of transportation in fiscal year 2018 as an annual administrative fee for issuing and managing state transportation bonds pursuant to Sections 67-3-59.3 and 67-3-59.4 NMSA 1978 shall not be deposited into the local transportation infrastructure fund.

The other state funds appropriations to the project design and construction program of the department of transportation include seven million dollars (\$7,000,000) for maintenance, reconstruction and related construction costs of state-managed highways.

Performance measures:

(a) Outcome: Percent of projects in production let as scheduled >67%

(b) Quality: Percent of final cost-over-bid amount (less gross receipts tax) on highway construction projects <3%

(c) Outcome: Percent of projects completed according to schedule >88%

(2) Highway operations:

The purpose of the highway operations program is to maintain and provide improvements to the state's highway infrastructure to serve the interest of the general public. These improvements include those activities directly related to preserving roadway integrity and maintaining open highway access throughout the state system.

Appropriations:

(a)	Personal services and			
	employee benefits	101,510.1	3,000.0	104,510.1
(b)	Contractual services	49,772.6		49,772.6
(c)	Other	76,512.2	76,512.2	

Performance measures:

(a) Output: Number of statewide pavement lane miles preserved >2,550

(b) Outcome: Percent of non-interstate lane miles rated good or better >68%

(c) Outcome: Number of combined systemwide miles in deficient condition  
<8,650

(d) Outcome: Percent of bridges in fair condition or better, based on  
deck area >90%

(3) Program support:

The purpose of program support is to provide management and administration of financial and human resources, custody and maintenance of information and property and management of construction and maintenance projects.

Appropriations:

(a)	Personal services and employee benefits	24,757.5	24,757.5
(b)	Contractual services	4,458.8	4,458.8
(c)	Other	12,949.4	12,949.4

Performance measures:

- (a) Quality: Number of external audit findings <5
- (b) Outcome: Vacancy rate in all programs <10%
- (c) Output: Number of employee injuries <90

(4) Modal:

The purpose of the modal program is to provide federal grants management and oversight of programs with dedicated revenues, including transit and rail, traffic safety and aviation.

Appropriations:

(a)	Personal services and employee benefits	3,336.0	471.0	1,249.4	5,056.4
(b)	Contractual services	18,883.0	700.0	9,046.8	28,629.8
(c)	Other	8,319.3	300.0	22,072.8	30,692.1

The internal service funds/interagency transfers appropriations to the modal program of the department of transportation include one million one hundred seventy-one thousand dollars (\$1,171,000) from the weight distance tax identification permit fund to hire temporary workers, purchase equipment for commercial truck permitting and maintain and fund capital improvements for port-of-entry facilities.

Performance measures:

(a) Outcome: Annual number of riders on park and ride >275,000

(b) Outcome: Percent of airport runways in satisfactory or better condition >53%

(c) Outcome: Number of traffic fatalities <340

(d) Outcome: Number of alcohol-related traffic fatalities <135

Subtotal 870,395.6

TOTAL TRANSPORTATION	467,472.8	1,471.0	401,451.8
870,395.6			

**I. OTHER EDUCATION**

**PUBLIC EDUCATION DEPARTMENT:**

The purpose of the public education department is to provide a public education to all students. The secretary of public 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 secretary or 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	9,327.4	2,812.1	36.0	6,501.1
18,676.6				

(b) Contractual services	1,059.8	806.0	18,331.9
20,197.7			

(c) Other	678.1	482.0	3,242.1	4,402.2
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Performance measures:

(a) Output: Number of local education agencies and charter schools

audited for funding formula components and program  
 compliance annually 20

(b) Explanatory: Number of eligible children served in state-funded  
 prekindergarten

(c) Explanatory: Number of eligible children served in k-3 plus

Subtotal 43,276.5

**REGIONAL EDUCATION COOPERATIVES:**

Appropriations:

(a) Northwest:	3,500.0	400.0	3,900.0
(b) Northeast:	1,122.1		1,122.1
(c) Lea county:	650.9	573.3	1,224.2
(d) Pecos valley:	492.0	282.0	774.0
(e) Southwest:	1,158.0	600.0	1,758.0
(f) Central:	4,607.0	1,429.0	6,036.0
(g) High plains:	2,782.9	300.0	3,082.9
(h) Clovis:	617.2	1,382.3	1,999.5
(i) Ruidoso:	1,304.0	158.0	1,462.0
Subtotal			21,358.7

**PUBLIC EDUCATION DEPARTMENT SPECIAL APPROPRIATIONS:**

Appropriations:

(a) Teachers pursuing excellence	900.0	900.0
(b) Breakfast for elementary students	1,600.0	1,600.0

(c)	After-school and summer enrichment programs	325.0		325.0
(d)	Regional education cooperatives operations	935.0		935.0
(e)	Public pre-kindergarten fund	21,000.0	3,500.0	24,500.0
(f)	Graduation, reality and dual-role skills program	200.0		200.0
(g)	Advanced placement	825.0		825.0
(h)	K-3 plus fund	23,700.0		23,700.0
(i)	Early reading initiative	12,500.0		12,500.0
(j)	Science, technology, engineering and math initiative	1,900.0		1,900.0
(k)	Teacher and school leader preparation	2,100.0		2,100.0
(l)	Teacher and administrator evaluation system	4,000.0	[500.0 ]	<i>LINE-ITEM VETO</i>
		4,500.0		
(m)	College preparation, career readiness and dropout prevention	2,200.0		2,200.0
(n)	Interventions and support for students, struggling			

schools, parents and		
teachers	15,000.0	15,000.0

(o) Stipends for teachers

in hard-to-staff areas	1,000.0	1,000.0
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The internal service funds/interagency transfers appropriation to the public pre-kindergarten fund of the public education department is from the federal temporary assistance for needy families block grant.

Notwithstanding the provisions of Article 23 of Chapter 32A NMSA 1978, the appropriations to the public pre-kindergarten fund of the public education department include sufficient funding to continue the established extended-day prekindergarten pilot program during the 2017-2018 school year.

In setting the reimbursement amount for the summer 2017 k-3 plus program, the secretary of public education shall use the final unit value set for the 2016-2017 school year as the basis for funding June, July and August 2017 k-3 plus programs.

The general fund appropriation to the k-3 plus fund of the public education department includes sufficient funds to pilot k-3 plus in fourth and fifth grades pursuant to Section 22-13-28.2 NMSA 1978.

The general fund appropriation to the public education department for teacher and school leader preparation includes five hundred thousand dollars (\$500,000) ~~[to be allocated to the university of New Mexico and New Mexico state university]~~ for a collaborative school principal ~~[turnaround]~~ leadership program. *LINE-ITEM VETO*

~~[The other state funds appropriation to the public education department for the teacher and administrator evaluation system is from the educator licensure fund.]~~ *LINE-ITEM VETO*

The general fund appropriation to the public education department for interventions and support for students, struggling schools, parents and teachers includes an additional three hundred thirteen thousand nine hundred dollars (\$313,900) for the principals pursuing excellence program.

Except for money in the appropriations for college preparation, career readiness and dropout prevention, interventions and support for students, struggling schools, parents and teachers and stipends for teachers in hard-to-staff areas that is for use by the public education department to provide services or support, the appropriations are contingent on being distributed by the department to school districts and charter schools based on proposals submitted by school districts and charter schools and approved by the department.

~~[The appropriations in Subparagraphs (a) through (c), (f), (g), and (j) through (o) of the public education department special appropriations may be used by the department for emergency support to school districts experiencing shortfalls in fiscal year 2018 after all other general fund appropriations for emergency support are fully expended. All requirements for distribution shall be made in accordance with Section 22-8-30 NMSA 1978.]~~ *LINE-ITEM VETO*

Any unexpended balances in the special appropriations to the public education department remaining at the end of fiscal year 2018 from appropriations made from the general fund shall revert to the general fund.

Subtotal		92,185.0
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## PUBLIC SCHOOL FACILITIES AUTHORITY:

The purpose of the public school facilities authority is to oversee public school facilities in all eighty-nine school districts ensuring correct and prudent planning, building and maintenance using state funds and ensuring adequacy of all facilities in accordance with public education department approved educational programs.

### Appropriations:

(a)	Personal services and employee benefits	4,337.2	4,337.2
(b)	Contractual services	109.7	109.7
(c)	Other	1,200.5	1,200.5

### Performance measures:

- (a) Explanatory: Average cost per square foot of new construction
- (b) Explanatory: Statewide public school facility condition index measured on December 31 of prior calendar year
- (c) Explanatory: Statewide public school facility maintenance assessment report score measured on December 31 of prior calendar year

Subtotal 5,647.4

TOTAL OTHER EDUCATION	99,250.3	26,481.6	3,536.0	33,199.7
	162,467.6			

## J. HIGHER EDUCATION

On approval of the higher education department, and with the exception of the policy development and institutional financial oversight program of the higher education department, the state budget division of the department of finance and administration may approve increases in budgets of agencies in this section 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.]~~ *LINE-ITEM VETO*

Except as otherwise provided, any unexpended balances remaining at the end of fiscal year 2018 shall not revert to the general fund.

## HIGHER EDUCATION DEPARTMENT:

(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 department's statutory authority for the state higher education system and to ensure both the efficient use of state resources and progress in implementing a statewide agenda.

Appropriations:

(a)	Personal services and						
	employee benefits	2,584.8	150.0	43.3	989.8	3,767.9	
(b)	Contractual services	1,365.2		50.0	799.3	2,214.5	
(c)	Other	8,353.0	308.1	192.4	7,700.7	16,554.2	

The general fund appropriation to the policy development and institutional financial oversight program of the higher education department in the other category includes five million two hundred thirty-five thousand nine hundred dollars (\$5,235,900) to provide adults with education services and materials and access to high school equivalency tests, one hundred thirty-eight thousand three hundred dollars (\$138,300) for workforce development programs at community colleges that primarily educate and retrain recently displaced workers, four hundred sixty-one thousand one hundred dollars (\$461,100) for the high skills program, ninety-two thousand six hundred dollars (\$92,600) for English-language learner teacher preparation and one hundred eighty-three thousand nine hundred dollars (\$183,900) to the tribal college dual credit program fund.

The general fund appropriation to the policy development and institutional financial oversight program of the higher education department in the contractual services category includes six hundred ninety-six thousand one hundred dollars (\$696,100) for an adult literacy program.

~~[The other state funds appropriation to the policy development and institutional financial oversight program of the higher education department in the other category includes fifty thousand dollars (\$50,000) to the tribal college dual credit program fund from the Indian education fund.] LINE-ITEM VETO~~

Any unexpended balances in the policy development and institutional financial oversight program of the higher education department at the end of fiscal year 2018 from appropriations made from the general fund shall revert to the general fund.

Performance measures:

(a) Outcome: Percent of adult education high school equivalency	
test-takers who earn a high school equivalency credential	83%

(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 may benefit from postsecondary education and training beyond high school.

Appropriations:

(a) Other 22,193.2 [18,449.4] 44,000.0 37.7 84,680.3

~~[Eighteen million four hundred forty-nine thousand four hundred dollars (\$18,449,400) of the other state funds appropriation to the student financial aid program of the higher education department in the other category is contingent on enactment of House Bill 237 or similar legislation of the first session of the fifty-third legislature.] LINE-ITEM VETO~~

Performance measures:

(a) Outcome: Percent of eligible state loan-for-service applicants

receiving funds 55%

(b) Outcome: Percent of eligible state loan repayment applicants

receiving funds 40%

Subtotal 107,216.9

~~[UNIVERSITY OF NEW MEXICO:~~

~~(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 workforce, compete and advance in the new economy and contribute to social advancement through informed citizenship.~~

~~Appropriations:~~

~~(a) Instruction and general~~

~~purposes 175,823.2 193,644.0 3,589.0 373,056.2~~

~~(b) Other 177,426.0 143,722.0 321,148.0~~

~~(c) Athletics 2,617.3 31,813.0 31.0 34,461.3~~

~~(d) Educational television~~

~~and public radio 1,080.2 6,645.0 7,725.2~~

~~Performance measures:~~

~~(a) Outcome: Percent of a cohort of first-time, full-time,~~

~~degree-seeking freshmen who completed a baccalaureate program within one hundred fifty percent of standard graduation time—49%~~

~~(b) Outcome: Percent of first-time, full-time freshmen retained to the third semester—80%~~

~~(2) Gallup branch:~~

~~The purpose of the instruction and general program at New Mexico's community colleges is to provide credit and noncredit postsecondary 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 8,407.1 6,724.0 670.0 15,801.1~~

~~(b) Other 2,122.0 703.0 2,825.0~~

~~Performance measures:~~

~~(a) Outcome: Percent of first-time, full-time freshmen retained to the third semester—64%~~

~~(b) Outcome: Percent of a cohort of first-time, full-time, degree- or certificate-seeking community college students who complete an academic program within one hundred fifty percent of standard graduation time—10%~~

~~(3) Los Alamos branch:~~

~~The purpose of the instruction and general program at New Mexico's community colleges is to provide credit and noncredit postsecondary 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 1,710.4 1,977.0 491.0 4,178.4~~

~~(b) Other 968.0 363.0 1,331.0~~

~~Performance measures:~~

~~(a) Outcome: Percent of a cohort of first-time, full-time, degree- or  
certificate-seeking community college students who complete  
an academic program within one hundred fifty percent of  
standard graduation time 12.3%~~

~~(b) Outcome: Percent of first-time, full-time freshmen retained to the  
third semester 45%~~

~~(4) Valencia branch:~~

~~The purpose of the instruction and general program at New Mexico's community colleges is to provide credit and noncredit postsecondary 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 5,135.2 5,002.0 610.0 10,747.2~~

~~(b) Other 1,737.0 1,046.0 2,783.0~~

~~Performance measures:~~

~~(a) Outcome: Percent of a cohort of first-time, full-time, degree- or  
certificate-seeking community college students who complete  
an academic program within one hundred fifty percent of  
standard graduation time 10%~~

~~(b) Outcome: Percent of first-time, full-time freshmen retained to the~~

third semester — 65%

(5) Taos branch:

The purpose of the instruction and general program at New Mexico's community colleges is to provide credit and noncredit postsecondary 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 — 3,274.1 — 3,498.0 — 855.0 7,627.1

(b) — Other — 1,246.0 — 1,726.0 — 2,972.0

Performance measures:

(a) Outcome: Percent of a cohort of first-time, full-time, degree- or

certificate-seeking community college students who complete

an academic program within one hundred fifty percent of

standard graduation time — 10%

(b) Outcome: Percent of first-time, full-time freshmen retained to the

third semester — 50%

(6) Research and public service projects:

Appropriations:

(a) — Judicial selection — 21.0 — 21.0

(b) — Southwest research center 1,043.3 — 1,043.3

(c) — Substance abuse program 68.1 — 68.1

(d) — Resource geographic

information system 60.8 — 60.8

(e) — Southwest Indian law clinic 190.5 — 190.5

(f)	Geospatial and population studies/bureau of business and economic research	353.0	353.0
(g)	New Mexico historical review	44.0	44.0
(h)	Ibero-American education	83.1	83.1
(i)	Manufacturing engineering program	515.5	515.5
(j)	Wildlife law education	88.4	88.4
(k)	Morrissey hall programs	43.6	43.6
(l)	Disabled student services	176.1	176.1
(m)	Minority student services	889.5	889.5
(n)	Community-based education	521.8	521.8
(o)	Corrine Wolfe children's law center	157.7	157.7
(p)	Utton transboundary resources center	317.7	317.7
(q)	Student mentoring program	268.1	268.1
(r)	Land grant studies	120.9	120.9
(s)	College degree mapping	68.8	68.8
(t)	Gallup branch - nurse expansion	192.1	192.1
(u)	Valencia branch - nurse		

expansion 155.8 155.8

(v) Taos branch nurse

expansion 223.8 223.8

(7) Health sciences center:

The purpose of the instruction and general program at the university of New Mexico health sciences center is to provide educational, clinical and research support for the advancement of health of all New Mexicans.

Appropriations:

(a) Instruction and general

purposes 57,201.1 57,896.6 4,000.0 119,097.7

(b) Other 338,600.0 72,500.0 411,100.0

The other state funds appropriation to the health sciences center of the university of New Mexico includes five hundred eighty-one thousand five hundred dollars (\$581,500) from the tobacco settlement program fund.

Performance measures:

(a) Output: Pass rate of medical school students on United States

medical licensing examination, step two clinical skills

exam on first attempt 98%

(b) Outcome: Percent of nursing graduates passing the requisite

licensure exam on first attempt 83%

(8) Health sciences center research and public service projects:

Appropriations:

(a) Office of medical

investigator 4,707.2 3,300.0 2.5 8,009.7

(b) Native American health

center 252.0 252.0

(c)	Native American suicide prevention	91.4	91.4		
(d)	Children's psychiatric hospital	6,692.2	10,000.0	16,692.2	
(e)	Carrie Tingley hospital	4,888.8	13,600.0	18,488.8	
(f)	Newborn intensive care	3,074.3	2,100.0	5,174.3	
(g)	Pediatric oncology	1,196.1	250.0	1,446.1	
(h)	Internal medicine residencies	980.4	980.4		
(i)	Poison and drug information center	1,456.2	590.2	96.3	2,142.7
(j)	Cancer center	2,469.5	5,300.0	13,200.0	20,969.5
(k)	Genomics, biocomputing and environmental health research	1,300.0	5,500.0	6,800.0	
(l)	Trauma specialty education	250.0	250.0		
(m)	Pediatrics specialty education	250.0	250.0		
(n)	Hepatitis community health outcomes	2,017.2	2,017.2		
(o)	Nurse expansion	1,012.3	1,012.3		
(p)	Graduate nurse education	1,514.7	1,514.7		

(q) Psychiatry residencies 370.1 370.1

(r) General surgery/family

community medicine

residencies 307.7 307.7

The other state funds appropriations to the health sciences center research and public service projects of the university of New Mexico include two million two hundred seventy-seven thousand six hundred dollars (\$2,277,600) from the tobacco settlement program fund.

Subtotal 1,407,225.9

### **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 workforce, compete and advance in the new economy and contribute to social advancement through informed citizenship.

Appropriations:

(a) Instruction and general

purposes 109,438.5 107,100.0 3,700.0 220,238.5

(b) Other 72,000.0 78,800.0 150,800.0

(c) Athletics 3,117.6 10,400.0 13,517.6

(d) Educational television

and public radio 1,006.7 1,000.0 2,006.7

Performance measures:

(a) Outcome: Percent of a cohort of first time, full-time,

degree-seeking freshmen who completed a baccalaureate

program within one hundred fifty percent of standard

graduation time 47%

~~(b) Outcome: Percent of first-time, full-time freshmen retained to the  
third semester — 75%~~

~~(2) Alamogordo branch:~~

~~The purpose of the instruction and general program at New Mexico's community colleges is to provide credit and noncredit postsecondary 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 — 7,036.2 — 3,600.0 — 1,700.0 — 12,336.2~~

~~(b) — Other — 700.0 — 2,000.0 — 2,700.0~~

~~Performance measures:~~

~~(a) Outcome: Percent of a cohort of first-time, full-time, degree- or~~

~~certificate-seeking community college students who complete  
an academic program within one hundred fifty percent of  
standard graduation time — 14%~~

~~(b) Outcome: Percent of first-time, full-time freshmen retained to the  
third semester — 55%~~

~~(3) Carlsbad branch:~~

~~The purpose of the instruction and general program at New Mexico's community colleges is to provide credit and noncredit postsecondary 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 — 3,860.0 — 8,800.0 — 600.0 — 13,260.0~~

~~(b) — Other — 600.0 — 1,500.0 — 2,100.0~~

Performance measures:

(a) Outcome: Percent of a cohort of first-time, full-time, degree- or certificate-seeking community college students who complete an academic program within one hundred fifty percent of standard graduation time—10%

(b) Outcome: Percent of first-time, full-time freshmen retained to the third semester—57%

(4) Dona Ana branch:

The purpose of the instruction and general program at New Mexico's community colleges is to provide credit and noncredit postsecondary 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 21,387.3 15,300.0 1,200.0 37,887.3

(b) Other 3,400.0 14,400.0 17,800.0

Performance measures:

(a) Outcome: Percent of a cohort of first-time, full-time, degree- or certificate-seeking community college students who complete an academic program within one hundred fifty percent of standard graduation time—12.5%

(b) Outcome: Percent of first-time, full-time freshmen retained to the third semester—63%

(5) Grants branch:

The purpose of the instruction and general program at New Mexico's community colleges is to provide credit and noncredit postsecondary 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 3,320.1 1,500.0 1,200.0 6,020.1~~

(b) ~~Other 400.0 1,700.0 2,100.0~~

Performance measures:

(a) ~~Outcome: Percent of a cohort of first-time, full-time, degree or~~

~~certificate-seeking community college students who complete~~

~~an academic program within one hundred fifty percent of~~

~~standard graduation time 14%~~

(b) ~~Outcome: Percent of first-time, full-time freshmen retained to the~~

~~third semester 53%~~

(6) ~~Department of agriculture:~~

~~Appropriations: 10,956.4 6,867.4 1,736.8 19,560.6~~

(7) ~~Agricultural experiment station:~~

~~Appropriations: 13,512.0 4,795.0 4,101.8 13,550.0~~  
~~35,958.8~~

(8) ~~Cooperative extension service:~~

~~Appropriations: 12,491.4 4,836.1 6,875.7 9,657.0~~  
~~33,860.2~~

(9) ~~Research and public service projects:~~

Appropriations:

(a) ~~Science, technology,~~

~~engineering and mathematics~~

alliance for minority  
participation 302.4 ————— 302.4

(b) Mental health nurse  
practitioner 643.9 ————— 643.9

(c) Water resource research  
institute 615.6 500.0 ————— 1,115.6

(d) Indian resources development 274.4 ————— 274.4

(e) Manufacturing sector  
development program 505.8 ————— 505.8

(f) Arrowhead center for  
business development 310.2 ————— 310.2

(g) Nurse expansion 700.2 ————— 700.2

(h) Economic development  
doctorate 91.4 ————— 91.4

(i) Alliance teaching and  
learning advancement 138.6 ————— 138.6

(j) College assistance migrant  
program 199.8 ————— 199.8

(k) Carlsbad branch -  
manufacturing sector  
development program 216.6 ————— 216.6

(l) Carlsbad branch - nurse  
expansion 108.9 ————— 108.9

(m) ~~Dona Ana branch - dental~~

~~hygiene program 206.0 206.0~~

(n) ~~Dona Ana branch - nurse~~

~~expansion 193.5 193.5~~

~~Notwithstanding the provisions of Section 74-1-13 NMSA 1978, the other state funds appropriation to the water resource research institute of New Mexico state university is from the water conservation fund.~~

~~Subtotal 575,153.3~~

**NEW MEXICO HIGHLANDS 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 workforce, compete and advance in the new economy and contribute to social advancement through informed citizenship.~~

~~Appropriations:~~

(a) ~~Instruction and general~~

~~purposes 26,046.1 12,216.7 172.5 38,435.3~~

(b) ~~Other 13,500.0 9,500.0 23,000.0~~

(c) ~~Athletics 1,968.7 500.0 2,468.7~~

~~Performance measures:~~

(a) ~~Output: Percent of a cohort of first-time, full-time,~~

~~degree-seeking freshmen who completed a baccalaureate~~

~~program within one hundred fifty percent of standard~~

~~graduation time 20%~~

(b) ~~Outcome: Percent of first-time, full-time freshmen retained to the~~

~~third semester 53%~~

(2) ~~Research and public service projects:~~

~~Appropriations:~~

(a) <del>Advanced placement</del>	<del>211.6</del>	<del>211.6</del>
(b) <del>Minority student services</del>	<del>514.4</del>	<del>514.4</del>
(c) <del>Forest and watershed</del>		
<del>institute</del>	<del>289.7</del>	<del>289.7</del>
(d) <del>Nurse expansion</del>	<del>60.4</del>	<del>60.4</del>
<del>Subtotal</del>		<del>64,980.1</del>

**WESTERN 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 workforce, compete and advance in the new economy and contribute to social advancement through informed citizenship.~~

~~Appropriations:~~

(a) <del>Instruction and general</del>			
<del>purposes</del>	<del>15,996.9</del>	<del>13,202.0</del>	<del>200.0 29,398.9</del>
(b) <del>Other</del>	<del>6,600.0</del>	<del>7,000.0</del>	<del>13,600.0</del>
(c) <del>Athletics</del>	<del>1,742.1</del>	<del>600.0</del>	<del>2,342.1</del>

~~Performance measures:~~

- (a) ~~Outcome: Percent of first-time, full-time freshmen retained to the~~  
~~third semester~~ ~~56.2%~~
- (b) ~~Output: Percent of a cohort of first-time, full-time,~~  
~~degree-seeking freshmen who completed a baccalaureate~~  
~~program within one hundred fifty percent of standard~~

graduation time — 25%

(2) Research and public service projects:

Appropriations:

(a) — Instructional television	72.4	72.4
(b) — Pharmacy and phlebotomy programs	57.2	57.2
(c) — Web-based teacher licensure	129.2	129.2
(d) — Child development center	193.6	193.6
(e) — Nurse expansion	809.2	809.2
Subtotal		46,602.6

**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 workforce, compete and advance in the new economy and contribute to social advancement through informed citizenship.

Appropriations:

(a) — Instruction and general purposes	25,603.1	17,900.0	2,300.0	45,803.1
(b) — Other	11,000.0	26,000.0	37,000.0	
(c) — Athletics	1,967.4	1,800.0	3,767.4	
(d) — Educational television and public radio	1,020.9	1,400.0	90.0	2,510.9

Performance measures:

(a) Outcome: Percent of first-time, full-time freshmen retained to the

~~third semester — 64.5%~~

~~(b) Output: Percent of a cohort of first-time, full-time,  
degree-seeking freshmen who completed a baccalaureate  
program within one hundred fifty percent of standard  
graduation time — 35%~~

~~(2) Roswell branch:~~

~~The purpose of the instruction and general program at New Mexico's community colleges is to provide credit and noncredit postsecondary education and training opportunities to New Mexicans so that they have the skills to be competitive in the new economy and are able to participate in lifelong learning activities.~~

~~Appropriations:~~

~~(a) — Instruction and general~~

~~purposes — 10,985.7 — 6,500.0 — 700.0 — 18,185.7~~

~~(b) — Other — 3,700.0 — 8,500.0 — 12,200.0~~

~~Performance measures:~~

~~(a) Outcome: Percent of a cohort of first-time, full-time, degree- or  
certificate-seeking community college students who complete  
an academic program within one hundred fifty percent of  
standard graduation time — 23%~~

~~(b) Outcome: Percent of first-time, full-time freshmen retained to the  
third semester — 55.5%~~

~~(3) Ruidoso branch:~~

~~The purpose of the instruction and general program at New Mexico's community colleges is to provide credit and noncredit postsecondary 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~~ 1,936.1 1,800.0 1,000.0 4,736.1

(b) ~~Other~~ 300.0 1,200.0 1,500.0

~~Performance measures:~~

(a) ~~Outcome: Percent of a cohort of first-time, full-time, degree- or certificate-seeking community college students who complete an academic program within one hundred fifty percent of standard graduation time~~ 18%

(b) ~~Outcome: Percent of first-time, full-time freshmen retained to the third semester~~ 35.4%

~~(4) Research and public service projects:~~

~~Appropriations:~~

(a) ~~Blackwater draw site and museum~~ 87.8 35.0 122.8

(b) ~~Student success programs~~ 417.0 417.0

(c) ~~Nurse expansion~~ 328.0 328.0

(d) ~~At-risk student tutoring~~ 224.6 224.6

(e) ~~Allied health~~ 142.4 142.4

(f) ~~Roswell branch - nurse expansion~~ 68.5 68.5

(g) ~~Roswell branch - airframe mechanics~~ 55.3 55.3

(h) ~~Roswell branch - special~~

services program 56.6 56.6

Subtotal 127,118.4

**NEW MEXICO INSTITUTE OF MINING AND TECHNOLOGY:**

(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 workforce, compete and advance in the new economy and contribute to social advancement through informed citizenship.

Appropriations:

(a) Instruction and general

purposes 25,523.0 22,300.0 47,823.0

(b) Other 17,300.0 18,500.0 35,800.0

(c) Athletics 191.8 191.8

Performance measures:

(a) Output: Percent of a cohort of first-time, full-time,

degree-seeking freshmen who completed a baccalaureate

program within one hundred fifty percent of standard

graduation time 49%

(b) Outcome: Percent of first-time, full-time freshmen retained to the

third semester 77%

(2) Bureau of mine safety:

Appropriations: 312.1 312.1

(3) Bureau of geology and mineral resources:

Appropriations: 3,888.7 400.0 400.0 4,688.7

The general fund appropriation to the bureau of geology and mineral resources of the New Mexico institute of mining and technology includes one hundred thousand dollars (\$100,000) from federal Mineral Leasing Act receipts.

(4) Petroleum recovery research center:

Appropriations: 1,841.2 1,300.0 3,300.0 6,441.2

(5) Geophysical research center:

Appropriations: 1,073.2 2,300.0 6,500.0 9,873.2

(6) Research and public service projects:

Appropriations:

(a) Energetic materials research

center 780.8 6,900.0 30,000.0 37,680.8

(b) Science and engineering fair 196.8 196.8

(c) Institute for complex

additive systems analysis 791.8 100.0 2,200.0 3,091.8

(d) Cave and karst research 355.4 355.4

(e) Homeland security center 513.5 513.5

(f) Aerospace internship

program 68.8 68.8

Subtotal 147,037.1

## **NORTHERN NEW MEXICO COLLEGE:**

(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 workforce, compete and advance in the new economy and contribute to social advancement through informed citizenship.

Appropriations:

(a) Instruction and general

purposes 9,706.9 5,000.0 4,200.0 18,906.9

(b) Other 2,900.0 4,700.0 7,600.0

(c) Athletics 246.6 200.0 446.6

Performance measures:

(a) Outcome: Percent of first-time, full-time freshmen retained to the third semester 66.5%

(b) Output: Percent of a cohort of first-time, full-time, degree-seeking freshmen who completed a baccalaureate program within one hundred fifty percent of standard graduation time 25%

(2) Research and public service projects:

Appropriations:

(a) Nurse expansion 233.0 233.0

(b) Science, technology, engineering and math 137.3 137.3

(c) Veterans center 114.5 114.5

Subtotal 27,438.3

**SANTA FE COMMUNITY COLLEGE:**

(1) Main campus:

The purpose of the instruction and general program at New Mexico's community colleges is to provide credit and noncredit postsecondary 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 9,182.8 26,473.0 3,300.0 38,955.8

(b) Other 1,374.0 15,477.0 16,851.0

Performance measures:

(a) Outcome: Percent of a cohort of first-time, full-time, degree or certificate-seeking community college students who complete an academic program within one hundred fifty percent of standard graduation time 12%

(b) Outcome: Percent of first-time, full-time freshmen retained to the third semester 50%

(2) Research and public service projects:

Appropriations:

(a) Automechanics 45.9 45.9

(b) Small business development centers 4,055.6 2,600.0 6,655.6

(c) Nurse expansion 253.9 253.9

(d) Radiography technician program 91.7 91.7

Subtotal 62,853.9

## **CENTRAL NEW MEXICO COMMUNITY COLLEGE:**

(1) Main campus:

The purpose of the instruction and general program at New Mexico's community colleges is to provide credit and noncredit postsecondary 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	52,815.8	95,000.0	5,300.0	153,115.8
(b) Other	9,500.0	42,000.0	51,500.0	

Performance measures:

(a) Outcome: Percent of a cohort of first-time, full-time, degree- or certificate-seeking community college students who complete an academic program within one hundred fifty percent of standard graduation time—16.5%

(b) Outcome: Percent of first-time, full-time freshmen retained to the third semester—61.1%

(2) Research and public service projects:

Appropriations:

(a) Nurse expansion	179.6	179.6	
Subtotal		204,795.4	

**LUNA COMMUNITY COLLEGE:**

(1) Main campus:

The purpose of the instruction and general program at New Mexico's community colleges is to provide credit and noncredit postsecondary education and training opportunities to New Mexicans so that they have the skills to be competitive in the new economy and are able to participate in lifelong learning activities.

Appropriations:

(a) Instruction and general purposes	6,730.9	3,300.0	1,100.0	11,130.9
(b) Other	2,560.5	1,918.0	4,478.5	
(c) Athletics	382.4	382.4		

Performance measures:

~~(a) Outcome: Percent of a cohort of first-time, full-time, degree- or certificate-seeking community college students who complete an academic program within one hundred fifty percent of standard graduation time—20%~~

~~(b) Outcome: Percent of first-time, full-time freshmen retained to the third semester——35.5%~~

~~(2) Research and public service projects:~~

~~Appropriations:~~

~~(a) Nurse expansion 267.0 267.0~~

~~(b) Student retention and completion 530.6 530.6~~

~~Subtotal 16,789.4~~

**MESALANDS COMMUNITY COLLEGE:**

~~(1) Main campus:~~

~~The purpose of the instruction and general program at New Mexico's community colleges is to provide credit and noncredit postsecondary 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 3,864.2 962.0 550.0 5,376.2~~

~~(b) Other 600.0 700.0 1,300.0~~

~~(c) Athletics 137.7 137.7~~

~~Performance measures:~~

~~(a) Outcome: Percent of a cohort of first-time, full-time, degree- or~~

~~certificate-seeking community college students who complete an academic program within one hundred fifty percent of standard graduation time—39%~~

~~(b) Outcome: Percent of first-time, full-time freshmen retained to the third semester—61.5%~~

~~(2) Research and public service projects:~~

~~Appropriations:~~

~~(a) Wind training center 112.9 112.9~~

~~Subtotal 6,926.8~~

~~**NEW MEXICO JUNIOR COLLEGE:**~~

~~(1) Main campus:~~

~~The purpose of the instruction and general program at New Mexico's community colleges is to provide credit and noncredit postsecondary 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 5,157.9 15,000.0 800.0 20,957.9~~

~~(b) Other 3,600.0 2,000.0 5,600.0~~

~~(c) Athletics 448.1 448.1~~

~~Performance measures:~~

~~(a) Outcome: Percent of a cohort of first-time, full-time, degree or~~

~~certificate-seeking community college students who complete an academic program within one hundred fifty percent of standard graduation time—30%~~

~~(b) Outcome: Percent of first-time, full-time freshmen retained to the  
third semester 70%~~

~~(2) Research and public service projects:~~

~~Appropriations:~~

~~(a) Oil and gas management~~

~~program 161.6 161.6~~

~~(b) Nurse expansion 282.9 282.9~~

~~(c) Lea county distance~~

~~education consortium 27.5 27.5~~

~~Subtotal 27,478.0~~

**~~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 postsecondary 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 22,555.4 29,000.0 2,400.0 53,955.4~~

~~(b) Other 5,000.0 18,000.0 23,000.0~~

~~Performance measures:~~

~~(a) Outcome: Percent of a cohort of first-time, full-time, degree or~~

~~certificate-seeking community college students who complete~~

~~an academic program within one hundred fifty percent of~~

~~standard graduation time 15%~~

~~(b) Outcome: Percent of first-time, full-time freshmen retained to the third semester — 61%~~

~~(2) Research and public service projects:~~

~~Appropriations:~~

~~(a) Dental hygiene program 153.7 153.7~~

~~(b) Nurse expansion 198.3 198.3~~

~~Subtotal 77,307.4~~

**~~CLOVIS COMMUNITY COLLEGE:~~**

~~(1) Main campus:~~

~~The purpose of the instruction and general program at New Mexico's community colleges is to provide credit and noncredit postsecondary 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 9,094.1 5,500.0 1,200.0 15,794.1~~

~~(b) Other 500.0 5,900.0 6,400.0~~

~~Performance measures:~~

~~(a) Outcome: Percent of a cohort of first-time, full-time, degree- or certificate-seeking community college students who complete an academic program within one hundred fifty percent of standard graduation time — 25%~~

~~(b) Outcome: Percent of first-time, full-time freshmen retained to the third semester — 55%~~

~~(2) Research and public service projects:~~

Appropriations:

(a) Nurse expansion 272.9 272.9

Subtotal 22,467.0

**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 degree.

(1) Main campus:

Appropriations:

(a) Instruction and general

purposes 1,312.4 24,300.0 100.0 25,712.4

(b) Other 8,500.0 900.0 9,400.0

(c) Athletics 259.3 400.0 659.3

(d) Knowles legislative

scholarship program 1,284.7 1,284.7

Performance measures:

(a) Outcome: Average American college testing composite scores for  
graduating high school seniors 22.5

(b) Outcome: Collegiate assessment of academic proficiency reading  
scores for graduating college sophomores 60

Subtotal 37,056.4

**NEW MEXICO SCHOOL FOR THE BLIND AND VISUALLY IMPAIRED:**

The purpose of the New Mexico school for the blind and visually impaired is to be an innovative leader and unifying entity in the field of educating blind and visually impaired students birth through high school by identifying and ensuring quality education through collaborative relationships with students, families and state, local and national partners to provide outstanding advocacy, training, resources and support services, thus ensuring all students who are blind or visually impaired will become independent, productive members of their communities.

~~(1) Main campus:~~

~~Appropriations:~~

~~(a) Instruction and general~~

~~purposes 984.1 13,600.0 150.0 14,734.1~~

~~Performance measures:~~

~~(a) Output: Number of New Mexico teachers who complete a personnel~~

~~preparation program to become a teacher of the visually~~

~~impaired 11~~

~~(2) Research and public service projects:~~

~~Appropriations:~~

~~(a) Early childhood center 361.9 361.9~~

~~(b) Low vision clinic programs 111.1 111.1~~

~~Subtotal 15,207.1~~

**~~NEW MEXICO SCHOOL FOR THE DEAF:~~**

~~The purpose of the New Mexico school for the deaf is to provide a school-based comprehensive, fully accessible and language-rich learning environment for its students who are deaf and hard-of-hearing and to work collaboratively with families, agencies and communities throughout the state to meet the unique communication, language and learning needs of children and youth who are deaf and hard-of-hearing.~~

~~(1) Main campus:~~

~~Appropriations:~~

~~(a) Instruction and general~~

~~purposes 3,819.3 12,100.0 300.0 16,219.3~~

~~Performance measures:~~

~~(a) Outcome: Rate of transition to postsecondary education,~~

~~vocational-technical training school, junior colleges, work~~

~~training or employment for graduates based on a three-year  
rolling average — 100%~~

~~(b) Outcome: Percent of first-year signers who demonstrate improvement  
in American sign language based on fall or spring  
assessments 100%~~

~~(2) Research and public service projects:~~

~~Appropriations:~~

~~(a) Statewide outreach services 236.6 236.6~~

~~Subtotal 16,455.9~~

~~TOTAL HIGHER EDUCATION 779,345.1 1,534,018.0 55,213.2 621,533.6  
2,990,109.9]~~

*LINE-ITEM VETO*

## **K. PUBLIC SCHOOL SUPPORT**

Except as otherwise provided, unexpended balances of appropriations made in this subsection shall not revert at the end of fiscal year 2018.

### **PUBLIC SCHOOL SUPPORT:**

(1) State equalization guarantee distribution:

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.

Appropriations: 2,493,258.7 5,000.0 2,498,258.7

The rate of distribution of the state equalization guarantee distribution shall be based on a program unit value determined by the secretary of public education. The secretary of public education shall establish a preliminary unit value to establish budgets for the 2017-2018 school year and then, on verification of the number of units statewide for fiscal year 2018, but no later than January 31, 2018, the secretary of public education may adjust the program unit value.

Notwithstanding the provisions of the School Personnel Act, the secretary of public education shall ensure that no full-time level one teacher receives a base salary less than thirty-four thousand dollars (\$34,000), no full-time level two teacher receives a base salary less than forty-two thousand dollars (\$42,000), and no full-time level three-A teacher receives a base salary less than fifty-two thousand dollars (\$52,000) during fiscal year 2018.

The budget of a first-year charter school shall use current year membership in the calculation of program units.

For fiscal year 2018, if the program cost made available is insufficient to meet the level of state support required by the special education maintenance of effort requirements of Part B of the federal Individuals with Disabilities Education Act, the public education department shall reduce the state equalization guarantee distribution in an amount that equals the projected shortfall and distribute that amount to school districts and charter schools in the same manner and on the same basis as the state equalization guarantee distribution to meet the level of support required by Part B of the federal Individuals with Disabilities Education Act for fiscal year 2018 and shall reset the final unit value to account for the reduction.

After considering those elementary physical education programs eligible for state financial support and the amount of state funding available for elementary physical education, the secretary of public education shall annually determine the programs and the consequent numbers of students in elementary physical education that will be used to calculate the number of elementary physical education program units.

Funds appropriated from the general fund to the state equalization guarantee distribution or any cash balances derived from appropriations from the general fund to the state equalization guarantee distribution in any year shall not be used to fund any litigation against the state unless or until a court issues a final decision in favor of a plaintiff school district or charter school and all legal remedies have been exhausted.

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 federal Mineral Leasing Act receipts otherwise unappropriated.

The general fund appropriation to the state equalization guarantee distribution reflects the deduction of federal revenue pursuant to Paragraph (2) of Subsection C of Section 22-8-25 NMSA 1978, that includes payments to school districts and charter schools commonly known as "impact aid funds" pursuant to 20 U.S.C. 7701 et seq., and formerly known as "PL874 funds".

The other state funds appropriation is from the balances received by the public education department pursuant to Section 66-5-44 NMSA 1978.

~~[Contingent on enactment of Senate Bill 30 of the first session of the fifty-third legislature, up to seven hundred thousand dollars (\$700,000) of the other state funds appropriation to the state equalization guarantee may be used by the public education department to implement the fiscal year 2018 program to maintain school districts' and charter schools' respective program cost calculations that result solely from the implementation of the provisions of Senate Bill 30.]~~

~~Within thirty calendar days of initial submission, the secretary of public education shall process and pay each request for reimbursement submitted to the public education department by a school district or charter school.~~

~~The department of finance and administration may adjust a school district's or charter school's monthly state equalization guarantee progress payment to provide flexibility to meet cash flow needs, provided that no school district or charter school shall receive an annual state equalization guarantee distribution that is more than their proportionate fiscal year 2018 share.]~~ *LINE-ITEM VETO*

Any unexpended balances in the authorized distributions remaining at the end of fiscal year 2018 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 standards-based assessment in reading 30%
- (b) Outcome: Percent of fourth-grade students who achieve proficiency or above on the standards-based assessment in mathematics 30%
- (c) Outcome: Percent of eighth-grade students who achieve proficiency or above on the standards-based assessment in reading 30%
- (d) Outcome: Percent of eighth-grade students who achieve proficiency or above on the standards-based assessment in mathematics 30%
- (e) Quality: Current four-year cohort graduation rate using shared accountability 75%
- (f) Outcome: Percent of recent New Mexico high school graduates who take remedial courses in higher education at two-year and four-year schools <35%

(2) ~~[State-chartered charter school]~~ transportation distribution: *LINE-ITEM VETO*

Appropriations:	1,927.0	1,927.0
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~~[The appropriation to the state-chartered charter school transportation distribution shall only be allocated to state-chartered charter schools. The public education department shall calculate an adjustment factor for state-chartered charter schools from the state-chartered charter school transportation distribution using the state-chartered charter school adjustment factor pursuant to the provisions of Sections 22-8-29.1 and 22-8-29.4 NMSA 1978. Rental fees for contractor owned buses providing transportation services to a state-chartered charter school shall be paid out of the state-chartered charter school transportation distribution.]~~ *LINE-ITEM VETO*

Notwithstanding the provisions of Section 22-8-26 NMSA 1978, a state-chartered charter school that receives a transportation allocation that exceeds the amount required to provide to-and-from transportation, three- and four-year-old developmentally disabled transportation and vocational education transportation during fiscal year 2018 shall deposit one hundred percent of the remaining balance in the transportation emergency fund at the end of fiscal year 2018.

(3) ~~[School district]~~ transportation distribution: *LINE-ITEM VETO*

Appropriations:	80,413.9	14,500.0	94,913.9
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~~[The appropriations to the school district transportation distribution shall only be allocated to school districts. The public education department shall calculate an adjustment factor for school districts and shall calculate the distribution for school districts from the school district transportation distribution using the school district adjustment factor pursuant to the provisions of Sections 22-8-29.1 and 22-8-29.4 NMSA 1978. Rental fees for contractor-owned buses providing transportation services to a school district shall be paid out of the school district transportation distribution.] LINE-ITEM VETO~~

The other state funds appropriation to the school district transportation distribution is from the public school capital outlay fund.

(4) Supplemental distribution:

Appropriations:

(a)	Out-of-state tuition	300.0	300.0
(b)	Emergency supplemental	1,000.0	1,000.0

The secretary of public education shall not distribute any emergency supplemental funds to a school district or charter school that is not in compliance with the Audit Act or that has cash and invested reserves, or other resources or any combination thereof, equaling five percent or more of their operating budget.

Any unexpended balances in the supplemental distribution of the public education department remaining at the end of fiscal year 2018 from appropriations made from the general fund shall revert to the general fund.

Subtotal	2,596,399.6
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**FEDERAL FLOW THROUGH:**

Appropriations:	414,202.3	414,202.3
Subtotal	414,202.3	

**INSTRUCTIONAL MATERIALS:**

(1) Instructional material fund:

Appropriations:	10,500.0	10,500.0
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The other state funds appropriation to the instructional material fund is from the public school capital outlay fund.

The public education department shall not calculate, allocate or withhold any entitlement or distribution for private school students or private schools from the instructional material fund consistent with the decision in *Moses v. Skandera*, 2015-NMSC-036.

(2) Dual-credit instructional materials:

Appropriations: 1,000.0 1,000.0

The general fund appropriation to the public education department for dual-credit instructional materials shall be used by the department to reimburse school districts, charter schools, state-supported schools and bureau of Indian education high schools in New Mexico for the cost of required textbooks and other course supplies for students enrolled in the dual-credit program to the extent of the available funds.

Any unexpended balances in the dual-credit instructional materials distribution remaining at the end of fiscal year 2018 from appropriations made from the general fund shall revert to the general fund.

Subtotal 11,500.0

**INDIAN EDUCATION FUND:**

Appropriations: 1,824.6 675.4 2,500.0

The general fund appropriation to the Indian education fund of the public education department includes four hundred thousand dollars (\$400,000) ~~[for a national nonprofit organization that recruits recent college graduates and professionals who have demonstrated a record of achievement to teach in low income urban and rural public schools]~~ to provide teaching support in schools with a high proportion of Native American students. *LINE-ITEM VETO*

The other state funds appropriation is from the Indian education fund.

Subtotal 2,500.0

**STANDARDS-BASED ASSESSMENTS:**

Appropriations: 6,000.0 6,000.0

Subtotal 6,000.0

TOTAL PUBLIC SCHOOL SUPPORT 2,585,724.2 30,675.4 414,202.3  
3,030,601.9

**GRAND TOTAL FISCAL YEAR 2018**

APPROPRIATIONS 6,063,360.7 4,009,137.5 548,677.4 7,615,700.1 18,236,875.7

**Chapter 135 Section 5 Laws 2017**

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 2017 and 2018. Unless otherwise indicated, any unexpended balances of the appropriations remaining at the end of fiscal year 2018 shall revert to the appropriate fund.

LEGISLATIVE COUNCIL SERVICE 1,000.0 1,000.0

~~For capitol repairs, security and infrastructure upgrades. The appropriation is from legislative cash balances.~~

(2) LEGISLATIVE COUNCIL SERVICE 150.0 150.0

~~For the capitol buildings planning commission to conduct a statewide inventory of state property and buildings for master planning.] LINE-ITEM VETO~~

(3) ADMINISTRATIVE OFFICE OF THE DISTRICT ATTORNEYS

Any unexpended balances remaining at the end of fiscal year 2017 from revenues received in fiscal year 2017 and prior years by a district attorney or the administrative office of the district attorneys from the United States department of justice pursuant to the southwest border prosecution initiative shall not revert and shall remain with the recipient district attorney's office for expenditure in fiscal year 2018. Prior to November 1, 2017, the administrative office of the district attorneys shall provide to the department of finance and administration and the legislative finance committee a detailed report documenting the amount of all southwest border prosecution initiative funds that do not revert at the end of fiscal year 2017 for each of the district attorneys and the administrative office of the district attorneys.

(4) ADMINISTRATIVE OFFICE OF THE DISTRICT ATTORNEYS

Any unexpended balances remaining at the end of fiscal year 2017 from revenues received in fiscal year 2017 and prior years by a district attorney from any Native American tribe, pueblo or political subdivision pursuant to a contract, memorandum of understanding, joint powers agreement or grant shall not revert and shall remain with the recipient district attorney's office for expenditure in fiscal year 2018. Prior to November 1, 2017, the administrative office of the district attorneys shall provide the department of finance and administration and the legislative finance committee a detailed report documenting the amount of all funds received from Native American tribes, pueblos and political subdivisions pursuant to a contract, memorandum of understanding, joint powers agreement or grant that do not revert at the end of fiscal year 2017 for each of the district attorneys and the administrative office of the district attorneys.

(5) ATTORNEY GENERAL 400.0 600.0 1,000.0

To defend the Rio Grande compact. The internal service funds/interagency transfers appropriation is from the improvement of Rio Grande income fund.

(6) TAXATION AND REVENUE DEPARTMENT 9,000.0  
9,000.0

Contingent on enactment of House Bill 412 or similar legislation of the first session of the fifty-third legislature, nine million dollars (\$9,000,000) is appropriated from the general fund to the taxation and revenue department for expenditures required to implement the tax code changes mandated in the legislation, including technical support to the consensus revenue estimating group. Any unexpended balances in the taxation and revenue department at the end of fiscal year 2017 from this appropriation shall not revert and shall be used exclusively for expenditure in fiscal year 2018 and fiscal year 2019 for the same purpose.

(7) DEPARTMENT OF FINANCE

AND ADMINISTRATION 750.0 750.0

For the payment card industry and data security standards compliance program.

~~[(8) DEPARTMENT OF FINANCE~~

~~AND ADMINISTRATION 50.0 50.0~~

~~For disbursement to the renewable energy transmission authority for operating costs in fiscal year 2018. The renewable energy transmission authority shall report to the interim New Mexico finance authority oversight committee on the status of the agency's operating budget.] LINE-ITEM VETO~~

~~[(9) DEPARTMENT OF FINANCE~~

~~AND ADMINISTRATION~~

~~The state board of finance shall prioritize up to five hundred thousand dollars (\$500,000) of loan or grant funds to preserve and enhance United States military base operations in New Mexico in the event that the United States department of defense convenes a military base realignment and closure commission or similar entity.] LINE-ITEM VETO~~

(10) ECONOMIC DEVELOPMENT

DEPARTMENT 10,000.0 10,000.0

To the development training fund for the job training incentive program [for expenditure in fiscal year 2018. At least one-third of the appropriation shall be expended for training in nonurban areas.] The appropriation includes sufficient funding for up to one million dollars (\$1,000,000) for the solo-worker program. LINE-ITEM VETO

(11) ECONOMIC DEVELOPMENT

DEPARTMENT 7,000.0 7,000.0

For economic development projects pursuant to the Local Economic Development Act for expenditure in fiscal year 2018. [The appropriation includes one hundred thousand dollars (\$100,000) to match federal funds for a protective buffer zone adjacent to Cannon air force base in Curry and Roosevelt counties. The economic development department may transfer funds from the Local Economic Development Act fund to the development training fund for the job training incentive program to assist with job creation through fiscal year 2018.] LINE-ITEM VETO

(12) CULTURAL AFFAIRS DEPARTMENT 300.0 300.0

Contingent on the enactment of legislation of the first session of the fifty-third legislature authorizing the appropriation of three hundred thousand dollars (\$300,000) from the art in public places fund to the cultural affairs department for capital improvements to exhibits at the museum of Indian arts and culture, any unexpended balances remaining from the general fund appropriation made in Laws 2015, Chapter 101, Section 5, Subsection 31, to the department of cultural affairs for renovation and upgrades of exhibits at the museum of Indian arts and culture shall not be expended for the original purpose but are appropriated to the cultural affairs department for expenditure in fiscal years 2017 and 2018 in the personal services and employee benefits category. Any unexpended balances remaining at the end of fiscal year 2018 shall revert to the general fund.

(13) CULTURAL AFFAIRS DEPARTMENT 1,255.2  
1,255.2

Contingent on the enactment of legislation of the first session of the fifty-third legislature authorizing the appropriation of up to one million two hundred fifty-five thousand two hundred dollars (\$1,255,200) from the art in public places fund to the cultural affairs department for capital improvements to exhibits and facilities, and notwithstanding the provisions of Section 9-4A-22 NMSA 1978, up to one million two hundred fifty-five thousand two hundred dollars (\$1,255,200) is appropriated from the state museums improvements and exhibits fund to the cultural affairs department for expenditure in fiscal years 2017 and 2018 in the personal services and employee benefits category, and any unexpended balances remaining at the end of fiscal year 2018 shall revert to the state museums improvement and exhibits fund.

(14) ENERGY, MINERALS AND

NATURAL RESOURCES DEPARTMENT	250.0	250.0
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For a design-build request for proposals for remediation of the Carlsbad brine well contingent on receiving matching funds of one hundred twenty-five thousand dollars (\$125,000) from the city of Carlsbad and one hundred twenty-five thousand dollars (\$125,000) from Eddy county.

(15) COMMISSIONER OF PUBLIC LANDS	550.0	550.0
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To complete historic back file conversion. The appropriation is from the state lands maintenance fund.

(16) STATE ENGINEER	400.0	600.0	1,000.0
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To continue water litigation under interstate compacts. The other state funds appropriation is from the improvement of Rio Grande income fund.

(17) HUMAN SERVICES DEPARTMENT

Up to five million dollars (\$5,000,000) of unexpended balances in the medical assistance program of the human services department remaining at the end of fiscal year 2017 from appropriations made from the general fund shall not revert and are re-appropriated to the computer system enhancement fund for the human services department to continue the replacement of the department's medicaid management information system through fiscal year 2019 in compliance with the project certification process.

(18) HUMAN SERVICES DEPARTMENT	700.0	523.6	1,223.6
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For attorneys' fees, a special master and other costs associated with the ongoing Deborah Hatten-Gonzales lawsuit.

~~[(19) HUMAN SERVICES DEPARTMENT 26,400.0~~

~~Contingent on enactment of House Bill 202 or similar legislation of the first session of the fifty-third legislature authorizing additional distributions to the county-supported medicaid fund, up to twenty-six million four hundred thousand dollars (\$26,400,000) is appropriated to the medical assistance program of the human services department for increases to inpatient and outpatient hospital rates, including five million dollars (\$5,000,000) for rate increases at hospitals classified during fiscal year 2017 as smallest and small for the purpose of receiving payments for uncompensated care from the safety net care pool fund. The other state funds appropriation is from the county-supported medicaid fund.] LINE-ITEM VETO~~

(20) WORKERS' COMPENSATION

ADMINISTRATION 188.0 188.0

To purchase equipment, software and storage for video conferencing and building security. The appropriation is from fund balances.

(21) DEPARTMENT OF HEALTH

Any unexpended balances in the developmental disabilities support program of the department of health in the other financing uses category remaining at the end of fiscal year 2017 from appropriations made from the general fund shall not revert to the general fund and shall be expended in fiscal year 2018 to support the developmental disabilities medicaid waiver program in the developmental disabilities support program of the department of health.

(22) DEPARTMENT OF HEALTH 1,000.0 230.0 1,230.0

For ongoing compliance with the Waldrop lawsuit settlement and Jackson lawsuit disengagement. The internal service funds/interagency transfers appropriation is from federal funds from the human services department.

(23) DEPARTMENT OF ENVIRONMENT 1,000.0  
1,000.0

For Gold King Mine litigation. The appropriation is from the corrective action fund. Any unexpended balances from this appropriation remaining at the end of fiscal year 2018 shall not revert and may be expended in subsequent fiscal years.

(24) CORRECTIONS DEPARTMENT 2,000.0 3,000.0  
5,000.0

For inmate population growth in public and private prisons, the treatment of hepatitis c and custodial staff overtime in fiscal year 2018. The other state funds appropriation is from land grant permanent fund income.

(25) CORRECTIONS DEPARTMENT 2,000.0 2,000.0

For inmate population growth in public and private prisons, the treatment of hepatitis c and custodial staff overtime.

(26) CORRECTIONS DEPARTMENT

Private prison penalties assessed in fiscal year 2017 and fiscal year 2018 are appropriated to the corrections department for facility repair in fiscal year 2017 and fiscal year 2018.

(27) DEPARTMENT OF PUBLIC SAFETY

The period of time for expending the one million two hundred thousand dollars (\$1,200,000) appropriated from the general fund in Subsection 47 of Section 5 of Chapter 11 of Laws 2016 for processing backlogged rape kits is extended through fiscal year 2018.

~~[(28) DEPARTMENT OF PUBLIC SAFETY 200.0 200.0]~~

~~For tourniquet and trauma kits and to provide related training to graduated cadets and certified police officers. The appropriation is from the concealed handgun carry fund.] LINE-ITEM VETO~~

(29) DEPARTMENT OF TRANSPORTATION

The period of time for expending up to fifty million dollars (\$50,000,000) of other state funds and federal funds appropriated to the modal program of the department of transportation pertaining to prior fiscal years is extended through fiscal year 2018.

(30) DEPARTMENT OF TRANSPORTATION

The period of time for expending up to fifty-five million dollars (\$55,000,000) of other state funds and federal funds appropriated to the highway operations program of the department of transportation pertaining to prior fiscal years is extended through fiscal year 2018.

(31) DEPARTMENT OF TRANSPORTATION

The period of time for expending up to three hundred seventy-five million dollars (\$375,000,000) of other state funds and federal funds appropriated to the project design and construction program of the department of transportation pertaining to prior fiscal years is extended through fiscal year 2018.

(32) PUBLIC EDUCATION DEPARTMENT

In fiscal year 2018, a school district or state-chartered charter school may request budget increases for instructional materials from its fiscal year 2018 transportation allocation or cash balances derived from prior year allocations for transportation and may request budget increases for transportation from its fiscal year 2018 instructional material allocation or cash balances derived from prior year allocations for instructional materials. ~~[The public education department shall provide the legislative finance committee and the legislative education study committee with a report on any transfers pursuant to this section.]~~  
*LINE-ITEM VETO*

(33) PUBLIC EDUCATION DEPARTMENT 1,000.0  
1,000.0

For emergency support to school districts experiencing shortfalls. All requirements for distribution shall be made in accordance with Section 22-8-30 NMSA 1978.

(34) PUBLIC EDUCATION DEPARTMENT 2,000.0  
2,000.0

For emergency support to school districts experiencing shortfalls in fiscal year 2018. All requirements for distribution shall be in accordance with Section 22-8-30 NMSA 1978.

(35) PUBLIC EDUCATION DEPARTMENT

Except for balances of fiscal year 2017 appropriations used by the public education department pursuant to item (36) of this section, the general fund appropriations to the public education department in Subparagraphs (g), (i), (l), (p), (q) and (t) of the public education department special appropriations in Subsection I of Section 4 of Chapter 11 of Laws 2016 are re-appropriated and extended through fiscal year 2018 for the same purpose.

(36) PUBLIC EDUCATION DEPARTMENT 1,250.0  
1,250.0

For legal fees related to defending the state in Martinez v. state of New Mexico No. D-101-CV-2014-00793 and Yazzie v. state of New Mexico No. D-101-CV-2014-02224. Up to seven hundred fifty thousand dollars (\$750,000) of the general fund appropriations made to the public education department in Subparagraphs (a) through (d), (f) through (i), and (l) through (t) of the public education department special appropriations of Subsection I of Section 4 of Chapter 11 of Laws 2016 may also be used for this purpose in fiscal years 2017 and 2018.

~~[(37) NEW MEXICO STATE UNIVERSITY~~

~~Contingent upon the department of environment reaching a settlement agreement with Exxon Mobil, five hundred thousand dollars (\$500,000) of the settlement is appropriated to the water resources research institute.] LINE-ITEM VETO~~

(38) PUBLIC SCHOOL SUPPORT 8,550.0 8,550.0

To the state equalization guarantee distribution for expenditure in fiscal year 2018. All requirements for distribution of funds shall be in accordance with Section 22-8-25 NMSA 1978.

(39) COMPUTER SYSTEMS

ENHANCEMENT FUNDS 524.0 524.0

For transfer to the computer systems enhancement fund for system replacements or enhancements.

TOTAL SPECIAL APPROPRIATIONS 47,024.0 34,493.2 830.0 523.6  
82,870.8

## Chapter 135 Section 6 Laws 2017

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 2017 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 2017 for the purpose specified and approval by the department of finance and administration. Any unexpended balances remaining at the end of fiscal year 2017 shall revert to the appropriate fund.

(1) ADMINISTRATIVE OFFICE OF  
THE COURTS 475.0 475.0

For a shortfall in the court-appointed attorney fund.

~~[(2) ADMINISTRATIVE OFFICE OF  
THE COURTS 1,328.6 1,328.6~~

~~For a shortfall in magistrate courts.]~~ LINE-ITEM VETO

(3) DEPARTMENT OF FINANCE AND ADMINISTRATION

Any unexpended balances in the tobacco settlement program fund remaining at the end of fiscal year 2017 from distributions made from the tobacco settlement permanent fund shall revert to the tobacco settlement permanent fund.

(4) DEPARTMENT OF

INFORMATION TECHNOLOGY                      600.0                      600.0

To cover a projected shortfall in the enterprise services program in fiscal year 2017. The other state funds appropriation is from the statewide human resources accounting and management reporting system equipment replacement fund.

(5) SECRETARY OF STATE    117.2                      117.2

To pay court-ordered costs and fees to the American civil liberties union.

(6) SECRETARY OF STATE    36.2                      36.2

For reimbursements to counties for expenses related to the 2016 general election.

(7) SECRETARY OF STATE                      179.0                      179.0

Notwithstanding the provisions of Section 1-19A-10 NMSA 1978, one hundred seventy-nine thousand dollars (\$179,000) is appropriated from the public election fund for expenses related to the 2016 general election.

(8) SECRETARY OF STATE                      146.4                      146.4

Notwithstanding the provisions of Section 1-19A-10 NMSA 1978, up to one hundred forty-six thousand four hundred dollars (\$146,400) is appropriated from the public election fund for a shortfall in the administration and operations program.

(9) STATE ENGINEER                      1,857.1                      1,857.1

One million eight hundred fifty-seven thousand one hundred dollars (\$1,857,100) of the appropriation to the interstate stream commission in Subsection 3 of Section 37 of Chapter 66 of Laws 2014 is re-appropriated to the interstate stream compact compliance and water development program of the state engineer for prior year expenses related to water litigation under interstate compacts.

(10) DEPARTMENT OF HEALTH                      375.0                      375.0

For a shortfall in the facilities management program.

TOTAL SUPPLEMENTAL AND

DEFICIENCY APPROPRIATIONS	2,332.0	2,782.5
5,114.5		

## Chapter 135 Section 7 Laws 2017

Section 7 . DATA PROCESSING APPROPRIATIONS.--The following amounts are appropriated from the computer systems enhancement fund, or other funds as indicated, for the purposes specified. Unless otherwise indicated, the appropriation may be expended in fiscal years 2017, 2018 and 2019. Unless otherwise indicated, any unexpended balances remaining at the end of fiscal year 2019 shall revert to the computer systems enhancement fund or other funds as indicated. For each executive branch agency project, the information technology commission shall certify that the purpose specified in this section complies with Section 9-27-9 NMSA 1978 prior to the allocation of two hundred forty thousand dollars (\$240,000) by the department of finance and administration. The department of finance and administration shall allocate amounts from the funds for the purposes specified upon receiving certification and supporting documentation from the state chief information officer that indicates compliance with the project certification process. The judicial information systems council shall certify compliance to the department of finance and administration for judicial branch projects. For executive branch agencies, all hardware and software purchases funded through appropriations made in Sections 4, 5, 6 and 7 of this act shall be procured using consolidated purchasing led by the state chief information officer and state purchasing division to achieve economies of scale and to provide the state with the best unit price.

### (1) ADMINISTRATIVE OFFICE OF THE COURTS

The period of time for expending the seven hundred eighty thousand dollars (\$780,000) appropriated from the computer systems enhancement fund in Subsection 2 of Section 7 Chapter 101 of Laws 2015 to purchase and implement jury management software is extended through fiscal year 2018.

### (2) ADMINISTRATIVE OFFICE OF

THE COURTS	284.0	284.0
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To purchase and install software and hardware for the video network operations center to provide video and audio communications to various courts statewide.

### (3) GENERAL SERVICES DEPARTMENT

The period of time for expending two hundred fifty thousand dollars (\$250,000) of the one million five hundred thousand dollars (\$1,500,000) appropriated from the workers' compensation retention fund, the public property reserve fund and the public liability fund in Subsection 7 of Section 7 of Chapter 63 of Laws 2014 as extended in Subsection 9 of Section 7 of Chapter 11 of Laws 2016 to implement the risk management information system is extended through fiscal year 2018 to develop a plan to implement the risk management information system. The balance of the appropriation shall revert to the workers' compensation retention fund, the public property reserve fund and the public liability fund.

### (4) SECRETARY OF STATE

The period of time for expending one million four hundred thousand dollars (\$1,400,000) appropriated from the computer systems enhancement fund in Subsection 12 of Section 7 of Chapter 101 of Laws 2015 to continue the implementation of the integrated reporting and integrity system is extended through fiscal year 2018.



integrated computer-aided dispatch and records management system is extended through fiscal year 2018.

(13) DEPARTMENT OF PUBLIC SAFETY

The period of time for expending two hundred fifty thousand dollars (\$250,000) appropriated from the computer systems enhancement fund in Subsection 24 of Section 7 of Chapter 101 of Laws 2015 for the planning phase to implement a records management system is extended through fiscal year 2018.

TOTAL DATA PROCESSING APPROPRIATIONS	524.0	2,160.0
2,684.0		

## Chapter 135 Section 8 Laws 2017

Section 8. ADDITIONAL FISCAL YEAR 2017 BUDGET ADJUSTMENT AUTHORITY.--During fiscal year 2017, 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 2016:

A. in addition to the specific program transfers authorized in this section and specific statutory provisions regarding restricted funds notwithstanding, all agencies may request program transfers;

B. the court of appeals may request budget increases up to five hundred dollars (\$500) from other program revenue;

C. the administrative office of the courts may request budget increases up to one hundred fifty thousand dollars (\$150,000) from internal service funds/interagency transfers and other state funds from political subdivisions of the state to reimburse magistrate courts for services, may request budget increases up to one hundred sixty-five thousand dollars (\$165,000) from magistrate drug court fund balances and may request budget increases up to two hundred fifty thousand dollars (\$250,000) from water rights adjudication fund balances for operating expenses;

D. the first judicial district court may request budget increases up to one hundred ten thousand dollars (\$110,000) from fund balances in the mediation program and may request budget increases up to one hundred ten thousand dollars (\$110,000) from fund balances in the child support program for operations;

E. the fourth judicial district court may request budget increases up to fifteen thousand dollars (\$15,000) from other state funds from mediation fees and may request budget increases up to ten thousand dollars (\$10,000) from other state funds from copy fees;

F. the fifth judicial district court may request budget increases up to twelve thousand dollars (\$12,000) from other state funds from duplication fees and may

request budget increases up to twenty-five thousand five hundred dollars (\$25,500) from other state funds from the mediation program;

G. the eleventh judicial district court may request budget increases up to fifty thousand dollars (\$50,000) from other state funds from adult drug court fees and may request budget increases up to fifty-five thousand dollars (\$55,000) from mediation fund balances;

H. the thirteenth judicial district court may request budget increases up to one hundred fifty thousand dollars (\$150,000) from other state funds for pretrial services, may request budget increases up to twenty thousand dollars (\$20,000) from other state funds for the social worker program and may request budget increases up to fourteen thousand dollars (\$14,000) from other state funds from tapes and copy fees;

I. the eleventh judicial district attorney division II may request budget increases up to fifty thousand dollars (\$50,000) from internal service funds/interagency transfers and other state funds from any political subdivision of the state or from Native American tribes to assist in the prosecution of crimes within McKinley county and may request budget increases up to seventy-five thousand dollars (\$75,000) from internal service funds/interagency transfers and other state funds from forfeiture revenues pursuant to Section 31-27-1 NMSA 1978 for case prosecution;

J. the criminal legal services program of the public defender department may request budget increases up to six hundred thousand dollars (\$600,000) from internal service funds/interagency transfers from the public defender automation fund and from other state funds for contractual services and automation;

K. the property tax program of the taxation and revenue department may request budget increases up to two hundred fifty thousand dollars (\$250,000) from other state funds or internal service funds/interagency transfers from the delinquent property tax fund for litigation and other legal services;

L. the New Mexico sentencing commission may request budget increases up to fifty thousand dollars (\$50,000) from internal service funds/interagency transfers from the grant received from the Santa Fe community foundation payable to the university of New Mexico for expenses incurred while performing research for the Santa Fe law enforcement assisted diversion program;

M. the department of information technology may request category transfers up to three million dollars (\$3,000,000) from the other financing uses category;

N. the construction industries and manufactured housing program of the regulation and licensing department may request budget increases up to one hundred fifty thousand dollars (\$150,000) from internal service funds/interagency transfers from the public school facilities authority for costs associated with permitting and inspecting projects funded by the Public School Capital Outlay Act;

O. the commission for the blind may request category transfers up to one hundred thousand dollars (\$100,000) into the other financing uses category and may request budget increases up to two hundred thousand dollars (\$200,000) from internal service funds/interagency transfers for the independent living services program of the division of vocational rehabilitation to provide services to the blind or visually impaired citizens of New Mexico;

P. the medical assistance program of the human services department may request budget increases up to twenty million dollars (\$20,000,000) from the university of New Mexico hospital for the state share of payments to the university of New Mexico hospital [~~and may request budget increases up to one million dollars (\$1,000,000) from miners' hospital of New Mexico~~] for the state share of payments to miners' hospital of New Mexico; *LINE-ITEM VETO*

Q. the rehabilitation services program of the division of vocational rehabilitation may request category transfers up to two hundred thousand dollars (\$200,000) into the other financing uses category and may request budget increases up to two hundred fifty thousand dollars (\$250,000) from internal service funds/interagency transfers and other state funds for rehabilitation services for the disabled;

R. the developmental disabilities support program of the department of health may request transfers between the other category and the other financing uses category for the family infant toddler program;

S. the water protection program of the department of environment may request budget increases up to one hundred eighty-five thousand dollars (\$185,000) from other state funds to provide technical and community services related to the New Mexico finance authority's drinking water state revolving loan fund, local government planning fund and water project fund programs and the resource protection program may request budget increases from other state funds and internal service funds/interagency transfers from the brownfields revolving loan fund for environmental assessments and cleanup activities;

T. the veterans' services department may request budget increases up to twenty-five thousand dollars (\$25,000) from other state funds from license plate revenues for operating expenses;

U. the early childhood services program and the protective services program of the children, youth and families department may request budget increases from unexpended general fund balances from Subsection 44 of Section 5 of Chapter 101 of Laws 2015;

V. the corrections industries program of the corrections department may request budget increases up to one million five hundred thousand dollars (\$1,500,000) from internal service funds/interagency transfers and other state funds from inmate canteen purchases and telephone services; and

W. the department of transportation may request budget increases up to forty-five million dollars (\$45,000,000) from other state funds and fund balances to meet federal match requirements, for debt service and related costs, intergovernmental agreements, lawsuit and construction- and maintenance-related costs.

## **Chapter 135 Section 9 Laws 2017**

### **Section 9. CERTAIN FISCAL YEAR 2018 BUDGET ADJUSTMENTS AUTHORIZED.--**

A. As used in this section and Section 8 of the General Appropriation Act of 2017:

(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 2018.

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 and, in addition to the specific program transfers authorized in this section and specific statutory provisions regarding restricted funds notwithstanding, all agencies may request program transfers.

D. Unless a conflicting budget increase is authorized in Subsection E of this section, a program with internal service funds/interagency transfers appropriations or other state funds appropriations that collects money in excess of those appropriated may request budget increases in an amount not to exceed five percent of its internal service funds/interagency transfers or other state funds appropriation contained in Section 4 of the General Appropriation Act of 2017. To track the five percent transfer limitation, agencies shall report cumulative budget adjustment request

totals on each budget request submitted. The department of finance and administration shall certify agency reporting of these cumulative totals.

E. In addition to the budget authority otherwise provided in the General Appropriation Act of 2017, the following agencies may request specified budget adjustments:

(1) the legislative council service may transfer amounts from the appropriation to the legislature to any other legislative appropriation as needed;

(2) the New Mexico compilation commission may request budget increases from internal service funds/interagency transfers and other state funds for publishing costs;

(3) the judicial standards commission may request budget increases up to thirty thousand dollars (\$30,000) from other state funds from investigation and trial cost reimbursements;

(4) the supreme court may request inter-agency transfers up to one hundred thousand dollars (\$100,000) between the supreme court, the supreme court building commission and the supreme court law library for budget shortfalls;

(5) the administrative office of the courts may request budget increases up to two hundred fifty thousand dollars (\$250,000) from water rights adjudication fund balances for operating expenses;

(6) the first judicial district court may request budget increases up to one hundred ten thousand dollars (\$110,000) from fund balances in the child support program for operating costs for child support hearings;

(7) the second judicial district court may request budget increases up to two hundred thousand dollars (\$200,000) from other state funds or internal service funds/interagency transfers from the behavioral health services program of the human services department for the veterans' treatment court program, may request budget increases up to two hundred thousand dollars (\$200,000) from other state funds from Bernalillo county, may request budget increases up to fifty thousand dollars (\$50,000) from other state funds from adult drug court fees and may request budget increases up to twenty thousand dollars (\$20,000) from internal service funds/interagency transfers or other state funds from copies, tapes and parking reimbursements;

(8) the third judicial district court may request budget increases up to twenty thousand dollars (\$20,000) from other state funds from mediation service fees;

(9) the eleventh judicial district court may request budget increases up to fifty thousand dollars (\$50,000) from adult drug court treatment fund balances, may request budget increases up to ten thousand dollars (\$10,000) from internal service funds/interagency transfers from copy fees, may request budget increases up to twenty-five thousand dollars (\$25,000) from mediation service fees, may request budget increases up to seventy-five thousand dollars (\$75,000) from mediation service fee fund balances and may request budget increases up to twenty-five thousand dollars (\$25,000) from adult drug court fees;

(10) the thirteenth judicial district court may request budget increases up to one hundred fifty thousand dollars (\$150,000) from other state funds for pretrial services, may request budget increases up to two hundred fourteen thousand dollars (\$214,000) from other state funds for foreclosure settlement services, may request budget increases up to twenty thousand dollars (\$20,000) from other state funds for the social worker program and may request budget increases up to fourteen thousand dollars (\$14,000) from other state funds from tapes and copy fees;

(11) the second judicial district attorney may request budget increases up to two hundred fifty thousand dollars (\$250,000) from internal service funds/interagency transfers and other state funds for case prosecution;

(12) the eighth judicial district attorney may request budget increases up to two hundred fifty thousand dollars (\$250,000) from internal service funds/interagency transfers and other state funds from forfeiture revenues pursuant to Section 31-27-1 NMSA 1978, for case prosecution;

(13) the twelfth judicial district attorney may request budget increases up to one hundred thousand dollars (\$100,000) from internal service funds/interagency transfers and other state funds from any political subdivision of the state or from Native American tribes to assist in the prosecution of crimes within Otero and Lincoln counties;

(14) the thirteenth judicial district attorney may request budget increases up to five hundred thousand dollars (\$500,000) from internal service funds/interagency transfers and other state funds from any political subdivision of the state or from Native American tribes to assist in case prosecution;

(15) the criminal legal services program of the public defender department may request budget increases up to six hundred thousand dollars (\$600,000) from internal service funds/interagency transfers from the public defender automation fund and from other state funds for contractual services and automation;

(16) the office of the state auditor may request budget increases up to three hundred thousand dollars (\$300,000) from other state funds to assist local public bodies in meeting financial reporting requirements or to assist in special investigations;

(17) the property tax program of the taxation and revenue department may request budget increases up to five hundred thousand dollars (\$500,000) from the delinquent property tax fund for litigation and other legal services and the motor vehicle program of the taxation and revenue department may request budget increases up to three hundred thousand dollars (\$300,000) from the enhanced driver's license fund for federal REAL ID Act of 2005 expenditures;

(18) the state investment council may request budget increases from other state funds for investment-related asset management fees and to meet emergencies or physical plant failures that might impact the health and safety of workers or visitors to the agency;

(19) the benefits and risk programs and program support of the public school insurance authority may request budget increases from internal service funds/interagency transfers, other state funds and fund balances for claims;

(20) program support of the retiree health care authority may request budget increases up to two hundred thousand dollars (\$200,000) from other state funds and internal service funds/interagency transfers for information technology services and the healthcare benefits administration program may request budget increases from other state funds for claims;

(21) the state printing program of the general services department may request program transfers up to one hundred fifty-six thousand six hundred dollars (\$156,600) to eliminate historical losses, the procurement services program may request category transfers up to eighty-one thousand six hundred dollars (\$81,600) to and from the other financing uses category and may request budget increases up to three hundred thousand dollars (\$300,000) from other state funds for operating expenses and the facilities management program may request category transfers up to one hundred ninety-nine thousand six hundred dollars (\$199,600) to and from the other financing uses category;

(22) the educational retirement board may request budget increases from other state funds for asset management fees and to meet emergencies or physical plant failures that might impact the health and safety of workers or visitors to the agency;

(23) the department of information technology may request budget increases up to two million dollars (\$2,000,000) from fund balances for telecommunication, information processing and the statewide human resources, accounting and management reporting system, may request budget increases up to five million dollars (\$5,000,000) from the statewide human resources, accounting and management reporting system equipment replacement fund for equipment replacement, may request budget increases up to ten percent of internal service funds/interagency transfers and other state funds appropriated in Section 4 of the General Appropriation Act of 2017 to support existing or new services and may request budget increases from

fund balances up to the amount of depreciation expense, as reported in the notes to the financial statements of the agency's independent audit of the fiscal year ended June 30, 2017 to acquire and replace capital equipment and associated software used to provide enterprise services;

(24) the public employees retirement association may request budget increases from other state funds for asset management fees and to meet emergencies or physical plant failures that might impact the health and safety of workers or visitors to the agency;

(25) the state commission of public records may request budget increases up to one hundred thousand dollars (\$100,000) from other state funds and fund balances for public records management and access;

(26) the marketing and promotions program of the tourism department may request budget increases up to one million dollars (\$1,000,000) from other state funds to grow the advertising efforts by leveraging partnership dollars in the tourism enterprise fund;

(27) the construction industries and manufactured housing program of the regulation and licensing department may request budget increases up to one hundred fifty thousand dollars (\$150,000) from internal service funds/interagency transfers from the public school facilities authority for costs associated with permitting and inspecting projects funded by the Public School Capital Outlay Act;

(28) the patient's compensation program of the office of superintendent of insurance may request budget increases from patient's compensation fund balances for patient compensation settlements and court-ordered payments;

(29) the New Mexico medical board may request budget increases up to one hundred thousand dollars (\$100,000) from other state funds for administrative hearing and litigation processes;

(30) the department of cultural affairs may request budget increases from the cultural affairs department enterprise fund and the preservation program may request budget increases from other state funds for archaeological services or historic preservation services;

(31) the department of game and fish may request budget increases up to five hundred thousand dollars (\$500,000) from the game protection fund for emergencies;

(32) the energy, minerals and natural resources department may request budget increases from internal service funds/interagency transfers from the department of environment, department of game and fish, homeland security and emergency management department and state engineer from federal funds to allow

programs to maximize the use of federal grants, the state parks division may request budget increases from internal service funds/interagency transfers from the department of transportation, New Mexico youth conservation corps, tourism department, economic development department and the department of game and fish from funds related to projects approved by the Rio Grande trail commission, the oil and gas conservation program may request budget increases from internal service funds/interagency transfers from funds received from the department of environment for the water quality program, the healthy forests program may request budget increases from internal service funds/interagency transfers from the New Mexico youth conservation corps fund for projects approved by the New Mexico youth conservation corps commission and may request budget increases up to fifty thousand dollars (\$50,000) from other state funds for costs associated with the inmate work camp program and the energy conservation and management program may request budget increases from internal service funds/interagency transfers and other state funds for project implementation;

(33) the commissioner of public lands may request budget increases up to fifty thousand dollars (\$50,000) from the state lands maintenance fund for travel expenses for performing audits of companies that pay royalties to the state;

(34) the interstate stream compact compliance and water development program of the state engineer may request budget increases up to four hundred thousand dollars (\$400,000) from the Ute dam construction fund to remove boat docks, modify the outlet works, start repairing the spillway or other operational requirements needed at Ute reservoir, may request budget increases up to three hundred thousand dollars (\$300,000) from the irrigation works construction fund for any additional operation and maintenance costs associated with the Pecos river settlement agreement, may request budget increases up to fifty thousand dollars (\$50,000) from other state funds from boat dock revenue deposited into the Ute dam construction fund to transfer to the state parks program of the energy, minerals and natural resources department for inspection, enforcement and administration of boat docks at Ute reservoir per the memorandum of understanding between the two agencies, may request budget increases up to two hundred thousand dollars (\$200,000) from the federal bureau of reclamation for operation and maintenance costs of the Vaughan pipeline, may request budget increases up to forty thousand dollars (\$40,000) from contractual services reimbursements for water modeling supply studies, and may request budget increases up to five thousand dollars (\$5,000) from Navajo reservoir top water bank deposit fees for costs associated with managing the program and the litigation and adjudication program of the state engineer may request budget increases up to two million five hundred thousand dollars (\$2,500,000) in other transfers from the irrigation works construction fund in the event water project fund revenues are insufficient to meet operating budget needs;

(35) the commission for the blind may request budget increases from other state funds to contract for the employment of blind or visually impaired persons pursuant to the federal Randolph-Sheppard Act, the federal Javits-Wagner-O'Day Act or the federal abilityone program;

(36) the independent living program of the division of vocational rehabilitation may request budget increases up to two hundred thousand dollars (\$200,000) from other state funds for independent living services for the disabled and the rehabilitation services program may request budget increases up to two hundred fifty thousand dollars (\$250,000) from other state funds for rehabilitation services for the disabled;

(37) the office of guardianship program of the developmental disabilities planning council may request budget increases from fund balances;

(38) the department of health [~~may request program transfers from the public health program, epidemiology and response program and the administration program to the facilities management program for budget shortfalls,~~] may request budget increases from health facility license and certification fees pursuant to Subsection G of Section 24-1-5 NMSA 1978, and may request budget increases from other state funds from private insurer payments, the developmental disabilities support program may request budget increases from other state funds from private insurer payments for family, infant, and toddler services, the epidemiology and response program may request budget increases from internal service funds/interagency transfers and other state funds from conducting health-related surveys and analyzing data, the laboratory services program may request budget increases from internal service funds/interagency transfers and other state funds and the medical cannabis program may request budget increases from medical cannabis program revenue; *LINE-ITEM VETO*

(39) the water protection program of the department of environment may request budget increases up to two hundred fifty thousand dollars (\$250,000) from other state funds and internal service funds/interagency transfers for providing technical or community services or both related to the drinking water state revolving loan fund, local government planning fund, water project fund, colonias infrastructure project fund programs and tribal infrastructure project fund programs and the resource protection program may request budget increases from other state funds and internal service funds/interagency transfers from the hazardous waste emergency fund for emergencies and may request budget increases from other state funds and internal service funds/interagency transfers from the corrective action fund for claims;

(40) the juvenile justice facilities program of the children, youth and families department may request budget increases up to four hundred thousand dollars (\$400,000) from the juvenile continuum grant fund and may request budget increases up to four hundred thousand dollars (\$400,000) from the juvenile community corrections grant fund and the early childhood services program and the juvenile justice services program may request budget increases from unexpended general fund balances from Subsection 41 of Section 5 of Chapter 11 of Laws of 2016;

(41) the department of military affairs may request budget increases up to fifty thousand dollars (\$50,000) from other state funds from leases, land

royalties, miscellaneous revenue, gifts or grants for support of national guard facility operations and maintenance and repair of the New Mexico youth challenge academy;

(42) the community offender management program of the corrections department may request budget increases up to one million five hundred thousand dollars (\$1,500,000) from internal service funds/interagency transfers and other state funds from program fees, probation and parole fees, cash balances and the community corrections grant fund and may request budget increases up to five hundred thousand dollars (\$500,000) from fund balances, program support may request budget increases up to one million dollars (\$1,000,000) from internal service funds/interagency transfers and other state funds from social security administration incentive payments and additional payments from international cadet training classes and the inmate management and control program may request budget increases up to one million five hundred thousand dollars (\$1,500,000) from internal service funds/interagency transfers and other state funds from land grant permanent fund and land income fund and inmate work crew program income;

(43) the department of public safety may request budget increases up to one million five hundred thousand dollars (\$1,500,000) from internal service funds/interagency transfers and other state funds for public safety special projects and activities with other state agencies, local governments and other law enforcement entities;

(44) the department of transportation may request budget increases up to two million dollars (\$2,000,000) from other state funds, internal service funds/interagency transfers and fund balances from the weight distance tax identification permit fund from the taxation and revenue department, if sufficient funds are available, to hire temporary workers, purchase equipment for commercial truck permitting and maintain and fund capital improvements for port-of-entry facilities and may request budget increases up to thirty million dollars (\$30,000,000) from other state funds and fund balances to meet federal match requirements for debt service and related costs, intergovernmental agreements, lawsuit and construction- and maintenance-related costs; and

(45) the public education department may request budget increases up to twenty thousand dollars (\$20,000) from the school transportation training fund for public school transportation workshops and training.

F. The department of military affairs, the homeland security and emergency management department, 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 135 Section 10 Laws 2017**

~~[Section 10. ADDITIONAL ADJUSTMENTS.--Contingent on enactment of senate finance committee substitute for Senate Bill 528 or similar legislation of the first session of the fifty-third legislature, the state budget division of the department of finance and administration shall adjust the following fiscal year 2018 general fund appropriations in Section 4 of this act in accordance with the following provisions:~~

~~A. reduce the personal services and employee benefits category of the corrections department appropriation of four hundred two thousand dollars (\$402,000);~~

~~B. reduce the personal services and employee benefits category of the department of public safety appropriation of three hundred forty-nine thousand one hundred dollars (\$349,100); and~~

~~C. increase the personal services and employee benefits categories of state courts and magistrate court program of the administrative office of the courts by seven hundred fifty-one thousand one hundred dollars (\$751,100).] *LINE-ITEM VETO*~~

## **Chapter 135 Section 11 Laws 2017**

Section 11. TRANSFER AUTHORITY.--If revenue and transfers to the general fund at the end of fiscal year 2018 are not sufficient to meet appropriations, the governor, with state board of finance approval, may transfer to the appropriation account of the general fund the amount necessary to meet that fiscal year's obligations from the operating reserve, the tobacco settlement permanent fund and the appropriation contingency fund.

## **Chapter 135 Section 12 Laws 2017**

Section 12. SEVERABILITY.--If any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

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H AFC/House Bills 2 and 3, aa, w/cc, partial veto  
Approved April 7, 2017

# **LAWS 2017, CHAPTER 136**

AN ACT

RELATING TO PROFESSIONAL LICENSURE; ENACTING THE LACTATION CARE PROVIDER ACT; PROVIDING FOR LICENSURE OF LACTATION CARE PROVIDERS; ESTABLISHING A SCOPE OF PRACTICE FOR LICENSED LACTATION CARE PROVIDERS; AMENDING A SECTION OF THE NURSING

PRACTICE ACT TO PROVIDE FOR BOARD OF NURSING ADMINISTRATION OF FUNDS DEPOSITED IN THE BOARD OF NURSING FUND PURSUANT TO THE LACTATION CARE PROVIDER ACT.

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

## **Chapter 136 Section 1 Laws 2017**

SECTION 1. SHORT TITLE.--Sections 1 through 6 of this act may be cited as the "Lactation Care Provider Act".

## **Chapter 136 Section 2 Laws 2017**

SECTION 2. DEFINITIONS.--As used in the Lactation Care Provider Act:

A. "applicant" means an individual seeking a license to provide lactation care and services as a licensee pursuant to the Lactation Care Provider Act;

B. "approved certification" means certification as a lactation care provider conferred by a certification program accredited by any nationally or internationally recognized accrediting agency that is approved by the board and that establishes continuing education requirements;

C. "board" means the board of nursing;

D. "lactation care and services" means the clinical application of scientific principles and a multidisciplinary body of evidence for the evaluation, problem identification, treatment, education and consultation for the provision of lactation care and services to families, including:

(1) clinical lactation assessment through the systematic collection of subjective and objective data;

(2) analysis of data and creation of a plan of care;

(3) implementation of a lactation care plan with demonstration and instruction to parents and communication to primary health care providers;

(4) evaluation of outcomes;

(5) provision of lactation education to parents and health care providers; and

(6) recommendation and use of assistive devices;

E. "license" means a license to practice as a lactation care provider that the board issues pursuant to the Lactation Care Provider Act;

F. "licensee" means a lactation care provider licensed as a licensed lactation care provider pursuant to the Lactation Care Provider Act;

G. "member" means a member of the board; and

H. "practice" means a course of business in which lactation care and services are rendered or offered to any individual, family or group of two or more individuals.

## **Chapter 136 Section 3 Laws 2017**

SECTION 3. BOARD POWERS.--The board may:

A. enforce the provisions of the Lactation Care Provider Act and adopt and promulgate rules to execute the provisions of that act;

B. license qualified applicants;

C. discipline licensees;

D. enforce qualification for licensure;

E. establish standards for licensee competence for continuing in or returning to practice based on approved certification;

F. issue orders relating to the practice of lactation care and services in accordance with the Uniform Licensing Act;

G. regulate licensee advertising and prohibit false, misleading or deceptive practices;

H. establish a code of conduct for licensees;

I. prepare information for the public that describes the regulatory functions of the board and the procedures by which complaints are filed with and resolved by the board; and

J. appoint a lactation care provider advisory committee consisting of at least one member who is a board member and at least two members who are experts in lactation to assist in the performance of the board's duties.

## **Chapter 136 Section 4 Laws 2017**

#### SECTION 4. LICENSURE REQUIREMENT--QUALIFICATIONS--EXEMPTIONS FROM LICENSURE.--

A. An individual shall not use the title "licensed lactation care provider" unless that individual is a licensee.

B. An applicant for a license as a licensee shall:

(1) be at least eighteen years of age;

(2) submit an application completed upon a form that the board prescribes and in accordance with board rules, accompanied by fees required by board rules;

(3) possess current approved certification; and

(4) assist the board in obtaining the applicant's criminal history background check by:

(a) providing fingerprints on two fingerprint cards or other biometric data for the purpose of obtaining criminal history record information from the federal bureau of investigation or the department of public safety; and

(b) paying the cost of obtaining the fingerprints and criminal history background checks. An applicant shall have the right to inspect or challenge the validity of the record development by the background check if the applicant is denied licensure as established by board rule.

C. Nothing in the Lactation Care Provider Act shall be construed to affect or prevent the practice of lactation care and services by licensed care providers or other persons; provided that a person who is not a licensee shall not hold that person out or represent that person's self to be a licensed lactation care provider.

### **Chapter 136 Section 5 Laws 2017**

#### SECTION 5. LICENSE FEES--TERM--RENEWAL.--

A. The board shall require each applicant for initial licensure or renewal of a license to pay a nonrefundable licensure fee that shall not exceed one hundred dollars (\$100).

B. A license shall expire biennially from the date of initial licensure.

C. The board shall renew licenses only upon receipt of renewal of licensure fees and evidence of compliance with continuing education requirements.

## Chapter 136 Section 6 Laws 2017

### SECTION 6. DISCIPLINARY PROCEEDINGS.--

A. In accordance with the procedures contained in the Uniform Licensing Act, the board may deny, revoke or suspend any license held or applied for pursuant to the Lactation Care Provider Act, reprimand or place a licensee on probation or deny, limit or revoke a privilege of a licensee desiring to practice or practicing lactation care and services upon grounds that the licensee or applicant:

(1) is guilty of fraud or deceit in procuring or attempting to procure a license;

(2) is convicted of a felony;

(3) is unfit or incompetent;

(4) is intemperate or is addicted to the use of habit-forming drugs;

(5) is guilty of unprofessional conduct as defined by board rules;

(6) has willfully or repeatedly violated any provisions of the Lactation Care Provider Act, including any board rule adopted pursuant to that act; or

(7) was certified or licensed to provide lactation care and services in any jurisdiction, territory or possession of the United States or another country and was the subject of disciplinary action for acts similar to acts described in this subsection. A certified copy of the record of the certification or licensure board disciplinary action taken by another jurisdiction, territory or possession of the United States or another country is conclusive evidence of the action.

B. The board may summarily suspend or restrict a license issued by the board without a hearing, simultaneously with or at any time after the initiation of proceedings for a hearing provided under the Uniform Licensing Act, if the board finds that evidence in its possession indicates that the licensee:

(1) poses a clear and immediate danger to the public health and safety if the licensee continues to practice;

(2) has been adjudged mentally incompetent by a final order or adjudication by a court of competent jurisdiction; or

(3) has pled guilty to or been found guilty of any offense related to the practice of medicine or for any violent criminal offense in this state or a substantially equivalent criminal offense in another jurisdiction.

C. A licensee is not required to comply with a summary action taken pursuant to Subsection B of this section until service has been made or the licensee has actual knowledge of the order, whichever occurs first.

D. A person whose license is suspended or restricted under this section is entitled to a hearing by the board pursuant to the Uniform Licensing Act within fifteen days from the date that the licensee requests a hearing.

E. Disciplinary proceedings may be instituted by any person, shall be by complaint and shall conform with the provisions of the Uniform Licensing Act. Any party to a hearing may obtain a copy of the hearing record upon payment of costs for the copy.

F. Any person filing a complaint shall be immune from liability arising out of civil action if the complaint is filed in good faith and without actual malice.

G. All written and oral communication made by any person to the board relating to actual or potential disciplinary action, including complaints made to the board, shall be confidential communications and are not public records for the purposes of the Inspection of Public Records Act. All data, communications and information acquired, prepared or disseminated by the board relating to actual or potential disciplinary action or its investigation of complaints shall not be disclosed, except to the extent necessary to carry out the purposes of the board or in a judicial appeal from the actions of the board or in a referral of cases made to law enforcement agencies, national database clearinghouses or other licensing boards.

H. The board shall not initiate a disciplinary action more than two years after the date that it receives a complaint.

I. The time limitation contained in Subsection D of this section shall not be tolled by any civil or criminal litigation in which the licensee or applicant is a party, arising substantially from the same facts, conduct, transactions or occurrences that would be the basis for the board's disciplinary action.

J. The board may recover the costs associated with the investigation and disposition of a disciplinary proceeding from the person who is the subject of the proceeding.

## **Chapter 136 Section 7 Laws 2017**

SECTION 7. Section 61-3-27 NMSA 1978 (being Laws 1968, Chapter 44, Section 23, as amended) is amended to read:

"61-3-27. FUND ESTABLISHED--DISPOSITION--METHOD OF PAYMENT.--

A. There is created a "board of nursing fund".

B. Except as provided in Sections 61-3-10.5 and 61-3-10.6 NMSA 1978, all funds received by the board and money collected under the Nursing Practice Act and the Lactation Care Provider Act shall be deposited with the state treasurer. The state treasurer shall place the money to the credit of the board of nursing fund. Any income earned on investment of the fund shall remain in the fund.

C. Payments out of the board of nursing fund shall be on vouchers issued and signed by the person designated by the board upon warrants drawn by the department of finance and administration in accordance with the budget approved by the department.

D. All amounts paid into the board of nursing fund shall be subject to the order of the board and shall only be used for the purpose of meeting necessary expenses incurred in the enforcement of the purposes of the Nursing Practice Act and the Lactation Care Provider Act, the duties imposed by those acts and the promotion of nursing and lactation care provider education and standards in this state. All money unused at the end of the fiscal year shall remain in the board of nursing fund for use in accordance with the provisions of the Nursing Practice Act and the Lactation Care Provider Act to further the purposes of those acts.

E. All funds that may have accumulated to the credit of the board under any previous act shall be continued for use by the board in administration of the Nursing Practice Act and the Lactation Care Provider Act.

F. As used in this section, "lactation care provider" means a person licensed by the board pursuant to the Lactation Care Provider Act to provide lactation care and services."

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HSIVC/HHHC/House Bill 138, aa

Approved April 7, 2017

## **LAWS 2017, CHAPTER 137**

AN ACT

RELATING TO RULES; CREATING REQUIREMENTS FOR PROPOSING, ADOPTING, AMENDING OR REPEALING RULES; AMENDING AND ENACTING SECTIONS OF THE STATE RULES ACT.

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

**Chapter 137 Section 1 Laws 2017**

SECTION 1. Section 14-4-2 NMSA 1978 (being Laws 1967, Chapter 275, Section 2, as amended) is amended to read:

"14-4-2. DEFINITIONS.--As used in the State Rules Act:

A. "agency" means any agency, board, commission, department, institution or officer of the state government except the judicial and legislative branches of the state government;

B. "person" includes individuals, associations, partnerships, companies, business trusts, political subdivisions and corporations;

C. "proceeding" means a formal agency process or procedure that is commenced or conducted pursuant to the State Rules Act;

D. "proposed rule" means a rule that is provided to the public by an agency for review and public comment prior to its adoption, amendment or repeal, and for which there is specific legal authority authorizing the proposed rule;

E. "provide to the public" means for an agency to distribute rulemaking information by:

(1) posting it on the agency website, if any;

(2) posting it on the sunshine portal;

(3) making it available in the agency's district, field and regional offices, if any;

(4) sending it by electronic mail to persons who have made a written request for notice from the agency of announcements addressing the subject of the rulemaking proceeding and who have provided an electronic mail address to the agency;

(5) sending it by electronic mail to persons who have participated in the rulemaking and who have provided an electronic mail address to the agency;

(6) sending written notice that includes, at a minimum, an internet and street address where the information may be found to persons who provide a postal address; and

(7) providing it to the New Mexico legislative council for distribution to appropriate interim and standing legislative committees;

F. "rule" means any rule, regulation, or standard, including those that explicitly or implicitly implement or interpret a federal or state legal mandate or other

applicable law and amendments thereto or repeals and renewals thereof, issued or promulgated by any 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, including affecting persons served by the

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 such a rule, nor shall it constitute specific adoption thereof 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 any hospital; 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 any educational institution; and

G. "rulemaking" means the process for adoption of a new rule or the amendment, readoption or repeal of an existing rule."

## **Chapter 137 Section 2 Laws 2017**

SECTION 2. Section 14-4-3 NMSA 1978 (being Laws 1967, Chapter 275, Section 3, as amended) is amended to read:

"14-4-3. FORMAT OF RULES--FILING--DISTRIBUTION.--

A. Each agency promulgating any rule shall place the rule in the format and style required by rule of the state records administrator and shall deliver the rule to the state records administrator or the administrator's designee, accompanied by the concise explanatory statement required by the State Rules Act. The state records administrator or the administrator's designee shall note thereon the date and hour of filing.

B. The state records administrator or the administrator's designee shall maintain a copy of the rule as a permanent record open to public inspection during office hours, on the website of the records center, published in a timely manner in the New Mexico register and compiled into the New Mexico Administrative Code.

C. At the time of filing, an agency may submit to the state records administrator or the administrator's designee a copy, for annotation with the date and hour of filing, to be returned to the agency.

D. The state records administrator, after written notification to the filing agency, may make minor, nonsubstantive corrections in spelling, grammar and format in filed rules. The state records administrator shall make a record of the correction and shall deliver the record to the filing agency and issuing authority within ten days of the change. Within thirty days of receiving that state records administrator's record of a

correction, the agency shall provide to the public notice of the correction in the same manner as the agency used to give notice of the rulemaking proceeding pursuant to Section 4 of this 2017 act."

## **Chapter 137 Section 3 Laws 2017**

SECTION 3. Section 14-4-5 NMSA 1978 (being Laws 1967, Chapter 275, Section 6, as amended) is amended to read:

"14-4-5. TIME LIMIT ON ADOPTION OF A PROPOSED RULE--FILING AND COMPLIANCE REQUIRED FOR VALIDITY.--

A. Except in the case of an emergency rule, no rule shall be valid or enforceable until it is published in the New Mexico register as provided by the State Rules Act.

B. An agency shall not adopt a rule until the public comment period has ended. If the agency fails to take action on a proposed rule within two years after the notice of proposed rulemaking is published in the New Mexico register, the rulemaking is automatically terminated unless the agency takes action to extend the period. The agency may extend the period of time for adopting the proposed rule for an additional period of two years by filing a statement of good cause for the extension in the rulemaking record, but it shall provide for additional public participation, comments and rule hearings prior to adopting the rule.

C. An agency may terminate a rulemaking at any time by publishing a notice of termination in the New Mexico register. If a rulemaking is terminated pursuant to this section, the agency shall provide notice to the public.

D. Within fifteen days after adoption of a rule, an agency shall file the adopted rule with the state records administrator or the administrator's designee and shall provide to the public the adopted rule. The state records administrator or the administrator's designee shall publish rules as soon as practicable after filing, but in no case later than ninety days after the date of adoption of the proposed rule. Unless a later date is otherwise provided by law or in the rule, the effective date of a rule shall be the date of publication in the New Mexico register.

E. A proposed rule shall not take effect unless it is adopted and filed within the time limits set by this section."

## **Chapter 137 Section 4 Laws 2017**

SECTION 4. A new section of the State Rules Act is enacted to read:

"NOTICE OF PROPOSED RULEMAKING.--

A. Not later than thirty days before a public rule hearing, the agency proposing the rule shall provide to the public and publish in the New Mexico register a notice of proposed rulemaking. The notice shall include:

- (1) a summary of the full text of the proposed rule;
- (2) a short explanation of the purpose of the proposed rule;
- (3) a citation to the specific legal authority authorizing the proposed rule and the adoption of the rule;
- (4) information on how a copy of the full text of the proposed rule may be obtained;
- (5) information on how a person may comment on the proposed rule, where comments will be received and when comments are due;
- (6) information on where and when a public rule hearing will be held and how a person may participate in the hearing; and
- (7) a citation to technical information, if any, that served as a basis for the proposed rule, and information on how the full text of the technical information may be obtained.

B. An agency may charge a reasonable fee for providing any records in nonelectronic form when provided to a person pursuant to this section. An agency shall not charge a fee for providing any records in electronic form when provided to a person pursuant to this section.

C. An internet link providing free access to the full text of the proposed rule shall be included on the notice of proposed rulemaking.

D. If the agency changes the date of the public rule hearing or the deadline for submitting comments as stated in the notice, the agency shall provide notice to the public of the change.

E. The state records administrator or the administrator's designee shall timely publish the notice of proposed rulemaking in the next publication of the New Mexico register."

## **Chapter 137 Section 5 Laws 2017**

SECTION 5. A new section of the State Rules Act is enacted to read:

"PUBLIC PARTICIPATION, COMMENTS AND RULE HEARINGS.--

A. The notice of proposed rulemaking shall specify a public comment period of at least thirty days after publication in the New Mexico register during which a person may submit information and comment on the proposed rule. The information or comment may be submitted in an electronic or written format or at a public rule hearing pursuant to Subsection B of this section. The agency shall consider all information and comment on a proposed rule that is submitted within the comment period.

B. At the public rule hearing, members of the public shall be given a reasonable opportunity to submit data, views or arguments orally or in writing. Each agency shall determine, in accordance with governing statutory and case law, the manner in which parties to the proceeding and members of the public will be able to participate in public hearings. All public hearings shall be conducted in a fair and equitable manner. Except as otherwise provided by law, an agency representative or hearing officer shall preside over a public rule hearing.

C. The public rule hearing shall be open to the public and be recorded."

## **Chapter 137 Section 6 Laws 2017**

SECTION 6. A new section of the State Rules Act is enacted to read:

"AGENCY RECORD IN RULEMAKING PROCEEDING.--

A. An agency shall maintain a rulemaking record for each rule it proposes to adopt. The record and materials incorporated by reference in the proposed rule shall be readily available for public inspection in the central office of the agency and available for public display on the state sunshine portal. If an agency determines that any part of the rulemaking record cannot be practicably displayed or is inappropriate for public display on the sunshine portal, the agency shall describe that part of the record, shall note on the sunshine portal that the part of the record is not displayed and shall provide instructions for accessing or inspecting that part of the record.

B. A rulemaking record shall contain:

(1) a copy of all publications in the New Mexico register relating to the proposed rule;

(2) a copy of any technical information that was relied upon in formulating the final rule;

(3) any official transcript of a public rule hearing or, if not transcribed, any audio recording or verbatim transcript of the hearing, and any memoranda summarizing the contents of the hearing prepared by the hearing officer or agency official who presided over the hearing;

(4) a copy of all comments and other material received by the agency during the public comment period and at the public hearing;

(5) a copy of the full text of the initial proposed rule and the full text of the final adopted rule and the concise explanatory statement filed with the state records administrator or the administrator's designee; and

(6) any corrections made by the state records administrator pursuant to Section 14-4-3 NMSA 1978."

## **Chapter 137 Section 7 Laws 2017**

SECTION 7. A new section of the State Rules Act is enacted to read:

"CONCISE EXPLANATORY STATEMENT.--At the time it adopts a rule, an agency shall provide to the public a concise explanatory statement containing:

A. the date the agency adopted the rule;

B. a reference to the specific statutory or other authority authorizing the rule; and

C. any findings required by a provision of law for adoption of the rule."

## **Chapter 137 Section 8 Laws 2017**

SECTION 8. A new section of the State Rules Act is enacted to read:

"EMERGENCY RULE.--

A. An agency shall comply with the rulemaking procedures of the State Rules Act unless the agency finds that the time required to complete the procedures would:

(1) cause an imminent peril to the public health, safety or welfare;

(2) cause the unanticipated loss of funding for an agency program;

or

(3) place the agency in violation of federal law.

B. The agency shall provide to the public a record of any finding pursuant to Subsection A of this section and a detailed justification for that finding before issuing an emergency rule. The record shall include a statement that the emergency rule is temporary. After such record has been provided to the public, the agency may issue the

emergency rule immediately without a public rule hearing or with any abbreviated notice and hearing that it finds practicable.

C. When an agency makes a finding pursuant to Subsection A of this section, the agency shall follow the provisions of this section in addition to any more specific requirements in statute that pertain to the agency regarding promulgating emergency or interim rules.

D. Emergency rules may take effect immediately upon filing with the state records administrator or the administrator's designee or at a later date specified in the emergency rule. Emergency rules shall be published in the New Mexico register.

E. No emergency rule shall permanently amend or repeal an existing rule. An emergency rule shall remain in effect until a permanent rule takes effect under the normal rulemaking process. If no permanent rule is adopted within one hundred eighty days from the effective date of the emergency rule, the emergency rule shall expire and may not be readopted as an emergency rule. If an expired emergency rule temporarily amended or repealed an existing rule, the rule shall revert to what it would have been had the emergency rule not been issued."

## **Chapter 137 Section 9 Laws 2017**

SECTION 9. A new section of the State Rules Act is enacted to read:

"CONFLICTS BETWEEN RULE AND STATUTE--VARIANCE BETWEEN PROPOSED AND FINAL ACTION.--

A. No rule is valid or enforceable if it conflicts with statute. A conflict between a rule and a statute is resolved in favor of the statute.

B. A word or phrase that is defined in an applicable statute should not be defined in rule. A conflict between a definition that appears in a rule and in an applicable statute is resolved in favor of the statute."

## **Chapter 137 Section 10 Laws 2017**

SECTION 10. A new section of the State Rules Act is enacted to read:

"PROCEDURAL RULES.--No later than January 1, 2018, the attorney general shall adopt default procedural rules for public rule hearings for use by agencies that have not adopted their own procedural rules consistent with the State Rules Act. Each agency may adopt its own procedural rules, or continue in effect existing rules, which shall provide at least as much opportunity for participation by parties and members of the public as is provided in the procedural rules adopted by the attorney general. An agency that adopts its own procedural rules shall send a copy of those procedural rules

to the attorney general and shall maintain those procedural rules on the agency's website."

## **Chapter 137 Section 11 Laws 2017**

SECTION 11. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2017.

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HSIVC/House Bill 58, aa

Approved April 7, 2017

## **LAWS 2017, CHAPTER 138**

AN ACT

RELATING TO INCREASING THE HEALTH CARE WORKFORCE; ESTABLISHING PREFERENCES FOR FINANCIAL ASSISTANCE TO MEDICAL STUDENTS ATTENDING AN ACCREDITED NEW MEXICO MEDICAL SCHOOL; ESTABLISHING PREFERENCES FOR FINANCIAL ASSISTANCE TO CERTAIN HEALTH CARE PROFESSIONALS WHO HAVE ATTENDED A NEW MEXICO POST-SECONDARY EDUCATIONAL INSTITUTION; DECLARING AN EMERGENCY.

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

## **Chapter 138 Section 1 Laws 2017**

SECTION 1. Section 21-22-4 NMSA 1978 (being Laws 1975, Chapter 244, Section 4, as amended) is amended to read:

"21-22-4. MEDICAL STUDENT LOANS--HIGHER EDUCATION DEPARTMENT AUTHORIZED--QUALIFICATIONS.--

A. The higher education department is authorized to grant a loan to defray the expenses of the medical education of a student deemed qualified by the department to receive the medical education, upon such terms and conditions as may be imposed by regulations of the department.

B. The department shall only receive, pass upon and allow or disallow those applications for loans made by those students enrolled or accepted by colleges of medicine who are bona fide citizens and residents of the United States and of New Mexico and who declare their intent to practice as physicians within designated areas of the state.

C. The department shall make a full and careful investigation of the ability, character and qualifications of each applicant and determine the applicant's fitness to become a recipient of a student loan. The investigation of each applicant shall include an investigation of the ability of the applicant and the applicant's parents or guardians to pay the applicant's expenses for a medical education. The department shall give preference to qualified applicants who:

(1) are unable, or whose parents or guardians are unable, to pay the applicant's expenses in obtaining a medical education; and

(2) are attending an accredited New Mexico medical school.

D. The department shall arrange for loan recipients to receive assistance in locating, planning and implementing the establishment and maintenance of a medical practice in a designated underserved area."

## **Chapter 138 Section 2 Laws 2017**

SECTION 2. Section 21-22D-6 NMSA 1978 (being Laws 1995, Chapter 144, Section 21, as amended) 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 higher education department a declaration of intent to practice as a health professional in areas of New

Mexico designated as underserved by the department.

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 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 department 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 department.

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 department.

F. If a health professional does not comply with the terms of the contract, the department shall assess a penalty of up to three times the amount of award disbursed plus eighteen percent interest, unless the department finds acceptable extenuating circumstances for why the health professional cannot serve or comply with the terms of the contract. If the department does not find acceptable extenuating circumstances for the health professional's failure to comply with the contract, the department shall require immediate repayment plus the amount of the penalty.

G. The department 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 138 Section 3 Laws 2017**

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

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House Bill 126, aa, w/ec

Approved without signature

March 16, 2017. See Art. 4

Section 22, N.M. Const.

## **LAWS 2017, CHAPTER 139**

### **AN ACT**

RELATING TO AGRICULTURE; PROVIDING FOR THE ESTABLISHMENT OF AN INDUSTRIAL HEMP RESEARCH AND DEVELOPMENT PROGRAM AND THE NEW MEXICO INDUSTRIAL HEMP RESEARCH AND DEVELOPMENT FUND; EXEMPTING THE CULTIVATION OF INDUSTRIAL HEMP FROM THE CONTROLLED SUBSTANCES ACT.

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

### **Chapter 139 Section 1 Laws 2017**

SECTION 1. A new section of Chapter 76 NMSA 1978 is enacted to read:

"INDUSTRIAL HEMP RESEARCH AND DEVELOPMENT PROGRAM--NEW MEXICO DEPARTMENT OF AGRICULTURE.--

A. As used in this section:

(1) "board" means the board of regents of New Mexico state university; and

(2) "industrial hemp" means the plant *Cannabis sativa* L. and any part of the plant, whether growing or not, containing a delta-9-tetrahydrocannabinol concentration of no more than three-tenths percent on a dry weight basis.

B. Notwithstanding any other provision of law to the contrary, the board through the New Mexico department of agriculture shall institute and administer an industrial hemp research and development program to allow persons and institutions of higher education to grow industrial hemp for the purpose of studying the growth, cultivation and marketing of industrial hemp in New Mexico or any other purpose allowed by federal regulation or law.

C. The board on behalf of the New Mexico department of agriculture shall develop and promulgate rules to establish and carry out the industrial hemp research and development program. The board may develop and promulgate rules regarding requirements for participation, the issuance of permits, inspections, recordkeeping, program compliance or program participation fees; provided that any required program participation fees shall not exceed administrative costs.

D. The cultivation of industrial hemp shall be subject to and comply with the rules promulgated by the board on behalf of the New Mexico department of agriculture pursuant to this section.

E. The board shall establish a "New Mexico industrial hemp research and development fund". The fund consists of revenue collected by the New Mexico department of agriculture in administration of the industrial hemp research and development program, donations, grants and income earned 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. The board shall administer the fund, and money in the fund is appropriated to the board for the New

Mexico department of agriculture to administer the industrial hemp research and development program and related programs. Money in the fund shall be disbursed on warrants signed by the board pursuant to vouchers signed by the director of the New Mexico department of agriculture or the director's authorized representative."

## **Chapter 139 Section 2 Laws 2017**

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 that 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;

- Substances Act;
- (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
  - (13) N-ethyl-3-piperidyl benzilate;
  - (14) N-methyl-3-piperidyl benzilate;
  - (15) psilocybin;
  - (16) psilocyn;
  - (17) tetrahydrocannabinols;
  - (18) hashish;
  - (19) synthetic cannabinoids, including:
    - (a) 1-[2-(4-(morpholinyl)ethyl)-3-(1-naphthoyl)indole];
    - (b) 1-butyl-3-(1-naphthoyl)indole;
    - (c) 1-hexyl-3-(1-naphthoyl)indole;
    - (d) 1-pentyl-3-(1-naphthoyl)indole;
    - (e) 1-pentyl-3-(2-methoxyphenylacetyl) indole;
    - (f) cannabicyclohexanol (CP 47, 497 and homologues: 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (CP-47,497); and 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol;
    - (g) 6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol);
    - (h) dexanabinol, (6aS,10aS)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol;

- (i) 1-pentyl-3-(4-chloro naphthoyl) indole;
- (j) (2-methyl-1-propyl-1H-indol-3-yl)-1-naphthalenyl-methanone; and
- (k) 5-(1,1-dimethylheptyl)-2-(3-hydroxy cyclohexyl)-phenol;
- (20) 3,4-methylenedioxy methcathinone;
- (21) 3,4-methylenedioxy pyrovalerone;
- (22) 4-methyl methcathinone;
- (23) 4-methoxy methcathinone;
- (24) 3-fluoro methcathinone; and
- (25) 4-fluoro methcathinone;

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:

(1) industrial hemp, pursuant to rules promulgated by the board of regents of New Mexico state university on behalf of the New Mexico department of agriculture; or

(2) the use of marijuana, tetrahydrocannabinols or chemical derivatives of tetrahydrocannabinol by certified patients pursuant to the Controlled Substances Therapeutic Research Act or by qualified patients pursuant to the provisions of the Lynn and Erin Compassionate Use Act; and

F. controlled substances added to Schedule I by rule adopted by the board pursuant to Section 30-31-3 NMSA 1978."

Approved without signature

March 9, 2017. See Art 4,

Section 22, N.M. Const.

## **LAWS 2017, CHAPTER 140**

### AN ACT

RELATING TO AGRICULTURE; ENACTING A NEW SECTION OF CHAPTER 76 NMSA 1978 TO PROVIDE AUTHORIZATION FOR THE NEW MEXICO DEPARTMENT OF AGRICULTURE TO ADOPT RULES FOR RESEARCH ON INDUSTRIAL HEMP; PROVIDING FOR THE ESTABLISHMENT OF THE NEW MEXICO INDUSTRIAL HEMP RESEARCH AND DEVELOPMENT FUND.

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

### **Chapter 140 Section 1 Laws 2017**

SECTION 1. A new section of Chapter 76 NMSA 1978 is enacted to read:

"INDUSTRIAL HEMP RESEARCH--NEW MEXICO DEPARTMENT OF AGRICULTURE.--

A. As used in this section, "industrial hemp" means the plant *Cannabis sativa* L. and any part of the plant, whether growing or not, containing a delta-9-tetrahydrocannabinol concentration of no more than three-tenths percent on a dry weight basis.

B. The intent of this section is to bring New Mexico into compliance with federal law.

C. Notwithstanding any other provision of law to the contrary, the New Mexico department of agriculture shall issue licenses pursuant to rules enacted under Subsection D of this section to grow industrial hemp for research and development purposes, including agricultural, agronomic, ecological, processing, sales and marketing research.

D. The director of the New Mexico department of agriculture shall adopt rules to establish and carry out the provisions of this section, including requirements for licensure, training of law enforcement personnel, inspection, recordkeeping, fees not to exceed program costs and compliance processes. An institution of higher education, person or business that plans to grow industrial hemp seed or industrial hemp fiber shall obtain a grower's license by submitting an application to the New Mexico department of agriculture pursuant to promulgated rules.

E. A person who holds a license issued pursuant to this section may grow industrial hemp for research and development purposes, including agricultural, agronomic, ecological, processing, sales and marketing research or any other purpose allowed by federal regulation in law.

F. New Mexico state university shall establish a "New Mexico industrial hemp research and development fund". The fund consists of fees collected by the New Mexico department of agriculture for administration of the industrial hemp research and development program, donations, grants and income earned 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. The New Mexico department of agriculture shall administer the fund, and money in the

fund is subject to appropriation by the legislature to the New Mexico department of agriculture to conduct related programs. Money in the fund shall be disbursed on warrants signed by the secretary of finance and administration pursuant to vouchers signed by the director of the New Mexico department of agriculture or the director's authorized representative."

## **Chapter 140 Section 2 Laws 2017**

SECTION 2. Section 30-31-2 NMSA 1978 (being Laws 1972, Chapter 84, Section 2, as amended) is amended to read:

"30-31-2. DEFINITIONS.--As used in the Controlled Substances Act:

A. "administer" means the direct application of a controlled substance by any means to the body of a patient or research subject by a practitioner or the practitioner's 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 warehouseperson or employee of the carrier or warehouseperson;

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 administering or dispensing a controlled substance in the course of the practitioner's professional practice; or

(2) by a practitioner, or by the practitioner's agent under the practitioner's 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; or the plant *Cannabis sativa* L. and any part of the plant, whether growing or not, containing a delta-9-tetrahydrocannabinol concentration of no more than three-tenths percent on a dry weight basis;

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, certified advanced practice chiropractic physician, doctor of oriental medicine, dentist, physician assistant, certified nurse practitioner, clinical nurse specialist, certified nurse-midwife, prescribing psychologist, veterinarian, euthanasia technician, 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, the prescriber's 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 the person's professional practice or research and includes analytical laboratories;

U. "ultimate user" means a person who lawfully possesses a controlled substance for the person's own use or for the use of a member of the person's household or for administering to an animal under the care, custody and control of the person or by a member of the person's 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) bonges; 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, parochial school or private school or property that is used for a public, parochial or private school purpose 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 140 Section 3 Laws 2017**

SECTION 3. 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 that 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;
- (18) hashish;
- (19) synthetic cannabinoids, including:
- (a) 1-[2-(4-(morpholinyl)ethyl)-3-(1-naphthoyl)indole];
  - (b) 1-butyl-3-(1-naphthoyl)indole;
  - (c) 1-hexyl-3-(1-naphthoyl)indole;
  - (d) 1-pentyl-3-(1-naphthoyl)indole;
  - (e) 1-pentyl-3-(2-methoxyphenylacetyl) indole;
  - (f) cannabicyclohexanol (CP 47, 497 and homologues: 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (CP-47,497); and 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol;

(g) 6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol);

(h) dexanabinol, (6aS,10aS)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol;

(i) 1-pentyl-3-(4-chloro naphthoyl) indole;

(j) (2-methyl-1-propyl-1H-indol-3-yl)-1-naphthalenyl-methanone; and

(k) 5-(1,1-dimethylheptyl)-2-(3-hydroxy cyclohexyl)-phenol;

(20) 3,4-methylenedioxy methcathinone;

(21) 3,4-methylenedioxy pyrovalerone;

(22) 4-methylmethcathinone;

(23) 4-methoxymethcathinone;

(24) 3-fluoromethcathinone; and

(25) 4-fluoromethcathinone;

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:

(1) cultivation of industrial hemp by qualified entities pursuant to rules adopted by the New Mexico department of agriculture; or

(2) the use of marijuana, tetrahydrocannabinols or chemical derivatives of tetrahydrocannabinol by certified patients pursuant to the Controlled Substances Therapeutic Research Act or by qualified patients pursuant to the provisions of the Lynn and Erin Compassionate Use Act; and

F. controlled substances added to Schedule I by rule adopted by the board pursuant to Section 30-31-3 NMSA 1978."

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Senate Bill 6, aa

Approved without signature

March 13, 2017. See Art. 4,

Section 22, N.M. Const.

## **LAWS 2017, CHAPTER 141**

### AN ACT

RELATING TO LOCAL GOVERNMENT; AMENDING THE INFRASTRUCTURE DEVELOPMENT ZONE ACT TO PROVIDE FOR BROADBAND INFRASTRUCTURE DEVELOPMENT BY A LOCAL GOVERNMENT.

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

### **Chapter 141 Section 1 Laws 2017**

SECTION 1. Section 5-17-2 NMSA 1978 (being Laws 2009, Chapter 136, Section 2) is amended to read:

"5-17-2. DEFINITIONS.--As used in the Infrastructure Development Zone Act:

A. "approving authority" means the governing body required by Section 5-17-9 or 5-17-13 NMSA 1978 to designate an election official to conduct the organization election and exercise other duties pursuant to the Infrastructure Development Zone Act;

B. "board" means the board of directors of an infrastructure development zone;

C. "director" means a member of a board;

D. "eligible elector" means a person who is registered to vote in New Mexico and who:

(1) has been a resident of the infrastructure development zone or the area to be included in the infrastructure development zone for not less than thirty days; or

(2) is a taxpaying elector;

E. "governing body" means the governing body of a municipality or the board of county commissioners of a county;

F. "infrastructure development zone" means a political subdivision organized or acting pursuant to the provisions of the Infrastructure Development Zone Act;

G. "publication" means printing one time, in one newspaper of general circulation in the infrastructure development zone or proposed infrastructure development zone if there is such a newspaper, and, if not, then in a newspaper in the county in which the infrastructure development zone or proposed infrastructure development zone is located. If an infrastructure development zone has territory within more than one county and if publication cannot be made in one newspaper of general circulation in the infrastructure development zone, then one publication is required in a newspaper in each county in which the infrastructure development zone is located and in which the infrastructure development zone also has fifty or more eligible electors;

H. "regular election" means the election on the Tuesday succeeding the first Monday of May in every even-numbered year, held for the purpose of electing members to the board and for submission of other questions, if any;

I. "secretary" means the secretary of a board;

J. "services" means any improvements and facilities listed in this subsection and

provided for in the service plan of an infrastructure development zone as approved by the governing body, including both on-site improvements and off-site improvements that directly or indirectly benefit the infrastructure development zone and necessary or incidental work, whether newly constructed, renovated or existing, and all necessary or desirable appurtenances. "Services" include:

(1) sanitary sewage systems, including collection, transport, storage, treatment, dispersal, effluent use and discharge;

(2) drainage and flood control systems, including collection, transport, diversion, storage, detention, retention, dispersal, use and discharge;

(3) water systems for domestic, commercial, office, industrial, irrigation, municipal, fire protection or other purposes, including production, collection, storage, treatment, transport, delivery, connection and dispersal;

(4) highways, streets, roadways, bridges, crossing structures and parking facilities, including all areas for vehicular use for travel, ingress, egress and parking;

(5) trails and areas for pedestrian, equestrian, bicycle or other nonmotor vehicle use for travel, ingress, egress and parking;

(6) pedestrian malls, parks, recreational facilities and open space areas for the use of members of the public for entertainment, assembly and recreation, including programming events for the community and public;

(7) landscaping, including earthworks, structures, lakes and other water features, plants, trees and related water delivery systems;

(8) public buildings, public safety facilities and fire protection and police facilities, subject to the consent of the approving authority;

(9) electrical and energy generation, transmission and distribution facilities, including solar, wind and geothermal;

(10) natural gas distribution facilities;

(11) lighting systems;

(12) cable or other telecommunications lines and related equipment, including fiber optic transmission facilities designed to carry communication signals such as voice, data and video and any broadband technology infrastructure;

(13) traffic control systems and devices, including signals, controls, markings and signage;

(14) public educational or cultural facilities;

(15) equipment, vehicles, furnishings and other personalty related to the items listed in this subsection;

(16) inspection, construction management and program management costs; and

(17) solid waste and garbage collection and disposal; and

K. "taxpaying elector" means a person:

(1) who, or whose spouse, owns taxable real or personal property within the infrastructure development zone or the area to be included in or excluded from the infrastructure development zone, whether the person resides within the infrastructure development zone or not; or

(2) who is obligated to pay taxes under a contract to purchase taxable property within the infrastructure development zone or the area to be included in

or excluded from the infrastructure development zone, whether the person resides within the infrastructure development zone or not."

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Senate Bill 24

Approved without signature

March 18, 2017. See Art. 4,

Section 22, N.M. Const.

## **LAWS 2017, CHAPTER 142**

### **AN ACT**

RELATING TO PUBLIC SCHOOL CAPITAL OUTLAY; ELIMINATING THE TIME PERIOD WHEN THE PUBLIC SCHOOL CAPITAL OUTLAY FUND CAN BE USED FOR EDUCATION TECHNOLOGY INFRASTRUCTURE DEFICIENCY CORRECTIONS INITIATIVES.

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

### **Chapter 142 Section 1 Laws 2017**

SECTION 1. Section 22-24-4 NMSA 1978 (being Laws 1975, Chapter 235, Section 4, as amended) is amended to read:

"22-24-4. PUBLIC SCHOOL CAPITAL OUTLAY FUND CREATED--USE.--

A. The "public school capital outlay fund" is created. Balances remaining in the fund at the end of each fiscal year shall not revert.

B. Except as provided in Subsections G and I through N of this section, money in the fund may be used only for capital expenditures deemed necessary by the council 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 to and custody of 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. Except as provided in Subsection K of this section, 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 for the core administrative functions 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. The fund may be expended by the council for building system repair, renovation or replacement initiatives with projects to be identified by the council pursuant to Section 22-24-4.6 NMSA 1978; provided that money allocated pursuant to this subsection shall be expended within three years of the allocation.

I. The fund may be expended annually by the council 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 school district; or

(b) seven hundred dollars (\$700) multiplied by the number of MEM using the leased classroom facilities; provided that in fiscal year 2009 and in each subsequent fiscal year, this amount shall be adjusted by the percentage change between the penultimate calendar year and the immediately preceding calendar year of the consumer price index for the United States, all items, as published by the United States department of labor;

(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;

(4) no grant shall be made for lease payments due pursuant to a financing agreement under which the facilities may be purchased for a price that is reduced according to the lease payments made unless:

(a) the agreement has been approved pursuant to the provisions of the Public School Lease Purchase Act; and

(b) the facilities are leased by a charter school;

(5) if the lease payments are made pursuant to a financing agreement under which the facilities may be purchased for a price that is reduced according to the lease payments made, neither a grant nor any provision of the Public School Capital Outlay Act creates a legal obligation for the school district or charter school to continue the lease from year to year or to purchase the facilities nor does it

create a legal obligation for the state to make subsequent grants pursuant to the provisions of this subsection; and

(6) as used in this subsection:

(a) "MEM" means: 1) the average full-time-equivalent enrollment using leased classroom facilities on the eightieth and one hundred twentieth days of the prior school year; or 2) 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 eightieth day of the school year, the MEM shall be adjusted to reflect the full-time-equivalent enrollment on that date; and

(b) "classroom facilities" or "classroom space" includes the space needed, as determined by the minimum required under the statewide adequacy standards, for the direct administration of school activities.

J. 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 pay 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 public school facilities authority may 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. Such a contract may provide for initial estimated payments from the fund prior to the expenditures if the contract also provides for additional payments from the fund if the actual expenditures exceed the initial payments and for repayments back to the fund if the initial payments exceed the actual expenditures. Money distributed from the fund to the state fire marshal or the construction industries division pursuant to this subsection shall be used to supplement, rather than supplant, appropriations to those entities.

K. Pursuant to guidelines established by the council, allocations from the fund may be made to assist school districts in developing and updating five-year facilities plans required by the Public School Capital Outlay Act; provided that:

(1) no allocation shall be made unless the council determines that the school district is willing and able to pay the portion of the total cost of developing or updating the plan that is not funded with the allocation from the fund. Except as provided in Paragraph (2) of this subsection, the portion of the total cost to be paid with the allocation from the fund shall be determined pursuant to the methodology in Paragraph (5) of Subsection B of Section 22-24-5 NMSA 1978; or

(2) the allocation from the fund may be used to pay the total cost of developing or updating the plan if:

(a) the school district has fewer than an average of six hundred full-time-equivalent students on the eightieth and one hundred twentieth days of the prior school year; or

(b) the school district meets all of the following requirements: 1) the school district has fewer than an average of one thousand full-time-equivalent students on the eightieth and one hundred twentieth days of the prior school year; 2) the school district has at least seventy percent of its students eligible for free or reduced-fee lunch; 3) the state share of the total cost, if calculated pursuant to the methodology in Paragraph (5) of Subsection B of Section 22-24-5 NMSA 1978, would be less than fifty percent; and 4) for all educational purposes, the school district 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.

L. Upon application by a school district, allocations from the fund may be made by the council for the purpose of demolishing abandoned school district facilities; provided that:

(1) the costs of continuing to insure an abandoned facility outweigh any potential benefit when and if a new facility is needed by the school district;

(2) there is no practical use for the abandoned facility without the expenditure of substantial renovation costs; and

(3) the council may enter into an agreement with the school district under which an amount equal to the savings to the district in lower insurance premiums are used to reimburse the fund fully or partially for the demolition costs allocated to the district.

M. Up to ten million dollars (\$10,000,000) of the fund may be expended each year for an education technology infrastructure deficiency corrections initiative pursuant to Section 22-24-4.5 NMSA 1978; provided that funding allocated pursuant to this section shall be expended within three years of its allocation.

N. For each fiscal year from 2018 through 2022, twenty-five million dollars (\$25,000,000) of the public school capital outlay fund is reserved for appropriation by the legislature to the instructional material fund or to the transportation distribution of the public school fund. The secretary shall certify the need for the issuance of supplemental severance tax bonds to meet an appropriation from the public school capital outlay fund to the instructional material fund or to the transportation distribution of the public school fund. Any portion of an amount of the public school capital outlay fund that is reserved

for appropriation by the legislature for a fiscal year, but that is not appropriated before the first day of that fiscal year, may be expended by the council as provided in this section."

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Senate Bill 64

Approved without signature

March 18, 2017. See Art. 4,

Section 22, N.M. Const.

## **LAWS 2017, CHAPTER 143**

### **AN ACT**

RELATING TO TAXATION; REQUIRING THAT THE TREASURER OF THE COUNTY IN WHICH A TAX INCREMENT DEVELOPMENT DISTRICT IS FORMED BE NOTIFIED OF THAT FORMATION.

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

### **Chapter 143 Section 1 Laws 2017**

SECTION 1. Section 5-15-9 NMSA 1978 (being Laws 2006, Chapter 75, Section 9, as amended) is amended to read:

"5-15-9. FORMATION OF A DISTRICT.--

A. If the formation of the tax increment development district is approved by a majority of the voters casting votes at the election, or if an election is held by vote of the owners of property within the district or proposed district, the governing body shall deliver a copy of the resolution ordering formation of the tax increment development district to each of the following persons or entities:

(1) the county assessor, the county treasurer and the clerk of the county in which the district is located;

(2) the school district within which any portion of the property located within a tax increment development area lies;

(3) any other taxing entities within which any portion of the property located within a tax increment development area lies;

(4) the taxation and revenue department;

(5) the local government division of the department of finance and administration; and

(6) the director of the legislative finance committee.

B. A notice of the formation showing the number and date of the resolution and giving a description of the land included in the district shall be recorded with the clerk of the county in which the district is located.

C. A tax increment development district shall be a political subdivision of the state, separate and apart from a municipality or county."

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Senate Bill 67

Approved without signature

March 14, 2017. See Art. 4,

Section 22, N.M. Const.

## **LAWS 2017, CHAPTER 144**

AN ACT

RELATING TO PUBLIC SCHOOLS; PROVIDING THAT MATHEMATICS OR SCIENCE UNITS REQUIRED FOR HIGH SCHOOL GRADUATION MAY INCLUDE A COMPUTER SCIENCE UNIT.

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

### **Chapter 144 Section 1 Laws 2017**

SECTION 1. Section 22-13-1.1 NMSA 1978 (being Laws 1986, Chapter 33, Section 5, as amended by Laws 2016, Chapter 17, Section 2 and by Laws 2016, Chapter 18, Section 2) 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 based on reports of college and workplace readiness assessments, as available, and other factors and is reasonably informed about:

(1) curricular and course options, including honors or advanced placement courses, dual-credit courses, distance learning courses, career clusters and career pathways, pre-apprenticeship programs or remediation programs that the college and workplace readiness assessments indicate to be appropriate;

(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. Once a student has entered ninth grade, the graduation requirements shall not be changed for that student from the requirements specified in the law at the time the student entered ninth grade.

G. 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 department content and performance standards. Student service learning shall be offered as an elective. Financial literacy shall be offered as an elective. Pre-apprenticeship programs may be offered as electives. Media literacy may be offered as an elective.

H. For students entering the ninth grade beginning in the 2009-2010 school year, at least one of the units required for graduation shall be earned as an advanced placement or honors course, a dual-credit course offered in cooperation with an institution of higher education or a distance learning course.

I. The department shall establish a procedure for students to be awarded credit through completion of specified career technical education courses for certain graduation requirements, and districts may choose to allow students who successfully

complete an industry-recognized credential, certificate or degree to receive additional weight in the calculation of the student's grade point average.

J. Successful completion of the requirements of the New Mexico diploma of excellence shall be required for graduation for students entering the ninth grade beginning in the 2009-2010 school year. Successful completion of a minimum of twenty-four units aligned to the state academic content and performance standards shall be required to earn a New Mexico diploma of excellence. These units shall be as follows:

(1) four units in English, with major emphasis on grammar, nonfiction writing and literature;

(2) four units in mathematics, of which one shall be the equivalent to or higher than the level of algebra 2, unless the parent submitted written, signed permission for the student to complete a lesser mathematics unit; and provided that a financial literacy course that meets state mathematics academic content and performance standards shall qualify as one of the four required mathematics units;

(3) three units in science, two of which shall have a laboratory component;

(4) three and one-half units in social science, which shall include United States history and geography, world history and geography, government and economics and one-half unit of New Mexico history;

(5) one unit in physical education, as determined by each school district, which may include a physical education program that meets state content and performance standards or participation in marching band, junior reserve officers' training corps or interscholastic sports sanctioned by the New Mexico activities association or any other co-curricular physical activity;

(6) one unit in one of the following: a career cluster course, workplace readiness or a language other than English; and

(7) seven and one-half elective units that meet department content and performance standards. Career and technical education courses shall be offered as an elective. Student service learning shall be offered as an elective. Financial literacy shall be offered as an elective. Pre-apprenticeship programs may be offered as electives. Media literacy may be offered as an elective.

K. For students entering the eighth grade in the 2012-2013 school year, a course in health education is required prior to graduation. Health education may be required in either middle school or high school, as determined by the school district. Each school district shall submit to the department by the beginning of the 2011-2012 school year a health education implementation plan for the 2012-2013 and subsequent school years, including in which grade health education will be required and how the

course aligns with department content and performance standards. Health education courses shall include:

(1) age-appropriate sexual abuse and assault awareness and prevention training that meets department standards developed in consultation with the federal centers for disease control and prevention that are based on evidence-based methods that have proven to be effective; and

(2) lifesaving skills training that follows nationally recognized guidelines for hands-on psychomotor skills cardiopulmonary resuscitation training. Students shall be trained to recognize the signs of a heart attack, use an automated external defibrillator and perform the Heimlich maneuver for choking victims. The secretary shall promulgate rules to provide for the:

(a) use of the following instructors for the training provided pursuant to this paragraph: 1) school nurses, health teachers and athletic department personnel as instructors; and 2) any qualified persons volunteering to provide training at no cost to the school district that the school district determines to be eligible to offer instruction pursuant to this paragraph; and

(b) approval of training and instructional materials related to the training established pursuant to this paragraph in both English and Spanish.

L. For students entering the ninth grade in the 2017-2018 school year and subsequent school years:

(1) one of the units in mathematics required by Paragraph (2) of Subsection J of this section may comprise a computer science course if taken after the student demonstrates competence in mathematics and if the course is not used to satisfy any part of the requirement set forth in Paragraph (3) of that subsection; and

(2) one of the units in science required by Paragraph (3) of Subsection J of this section may comprise a computer science course if taken after the student demonstrates competence in science and if the course is not used to satisfy any part of the requirement set forth in Paragraph (2) of that subsection.

M. Final examinations shall be administered to all students in all classes offered for credit.

N. Until July 1, 2010, a student who has not passed a state graduation examination in the subject areas of reading, English, mathematics, writing, science and social science shall not receive a high school diploma. 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. Any student passing the state graduation examination and completing all other requirements within five years of entering ninth grade, including a final summer session if completed by August 1, may be counted by the school system in which the student is enrolled as a high school graduate for the year in which completion and examination occur.

O. Beginning with the 2010-2011 school year, a student shall not receive a New Mexico diploma of excellence if the student has not demonstrated competence in the subject areas of mathematics, reading and language arts, writing, social studies and science, including a section on the constitution of the United States and the constitution of New Mexico, based on a standards-based assessment or assessments or a portfolio of standards-based indicators established by the department by rule. The standards-based assessments required in Section 22-2C-4 NMSA 1978 may also serve as the assessment required for high school graduation. If a student exits from the school system at the end of grade twelve without having satisfied the requirements of this subsection, 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 satisfies the requirements of this subsection, the student may receive a New Mexico diploma of excellence. Any student satisfying the requirements of this subsection and completing all other requirements within five years of entering ninth grade, including a final summer session if completed by August 1, may be counted by the school system in which the student is enrolled as a high school graduate for the year in which all requirements are satisfied.

P. As used in this section:

(1) "career and technical education", sometimes referred to as "vocational education", means organized programs offering a sequence of courses, including technical education and applied technology education, that are directly related to the preparation of individuals for paid or unpaid employment in current or emerging occupations requiring an industry-recognized credential, certificate or degree;

(2) "career and technical education course" means a course with content that provides technical knowledge, skills and competency-based applied learning and that aligns with educational standards and expectations as defined in rule;

(3) "career cluster" means a grouping of occupations in industry sectors based on recognized commonalities that provide an organizing tool for developing instruction within the educational system;

(4) "career pathways" means a sub-grouping used as an organizing tool for curriculum design and instruction of occupations and career specialties that share a set of common knowledge and skills for career success;

(5) "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;

(6) "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

(7) "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 that includes one or more of the following:

- (a) advanced placement or honors courses;
- (b) dual-credit courses offered in cooperation with an institution of higher education;
- (c) distance learning courses;
- (d) career-technical courses; and
- (e) pre-apprenticeship programs.

Q. The secretary may establish a policy to provide for administrative interpretations to clarify curricular and testing provisions of the Public School Code."

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SEC/Senate Bill 134

Approved without signature

March 14, 2017. See Art. 4,

Section 22, N.M. Const.

## **LAWS 2017, CHAPTER 145**

AN ACT

RELATING TO HORSE RACING; REMOVING CERTAIN EXCEPTIONS TO CONDUCT THAT REQUIRES DENIAL OR REVOCATION OF AN OCCUPATIONAL LICENSE; PROVIDING FOR AN EQUINE HEALTH AND TESTING ADVISOR TO

REPLACE THE OFFICIAL CHEMIST; CLARIFYING THE DESIGNATION AND HANDLING OF TESTING SAMPLES; PROVIDING FOR COMPENSATION OF THE EQUINE HEALTH AND TESTING ADVISOR FROM THE RACEHORSE TESTING FUND.

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

## **Chapter 145 Section 1 Laws 2017**

SECTION 1. Section 60-1A-11 NMSA 1978 (being Laws 2007, Chapter 39, Section 11, as amended) is amended to read:

"60-1A-11. GRANTING A LICENSE--STANDARDS--DENIAL AND REVOCATION--SUSPENSION AND PENALTIES.--

A. A license shall not be issued or renewed unless the applicant has satisfied the commission that the applicant:

(1) is of good moral character, is honest and has integrity;

(2) does not currently have a license suspended by a horse racing licensing authority in another jurisdiction;

(3) does not have any prior activities, criminal record, reputation, habits or associations that:

(a) pose a threat to the public interest;

(b) pose a threat to the effective regulation and control of horse racing; or

(c) create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of horse racing, the business of operating a horse racetrack licensed pursuant to the Horse Racing Act or the financial activities incidental to operating a horse racetrack;

(4) is qualified to be licensed consistent with the Horse Racing Act;

(5) has sufficient business probity, competence and experience in horse racing as determined by the commission;

(6) has proposed financing that is sufficient for the nature of the license and from a suitable source that meets the criteria set forth in this subsection; and

(7) is sufficiently capitalized pursuant to standards set by the commission to conduct the business covered by the license.

B. The commission shall establish by rule additional qualifications for a licensee as it deems in the public interest.

C. A person issued or applying for an occupational license who has positive test

results for a controlled substance or who has been convicted of a violation of a federal or state controlled substance law shall be denied a license or shall be subject to revocation of an existing license unless sufficient evidence of rehabilitation is presented to the commission.

D. The commission may deny or revoke an occupational license if the applicant or occupational licensee, for the purpose of stimulating or depressing a racehorse or affecting its speed or stamina during a race or workout, is found to have administered, attempted to administer or conspired to administer to a racehorse, internally, externally or by injection, a drug, chemical, stimulant or depressant, or other prohibited substance as defined by the association of racing commissioners international, incorporated, or a successor organization or, if none, by another nationally recognized organization that has published substantially similar guidelines that are generally accepted in the horse racing industry as determined by the commission.

E. In addition to its authority to deny or revoke an occupational license for the conduct described in Subsection D of this section, the commission may suspend a license and impose fines on a licensee. For suspensions and fines, the commission shall adopt as its own rules the model rules for the imposition of penalties for the use of prohibited substances published by the association of racing commissioners international, incorporated, or a successor organization or, if none, by another nationally recognized organization that has published substantially similar rules that are generally accepted in the horse racing industry as determined by the commission.

F. The commission shall revoke for a period not to exceed five years an occupational license if the occupational licensee used, attempted to use or conspired with others to use an electrical or mechanical device, implement or instrument for the purpose of affecting the speed or stamina of a racehorse.

G. The burden of proving the qualifications of an applicant or licensee to be issued a license or have a license renewed shall be on the applicant or licensee."

## **Chapter 145 Section 2 Laws 2017**

SECTION 2. Section 60-1A-13 NMSA 1978 (being Laws 2007, Chapter 39, Section 13) is amended to read:

"60-1A-13. EQUINE HEALTH AND TESTING ADVISOR--QUALIFICATIONS--DUTIES.--The commission shall hire or contract with an equine health and testing advisor. An equine health and testing advisor shall be a doctor of veterinary medicine or shall hold a doctorate degree in chemistry or a related field and shall be knowledgeable and experienced in the techniques used for testing the specimens collected pursuant to Section 60-1A-14 NMSA 1978. The equine health and testing advisor shall exercise the duties prescribed by rules of the commission."

## **Chapter 145 Section 3 Laws 2017**

SECTION 3. Section 60-1A-14 NMSA 1978 (being Laws 2007, Chapter 39, Section 14, as amended) is amended to read:

"60-1A-14. TESTING SPECIMENS.--

A. The commission shall adopt rules applying to the handling of pre- and post-race, out-of-competition and necropsy testing of blood serum plasma, urine or other appropriate test samples identified by the commission to be taken from racehorses, following guidelines that meet or exceed the standards established in model rules published by the association of racing commissioners international, incorporated, or a successor organization or, if none, by another nationally recognized organization that has published substantially similar guidelines that are generally accepted in the horse racing industry as determined by the commission.

B. Each specimen taken from a racehorse shall be divided into two or more samples, and:

(1) one sample, designated as the "official sample", shall be tested by the commission or its designated laboratory in order to detect the presence of unauthorized drugs, chemicals, stimulants, depressants or other prohibited substances as defined in guidelines published by the association of racing commissioners international, incorporated, or a successor organization or, if none, by another nationally recognized organization that has published substantially similar guidelines that are generally accepted in the horse racing industry as determined by the commission; and

(2) the remaining samples, each designated as a "split sample", may be forwarded by the commission to the scientific laboratory division of the department of health or maintained by the commission in a manner that meets or exceeds the guidelines identified in Paragraph (1) of this subsection.

C. After a positive test result on the official sample tested by the commission or its designated laboratory and upon a written request from the president, executive director or manager of the New Mexico horsemen's association on forms designated by the commission, a corresponding split sample shall be transferred to an independent laboratory in a manner prescribed by commission rule.

D. All samples shall be kept in a controlled environment for a period of time specified by the commission in each case.

E. The commission shall contract with an independent laboratory to maintain a quality assurance program. The laboratory shall meet or exceed the current national laboratory standards for the testing of drugs or other foreign substances in a horse, as established by the association of racing commissioners international, incorporated, or of a successor organization or, if none, of another nationally recognized organization that has published substantially similar guidelines that are generally accepted in the horse racing industry."

## **Chapter 145 Section 4 Laws 2017**

SECTION 4. Section 60-1A-14.1 NMSA 1978 (being Laws 2013, Chapter 102, Section 1, as amended) is amended to read:

"60-1A-14.1. RACEHORSE TESTING FUND--CREATED--PURPOSE.--The "racehorse testing fund" is created in the state treasury. The purpose of the fund is to ensure the testing of racehorses at a laboratory that meets or exceeds the current national laboratory standards for the testing of drugs or other foreign substances not naturally occurring in a horse, as established by the association of racing commissioners international, incorporated, or of a successor organization or, if none, of another nationally recognized organization that has published substantially similar guidelines that are generally accepted in the horse racing industry. The fund consists of one-half of the daily capital outlay tax appropriated and transferred pursuant to Paragraph (4) of Subsection A of Section 60-1A-20 NMSA 1978 and appropriations, gifts, grants and donations made to the fund. Income from investment of the fund shall be credited to the fund. The commission shall administer the racehorse testing fund, and money in the fund is appropriated to the commission for the handling of pre- and post-race, out-of-competition and necropsy testing of blood serum plasma, urine or other appropriate test samples taken from racehorses pursuant to Section 60-1A-14 NMSA 1978 and to compensate the equine health and testing advisor employed or selected pursuant to Section 60-1A-13 NMSA 1978. Any unexpended or unencumbered balance remaining in the racehorse testing fund at the end of a fiscal year in excess of six hundred thousand dollars (\$600,000) shall revert to the general fund. Expenditures from the fund shall be made on warrant of the secretary of finance and administration pursuant to vouchers signed by the executive director of the commission."

## **Chapter 145 Section 5 Laws 2017**

SECTION 5. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2017.

Approved without signature

March 18, 2017. See Art. 4,

Section 22, N.M. Const.

## **LAWS 2017, CHAPTER 146**

### **AN ACT**

RELATING TO LOCAL GOVERNMENT FINANCE; RAISING THE THRESHOLD FOR BEING EXEMPT FROM THE DEFINITION OF "LOCAL PUBLIC BODY".

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

### **Chapter 146 Section 1 Laws 2017**

SECTION 1. Section 6-6-1 NMSA 1978 (being Laws 1957, Chapter 250, Section 1, as amended) is amended to read:

"6-6-1. DEFINITIONS.--"Local public body" means every political subdivision of the state that expends public money from whatever source derived, including counties, county institutions, boards, bureaus or commissions; incorporated cities, towns or villages; drainage, conservancy, irrigation or other districts; charitable institutions for which an appropriation is made by the legislature; and every office or officer of any of the above. "Local public body" does not include a mutual domestic water consumers association, a land grant, an incorporated municipality or a special district with an annual revenue, exclusive of capital outlay funds, federal or private grants or capital outlay funds disbursed directly by an administrating agency, of less than fifty thousand dollars (\$50,000), nor county, municipal, consolidated, union or rural school districts and their officers or irrigation districts organized under Sections 73-10-1 through 73-10-47 NMSA 1978."

### **Chapter 146 Section 2 Laws 2017**

SECTION 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2017.

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Senate Bill 222

Approved without signature

March 18, 2017. See Art. 4,

Section 22, N.M. Const.

# LAWS 2017, CHAPTER 147

## AN ACT

RELATING TO TAXATION; REQUIRING THAT THE TREASURER OF THE COUNTY IN WHICH A PUBLIC IMPROVEMENT DISTRICT IS FORMED BE NOTIFIED OF THAT FORMATION.

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

### **Chapter 147 Section 1 Laws 2017**

SECTION 1. Section 5-11-8 NMSA 1978 (being Laws 2001, Chapter 305, Section 8) is amended to read:

#### "5-11-8. FORMATION--DEBT LIMITATION.--

A. If the formation of the district is approved by at least a three-fourths' majority of the votes cast at the election, the governing body shall cause a copy of the resolution ordering formation of the district to be delivered to the county assessor, the county treasurer and the county in which the district is located and to the taxation and revenue department and the local government division of the department of finance and administration. A notice of the formation showing the number and date of the resolution and giving a description of the land included in the district shall be recorded with the county clerk.

B. Except as otherwise provided in this section, a district shall be a political subdivision of the state, separate and apart from the municipality or county. The amount of indebtedness evidenced by general obligation bonds issued pursuant to Section 5-11-19 NMSA 1978, special levy bonds issued pursuant to Section 5-11-20 NMSA 1978 and revenue bonds issued pursuant to Section 5-11-21 NMSA 1978 shall not exceed the estimated cost of the public infrastructure improvements plus all costs connected with the public infrastructure purposes and issuance and sale of bonds, including, without limitation, formation costs, credit enhancement and liquidity support fees and costs. The total aggregate outstanding amount of bonds and any other indebtedness for which the full faith and credit of the district are pledged shall not exceed sixty percent of the market value of the real property and improvements in the district after the public infrastructure improvements of the district are completed plus the value of the public infrastructure owned or to be acquired by the district with the proceeds of the bonds and shall not affect the general obligation bonding capacity of the municipality or county in which the district is located.

C. Bonds issued by a district shall not be a general obligation of the state, the county or the municipality in which the district is located and shall not pledge the full faith and credit of the state, the county or the municipality in which the district is located,

irrespective of whether the district board is governed by the governing body of the county or municipality in which the district is located.

D. Following formation of the district, the district board shall administer in a reasonable manner the implementation of the general plan for the public infrastructure improvements of the district."

## **Chapter 147 Section 2 Laws 2017**

SECTION 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2017.

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Senate Bill 356

Approved without signature

March 18, 2017. See Art. 4,

Section 22, N.M. Const.

## **LAWS 2017, HOUSE JOINT RESOLUTION 10**

### **A JOINT RESOLUTION**

RESCINDING HOUSE JOINT RESOLUTION NUMBER 12 PASSED BY THE LEGISLATURE IN 1951, SENATE JOINT RESOLUTION NUMBER 2 PASSED BY THE LEGISLATURE IN 1965 AND SENATE JOINT RESOLUTION 1 PASSED BY THE LEGISLATURE IN 1976, EACH OF WHICH MADE AN APPLICATION TO THE UNITED STATES CONGRESS FOR THE CALLING OF A CONVENTION TO PROPOSE AN AMENDMENT TO THE UNITED STATES CONSTITUTION.

WHEREAS, Article 5 of the United States constitution reads in part as follows: "the Congress . . . on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States"; and

WHEREAS, in 1951, the legislature of New Mexico passed House Joint Resolution Number 12 to make an application to the United States congress to call a convention to propose specified amendments to the United States constitution; and

WHEREAS, in 1965, the legislature of New Mexico passed Senate Joint Resolution Number 2 to make an application to the United States congress to call a convention to propose a specified amendment to the United States constitution; and

WHEREAS, in 1976, the legislature of New Mexico passed Senate Joint Resolution 1 to make an application to the United States congress to call a convention to propose a specified amendment to the United States constitution;

NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO that House Joint Resolution Number 12, passed in the first session of the twentieth legislature of the state of New Mexico, Senate Joint Resolution Number 2, passed in the first session of the twenty-seventh legislature of the state of New Mexico, and Senate Joint Resolution 1, passed in the second session of the thirty-second legislature of the state of New Mexico, be rescinded; and

BE IT FURTHER RESOLVED that copies of this resolution be transmitted, within thirty days of its passage, to the speaker of the United States house of representatives, the clerk of the United States house of representatives, the president of the United States senate, the secretary of the United States senate and the members of the New Mexico congressional delegation; and

BE IT FURTHER RESOLVED that a request be hereby made that the official journals and record of the senate and the house of representatives of the United States congress include the resolution or a notice of its receipt.

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House Joint Resolution 10

## **LAWS 2017, SENATE JOINT RESOLUTION 20**

### A JOINT RESOLUTION

AUTHORIZING THE PROPERTY COMPRISING THE VIETNAM VETERANS MEMORIAL STATE PARK IN COLFAX COUNTY TO BE TRANSFERRED FROM THE STATE PARKS DIVISION OF THE ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT TO THE FACILITIES MANAGEMENT DIVISION OF THE GENERAL SERVICES DEPARTMENT.

WHEREAS, in 2005, the state parks division of the energy, minerals and natural resources department acquired property, including the Vietnam veterans memorial, from the David Westphall veterans foundation, incorporated, as authorized in Senate Joint Resolution 11 from the second session of the forty-sixth legislature for use as a state park; and

WHEREAS, property that includes the Vietnam veterans memorial in Colfax county is currently owned by the state parks division of the energy, minerals and natural resources department and operated as a state park; and

WHEREAS, the state parks division of the energy, minerals, and natural resources department, the veterans' services department and the David Westphall veterans foundation, incorporated, desire that the property be transferred from the state parks division of the energy, minerals and natural resources department to the facilities management division of the general services department; and

WHEREAS, the property comprising the Vietnam veterans memorial state park has a value in excess of one hundred thousand dollars (\$100,000); and

WHEREAS, Section 13-6-3 NMSA 1978 provides in pertinent part that any sale, trade or lease of state real property for consideration of one hundred thousand dollars (\$100,000) or more shall be subject to the ratification and approval by the state legislature prior to the sale, trade or lease becoming effective; and

WHEREAS, in 1.5.23.7 NMAC, the state board of finance defines "sale, trade or lease" as any disposition of real property, including donation by one governmental entity to another governmental entity; and

WHEREAS, the property to be transferred has met the requirements for property to be used as a Vietnam veterans memorial and is of historical importance to the residents of the state; and

WHEREAS, the property to be transferred is more particularly described as:

"All that certain parcel of land lying and being situate within the Maxwell Land Grant, within Projected Section 36, T26N, R15E, and Projected Section 31, T26N, R16E, N.M.P.M., Colfax County, New Mexico.

Commencing at the section corner common to Sections 29, 30, 31 and 32, T26N, R16E, N.M.P.M.; Thence S54121'02"W, a distance of 6005.47 feet to the point of beginning of the herein described parcel of land; said point being the most northerly corner of lands described as Tract 3 in that certain quitclaim deed to David Westphall Veterans Foundation, Inc. recorded in the Office of the Colfax County Clerk in Real Estate Records Book 9, Page 13490, said point also being the most easterly corner of Tract 4 described in the last mentioned deed;

Thence running from said point of beginning South 57144'00" East, along the northeasterly line of said Tract 3 and along the southwesterly line of Parcel B as shown on a plat titled "BOUNDARY SURVEY PLAT FOR SALADON PROPERTIES, LLC," filed in the Office of the Colfax County Clerk in Survey Book 1, Page 03034, a distance of 490.36 feet to a point on the northwesterly right-of-way of U.S. Highway No. 64;

Thence South 40154'07" West, along said right-of-way, a distance of 232.70 feet to a point on the northerly right-of-way of Onate Road;

Thence in a general westerly direction along the last mentioned right-of-way the following courses and distances: South 73116'32" West, a distance of 179.10 feet to a point;

Thence along a curve to the right having a central angle of 21140'15", a radius of 387.77 feet, an arc length of 146.67 feet and whose chord bears South 84106'39" West, a distance of 145.79 feet to a point;

Thence North 85103'13" West, a distance of 496.45 feet to a point;

Thence along a curve to the right having a central angle of 3149'35", a radius of 2959.53 feet, an arc length of 197.64 feet and whose chord bears North 83110'28" West, a distance of 197.61 feet to a point;

Thence North 81115'14" West, a distance of 366.49 feet to a point;

Thence along a curve to the right having a central angle of 41108'27", a radius of 369.19 feet, an arc length of 265.09 feet and whose chord bears North 60142'50" West, a distance of 259.44 feet to a point;

Thence North 40102'37" West, a distance of 443.49 feet to a point;

Thence along a curve to the left having a central angle of 11134'29", a radius of 537.68 feet, an arc length of 108.62 feet and whose chord bears North 45148'14" West, a distance of 108.44 feet to the southeast corner of Lot 9, Block 1 of Val Verde Ranch Subdivision Unit Five, a plat of said subdivision having been filed in the Office of the Colfax County Clerk in Plat Book 4, page 25;

Thence North 27137'56" East, along the easterly line of said Lot 9, a distance of 259.26 feet to a point on the southerly right-of-way of Country Club Road;

Thence in a general northeasterly direction along said right-of-way the following courses and distances:

Along a curve to the left having a central angle of 19127'51", a radius of 209.16 feet, an arc length of 71.05 feet and whose chord bears South 89142'52" East, a distance of 70.71 feet to a point;

Thence North 80135'37" East, a distance of 231.66 feet to the most easterly corner of said Country Club Road as shown on the last mentioned plat;

Thence North 25151'00" West, along the northeasterly end of said Country Club Road and continuing along TRACT D - TRACT 1 as shown on the aforesaid plat titled

"BOUNDARY SURVEY PLAT FOR SALADON PROPERTIES, LLC" filed in the Office of the Colfax County Clerk in Survey Book 1, Page 03034, a distance of 141.71 feet;

Thence North 57148'45" East, continuing along said TRACT D - TRACT 1, a distance of 273.33 feet;

Thence South 57142'03" East, along PARCEL B as shown on the last mentioned plat, a distance of 1310.38 feet to the Point of Beginning. Containing 31.546 acres of land more or less.

Also Lot 9, Block 1 of Val Verde Ranch Subdivision, Unit No. 5, Colfax County, New Mexico, as shown on Plat recorded in Plat Book 4, Page 25, records of Colfax County, New Mexico; and Lot 8, Block 1, Val Verde 5 Subdivision, located within Colfax County containing 0.5 acres more or less.";

NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO that the proposed donation and transfer of the real property that the state parks division of the energy, minerals and natural resources department owns and operates as the Vietnam veterans memorial state park as described above from the state parks division of the energy, minerals and natural resources department to the facilities management division of the general services department be and is hereby ratified and approved by the legislature; and

BE IT FURTHER RESOLVED that copies of this resolution be transmitted to the David Westphall veterans foundation, incorporated, the facilities management division of the general services department, the veterans' services department and the state parks division of the energy, minerals and natural resources department.

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Senate Joint Resolution 20

**2017 OFFICIAL ROSTER OF THE STATE OF NEW  
MEXICO**

**OFFICIAL ROSTER  
OF THE  
STATE OF NEW MEXICO**

**UNITED STATES SENATORS**

Martin Heinrich, Democrat, Albuquerque  
Tom Udall, Democrat, Santa Fe

**UNITED STATES REPRESENTATIVES**

Michelle Lujan Grisham, Democrat, 1<sup>st</sup> Congressional District - Albuquerque  
Steve Pearce, Republican, 2<sup>nd</sup> Congressional District - Hobbs  
Ben R. Lujan, Democrat, 3<sup>rd</sup> Congressional District - Santa Fe

**STATE OFFICIALS**

Susana Martinez, Republican	Governor
John A. Sanchez, Republican	Lieutenant Governor
Maggie Toulouse Oliver, Democrat	Secretary of State
Timothy M. Keller, Democrat	State Auditor
Tim Eichenberg, Democrat	State Treasurer
Hector H. Balderas, Democrat	Attorney General
Aubrey Dunn, Republican	Commissioner of Public Lands
Cynthia B. Hall, Democrat	Public Regulation Commissioner, District 1
Patrick H. Lyons, Republican	Public Regulation Commissioner, District 2
Valerie L. Espinoza, Democrat	Public Regulation Commissioner, District 3
Lynda M. Lovejoy, Democrat	Public Regulation Commissioner, District 4
Sandy R. Jones, Democrat	Public Regulation Commissioner, District 5

**JUSTICES OF THE SUPREME COURT**

Charles W. Daniels, Chief Justice  
Edward L. Chavez  
Petra Jimenez Maes  
Judith K. Nakamura  
Barbara J. Vigil

**JUDGES OF THE COURT OF APPEALS**

Michael E. Vigil, Chief Judge  
James J. Wechsler  
Michael D. Bustamante  
Jonathan B. Sutin  
Stephen French  
Linda M. Vanzi  
Timothy L. Garcia  
M. Monica Zamora  
J. Miles Hanisee  
Henry M. Bohnhoff

**DISTRICT COURTS  
DISTRICT JUDGES**

**FIRST JUDICIAL DISTRICT  
Santa Fe, Los Alamos & Rio Arriba Counties**

Division	I	Francis J. Mathew	Santa Fe
Division	II	Sarah M. Singleton	Santa Fe
Division	III	Raymond Z. Ortiz	Santa Fe
Division	IV	Sylvia F. LaMar	Santa Fe
Division	V	Jennifer L. Attrep	Santa Fe
Division	VI	David K. Thomson	Santa Fe
Division	VII	T. Glenn Ellington	Santa Fe
Division	VIII	Mary L. Marlowe Sommer	Santa Fe
Division	IX	Matthew J. Wilson	Santa Fe

**SECOND JUDICIAL DISTRICT  
Bernalillo County**

Division	I	William Parnall	Albuquerque
Division	II	Stan Whitaker	Albuquerque
Division	III	Brett Loveless	Albuquerque
Division	IV	Beatrice Brickhouse	Albuquerque
Division	V	Nancy J. Franchini	Albuquerque
Division	VI	Briana Zamora	Albuquerque
Division	VII	John J. Romero	Albuquerque
Division	VIII	Cristina T. Jaramillo	Albuquerque
Division	IX	Cindy Leos	Albuquerque
Division	X	Christina P. Argyres	Albuquerque
Division	XI	Gerard Lavelle	Albuquerque
Division	XII	Clay Campbell	Albuquerque
Division	XIII	Valerie A. Huling	Albuquerque
Division	XIV	Marie Ward	Albuquerque
Division	XV	Alan Malott	Albuquerque
Division	XVI	Carl Butkus	Albuquerque
Division	XVII	Nan G. Nash	Albuquerque
Division	XVIII	Denise Barela-Shepherd	Albuquerque
Division	XIX	Benjamin Chavez	Albuquerque
Division	XX	Jacqueline D. Flores	Albuquerque
Division	XXI	Alisa Hadfield	Albuquerque
Division	XXII	Deborah Davis Walker	Albuquerque
Division	XXIII	Shannon Bacon	Albuquerque
Division	XXIV	Debra Ramirez	Albuquerque
Division	XXV	Jane Levy	Albuquerque
Division	XXVI	Charles W. Brown	Albuquerque
Division	XXVII	Victor S. Lopez	Albuquerque

**THIRD JUDICIAL DISTRICT  
Doña Ana County**

Division	I	Manuel I. Arrieta	Las Cruces
Division	II	Marcy E. Beyer	Las Cruces
Division	III	Conrad Perea	Las Cruces
Division	IV	Mary W. Rosner	Las Cruces
Division	V	Lisa C. Schultz	Las Cruces
Division	VI	James T. Martin	Las Cruces
Division	VII	Douglas R. Driggers	Las Cruces
Division	VIII	Fernando R. Macias	Las Cruces

**FOURTH JUDICIAL DISTRICT  
Guadalupe, Mora & San Miguel Counties**

Division	I	Gerald Baca	Las Vegas
Division	II	Abigail P. Aragon	Las Vegas
Division	III	Matthew J. Sandoval	Las Vegas

**FIFTH JUDICIAL DISTRICT  
Lea, Eddy & Chaves Counties**

Division	I	Raymond L. Romero	Carlsbad
Division	II	Freddie J. Romero	Roswell
Division	III	William G.W. Shoobridge	Lovington
Division	IV	Mark T. Sanchez	Lovington
Division	V	Jane Shuler Gray	Carlsbad
Division	VI	James M. Hudson	Roswell
Division	VII	Gary L. Clingman	Lovington
Division	VIII	Kea W. Riggs	Roswell
Division	IX	Lisa Riley	Carlsbad
Division	X	Dustin K. Hunter	Chaves
Division	XI	Lee A. Kirksey	Lea

**SIXTH JUDICIAL DISTRICT  
Grant, Hidalgo & Luna Counties**

Division	I	Henry R. Quintero	Silver City
Division	II	Jennifer Ellen DeLaney	Deming
Division	III	J. C. Robinson	Silver City
Division	IV	Jarod K. Hofacket	Deming

**SEVENTH JUDICIAL DISTRICT  
Catron, Sierra, Socorro & Torrance Counties**

Division	I	Mercedes C. Murphy	Socorro
Division	II	Matthew G. Reynolds	Socorro
Division	III	Kevin R. Sweazea	Estancia

**EIGHTH JUDICIAL DISTRICT  
Colfax, Union & Taos Counties**

Division	I	Emilio Chavez	Raton
Division	II	Sarah C. Backus	Taos
Division	III	Jeff F. McElroy	Taos

**NINTH JUDICIAL DISTRICT  
Curry & Roosevelt Counties**

Division	I	Matthew E. Chandler	Clovis
Division	II	Drew D. Tatum	Clovis
Division	III	Fred Van Soelen	Clovis, Portales
Division	IV	Donna J. Mowrer	Clovis, Portales
Division	V	David P. Reeb	Portales

**TENTH JUDICIAL DISTRICT  
Quay, DeBaca, & Harding Counties**

Division	I	Albert J. Mitchell, Jr.	Tucumcari
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**ELEVENTH JUDICIAL DISTRICT  
McKinley & San Juan Counties**

Division	I	Bradford J. Dalley	Farmington
Division	II	Louis E. DePauli, Jr.	Gallup
Division	III	Sandra A. Price	Farmington
Division	IV	John Arthur Dean, Jr.	Farmington
Division	V	Lyndy D. Bennett	Gallup
Division	VI	Daylene A. Marsh	Aztec
Division	VII	Robert A. Aragon	Gallup
Division	VIII	Karen L. Townsend	Aztec

**TWELFTH JUDICIAL DISTRICT  
Lincoln & Otero Counties**

Division	I	Jerry H. Ritter, Jr.	Alamogordo
Division	II	James Waylon Counts	Alamogordo
Division	III	Daniel A. Bryant	Carrizozo
Division	IV	Angie K. Schneider	Alamogordo

**THIRTEENTH JUDICIAL DISTRICT  
Cibola, Sandoval & Valencia Counties**

Division	I	James Lawrence Sanchez	Los Lunas
Division	II	George P. Eichwald	Bernalillo
Division	III	Allen R. Smith	Los Lunas
Division	IV	Pedro Rael	Grants
Division	V	Louis P. McDonald	Bernalillo
Division	VI	Cindy M. Mercer	Los Lunas
Division	VII	John F. Davis	Bernalillo
Division	VII	Cheryl H. Johnston	Bernalillo

**DISTRICT ATTORNEYS**

First Judicial District	Marco P. Serna	Santa Fe, Rio Arriba & Los Alamos
Second Judicial District	Raul Torrez	Bernalillo
Third Judicial District	Mark D'Antonio	Doña Ana
Fourth Judicial District	Richard D. Flores	San Miguel, Guadalupe & Mora
Fifth Judicial District	Dianna Luce	Chaves, Eddy & Lea
Sixth Judicial District	Francesca Martinez-Estevez	Grant, Luna & Hidalgo
Seventh Judicial District	Clint H. Wellborn	Catron, Sierra, Socorro & Torrance
Eighth Judicial District	Donald A. Gallegos	Taos, Colfax & Union
Ninth Judicial District	Andrea R. Reeb	Curry & Roosevelt
Tenth Judicial District	Timothy L. Rose	Quay, Harding & DeBaca
Eleventh Judicial District	Robert "Rick" P. Tedrow	Division 1: San Juan
	Karl R. Gillson	Division 2: McKinley
Twelfth Judicial District	John P. Sugg	Otero & Lincoln
Thirteenth Judicial District	Lemuel L. Martinez	Sandoval, Valencia & Cibola

**STATE SENATORS SERVING IN THE FIFTY-THIRD LEGISLATURE  
STATE OF NEW MEXICO  
FIRST SESSION  
CONVENED JANUARY 17<sup>th</sup>, 2017**

<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 & San Juan	George K. Muñoz	Gallup
5	Los Alamos, Rio Arriba, Sandoval & Santa Fe	Richard C. Martinez	Española
6	Los Alamos, Rio Arriba, Santa Fe & Taos	Carlos R. Cisneros	Questa
7	Curry, Quay & Union	Pat Woods	Broadview
8	Colfax, Guadalupe, Harding, Mora, Quay, San Miguel & Taos	Pete Campos	Las Vegas
9	Bernalillo & Sandoval	John M. Sapien	Corrales
10	Bernalillo & Sandoval	Candace Gould	Albuquerque
11	Bernalillo	Linda M. Lopez	Albuquerque
12	Bernalillo	Gerald Ortiz y Pino	Albuquerque
13	Bernalillo	Bill B. O'Neill	Albuquerque
14	Bernalillo	Michael Padilla	Albuquerque
15	Bernalillo	Daniel A. Ivey-Soto	Albuquerque
16	Bernalillo	Cisco McSorley	Albuquerque
17	Bernalillo	Mimi Stewart	Albuquerque
18	Bernalillo	Bill G. Tallman	Albuquerque
19	Bernalillo, Sandoval, Santa Fe & Torrance	James P. White	Sandia Park
20	Bernalillo	William H. Payne	Albuquerque
21	Bernalillo	Mark Moores	Albuquerque
22	Bernalillo, McKinley, Rio Arriba, San Juan, & Sandoval	Benny Shendo, Jr.	Jemez Pueblo
23	Bernalillo	Sander Rue	Albuquerque
24	Santa Fe	Nancy Rodriguez	Santa Fe
25	Santa Fe	Peter Wirth	Santa Fe
26	Bernalillo	Jacob R. Candelaria	Albuquerque
27	Chaves, Curry, DeBaca, Lea & Roosevelt	Stuart Ingle	Portales
28	Catron, Grant & Socorro	Howie C. Morales	Silver City
29	Bernalillo & Valencia	Gregory A. Baca	Belen
30	Cibola, McKinley, Socorro & Valencia	Clemente Sanchez	Grants
31	Doña Ana	Joseph Cervantes	Las Cruces
32	Chaves, Eddy & Otero	Cliff R. Pirtle	Roswell
33	Chaves, Lincoln & Otero	William F. Burt	Alamogordo
34	Doña Ana, Eddy & Otero	Ron Griggs	Alamogordo
35	Doña Ana, Hidalgo, Luna & Sierra	John Arthur Smith	Deming
36	Doña Ana	Jeff Steinborn	Las Cruces
37	Doña Ana	William P. Soules	Las Cruces
38	Doña Ana	Mary Kay Papen	Las Cruces
39	Bernalillo, Lincoln, San Miguel, Santa Fe, Torrance & Valencia	Elizabeth "Liz" Stefanics	Cerrillos
40	Sandoval	Craig W. Brandt	Rio Rancho
41	Eddy & Lea	Carroll H. Leavell	Jal
42	Chaves, Eddy & Lea	Gay G. Kernan	Hobbs

**STATE REPRESENTATIVES SERVING IN THE FIFTY-THIRD LEGISLATURE  
STATE OF NEW MEXICO  
FIRST SESSION  
CONVENED JANUARY 17<sup>th</sup>, 2017**

<u>District</u>	<u>County</u>	<u>Name</u>	<u>City</u>
1	San Juan	Rodney D. Montoya	Farmington
2	San Juan	James R.J. Strickler	Farmington
3	San Juan	Paul C. Bandy	Aztec
4	San Juan	Sharon Clahchischilliage	Kirtland
5	McKinley & San Juan	D. Wonda Johnson	Church Rock
6	Cibola & McKinley	Eliseo Lee Alcon	Milan
7	Valencia	Kelly K. Fajardo	Belen
8	Valencia	Alonzo Baldonado	Los Lunas
9	McKinley & San Juan	Patricia A. Lundstrom	Gallup
10	Bernalillo	G. Andres Romero	Albuquerque
11	Bernalillo	Javier. I. Martinez	Albuquerque
12	Bernalillo	Patricio R. Ruiloba	Albuquerque
13	Bernalillo	Patricia A. Roybal Caballero	Albuquerque
14	Bernalillo	Miguel P. Garcia	Albuquerque
15	Bernalillo	Sarah Maestas Barnes	Albuquerque
16	Bernalillo	Antonio "Moe" Maestas	Albuquerque
17	Bernalillo	Deborah A. Armstrong	Albuquerque
18	Bernalillo	Gail Chasey	Albuquerque
19	Bernalillo	Sheryl Williams Stapleton	Albuquerque
20	Bernalillo	Jim Dines	Albuquerque
21	Bernalillo	Debra M. Sariñana	Albuquerque
22	Bernalillo, Sandoval & Santa Fe	James E. Smith	Sandia Park
23	Bernalillo & Sandoval	Daymon Ely	Corrales
24	Bernalillo	Elizabeth "Liz" Thomson	Albuquerque
25	Bernalillo	Christine Trujillo	Albuquerque
26	Bernalillo	Georgene Louis	Albuquerque
27	Bernalillo	Larry A. Larrañaga	Albuquerque
28	Bernalillo	Jimmie C. Hall	Albuquerque
29	Bernalillo	David Edward Adkins	Albuquerque
30	Bernalillo	Nate Gentry	Albuquerque
31	Bernalillo	William "Bill" R. Rehm	Albuquerque
32	Grant, Hildago & Luna	Candie G. Sweetser	Deming
33	Doña Ana	Bill McCamley	Mesilla Park
34	Doña Ana	Bealquin Bill Gomez	Las Cruces
35	Doña Ana	Angelica Rubio	Las Cruces
36	Doña Ana	Nathan P. Small	Las Cruces
37	Doña Ana	Joanne J. Ferrary	Las Cruces
38	Grant, Hidalgo & Sierra	Rebecca Dow	Truth or Consequences
39	Doña Ana, Grant & Sierra	Rudolpho "Rudy" S. Martinez	Bayard
40	Colfax, Mora, Rio Arriba & San Miguel	Nick L. Salazar	Ohkay Owingeh
41	Rio Arriba, Santa Fe & Taos	Debbie A. Rodella	Española
42	Taos	Roberto "Bobby" J. Gonzales	Rancho de Taos
43	Los Alamos, Rio Arriba, Sandoval & Santa Fe	Stephanie Garcia Richard	Los Alamos
44	Sandoval	Jane E. Powdrell-Culbert	Corrales
45	Santa Fe	Jim R. Trujillo	Santa Fe
46	Santa Fe	Carl Trujillo	Santa Fe
47	Santa Fe	Brian F. Egolf, Jr.	Santa Fe

**STATE REPRESENTATIVES (continued)**

<u>District</u>	<u>County</u>	<u>Name</u>	<u>City</u>
48	Santa Fe	Linda M. Trujillo	Santa Fe
49	Catron, Socorro & Valencia	Gail Armstrong	Magdalena
50	Bernalillo, Santa Fe, Torrance & Valencia	Matthew McQueen	Santa Fe
51	Otero	Yvette Herrell	Alamogordo
52	Doña Ana	Doreen Y. Gallegos	Las Cruces
53	Doña Ana & Otero	Rick Little	Chaparral
54	Chaves, Eddy & Otero	James G. Townsend	Artesia
55	Eddy	Cathrynn N. Brown	Carlsbad
56	Lincoln & Otero	Zachary J. Cook	Ruidoso
57	Sandoval	Jason C. Harper	Rio Rancho
58	Chaves	Candy Spence Ezzell	Roswell
59	Chaves & Lincoln	Greg Nibert	Roswell
60	Sandoval	Tim D. Lewis	Rio Rancho
61	Lea	David M. Gallegos	Eunice
62	Lea	Larry R. Scott	Hobbs
63	Curry, DeBaca, Guadalupe, Roosevelt & San Miguel	George Dodge, Jr.	Santa Rosa
64	Curry	Randal S. Crowder	Clovis
65	Rio Arriba, San Juan & Sandoval	Derrick J. Lente	Sandia Pueblo
66	Chaves, Lea & Roosevelt	Bob Wooley	Roswell
67	Colfax, Curry, Harding, Quay, Roosevelt, San Miguel & Union	Dennis J. Roch	Logan
68	Bernalillo	Monica Youngblood	Albuquerque
69	Bernalillo, Cibola, McKinley, San Juan Socorro & Valencia	Harry Garcia	Grants
70	San Miguel, Santa Fe & Torrance	Tomás E. Salazar	Las Vegas