

LAWS 2009, CONSTITUTIONAL AMENDMENT 1

A JOINT RESOLUTION

PROPOSING AN AMENDMENT TO ARTICLE 9, SECTION 14 OF THE CONSTITUTION OF NEW MEXICO TO PERMIT THE ESTABLISHMENT OF A COLLEGE SCHOLARSHIP PROGRAM FOR NEW MEXICO MILITARY WAR VETERANS.

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

Constitutional Amendment 1 Section 1 Laws 2009

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

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

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

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

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

D. Nothing in this section prohibits the state or a county or municipality from creating new job opportunities by providing land, buildings or infrastructure for facilities to support new or expanding businesses if this assistance is granted pursuant to general implementing legislation that is approved by a majority vote of those elected

to each house of the legislature. The implementing legislation shall include adequate safeguards to protect public money or other resources used for the purposes authorized in this subsection. The implementing legislation shall further provide that:

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

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

E. Nothing in this section prohibits the state, or the instrumentality of the state designated by the legislature as the state's housing authority, or a county or a municipality from:

(1) donating or otherwise providing or paying a portion of the costs of land for the construction on it of affordable housing;

(2) donating or otherwise providing or paying a portion of the costs of construction or renovation of affordable housing or the costs of conversion or renovation of buildings into affordable housing; or

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

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

(1) define "affordable housing";

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

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

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

(5) require prior approval by law of an affordable housing assistance grant by the state; and

(6) require the governing body of the instrumentality of the state, designated by the legislature as the state's housing authority, to give prior approval, by resolution, for affordable housing grants that are to be given by the instrumentality.

G. Nothing in this section prohibits the state from establishing a veterans' scholarship program, for military war veterans who are post-secondary students at educational institutions under the exclusive control of the state and who have exhausted all educational benefits offered by the United States department of defense or the United States department of veterans affairs, by exempting such veterans from the payment of tuition. For the purposes of this subsection, a "military war veteran" is any person who has been honorably discharged from the armed forces of the United States, who was a resident of New Mexico at the original time of entry into the armed forces or who has lived in New Mexico for ten years or more and who has been awarded a southwest Asia service medal, global war on terror service medal, Iraq campaign medal, Afghanistan campaign medal or any other medal issued for service in the armed forces of this country in support of any United States military campaign or armed conflict as defined by congress or by presidential executive order or any other campaign medal issued for service after August 1, 1990 in the armed forces of the United States during periods of armed conflict as defined by congress or by executive order."

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

House Joint Resolution 11, aa, w/cc

LAWS 2009, CHAPTER 1

AN ACT

RELATING TO THE LEGISLATIVE BRANCH OF GOVERNMENT; APPROPRIATING FUNDS FOR THE EXPENSE OF THE FORTY-NINTH LEGISLATURE, FIRST SESSION, 2009 AND FOR OTHER LEGISLATIVE EXPENSES, INCLUDING THE LEGISLATIVE COUNCIL SERVICE, THE LEGISLATIVE FINANCE COMMITTEE, THE LEGISLATIVE EDUCATION STUDY COMMITTEE, THE SENATE RULES COMMITTEE, THE HOUSE CHIEF CLERK'S OFFICE AND THE SENATE CHIEF CLERK'S OFFICE; DECLARING AN EMERGENCY.

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

Chapter 1 Section 1 Laws 2009

Section 1. SESSION EXPENSES.--

A. There is appropriated for the expense of the legislative department of the state of New Mexico for the first session of the forty-ninth legislature for per diem and mileage of its members, for salaries of employees and for other expenses of the legislature, eight million three hundred twenty-six thousand seven hundred thirty-four dollars (\$8,326,734) or so much thereof as may be necessary for such purposes.

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

- (1) per diem for senators \$365,400;
- (2) per diem for members of the house of representatives
\$609,000;
- (3) mileage traveled by members of the senate going to and
returning from the seat of government by the usually traveled route, one round trip
\$6,800;
- (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 \$10,300;
- (5) salaries and employee benefits of senate employees
\$2,830,400;
- (6) salaries and employee benefits of house of representatives
employees \$2,097,159;
- (7) for expense of the senate not itemized above, six hundred
twenty-two thousand nine hundred dollars (\$622,900). 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 sixteen thousand five hundred seventy-five dollars (\$516,575). 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 two hundred sixty-
eight thousand two hundred dollars (\$1,268,200) to be disbursed upon vouchers signed
by the director of the legislative council service.

C. The expenditures for the senate shall be disbursed on vouchers signed by the 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 forty-ninth 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 1 Section 2 Laws 2009

Section 2. BILLS AND OTHER PRINTED MATERIALS.--

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

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

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

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

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

B. Any person not listed in Subsection A of this section may secure a complete file of the bills, resolutions, joint resolutions, memorials and joint memorials of the legislature by depositing with the legislative council service the amount of seven hundred dollars (\$700), 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 thirty dollars (\$230) for the entire session.

Chapter 1 Section 3 Laws 2009

Section 3. LEGISLATIVE COUNCIL SERVICE.--There is appropriated from the general fund to the legislative council service for fiscal year 2010 unless otherwise indicated, to be disbursed on vouchers signed by the director of the legislative council service or the director's designee, the following:

A. Personal Services & Employee Benefits	\$ 4,681,400
Contractual Services	240,000
Other Costs	1,122,800
Total	\$ 6,044,200;

B. for travel expenses of legislators other than New Mexico legislative council members, on legislative council business, for committee travel, studies, staff and other necessary expenses for other interim committees and for other necessary legislative expenses for fiscal year 2010, one million thirty-six thousand dollars (\$1,036,000); provided that the New Mexico legislative council may transfer amounts from the appropriation in this subsection, during the fiscal year for which appropriated, to any other legislative appropriation where they may be needed;

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

D. for a statewide legislative intern program, forty-five thousand dollars (\$45,000).

Chapter 1 Section 4 Laws 2009

Section 4. LEGISLATIVE FINANCE COMMITTEE.--There is appropriated from the general fund to the legislative finance committee for fiscal year 2010, to be disbursed on vouchers signed by the chair of the committee or the chair's designated representative, the following:

Personal Services & Employee Benefits	\$ 3,853,900
Contractual Services	220,500
Other Costs	355,300
Total	\$ 4,429,700.

Chapter 1 Section 5 Laws 2009

Section 5. LEGISLATIVE EDUCATION STUDY COMMITTEE.--There is appropriated from the general fund to the legislative education study committee for fiscal year 2010, to be disbursed on vouchers signed by the chair of the committee or the chair's designated representative, the following:

Personal Services & Employee Benefits	\$ 1,130,000
Contractual Services	50,000
Other Costs	151,000
Total	\$ 1,331,000.

Chapter 1 Section 6 Laws 2009

Section 6. SENATE RULES COMMITTEE.--There is appropriated from the general fund to the legislative council service for the interim duties of the senate rules committee, twenty-one thousand six hundred dollars (\$21,600) for fiscal year 2010.

Chapter 1 Section 7 Laws 2009

Section 7. HOUSE CHIEF CLERK.--There is appropriated from the general fund to the legislative council service for expenditure in fiscal year 2010 for the operation of the house chief clerk's office, to be disbursed on vouchers signed by the director of the legislative council service, the following:

Personal Services & Employee Benefits	\$ 965,600
Contractual Services	141,600
Other Costs	61,200
Total	\$ 1,168,400.

Chapter 1 Section 8 Laws 2009

Section 8. SENATE CHIEF CLERK.--There is appropriated from the general fund to the legislative council service for expenditure in fiscal year 2010 for the operation of the senate chief clerk's office, to be disbursed on vouchers signed by the director of the legislative council service, the following:

Personal Services & Employee Benefits	\$ 967,800
Contractual Services	191,350
Other Costs	64,250
Total	\$ 1,223,400.

Chapter 1 Section 9 Laws 2009

Section 9. LEGISLATIVE INFORMATION SYSTEM.--There is appropriated to the legislative council service for the legislative information system five hundred seventy-four thousand five hundred dollars (\$574,500) from the general fund for expenditure in fiscal year 2010.

Chapter 1 Section 10 Laws 2009

Section 10. CENSUS REDISTRICTING DATA--SECOND PHASE.--There is appropriated to the legislative council service to complete the second phase of the 2010 census redistricting block boundary data program and to perform such other functions as are necessary to prepare for redistricting in 2011, five hundred thousand dollars (\$500,000) from legislative cash balances, for expenditure during fiscal years 2010 and 2011.

Chapter 1 Section 11 Laws 2009

Section 11. 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 2009 and 2010.

Chapter 1 Section 12 Laws 2009

Section 12. NATIONAL CONFERENCES HOST COMMITTEES.--There is appropriated from legislative cash balances to the legislative council service for the New Mexico legislature's host committees for two national conferences to be held in fiscal year 2010 in Santa Fe to provide transportation, speakers' fees and other appropriate expenses as are necessary to prepare for the annual meetings to be held in New Mexico, two hundred thousand dollars (\$200,000), for expenditure during fiscal years 2009 and 2010.

Chapter 1 Section 13 Laws 2009

Section 13. LEGISLATIVE BRANCH APPROPRIATIONS--REDUCTIONS.--The New Mexico legislative council shall reduce any general fund appropriations in this act, provided that the total amount of the reductions shall equal two percent of the total general fund appropriations in Sections 3 through 9 of this act and, provided further that in order to meet the reductions and maintain government efficiency, the New Mexico legislative council may transfer amounts from any of the appropriations in this act to any other legislative expenditure where they may be needed.

Chapter 1 Section 14 Laws 2009

Section 14. CATEGORY TRANSFER.--Amounts set out in Sections 3, 4, 5, 7 and 8 of this act are provided for informational purposes only and may be freely transferred among categories.

Chapter 1 Section 15 Laws 2009

Section 15. PERFORMANCE MEASURES.--Each legislative agency shall adhere to the performance measures specified in its strategic plan and shall make reports as required in that plan.

Chapter 1 Section 16 Laws 2009

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

House Bill 1, aa, w/ec

Approved January 23, 2009

LAWS 2009, CHAPTER 2

AN ACT

RELATING TO STATE EXPENDITURES; ENACTING NEW SECTIONS OF THE GENERAL APPROPRIATION ACT OF 2008 TO REDUCE CERTAIN GENERAL FUND APPROPRIATIONS FOR FISCAL YEAR 2009 AND TO PROVIDE FOR ADDITIONAL BUDGET ADJUSTMENT AUTHORITY; DECLARING AN EMERGENCY.

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

Chapter 2 Section 1 Laws 2009

Section 1. A new section of the General Appropriation Act of 2008 is enacted to read:

"APPROPRIATION REDUCTIONS.--

A. Except as provided in Subsections B through G of this section, all amounts set out under the general fund column in Section 4 of the General Appropriation Act of 2008 are reduced by two and one-half percent rounded to the nearest one hundred dollars (\$100).

B. In lieu of the reduction made in Subsection A of this section and except as provided in Subsection G of this section, the general fund appropriations in Section 4 of the General Appropriation Act of 2008 to the following agencies are reduced by the specified percentage, rounded to the nearest one hundred dollars (\$100):

(1) the personnel board, the public employee labor relations board, the regulation and licensing department, the energy, minerals and natural resources department, the state engineer and the department of environment are reduced by five percent;

(2) the economic development department is reduced by three and nine-tenths percent;

(3) the public education department is reduced by three and eight-tenths percent;

(4) the taxation and revenue department, the cultural affairs department and the aging and long-term services department are reduced by three percent;

(5) the veterans' services department is reduced by two and four-tenths percent;

(6) the workforce solutions department is reduced by two and one-tenth percent;

(7) the district attorneys, the administrative office of the district attorneys, the public defender department, the children, youth and families department, the corrections department and the department of public safety are reduced by one and nine-tenths percent;

(8) the vocational rehabilitation division is reduced by one and eight-tenths percent;

(9) the developmental disabilities planning council is reduced by one and six-tenths percent;

(10) the supreme court law library, the New Mexico compilation commission, the judicial standards commission, the court of appeals, the supreme court, the administrative office of the courts, the supreme court building commission, the district courts and the Bernalillo county metropolitan court are reduced by one and four-tenths percent; and

(11) the appropriation to the lieutenant governor is not reduced.

C. In lieu of the reduction made in Subsection A of this section, the general fund appropriations in Section 4 of the General Appropriation Act of 2008 to the medical assistance program of the human services department and the medicaid behavioral health program of the human services department are reduced by one percent rounded to the nearest one hundred dollars (\$100).

D. After the reduction pursuant to Subsection C of this section, the general fund appropriation in Section 4 of the General Appropriation Act of 2008 to the medical assistance program of the human services department in the other category is further reduced by twenty-four million five hundred fifty thousand dollars (\$24,550,000).

E. After the reduction pursuant to Subsection A of this section, the general fund appropriation in Section 4 of the General Appropriation Act of 2008 to the transportation distribution for public schools is further reduced by four million dollars (\$4,000,000).

F. After the reductions pursuant to Subsections A through E of this section, the total appropriation from the general fund to each agency and institution in Section 4 of the General Appropriation Act of 2008 is further reduced by an amount equal to two and one-half percent of that agency's or institution's allocation of the compensation appropriation made in Section 8 of that act. The reductions shall be made using the same methodology used by the department of finance and administration and the higher education department in allocating the compensation appropriation. Each agency and institution shall use program transfers, category transfers, cash balances, vacancy savings and other available funds to provide the increases provided for in Section 8 of the General Appropriation Act of 2008 and Laws 2008, Chapter 6, Section 43.

~~[G. A reduction to an appropriation, otherwise required by Subsection A or B of this section, shall not be made if the state budget division of the department of finance and administration determines that:~~

~~(1) the appropriation is to the department of finance and administration, the public education department or the higher education department;~~

~~(2) the purpose of the appropriation is for the department of finance and administration, the public education department or the higher education department to:~~

~~(a) distribute the money appropriated to another public entity or association of public entities that is named in the appropriation; or~~

~~(b) expend the money appropriated on goods, services or memberships provided by another public entity or association of public entities that is named in the appropriation; and~~

~~(3) the money was distributed or expended prior to January 1, 2009.]~~*LINE-ITEM VETO*

H. Where required as part of the operating budget approval process, the state budget division of the department of finance and administration shall reduce all appropriations set out under the other state funds, internal service funds/interagency transfers and federal funds columns to reflect the revised general fund appropriations."

Chapter 2 Section 2 Laws 2009

Section 2. A new section of the General Appropriation Act of 2008 is enacted to read:

"ADDITIONAL FISCAL YEAR 2009 BUDGET ADJUSTMENT AUTHORITY.-- Subject to review and approval by the department of finance and administration pursuant to Sections 6-3-23 through 6-3-25 NMSA 1978, during fiscal year 2009:

A. each agency may request category transfers between any categories of a program and between programs. The authority granted by this subsection is in addition to the budget adjustment authority granted in Section 10 of the General Appropriation Act of 2008; and

B. a program with internal service funds/interagency transfers appropriations or other state funds appropriations that collects money in excess of the amounts appropriated may request budget increases in an amount not to exceed five percent of its internal funds/interagency transfers or other state funds appropriations contained in Section 4 of the General Appropriation Act of 2008. The authority granted by this subsection is in lieu of the budget increase authority granted in Subsection D of Section 10 of the General Appropriation Act of 2008."

Chapter 2 Section 3 Laws 2009

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

Approved February 6, 2009

LAWS 2009, CHAPTER 3

AN ACT

RELATING TO STATE EXPENDITURES; REDUCING CERTAIN GENERAL FUND APPROPRIATIONS; TRANSFERRING MONEY TO THE GENERAL FUND FROM OTHER STATE FUNDS, INCLUDING THE TAX STABILIZATION RESERVE; CHANGING THE DISTRIBUTIONS FROM CERTAIN FUNDS; MAKING APPROPRIATIONS FROM OTHER STATE FUNDS AND CERTAIN FEDERAL FUNDS; REPEALING CERTAIN APPROPRIATIONS; DECLARING AN EMERGENCY.

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

Chapter 3 Section 1 Laws 2009

Section 1. 2008 LEGISLATIVE BRANCH APPROPRIATIONS--REDUCTIONS.--

A. All general fund appropriations in Section 9 and Subsections A, B and C of Section 3 of Chapter 1 of Laws 2008 are reduced by three and two-tenths percent rounded to the nearest one hundred dollars (\$100); provided that the

New Mexico legislative council may transfer amounts from any of the appropriations in Laws 2008, Chapter 1 to any other legislative expenditure where they may be needed to effectuate government efficiency.

B. All general fund appropriations in Laws 2008, Chapter 1, Section 4 are reduced by two and one-half percent rounded to the nearest one hundred dollars (\$100).

C. After the reductions pursuant to Subsections A and B of this section, each amount appropriated from the general fund in Laws 2008, Chapter 1, Sections 3, 4, 5, 7 and 8 in the personal services and employee benefits category of each legislative agency is further reduced by an amount equal to two and one-half percent of the amount of the general fund appropriation in Section 8 of the General Appropriation Act of 2008 that was distributed to that agency, provided that each agency shall use category transfers, cash balances, vacancy savings and other available funds to provide the salary increases provided for in Section 8 of the General Appropriation Act of 2008 and Laws 2008, Chapter 6,

Section 43.

D. Prior to June 30, 2009, the New Mexico legislative council may reduce any general fund appropriations in Laws 2009, Chapter 1, Section 1, provided that the

total amount of the reductions shall not exceed two and one-half percent of the total general fund appropriations in that section.

Chapter 3 Section 2 Laws 2009

Section 2. 2008 SPECIAL APPROPRIATIONS--REDUCTIONS.--The balances of all general fund appropriations in Laws 2008, Chapter 6 that were unexpended or unencumbered on the effective date of this act are reduced by seven and three-tenths percent rounded to the nearest one hundred dollars (\$100).

Chapter 3 Section 3 Laws 2009

Section 3. AUTHORITY TO REDUCE ALLOTMENTS.--

A. If, in this act or any other act of the first session of the forty-ninth legislature, a general fund appropriation or budget is reduced and funds in excess of the amount of the reduced appropriation or budget have already been allotted to the agency receiving the appropriation, the department of finance and administration may reduce any other general fund allotment to the agency in order to recoup the overallocation of the reduced appropriation or budget. In the case of an appropriation made to one agency but disbursed or transferred to another agency, the department of finance and administration may reduce any other general fund allotment to the agency to which the appropriation was disbursed or transferred in order to recoup the overallocation of the reduced appropriation or budget. The authority provided in this section is additional to any other power the department of finance and administration has to remedy overallocations, and the grant of authority in this section shall not be deemed to be a legislative determination that the department of finance and administration does not otherwise have the authority provided in this section.

B. As used in this section, "agency" means any department, institution, board, bureau, commission, district or committee of government of the state and means every office or officer of any of the above.

Chapter 3 Section 4 Laws 2009

Section 4. FUND TRANSFERS.--

A. Notwithstanding any restriction on the use of money in the funds, the following amounts from the following funds are transferred to the general fund for the purpose of meeting appropriations from the general fund:

(1) fourteen million five hundred thousand dollars (\$14,500,000) is transferred from the college affordability endowment fund;

(2) one million seven hundred fifty thousand dollars (\$1,750,000) is transferred from the public election fund;

(3) eight hundred thousand dollars (\$800,000) is transferred from the public pre-kindergarten fund;

(4) five hundred thousand dollars (\$500,000) is transferred from the juvenile continuum grant fund;

(5) one million five hundred thousand dollars (\$1,500,000) is transferred from the day-care fund;

(6) eight million dollars (\$8,000,000) is transferred from the telecommunications access fund;

(7) one million dollars (\$1,000,000) is transferred from the corrections department intensive supervision fund;

(8) five million dollars (\$5,000,000) is transferred from the workers' compensation administration fund;

(9) three million dollars (\$3,000,000) is transferred from the juvenile community corrections grant fund;

(10) five hundred thousand dollars (\$500,000) is transferred from the New Mexico youth conservation corps fund;

(11) one million dollars (\$1,000,000) is transferred from the board of nursing fund;

(12) six hundred thousand dollars (\$600,000) is transferred from the higher education endowment fund;

(13) one million five hundred thousand dollars (\$1,500,000) is transferred from the electronic voting system revolving fund;

(14) four hundred thousand dollars (\$400,000) is transferred from the insurance fraud fund; and

(15) one hundred thousand dollars (\$100,000) is transferred from the motorboat fuel tax fund.

B. One million dollars (\$1,000,000) of the unexpended balance of the amounts allocated from the water project fund to the administrative office of the courts pursuant to Subsection A of Section 72-4A-9 NMSA 1978, and derived from funds other than distributions from the water trust fund, is transferred to the general fund.

C. Notwithstanding any provision of Section 22-24-4 NMSA 1978, fifty-eight million four hundred thousand dollars (\$58,400,000) is transferred from the public

school capital outlay fund to the general fund for the purpose of meeting appropriations from the general fund. The money transferred represents a portion of the amount of the general fund appropriation made in Laws 2006, Chapter 111, Section 66 and recouped by the offset of allocations that would have been made to school districts for the state share of projects pursuant to Section 22-24-5.7 NMSA 1978.

D. Notwithstanding the provisions of Section 22-25-10 NMSA 1978, five million five hundred thousand dollars (\$5,500,000) of the unexpended proceeds of taxable severance tax bonds is transferred from the public school capital improvements fund to the general fund.

Chapter 3 Section 5 Laws 2009

Section 5. Section 6-4-9 NMSA 1978 (being Laws 1999, Chapter 207, Section 1, as amended) is amended to read:

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

A. The "tobacco settlement permanent fund" is created in the state treasury. The fund shall consist of money distributed to the state pursuant to the master settlement agreement entered into between tobacco product manufacturers and various states, including New Mexico, and executed November 23, 1998 or any money released to the state from a qualified escrow fund or otherwise paid to the state as authorized by the model statute, Sections 6-4-12 and 6-4-13 NMSA 1978, enacted pursuant to the master settlement agreement. Money in the fund shall be invested by the state investment officer as land grant permanent funds are invested pursuant to Chapter 6, Article 8 NMSA 1978. Income from investment of the fund shall be credited to the fund. Money in the fund shall not be expended for any purpose, except as provided in this section.

B. In fiscal years 2003 through 2006, a distribution shall be made from the tobacco settlement permanent fund to the general fund in an amount equal to one hundred percent of the total amount of money distributed to the tobacco settlement permanent fund in that fiscal year.

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

settlement program fund in a fiscal year is insufficient to meet appropriations from that fund for that fiscal year, the secretary of finance and administration shall proportionately reduce each appropriation accordingly.

D. In addition to the distribution made pursuant to Subsection C of this section, in fiscal year 2009 and in fiscal year 2010, 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.

E. The tobacco settlement permanent fund shall be considered a reserve fund of the state and, as a reserve fund, may be expended in the event that general fund balances, including all authorized revenues and transfers to the general fund and balances in the general fund operating reserve, the appropriation contingency fund and the tax stabilization reserve, will not meet the level of appropriations authorized from the general fund for a fiscal year. In that event, in order to avoid an unconstitutional deficit, the legislature may authorize a transfer from the tobacco settlement permanent fund to the general fund but only in an amount necessary to meet general fund appropriations."

Chapter 3 Section 6 Laws 2009

Section 6. Section 59A-53-5.2 NMSA 1978 (being Laws 2007, Chapter 152, Section 1) 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 commission for the purpose of making the distributions.

B. For the purposes of Subsections C and D of this section, the "remaining balance in the fire protection fund" shall be calculated on June 30 of each year and shall equal the balance of the fund on that date less the sum of:

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

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

C. On the following dates, the following percentages of the remaining balance in the fire protection fund shall be transferred from the fire protection fund to the fire protection grant fund:

(1) on June 30, 2007, six and seven-tenths percent;
(2) on June 30, 2008, thirteen and four-tenths percent;
(3) on June 30, 2009, thirteen and four-tenths percent;
(4) on June 30, 2010, thirteen and four-tenths percent;
(5) on June 30, 2011, twenty and one-tenth percent;
(6) on June 30, 2012, twenty-six and eight-tenths percent;
(7) on June 30, 2013, thirty-three and five-tenths percent;
(8) on June 30, 2014, forty and two-tenths percent;
(9) on June 30, 2015, forty-six and nine-tenths percent;
(10) on June 30, 2016, fifty-three and six-tenths percent;
(11) on June 30, 2017, sixty and three-tenths percent;
(12) on June 30, 2018, sixty-seven percent;
(13) on June 30, 2019, seventy-three and seven-tenths percent;
(14) on June 30, 2020, eighty and four-tenths percent;
(15) on June 30, 2021, eighty-seven and one-tenth percent;
(16) on June 30, 2022, ninety-three and eight-tenths percent; and
(17) on June 30, 2023 and on each subsequent June 30, one hundred percent.

D. On June 30 of each year, the remaining balance in the fire protection fund, less the amount to be transferred on that date pursuant to Subsection C of this section, shall be transferred to the general fund; provided that no transfer shall be made pursuant to this subsection after June 30, 2022."

Chapter 3 Section 7 Laws 2009

Section 7. Laws 2008 (2nd S.S.), Chapter 10, Section 1 is amended to read:

"Section 1. APPROPRIATION.--

A. Five million five hundred thousand dollars (\$5,500,000) is appropriated from the general fund to the human services department for expenditure in fiscal years 2009 and 2010 as follows:

(1) four million dollars (\$4,000,000) to provide coverage for individuals enrolled in or eligible for the developmental disabilities medicaid waiver program; and

(2) one million five hundred thousand dollars (\$1,500,000) to enhance behavioral health services for individuals through age eighteen with behavioral health care needs who are ~~already~~ enrolled in the medicaid program or the state children health insurance program. *LINE-ITEM VETO*

B. Any unexpended or unencumbered balance remaining at the end of fiscal year 2010 shall revert to the general fund."

Chapter 3 Section 8 Laws 2009

Section 8. TEMPORARY ASSISTANCE FOR NEEDY FAMILIES CONTINGENCY FUNDS--APPROPRIATION.--Upon certification by the state board of finance that the human services department has received reimbursement from federal temporary assistance for needy families contingency funds for state expenditures meeting criteria for the temporary assistance for needy families program, twenty-two million one hundred thousand dollars (\$22,100,000) of the amount received is appropriated to the human services department for ~~[transfer to the tax administration suspense fund for]~~ payment of the working families tax credit pursuant to Section 7-2-18.15 NMSA 1978. *LINE-ITEM VETO*

Chapter 3 Section 9 Laws 2009

Section 9. TOBACCO SETTLEMENT PROGRAM FUND--APPROPRIATION FOR MEDICAID.--Twenty-four million five hundred fifty thousand dollars (\$24,550,000) is appropriated from the tobacco settlement program fund to the human services department for expenditure in fiscal year 2009 for the medical assistance program. Any unexpended or unencumbered balance remaining at the end of fiscal year 2009 shall revert to the tobacco settlement program fund.

Chapter 3 Section 10 Laws 2009

Section 10. APPROPRIATION--PUBLIC SCHOOL SUPPORT.--Thirty-five million seven hundred fifty-three thousand six hundred dollars (\$35,753,600) is appropriated from the appropriation contingency fund to the state equalization guarantee distribution for the purpose of supplementing the general fund appropriation to the distribution in fiscal year 2009. The appropriation is from the separate account of the appropriation contingency fund dedicated for the purpose of implementing and maintaining

educational reforms pursuant to Laws 2004, Chapter 114, Section 12. Any unexpended or unencumbered balance remaining at the end of fiscal year 2009 shall not revert.

Chapter 3 Section 11 Laws 2009

Section 11. TRANSFER--TAX STABILIZATION RESERVE.--Fifty-five million seven hundred thousand dollars (\$55,700,000) is transferred from the general fund tax stabilization reserve to the fiscal year 2009 appropriation account of the general fund. The transfer is contingent upon the governor sending a message to the first session of the forty-ninth legislature that, pursuant to Subsection D of Section 6-4-2.2 NMSA 1978, general fund revenues, including transfers to the general fund, are projected by the governor to be insufficient to meet appropriations authorized by law from the general fund for fiscal year 2009.

Chapter 3 Section 12 Laws 2009

Section 12. REPEAL.--Laws 2008, Chapter 50, Section 1 is repealed.

Chapter 3 Section 13 Laws 2009

Section 13. CONTINGENCY.--The provisions of Sections 8 and 9 of this act are contingent upon the enactment into law of legislation of the first session of the forty-ninth legislature that reduces general fund appropriations in the General Appropriation Act of 2008.

Chapter 3 Section 14 Laws 2009

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

SFC/Senate Bill 79, w/ec, partial veto

Approved February 6, 2009

LAWS 2009, CHAPTER 4

AN ACT

RELATING TO TAXATION; PROVIDING A PAYMENT DATE FOR THE FIRST QUARTERLY PAYMENT OF ESTIMATED CORPORATE INCOME TAX; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2003; DECLARING AN EMERGENCY.

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

Chapter 4 Section 1 Laws 2009

Section 1. Section 7-2A-9.1 NMSA 1978 (being Laws 1986, Chapter 5, Section 1, as amended by Laws 2003, Chapter 86, Section 2 and by Laws 2003, Chapter 295, Section 1) is amended to read:

"7-2A-9.1. ESTIMATED TAX DUE--PAYMENT OF ESTIMATED TAX--
PENALTY--EXEMPTION.--

A. Every taxpayer shall pay estimated corporate income tax to the state of New Mexico during its taxable year if its tax after applicable credits is five thousand dollars (\$5,000) or more in the current taxable year. A taxpayer to which this section applies shall calculate estimated tax by one of the following methods:

(1) estimating the amount of tax due, net of any credits, for the current taxable year, provided that the estimated amount is at least eighty percent of the amount determined to be due for the taxable year;

(2) using as the estimate an amount equal to one hundred percent of the tax due for the previous taxable year, if the previous taxable year was a full twelve-month year;

(3) using as the estimate an amount equal to one hundred ten percent of the tax due for the taxable year immediately preceding the previous taxable year, if the taxable year immediately preceding the previous taxable year was a full twelve-month year and the return for the previous taxable year has not been filed and the extended due date for filing that return has not occurred at the time the first installment is due for the taxable year; or

(4) estimating the amount of tax due, net of any credits, for each fiscal quarter of the current taxable year, provided that the estimated amount is at least eighty percent of the amount determined to be due for that quarter.

B. If Subsection A of this section applies, the amount of estimated tax shall be paid in installments as provided in this subsection. Twenty-five percent of the estimated tax calculated under Paragraph (1), (2) or (3) of Subsection A of this section or one hundred percent of the estimated tax calculated under Paragraph (4) of Subsection A of this section is due on or before the following dates: the fifteenth day of the fourth month of the taxable year, the fifteenth day of the sixth month of the taxable year, the fifteenth day of the ninth month of the taxable year and the fifteenth day of the twelfth month of the taxable year. Application of this subsection to a taxable year that is a fractional part of a year shall be determined by regulation of the secretary.

C. Every taxpayer to which Subsection A of this section applies that fails to pay the estimated tax when due or that makes estimated tax payments during the taxable year that are less than the lesser of eighty percent of the income tax imposed on the taxpayer under the Corporate Income and Franchise Tax Act or the amount required by Paragraph (2), (3) or (4) of Subsection A of this section shall be subject to the interest and penalty provisions of Sections 7-1-67 and 7-1-69 NMSA 1978 on the underpayment.

D. For purposes of this section, the amount of underpayment shall be the excess of the amount of the installment that would be required to be paid if the estimated tax were equal to eighty percent of the tax shown on the return for the taxable year or the amount required by Paragraph (2), (3) or (4) of Subsection A of this section or, if no return was filed, eighty percent of the tax for the taxable year for which the estimated tax is due less the amount, if any, of the installment paid on or before the last date prescribed for payment.

E. For purposes of this section, the period of underpayment shall run from the date the installment was required to be paid to whichever of the following dates is earlier:

(1) the fifteenth day of the third month following the end of the taxable year; or

(2) with respect to any portion of the underpayment, the date on which such portion is paid. For the purposes of this paragraph, a payment of estimated tax on any installment date shall be applied as a payment of any previous underpayment only to the extent such payment exceeds the amount of the installment determined under Subsection D of this section due on such installment date.

F. For the purposes of this section, the amount of tax deducted and withheld with respect to a taxpayer under the Withholding Tax Act or the Oil and Gas Proceeds Withholding Tax Act shall be deemed a payment of estimated tax. An equal amount of the amount of withheld tax shall be deemed paid on each due date for the applicable taxable year unless the taxpayer establishes the dates on which all amounts were actually withheld, in which case the amounts withheld shall be deemed payments of estimated tax on the dates on which the amounts were actually withheld. The taxpayer may apply the provisions of this subsection separately to amounts withheld under the Withholding Tax Act or the Oil and Gas Proceeds Withholding Tax Act."

Chapter 4 Section 2 Laws 2009

Section 2. TEMPORARY PROVISION.--For estimated payments due on or before April 15, 2009, pursuant to Section 7-2A-9.1 NMSA 1978, a taxpayer shall remit at least one-eighth of the annual estimated taxes due for the taxable year in lieu of the one-fourth that is required in that section. The remainder of the annual estimated taxes

due in the first quarter shall be remitted in addition to the taxpayer's second-quarter payment by June 15, 2009.

Chapter 4 Section 3 Laws 2009

Section 3. APPLICABILITY.--The provisions of Section 1 of this act are applicable to taxable years beginning on or after January 1, 2009.

Chapter 4 Section 4 Laws 2009

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

Senate Bill 80, aa, w/ec

Approved February 6, 2009

LAWS 2009, CHAPTER 5

AN ACT

RELATING TO CAPITAL OUTLAY; LIMITING CERTAIN GENERAL FUND APPROPRIATIONS AND REVERTING BALANCES; CHANGING CERTAIN SEVERANCE TAX BOND AUTHORIZATIONS AND APPROPRIATIONS OF PROCEEDS; AUTHORIZING SEVERANCE TAX BONDS; PROVIDING FOR REVERSION OF CERTAIN BALANCES; DECLARING AN EMERGENCY.

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

Chapter 5 Section 1 Laws 2009

Section 1. GENERAL FUND BALANCES REVERTED.--The following appropriations from the general fund or other state fund shall not be expended, and the unexpended balances up to the amount specified shall revert to the general fund:

1. two million eight hundred thousand dollars (\$2,800,000) to the capital program fund in Subsection 15 of Section 38 of Chapter 42 of Laws 2007 and in Subsection 2 of Section 4 of Chapter 2 of Laws 2007 to plan, design, construct, renovate and equip a substance abuse treatment center in Los Lunas in Valencia county;

2. two million seven hundred thousand dollars (\$2,700,000) to the energy, minerals and natural resources department in Subsection 2 of Section 33 of Chapter

347 of Laws 2005 for bosque revitalization and to plan and develop trails in the north bosque area along the Rio Grande;

3. one million dollars (\$1,000,000) to the office of the state engineer in Subsection 20 of Section 42 of Chapter 111 of Laws 2006 to repair and improve Cabresto Lake dam in Taos county;

4. one million dollars (\$1,000,000) to the department of environment in Subsection 48 of Section 59 of Chapter 42 of Laws 2007 to plan, design and construct improvements to the water and wastewater system in Sunland Park in Dona Ana county;

5. two million five hundred thousand dollars (\$2,500,000) to the department of environment in Subsection 87 of Section 59 of Chapter 42 of Laws 2007 to plan, design and construct improvements to the regional wastewater treatment plant in Ruidoso Downs in Lincoln county;

6. one million four thousand dollars (\$1,004,000) to the department of environment in Subsection 157 of Section 45 of Chapter 111 of Laws 2006 to plan, design and construct water system leakage repairs in the Pueblo of Cochiti in Sandoval county;

7. three million dollars (\$3,000,000) to the department of environment in Subsection 143 of Section 45 of Chapter 111 of Laws 2006 for improvements to the water reuse and distribution facilities in Rio Rancho in Sandoval county;

8. two million four hundred ninety-eight thousand two hundred fifteen dollars (\$2,498,215) to the department of finance and administration in Subsection 3 of Section 47 of Chapter 111 of Laws 2006 for media production, education and training facilities statewide;

~~[9. two million dollars (\$2,000,000) to the human services department in Laws 2008, Chapter 92, Section 54 for domestic violence projects to maintain, repair and renovate facilities to ensure consistent domestic violence service delivery and to plan, design, construct, equip and furnish additional shelters statewide;]~~LINE-ITEM
VETO

10. one million dollars (\$1,000,000) to the Indian affairs department in Subsection 87 of Section 66 of Chapter 42 of Laws 2007 to plan, design and construct improvements to the airport at Ohkay Owingeh in Rio Arriba county;

11. Section 72-1-12 NMSA 1978 and Laws 2007, Chapter 42, Section 88 notwithstanding, ten million dollars (\$10,000,000) to the Indian water rights settlement fund in Laws 2007, Chapter 42, Section 88 to implement the state's portion of the settlement of water rights in the *Navajo Nation*, *Taos* and *Aamodt* cases;

12. five million dollars (\$5,000,000) to the local government division in Subsection 5 of Section 26 of Chapter 2 of Laws 2007 to plan, design, construct, renovate and equip a state multipurpose equestrian facility on open space property in Bernalillo county;

13. three million dollars (\$3,000,000) to the local government division in Subsection 637 of Section 52 of Chapter 111 of Laws 2006 to plan, design and construct bikeways and horse trails in Santa Fe county;

14. five million seven hundred thousand dollars (\$5,700,000) to the local government division in Subsection 704 of Section 68 of Chapter 42 of Laws 2007 for film and media production, education and training facilities statewide;

15. five million dollars (\$5,000,000) to the local government division in Subsection 653 of Section 52 of Chapter 111 of Laws 2006 for local fair and arena rodeo facilities statewide;

16. one million five hundred thousand dollars (\$1,500,000) to the department of transportation in Subsection 127 of Section 75 of Chapter 42 of Laws 2007 for a paved access road for the Strauss facility near the Santa Teresa port near entry in Dona Ana county;

17. fifty thousand dollars (\$50,000) to the aging and long-term services department in Subsection 8 of Section 124 of Chapter 126 of Laws 2004 to replace the roof and flooring at the Billy McKibben senior center in Lovington in Lea county;

18. fifty thousand dollars (\$50,000) to the aging and long-term services department in Subsection 11 of Section 124 of Chapter 126 of Laws 2004 to renovate and construct a senior center in Dixon in Rio Arriba county;

19. six hundred fifty-two thousand eight hundred seventy-five dollars (\$652,875) to the capital program fund in Paragraph (13) of Subsection B of Section 44 of Chapter 126 of Laws 2004 for an office complex to house health-related state agencies in Santa Fe in Santa Fe county;

20. nine hundred three thousand one hundred forty-nine dollars (\$903,149) to the capital program fund in Subsection 1 of Section 64 of Chapter 111 of Laws 2006 to plan, design, construct, improve and renovate the facility and infrastructure at the state government center in Albuquerque in Bernalillo county;

21. twenty-five thousand dollars (\$25,000) to the cultural affairs department in Subsection 7 of Section 127 of Chapter 126 of Laws 2004 to plan and design the New Mexico rodeo hall of fame in Las Cruces in Dona Ana county;

22. one million dollars (\$1,000,000) to the department of information technology in Laws 2008, Chapter 92, Section 56 to purchase a computing system for

the state, contingent on the state receiving an award from the national science foundation to develop supercomputing systems;

23. two million dollars (\$2,000,000) to the economic development department in Subsection 4 of Section 43 of Chapter 92 of Laws 2008 for an Eclipse aviation maintenance center facility in Bernalillo county;

24. twenty thousand dollars (\$20,000) to the public education department in Subsection 52 of Section 136 of Chapter 126 of Laws 2004 for renovations at the charter vocational high school in the Albuquerque public school district in Bernalillo county;

25. twenty-five thousand dollars (\$25,000) to the public education department in Subsection 147 of Section 136 of Chapter 126 of Laws 2004 and reauthorized in Laws 2006, Chapter 107, Section 20 for land acquisition, site development and construction for the Nuestros Valores charter school in the Albuquerque public school district in Bernalillo county;

26. seventy-five thousand dollars (\$75,000) to the public education department in Subsection 1 of Section 14 of Chapter 385 of Laws 2003 and reauthorized in Laws 2006, Chapter 107, Section 34 to acquire land, develop the site for and construct the Nuestros Valores charter school in the Albuquerque public school district in Bernalillo county;

27. three hundred eighty-eight thousand eight hundred fourteen dollars (\$388,814) to the energy, minerals and natural resources department in Subsection 10 of Section 54 of Chapter 111 of Laws 2006 for facilities and infrastructure at Red Rock state park in McKinley county;

28. fifteen thousand dollars (\$15,000) to the office of the state engineer in Subsection 6 of Section 129 of Chapter 126 of Laws 2004 to develop a well for the park in Berino in Dona Ana county;

29. five thousand dollars (\$5,000) to the interstate stream commission in Subsection 1 of Section 133 of Chapter 126 of Laws 2004 to develop water management and water conservation plans for acequias in Mora county;

30. five hundred thousand dollars (\$500,000) to the office of the state engineer in Subsection 6 of Section 20 of Chapter 2 of Laws 2007 to repair and rehabilitate acequia water storage projects statewide;

31. two million dollars (\$2,000,000) to the office of the state engineer in Subsection 11 of Section 34 of Chapter 347 of Laws 2005 for dam renovations and repairs statewide;

32. fifty thousand dollars (\$50,000) to the department of environment in Subsection 12 of Section 132 of Chapter 126 of Laws 2004 for a new sewer system for the San Mateo mutual domestic water consumers association in Cibola county;

33. two hundred fifty thousand dollars (\$250,000) to the department of environment in Subsection 74 of Section 59 of Chapter 42 of Laws 2007 for utility line extensions in Lea county;

34. forty-eight thousand dollars (\$48,000) to the department of environment in Subsection 27 of Section 132 of Chapter 126 of Laws 2004 for water system improvements, including drilling a well and purchasing and installing a storage tank, for the Weed water users association in Otero county;

35. two hundred fifty thousand dollars (\$250,000) to the department of finance and administration in Subsection 9 of Section 61 of Chapter 42 of Laws 2007 for the New Mexico mortgage finance authority to provide energy-efficient systems and improvements affixed to real property statewide;

36. five hundred thousand dollars (\$500,000) to the department of finance and administration in Subsection 6 of Section 50 of Chapter 92 of Laws 2008 to the New Mexico mortgage finance authority for energy-efficient systems and improvements to real property statewide;

37. two million seven hundred thousand dollars (\$2,700,000) to the department of finance and administration in Subsection 7 of Section 50 of Chapter 92 of Laws 2008 for film and media production, education and training facilities and other film initiatives statewide;

38. four hundred two thousand two hundred ninety-six dollars (\$402,296) to the department of finance and administration in Subsection 3 of Section 31 of Chapter 126 of Laws 2004 for a film production education and training center and studio;

39. five hundred thousand dollars (\$500,000) to the department of finance and administration in Subsection 4 of Section 61 of Chapter 42 of Laws 2007 for pre-kindergarten classrooms, including portables, statewide;

40. nine million three hundred twenty-nine thousand two hundred twenty-two dollars (\$9,329,222) to the department of finance and administration in Subsection 9 of Section 47 of Chapter 111 of Laws 2006 for rodeo arena facilities related to the statewide rodeo initiative;

41. two hundred six thousand six hundred forty-four dollars (\$206,644) to the department of finance and administration in Subsection 1 of Section 31 of Chapter 126 of Laws 2004 to provide matching funds for innovative water resources projects statewide;

42. two million three hundred thousand dollars (\$2,300,000) to the department of finance and administration in Subsection 10 of Section 61 of Chapter 42 of Laws 2007 for leak detection, regional and demonstration water system projects statewide;

43. one million dollars (\$1,000,000) to the department of game and fish in Subsection 2 of Section 48 of Chapter 111 of Laws 2006 to plan, design and improve the spillway of Bear Canyon dam in Grant county;

44. one million dollars (\$1,000,000) to the department of game and fish in Subsection 4 of Section 48 of Chapter 111 of Laws 2006 for water leakage improvements to the Clayton Lake dam and surrounding area in Union county;

45. three hundred thirty-two thousand dollars (\$332,000) to the public education department in Subsection 442 of Section 55 of Chapter 42 of Laws 2007 for nonpublic school computers and reauthorized to the general services department in Subsection C of Section 210 of Chapter 83 of Laws 2008 to purchase an airplane in Santa Fe in Santa Fe county;

46. nine hundred eighty-five thousand dollars (\$985,000) to the property control division of the general services department in Subsection B of Section 6 of Chapter 64 of Laws 2007 for the planning and designing of a New Mexico state police crime laboratory to be located adjacent to or within close proximity to the state laboratory facility in Bernalillo county;

47. two million dollars (\$2,000,000) to the department of health in Subsection 2 of Section 49 of Chapter 111 of Laws 2006 for improvements to school-based clinics and department of health facilities and reauthorized in Paragraph (1) of Subsection A of Section 95 of Chapter 42 of Laws 2007 for the public health office in Bernalillo county;

~~[48. thirty thousand dollars (\$30,000) to the Indian affairs department in Subsection 24 of Section 131 of Chapter 126 of Laws 2004 for improvements and equipment for the chapter house for the Chichiltah chapter of the Navajo Nation in McKinley county;]~~*LINE-ITEM VETO*

49. thirty thousand dollars (\$30,000) to the Indian affairs department in Subsection 30 of Section 131 of Chapter 126 of Laws 2004 to repair the building, heating and plumbing systems at the chapter house in the Chichiltah chapter in the Navajo Nation in McKinley county;

~~[50. one hundred thousand dollars (\$100,000) to the Indian affairs department in Subsection C of Section 42 of Chapter 23 of Laws 2000 (2nd S.S.) and reauthorized in Laws 2005, Chapter 347, Section 259 to purchase a building for the department of Navajo veterans' affairs in Crownpoint in McKinley county;~~

~~51. thirty thousand dollars (\$30,000) to the Indian affairs department in Subsection 32 of Section 131 of Chapter 126 of Laws 2004 to repair the building, heating and plumbing systems at the chapter house in the Iyanbito chapter in the Navajo Nation in McKinley county;~~

~~52. thirty thousand dollars (\$30,000) to the Indian affairs department in Subsection 31 of Section 131 of Chapter 126 of Laws 2004 to repair the building, heating and plumbing systems at the chapter house in the Manuelito chapter in the Navajo Nation in McKinley county;~~

~~53. thirty thousand dollars (\$30,000) to the Indian affairs department in Subsection 28 of Section 131 of Chapter 126 of Laws 2004 to repair the building, heating and plumbing systems at the chapter house in the Tsayatoh chapter in the Navajo Nation in McKinley county;~~

~~54. two hundred twenty-one thousand dollars (\$221,000) to the Indian affairs department in Subsection 43 of Section 131 of Chapter 126 of Laws 2004 to expand, improve and construct road yards and highway maintenance facilities for the chapters of the Navajo Nation in northwest New Mexico;]LINE-ITEM VETO~~

55. forty-one thousand dollars (\$41,000) to the Indian affairs department in Subsection G of Section 42 of Chapter 23 of Laws 2000 (2nd S.S.) and reauthorized in Laws 2005, Chapter 347, Section 144 to make improvements, including a master plan, at the Hogback chapter of the Navajo Nation in San Juan county;

56. twenty-five thousand dollars (\$25,000) to the Indian affairs department in Subsection 4 of Section 131 of Chapter 126 of Laws 2004 and reauthorized in Laws 2005, Chapter 347, Section 282 for improvements to playground equipment and outdoor recreation facilities at the Pueblo of Santa Ana in Sandoval county;

57. one million five hundred thousand dollars (\$1,500,000) to the interstate stream commission in Laws 2007, Chapter 42, Section 89 and reauthorized in Laws 2008, Chapter 83, Section 400 to purchase land and water rights and for development of augmentation well fields and pipelines;

58. three million five hundred thousand dollars (\$3,500,000) to the local government division in Subsection 44 of Section 68 of Chapter 42 of Laws 2007 for infrastructure for an automobile assembly operations economic development project in Bernalillo county;

59. two hundred fifty thousand dollars (\$250,000) to the local government division in Subsection 11 of Section 68 of Chapter 42 of Laws 2007 to purchase land for open space adjacent to the Gutierrez Canyon open space area in Bernalillo county;

60. two million twenty-five thousand dollars (\$2,025,000) to the local government division in Subsection 35 of Section 68 of Chapter 42 of Laws 2007 for a state multipurpose equestrian facility on open space property in Bernalillo county;

61. fifty thousand dollars (\$50,000) to the local government division in Subsection 13 of Section 59 of Chapter 92 of Laws 2008 for the Fisher and Smith memorial gymnasium at the Vista Grande community center in Bernalillo county;

62. one hundred thousand dollars (\$100,000) to the local government division in Subsection 10 of Section 68 of Chapter 42 of Laws 2007 to equip the Fisher and Smith memorial gymnasium at the Vista Grande community center in Bernalillo county;

63. two hundred five thousand dollars (\$205,000) to the local government division in Subsection 43 of Section 45 of Chapter 347 of Laws 2005 for a gymnasium to be jointly used by East Mountain high school and Vista Grande community center in Bernalillo county;

64. twenty-five thousand dollars (\$25,000) to the local government division in Subsection 77 of Section 134 of Chapter 126 of Laws 2004 for renovation for the Downtown community education center in Albuquerque in Bernalillo county;

65. thirty-five thousand dollars (\$35,000) to the local government division in Subsection 59 of Section 134 of Chapter 126 of Laws 2004 for maintenance and renovation of the Albuquerque railyard station in Albuquerque in Bernalillo county;

66. seven hundred forty-nine thousand two hundred eighty-five dollars (\$749,285) to the local government division in Subsection 50 of Section 68 of Chapter 42 of Laws 2007 for construction, equipment, furnishings and exhibits at the Anderson-Abruzzo international balloon museum in Albuquerque in Bernalillo county;

67. fifty thousand dollars (\$50,000) to the local government division in Subsection 110 of Section 134 of Chapter 126 of Laws 2004 to acquire land in Eagle Nest in Colfax county;

68. sixty-six thousand two hundred eighty-six dollars (\$66,286) to the local government division in Subsection 138 of Section 26 of Chapter 2 of Laws 2007 for improvements to the Cliff-Gila cemetery in Grant county;

69. one hundred thousand dollars (\$100,000) to the local government division in Subsection 385 of Section 68 of Chapter 42 of Laws 2007 for a boys' and girls' club in Grant county;

70. one hundred ninety-six thousand twenty dollars (\$196,020) to the local government division in Subsection 186 of Section 45 of Chapter 347 of Laws 2005 and

reauthorized in Laws 2007, Chapter 341, Section 142 for a boys' and girls' club in Grant county;

71. one hundred thousand dollars (\$100,000) to the local government division in Subsection 430 of Section 45 of Chapter 347 of Laws 2005 and reauthorized in Laws 2007, Chapter 341, Section 143 for a ball park in Cliff in Grant county;

72. ninety-nine thousand three hundred eleven dollars (\$99,311) to the local government division in Subsection 352 of Section 52 of Chapter 111 of Laws 2006 and reauthorized in Laws 2008, Chapter 83, Section 223 for a multipurpose facility and purchasing property for the Casa Mia ranch in Silver City in Grant county;

73. twenty-five thousand dollars (\$25,000) to the local government division in Subsection 48 of Section 134 of Chapter 126 of Laws 2004 to furnish and equip the Rio Grande alcohol treatment facility in Embudo in Rio Arriba county;

74. fifty thousand dollars (\$50,000) to the local government division in Subsection 204 of Section 134 of Chapter 126 of Laws 2004 and reauthorized in Laws 2005, Chapter 347, Section 270 to plan, design and construct a courthouse and acquire land in the first judicial district in Espanola in Rio Arriba county;

75. thirty thousand dollars (\$30,000) to the local government division in Subsection 106 of Section 134 of Chapter 126 of Laws 2004 for renovation of El Pueblo community center in El Pueblo in San Miguel county;

76. thirteen thousand dollars (\$13,000) to the local government division in Subsection 102 of Section 134 of Chapter 126 of Laws 2004 for design and construction of the Pueblo fire department San Jose substation in San Miguel county;

77. fifteen thousand dollars (\$15,000) to the local government division in Subsection 105 of Section 134 of Chapter 126 of Laws 2004 for completion of the San Juan community center in San Miguel county;

78. twenty-four thousand dollars (\$24,000) to the local government division in Subsection 90 of Section 134 of Chapter 126 of Laws 2004 for repairs to Casa San Ysidro in Corrales in Sandoval county;

79. twenty thousand dollars (\$20,000) to the local government division in Subsection 246 of Section 134 of Chapter 126 of Laws 2004 for a feasibility study to develop a plan, including an implementation schedule, for a protected river corridor for the Santa Fe river between Osage street and New Mexico highway 599 in Santa Fe county;

80. five hundred thousand dollars (\$500,000) to the local government division in Subsection 702 of Section 68 of Chapter 42 of Laws 2007 for local fair and arena rodeo facilities statewide;

81. twenty-five thousand dollars (\$25,000) to the local government division in Subsection 47 of Section 134 of Chapter 126 of Laws 2004 to plan, design and construct a facility and to purchase firefighting equipment for the Pot Creek volunteer fire department in Taos county;

82. twenty-five thousand dollars (\$25,000) to the department of transportation in Subsection 33 of Section 43 of Chapter 126 of Laws 2004 for water and sewer extensions on Lisa lane and Lisa road SW in Bernalillo county;

83. twenty thousand dollars (\$20,000) to the department of transportation in Subsection 15 of Section 43 of Chapter 126 of Laws 2004 for the construction of speed bumps and signage near Hayes middle school in Albuquerque in Bernalillo county;

84. one hundred thousand dollars (\$100,000) to the department of transportation in Subsection 19 of Section 43 of Chapter 126 of Laws 2004 for water and sewer improvements on streets west of Rio Grande boulevard between Griegos and Matthew streets in Albuquerque in Bernalillo county;

85. two hundred thirty-four thousand seven hundred eighty-six dollars (\$234,786) to the higher education department in Subsection A of Section 38 of Chapter 126 of Laws 2004 to plan, design, construct and equip career technical-vocational education centers statewide;

86. thirty thousand dollars (\$30,000) to the board of regents of New Mexico state university in Paragraph (2) of Subsection E of Section 137 of Chapter 126 of Laws 2004 to plan and design an environmental education center for New Mexico state university at Mesa del Sol in Bernalillo county;

87. thirty thousand dollars (\$30,000) to the board of regents of New Mexico state university in Paragraph (10) of Subsection E of Section 137 of Chapter 126 of Laws 2004 to plan and design an environmental education center for New Mexico state university at Mesa del Sol in Bernalillo county;

88. Laws 2001, Chapter 345, Section 3 notwithstanding, three million seven hundred sixty-nine thousand four hundred forty-two dollars (\$3,769,442) to the water and wastewater project grant fund in Laws 2001, Chapter 345, Section 3 to carry out the provisions of Section 6-21-6.3 NMSA 1978; and

89. Section 72-4A-9 NMSA 1978 and Laws 2002, Chapter 110, Section 47 notwithstanding, two hundred ninety-four thousand six hundred twenty-seven dollars (\$294,627) to the water project fund in Laws 2002, Chapter 110, Section 47 to carry out the provisions of the Water Project Finance Act.

Chapter 5 Section 2 Laws 2009

Section 2. SEVERANCE TAX BONDS--CHANGING PURPOSES--CHANGING AUTHORIZATIONS AND PROVIDING FOR EXPENDITURES--PROVIDING FOR REVERSION TO THE SEVERANCE TAX BONDING FUND OF ANY BALANCES NOT APPROPRIATED.--

A. The unexpended proceeds up to the amount specified from the severance tax bonds for the capital projects specified in this subsection shall not be expended for their original purposes, but may be expended by the specified state agencies as provided in Subsection B of this section:

(1) two hundred forty-four thousand three hundred eighty-seven dollars (\$244,387) to the capital program fund in Subsection 17 of Section 6 of Chapter 42 of Laws 2007 to plan, design and renovate the Mary Medina motor vehicle division field office in Taos in Taos county;

(2) four hundred ninety-five thousand dollars (\$495,000) to the capital program fund in Subsection 19 of Section 5 of Chapter 92 of Laws 2008 to complete renovations at the Mary Medina motor vehicle division field office in Taos in Taos county;

(3) one million eight hundred thousand dollars (\$1,800,000) to the department of information technology in Laws 2008, Chapter 92, Section 20 to purchase a computing system for the state;

(4) four million five hundred thousand dollars (\$4,500,000) to the economic development department in Laws 2008, Chapter 92, Section 10 for capital improvements at an automobile manufacturing economic development project in Bernalillo county;

(5) fifty thousand dollars (\$50,000) to the public education department in Subsection 12 of Section 118 of Chapter 126 of Laws 2004 to build a grass sports field and running track at East San Jose elementary school in the Albuquerque public school district in Bernalillo county;

(6) fifty thousand dollars (\$50,000) to the public education department in Subsection 162 of Section 118 of Chapter 126 of Laws 2004 for equipment and construction for the Nuestros Valores charter school in the Albuquerque public school district in Bernalillo county;

(7) twelve thousand dollars (\$12,000) to the public education department in Subsection 248 of Section 23 of Chapter 110 of Laws 2002 and reauthorized in Laws 2006, Chapter 107, Section 31 to plan, design, construct and upgrade the soccer field at Alameda elementary school in the Albuquerque public school district in Bernalillo county;

(8) twenty-five thousand dollars (\$25,000) to the public education department in Subsection 307 of Section 23 of Chapter 429 of Laws 2003 and reauthorized in Laws 2006, Chapter 107, Section 21 for the purchase of land and construction of a facility for the Nuestros Valores charter school in the Albuquerque public school district in Bernalillo county;

(9) fifty thousand dollars (\$50,000) to the public education department in Subsection 133 of Section 118 of Chapter 126 of Laws 2004 for equipment, design and construction of a facility for the Nuestros Valores charter school in Albuquerque in Bernalillo county;

(10) fifteen thousand dollars (\$15,000) to the public education department in Subsection 266 of Section 23 of Chapter 429 of Laws 2003 and reauthorized in Laws 2006, Chapter 107, Section 21 to design and construct a facility for the Nuestros Valores charter school in the Albuquerque public school district in Bernalillo county;

(11) seven hundred forty-two thousand five hundred dollars (\$742,500) to the energy, minerals and natural resources department in Subsection 1 of Section 14 of Chapter 42 of Laws 2007 for facilities at Red Rock state park in Gallup in McKinley county;

(12) five hundred forty-eight thousand dollars (\$548,000) to the energy, minerals and natural resources department in Subsection 4 of Section 12 of Chapter 92 of Laws 2008 for clean energy grants to public entities or innovative energy projects;

(13) two million dollars (\$2,000,000) to the office of the state engineer in Subsection 7 of Section 14 of Chapter 92 of Laws 2008 for emergency repairs at dams statewide;

(14) fifty thousand dollars (\$50,000) to the department of environment in Subsection 11 of Section 113 of Chapter 126 of Laws 2004 for improvements to the sewer line on Romero street in Las Vegas in San Miguel county;

(15) five hundred thirty-six thousand dollars (\$536,000) to the department of finance and administration in Subsection 1 of Section 18 of Chapter 42 of Laws 2007 for pre-kindergarten classrooms, including portables, statewide;

(16) two million five hundred thousand dollars (\$2,500,000) to the department of finance and administration in Subsection 5 of Section 17 of Chapter 92 of Laws 2008 for leak detection, regional and demonstration water system projects statewide;

(17) one hundred seventy-seven thousand dollars (\$177,000) to the capital program fund in Subsection 16 of Section 6 of Chapter 42 of Laws 2007 and

reauthorized to the department of health in Subsection A of Section 4 of Chapter 334 of Laws 2007 for improvements and renovations at public health clinics statewide;

(18) nine hundred ninety thousand dollars (\$990,000) to the department of health in Laws 2007, Chapter 42, Section 21 to plan, design, construct, renovate, equip and furnish regional substance abuse facilities in southern New Mexico;

(19) twenty-five thousand dollars (\$25,000) to the Indian affairs department in Subsection 3 of Section 21 of Chapter 429 of Laws 2003 and reauthorized in Laws 2006, Chapter 107, Section 35 to plan, design and construct an outdoor multipurpose court at the To'hajilee chapter of the Navajo Nation in Bernalillo county;

(20) fifty thousand dollars (\$50,000) to the Indian affairs department in Subsection YY of Section 13 of Chapter 23 of Laws 2000 (2nd S.S.) and reauthorized in Laws 2005, Chapter 347, Section 264 to plan and design a recreation building in Coyote Canyon in McKinley county;

~~[(21) fifty thousand dollars (\$50,000) to the Indian affairs department in Subsection 43 of Section 20 of Chapter 110 of Laws 2002 and reauthorized in Laws 2006, Chapter 107, Section 101 to plan and design a preschool building at the Coyote Canyon chapter of the Navajo Nation in McKinley county;]~~*LINE-ITEM VETO*

(22) fifty thousand dollars (\$50,000) to the Indian affairs department in Subsection 33 of Section 115 of Chapter 126 of Laws 2004 to plan, design and construct a telephone system in the Rock Springs chapter of the Navajo Nation in McKinley county;

~~[(23) forty-five thousand dollars (\$45,000) to the Indian affairs department in Subsection 20 of Section 115 of Chapter 126 of Laws 2004 for a feasibility study for a new chapter house for the Sanostee chapter of the Navajo Nation in San Juan county;]~~*LINE-ITEM VETO*

(24) one hundred thousand dollars (\$100,000) to the Indian affairs department in Subsection KK of Section 13 of Chapter 23 of Laws 2000 (2nd S.S.) and reauthorized in Laws 2005, Chapter 347, Section 146 to continue the powerline extension construction of the Mancos Creek area of the Shiprock chapter in San Juan county;

(25) thirty thousand dollars (\$30,000) to the Indian affairs department in Subsection O of Section 13 of Chapter 23 of Laws 2000 (2nd S.S.) and reauthorized in Laws 2005, Chapter 347, Section 148 for phase 2 development to include the addition of restroom facilities at the Nizhoni park in Shiprock in San Juan county;

(26) nineteen thousand two hundred dollars (\$19,200) to the Indian affairs department in Subsection N of Section 13 of Chapter 23 of Laws 2000 (2nd S.S.) and reauthorized in Laws 2005, Chapter 347, Section 149 to plan, design and construct an addition to the Shiprock chapter house in San Juan county;

(27) forty-five thousand dollars (\$45,000) to the local government division in Subsection 29 of Section 117 of Chapter 126 of Laws 2004 for information technology infrastructure for first responders in the east mountain area in Bernalillo county;

(28) forty thousand dollars (\$40,000) to the local government division in Subsection 65 of Section 117 of Chapter 126 of Laws 2004 for maintenance and renovation of the Albuquerque railyard station in Albuquerque in Bernalillo county;

~~[(29) nine hundred ninety thousand dollars (\$990,000) to the local government division in Subsection 5 of Section 23 of Chapter 42 of Laws 2007 for a kitchen and social service office for senior affairs in Albuquerque in Bernalillo county;]~~ *LINE-ITEM VETO*

(30) sixty-four thousand dollars (\$64,000) to the local government division in Subsection 273 of Section 117 of Chapter 126 of Laws 2004 to acquire land, plan, design, landscape and make improvements for an off-leash dog park for the Hodgin neighborhood association in Albuquerque in Bernalillo county;

(31) four hundred thousand dollars (\$400,000) to the higher education department in Paragraph (2) of Subsection E of Section 24 of Chapter 111 of Laws 2006 for improvements to the library at the Grants branch campus of New Mexico state university and reauthorized to the local government division in Laws 2008, Chapter 83, Section 158 for renovations to a public library in Grants in Cibola county;

(32) four hundred sixty thousand three hundred fifty dollars (\$460,350) to the local government division in Subsection 177 of Section 18 of Chapter 111 of Laws 2006 and reauthorized in Laws 2008, Chapter 83, Section 222 for a multipurpose facility and purchasing property for Casa Mia ranch in Silver City in Grant county;

(33) fifty thousand dollars (\$50,000) to the local government division in Subsection 206 of Section 117 of Chapter 126 of Laws 2004 for improvements to the Oñate center, including re-roofing, replacing woodworking, site preparation, demolition, preparing the foundation for and constructing a stage, in Alcalde in Rio Arriba county;

(34) fifty thousand dollars (\$50,000) to the local government division in Subsection 214 of Section 117 of Chapter 126 of Laws 2004 and reauthorized in Laws 2005, Chapter 347, Section 270 to acquire land for and plan,

design and construct a courthouse in the first judicial district in Espanola in Rio Arriba county;

(35) fifty thousand dollars (\$50,000) to the local government division in Subsection 205 of Section 117 of Chapter 126 of Laws 2004 to design, acquire land for and construct facilities for the health commons project, which will be owned by the county and include housing for the health centers of northern New Mexico, Las Cumbres learning services and the public health office, in Espanola in Rio Arriba county;

(36) fifty-eight thousand dollars (\$58,000) to the local government division in Subsection 114 of Section 117 of Chapter 126 of Laws 2004 for design and construction of the Pueblo fire department San Jose substation in San Miguel county;

(37) ten thousand dollars (\$10,000) to the local government division in Subsection 616 of Section 22 of Chapter 429 of Laws 2003 and reauthorized in Laws 2007, Chapter 341, Section 338 to make improvements to the Agua Fria community center in Santa Fe county;

(38) one hundred thousand dollars (\$100,000) to the local government division in Subsection 77 of Section 21 of Chapter 92 of Laws 2008 for the Santa Fe innovation park in Santa Fe county;

(39) fifty thousand dollars (\$50,000) to the local government division in Subsection 47 of Section 117 of Chapter 126 of Laws 2004 for an addition to the fire department building in Mountainair in Torrance county;

(40) two hundred thousand dollars (\$200,000) to the local government division in Subsection 94 of Section 21 of Chapter 92 of Laws 2008 for a facility, equipment and furnishings for the Los Lunas westside fire substation in Los Lunas in Valencia county;

(41) two million dollars (\$2,000,000) to the department of transportation in Subsection 11 of Section 15 of Chapter 126 of Laws 2004 for improvements to the Coors boulevard and Sequoia road intersection in Albuquerque in Bernalillo county;

(42) fifty thousand dollars (\$50,000) to the department of transportation in Subsection 30 of Section 119 of Chapter 126 of Laws 2004 to purchase and install traffic lights at the intersection of Mildred and Fourth streets in Albuquerque in Bernalillo county;

(43) fifty-two thousand dollars (\$52,000) to the department of transportation in Subsection 33 of Section 15 of Chapter 126 of Laws 2004 to design and construct connectors for the Alamogordo relief route in Otero county;

(44) ninety-eight thousand seven hundred thirty-two dollars (\$98,732) to the higher education department in Subsection 2 of Section 27 of Chapter 42 of Laws 2007 for the trades and technology building at San Juan college in Farmington in San Juan county; and

(45) Section 72-4A-9 NMSA 1978 notwithstanding, five million eight hundred thousand dollars (\$5,800,000) to the water project fund in Laws 2007, Chapter 42, Section 34 for the purpose of supporting water projects pursuant to the Water Project Finance Act.

B. The proceeds from severance tax bonds authorized as indicated in Subsection A of this section and those authorized in Subsection C of this section may be expended in the following amounts by the following agencies for the following purposes:

(1) two million eight hundred thousand dollars (\$2,800,000) to the capital program fund to plan, design, construct, renovate and equip a substance abuse treatment center in Los Lunas in Valencia county;

(2) two million seven hundred thousand dollars (\$2,700,000) to the energy, minerals and natural resources department for bosque revitalization and to plan and develop trails [~~in the north bosque area~~] along the Rio Grande; *LINE-ITEM VETO*

(3) one million dollars (\$1,000,000) to the office of the state engineer to repair and improve Cabresto Lake dam in Taos county;

(4) one million dollars (\$1,000,000) to the department of environment to plan, design and construct improvements to the water and wastewater system in Sunland Park in Dona Ana county;

(5) two million five hundred thousand dollars (\$2,500,000) to the department of environment to plan, design and construct improvements to the regional wastewater treatment plant in Ruidoso Downs in Lincoln county;

(6) one million four thousand dollars (\$1,004,000) to the department of environment to plan, design and construct water system leakage repairs in the Pueblo of Cochiti in Sandoval county;

(7) three million dollars (\$3,000,000) to the department of environment for improvements to the water reuse and distribution facilities in Rio Rancho in Sandoval county;

(8) two million four hundred ninety-eight thousand two hundred fifteen dollars (\$2,498,215) to the department of finance and administration for construction, renovation and improvements to media production, education and training facilities statewide;

~~[(9) one million dollars (\$1,000,000) to the children, youth and families department for domestic violence projects to maintain, repair and renovate facilities to ensure consistent domestic violence service delivery and to plan, design, construct, equip and furnish additional shelters statewide;]LINE-ITEM VETO~~

(10) one million dollars (\$1,000,000) to the Indian affairs department to plan, design and construct improvements to the airport at Ohkay Owingeh in Rio Arriba county;

(11) ten million dollars (\$10,000,000) to the Indian water rights settlement fund; notwithstanding the requirement for a joint resolution of the legislature in Subsection A of Section 72-1-11 NMSA 1978, if corresponding commitments have been made for the federal portion of the settlement in the *Navajo Nation*, *Taos* and *Aamodt* cases, the money may be expended by the interstate stream commission in fiscal year 2009 and subsequent fiscal years to implement the state's portion of the settlement, and any unexpended or unencumbered balances shall not revert at the end of a fiscal year;

(12) five million dollars (\$5,000,000) to the property control division of the general services department to plan, design, construct, renovate and equip a state multipurpose equestrian facility at the state fairgrounds in Bernalillo county;

(13) three million dollars (\$3,000,000) to the local government division to plan, design and construct bikeways and horse trails in Santa Fe county;

(14) five million seven hundred thousand dollars (\$5,700,000) to the local government division for construction, renovation and improvements to film and media production, education and training facilities statewide;

(15) five million dollars (\$5,000,000) to the local government division for improvements to [local] fair and arena rodeo facilities [statewide]; and *LINE-ITEM VETO*

(16) one million five hundred thousand dollars (\$1,500,000) to the department of transportation to acquire rights of way and plan, design and construct paved roads for the Strauss facility near the Santa Teresa port of entry in Dona Ana county.

C. If additional severance tax bond proceeds are needed to fund the projects up to the amount specified in Subsection B of this section, the state board of finance is authorized to issue severance tax bonds in that amount. The state board of finance shall determine which proceeds of the bonds issued pursuant to this subsection and those bonds issued for projects specified in Subsection A of this section shall be allocated to which projects specified in Subsection B of this section.

D. The procedures for issuance of bonds, certification of projects and use of proceeds of bonds shall be the same as provided in Laws 2008, Chapter 92. The authorizations for projects in Subsection B of this section not certified within two years of the effective date of this act are void. The unexpended balance of appropriations for projects in Subsection B of this section shall revert at the end of fiscal year 2013 or upon completion of the project, whichever is earlier.

Chapter 5 Section 3 Laws 2009

Section 3. SEVERABILITY.--If, in this act, a specific reversion, a change in the use of severance tax bond proceeds, a change in the authorization for severance tax bonds or an authorization to expend severance tax bond proceeds is held invalid or otherwise cannot be effectuated, the remainder of the act and any other reversion, change in the use of severance tax bond proceeds, authorization for severance tax bonds or authorization to expend severance tax bond proceeds shall not be affected.

Chapter 5 Section 4 Laws 2009

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

HTRC/House Bill 9, aa, w/ec, partial veto

Approved February 6, 2009

LAWS 2009, CHAPTER 6

AN ACT

RELATING TO PUBLIC SCHOOLS; LIMITING THE PERIOD IN WHICH CHARTER SCHOOL APPLICATIONS MAY BE SUBMITTED IN ANY YEAR.

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

Chapter 6 Section 1 Laws 2009

Section 1. Section 22-8B-6 NMSA 1978 (being Laws 1999, Chapter 281, Section 6, as amended) is amended to read:

"22-8B-6. CHARTER SCHOOL REQUIREMENTS--APPLICATION PROCESS-- AUTHORIZATION--BOARD OF FINANCE DESIGNATION REQUIRED.--

A. A local school board has the authority to approve the establishment of a charter school within the school district in which it is located.

B. No later than the second Tuesday of January of the year in which an application will be filed, the organizers of a proposed charter school shall provide written notification to the commission and the school district in which the charter school is proposed to be located of their intent to establish a charter school. Failure to notify may result in an application not being accepted.

C. A charter school applicant shall apply to either a local school board or the commission for a charter. If an application is submitted to a chartering authority, it must process the application. Applications for initial charters shall be submitted between June 1 and July 1 to be eligible for consideration for the following fiscal year; provided that the July 1 deadline may be waived upon agreement of the applicant and the chartering authority.

D. An application shall include the total number of grades the charter school proposes to provide, either immediately or phased. A charter school may decrease the number of grades it eventually offers, but it shall not increase the number of grades or the total number of students proposed to be served in each grade.

E. An application shall include a detailed description of the charter school's projected capital outlay needs, including projected requests for capital outlay assistance.

F. An application may be made by one or more teachers, parents or community members or by a public post-secondary educational institution or nonprofit organization. Municipalities, counties, private post-secondary educational institutions and for-profit business entities are not eligible to apply for or receive a charter.

G. An initial application for a charter school shall not be made after June 30, 2007 if the proposed charter school's proposed enrollment for all grades or the proposed charter school's proposed enrollment for all grades in combination with any other charter school's enrollment for all grades would equal or exceed ten percent of the total MEM of the school district in which the charter school will be geographically located and that school district has a total enrollment of not more than one thousand three hundred students.

H. A state-chartered charter school shall not be approved for operation unless its governing body has qualified to be a board of finance.

I. The chartering authority shall receive and review all applications for charter schools submitted to it. The chartering authority shall not charge application fees.

J. The chartering authority shall hold at least one public meeting in the school district in which the charter school is proposed to be located to obtain information and community input to assist it in its decision whether to grant a charter school application. Community input may include written or oral comments in favor of or in opposition to the application from the applicant, the local community and, for state-chartered charter schools, the local school board and school district in whose geographical boundaries the charter school is proposed to be located. The chartering authority shall rule on the application for a charter school in a public meeting by September 1 of the year the application was received. If not ruled upon by that date, the charter application shall be automatically reviewed by the secretary in accordance with the provisions of Section 22-8B-7 NMSA 1978. The charter school applicant and the chartering authority may, however, jointly waive the deadlines set forth in this section.

K. A chartering authority may approve, approve with conditions or deny an application. A chartering authority may deny an application if:

(1) the application is incomplete or inadequate;

(2) the application does not propose to offer an educational program consistent with the requirements and purposes of the Charter Schools Act;

(3) the proposed head administrator or other administrative or fiscal staff was involved with another charter school whose charter was denied or revoked for fiscal mismanagement or the proposed head administrator or other administrative or fiscal staff was discharged from a public school for fiscal mismanagement;

(4) for a proposed state-chartered charter school, it does not request to have the governing body of the charter school designated as a board of finance or the governing body does not qualify as a board of finance; or

(5) the application is otherwise contrary to the best interests of the charter school's projected students, the local community or the school district in whose geographic boundaries the charter school applies to operate.

L. If the chartering authority denies a charter school application or approves the application with conditions, it shall state its reasons for the denial or conditions in writing within fourteen days of the meeting. If the chartering authority grants a charter, the approved charter shall be provided to the applicant together with any imposed conditions.

M. A charter school that has received a notice from the chartering authority denying approval of the charter shall have a right to a hearing by the secretary as provided in Section 22-8B-7 NMSA 1978."

Senate Bill 27, aa

Approved March 18, 2009

LAWS 2009, CHAPTER 7

AN ACT

RELATING TO EDUCATION; REQUIRING PUBLIC POST-SECONDARY EDUCATIONAL INSTITUTIONS TO REPORT ANNUALLY TO PUBLIC HIGH SCHOOLS ON FIRST YEAR OF COLLEGE OUTCOMES OF THE STUDENTS FROM THOSE HIGH SCHOOLS; PROVIDING FOR COPIES OF THE REPORTS TO BE PROVIDED TO THE HIGHER EDUCATION DEPARTMENT.

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

Chapter 7 Section 1 Laws 2009

Section 1. A new section of Chapter 21, Article 1 NMSA 1978 is enacted to read:

"FIRST YEAR OF COLLEGE OUTCOMES OF NEW MEXICO PUBLIC HIGH SCHOOL GRADUATES--ANNUAL REPORTS.--

A. Upon request from a public high school or school district superintendent in New Mexico, a public post-secondary educational institution shall provide a report of students who enroll in the institution within three years of graduating from that high school or leaving that high school without enrolling in another high school or earning a general educational development certificate. Information in the reports may be used by the high schools and public post-secondary educational institutions to improve instruction, student preparation and advisement.

B. The higher education department, in consultation with the public education department and representatives of public high schools and public post-secondary educational institutions, shall prescribe the form of the reports. Reports shall not include any personally identifiable student information. The reports shall be designed to show advanced placement by subject, total credits earned, grade point averages, retention from fall to spring semester of the first year of college and frequency and patterns of remedial or development courses being taken.

C. The higher education department shall be provided with copies of the reports."

Senate Bill 152, aa

Approved March 18, 2009

LAWS 2009, CHAPTER 8

AN ACT

RELATING TO STATE VEHICLES; AMENDING SECTIONS OF THE NMSA 1978 TO PERMIT INDIVIDUALS ENROLLED IN THE STATE'S ADAPTIVE DRIVING PROGRAM TO USE STATE VEHICLES FOR TRAINING PURPOSES.

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

Chapter 8 Section 1 Laws 2009

Section 1. Section 15-8-6 NMSA 1978 (being Laws 1994, Chapter 119, Section 6, as amended) is amended to read:

"15-8-6. STATE VEHICLES--USE--MARKINGS--STATE GOVERNMENT PLATES.--

A. The division shall adopt rules governing the use of vehicles used by state agencies or by other persons pursuant to Subsection G of this section, including driver requirements and responsibilities, under what circumstances someone can be assigned a state vehicle on a permanent or semi-permanent basis and when custody of a state vehicle can be vested in another state agency.

B. The division may determine that it is impractical to retain custody of certain state vehicles, and it may provide that custody reside in another state agency in the following cases:

(1) the state vehicle is used for emergency or law enforcement purposes; or

(2) the state vehicle is a department of transportation, energy, minerals and natural resources department or department of game and fish passenger vehicle, truck or tractor or heavy road equipment.

C. Except as provided in Subsections E and F of this section, all state vehicles shall be marked as state vehicles. Each side of the vehicle shall be marked, in letters not less than two inches in height, with the following designation of ownership: "State of New Mexico,..... Department" or "State of New Mexico Department of" and naming the department using the vehicle.

D. Except as provided in Subsections E and F of this section, all state vehicles shall have specially designed government registration plates.

E. Only state vehicles used for legitimate undercover law enforcement purposes are exempt from the requirements of Subsections C and D of this section. All other state vehicles owned or in the custody of state agencies that have law enforcement functions shall be marked and have state government registration plates.

F. A state agency may seek custody of state vehicles as an exception to Subsection B of this section or an exemption to the provisions of Subsection C of this section by making a written request to the director, specifying the reasons for the proposed custody or exemption. The director may approve the custody or exemption, in writing, indicating the duration and any conditions of the custody or exemption.

G. The division shall adopt rules permitting individuals enrolled in the state's adaptive driving program to use special-use state vehicles for evaluation and training purposes in that program."

Chapter 8 Section 2 Laws 2009

Section 2. Section 41-4-3 NMSA 1978 (being Laws 1976, Chapter 58, Section 3, as amended) is amended to read:

"41-4-3. DEFINITIONS.--As used in the Tort Claims Act:

A. "board" means the risk management advisory board;

B. "governmental entity" means the state or any local public body as defined in Subsections C and H of this section;

C. "local public body" means all political subdivisions of the state and their agencies, instrumentalities and institutions and all water and natural gas associations organized pursuant to Chapter 3, Article 28 NMSA 1978;

D. "law enforcement officer" means a full-time salaried public employee of a governmental entity whose principal duties under law are to hold in custody any person accused of a criminal offense, to maintain public order or to make arrests for crimes, or members of the national guard when called to active duty by the governor;

E. "maintenance" does not include:

(1) conduct involved in the issuance of a permit, driver's license or other official authorization to use the roads or highways of the state in a particular manner; or

(2) an activity or event relating to a public building or public housing project that was not foreseeable;

F. "public employee" means an officer, employee or servant of a governmental entity, excluding independent contractors except for individuals defined in Paragraphs (7), (8), (10), (14) and (17) of this subsection, or of a corporation organized pursuant to the Educational Assistance Act, the Small Business Investment Act or the Mortgage Finance Authority Act or a licensed health care provider, who has no medical liability insurance, providing voluntary services as defined in Paragraph (16) of this subsection and including:

- (1) elected or appointed officials;
- (2) law enforcement officers;
- (3) persons acting on behalf or in service of a governmental entity in any official capacity, whether with or without compensation;
- (4) licensed foster parents providing care for children in the custody of the human services department, corrections department or department of health, but not including foster parents certified by a licensed child placement agency;
- (5) members of state or local selection panels established pursuant to the Adult Community Corrections Act;
- (6) members of state or local selection panels established pursuant to the Juvenile Community Corrections Act;
- (7) licensed medical, psychological or dental arts practitioners providing services to the corrections department pursuant to contract;
- (8) members of the board of directors of the New Mexico medical insurance pool;
- (9) individuals who are members of medical review boards, committees or panels established by the educational retirement board or the retirement board of the public employees retirement association;
- (10) licensed medical, psychological or dental arts practitioners providing services to the children, youth and families department pursuant to contract;
- (11) members of the board of directors of the New Mexico educational assistance foundation;
- (12) members of the board of directors of the New Mexico student loan guarantee corporation;
- (13) members of the New Mexico mortgage finance authority;

(14) volunteers, employees and board members of court-appointed special advocate programs;

(15) members of the board of directors of the small business investment corporation;

(16) health care providers licensed in New Mexico who render voluntary health care services without compensation in accordance with rules promulgated by the secretary of health. The rules shall include requirements for the types of locations at which the services are rendered, the allowed scope of practice and measures to ensure quality of care; and

(17) an individual while participating in the state's adaptive driving program and only while using a special-use state vehicle for evaluation and training purposes in that program;

G. "scope of duty" means performing any duties that a public employee is requested, required or authorized to perform by the governmental entity, regardless of the time and place of performance; and

H. "state" or "state agency" means the state of New Mexico or any of its branches, agencies, departments, boards, instrumentalities or institutions."

Senate Bill 232, aa

Approved March 18, 2009

LAWS 2009, CHAPTER 9

AN ACT

RELATING TO EDUCATIONAL RETIREMENT; PROVIDING CERTAIN CONDITIONS AND OPTIONS FOR EMPLOYEES IN ALTERNATIVE RETIREMENT PLANS; CHANGING THE BENEFITS AVAILABLE UNDER ALTERNATIVE RETIREMENT PLANS; CLARIFYING THE PORTABILITY OF THE PLANS; DECLARING AN EMERGENCY.

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

Chapter 9 Section 1 Laws 2009

Section 1. Section 22-11-47 NMSA 1978 (being Laws 1991, Chapter 118, Section 5, as amended) is amended to read:

"22-11-47. ALTERNATIVE RETIREMENT PLAN--ELECTION OF COVERAGE.--

A. Beginning October 1, 1991, any 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 is eligible to become a participant may make within ninety days of that date an election to participate in the alternative retirement plan. Beginning October 1, 1999, an employee of central New Mexico community college, Clovis community college, Luna community college, Mesalands community college, New Mexico junior college, northern New Mexico college, San Juan college or Santa Fe community college who is eligible to become a participant may make an election to participate in the alternative retirement plan within ninety days of the initial date. Thereafter, any employee who is eligible to become a participant may make within the first ninety days of employment with a qualifying state educational institution an election to participate in the alternative retirement plan. Any employee who makes the election shall become a participant the first day of the first pay period following the election. Any employee who fails to make the election within ninety days of October 1, 1991 or October 1, 1999, whichever is applicable, or within the first ninety days of employment with a qualifying state educational institution shall become or remain a regular member if that employee is eligible to be a regular member and shall not later be eligible to elect to be a participant, regardless of whether the employee subsequently is employed in another position that is eligible for participation in the alternative retirement plan. Except as provided in Subsection D of this section, an election to become a participant is irrevocable.

B. Until the time an employee who is eligible to become a participant elects to participate in the alternative retirement plan, that employee shall be a regular member.

C. When an employee elects to become a participant, any employer and employee contributions made as a regular member shall be withdrawn from the fund and applied instead toward the alternative retirement plan as if the participant had been participating in the alternative retirement plan from the commencement of employment with the qualifying state educational institution.

D. On July 1, 2009, any participant who has made contributions to the alternative retirement plan for a cumulative total of seven years or more shall have a one-time option of electing to become a regular member. Thereafter, once a participant has made contributions to the alternative retirement plan for a cumulative total of seven years, a participant shall have a one-time option of electing to become a regular member. Participants electing to become regular members shall exercise that option within one hundred twenty days of the date of becoming eligible to elect to become a regular member. Any amounts on deposit in an employee's alternative retirement plan account when a participant becomes a regular member shall remain on deposit with the contractor or carrier subject to that plan's provisions, unless otherwise provided by law. An employee who elects to become a regular member under this subsection shall use

the date on which the employee was first employed with a qualifying state educational institution for purposes of determining any retirement eligibility requirement, provided that the employee:

(1) may not purchase service credit for periods of employment during which the employee participated in the alternative retirement plan; and

(2) shall acquire not less than five years of contributory employment as a regular member as provided for in Section 22-11-24 NMSA 1978 to be eligible for retirement benefits pursuant to the Educational Retirement Act.

E. The board shall approve the positions at each qualifying state educational institution that are eligible for participation in the alternative retirement plan."

Chapter 9 Section 2 Laws 2009

Section 2. Section 22-11-51 NMSA 1978 (being Laws 1991, Chapter 118, Section 9, as amended) is amended to read:

"22-11-51. ALTERNATIVE RETIREMENT PLANS--BENEFITS--TRANSFER UPON UNEMPLOYMENT.--

A. No retirement, death or other benefit shall be paid by the board from the fund for services credited under the alternative retirement plan. Such benefits are payable to participants or their beneficiaries only by the appropriate alternative retirement plan contractor or carrier in accordance with the terms of the applicable contracts or certificates; provided, however, that retirement benefits shall, at the option of the participant, be paid in the form of a lifetime income, if held in an annuity contract; payments for a term of years; or a single-sum cash payment.

B. Upon termination of employment with a qualifying state educational institution, a participant may transfer or roll over the account balance to another eligible retirement plan or may withdraw the balance as permitted for a plan qualified under Section 401(a) of the Internal Revenue Code of 1986."

Chapter 9 Section 3 Laws 2009

Section 3. Section 22-11-52 NMSA 1978 (being Laws 1991, Chapter 118, Section 10) is amended to read:

"22-11-52. ALTERNATIVE RETIREMENT PLAN--SELECTION OF CONTRACTOR OR CARRIER--ADMINISTRATION.--

A. The board shall solicit and review proposals for providing retirement, death and any other benefits deemed desirable by the board for participants in the alternative retirement plan. The board shall solicit proposals for providing the benefits

through contracts or investments held in trust or a custodial account that meets the requirements of Section 401(a) or 403(a) of the Internal Revenue Code of 1986, including, without limitation, annuity contracts or certificates that are fixed or variable in nature or some combination thereof.

B. The board, after consultation with the qualifying state educational institutions, shall select no less than two nor more than five contractors or carriers to provide the contracts or certificates. In making its selection, the board shall consider, among other things, the following criteria:

(1) the portability of the benefits offered, based upon the number of states and institutions of higher education in which the offeror provides similar benefits;

(2) the nature and extent of the rights and benefits that would be provided to the participants, including the right to maintain their accounts or to transfer the balance to another eligible retirement plan upon termination of employment with the qualifying educational institution, to the extent permitted for a plan qualified under Section 401(a) of the Internal Revenue Code of 1986;

(3) the relation of the rights and benefits to the contributions that would be made by the participants and the qualifying state educational institutions;

(4) the ability of the offeror to provide the rights and benefits;

(5) the suitability of the rights and benefits for recruitment and retention of employees by the qualifying state educational institutions; and

(6) compliance with the requirements of the Educational Retirement Act and Section 401(a) or 403(a) of the Internal Revenue Code of 1986.

C. The board shall provide for the administration and maintenance of the alternative retirement plan and may adopt rules and regulations for that purpose."

Chapter 9 Section 4 Laws 2009

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

Senate Bill 572, aa, w/ec

Approved March 18, 2009

LAWS 2009, CHAPTER 10

AN ACT

RELATING TO SCHOOL PERSONNEL; PROVIDING FOR AN ALTERNATIVE LICENSURE ASSESSMENT FOR TEACHERS WHO ARE DEAF OR HARD OF HEARING; DECLARING AN EMERGENCY.

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

Chapter 10 Section 1 Laws 2009

Section 1. A new section of the School Personnel Act is enacted to read:

"DEAF AND HARD-OF-HEARING TEACHERS--ALTERNATIVE LICENSURE ASSESSMENT--SAVING PROVISION.--

A. A person who has a degree from an accredited teacher education program and who is deaf or hard of hearing may elect to demonstrate competency for a level one, two or three license through a portfolio assessment in lieu of all or part of the New Mexico teacher assessment. A person who is deaf or hard of hearing may apply for a lower level of licensure if the person's portfolio assessment does not qualify the person for a higher level. The department shall promulgate rules on the requirements for the portfolio assessment and for who is eligible for licensure pursuant to this section. The department shall provide a process for portfolio review that includes the designation of a review committee consisting of:

- (1) a teacher of deaf and hard-of-hearing students;
- (2) a sign language interpreter;
- (3) a school administrator from the New Mexico school for the deaf;
- (4) the parent of a deaf or hard-of-hearing student;
- (5) a deaf or hard-of-hearing teacher, if one is available; and
- (6) other appropriate persons as determined by the department.

B. Until the rules have been effective for a period deemed sufficient by the department for a deaf or hard-of-hearing person to submit a portfolio, any eligible deaf or hard-of-hearing person who has a degree from an accredited teacher education program shall be granted a temporary teaching license for the level of licensure for which the person will likely qualify when the person's portfolio is submitted to the department. The temporary teaching license shall be effective for no longer than two school years.

Chapter 10 Section 2 Laws 2009

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

House Bill 189, w/ec

Approved March 18, 2009

LAWS 2009, CHAPTER 11

AN ACT

RELATING TO CAPITAL FELONY SENTENCING; ABOLISHING THE DEATH PENALTY; PROVIDING FOR LIFE IMPRISONMENT WITHOUT POSSIBILITY OF RELEASE OR PAROLE.

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

Chapter 11 Section 1 Laws 2009

Section 1. Section 31-18-14 NMSA 1978 (being Laws 1979, Chapter 150, Section 1, as amended) is amended to read:

"31-18-14. SENTENCING AUTHORITY--CAPITAL FELONIES.--When a defendant has been convicted of a capital felony, the defendant shall be sentenced to life imprisonment or life imprisonment without possibility of release or parole."

Chapter 11 Section 2 Laws 2009

Section 2. Section 31-18-23 NMSA 1978 (being Laws 1994, Chapter 24, Section 2, as amended) is amended to read:

"31-18-23. THREE VIOLENT FELONY CONVICTIONS--MANDATORY LIFE IMPRISONMENT--EXCEPTION.--

A. When a defendant is convicted of a third violent felony, and each violent felony conviction is part of a separate transaction or occurrence, and at least the third violent felony conviction is in New Mexico, the defendant shall, in addition to the sentence imposed for the third violent conviction, be punished by a sentence of life imprisonment. The life imprisonment sentence shall be subject to parole pursuant to the provisions of Section 31-21-10 NMSA 1978.

B. The sentence of life imprisonment shall be imposed after a sentencing hearing, separate from the trial or guilty plea proceeding resulting in the third violent felony conviction, pursuant to the provisions of Section 31-18-24 NMSA 1978.

C. For the purpose of this section, a violent felony conviction incurred by a defendant before the defendant reaches the age of eighteen shall not count as a violent felony conviction.

D. When a defendant has a felony conviction from another state, the felony conviction shall be considered a violent felony for the purposes of the Criminal Sentencing Act if that crime would be considered a violent felony in New Mexico.

E. As used in the Criminal Sentencing Act:

(1) "great bodily harm" means an injury to the person that creates a high probability of death or that causes serious disfigurement or that results in permanent loss or impairment of the function of any member or organ of the body; and

(2) "violent felony" means:

(a) murder in the first or second degree, as provided in Section 30-2-1 NMSA 1978;

(b) shooting at or from a motor vehicle resulting in great bodily harm, as provided in Subsection B of Section 30-3-8 NMSA 1978;

(c) kidnapping resulting in great bodily harm inflicted upon the victim by the victim's captor, as provided in Subsection B of Section 30-4-1 NMSA 1978;

(d) criminal sexual penetration, as provided in Subsection C or D or Paragraph (5) or (6) of Subsection E of Section 30-9-11 NMSA 1978; and

(e) robbery while armed with a deadly weapon resulting in great bodily harm as provided in Section 30-16-2 NMSA 1978 and Subsection A of Section 30-1-12 NMSA 1978."

Chapter 11 Section 3 Laws 2009

Section 3. Section 31-20A-2 NMSA 1978 (being Laws 1979, Chapter 150, Section 3) is amended to read:

"31-20A-2. CAPITAL FELONY--DETERMINATION OF SENTENCE.--

If a jury finds, beyond a reasonable doubt, that one or more aggravating circumstances exist, as enumerated in Section 31-20A-5 NMSA 1978, the defendant

shall be sentenced to life imprisonment without possibility of release or parole. If the jury does not make the finding that one or more aggravating circumstances exist, the defendant shall be sentenced to life imprisonment."

Chapter 11 Section 4 Laws 2009

Section 4. Section 31-21-10 NMSA 1978 (being Laws 1980, Chapter 28, Section 1, as amended) is amended to read:

"31-21-10. PAROLE AUTHORITY AND PROCEDURE.--

A. An inmate of an institution who was sentenced to life imprisonment becomes eligible for a parole hearing after the inmate has served thirty years of the sentence. Before ordering the parole of an inmate sentenced to life imprisonment, the board shall:

- committed;
- including:
 - (1) interview the inmate at the institution where the inmate is committed;
 - (2) consider all pertinent information concerning the inmate, including:
 - (a) the circumstances of the offense;
 - (b) mitigating and aggravating circumstances;
 - (c) whether a deadly weapon was used in the commission of the offense;
 - (d) whether the inmate is a habitual offender;
 - (e) the reports filed under Section 31-21-9 NMSA 1978; and
 - (f) the reports of such physical and mental examinations as have been made while in an institution;
 - (3) make a finding that a parole is in the best interest of society and the inmate; and
 - (4) make a finding that the inmate is able and willing to fulfill the obligations of a law-abiding citizen.

If parole is denied, the inmate sentenced to life imprisonment shall again become entitled to a parole hearing at two-year intervals. The board may, on its own motion, reopen any case in which a hearing has already been granted and parole denied.

B. Unless the board finds that it is in the best interest of society and the parolee to reduce the period of parole, a person who was sentenced to life imprisonment shall be required to undergo a minimum period of parole of five years. During the period of parole, the person shall be under the guidance and supervision of the board.

C. An inmate of an institution who was sentenced to life imprisonment without possibility of release or parole is not eligible for parole and shall remain incarcerated for the entirety of the inmate's natural life.

D. Except for certain sex offenders as provided in Section 31-21-10.1 NMSA 1978, an inmate who was convicted of a first, second or third degree felony and who has served the sentence of imprisonment imposed by the court in an institution designated by the corrections department shall be required to undergo a two-year period of parole. An inmate who was convicted of a fourth degree felony and who has served the sentence of imprisonment imposed by the court in an institution designated by the corrections department shall be required to undergo a one-year period of parole. During the period of parole, the person shall be under the guidance and supervision of the board.

E. Every person while on parole shall remain in the legal custody of the institution from which the person was released, but shall be subject to the orders of the board. The board shall furnish to each inmate as a prerequisite to release under its supervision a written statement of the conditions of parole that shall be accepted and agreed to by the inmate as evidenced by the inmate's signature affixed to a duplicate copy to be retained in the files of the board. The board shall also require as a prerequisite to release the submission and approval of a parole plan. If an inmate refuses to affix the inmate's signature to the written statement of the conditions of parole or does not have an approved parole plan, the inmate shall not be released and shall remain in the custody of the institution in which the inmate has served the inmate's sentence, excepting parole, until such time as the period of parole the inmate was required to serve, less meritorious deductions, if any, expires, at which time the inmate shall be released from that institution without parole, or until such time that the inmate evidences acceptance and agreement to the conditions of parole as required or receives approval for the inmate's parole plan or both. Time served from the date that an inmate refuses to accept and agree to the conditions of parole or fails to receive approval for the inmate's parole plan shall reduce the period, if any, to be served under parole at a later date. If the district court has ordered that the inmate make restitution to a victim as provided in Section 31-17-1 NMSA 1978, the board shall include restitution as a condition of parole. The board shall also personally apprise the inmate of the conditions of parole and the inmate's duties relating thereto.

F. When a person on parole has performed the obligations of the person's release for the period of parole provided in this section, the board shall make a final order of discharge and issue the person a certificate of discharge.

G. Pursuant to the provisions of Section 31-18-15 NMSA 1978, the board shall require the inmate as a condition of parole:

(1) to pay the actual costs of parole services to the adult probation and parole division of the corrections department for deposit to the corrections department intensive supervision fund not exceeding one thousand eight hundred dollars (\$1,800) annually to be paid in monthly installments of not less than twenty-five dollars (\$25.00) and not more than one hundred fifty dollars (\$150), as set by the appropriate district supervisor of the adult probation and parole division, based upon the financial circumstances of the defendant. The defendant's payment of the supervised parole costs shall not be waived unless the board holds an evidentiary hearing and finds that the defendant is unable to pay the costs. If the board waives the defendant's payment of the supervised parole costs and the defendant's financial circumstances subsequently change so that the defendant is able to pay the costs, the appropriate district supervisor of the adult probation and parole division shall advise the board and the board shall hold an evidentiary hearing to determine whether the waiver should be rescinded; and

(2) to reimburse a law enforcement agency or local crime stopper program for the amount of any reward paid by the agency or program for information leading to the inmate's arrest, prosecution or conviction.

H. The provisions of this section shall apply to all inmates except geriatric, permanently incapacitated and terminally ill inmates eligible for the medical and geriatric parole program as provided by the Parole Board Act."

Chapter 11 Section 5 Laws 2009

Section 5. REPEAL.--Sections 31-14-1 through 31-14-16, Section 31-18-14.1, Section 31-20A-1, Sections 31-20A-2.1 through 31-20A-4 and Section 31-20A-6 NMSA 1978 (being Laws 1929, Chapter 69, Sections 1 through 10, Laws 1955, Chapter 127, Section 1, Laws 1979, Chapter 150, Section 9, Laws 1955, Chapter 127, Sections 3 and 4, Laws 1929, Chapter 69, Sections 12 and 13, Laws 2001, Chapter 128, Section 1, Laws 1979, Chapter 150, Section 2, Laws 1991, Chapter 30, Section 1 and Laws 1979, Chapter 150, Sections 4, 5 and 7, as amended) are repealed.

Chapter 11 Section 6 Laws 2009

Section 6. APPLICABILITY.--The provisions of this act apply to crimes committed on or after July 1, 2009.

Chapter 11 Section 7 Laws 2009

Section 7. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.

House Bill 285

Approved March 18, 2009

LAWS 2009, CHAPTER 12

AN ACT

RELATING TO PUBLIC SCHOOLS; ALLOWING CHARTERING AUTHORITIES TO DESIGNATE SUBCOMMITTEES FOR PUBLIC HEARINGS; REQUIRING OTHER MEMBERS TO REVIEW THE RECORD PRIOR TO RULING ON A CHARTER SCHOOL APPLICATION.

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

Chapter 12 Section 1 Laws 2009

Section 1. Section 22-8B-6 NMSA 1978 (being Laws 1999, Chapter 281, Section 6, as amended) is amended to read:

"22-8B-6. CHARTER SCHOOL REQUIREMENTS--APPLICATION PROCESS-- AUTHORIZATION--BOARD OF FINANCE DESIGNATION REQUIRED--PUBLIC HEARINGS--SUBCOMMITTEES.--

A. A local school board has the authority to approve the establishment of a charter school within the school district in which it is located.

B. At least one hundred eighty days prior to initial application, the organizers of a proposed charter school shall provide written notification to the commission and the school district in which the charter school is proposed to be located of intent to establish a charter school. Failure to notify may result in an application not being accepted.

C. A charter school applicant shall apply to either a local school board or the commission for a charter. If an application is submitted to a chartering authority, it must process the application. Applications for initial charters shall be submitted by July 1 to be eligible for consideration for the following fiscal year; provided that the July 1 deadline may be waived upon agreement of the applicant and the chartering authority.

D. An application shall include the total number of grades the charter school proposes to provide, either immediately or phased. A charter school may decrease the number of grades it eventually offers, but it shall not increase the number of grades or the total number of students proposed to be served in each grade.

E. An application shall include a detailed description of the charter school's projected capital outlay needs, including projected requests for capital outlay assistance.

F. An application for a start-up school may be made by one or more teachers, parents or community members or by a public post-secondary educational institution or nonprofit organization. Municipalities, counties, private post-secondary educational institutions and for-profit business entities are not eligible to apply for or receive a charter.

G. An initial application for a charter school shall not be made after June 30, 2007 if the proposed charter school's proposed enrollment for all grades or the proposed charter school's proposed enrollment for all grades in combination with any other charter school's enrollment for all grades would equal or exceed ten percent of the total MEM of the school district in which the charter school will be geographically located and that school district has a total enrollment of not more than one thousand three hundred students.

H. A state-chartered charter school shall not be approved for operation unless its governing body has qualified to be a board of finance.

I. The chartering authority shall receive and review all applications for charter schools submitted to it. The chartering authority shall not charge application fees.

J. The chartering authority shall hold at least one public hearing in the school district in which the charter school is proposed to be located to obtain information and community input to assist it in its decision whether to grant a charter school application. The chartering authority may designate a subcommittee of no fewer than three members to hold the public hearing, and, if so, the hearing shall be transcribed for later review by other members of the chartering authority. Community input may include written or oral comments in favor of or in opposition to the application from the applicant, the local community and, for state-chartered charter schools, the local school board and school district in whose geographical boundaries the charter school is proposed to be located.

K. The chartering authority shall rule on the application for a charter school in a public meeting within sixty days after receiving the application; provided, however, that prior to ruling on the application for which a designated subcommittee was used, any member of the chartering authority who was not present at the public hearing shall receive the transcript of the public hearing together with documents submitted for the public hearing. If not ruled upon within sixty days, the charter application shall be automatically reviewed by the secretary in accordance with the provisions of Section 22-8B-7 NMSA 1978. The charter school applicant and the chartering authority may, however, jointly waive the deadlines set forth in this section.

L. A chartering authority may approve, approve with conditions or deny an application. A chartering authority may deny an application if:

- (1) the application is incomplete or inadequate;
- (2) the application does not propose to offer an educational program consistent with the requirements and purposes of the Charter Schools Act;
- (3) the proposed head administrator or other administrative or fiscal staff was involved with another charter school whose charter was denied or revoked for fiscal mismanagement or the proposed head administrator or other administrative or fiscal staff was discharged from a public school for fiscal mismanagement;
- (4) for a proposed state-chartered charter school, it does not request to have the governing body of the charter school designated as a board of finance or the governing body does not qualify as a board of finance; or
- (5) the application is otherwise contrary to the best interests of the charter school's projected students, the local community or the school district in whose geographic boundaries the charter school applies to operate.

M. If the chartering authority denies a charter school application or approves the application with conditions, it shall state its reasons for the denial or conditions in writing within fourteen days of the meeting. If the chartering authority grants a charter, the approved charter shall be provided to the applicant together with any imposed conditions.

N. A charter school that has received a notice from the chartering authority denying approval of the charter shall have a right to a hearing by the secretary as provided in Section 22-8B-7 NMSA 1978."

House Bill 289, aa

Approved March 18, 2009

LAWS 2009, CHAPTER 13

AN ACT

RELATING TO CULTURAL AFFAIRS; ENACTING THE MUSIC COMMISSION ACT;
CREATING THE MUSIC COMMISSION; PROVIDING POWERS AND DUTIES.

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

Chapter 13 Section 1 Laws 2009

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

Chapter 13 Section 2 Laws 2009

Section 2. DEFINITIONS.--As used in the Music Commission Act:

- A. "commission" means the music commission;
- B. "department" means the cultural affairs department; and
- C. "division" means the arts division of the department.

Chapter 13 Section 3 Laws 2009

Section 3. MUSIC COMMISSION--CREATED--MEMBERS--TERMS--COMPENSATION.--

A. The "music commission" is created. The commission is administratively attached to the division.

B. The commission is composed of fifteen members appointed by the governor. Members shall be residents of New Mexico, broadly representative of the various fields of music, and widely known for their professional competence and experience.

C. Five members of the commission shall serve initial terms of one year, five members shall serve initial terms of two years and five members shall serve initial terms of three years as determined by the governor; thereafter, terms shall be for three years. A vacancy on the commission shall be filled by appointment by the governor for the unexpired portion of the term of the member creating the vacancy.

D. The governor shall appoint the chairperson of the commission, and the commission may appoint other officers as it deems necessary to carry out the purposes of the Music Commission Act. The commission shall hold at least four meetings each calendar year.

E. Members of the commission shall not receive any compensation, perquisite or allowance.

Chapter 13 Section 4 Laws 2009

Section 4. MUSIC COMMISSION--DUTIES.--The commission shall:

A. advise the division, the department, other state agencies and the governor concerning the protection, promotion and preservation of music and the music industry in New Mexico;

B. advise the division on music-related policies;

C. advise and assist public agencies in elevating the role of music in New Mexico;

D. foster appreciation of the value of music;

E. make New Mexico a music destination for both visitors and music professionals;

F. encourage the educational, creative and professional musical activities of the residents of New Mexico and attract outstanding musicians to New Mexico through appropriate programs of publicity, education and coordination and through direct activities, such as sponsorship of music;

G. protect, promote and preserve the musical traditions of New Mexico;
and

H. accept on behalf of the state donations of money, property and other things of value as, in the division's discretion, are suitable and will best further the aims of the Music Commission Act.

House Bill 443

Approved March 18, 2009

LAWS 2009, CHAPTER 14

AN ACT

RELATING TO LABOR; PROMOTING FINANCIAL INDEPENDENCE FOR VICTIMS OF DOMESTIC ABUSE.

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

Chapter 14 Section 1 Laws 2009

Section 1. A new section of Chapter 50, Article 4 NMSA 1978 is enacted to read:

"SHORT TITLE.--This act may be cited as the "Promoting Financial Independence for Victims of Domestic Abuse Act"."

Chapter 14 Section 2 Laws 2009

Section 2. A new section of Chapter 50, Article 4 NMSA 1978 is enacted to read:

"DEFINITIONS.--As used in the Promoting Financial Independence for Victims of Domestic Abuse Act:

A. "domestic abuse" has the same meaning as it does in the Family Violence Protection Act;

B. "domestic abuse leave" means intermittent paid or unpaid leave time for up to fourteen days in any calendar year, taken by an employee for up to eight hours in one day, to obtain or attempt to obtain an order of protection or other judicial relief from domestic abuse or to meet with law enforcement officials, to consult with attorneys or district attorneys' victim advocates or to attend court proceedings related to the domestic abuse of an employee or an employee's family member;

C. "employee" means a person who is employed by an employer;

D. "employer" includes a person, a firm, a partnership, an association, a corporation, a receiver or an officer of the court of New Mexico, a state agency, or a unit of local government or a school district;

E. "family member" means a minor child of the employee or a person for whom the employee is a legal guardian;

F. "order of protection" means a court order granted pursuant to the Family Violence Protection Act; and

G. "retaliation" means an adverse action against an employee, including threats, reprisals or discrimination for engaging in the protected activity of taking domestic abuse leave."

Chapter 14 Section 3 Laws 2009

Section 3. A new section of Chapter 50, Article 4 NMSA 1978 is enacted to read:

"DOMESTIC ABUSE LEAVE REQUIRED--RETALIATION

PROHIBITED.--An employer shall grant an employee domestic abuse leave without interfering with, restraining or denying exercise of rights under the Promoting Financial Independence for Victims of Domestic Abuse Act or attempting to do so. Retaliation against an employee for using domestic abuse leave is prohibited."

Chapter 14 Section 4 Laws 2009

Section 4. A new section of Chapter 50, Article 4 NMSA 1978 is enacted to read:

"CERTIFICATION--VERIFICATION.--

A. When domestic abuse leave is taken in an emergency, the employee or the employee's designee shall give notice to the employer within twenty-four hours of commencing the domestic abuse leave.

B. An employer may require verification of the need for domestic abuse leave, and, if so, an employee shall provide one of the following forms of verification through furnishing in a timely fashion:

(1) a police report indicating that the employee or a family member was a victim of domestic abuse;

(2) a copy of an order of protection or other court evidence produced in connection with an incident of domestic abuse, but the document does not constitute a waiver of confidentiality or privilege between the employee and the employee's advocate or attorney; or

(3) the written statement of an attorney representing the employee, a district attorney's victim advocate, a law enforcement official or a prosecuting attorney that the employee or employee's family member appeared or is scheduled to appear in court in connection with an incident of domestic abuse."

Chapter 14 Section 5 Laws 2009

Section 5. A new section of Chapter 50, Article 4 NMSA 1978 is enacted to read:

"IMPACT OF DOMESTIC ABUSE LEAVE ON OTHER EMPLOYEE BENEFITS.--

A. For domestic abuse leave, an employee may use accrued sick leave or other available paid time off, compensatory time or unpaid leave time consistent with the employer's policies.

B. To the extent permitted by law, an employer shall not withhold pay, health coverage insurance or another benefit that has accrued to the employee when an employee takes domestic abuse leave. An employer shall not include time taken for domestic abuse leave in calculating eligibility for benefits."

Chapter 14 Section 6 Laws 2009

Section 6. A new section of Chapter 50, Article 4 NMSA 1978 is enacted to read:

"CONFIDENTIALITY.--An employer shall not disclose verification information provided under Subsection B of Section 4 of the Promoting Financial Independence for Victims of Domestic Abuse Act and shall maintain confidentiality of the fact that the employee or employee's family member was involved in a domestic abuse incident, that the employee requested or obtained domestic abuse leave and that the employee made any written or oral statement about the need for domestic abuse leave. An employer may disclose an employee's information related to domestic abuse leave only when the employee consents, when a court or administrative agency orders the disclosure or when otherwise required by federal or state law."

Chapter 14 Section 7 Laws 2009

Section 7. A new section of Chapter 50, Article 4 NMSA 1978 is enacted to read:

"ENFORCEMENT.--

A. The workforce solutions department is authorized to enforce the Promoting Financial Independence for Victims of Domestic Abuse Act and to investigate complaints made by persons who claim to be aggrieved pursuant to the provisions of that act.

B. The workforce solutions department and the employee have the right to bring an action in violation of the Promoting Financial Independence for Victims of Domestic Abuse Act in a court of competent jurisdiction to enjoin further violations, recover actual damages sustained or both, together with costs and reasonable attorney fees."

Chapter 14 Section 8 Laws 2009

Section 8. A new section of Chapter 50, Article 4 NMSA 1978 is enacted to read:

"EFFECT ON OTHER LAWS AND EXISTING EMPLOYMENT BENEFITS.--

A. Remedies in this section are provided in addition to other common law, federal or state remedies.

B. Nothing in the Promoting Financial Independence for Victims of Domestic Abuse Act shall supersede any provision of law or contract that provides greater rights than the rights established under that act.

C. The rights provided in the Promoting Financial Independence for Victims of Domestic Abuse Act shall not diminish an employer's obligation to provide greater rights in compliance with another contract, collective bargaining agreement or employment benefit program, policy or plan."

Chapter 14 Section 9 Laws 2009

Section 9. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.

Senate Bill 68, aa

Approved March 19, 2009

LAWS 2009, CHAPTER 15

AN ACT

RELATING TO GOVERNMENTAL AFFAIRS; ENACTING THE STATE-TRIBAL COLLABORATION ACT; REQUIRING STATE-TRIBAL COLLABORATION AND COMMUNICATION; DECLARING AN EMERGENCY.

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

Chapter 15 Section 1 Laws 2009

Section 1. SHORT TITLE.--This act may be cited as the "State-Tribal Collaboration Act".

Chapter 15 Section 2 Laws 2009

Section 2. DEFINITIONS.--As used in the State-Tribal Collaboration Act:

A. "American Indian or Alaska Native" means:

(1) individuals who are members of any federally recognized Indian tribe, nation or pueblo;

(2) individuals who would meet the definition of "Indian" pursuant to 18 USC 1153; or

(3) individuals who have been deemed eligible for services and programs provided to American Indians and Alaska Natives by the United States public health service, the bureau of Indian affairs or other federal programs;

B. "Indian nation, tribe or pueblo" means any federally recognized Indian nation, tribe or pueblo located wholly or partially in New Mexico; and

C. "state agency" means an agency, department or office of the state of New Mexico that is cabinet-level.

Chapter 15 Section 3 Laws 2009

Section 3. COLLABORATION WITH INDIAN NATIONS, TRIBES OR PUEBLOS.--

A. By December 31, 2009, every state agency shall develop and implement a policy that:

(1) promotes effective communication and collaboration between the state agency and Indian nations, tribes or pueblos;

(2) promotes positive government-to-government relations between the state and Indian nations, tribes or pueblos;

(3) promotes cultural competency in providing effective services to American Indians or Alaska Natives; and

(4) establishes a method for notifying employees of the state agency of the provisions of the State-Tribal Collaboration Act and the policy that the state agency adopts pursuant to this section.

B. In the process of developing the policy set forth in Subsection A of this section, state agencies shall consult with representatives designated by the Indian nations, tribes or pueblos.

C. A state agency shall make a reasonable effort to collaborate with Indian nations, tribes or pueblos in the development and implementation of policies, agreements and programs of the state agency that directly affect American Indians or Alaska Natives.

D. The Indian affairs department shall maintain for public reference an updated list of the names and contact information for the chief executives of the Indian nations, tribes or pueblos and for the state agency tribal liaisons.

E. Every state agency shall designate a tribal liaison, who reports directly to the office of the head of the state agency, to:

(1) assist the head of the state agency with developing and ensuring the implementation of the policy as set forth in Subsection A of this section;

(2) serve as a contact person who shall maintain ongoing communication between the state agency and affected Indian nations, tribes or pueblos; and

(3) ensure that training is provided to the staff of the state agency as set forth in Subsection B of Section 4 of the State-Tribal Collaboration Act. Nothing in

this subsection shall preclude tribal liaisons from providing or facilitating additional training.

Chapter 15 Section 4 Laws 2009

Section 4. ANNUAL SUMMIT--TRAINING OF STATE EMPLOYEES--ANNUAL REPORTS.--

A. At least once a year, during the third quarter of the state's fiscal year, the governor shall meet with the leaders of Indian nations, tribes and pueblos in a state-tribal summit to address issues of mutual concern.

B. All state agency managers and employees who have ongoing communication with Indian nations, tribes or pueblos shall complete a training provided by the state personnel office with assistance from the Indian affairs department, which training supports:

(1) the promotion of effective communication and collaboration between state agencies and Indian nations, tribes or pueblos;

(2) the development of positive state-tribal government-to-government relations; and

(3) cultural competency in providing effective services to American Indians or Alaska Natives.

C. No later than July 31 of every year, a state agency shall submit a report to the Indian affairs department on the activities of the state agency pursuant to the State-Tribal Collaboration Act, and the Indian affairs department shall compile all such reports for submittal to the governor and to the legislature. The report shall include:

(1) the policy the state agency adopted pursuant to the State-Tribal Collaboration Act;

(2) the names of and contact information for the individuals in the state agency who are responsible for developing and implementing programs of the state agency that directly affect American Indians or Alaska Natives;

(3) the current and planned efforts of the state agency to implement the policy set forth in Subsection A of Section 3 of the State-Tribal Collaboration Act;

(4) a certification by the state personnel office of the number of managers and employees of each state agency who have completed the training required by Subsection B of this section;

(5) a description of current and planned programs and services provided to or directly affecting American Indians or Alaska Natives and the amount of funding for each program; and

(6) the method the state agency established for notifying employees of the state agency of the provisions of the State-Tribal Collaboration Act.

Chapter 15 Section 5 Laws 2009

Section 5. RIGHT OF ACTION.--Nothing in the State-Tribal Collaboration Act creates a right of action against a state agency or a right of review of an action of a state agency.

Chapter 15 Section 6 Laws 2009

Section 6. SEVERABILITY.--If any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

Chapter 15 Section 7 Laws 2009

Section 7. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

Senate Bill 196, aa, w/ec

Approved March 19, 2009

LAWS 2009, CHAPTER 16

AN ACT

RELATING TO TAXATION; AMENDING THE LOCAL HOSPITAL GROSS RECEIPTS TAX ACT TO PERMIT CERTAIN COUNTIES TO DEDICATE THE TAX AS MATCHING FUNDS AND TO EXTEND THE PERIOD FOR WHICH THE TAX IS IMPOSED.

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

Chapter 16 Section 1 Laws 2009

Section 1. Section 7-20C-3 NMSA 1978 (being Laws 1991, Chapter 176, Section 3, as amended) is amended to read:

"7-20C-3. LOCAL HOSPITAL GROSS RECEIPTS TAX--AUTHORITY TO IMPOSE--ORDINANCE REQUIREMENTS.--

A. A majority of the members elected to the governing body of a county may enact an ordinance imposing an excise tax on a person engaging in business in the county for the privilege of engaging in business. This tax is to be referred to as the "local hospital gross receipts tax". The rate of the tax shall be:

(1) one-half percent of the gross receipts of the person engaging in business if the tax is initially imposed before January 1, 1993;

(2) one-eighth percent of the gross receipts of the person engaging in business if the tax is initially imposed after January 1, 1993; and

(3) a rate not to exceed one-half percent of the gross receipts of the person engaging in business if the tax is imposed after July 1, 1996 in a county described in Paragraph (4), (6), (7) or (8) of Subsection A of Section 7-20C-2 NMSA 1978; provided the tax may be imposed in any number of increments of one-eighth percent not to exceed an aggregate rate of one-half percent of gross receipts.

B. The local hospital gross receipts tax imposed:

(1) initially before January 1, 1993 shall be imposed only once for the period necessary for payment of the principal and interest on revenue bonds issued to accomplish the purpose for which the revenue is dedicated, but the period shall not exceed ten years from the effective date of the ordinance imposing the tax; or

(2) after July 1, 1996 in a county described in Paragraph (4) or (8) of Subsection A of Section 7-20C-2 NMSA 1978 shall be imposed for the period necessary for payment of the principal and interest on revenue bonds issued to accomplish the purpose for which the revenue is dedicated, but the period shall not exceed forty years from the effective date of the ordinance imposing the tax; provided, however, that the governing body of a county described in Paragraph (8) of Subsection A of Section 7-20C-2 NMSA 1978 that has enacted an ordinance imposing an increment of the local hospital gross receipts tax pursuant to the provisions of this paragraph may, prior to the date of the delayed repeal of the ordinance, enact an ordinance to modify the period of imposition of the tax and modify the purposes for which the revenue from the tax is dedicated, consistent with one or more of the purposes permitted pursuant to Paragraph (6) of Subsection D of this section. The ordinance shall be subject to the election requirement of Subsection E of this section.

C. No local hospital gross receipts tax authorized in Subsection A of this section shall be imposed initially after January 1, 1993 in a county described in Paragraph (2), (3) or (5) of Subsection A of Section 7-20C-2 NMSA 1978 unless:

(1) in a county described in Paragraph (2) of Subsection A of Section 7-20C-2 NMSA 1978, the voters of the county have approved the issuance of general obligation bonds of the county sufficient to pay at least one-half of the costs of the county hospital facility or county twenty-four-hour urgent care or emergency facility for which the local hospital gross receipts tax revenues are dedicated, including the costs of all acquisition, renovation and equipping of the facility; or

(2) in a county described in Paragraph (3) or (5) of Subsection A of Section 7-20C-2 NMSA 1978, the county will not have in effect at the same time a county hospital emergency gross receipts tax and the voters of the county have approved the imposition of a property tax at a rate of one dollar (\$1.00) on each one thousand dollars (\$1,000) of taxable value of property in the county for the purpose of operation and maintenance of a hospital owned by the county and operated and maintained either by the county or by another party pursuant to a lease with the county.

D. The governing body of a county enacting an ordinance imposing a local hospital gross receipts tax shall dedicate the revenue from the tax as provided in this subsection. In any election held, the ballot shall clearly state the purpose to which the revenue will be dedicated and the revenue shall be used by the county for that purpose. The revenue shall be dedicated as follows:

(1) prior to January 1, 1993, the governing body, at the time of enacting an ordinance imposing the rate of the tax authorized in Subsection A of this section, shall dedicate the revenue for acquisition of land for and the design, construction, equipping and furnishing of a county hospital facility to be operated by the county or operated and maintained by another party pursuant to a lease with the county;

(2) if the governing body of a county described in Paragraph (2), (3) or (5) of Subsection A of Section 7-20C-2 NMSA 1978 is enacting the ordinance imposing the tax after July 1, 1993, the governing body shall dedicate the revenue for acquisition, renovation and equipping of a building for a county hospital facility or a county twenty-four-hour urgent care or emergency facility or for operation and maintenance of that facility, whether operated and maintained by the county or by another party pursuant to a lease or management contract with the county, for the period of time the tax is imposed not to exceed ten years;

(3) if the governing body of a county described in Paragraph (4) or (8) of Subsection A of Section 7-20C-2 NMSA 1978 is enacting the ordinance imposing the tax after July 1, 1995, the governing body shall dedicate the revenue for acquisition of land or buildings for and the renovation, design, construction, equipping or furnishing of a county hospital facility or health clinic to be operated by the county or operated and maintained by another party pursuant to a health care facilities contract, lease or management contract with the county; provided, however, that the governing body of a county described in Paragraph (8) of Subsection A of Section 7-20C-2 NMSA 1978 that has imposed an increment of the local hospital gross receipts tax prior to January 1, 2009 and dedicated the revenue from that imposition pursuant to the provisions of this

paragraph may, prior to the date of the delayed repeal of the ordinance imposing the increment of the tax, enact an ordinance to modify the period of imposition of the tax and modify the purposes for which the revenue from the tax is dedicated, consistent with one or more of the purposes permitted pursuant to Paragraph (6) of this subsection. The ordinance shall be subject to the election requirement of Subsection E of this section;

(4) if the governing body of a county described in Paragraph (6) or (9) of Subsection A of Section 7-20C-2 NMSA 1978 is enacting the ordinance imposing the tax after July 1, 1997, the governing body shall dedicate the revenue for either or a combination of the following:

(a) acquisition of land or buildings for and the design, construction, renovation, equipping or furnishing of a hospital facility or health clinic owned by the county or a hospital or health clinic with which the county has entered into a health care facilities contract lease or management contract; or

(b) operations and maintenance of a hospital or health clinic owned by the county or a hospital or a health clinic with which the county has entered into a health care facilities contract;

(5) if the governing body of a county described in Paragraph (7) of Subsection A of Section 7-20C-2 NMSA 1978 is enacting the ordinance imposing the tax after January 1, 2002, the governing body shall dedicate the revenue for acquisition, lease, renovation or equipping of a hospital facility or for operation and maintenance of that facility, whether operated and maintained by the county or by another party pursuant to a health care facilities contract, lease or management contract with the county; and

(6) if the governing body of a county described in Paragraph (8) of Subsection A of Section 7-20C-2 NMSA 1978 is enacting the ordinance imposing one or more increments of the tax after January 1, 2009, the governing body shall dedicate the revenue for either or both of the following:

(a) payment of the principal and interest on revenue bonds, including refunding bonds, issued for acquisition of land or buildings for and the renovation, design, construction, equipping or furnishing of hospital facilities or health care clinic facilities to be operated by the county or operated and maintained by another party pursuant to a health care facilities contract, lease or management contract with the county; and

(b) use as matching funds for state or federal programs benefiting the facilities.

E. The ordinance shall not go into effect until after an election is held and a simple majority of the qualified electors of the county voting in the election vote in

favor of imposing the local hospital gross receipts tax and, in the case of a county described in Paragraph (3) or (5) of Subsection A of Section 7-20C-2 NMSA 1978, also vote in favor of a property tax at a rate of one dollar (\$1.00) for each one thousand dollars (\$1,000) of taxable value of property in the county. The governing body shall adopt a resolution calling for an election within seventy-five days of the date the ordinance is adopted on the question of imposing the tax. The question may be submitted to the qualified electors and voted on as a separate question in a general election or in any special election called for that purpose by the governing body. A special election on the question shall be called, held, conducted and canvassed in substantially the same manner as provided by law for general elections. If the question of imposing a local hospital gross receipts tax fails or if the question of imposing both a local hospital gross receipts tax and a property tax fails, the governing body shall not again propose a local hospital gross receipts tax for a period of one year after the election. A certified copy of any ordinance imposing a local hospital gross receipts tax shall be mailed to the department within five days after the ordinance is adopted in an election called for that purpose.

F. An ordinance enacted pursuant to the provisions of Subsection A of this section shall include an effective date of either July 1 or January 1, whichever date occurs first after the expiration of at least three months from the date the ordinance is approved by the electorate.

G. An ordinance repealed under the provisions of the Local Hospital Gross Receipts Tax Act shall be repealed effective on either July 1 or January 1.

H. As used in this section, "taxable value of property" means the sum of:

(1) the net taxable value, as that term is defined in the Property Tax Code, of property subject to taxation under the Property Tax Code;

(2) the assessed value of products, as those terms are defined in the Oil and Gas Ad Valorem Production Tax Act;

(3) the assessed value of equipment, as those terms are defined in the Oil and Gas Production Equipment Ad Valorem Tax Act; and

(4) the taxable value of copper mineral property, as those terms are defined in the Copper Production Ad Valorem Tax Act, subject to taxation under the Copper Production Ad Valorem Tax Act."

Chapter 16 Section 2 Laws 2009

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.

Senate Bill 89

Approved March 19, 2009

LAWS 2009, CHAPTER 17

AN ACT

RELATING TO MILITARY AFFAIRS; ELIMINATING THE ANNUAL FUNDING CAP FOR SERVICES, MATERIALS AND SUPPLIES IN THE NEW MEXICO MILITARY CODE.

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

Chapter 17 Section 1 Laws 2009

Section 1. Section 20-1-6 NMSA 1978 (being Laws 1987, Chapter 318, Section 6, as amended) is amended to read:

"20-1-6. PAYMENTS BY STATE TREASURER--CERTIFICATES OF INDEBTEDNESS.--

A. All compensation of personnel and all the necessary expenses incurred in quartering, housing, caring for, subsisting, protecting, equipping, warning for duty and transporting such officers and members and their equipment, including the purchase or lease of any articles of material, equipment or supplies reasonably required, designed or needed to accomplish the purpose or results desired by the governor or specified in the governor's call for such troops into service of the state, shall be paid by the state. The state treasurer, upon presentation to the state treasurer of vouchers and payrolls for such compensation, expenses, supplies and materials, certified by the officers commanding such forces and approved by the adjutant general, shall pay the vouchers and payrolls out of any money available in the state treasury not otherwise appropriated; provided that the vouchers and payrolls for such service, supplies and materials do not exceed one million dollars (\$1,000,000) in any one fiscal year.

B. If there is no money available in the state treasury that is not otherwise appropriated or if the vouchers and payrolls for such service, material and supplies approach the amount of one million dollars (\$1,000,000) in any one fiscal year, the state treasurer shall certify such facts to the governor who shall inquire into and make an estimate of the total probable cost necessary to be incurred for all purposes in connection with or to accomplish the purpose for which such troops were called into active service. If the governor deems it necessary and prudent in order to provide for the public defense that such expenses be incurred and that it is necessary to create an indebtedness for the purpose of paying the expenses, the governor shall by proclamation declare an emergency to exist requiring the creation of an indebtedness under Article 9, Section 7 of the constitution of New Mexico in order to suppress

insurrection or to provide for the public defense. The governor shall order the issuance of certificates of indebtedness in such amount as the governor deems required or necessary to provide funds for the payment of expenses and costs incident to or connected with the emergency.

C. The certificates of indebtedness shall be approved as to form by the attorney general. They shall be dated the day of their issuance and the state board of finance shall by proper resolutions prescribe the denominations of the certificates, the maturity dates thereof, the rate of interest they shall bear payable semiannually, the time and place of payment of both principal and interest and the amount of the certificates that shall be issued from time to time. The certificates shall be signed by the secretary of the state board of finance and the state treasurer and the coupons attached thereto shall have the engraved lithographed facsimile of the signature of the state treasurer thereon; provided, however, that certificates purchased by the state treasurer may be issued without coupons. The certificates shall be sold by the state board of finance from time to time in such amounts as it deems advisable, at not less than par and accrued interest to date of delivery, after advertisement for a period of two weeks immediately prior to the sale in one daily newspaper in the state and in some financial journal in the city and state of New York; provided, however, that the state treasurer may purchase the certificates as an investment of any funds in the state treasurer's hands available for investment and in the event of any such purchase by the state treasurer, no advertisement shall be required. The proceeds of certificates so sold shall be by the state treasurer covered into a fund known as the "adjutant general emergency public defense fund" and shall be expended and disbursed only in the manner and for the purposes specified and provided for in Chapter 20, Article 1 NMSA 1978.

D. A fund to be known as the "adjutant general emergency public defense certificates fund" to provide for the payment of interest and principal on the foregoing certificates is established and, beginning with the tax levy for the year following the issuance of the certificates, a tax shall be levied annually in the same manner as other ad valorem taxes are levied on all taxable property in the state, not to exceed one-half mill on the dollar of valuation, sufficient to produce the amount required to pay interest on the certificates and the principal thereof at maturity, for each year prior to the maturity of the certificates, which taxes when collected shall be credited to the adjutant general emergency public defense certificates fund. The state auditor shall each year prior to August 1 certify to the property tax division of the taxation and revenue department the amount necessary to meet all payments of principal and interest due on the certificates during the year ending June 30 following the date of the certificates.

E. On or before the twentieth legislative day of the next legislative session following the expenditures of the sums provided for in this section, the governor shall file a written report with the presiding officer of each house of the legislature setting forth the purpose and the amounts of money expended as provided in this section.

F. The provisions of this section may be used for the operation of the national guard or the state defense force when on militia duty."

Senate Bill 120, aa

Approved March 19, 2009

LAWS 2009, CHAPTER 18

AN ACT

RELATING TO PUBLIC SCHOOLS; REQUIRING MANDATORY TRAINING FOR CHARTER SCHOOL GOVERNING BODY MEMBERS.

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

Chapter 18 Section 1 Laws 2009

Section 1. A new section of the Charter Schools Act is enacted to read:

"GOVERNING BODY TRAINING.--The department shall develop a mandatory training course for all governing body members that explains department rules, policies and procedures, statutory powers and duties of governing boards, legal concepts pertaining to public schools, finance and budget and other matters deemed relevant by the department. The department shall notify the governing body members of the dates of the training courses."

Senate Bill 148

Approved March 19, 2009

LAWS 2009, CHAPTER 19

AN ACT

RELATING TO STATE FACILITIES; PROVIDING ADDITIONAL DUTIES FOR THE CAPITOL BUILDINGS PLANNING COMMISSION; AUTHORIZING CERTAIN DESIGNEES TO SERVE ON THE COMMISSION.

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

Chapter 19 Section 1 Laws 2009

Section 1. Section 15-10-1 NMSA 1978 (being Laws 1997, Chapter 178, Section 5, as amended) is amended to read:

"15-10-1. CAPITOL BUILDINGS PLANNING COMMISSION CREATED.--

A. The "capitol buildings planning commission" is created. The commission shall be composed of four members of the legislature, two from each house, appointed by the New Mexico legislative council, the secretary of general services or the secretary's designee, the state treasurer or the state treasurer's designee, the secretary of transportation or the secretary's designee, the secretary of cultural affairs or the secretary's designee, the secretary of finance and administration or the secretary's designee, the commissioner of public lands or the commissioner's designee and the chair of the supreme court building commission or the chair's designee.

B. The commission shall:

(1) study and plan for the long-range facilities needs of state government in the greater metropolitan areas of Las Cruces, Santa Fe and Albuquerque and, after developing an initial master plan for the state facilities in those areas, conduct a review of state properties throughout the state for the development of an overall master plan;

(2) review proposed lease-purchase agreements pursuant to Section 15-10-2 NMSA 1978;

(3) work with the general services department and other state agencies in developing recommendations for addressing deferred maintenance on state facilities and disposal strategies for aging facilities no longer able to serve their mission; and

(4) utilizing life cycle costing, work with the general services department in developing recommendations regarding whether the state should lease, lease-purchase or purchase needed additional facilities.

C. The legislative council service shall provide staff for the commission in coordination with the staff architect and other staff of the property control division of the general services department.

D. The commission shall meet regularly and shall report annually to the legislature on an annual update of the master plan for the long-range facilities needs of state government in the greater metropolitan areas of Las Cruces, Santa Fe and Albuquerque and throughout the state."

Chapter 19 Section 2 Laws 2009

Section 2. A new Section 15-10-2 NMSA 1978 is enacted to read:

"15-10-2. CAPITOL BUILDINGS PLANNING COMMISSION--REVIEW OF LEASE-PURCHASE AGREEMENTS.--

A. Before submitting a proposed lease-purchase agreement to the legislature for ratification and approval pursuant to Section 15-3-35 NMSA 1978, the proposed lessee shall notify the commission. The commission shall review a proposed lease-purchase agreement if:

(1) the total lease revenues to be generated during the term of the lease-purchase agreement, including any possible extensions or renewals, exceed five million dollars (\$5,000,000); or

(2) pursuant to criteria adopted by the commission, the commission selects the lease-purchase agreement for review.

B. A review conducted pursuant to this section shall include findings by the commission as to whether:

(1) the leasehold property and the term of the lease-purchase agreement are sufficient to meet the identified needs of the state agency that will occupy the leasehold property;

(2) the payment of all lease revenues due pursuant to a lease-purchase agreement will be sufficient, at the end of the term of the lease-purchase agreement, to acquire ownership of the leasehold property;

(3) the lease-purchase agreement provides that there is no legal obligation for the state or state agency to continue the lease-purchase agreement from year to year or to purchase the leasehold property, and that the lease-purchase agreement shall be terminated if sufficient appropriations are not available to meet the current lease payments; and

(4) the lease-purchase agreement is the most cost-effective alternative for acquiring the leasehold property, taking into account currently available alternative lease arrangements, lease-purchase agreements or other financing arrangements permitted by law.

C. After a review pursuant to this section, the commission shall submit its findings and recommendations to the legislature.

D. As used in this section:

(1) "commission" means the capitol buildings planning commission;

(2) "facilities" means buildings and the appurtenances and improvements associated therewith, including the real estate upon which a building is constructed; suitable parking for use of the building; utilities, access roads and other infrastructure; and related real estate. "Facilities" can also mean undeveloped or developed real estate that is transferred or leased with the intent that a new building or improvement be constructed thereon;

(3) "lease-purchase agreement" means a financing agreement for the leasing of facilities by the state or a state agency from a public or private entity with an option to purchase the leasehold property for a price that is reduced according to the payments made pursuant to the financing agreement;

(4) "leasehold property" means facilities that are subject to a lease-purchase agreement;

(5) "lease revenues" means the amounts payable pursuant to a lease-purchase agreement; and

(6) "state agency" means any department, branch, institution, board, officer, bureau, instrumentality, commission, district or committee of government of the state of New Mexico except:

(a) the state armory board;

(b) the commissioner of public lands;

(c) state institutions under the jurisdiction of the higher education department;

(d) the economic development department when the department is acquiring property pursuant to the Statewide Economic Development Finance Act;

(e) the public school facilities authority when the authority is acquiring property pursuant to the Public School Capital Outlay Act; and

(f) a state-chartered charter school."

Chapter 19 Section 3 Laws 2009

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.

Approved March 19, 2009

LAWS 2009, CHAPTER 20

AN ACT

RELATING TO SCHOOL PERSONNEL; INCLUDING ADMINISTRATORS IN THE UNIFORM STATEWIDE EDUCATOR ACCOUNTABILITY REPORTING SYSTEM.

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

Chapter 20 Section 1 Laws 2009

Section 1. Section 22-10A-19.2 NMSA 1978 (being Laws 2007, Chapter 264, Section 2) is amended to read:

"22-10A-19.2. EDUCATOR ACCOUNTABILITY REPORT.--

A. The department shall:

(1) design a uniform statewide educator accountability reporting system to measure and track teacher and administrator education candidates from pre-entry to post-graduation in order to benchmark the productivity and accountability of New Mexico's educator work force; provided that the system shall be designed in collaboration with:

(a) all public post-secondary teacher and administrator preparation programs in New Mexico, including those programs that issue alternative or provisional licenses;

(b) the teacher and administrator preparation programs' respective public post-secondary educational institutions; and

(c) the higher education department;

(2) require all public post-secondary teacher and administrator preparation programs to submit the data required for the uniform statewide educator accountability reporting system through the department's student teacher accountability reporting system;

(3) use the uniform statewide educator accountability reporting system, in conjunction with the department's student teacher education accountability reporting system, to assess the status of the state's efforts to establish and maintain a seamless pre-kindergarten through post-graduate system of education;

(4) adopt the format for reporting the outcome measures of each teacher and administrator preparation program in the state; and

(5) issue an annual statewide educator accountability report.

B. The annual educator accountability report format shall be clear, concise and understandable to the legislature and the general public. All annual program and statewide accountability reports shall ensure that the privacy of individual students is protected.

C. Each teacher and administrator preparation program's annual educator accountability report shall include the demographic characteristics of the students and the following indicators of program success:

(1) the standards for entering and exiting the program;

(2) the number of hours required for field experience and for student teaching or administrator internship;

(3) the number and percentage of students needing developmental course work upon entering the program;

(4) the number and percentage of students completing each program;

(5) the number and types of degrees received by students who complete each program;

(6) the number and percentage of students who pass the New Mexico teacher or administrator assessments for initial licensure on the first attempt;

(7) a description of each program's placement practices; and

(8) the number and percentage of students hired by New Mexico school districts.

D. The educator accountability report shall include an evaluation plan that includes high performance objectives. The plan shall include objectives and measures for:

(1) increasing student achievement for all students;

(2) increasing teacher and administrator retention, particularly in the first three years of a teacher's or administrator's career;

(3) increasing the percentage of students who pass the New Mexico teacher or administrator assessments for initial licensure on the first attempt;

(4) increasing the percentage of secondary school classes taught in core academic subject areas by teachers who demonstrate by means of rigorous content area assessments a high level of subject area mastery and a thorough knowledge of the state's academic content and performance standards;

(5) increasing the percentage of elementary school classes taught by teachers who demonstrate by means of a high level of performance in core academic subject areas their mastery of the state academic content and performance standards; and

(6) increasing the number of teachers trained in math, science and technology.

E. In addition to the specifications in Subsections C and D of this section, the annual educator accountability report shall also include itemized information on program revenues and expenditures, including staff salaries and benefits and the operational cost per credit hour.

F. The annual educator accountability report shall be adopted by each public post-secondary educational institution, reported in accordance with guidelines established by the department to ensure effective communication with the public and disseminated to the governor, legislators and other policymakers and business and economic development organizations by November 1 of each year."

Senate Bill 123

Approved March 19, 2009

LAWS 2009, CHAPTER 21

AN ACT

RELATING TO CRIMINAL LAW; REVISING THE CRIME OF STALKING; ADDING DEFINITIONS; AMENDING SECTIONS OF THE CRIMINAL CODE.

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

Chapter 21 Section 1 Laws 2009

Section 1. Section 30-3A-1 NMSA 1978 (being Laws 1997, Chapter 10, Section 1) is amended to read:

"30-3A-1. SHORT TITLE.--Chapter 30, Article 3A NMSA 1978 may be cited as the "Harassment and Stalking Act"."

Chapter 21 Section 2 Laws 2009

Section 2. Section 30-3A-3 NMSA 1978 (being Laws 1997, Chapter 10, Section 3) is amended to read:

"30-3A-3. STALKING--PENALTIES.--

A. Stalking consists of knowingly pursuing a pattern of conduct, without lawful authority, directed at a specific individual when the person intends that the pattern of conduct would place the individual in reasonable apprehension of death, bodily harm, sexual assault, confinement or restraint of the individual or another individual.

B. As used in this section:

(1) "lawful authority" means within the scope of lawful employment or constitutionally protected activity; and

(2) "pattern of conduct" means two or more acts, on more than one occasion, in which the alleged stalker by any action, method, device or means, directly, indirectly or through third parties, follows, monitors, surveils, threatens or communicates to or about a person.

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

D. In addition to any punishment provided pursuant to the provisions of this section, the court shall order a person convicted of stalking to participate in and complete a program of professional counseling at the person's own expense or a domestic violence offender treatment or intervention program."

Chapter 21 Section 3 Laws 2009

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.

SJC/Senate Bill 166, aa

Approved March 20, 2009

LAWS 2009, CHAPTER 22

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE; CHANGING THE AGENCY AUTHORIZED TO GRANT FUNDS FOR CERTAIN PROJECTS AUTHORIZED IN LAWS 2006, CHAPTER 41, SECTION 1 AND LAWS 2007, CHAPTER 139, SECTION 1; APPROPRIATING CERTAIN BOND PROCEEDS TO THE DEPARTMENT OF ENVIRONMENT; DECLARING AN EMERGENCY.

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

Chapter 22 Section 1 Laws 2009

Section 1. Section 7-27-10.1 NMSA 1978 (being Laws 2003, Chapter 134, Section 1) is amended to read:

"7-27-10.1. BONDING CAPACITY--AUTHORIZATION FOR SEVERANCE TAX BONDS--WATER PROJECTS PRIORITY.--

A. By January 15 of each year, the board of finance division of the department of finance and administration shall estimate the amount of bonding capacity available for severance tax bonds to be authorized by the legislature. The division shall authorize ten percent of the estimated bonding capacity each year, and the legislature authorizes the state board of finance to issue severance tax bonds in the annually deducted amount for use by the water trust board to fund water projects statewide, except for projects authorized in Subsection D of this section.

B. The water trust board shall certify to the state board of finance the need for issuance of bonds for water projects. The state board of finance may issue and sell the bonds in the same manner as other severance tax bonds in an amount not to exceed the authorized amount provided for in Subsection A of this section. If necessary, the state board of finance shall take the appropriate steps to comply with the federal Internal Revenue Code of 1986, as amended. Proceeds from the sale of the bonds are appropriated to the water project fund in the New Mexico finance authority for the purposes certified by the water trust board to the state board of finance.

C. Money from the severance tax bonds provided for in this section shall not be used to pay indirect project costs. Any unexpended balance from proceeds of severance tax bonds issued for a water project shall revert to the severance tax bonding fund within six months of completion of the water project. The New Mexico finance authority shall monitor and ensure proper reversions.

D. The board of finance division of the department of finance and administration shall:

(1) void the authorization to the water project fund held at the New Mexico finance authority to make grants or loans of severance tax bond proceeds for

projects pursuant to Subsection U of Section 1 of Chapter 41 of Laws 2006 for the northwest New Mexico council of governments in McKinley county for a water distribution project and Subsection 25 of Section 1 of Chapter 139 of Laws 2007 for the Navajo Nation division of natural resources department of water resources water management branch for a regional water project in Rio Arriba, Sandoval, McKinley, San Juan and Cibola counties; and

(2) authorize the department of environment to make a grant of the unexpended proceeds of severance tax bonds issued in fiscal years 2006 and 2007 for the purposes of the water project fund to be used for the authorizations identified in Paragraph (1) of this subsection and appropriate to the department of environment five million three hundred seventy-five thousand two hundred forty-four dollars (\$5,375,244) for the Navajo Nation division of natural resources department of water resources water management branch for a regional water distribution project in Rio Arriba, Sandoval, McKinley, San Juan and Cibola counties. Any unexpended balance of the funds authorized for expenditure in this section shall revert to the severance tax bonding fund at the end of fiscal year 2013 or upon completion of the project, whichever is earlier.

E. As used in this section, "water project" means a capital outlay project for:

- (1) the storage, conveyance or delivery of water to end users;
- (2) the implementation of federal Endangered Species Act of 1973 collaborative programs;
- (3) the restoration and management of watersheds;
- (4) flood prevention; or
- (5) conservation, recycling, treatment or reuse of water."

Chapter 22 Section 2 Laws 2009

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

SIAC/Senate Bill 723, aa, w/ec

Approved March 20, 2009

LAWS 2009, CHAPTER 23

AN ACT

RELATING TO LOCAL GOVERNMENTS; PROVIDING PROCEDURES FOR THE APPLICATION OF THE HISTORIC DISTRICT AND LANDMARK ACT TO STATE CAPITAL OUTLAY PROJECTS.

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

Chapter 23 Section 1 Laws 2009

Section 1. A new section of the Historic District and Landmark Act is enacted to read:

"APPLICABILITY TO STATE CAPITAL OUTLAY PROJECTS--LIMITATION.--

A. Recognizing the fragility of the state's historic heritage, the purpose of this section is to establish a procedure under which the state and its municipalities and counties will commit to collaborate in good faith and work jointly to preserve and protect the historic districts of New Mexico.

B. Ordinances enacted by a municipality or county pursuant to the Historic District and Landmark Act shall apply to a state capital outlay project only as provided in this section and only if the ordinances contain special provisions and standards applicable to state buildings, including provisions concerning the design, construction, alteration or demolition of the exterior features of state buildings. If requested by a resolution of the governing body of a municipality or county, the staff of the capitol buildings planning commission shall work jointly with the staff of the municipality or county in developing the provisions and standards required by this subsection.

C. The applicable state agency shall carry out a capital outlay project in a manner that is harmonious and generally compatible with the municipal or county ordinances.

D. Before commencing the design phase of a capital outlay project, the applicable state agency shall consult with the municipality or county as to the design standards in the ordinances and how those design standards would impact costs and the operation or manner in which the capital outlay project will ultimately be expected to function, provided that, if the municipality or county has an agency or other entity review projects within the area zoned as an historic district or landmark, then the consultation shall be with that review agency or other entity. The state agency shall work collaboratively with the municipality or county or its review agency or other entity to arrive at compatibility with the design standards, considering reasonable costs and preserving essential functionality. If the municipality or county has identifiable community groups involved in historic preservation, the agency shall also make every reasonable effort to obtain input from members of those identified groups before commencing the design phase.

E. After the design phase and before soliciting a bid or a proposal for design-build or lease-purchase for a capital outlay project, the applicable state agency shall transmit its plans for review and comment to the municipality or county or its review agency or other entity and shall also conduct a public meeting to receive public input. Notice of the public meeting shall also be given to any identifiable community groups involved in historic preservation in the municipality or county.

F. Within sixty days after the public meeting, the municipality or county or its review agency or other entity, any identifiable historic preservation community group and any other interested party shall communicate recommendations and comments in writing to the state agency. The state agency shall consult with the municipality or county or its review agency or other entity to resolve any issues raised. If, at the end of the sixty-day period, unresolved issues remain, the municipality or county may, within five days after the end of the period, notify the applicable state agency that the issues remain unresolved and should be finally determined pursuant to Subsection G of this section; provided that, if notice is not timely given, the applicable state agency may, after incorporating those provisions to which the state agency and the municipality or county have agreed, proceed with the capital outlay project.

G. If notice is timely given by a municipality or county, pursuant to Subsection F of this section, that issues remain unresolved, those issues shall be decided pursuant to the following provisions:

(1) within five days after the notice, a state-local government historic review board shall be formed, consisting of eight members as follows:

(a) one member appointed by the capitol buildings planning commission, who shall chair the board and who shall vote only if there is a tie among the other board members present;

(b) one member appointed by the cultural properties review committee;

(c) the state historic preservation officer or a designee of the officer;

(d) one member appointed by the agency or other entity that reviews projects within the area zoned as an historic district or landmark, provided that, if the municipality or county has no such agency or other entity, the member shall be appointed by the governing body of the municipality or county;

(e) one member appointed by the agency or entity of the municipality or county that is concerned with historic preservation, provided that, if the municipality or county has no such agency or other entity, the member shall be appointed by the governing body of the municipality or county; and

(f) three public members who have a demonstrated interest in historic preservation appointed as follows: one member appointed by the secretary of general services, one member appointed by the governing body of the municipality or county and one public member appointed by the other two public members;

(2) the staff of the capitol buildings planning commission shall serve as the staff of the state-local government historic review board; and

(3) the state-local government historic review board shall, at a public meeting, consider each of the unresolved issues and, within twenty days of its formation shall, for each issue, make a final decision that is harmonious and generally compatible with the municipal or county ordinance.

H. Appeals from the decisions of the state-local government historic review board shall be taken to the district court in the manner provided in Section 39-3-1.1 NMSA 1978.

I. The state agency shall not take any irrevocable action on the capital project in reliance on the plans until the procedures set forth in Subsections F and G of this section have been followed."

HTRC/House Bill 360

Approved March 24, 2009

LAWS 2009, CHAPTER 24

AN ACT

RELATING TO LAW ENFORCEMENT; AMENDING SECTIONS OF THE DNA IDENTIFICATION ACT TO MEET FEDERAL GUIDELINES ON QUALIFYING LABORATORIES; REQUIRING THE COLLECTION OF DNA SAMPLES FROM ADULTS CONVICTED OF A FELONY OFFENSE IN ANOTHER JURISDICTION.

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

Chapter 24 Section 1 Laws 2009

Section 1. Section 29-16-3 NMSA 1978 (being Laws 1997, Chapter 105, Section 3, as amended) is amended to read:

"29-16-3. DEFINITIONS.--As used in the DNA Identification Act:

A. "administrative center" means the part of a national DNA index system qualified New Mexico crime laboratory that administers and operates the DNA identification system;

B. "CODIS" means the federal bureau of investigation's national DNA index system for storage and exchange of DNA records submitted by forensic DNA laboratories;

C. "covered offender" means any person convicted of a felony offense as an adult pursuant to state, federal, or military law or convicted as an adult pursuant to youthful offender or serious youthful offender proceedings under the Children's Code or a sex offender required to register pursuant to the provisions of the Sex Offender Registration and Notification Act;

D. "department" means the department of public safety;

E. "DNA" means deoxyribonucleic acid as the basis of human heredity;

F. "DNA identification system" means the DNA identification system established pursuant to the DNA Identification Act;

G. "DNA oversight committee" means the DNA identification system oversight committee;

H. "DNA records" means the results of DNA testing and related information;

I. "DNA testing" means a forensic DNA analysis that includes restriction fragment length polymorphism, polymerase chain reaction or other valid methods of DNA typing performed to obtain identification characteristics of samples;

J. "fund" means the DNA identification system fund;

K. "missing persons DNA identification system" means the missing persons DNA identification system established by the DNA Identification Act;

L. "sample" means a sample of biological material sufficient for DNA testing; and

M. "sex offender DNA identification system" means the sex offender DNA identification system established by the DNA Identification Act."

Chapter 24 Section 2 Laws 2009

Section 2. Section 29-16-4 NMSA 1978 (being Laws 1997, Chapter 105, Section 4, as amended) is amended to read:

"29-16-4. ADMINISTRATIVE CENTER--POWERS AND DUTIES--TRANSFER TO OTHER LAW ENFORCEMENT AGENCY.--

A. The administrative center shall be an appropriate unit of the department or such other qualified New Mexico law enforcement agency as the secretary of public safety may designate in accordance with this section that meets the requirements for participation in the national DNA index system.

B. The administrative center shall:

(1) establish and administer the DNA identification system. The DNA identification system shall provide for collection, storage, DNA testing, maintenance and comparison of samples and DNA records for forensic and humanitarian purposes. Those purposes shall include generation of investigative leads, statistical analysis of DNA profiles and identification of missing persons and unidentified human remains. Procedures used for DNA testing shall be compatible with the procedures the federal bureau of investigation has specified, including comparable test procedures, laboratory equipment, supplies and computer software. Procedures used shall meet or exceed the provisions of the federal DNA Identification Act of 1994 regarding minimum standards for state participation in CODIS, including minimum standards for the acceptance, security and dissemination of DNA records;

(2) coordinate sample collection activities;

(3) perform or contract for DNA testing;

(4) serve as a repository for samples and DNA records;

(5) act as liaison with the federal bureau of investigation for purposes of CODIS;

(6) adopt rules and procedures governing:

(a) sample collection;

(b) DNA testing;

(c) the DNA identification system and DNA records;

(d) the acceptance, security and dissemination of DNA records; and

(e) communication between local, state and federal law enforcement agencies, the corrections department and local jails and detention facilities in order to minimize duplicate sample collections from the same individual;

(7) provide training to jail and detention facility personnel who are required to collect samples pursuant to Section 29-3-10 NMSA 1978;

(8) be reimbursed for, pursuant to the DNA Identification Act, the costs of sample collection and DNA testing of samples taken for the purposes of the identification of missing persons and unidentified human remains;

(9) establish and administer the missing persons DNA identification system as a part of the DNA identification system; and

(10) establish and administer the sex offender DNA identification system as part of the DNA identification system.

C. The secretary of public safety may designate, pursuant to a joint powers agreement, the crime laboratory of the police department for the largest municipality in a class A county having a population of more than two hundred fifty thousand at the most recent federal decennial census to act as the administrative center.

D. The secretary of public safety may designate, pursuant to a joint powers agreement, any other law enforcement agency to act as administrative center upon recommendation of five voting members of the DNA oversight committee."

Chapter 24 Section 3 Laws 2009

Section 3. Section 29-16-5 NMSA 1978 (being Laws 1997, Chapter 105, Section 5, as amended) is amended to read:

"29-16-5. DNA OVERSIGHT COMMITTEE--CREATED--POWERS AND DUTIES.--

A. The "DNA identification system oversight committee" is created. The DNA oversight committee shall be composed of nine voting members as follows:

(1) a scientific representative from the department crime laboratory appointed by the secretary of public safety;

(2) a scientific representative from the crime laboratory of the police department for the largest municipality in a class A county having a population of more than two hundred fifty thousand at the most recent federal decennial census;

(3) the secretary of corrections or the secretary's designated representative;

(4) the state medical investigator or the investigator's designated representative;

(5) the attorney general or the attorney general's designated representative;

(6) the president of the district attorneys association or the president's designated representative;

(7) the chief public defender or the chief public defender's designated representative;

(8) the president of the New Mexico criminal defense lawyers association or the president's designated representative; and

(9) the head of the administrative center or the head's designated representative.

B. The DNA oversight committee shall adopt rules and procedures regarding the administration and operation of the DNA identification system.

C. The administrative center shall review and make recommendations to the DNA oversight committee regarding rules and procedures for the administration and operation of the DNA identification system.

D. The DNA oversight committee shall oversee the establishment and administration of the missing persons DNA identification system as part of the DNA identification system.

E. The DNA oversight committee shall adopt rules and procedures regarding the administration and operation of the missing persons DNA identification system as part of the DNA identification system.

F. The DNA oversight committee shall oversee the establishment and administration of the sex offender DNA identification system as part of the DNA identification system.

G. The DNA oversight committee shall adopt rules and procedures regarding the administration and operation of the sex offender DNA identification system as part of the DNA identification system."

Senate Bill 5, aa

Approved March 24, 2009

LAWS 2009, CHAPTER 25

AN ACT

RELATING TO PUBLIC SCHOOL FACILITIES; AMENDING THE PUBLIC SCHOOL BUILDINGS ACT TO ALLOW SCHOOL DISTRICT REVENUE TO BE USED TO PURCHASE ACTIVITY BUSES FOR TRANSPORTING STUDENTS TO AND FROM EXTRACURRICULAR SCHOOL ACTIVITIES.

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

Chapter 25 Section 1 Laws 2009

Section 1. 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; or

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."

Senate Bill 38, aa

Approved March 24, 2009

LAWS 2009, CHAPTER 26

AN ACT

RELATING TO TRIALS; PROVIDING AN EXEMPTION FROM JURY SERVICE, ON REQUEST AND AFFIDAVIT, FOR A PERSON WHO IS SEVENTY-FIVE YEARS OF AGE OR OLDER.

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

Chapter 26 Section 1 Laws 2009

Section 1. Section 38-5-2 NMSA 1978 (being Laws 1973, Chapter 150, Section 1, as amended) is amended to read:

"38-5-2. EXEMPTION FROM JURY SERVICE--EXCUSALS--SERVICE OF DISQUALIFIED JUROR.--

A. A person who has served as a member of a petit jury panel or a grand jury in either state or federal courts within the preceding thirty-six months shall be exempt from sitting or serving as a juror in a court of this state when the person requests to be exempted from service by reason of the exemption granted by this subsection.

B. A person who is seventy-five years of age or older who files an affidavit requesting an exemption from jury service with a local court shall be permanently exempt from jury service.

C. A person may be excused from jury service at the discretion of the judge or the judge's designee, with or without the person's personal attendance upon the court, if:

(1) jury service would cause undue or extreme physical or financial hardship to the prospective juror or to a person under the prospective juror's care or supervision;

(2) the person has an emergency that renders the person unable to perform jury service; or

(3) the person presents other satisfactory evidence to the judge or the judge's designee.

D. A person requesting an exemption or an excuse from jury service shall take all necessary action to obtain a ruling on the request no later than the date on which the person is scheduled to appear for jury duty.

E. The judge, in the judge's discretion, upon granting any excuse, may disallow the fees and mileage of the person excused.

F. The service upon a jury of a person disqualified shall, of itself, not vitiate any indictment found or any verdict rendered by that jury, unless actual injury to the person complaining of the injury is shown.

G. As used in this section and Section 38-5-1 NMSA 1978, "undue or extreme physical or financial hardship":

(1) means circumstances in which a person would:

(a) be required to abandon another person under the person's care or supervision due to the extreme difficulty of obtaining an appropriate substitute caregiver during the period of jury service;

(b) incur costs that would have a substantial adverse impact on the payment of necessary daily living expenses of the person or the person's dependent; or

(c) suffer physical hardship that would result in illness or disease; and

(2) does not exist solely because a prospective juror will be absent from employment."

Senate Bill 112, aa

Approved March 24, 2009

LAWS 2009, CHAPTER 27

AN ACT

RELATING TO MISCELLANEOUS PUBLIC AFFAIRS; NAMING THE NEW MEXICO SUNRISE GUITAR THE STATE GUITAR.

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

Chapter 27 Section 1 Laws 2009

Section 1. A new section of Chapter 12, Article 3 NMSA 1978 is enacted to read:

"OFFICIAL STATE GUITAR.--The New Mexico sunrise guitar is adopted as the official guitar of New Mexico."

Senate Bill 52, aa

Approved March 25, 2009

LAWS 2009, CHAPTER 28

AN ACT

RELATING TO PUBLIC AFFAIRS; DECLARING A STATE COWBOY SONG.

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

Chapter 28 Section 1 Laws 2009

Section 1. STATE COWBOY SONG.--The words and music of "Under New Mexico Skies", written by Syd Masters, are declared to be the official state cowboy song. The words of the state cowboy song are as follows:

"(first verse)

Where the Piñon Mesa rolls

And the campfire cures your woes

Watchin' the sly roadrunner flee

On the tail of an autumn breeze

I'm leanin' against a juniper bole

As the creek water takes a stroll

(chorus)

That's where you'll find me

Where the big back country lies

There the cowboy's free to ride

Out under New Mexico skies

(second verse)

Where the lean jack hops along

And the coyote sings his song

Up high the rocky spires shade

The sunny desert days

I'm leanin' against adobe walls of old

Their stories to be told

(chorus)

That's where you'll find me

Where the big back country lies

There the cowboy's free to ride

Out under New Mexico skies

(third verse)

Just me and a covey of gamblin' quail

Lopin' down the Turquoise Trail

(chorus)

That's where you'll find me

Where the big back country lies

There the cowboy's free to ride

Out under New Mexico skies".

Approved March 25, 2009

LAWS 2009, CHAPTER 29

AN ACT

RELATING TO HEALTH CARE; AMENDING THE VITAL STATISTICS ACT TO ALLOW NURSE PRACTITIONERS TO COMPLETE AND SIGN MEDICAL CERTIFICATIONS OF CAUSE OF DEATH.

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

Chapter 29 Section 1 Laws 2009

Section 1. Section 24-14-20 NMSA 1978 (being Laws 1961, Chapter 44, Section 18, as amended) is amended to read:

"24-14-20. DEATH REGISTRATION.--

A. A death certificate for each death that occurs in this state shall be filed within five days after the death and prior to final disposition. The death certificate shall be registered by the state registrar if it has been completed and filed in accordance with this section, subject to the exception provided in Section 24-14-24 NMSA 1978; provided that:

(1) if the place of death is unknown but the dead body is found in this state, a death certificate shall be filed with a local registrar within ten days after the occurrence. The place where the body is found shall be shown as the place of death. If the date of death is unknown, it shall be approximated by the state medical investigator; and

(2) if death occurs in a moving conveyance in the United States and the body is first removed from the conveyance in this state, the death shall be registered in this state and the place where the body is first removed shall be considered the place of death. When a death occurs on a moving conveyance while in international waters or air space or in a foreign country or its air space and the body is first removed from the conveyance in this state, the death shall be registered in this state, but the certificate shall show the actual place of death insofar as can be determined by the state medical investigator.

B. The funeral service practitioner or person acting as a funeral service practitioner who first assumes custody of a dead body shall:

(1) file the death certificate;

(2) obtain the personal data from the next of kin or the best qualified person or source available; and

(3) obtain the medical certification of cause of death.

C. The medical certification shall be completed and signed within forty-eight hours after death by the physician or nurse practitioner in charge of the patient's care for the illness or condition that resulted in death, except when inquiry is required by law. Except as provided in Subsection D of this section, in the absence of the physician or nurse practitioner, or with the physician's or the nurse practitioner's approval, the medical certification may be completed and signed by the physician's associate physician or the nurse practitioner's associate nurse practitioner, the chief medical officer of the institution in which death occurred or the physician who performed an autopsy on the decedent; provided that the individual has access to the medical history of the case and views the deceased at or after death and that death is due to natural causes.

D. Unless there is reasonable cause to believe that the death is not due to natural causes, a registered nurse employed by a nursing home may pronounce the death of a resident of the nursing home and a registered nurse employed by a hospital may pronounce the death of a patient of the hospital. The nurse shall have access to the medical history of the case and view the deceased at or after death, and the individual who completes the medical certification shall not be required to view the deceased at or after death. The death shall be pronounced pursuant to procedures or facility protocols prescribed by the hospital for patients or by the physician who is the medical director of the nursing home for residents. The procedures or facility protocols shall ensure that the medical certification of death is completed in accordance with the provisions of Subsection C of this section.

E. For purposes of this section:

(1) "hospital" means a public hospital, profit or nonprofit private hospital or a general or special hospital that is licensed as a hospital by the department of health;

(2) "nurse practitioner" means a registered nurse who is licensed by the board of nursing for advanced practice as a certified nurse practitioner and whose name and pertinent information are entered on the list of certified nurse practitioners maintained by the board of nursing; and

(3) "nursing home" means any nursing institution or facility required to be licensed under state law as a nursing facility by the public health division of the department of health, whether proprietary or nonprofit, including skilled nursing home facilities.

F. When death occurs without medical attendance as set forth in Subsection C or D of this section or when death occurs more than ten days after the decedent was last treated by a physician, the case shall be referred to the state medical investigator for investigation to determine and certify the cause of death.

G. An amended death certificate based on an anatomical observation shall be filed within thirty days of the completion of an autopsy."

House Bill 170, w/cc

Approved March 26, 2009

LAWS 2009, CHAPTER 30

AN ACT

RELATING TO FLOOD CONTROL DISTRICTS; INCREASING THE MAXIMUM ALLOWABLE INDEBTEDNESS OF THE SOUTHERN SANDOVAL COUNTY ARROYO FLOOD CONTROL AUTHORITY.

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

Chapter 30 Section 1 Laws 2009

Section 1. Section 72-19-44 NMSA 1978 (being Laws 1990, Chapter 14, Section 44) is amended to read:

"72-19-44. ISSUANCE OF BONDS AND INCURRENCE OF DEBT.--The authority is authorized to borrow money in anticipation of taxes or other revenues, or both, and to issue bonds to evidence the amount so borrowed. No bonded indebtedness or any other indebtedness not payable in full within one year, except for interim debentures as provided in Sections 72-19-46 and 72-19-89 through 72-19-91 NMSA 1978, shall be created by the authority without first submitting a proposition of issuing such bonds to the qualified electors of the authority and being approved by a majority of such electors voting thereon at an election held for that purpose in accordance with Sections 72-19-28 through 72-19-34 NMSA 1978 and all laws amendatory thereof and supplemental thereto. Bonds so authorized may be issued in one series or more and may mature at such time or times not exceeding forty years from their issuance as the board may determine. The total of all outstanding indebtedness at any one time shall not exceed sixty million dollars (\$60,000,000) without prior approval of the state legislature."

Chapter 30 Section 2 Laws 2009

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.

House Bill 288, aa

Approved March 26, 2009

LAWS 2009, CHAPTER 31

AN ACT

RELATING TO FLOOD CONTROL DISTRICTS; INCREASING THE MAXIMUM ALLOWABLE INDEBTEDNESS OF THE SOUTHERN SANDOVAL COUNTY ARROYO FLOOD CONTROL AUTHORITY.

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

Chapter 31 Section 1 Laws 2009

Section 1. Section 72-19-44 NMSA 1978 (being Laws 1990, Chapter 14, Section 44) is amended to read:

"72-19-44. ISSUANCE OF BONDS AND INCURRENCE OF DEBT.--The authority is authorized to borrow money in anticipation of taxes or other revenues, or both, and to issue bonds to evidence the amount so borrowed. No bonded indebtedness or any other indebtedness not payable in full within one year, except for interim debentures as provided in Sections 72-19-46 and 72-19-89 through 72-19-91 NMSA 1978, shall be created by the authority without first submitting a proposition of issuing such bonds to the qualified electors of the authority and being approved by a majority of such electors voting thereon at an election held for that purpose in accordance with Sections 72-19-28 through 72-19-34 NMSA 1978 and all laws amendatory thereof and supplemental thereto. Bonds so authorized may be issued in one series or more and may mature at such time or times not exceeding forty years from their issuance as the board may determine. The total of all outstanding indebtedness at any one time shall not exceed sixty million dollars (\$60,000,000) without prior approval of the state legislature."

Chapter 31 Section 2 Laws 2009

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.

Senate Bill 316, aa

Approved March 26, 2009

LAWS 2009, CHAPTER 32

AN ACT

RELATING TO PUBLIC ASSISTANCE; AMENDING SECTIONS OF THE PUBLIC ASSISTANCE ACT AND THE MANDATORY MEDICAL SUPPORT ACT TO LIMIT THE STATE'S CLAIM FOR CHILD SUPPORT ARREARS TO THE TIME PERIODS IN WHICH A HOUSEHOLD RECEIVES CASH ASSISTANCE AND TO ALLOW FOR CASH MEDICAL SUPPORT WHEN HEALTH INSURANCE IS UNAVAILABLE.

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

Chapter 32 Section 1 Laws 2009

Section 1. Section 27-2-28 NMSA 1978 (being Laws 1981, Chapter 90, Section 2, as amended) is amended to read:

"27-2-28. LIABILITY FOR REPAYMENT OF PUBLIC ASSISTANCE.--

A. In cases where the department has provided cash assistance to children in a household, the court shall award judgment in favor of the department and against the noncustodial parents of the children for child support, calculated pursuant to Section 40-4-11.1 NMSA 1978, for all months in which the children received cash assistance benefits.

B. Equitable defenses available to the noncustodial parent in claims by the custodian for retroactive support or past due support shall not operate to deprive the department of its right to request retroactive support or past due support for months during which the noncustodial parent's children received cash assistance benefits.

C. Amounts of support collected that are in excess of the amounts specified in Subsections A and B of this section shall be paid by the department to the custodian of the child.

D. No agreement between any custodian of a child and a parent of that child, either relieving the parent of any duty of child or spousal support or responsibility or purporting to settle past, present or future support obligations, either as a settlement or prepayment, shall act to reduce or terminate any rights of the department to recover from that parent for support provided, unless the department has consented to the agreement in writing.

E. The noncustodial parent shall be given credit for any support actually provided, including housing, clothing, food or funds paid prior to the entry of any order for support. The noncustodial parent has the burden to prove that the noncustodial parent has provided any support.

F. An application for public assistance by any person constitutes an assignment by operation of law of any support rights the person is entitled to during the time the person's household receives public assistance, whether the support rights are owed to the applicant or to any family member for whom the applicant is applying for or receiving assistance. The assignment includes all support rights that accrue as long as the applicant receives public assistance.

G. By operation of law, an assignment to the department of any and all rights of an applicant for or recipient of medical assistance under the medicaid program in New Mexico or supplemental security income through the social security administration:

(1) is deemed to be made of:

(a) any payment for medical care from any person, firm or corporation, including an insurance carrier; and

(b) any recovery for personal injury, whether by judgment or contract for compromise or settlement;

(2) shall be effective to the extent of the amount of medical assistance actually paid by the department under the medicaid program; and

(3) shall be effective as to the rights of any other individuals who are eligible for medical assistance and whose rights can legally be assigned by the applicant or recipient.

An applicant or recipient is required to cooperate fully with the department in its efforts to secure the assignment and to execute and deliver any instruments and papers deemed necessary to complete the assignment by the department."

Chapter 32 Section 2 Laws 2009

Section 2. Section 40-4C-3 NMSA 1978 (being Laws 1990, Chapter 78, Section 3, as amended) is amended to read:

"40-4C-3. DEFINITIONS.--As used in the Mandatory Medical Support Act:

A. "cash medical support" means an amount ordered to be paid toward the cost of health insurance provided by a public entity or by another parent through employment or otherwise, or for other medical costs not covered by insurance;

B. "court" means any district court ordering support by a medical support obligor;

C. "department" means the human services department;

D. "employer" means an individual, organization, agency, business or corporation hiring a medical support obligor for pay;

E. "health insurance coverage" means those coverages generally associated with a medical plan of benefits, which may include dental insurance, but not including medicaid coverage authorized by Title 19 of the Social Security Act and administered by the department;

F. "insurer" means an employment-related or other group health care insurance plan, a health maintenance organization, a nonprofit health care plan or other type of health care insurance plan under which medical or dental services are provided, regardless of service delivery mechanism;

G. "medical support obligee" means a person to whom a duty of medical support is owed or a person, including the department, who has commenced a proceeding for enforcement of a duty to provide health support for each minor child or for registration of a support order that includes a provision for such support for each minor child;

H. "medical support obligor" means a person owing a duty to provide health support or against whom a proceeding for the enforcement of such a duty of support is commenced or for registration of a support order that includes provisions for such support for each minor child;

I. "minor child" means a child younger than eighteen years of age who has not been emancipated; and

J. "national medical support notice" means a notice to an employer that an employee's child must be covered by the employment-related group health and dental care insurance plan pursuant to a court order."

Chapter 32 Section 3 Laws 2009

Section 3. Section 40-4C-4 NMSA 1978 (being Laws 1990, Chapter 78, Section 4, as amended) is amended to read:

"40-4C-4. MEDICAL SUPPORT--ORDER.--

A. The court shall determine a parent or both parents to be a medical support obligor based on the following:

(1) the availability of health insurance coverage that meets or exceeds the minimum standards required under the Mandatory Medical Support Act; and

(2) the availability of health insurance coverage through an employment-related or other group health and dental care insurance plan.

B. When a medical support obligor is ordered to provide health insurance coverage, the medical support obligor shall properly name each minor child on behalf of whom medical support is owed as an eligible dependent on such insurance.

C. The court may consider the impact of the cost of health insurance coverage on the payment of the base child support amounts in determining whether such insurance coverage shall be ordered.

D. The court may order the medical support obligor to obtain health insurance coverage for each minor child to whom medical support is owed if the court finds that health insurance coverage for each minor child is not available to the medical support obligor through an employment-related or other group health care insurance plan.

E. The court shall require the medical support obligor to pay cash medical support in specific dollar amounts when:

(1) a public entity provides health insurance;

(2) the court finds that health insurance is not available at the time an order is entered or modified and until such time that health insurance becomes available; or

(3) the court finds that the health insurance coverage required to be obtained by a medical support obligor does not pay all the medical or dental expenses of each minor child.

F. The court shall require the medical support obligor to be liable to the custodial parent or the department for all or a portion of the uninsured or uncovered medical and dental expenses of each minor child.

G. The court shall require the medical support obligor to provide health insurance coverage or dental insurance coverage for the benefit of the medical support obligee if it is available at no additional cost to the medical support obligor.

H. The court in any proceeding for the establishment, enforcement or modification of a child support obligation may modify an existing order of support or establish child support, as applicable, for each minor child to incorporate the provisions for medical and dental support ordered pursuant to the Mandatory Medical Support Act."

Senate Bill 57, aa

Approved March 26, 2009

LAWS 2009, CHAPTER 33

AN ACT

RELATING TO MUSEUMS; ENACTING THE VETERANS MUSEUM ACT; CREATING THE VETERANS MUSEUM DIVISION IN THE CULTURAL AFFAIRS DEPARTMENT; PROVIDING POWERS AND DUTIES.

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

Chapter 33 Section 1 Laws 2009

Section 1. SHORT TITLE.--Sections 1 through 8 of this act may be cited as the "Veterans Museum Act".

Chapter 33 Section 2 Laws 2009

Section 2. DEFINITIONS.--As used in the Veterans Museum Act:

- A. "board" means the board of trustees of the museum;
- B. "director" means the director of the division;
- C. "division" means the veterans museum division of the cultural affairs department;
- D. "museum" means the New Mexico veterans museum; and
- E. "secretary" means the secretary of cultural affairs.

Chapter 33 Section 3 Laws 2009

Section 3. VETERANS MUSEUM DIVISION CREATED--LOCATION--PROPERTY.--

A. The "veterans museum division" is created in the cultural affairs department. The principal facility of the division is the "New Mexico veterans museum" located in Las Cruces. The site shall be held in the name of the state.

B. All property, real or personal, now held or subsequently acquired for the operation of the museum shall be under the control and authority of the board.

C. Funds or other property received by gift, endowment or legacy shall remain under the control of the board and shall, upon acceptance, be employed for the purpose specified.

Chapter 33 Section 4 Laws 2009

Section 4. BOARD OF TRUSTEES CREATED--APPOINTMENTS--TERMS--OFFICERS.--

A. The "board of trustees of the New Mexico veterans museum" is created. The board shall consist of eleven voting members who are residents of New Mexico. One of the voting members shall be the secretary of veterans' services or that secretary's designated representative. Ten voting members shall be appointed by the governor with the advice and consent of the senate. In making the appointments, the governor shall appoint at least three members from each congressional district and give due consideration to the ethnic and geographic diversity of the state. No more than five of the ten appointed members shall be from the same political party. At least five of the members shall be armed forces veterans, one each from:

(1) the New Mexico national guard;

(2) the United States army;

(3) the United States navy;

(4) the United States air force; and

(5) the United States marine corps.

B. Of the initial appointees, four members shall be appointed for four-year terms, four members shall be appointed for three-year terms and two members shall be appointed for two-year terms. All subsequent appointed members shall be appointed for four-year terms.

C. A majority of the board members currently serving shall constitute a quorum at any meeting or hearing.

D. Any appointed member failing to attend three consecutive meetings after receiving proper notice shall be recommended for removal by the governor. The governor may also remove any appointed member of the board for neglect of any duty required by law, for incompetency, for unprofessional conduct or for violating any provisions of the Veterans Museum Act. If a vacancy occurs on the board, the governor shall appoint another member to complete the unexpired term.

E. The secretary of cultural affairs shall be an ex-officio nonvoting member of the board.

F. The governor shall designate the president of the board, who shall serve in that capacity at the pleasure of the governor.

G. Appointed members of the board are entitled to per diem and mileage as provided in the Per Diem and Mileage Act but shall receive no other compensation, perquisite or allowance.

Chapter 33 Section 5 Laws 2009

Section 5. BOARD--POWERS--DUTIES.--The board shall:

A. exercise trusteeship over the collections of the museum;

B. accept and hold title to all property for the museum's use;

C. review annually the performance of the director and report its findings to the secretary;

D. enter into agreements or contracts with private or public organizations, agencies or individuals for the purpose of obtaining real or personal property for the museum's use;

E. authorize the director to solicit and receive funds or property of any nature for the development of the museum, its collections and its programs;

F. adopt such rules as may be necessary to carry out the provisions of the Veterans Museum Act; and

G. establish policy, determine the mission and direct the development of the museum.

Chapter 33 Section 6 Laws 2009

Section 6. DIRECTOR--APPOINTMENT--QUALIFICATIONS.--

A. Subject to the authority of the secretary, the administrative and executive officer of the division and the museum is the "director" of the division.

B. The secretary shall appoint the director with the approval of the governor from a list of qualified finalists provided by the board of trustees.

C. The position of director shall require previous experience in museum administration.

Chapter 33 Section 7 Laws 2009

Section 7. DIRECTOR--POWERS--DUTIES.--Subject to the policies agreed to by the board, the director:

A. shall be responsible for the operation of the museum in accordance with all appropriate statutes and rules;

B. shall develop exhibits and programs displaying New Mexico veterans history for the benefit of the public and with particular concern for the interests of the schools of the state;

C. shall acquire by donation or other means of acquisition any collections and related materials appropriate to a veterans museum and shall direct research as is appropriate to render the collections of benefit to the public;

D. shall employ such professional staff and other employees as are necessary to the operation of the museum in accordance with the provisions of the Personnel Act;

E. may solicit and receive funds or property of any nature for the development of the museum;

F. may enter into contracts with public or private organizations, agencies or individuals for the performance of services related to the location, preservation, development, study or salvage of historical New Mexico veterans materials;

G. shall provide an office in the museum for use by the veterans' services department to provide services to New Mexico veterans;

H. shall cooperate with institutions of higher education and other agencies and political subdivisions of municipal, state and federal governments to establish, maintain and extend the programs of the museum;

I. may, as authorized by the board, lend collection materials to qualified institutions and agencies for purposes of exhibition and study and borrow collection materials from other institutions and agencies for the same purpose;

J. subject to the provisions of Section 8 of the Veterans Museum Act, shall impose and collect admission fees and conduct retail sales as are normal for the operation of the museum;

K. may publish journals, books, reports and other materials as are appropriate to the operation of the museum; and

L. shall perform other appropriate duties as may be delegated by the governor, the secretary or the board or as may be provided by law.

Chapter 33 Section 8 Laws 2009

Section 8. MUSEUM ADMISSION POLICY.--The board, the secretary of cultural affairs and the director shall establish and implement a policy to permit New Mexico residents age sixty years and older to enter all publicly accessible exhibit and program areas of the museum, except special exhibits and programs where commissions or royalties are paid by contract, free of charge every Wednesday that is not a holiday that the museum is open.

Chapter 33 Section 9 Laws 2009

Section 9. Section 9-4A-4 NMSA 1978 (being Laws 2004, Chapter 25, Section 4, as amended) is amended to read:

"9-4A-4. DEPARTMENT CREATED.--The "cultural affairs 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 arts division;
- C. the historic preservation division;
- D. the library division;
- E. the Hispanic cultural division;
- F. the farm and ranch heritage museum division;
- G. the natural history and science museum division;
- H. the museum of space history division;
- I. the museum resources division;
- J. the veterans museum division; and
- K. the following divisions that make up the museum of New Mexico:
 - (1) the palace of the governors state history museum division;
 - (2) the New Mexico museum of art division;

- (3) the museum of Indian arts and culture division;
- (4) the museum of international folk art division;
- (5) the archaeological services division; and
- (6) the state monuments division."

Chapter 33 Section 10 Laws 2009

Section 10. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.

House Bill 59

Approved March 27, 2009

LAWS 2009, CHAPTER 34

AN ACT

RELATING TO LOCAL GOVERNMENTS; CLARIFYING THE CONCURRENT AUTHORITY BETWEEN A MUNICIPALITY AND A COUNTY WITHIN THE EXTRATERRITORIAL ZONING JURISDICTION OF CERTAIN COUNTIES.

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

Chapter 34 Section 1 Laws 2009

Section 1. EXTRATERRITORIAL ZONING JURISDICTION--CONCURRENT AUTHORITY FOR CERTAIN COUNTIES.--A class A county with a population, as shown by the most recent federal decennial census, of greater than one hundred fifty thousand and less than four hundred thousand and a municipality within that county may exercise concurrent authority pursuant to an extraterritorial zoning authority created under Section 3-21-3 or 3-21-3.2 NMSA 1978 or pursuant to the terms of a joint powers agreement.

Senate Bill 563

Approved March 27, 2009

LAWS 2009, CHAPTER 35

AN ACT

RELATING TO WATER; PROVIDING STATE ENGINEER JURISDICTION OVER CERTAIN NONPOTABLE UNDERGROUND AQUIFERS; DECLARING AN EMERGENCY.

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

Chapter 35 Section 1 Laws 2009

Section 1. Section 72-12-25 NMSA 1978 (being Laws 1967, Chapter 86, Section 1) is amended to read:

"72-12-25. DECLARATION OF BASIN--NONPOTABLE DEEP AQUIFERS.--

A. An undeclared underground water basin having reasonably ascertainable boundaries that consists of an aquifer, the top of which aquifer is at a depth of two thousand five hundred feet or more below the ground surface at any location at which a well is drilled and which aquifer contains only nonpotable water, is subject to state engineer administration in accordance with Sections 72-12-25 through 72-12-28 NMSA 1978.

B. If the state engineer declares the type of underground water basin described in Subsection A of this section, all appropriations of nonpotable water from that basin for:

(1) oil and gas exploration and production, prospecting, mining, road construction, agriculture, generation of electricity, use in an industrial process or geothermal use shall remain subject to Sections 72-12-25 through 72-12-28 NMSA 1978; and

(2) all other uses shall be subject to Sections 72-12-1 through 72-12-24 NMSA 1978.

C. "Nonpotable water", for the purpose of Sections 72-12-25 through 72-12-28 NMSA 1978, means water containing not less than one thousand parts per million of dissolved solids."

Chapter 35 Section 2 Laws 2009

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

House Bill 19, aa, w/ec

Approved March 30, 2009

LAWS 2009, CHAPTER 36

AN ACT

RELATING TO WATER; REQUIRING STATE ENGINEER REVIEW AND APPROVAL FOR THE CONSTRUCTION AND OPERATION OF DAMS; PROVIDING FOR EXCEPTIONS.

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

Chapter 36 Section 1 Laws 2009

Section 1. Section 72-5-32 NMSA 1978 (being Laws 1941, Chapter 126, Section 25, as amended) is amended to read:

"72-5-32. CONSTRUCTION AND OPERATION OF DAMS--STATE ENGINEER AUTHORITY.--

A. Except as provided in Subsection D of this section, any person, association or corporation, public or private, the state or the United States intending to construct a dam shall file applications for appropriations and use of water pursuant to Section 72-5-1, 72-5-22, 72-5-23 or 72-5-24 NMSA 1978.

B. Any person, association or corporation, public or private, the state or the United States intending to construct or operate a dam shall submit detailed plans to the state engineer for approval before construction or operation of the dam, except for a dam that:

(1) is less than twenty-five feet in height from the lowest natural ground surface elevation at the downstream toe of the dam to the crest of the dam and has a storage capacity of less than fifty acre-feet of water;

(2) is less than six feet in height from the lowest natural ground surface elevation at the downstream toe of the dam to the crest of the dam, regardless of storage capacity; or

(3) has a storage capacity of fifteen acre-feet or less of water, regardless of height.

C. If the state engineer finds that the dam design and operational plan are safe, the state engineer shall approve the plans.

D. Filing an application for the appropriation and use of water is not required for the construction or operation of a flood or erosion control dam; provided that a flood or erosion control dam shall not store water for more than ninety-six hours unless a longer duration time is authorized by the state engineer and water stored shall not be placed to any beneficial use unless specifically authorized by the state engineer.

E. The state engineer shall determine how the height, storage capacity and storage duration for all dams are calculated or measured and shall prescribe the form in which dam design plans and operational plans are submitted."

House Bill 63

Approved March 30, 2009

LAWS 2009, CHAPTER 37

AN ACT

RELATING TO STATE EDUCATIONAL INSTITUTIONS; PROVIDING FOR THE CORRECTION OF OUTSTANDING DEFICIENCIES AT THE NEW MEXICO SCHOOL FOR THE BLIND AND VISUALLY IMPAIRED AND THE NEW MEXICO SCHOOL FOR THE DEAF PURSUANT TO THE PUBLIC SCHOOL CAPITAL OUTLAY ACT; DECLARING AN EMERGENCY.

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

Chapter 37 Section 1 Laws 2009

Section 1. Section 22-24-5.6 NMSA 1978 (being Laws 2006, Chapter 95, Section 6) is amended to read:

"22-24-5.6. OUTSTANDING DEFICIENCIES AT CERTAIN STATE EDUCATIONAL INSTITUTIONS.--

A. In consultation with the higher education department and the applicable board of regents, and after reviewing the existing five-year facilities plan and the facilities condition assessment, the public school facilities authority shall verify the assessed outstanding health, safety or infrastructure deficiencies at the New Mexico school for the blind and visually impaired and the New Mexico school for the deaf and shall develop a plan to correct the deficiencies.

B. The council may approve allocations from the fund and, working with the higher education department and the applicable board of regents, enter into construction contracts to correct the deficiencies.

C. The council shall establish oversight functions for the public school facilities authority and such other guidelines and conditions as it deems necessary to ensure that the allocations from the fund pursuant to this section are expended in the most prudent manner possible and consistent with the original purpose.

D. As used in the Public School Capital Outlay Act, "public school capital outlay project", "capital outlay project" or "project" includes a program for the correction of deficiencies at the New Mexico school for the blind and visually impaired or at the New Mexico school for the deaf pursuant to this section.

E. As used in Sections 22-24-5.1, 22-24-5.3 and 22-24-5.5 NMSA 1978 and in Paragraph (10) of Subsection B of Section 22-24-5 NMSA 1978, "school district" includes the New Mexico school for the blind and visually impaired and the New Mexico school for the deaf."

Chapter 37 Section 2 Laws 2009

Section 2. TEMPORARY PROVISION--STUDY OF MATCH REQUIREMENT.-- During calendar year 2009, the public school capital outlay oversight task force shall study reasonable alternatives for determining the local matching funds to be required from the New Mexico school for the blind and visually impaired and the New Mexico school for the deaf for a grant award pursuant to the Public School Capital Outlay Act and shall report its findings and recommendations to the second session of the forty-ninth legislature.

Chapter 37 Section 3 Laws 2009

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

House Bill 780, aa, w/ec

Approved March 31, 2009

LAWS 2009, CHAPTER 38

AN ACT

RELATING TO GAME AND FISH; PROVIDING FOR AUTHORITY FOR THE CONTROL AND PREVENTION OF THE SPREAD OF AQUATIC INVASIVE SPECIES IN NEW MEXICO; DECLARING AN EMERGENCY.

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

Chapter 38 Section 1 Laws 2009

Section 1. A new section of Chapter 17, Article 4 NMSA 1978 is enacted to read:

"AQUATIC INVASIVE SPECIES CONTROL.--

A. Based on a determination of credible scientific evidence, the director, after consulting with the secretary of energy, minerals and natural resources and with the concurrence of the director of the New Mexico department of agriculture, is authorized to designate:

(1) species of exotic or nonnative animals or plants as aquatic invasive species;

(2) water bodies within the state as infested waters; and

(3) specific requirements to decontaminate conveyances and equipment.

B. Prior to entering any water body in the state, the owner or person in control of a warning-tagged conveyance or warning-tagged equipment or a conveyance or equipment that has been in an infested water body in New Mexico or elsewhere shall:

(1) have the conveyance or equipment decontaminated by a person or entity approved by the director to effect decontamination, and only the person legally effecting the decontamination is authorized to remove a warning tag; and

(2) provide certification by a person legally authorized to effect decontamination that the conveyance or equipment is free from infestation or otherwise demonstrate compliance with the decontamination requirements established by the director.

C. A law enforcement officer may impound a conveyance or equipment if the person transporting the conveyance or equipment refuses to submit to an inspection authorized by this section and the officer has reason to believe that an aquatic invasive species may be present, or if the conveyance or equipment has a warning tag affixed and the operator of the conveyance is attempting to enter a state water body and cannot provide evidence that the conveyance or equipment has been decontaminated. A law enforcement officer shall take action to prevent equipment or conveyances

believed or known to contain an aquatic invasive species and warning-tagged equipment or conveyances from entering a state water body.

D. The impoundment of a conveyance or equipment may continue for a reasonable period necessary to inspect and decontaminate the conveyance or equipment.

E. Notwithstanding any provision to the contrary, no motor vehicle that is drawing a conveyance shall be impounded pursuant to this section.

F. Trained personnel of the department of game and fish or the state parks division of the energy, minerals and natural resources department may:

(1) establish, operate and maintain aquatic invasive species check stations at or adjacent to the entrance to any state-controlled water body or, pursuant to a cooperative agreement, at or adjacent to any county, municipal or federally or privately controlled water body or at or adjacent to the exit point of an infested water body in order to inspect conveyances and equipment prior to a conveyance or equipment entering, being launched onto or being directly exposed to water bodies of the state or upon the conveyance's or equipment's departure from infested waters;

(2) affix a warning tag to equipment or a conveyance where the presence of an aquatic invasive species has been found; or

(3) affix a warning tag to a conveyance or equipment upon the conveyance or equipment leaving an infested water.

G. It is unlawful for a person to:

(1) knowingly possess, import, export, ship or transport an aquatic invasive species into, within or from the state;

(2) knowingly release, place, plant or cause to be released, placed or planted an aquatic invasive species into a water body;

(3) remove a warning tag other than as provided pursuant to this section;

(4) introduce any tagged conveyance or equipment or any equipment or conveyance from which a warning tag has been unlawfully removed into a water body without first having that conveyance or equipment decontaminated; or

(5) knowingly introduce into any water body a conveyance or equipment that has been exposed to an infested water body or a water body in any other state known to contain aquatic invasive species without first being decontaminated.

H. Knowingly or willfully violating any provision of this section as a first offense is a petty misdemeanor. A second or subsequent violation of any provision of this section is a misdemeanor. Any violation is punishable pursuant to Section 31-19-1 NMSA 1978.

I. The director or the director's designee shall coordinate the monitoring of the water bodies of the state for the presence of aquatic invasive species, including privately controlled waters if the director has authorized access to them or has received permission to monitor them from the persons controlling access to such waters.

J. The commission is authorized to adopt rules pursuant to Section 17-1-26 NMSA 1978, and the secretary of energy, minerals and natural resources is authorized to adopt rules pursuant to Section 16-2-32 NMSA 1978 as necessary to implement and enforce the provisions of this section.

K. The director may enter into cooperative agreements with any federal, state, county or municipal authority or private entity that may be in control of a water body potentially affected by aquatic invasive species.

L. As used in this section:

(1) "aquatic invasive species" means quagga mussels and zebra mussels and other exotic or nonnative aquatic animals, including invertebrates but excluding those species listed as protected in Chapter 17 NMSA 1978, or any plant or animal species whose introduction into an aquatic ecosystem is determined by the director, after consulting with the secretary of energy, minerals and natural resources and with the concurrence of the director of the New Mexico department of agriculture, to cause or be likely to cause harm to the economy, environment or human health or safety;

(2) "commission" means the state game commission;

(3) "conveyance" means a motor vehicle, vessel, trailer or any associated equipment or containers, including, but not limited to, live wells, fish-hauling tanks, ballast tanks, motorized skis and bilge areas that may contain or carry an aquatic invasive species or any other equipment by which aquatic invasive species may be introduced into an aquatic ecosystem;

(4) "decontaminate" means to wash, drain, dry or otherwise treat a conveyance in accordance with guidelines established by the director in order to remove or destroy an aquatic invasive species;

(5) "director" means the director of the department of game and fish;

(6) "equipment" means an article, a tool, an implement, a device or a piece of clothing, including boots and waders, that is capable of containing or transporting water;

(7) "infested water" means a geographic region, water body or water supply system or facility within the state that the director, after consulting with the secretary of energy, minerals and natural resources and with the concurrence of the director of the New Mexico department of agriculture, identifies as carrying or containing an aquatic invasive species;

(8) "inspect" means to examine a conveyance or equipment to determine whether an aquatic invasive species is present;

(9) "law enforcement officer" means a state or federal certified law enforcement officer;

(10) "trained personnel" means individuals who have successfully completed the United States fish and wildlife service's aquatic invasive species watercraft inspection and decontamination training, level I or level II;

(11) "warning tag" means a tag that is affixed to equipment or a conveyance upon the equipment or conveyance leaving an infested water or upon an inspection determining that the equipment or conveyance contains an aquatic invasive species that requires the equipment or conveyance to be decontaminated; and

(12) "water body" means a natural or impounded surface water, including a stream, river, spring, lake, reservoir, pond, wetland, tank or fountain."

Chapter 38 Section 2 Laws 2009

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

HBIC/House Bill 467, w/ec

Approved March 31, 2009

LAWS 2009, CHAPTER 39

AN ACT

RELATING TO ELECTIONS; PROVIDING ALTERNATIVE MEANS FOR THE REMOVAL OF NAMES OF DECEASED NATIVE AMERICANS FROM VOTER POLLS.

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

Chapter 39 Section 1 Laws 2009

Section 1. Section 1-4-25 NMSA 1978 (being Laws 1969, Chapter 240, Section 81, as amended) is amended to read:

"1-4-25. CANCELLATION OF REGISTRATION--DETERMINATION OF DEATH.-

A. For purposes of cancellation of registration, the death of a voter shall be ascertained by obituary notices or probate records or by comparison of registration records with monthly certified lists of deceased residents filed with the secretary of state.

B. The state registrar of vital statistics shall file monthly with the secretary of state certified lists of deceased residents over the age of eighteen years, sorted by county, regardless of the place of death.

C. The monthly certified list of deceased residents shall show the:

- (1) name;
- (2) age;
- (3) sex;
- (4) marital status;
- (5) birth place;
- (6) birth date;
- (7) social security number, if any;
- (8) address; and
- (9) place and date of death of the deceased resident.

D. The secretary of state shall, upon receipt of the monthly certified list of deceased residents, forward each county's list to the county clerk.

E. The county clerk shall, upon receipt of the monthly certified list of deceased residents, cancel any deceased resident's certificate of registration.

F. Upon receipt of a notarized document from the president or governor of an Indian nation, tribe or pueblo or from a tribal enrollment clerk indicating that a tribal member is deceased, the county clerk shall cancel the certification of registration of that deceased tribal member."

House Bill 390

Approved March 31, 2009

LAWS 2009, CHAPTER 40

AN ACT

RELATING TO HIGHER EDUCATION; PROVIDING FOR THE CREATION OF A RIO RANCHO CAMPUS FOR THE UNIVERSITY OF NEW MEXICO AND OTHER INSTITUTIONS.

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

Chapter 40 Section 1 Laws 2009

Section 1. RIO RANCHO CAMPUS FOR THE UNIVERSITY OF NEW MEXICO AND OTHER INSTITUTIONS.--The board of regents of the university of New Mexico may create a campus of the university in Rio Rancho, which it may operate separately or jointly with any other post-secondary educational institution.

House Bill 354, aa

Approved March 31, 2009

LAWS 2009, CHAPTER 41

AN ACT

RELATING TO AGRICULTURE; AMENDING A SECTION OF CHAPTER 76, ARTICLE 20 NMSA 1978 TO PROVIDE FOR BRANDING NEW MEXICO AGRICULTURAL PRODUCTS BASED ON REGIONAL, VARIETAL OR SPECIALTY LABELS.

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

Chapter 41 Section 1 Laws 2009

Section 1. Section 76-20-3 NMSA 1978 (being Laws 1979, Chapter 130, Section 3) is amended to read:

"76-20-3. MARKET DEVELOPMENT PROGRAM.--The department is authorized to and may engage in a program of agricultural market development, which may include but not be limited to the following services and functions:

A. assisting in the development of new markets or expansion of existing markets for farm products produced or processed in the state;

B. disseminating information relating to the availability, quality and use of farm products;

C. collecting and disseminating information relating to prospective market conditions as well as current supplies, demand and prices of farm products;

D. serving as an intermediary between prospective purchasers and sellers of farm products as to source of supply and demand;

E. cooperating with and aiding farmers and other producers of farm and food products and distributors and consumers of such products in improving and maintaining an efficient system of distribution and marketing in reaching advantageous markets;

F. developing and implementing certification standards in cooperation with the affected growers and industry for the branding of agricultural products that may receive unique labels based on region of origin, variety or other special characteristics; provided that nothing in this subsection shall be construed to affect the trademark or copyright of an agricultural product or convey authority for trademarks or copyrights;

G. accepting and receiving grants from public or private agencies for expenditure in furtherance of the purposes of the Agricultural Market Development Act of 1979;

H. consulting with other states in the development of joint programs for the establishment and development of markets on a mutual or regional basis; and

I. performing such other services as may be necessary to fulfill the purposes of the Agricultural Market Development Act of 1979."

House Bill 38, aa

Approved March 31, 2009

LAWS 2009, CHAPTER 42

AN ACT

RELATING TO THE ENVIRONMENT; PROVIDING FOR REDUCTION OR ELIMINATION OF CIVIL PENALTIES FOR PERSONS WHO VOLUNTARILY REPORT POTENTIAL VIOLATIONS WITHIN SIXTY DAYS.

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

Chapter 42 Section 1 Laws 2009

Section 1. Section 74-1-6 NMSA 1978 (being Laws 1971, Chapter 277, Section 9, as amended) is amended to read:

"74-1-6. DEPARTMENT--POWERS.--The department shall have power to:

- A. sue and be sued;
- B. make contracts to carry out its delegated duties;
- C. enter into agreements with environmental and consumer protection agencies of other states and the federal government pertaining to duties of the department;
- D. enter into investigation and remediation agreements with persons potentially responsible for sites within New Mexico subject to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and such agreements shall not duplicate or take any authority from the oil conservation commission;
- E. serve as agent of the state in matters of environmental management and consumer protection not expressly delegated by law to another department, commission or political subdivision in which the United States is a party;
- F. enforce the rules, regulations and orders promulgated by the board and environmental management and consumer protection laws for which the department is responsible by appropriate action in courts of competent jurisdiction;
- G. collect civil penalties pursuant to law, including reduction or elimination of penalties for violations from persons that:
 - (1) within sixty days of the discovery of a potential violation, voluntarily report to the department potential violations of law enforced by the department;

(2) initiate corrective action for the potential violation;

(3) have not previously violated the same provision of law; and

(4) do not present an imminent and substantial endangerment to health or the environment by the potential violation.

H. on the same basis as any other person, recommend and propose regulations for promulgation by the board;

I. on the same basis as any other person, present data, views or arguments and examine witnesses and otherwise participate at all hearings conducted by the board or any other administrative agency with responsibility in the areas of environmental management or consumer protection, but shall not be given any special status over any other party; and

J. have such other powers as may be necessary and appropriate for the exercise of the powers and duties delegated to the department."

House Bill 106, aa

Approved March 31, 2009

LAWS 2009, CHAPTER 43

AN ACT

RELATING TO ANIMALS; CLARIFYING PROVISIONS OF CRIMINAL LAW REGARDING TAKING CRUELLY TREATED ANIMALS INTO CUSTODY; AMENDING THE LIVESTOCK CODE REGARDING CRUELLY TREATED ANIMALS; PROVIDING FOR SECURITY IN AMOUNTS NEEDED FOR THE CARE OF ANIMALS SEIZED IN COMMISSION OF CRUELTY TO ANIMALS CASES.

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

Chapter 43 Section 1 Laws 2009

Section 1. Section 30-18-1.2 NMSA 1978 (being Laws 1999, Chapter 107, Section 3) is amended to read:

"30-18-1.2. DISPOSITION OF SEIZED ANIMALS.--

A. If the court finds that a seized animal is not being cruelly treated and that the animal's owner is able to provide for the animal adequately, the court shall return the animal to its owner.

B. If the court finds that a seized animal is being cruelly treated or that the animal's owner is unable to provide for the animal adequately, the court shall hold a hearing to determine the disposition of the animal.

C. An agent of the New Mexico livestock board, an animal control agency operated by the state, a county or a municipality, or an animal shelter or other animal welfare organization designated by an animal control agency or an animal shelter, in the custody of which an animal that has been cruelly treated has been placed may petition the court to request that the animal's owner may be ordered to post security with the court to indemnify the costs incurred to care and provide for the seized animal pending the disposition of any criminal charges of committing cruelty to animals pending against the animal's owner.

D. The court shall determine the amount of security while taking into consideration all of the circumstances of the case including the owner's ability to pay, and may conduct periodic reviews of its order. If the posting of security is ordered, the animal control agency, animal shelter or animal welfare organization may, with permission of the court, draw from the security to indemnify the costs incurred to care and provide for the seized animal pending disposition of the criminal charges.

E. If the owner of the animal does not post security within fifteen days after the issuance of the order, or if, after reasonable and diligent attempts the owner cannot be located, the animal may be deemed abandoned and relinquished to the animal control agency, animal shelter or animal welfare organization for adoption or humane destruction; provided that if the animal is livestock other than poultry associated with cockfighting, the animal may be sold pursuant to the procedures set forth in Section 77-18-2 NMSA 1978.

F. Nothing in this section shall prohibit an owner from voluntarily relinquishing an animal to an animal control agency or shelter in lieu of posting security. A voluntary relinquishment shall not preclude further prosecution of any criminal charges alleging that the owner has committed felony cruelty to animals.

G. Upon conviction, the court shall place the animal with an animal shelter or animal welfare organization for placement or for humane destruction.

H. As used in this section, "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."

Chapter 43 Section 2 Laws 2009

Section 2. Section 30-18-1.3 NMSA 1978 (being Laws 1999, Chapter 107, Section 4) is amended to read:

"30-18-1.3. COSTS.--

A. Upon conviction, a defendant shall be liable for the reasonable cost of boarding the animal and all necessary veterinary examinations and care provided to the animal. The amount of these costs shall be offset by the security posted pursuant to Section 30-18-1.2 NMSA 1978. Unexpended security funds shall be returned to the defendant.

B. In the absence of a conviction, the seizing agency shall bear the costs of boarding the animal and all necessary veterinary examinations and care of the animal during the pendency of the proceedings, return the animal, if not previously relinquished, and all of the security posted pursuant to Section 30-18-1.2 NMSA 1978."

Chapter 43 Section 3 Laws 2009

Section 3. Section 77-18-2 NMSA 1978 (being Laws 1987, Chapter 151, Section 1, as amended) is amended to read:

"77-18-2. SEIZURE AND DISPOSITION OF CRUELLY TREATED LIVESTOCK.-

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A. If a livestock inspector or other peace officer has reason to believe that livestock is being cruelly treated, the inspector or peace officer may apply to a court in the county where the livestock is located for a warrant to seize the allegedly cruelly treated livestock.

B. On a showing of probable cause to believe that the livestock is being cruelly treated, the court shall issue a warrant for the seizure of the livestock and set the matter for hearing as expeditiously as possible within thirty days unless good cause for a later time is demonstrated by the state. Seizure as authorized by this section shall be restricted to only those livestock allegedly being cruelly treated. The board by rule shall establish procedures for preserving evidence of alleged cruel treatment of livestock.

C. If criminal charges are filed against the owner, the court shall, upon proper petition, proceed to determine if security is required to be posted pursuant to Section 30-18-1.2 NMSA 1978. Otherwise, the judge or magistrate executing the warrant shall notify the board, have the livestock impounded and give written notice to the owner of the livestock of the time and place of a hearing to determine disposition of the livestock.

D. All interested parties, including the district attorney, shall be given an opportunity to present evidence at the hearing, and if the court finds that the owner has cruelly treated the livestock, the court shall order the sale of the livestock at fair market value or order humane destruction. If the livestock is ordered sold, the sale shall occur within ten days of the order. If the court does not find that the owner has cruelly treated the livestock, the court shall order the livestock returned to the owner.

E. If the court orders the sale of the livestock, the board shall take proper action to ensure the livestock is sold at fair market value, including acceptance of reasonable bids or sale at auction. A bid by the owner of the livestock or the owner's representative shall not be accepted.

F. Proceeds from the sale of the livestock shall be forwarded to the court ordering the sale. From these proceeds, the court shall pay all expenses incurred in caring for the livestock while it was impounded and any expenses involved in its sale. Any excess proceeds of the sale shall be forwarded to the former owner. If the expenses incurred in caring for and selling the livestock exceed the amount received from the sale, the court shall order the former owner to pay the additional cost."

SJC/Senate Bill 127, aa

Approved March 31, 2009

LAWS 2009, CHAPTER 44

AN ACT

RELATING TO THE BORDER AUTHORITY; AMENDING POWERS AND DUTIES; REMOVING RESTRICTIONS ON THE BORDER AUTHORITY'S POWER TO OPERATE A PROJECT OR BUSINESS; INCREASING THE PURPOSE FOR WHICH THE BORDER AUTHORITY MAY EXPEND FUNDS.

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

Chapter 44 Section 1 Laws 2009

Section 1. Section 58-27-1 NMSA 1978 (being Laws 1991, Chapter 131, Section 1) is amended to read:

"58-27-1. SHORT TITLE.--Chapter 58, Article 27 NMSA 1978 may be cited as the "Border Development Act"."

Chapter 44 Section 2 Laws 2009

Section 2. Section 58-27-10 NMSA 1978 (being Laws 1991, Chapter 131, Section 10, as amended) is amended to read:

"58-27-10. POWERS AND DUTIES OF AUTHORITY.--

A. The authority shall:

(1) advise the governor and the governor's staff and the New Mexico finance authority oversight committee on methods, proposals, programs and initiatives involving the New Mexico-Chihuahua border area that may further stimulate the border economy and provide additional employment opportunities for New Mexico citizens;

(2) subject to the provisions of the Border Development Act, initiate, develop, acquire, own, construct and maintain border development projects;

(3) create programs to expand economic opportunities beyond the New Mexico-Chihuahua border area to other areas of the state;

(4) create avenues of communication between New Mexico and Chihuahua and the Republic of Mexico concerning economic development, trade and commerce, transportation and industrial affairs;

(5) promote legislation that will further the goals of the authority and development of the border region;

(6) produce or cause to have produced promotional literature related to explanation and fulfillment of the authority's goals;

(7) actively recruit industries and establish programs that will result in the location and relocation of new industries in the state;

(8) coordinate and expedite the involvement of the executive department's border area efforts; and

(9) perform or cause to be performed environmental, transportation, communication, land use and other technical studies necessary or advisable for projects or programs or to secure port-of-entry approval by the United States and the Mexican governments and other appropriate governmental agencies.

B. The authority may:

(1) solicit and accept federal, state, local and private grants of funds, property or financial or other aid in any form for the purpose of carrying out the provisions of the Border Development Act;

(2) adopt rules governing the manner in which its business is transacted and the manner in which the powers of the authority are exercised and its duties performed;

(3) act as an applicant for and operator of port-of-entry facilities and, as the applicant, carry out all tasks and functions, including acquisition by purchase or gift of any real property necessary for port-of-entry facilities, acquisition by purchase, gift or construction of any facilities or other real or personal property necessary for a port of entry and filing all necessary documents and follow-up of such filings with appropriate agencies;

(4) as part of a port of entry, give or transfer real property, facilities and improvements owned by the authority to the United States government;

(5) acquire by construction, purchase, gift or lease projects that shall be located within the state;

(6) sell, lease or otherwise dispose of a project upon terms and conditions acceptable to the authority and in the best interests of the state;

(7) issue revenue bonds and borrow money for the purpose of defraying the cost of acquiring a project by purchase or construction and to secure the payment of the bonds or repayment of a loan;

(8) expend funds or incur debt for the improvement, maintenance, repair or addition to property owned by the authority, the state or the United States government; and

(9) refinance a project.

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."

Senate Bill 55

Approved March 31, 2009

LAWS 2009, CHAPTER 45

AN ACT

RELATING TO PROPERTY CONTROL; EXEMPTING THE BORDER AUTHORITY FROM THE JURISDICTION OF THE PROPERTY CONTROL DIVISION OF THE GENERAL SERVICES DEPARTMENT.

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

Chapter 45 Section 1 Laws 2009

Section 1. Section 15-3B-2 NMSA 1978 (being Laws 1972, Chapter 74, Section 2, as amended) is amended to read:

"15-3B-2. DEFINITIONS.--As used in the Property Control Act:

A. "capital outlay project" means the acquisition, improvement, alteration or reconstruction of assets of a long-term character that are intended to continue to be held or used, including land, buildings, machinery, furniture and equipment. A "capital outlay project" includes all proposed expenditures related to the entire undertaking;

B. "department" means the general services department;

C. "director" means the director of the division;

D. "division" means the property control division of the department;

E. "jurisdiction" means all state buildings and land except those under the control and management of the state armory board, the border authority, the cultural affairs department, the state fair commission, the department of game and fish, the department of transportation, the commissioner of public lands, the state parks division of the energy, minerals and natural resources department, the state institutions of higher learning, regional education cooperatives, the New Mexico school for the deaf, the New Mexico school for the blind and visually impaired, the judicial branch, the legislative branch, property acquired by the economic development department pursuant to the Statewide Economic Development Finance Act and property acquired by the public school facilities authority pursuant to the Public School Capital Outlay Act; and

F. "secretary" means the secretary of general services."

Senate Bill 56

Approved March 31, 2009

LAWS 2009, CHAPTER 46

AN ACT

RELATING TO LOCAL GOVERNMENT; AMENDING SECTIONS OF THE PUBLIC IMPROVEMENT DISTRICT ACT TO PROVIDE FOR OWNERS AND RESIDENTS TO

ELECT A DISTRICT BOARD AND TO PROVIDE FOR LIMITATION OF PROPERTY TAX LEVIES TO PAY DEBT SERVICE ON BONDS.

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

Chapter 46 Section 1 Laws 2009

Section 1. Section 5-11-2 NMSA 1978 (being Laws 2001, Chapter 305, Section 2) is amended to read:

"5-11-2. DEFINITIONS.--As used in the Public Improvement District Act:

A. "clerk" means the clerk of the municipality or county, or any person appointed by the district board to be the district clerk pursuant to Section 5-11-6 NMSA 1978;

B. "county" means a county that forms a public improvement district pursuant to the Public Improvement District Act in an unincorporated area or in an incorporated area with the municipality's consent;

C. "debt service" means the principal of, interest on and premium, if any, on the bonds, when due, whether at maturity or prior redemption; the fees and costs of registrars, trustees, paying agents or other agents necessary to handle the bonds; and the costs of credit enhancement or liquidity support;

D. "development agreement" means an agreement between a property owner or developer and the county, municipality or district, concerning the improvement of specific property within the district, which agreement may be used to establish obligations of the owner or developer, the county or municipality or the district concerning the zoning, subdivision, improvement, impact fees, financial responsibilities and other matters relating to the development, improvement and use of real property within a district;

E. "district" means a public improvement district formed pursuant to the Public Improvement District Act by a municipality or by a county in an unincorporated area or in an incorporated area with the municipality's consent;

F. "district board" means the board of directors of the district, which shall be composed of members of the governing body, ex officio, or, at the option of the governing body, five directors appointed by the governing body of the municipality or county in which the district is located, until replaced by elected directors, which shall occur not later than six years after the date on which the resolution establishing the district is enacted, as provided in Section 5-11-9 NMSA 1978;

G. "election" means an election held in compliance with the provisions of Sections 5-11-6 and 5-11-7 NMSA 1978;

H. "enhanced services" means public services provided by a municipality or county within the district at a higher level or to a greater degree than otherwise available to the land located in the district from the municipality or county, including such services as public safety, fire protection, street or sidewalk cleaning or landscape maintenance in public areas. "Enhanced services" does not include the basic operation and maintenance related to infrastructure improvements financed by the district pursuant to the Public Improvement District Act;

I. "general plan" means the general plan described in Section 5-11-3 NMSA 1978, as the plan may be amended from time to time;

J. "governing body" means the body or board that by law is constituted as the governing body of the municipality or county in which the public improvement district is located;

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

L. "owner" means:

(1) the person who is listed as the owner of real property in the district on the current property tax assessment roll in effect at the time that the action, proceeding, hearing or election has begun. For purposes of voting in elections held pursuant to the Public Improvement District Act, when the owner of record title is a married person, only one spouse in whose name title is held may vote at such election. Where record title is held in more than one name, each owner may vote the number of fractions of acres represented by the owner's legal interest or proportionate share of and in the lands within the district;

(2) the administrator or executor of an estate holding record title to land within the district;

(3) the guardian of a minor or incompetent person holding record title to land within the district, appointed and qualified under the laws of the state;

(4) an officer of a corporation holding record title to land within the district, which officer has been authorized by resolution of the corporation's board of directors to act with respect to such land;

(5) the general partner of a partnership holding record title to land within the district;

(6) the trustee of a trust holding record title to land within the district; or

(7) the manager or member of a limited liability company holding record title to land within the district who has been authorized to represent the company;

M. "public infrastructure improvements" means all improvements listed in this subsection and includes both on-site improvements and off-site improvements that directly or indirectly benefit the district. Such improvements include necessary or incidental work, whether newly constructed, renovated or existing, and all necessary or desirable appurtenances. "Public infrastructure improvements" includes:

(1) sanitary sewage systems, including collection, transport, storage, treatment, dispersal, effluent use and discharge;

(2) drainage and flood control systems, including collection, transport, diversion, storage, detention, retention, dispersal, use and discharge;

(3) water systems for domestic, commercial, office, hotel or motel, industrial, irrigation, municipal or fire protection purposes, including production, collection, storage, treatment, transport, delivery, connection and dispersal;

(4) highways, streets, roadways, bridges, crossing structures and parking facilities, including all areas for vehicular use for travel, ingress, egress and parking;

(5) trails and areas for pedestrian, equestrian, bicycle or other nonmotor vehicle use for travel, ingress, egress and parking;

(6) pedestrian malls, parks, recreational facilities and open space areas for the use of members of the public for entertainment, assembly and recreation;

(7) landscaping, including earthworks, structures, lakes and other water features, plants, trees and related water delivery systems;

(8) public buildings, public safety facilities and fire protection and police facilities;

(9) electrical generation, transmission and distribution facilities;

(10) natural gas distribution facilities;

(11) lighting systems;

(12) cable or other telecommunications lines and related equipment;

(13) traffic control systems and devices, including signals, controls, markings and signage;

(14) school sites and facilities with the consent of the governing board of the public school district for which the site or facility is to be acquired, constructed or renovated;

(15) library and other public educational or cultural facilities;

(16) equipment, vehicles, furnishings and other personalty related to the items listed in this subsection; and

(17) inspection, construction management and program management costs;

N. "public infrastructure purpose" means:

(1) planning, design, engineering, construction, acquisition or installation of public infrastructure, including the costs of applications, impact fees and other fees, permits and approvals related to the construction, acquisition or installation of such infrastructure;

(2) acquiring, converting, renovating or improving existing facilities for public infrastructure, including facilities owned, leased or installed by an owner;

(3) acquiring interests in real property or water rights for public infrastructure, including interests of an owner;

(4) establishing, maintaining and replenishing reserves in order to secure payment of debt service on bonds;

(5) funding and paying from bond proceeds interest accruing on bonds for a period not to exceed three years from their date of issuance;

(6) funding and paying from bond proceeds fiscal, financial and legal consultant fees, trustee fees, discount fees, district formation and election costs and all costs of issuance of bonds issued pursuant to the Public Improvement District Act, including, but not limited to, fees and costs for bond counsel, financial advisors, consultants and underwriters, costs of obtaining credit ratings, bond insurance premiums, fees for letters of credit and other credit enhancement costs and printing costs;

(7) providing for the timely payment of debt service on bonds or other indebtedness of the district;

(8) refinancing any outstanding bonds with new bonds, including through the formation of a new public improvement district; and

(9) incurring expenses of the district incident to and reasonably necessary to carry out the purposes specified in this subsection;

O. "resident qualified elector" means a person who resides within the boundaries of a district or proposed district and who is qualified to vote in the general elections held in the state pursuant to Section 1-1-4 NMSA 1978;

P. "special levy" means a levy imposed against real property within a district that may be apportioned according to direct or indirect benefits conferred upon affected real property, as well as acreage, front footage, the cost of providing public infrastructure for affected real property, or other reasonable method, as determined by the governing body or district board, as applicable; and

Q. "treasurer" means the treasurer of the governing body or the person appointed by the district board as the district treasurer pursuant to Section 5-11-6 NMSA 1978."

Chapter 46 Section 2 Laws 2009

Section 2. Section 5-11-9 NMSA 1978 (being Laws 2001, Chapter 305, Section 9) is amended to read:

"5-11-9. APPOINTMENT OF DIRECTORS--QUALIFICATIONS--TERMS--RESUMPTION OF GOVERNANCE BY GOVERNING BODY.--

A. The governing body, at its option, may authorize the appointment of a separate district board. In the case of an appointed district board, three of the appointed directors shall serve an initial term of six years. Two of the appointed directors shall serve an initial term of four years. The resolution forming the district shall state which directors shall serve four-year terms and which shall serve six-year terms. If a vacancy occurs on the district board because of death, resignation or inability of the director to discharge the duties of director, the governing body shall appoint a director to fill the vacancy, who shall hold office for the remainder of the unexpired term until a successor is appointed or elected.

B. A director may be a director of more than one district.

C. At the end of the appointed directors' terms, the governing body shall hold an election of new directors by majority vote of the qualified electors and owners."

Chapter 46 Section 3 Laws 2009

Section 3. Section 5-11-19 NMSA 1978 (being Laws 2001, Chapter 305, Section 19) is amended to read:

"5-11-19. GENERAL OBLIGATION BONDS--TAX LEVY--EXCEPTION.--

A. At any time after the hearing on formation of the district, the district board, or, if before formation, the governing body may from time to time order and call a general obligation bond election to submit to the owners and qualified electors the question of authorizing the district to issue general obligation bonds of the district to provide money for any public infrastructure purposes consistent with the general plan. The question shall include authorization for a levy, including a limitation on the levy, of a property tax to pay debt service on the bonds. The election may be held in conjunction with the formation election.

B. If general obligation bonds are approved at an election, the district board may issue and sell general obligation bonds of the district.

C. Bonds may be sold in a public offering or in a negotiated sale.

D. After the bonds are issued, the district board shall enter in its minutes a record of the bonds sold and their numbers and dates and shall annually levy and cause a property tax to be collected, at the same time and in the same manner as other property taxes are levied and collected on all taxable property in the district, sufficient, together with any money from the sources described in Section 5-11-17 NMSA 1978 to pay debt service on the bonds when due. Money derived from the levy of property taxes that are pledged to pay the debt service on the bonds shall be kept separately from other funds of the district. Property tax revenues not pledged to pay debt service on bonds may be used to pay other costs of the district, including costs of formation, administration, operation and maintenance, services or enhanced services. A district's levy of property taxes shall constitute a lien on all taxable property within the district, including, without limitation, all leased property or improvements to leased land, which shall be subject to foreclosure in the same manner as other property tax liens under the laws of this state. The lien shall include delinquencies and interest thereon at a rate not to exceed ten percent per year, the actual costs of foreclosure and any other costs of the district resulting from the delinquency. The proceeds of any foreclosure sale shall be deposited in the special bond fund for payment of any obligations secured thereby.

E. Subject to the election requirements of this section, a district may issue general obligation bonds at such times and in such amounts as the district deems appropriate to carry out a project or projects in phases.

F. Pursuant to this section, the district may issue and sell refunding bonds to refund general obligation bonds of the district authorized by the Public Improvement District Act. No election is required in connection with the issuance and sale of refunding bonds. Refunding bonds issued pursuant to this section shall have a final maturity date no later than the final maturity date of the bonds being refunded."

Chapter 46 Section 4 Laws 2009

Section 4. Section 5-11-26 NMSA 1978 (being Laws 2001, Chapter 305, Section 26) is amended to read:

"5-11-26. CUMULATIVE AUTHORITY.--The Public Improvement District Act shall be deemed to provide an additional and alternative method for the doing of things authorized by that act and shall be regarded as supplemental and additional to powers conferred by other laws and shall not be regarded as in derogation of any powers now existing; provided that the issuance of bonds under the provisions of the Public Improvement District Act need not comply with the requirements of any other law applicable to the issuance of bonds, except the Public Securities Limitation of Action Act, which shall apply."

Senate Bill 110, aa

Approved March 31, 2009

LAWS 2009, CHAPTER 47

AN ACT

RELATING TO HIGHER EDUCATION; CHANGING THE PROPORTION OF THE PRESIDENT'S GRATIS SCHOLARSHIPS AT PUBLIC POST-SECONDARY EDUCATIONAL INSTITUTIONS TO BE GRANTED BASED ON FINANCIAL NEED.

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

Chapter 47 Section 1 Laws 2009

Section 1. Section 21-1-2 NMSA 1978 (being Laws 1970, Chapter 9, Section 1, as amended) is amended to read:

"21-1-2. MATRICULATION AND TUITION FEES.--

A. Except as otherwise provided in this section and in Section 21-1-4.3 NMSA 1978, the boards of regents of the university of New Mexico, New Mexico state university, New Mexico highlands university, western New Mexico university, eastern New Mexico university, New Mexico military institute and New Mexico institute of mining and technology shall establish and charge matriculation fees and tuition fees as follows:

(1) each student shall be charged a matriculation fee of not less than five dollars (\$5.00) upon enrolling in each institution;

(2) each student who is a resident of New Mexico shall be charged a tuition fee of not less than twenty dollars (\$20.00) a year;

(3) each student who is not a resident of New Mexico shall be charged a tuition fee of not less than fifty dollars (\$50.00) a year;

(4) each student shall be charged a tuition fee of not less than ten dollars (\$10.00) for each summer session; and

(5) each student may be charged a tuition fee for extension courses.

B. Except as otherwise provided in this section and in Section 21-1-4.3 NMSA 1978, the board of regents of northern New Mexico college shall establish and charge each student a matriculation fee and a tuition fee.

C. The board of regents of each institution may establish and grant gratis scholarships to students who are residents of New Mexico in an amount not to exceed the matriculation fee or tuition and fees, or both. These scholarships are in addition to the lottery tuition scholarships authorized in Section 21-1-4.3 NMSA 1978 and shall be granted to the full extent of available funds before lottery tuition scholarships are granted. The number of scholarships established and granted pursuant to this subsection shall not exceed three percent of the preceding fall semester enrollment in each institution and shall not be established and granted for summer sessions. The president of each institution shall select and recommend to the board of regents of the institution, as recipients of scholarships, students who possess good moral character and satisfactory initiative, scholastic standing and personality. Beginning with the fall semester of 2010, a minimum of one-half of the gratis scholarships established and granted by each board of regents each year shall be granted on the basis of financial need, and beginning with the fall semester of 2011, a minimum of two-thirds of the gratis scholarships established and granted by each board of regents each year shall be granted on the basis of financial need.

D. The board of regents or governing board of each institution set out in this subsection may establish and grant, in addition to those scholarships provided for in Subsection C of this section, athletic scholarships for tuition and fees. In no event shall the board of regents of any institution be allowed to award scholarships for tuition and fees for more than the number of athletic scholarships set out in this subsection and in no event shall more than seventy-five percent of the scholarships granted be for out-of-state residents:

(1) the board of regents of the university of New Mexico may grant up to two hundred ninety-three athletic scholarships;

(2) the board of regents of New Mexico state university may grant up to two hundred seventy athletic scholarships;

(3) the boards of regents of New Mexico highlands university, eastern New Mexico university and western New Mexico university may each grant up to one hundred forty athletic scholarships; and

(4) the governing board of New Mexico junior college may grant up to fifty-two athletic scholarships.

E. In the event that the number of athletic scholarships exceeds the number of athletic scholarships permitted that institution by regulations and bylaws of the national collegiate athletic association or the national association of intercollegiate athletics of which that institution is a member, the appropriate board of regents shall reduce the number of authorized tuition scholarships to comply with association rules and regulations.

F. Matriculation fees and tuition fees shall be fixed and made payable as directed by the board of regents of each institution, collected by the officers of each institution and accounted for as are other funds of the institutions. Matriculation fees shall be charged only once for each institution in which a student enrolls."

Chapter 47 Section 2 Laws 2009

Section 2. Section 21-13-19 NMSA 1978 (being Laws 1968, Chapter 70, Section 2, as amended) is amended to read:

"21-13-19. ENROLLMENT DEFINED--PAYMENTS.--

A. For those students in community colleges taking college-level courses, full-time-equivalent students shall be defined and computed by the higher education department in the same manner in which it defines and computes full-time-equivalent students for all other college-level programs within its jurisdiction.

B. No student shall be included in any calculations made under the provisions of this section if the student is enrolled in a course the cost of which is totally reimbursed from federal, state or private sources.

C. The higher education department shall not recommend an appropriation greater than three hundred twenty-five dollars (\$325) for each full-time-equivalent student for any community college that levies a tax at a rate less than two dollars (\$2.00), unless a lower amount is required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon a rate of at least two dollars (\$2.00) on each one thousand dollars (\$1,000) of net taxable value, as that term is defined in the Property Tax Code, or any community college that reduces a previously authorized tax levy, except as required by the operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978.

D. The higher education department shall require from the community college such reports as the department deems necessary for the purpose of determining the number of full-time-equivalent students at the community college eligible to receive support under this section.

E. A community college board shall establish tuition and fee rates for its respective institutions for full-time, part-time, resident and nonresident students, as defined by the higher education department.

F. A community college board may establish and grant gratis scholarships to students who are residents of New Mexico in an amount not to exceed the matriculation fee or tuition and fees, or both. The gratis scholarships are in addition to the lottery tuition scholarships authorized in Section 21-13-10 NMSA 1978 and shall be granted to the full extent of available funds before lottery tuition scholarships are granted. The number of scholarships established and granted pursuant to this subsection shall not exceed three percent of the preceding fall semester enrollment in each institution and shall not be established and granted for summer sessions. The president of each institution shall select and recommend to the community college board of the president's institution, as recipients of scholarships, students who possess good moral character and satisfactory initiative, scholastic standing and personality. All of the gratis scholarships established and granted by each community college board each year shall be granted on the basis of financial need.

G. A student in a home school or private school who meets the eligibility criteria in rules promulgated by the public education department and higher education department may apply for dual credit courses, provided that the student pays the full cost of dual credit courses."

Chapter 47 Section 3 Laws 2009

Section 3. Section 21-14-5 NMSA 1978 (being Laws 1957, Chapter 143, Section 4, as amended) is amended to read:

"21-14-5. FINANCING OF BRANCH COMMUNITY COLLEGES--TUITION AND FEE WAIVERS.--

A. Financing of branch community colleges shall be by tuition and fees, which shall be set by the board of regents of the parent institution, by gifts and grants and by other funds as may be made available pursuant to the provisions of the College District Tax Act or Chapter 21, Article 14 NMSA 1978.

B. The board of regents of the respective parent institution of the branch community college may establish and grant gratis scholarships to students of the branch community college who are residents of New Mexico in an amount not to exceed the matriculation fee or tuition and fees, or both. Except as provided in Section 21-1-4.3 NMSA 1978, the number of scholarships established and granted shall not exceed three percent of the preceding fall semester enrollment in the branch community college and shall not be established and granted for summer sessions. The president of each institution shall select and recommend to the board of regents of the president's institution, as recipients of scholarships, students who possess good moral character and satisfactory initiative, scholastic standing and personality. Beginning with the fall

semester of 2010, a minimum of one-half of the gratis scholarships established and granted by the board of regents for a branch community college each year shall be granted on the basis of financial need, and beginning with the fall semester of 2011, a minimum of two-thirds of the gratis scholarships established and granted by each board of regents each year shall be granted on the basis of financial need."

Chapter 47 Section 4 Laws 2009

Section 4. Section 21-16-10 NMSA 1978 (being Laws 1968, Chapter 59, Section 3, as amended) is amended to read:

"21-16-10. APPROPRIATION--DISTRIBUTION.--

A. The higher education department shall recommend an appropriation for each technical and vocational institute based upon its financial requirements in relation to its authorized program and its available funds from non-general fund sources; provided, the recommended appropriation shall be an amount not less than three hundred twenty-five dollars (\$325) for each full-time-equivalent student.

B. The higher education department shall by rule provide for the method for calculating the number of full-time-equivalent students in technical and vocational institutes. No student shall be included in any calculation of the number of full-time-equivalent students if the student is enrolled in a course, the cost of which is totally reimbursed from federal, state or private sources.

C. The higher education department shall not recommend an appropriation greater than three hundred twenty-five dollars (\$325) for each full-time-equivalent student for any technical and vocational institute that levies a tax at a rate less than two dollars (\$2.00), unless a lower amount is required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon a rate approved by the electors of at least two dollars (\$2.00) on each one thousand dollars (\$1,000) of net taxable value, as that term is defined in the Property Tax Code, or any technical and vocational institute that reduces a previously authorized tax levy, except as required by the operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978.

D. The board may establish and grant gratis scholarships to students who are residents of New Mexico in an amount not to exceed the matriculation fee or tuition and fees, or both. The gratis scholarships are in addition to the lottery tuition scholarships authorized in Section 21-16-10.1 NMSA 1978 and shall be granted to the full extent of available funds before lottery tuition scholarships are granted. The number of scholarships established and granted pursuant to this subsection shall not exceed three percent of the preceding fall semester enrollment in the technical and vocational institute and shall not be established and granted for summer sessions. The president of the technical and vocational institute shall select and recommend to the board as recipients of scholarships students who possess good moral character and satisfactory initiative, scholastic standing and personality. Beginning with the fall semester of 2010,

a minimum of one-half of the gratis scholarships established and granted by the board each year shall be granted on the basis of financial need, and beginning with the fall semester of 2011, a minimum of two-thirds of the gratis scholarships established and granted by each board of regents each year shall be granted on the basis of financial need."

Senate Bill 28, aa

Approved March 31, 2009

LAWS 2009, CHAPTER 48

AN ACT

RELATING TO REGIONAL HOUSING; EXPANDING ELIGIBILITY TO MODERATE-INCOME PERSONS; CONSOLIDATING REGIONAL HOUSING AUTHORITIES; REVISING THE GOVERNANCE AND OVERSIGHT OF REGIONAL HOUSING AUTHORITIES; DECLARING AN EMERGENCY.

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

Chapter 48 Section 1 Laws 2009

Section 1. Section 11-3A-2 NMSA 1978 (being Laws 1994, Chapter 132, Section 2, as amended) is amended to read:

"11-3A-2. FINDING AND DECLARATION OF NECESSITY.--It is declared that:

- A. unsanitary and unsafe dwelling accommodations exist in the state;
- B. low- and moderate-income persons are forced to reside in unsanitary and unsafe accommodations;
- C. within the state:
 - (1) there is a shortage of safe and sanitary dwelling accommodations available at rents that low- and moderate-income persons can afford;
 - (2) low- and moderate-income persons are forced to occupy overcrowded, congested dwelling accommodations; and
 - (3) these conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals and welfare of the residents of the state and impair economic values;

D. excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety, fire and accident protection and other public services and facilities are necessitated;

E. private enterprise alone cannot meet the need or resolve the problems inherent in providing appropriate, safe, sanitary and sufficient housing for low- and moderate-income persons, and public participation in construction of low- and moderate-income housing does not compete with private enterprise;

F. demolition, replanning, reconstruction or renovation of unsanitary and unsafe housing and acquisition of land to provide safe and sanitary dwellings for low- and moderate-income persons are in the public interest and are essential state and local governmental functions requiring expenditures of public money; and

G. it is in the public interest that work on projects for demolition, planning, reconstruction, renovation and land acquisition for provision of safe and sanitary dwellings for low- and moderate-income persons be started immediately in order to relieve the housing shortage that has reached emergency status, and it is a necessity that the Regional Housing Law be continued to relieve that emergency."

Chapter 48 Section 2 Laws 2009

Section 2. Section 11-3A-3 NMSA 1978 (being Laws 1994, Chapter 132, Section 3, as amended) is amended to read:

"11-3A-3. DEFINITIONS.--As used in the Regional Housing Law:

A. "affordable housing" means housing that serves the needs of low- and moderate-income persons;

B. "affordable housing programs" means an ongoing delivery system of affordable housing services that assists persons of low- and moderate-income;

C. "federal government" includes the United States of America, programs of the United States department of housing and urban development, the farmers home administration and rural development administration of the United States department of agriculture or housing programs or any other agency or instrumentality, corporate or otherwise, of the United States of America;

D. "housing project" means an undertaking of an authority to:

(1) demolish, clear or remove buildings from any slum area. The undertaking may embrace the adaptation of the area to public purposes, including parks or other recreational or community purposes; or

(2) provide decent, safe and sanitary dwellings, apartments, single-family dwellings or other affordable living accommodations for low- and moderate-income persons. The undertaking may include buildings, land, equipment, facilities and other real or personal property for necessary, convenient or desirable appurtenances, streets, sewers, water service, parks, site preparation or gardening or administrative, community, health, recreational, welfare or other purposes. "Housing project" also may be applied to the planning of buildings and improvements, acquisition of property or existing structures, demolition of existing structures, construction, reconstruction, alteration and repair of improvements or buildings or any other work performed to complete housing projects;

E. "indebtedness" means any note, interim certificate, debenture or other obligation to be issued pursuant to the Regional Housing Law;

F. "local housing authority" means any municipal or county housing authority established by a municipality or county;

G. "local public body" means any county, municipality, commission, district or other political subdivision of the state;

H. "low-income person" means any individual, couple or family whose gross income does not exceed eighty percent of the person's particular area median income and who cannot afford to pay more than thirty-five percent of gross annual income for housing rent or mortgage payments; or a low-income person as defined by the federal government;

I. "moderate-income person" means any individual, couple or family whose gross annual income is not less than eighty percent of the person's particular area median income and does not exceed one hundred twenty percent of the area income;

J. "obligee" means:

(1) a holder of indebtedness issued pursuant to the Regional Housing Law or a trustee for the holder of debt;

(2) a lessor leasing to a regional housing authority or a local housing authority property used in connection with a housing project or any assignee of a lessor's interest or partial interest; or

(3) the federal government when it is a party to a contract with a regional housing authority or a local housing authority in regard to a housing project;

K. "real property" includes all lands, including improvements and fixtures on the land, property of any nature appurtenant to or used in connection with the land and every estate, interest and right, legal or equitable, in the land, including terms for

years and liens by way of judgment, mortgage or other instrument and the indebtedness secured by the lien;

L. "regional housing authority" means any regional housing authority or a nonprofit housing corporation approved pursuant to Section 11-3A-9 NMSA 1978; and

M. "slum" means any area where dwellings predominate, which by reason of dilapidation, overcrowding, lack of ventilation, light or sanitary facilities or any combination of these factors is detrimental to safety, health or morals."

Chapter 48 Section 3 Laws 2009

Section 3. Section 11-3A-4 NMSA 1978 (being Laws 1994, Chapter 132, Section 4) is amended to read:

"11-3A-4. REGIONAL HOUSING AUTHORITIES CREATED.--Three regional housing authorities are created for the state of New Mexico as follows:

A. the northern regional housing authority that shall include Cibola, Taos, McKinley, Rio Arriba, San Juan, San Miguel, Mora, Los Alamos, Colfax and Sandoval counties;

B. the eastern regional housing authority that shall include Chaves, De Baca, Eddy, Guadalupe, Harding, Lea, Lincoln, Otero, Quay, Roosevelt, Union and Curry counties; and

C. the western regional housing authority that shall include Grant, Hidalgo, Luna, Sierra, Socorro, Catron, Torrance and Valencia counties."

Chapter 48 Section 4 Laws 2009

Section 4. Section 11-3A-5 NMSA 1978 (being Laws 1994, Chapter 132, Section 5, as amended) is amended to read:

"11-3A-5. JURISDICTION.--

A. The regional housing authorities created pursuant to Section 11-3A-4 NMSA 1978 shall operate within the specified area of their region except for any portion within the territorial boundary of a municipality or county that has established a local housing authority. If the governing body of a municipality or county that has established a local housing authority consents by resolution to have the regional housing authority take action within the territory that would be excluded pursuant to this section, the regional housing authority may enlarge its jurisdiction to include that territory.

B. A subsequent withdrawal of consent by resolution of a governing body of a municipality or county that has established a local housing authority shall not

prohibit the development and operation of any housing projects initiated within the territorial boundary of that municipality or county by the regional housing authority prior to the date of the resolution withdrawing consent, except upon terms that are mutually agreed upon between the regional housing authority and the governing body of the municipality or county."

Chapter 48 Section 5 Laws 2009

Section 5. Section 11-3A-6 NMSA 1978 (being Laws 1994, Chapter 132, Section 6, as amended) is amended to read:

"11-3A-6. POWERS OF REGIONAL HOUSING AUTHORITY IN BOARD OF COMMISSIONERS--APPOINTMENT OF BOARD OF REGIONAL HOUSING AUTHORITIES--TERMS.--

A. The powers of each regional housing authority shall be vested in its board of commissioners as the board may be constituted, from time to time. The board of commissioners of the regional housing authority for each of the three regions shall consist of one person from each county within the designated area of the regional housing authority, which person shall be a resident of that county and shall be appointed by the governor. Appointments shall be for terms of four years and shall be made so that the terms of not more than four commissioners on each board of commissioners expire on July 1 of each year. Vacancies shall be filled for the unexpired term. Commissioners shall serve until their successors have been appointed.

B. Members of a board of commissioners of a regional housing authority shall elect an executive committee consisting of a chair, vice chair, treasurer, secretary and one other member of the board to function and meet on a monthly basis as an executive committee. The executive committee shall have the authority to act on behalf of the board of commissioners of the regional housing authority as needed. The executive committee shall submit a report of actions to the full board of commissioners, which shall meet on a quarterly basis.

C. The members of the boards of commissioners may receive per diem and mileage as provided in the Per Diem and Mileage Act but shall receive no other compensation, perquisite or allowance. A majority of the appointed commissioners shall constitute a quorum of a board of commissioners for the purpose of conducting its business and exercising its powers and for all other purposes. Action may be taken by a regional housing authority upon a vote of a majority of the commissioners present. Each board of commissioners shall organize itself at its annual meeting each year. A board of commissioners may employ an executive director, subject to approval by the New Mexico mortgage finance authority. With delegated authority from the board of commissioners, the executive director may hire or terminate, according to the procurement and personnel policies and procedures of the regional housing authority, any technical experts, officers, attorneys, agents or employees, permanent or temporary, as the regional housing authority may require.

D. The threshold requirements for commissioners of regional housing authorities are that commissioners have expertise and experience in housing construction, real estate, architecture, law, banking, housing finance, business, property management, accounting, residential development, public housing programs, community development, social services or health care. The requirements set forth in this section shall not apply to commissioners serving pursuant to requirements of the federal department of housing and urban development.

E. Commissioners are expected to attend all meetings of the board of commissioners of the regional housing authority, and more than three unexcused absences may be grounds for dismissal from the board. All recommendations for appointment as commissioners shall be forwarded to and reviewed by the New Mexico mortgage finance authority prior to recommendation to the governor."

Chapter 48 Section 6 Laws 2009

Section 6. Section 11-3A-7 NMSA 1978 (being Laws 1994, Chapter 132, Section 7, as amended) is amended to read:

"11-3A-7. POWERS.--

A. Every regional housing authority may:

(1) within its region, prepare, carry out, acquire, purchase, lease, construct, reconstruct, improve, alter, extend or repair any housing project and operate and maintain the housing project or affordable housing program. For any of such purposes, the board of commissioners of the regional housing authority may expend money and authorize the use of any property of the regional housing authority;

(2) lease or rent dwellings, houses, accommodations, lands, buildings, structures or facilities embraced in any housing project or affordable housing program and establish and revise the rents or lease charges; own, hold and improve real or personal property; purchase, lease, obtain options upon or acquire by gift, grant, bequest, devise or otherwise any real or personal property or any interest therein; sell, lease, mortgage, exchange, transfer, assign, pledge or dispose of real or personal property or any interest in real or personal property; or procure or agree to the procurement of insurance or guarantees from the federal government of the payment of any bonds or parts thereof, including the power to pay premiums on the insurance;

(3) enter on lands, buildings or property for the purpose of making surveys, soundings and examinations in connection with the planning or construction, or both, of a housing project;

(4) insure or provide for the insurance of a housing project of the regional housing authority against the risks that the regional housing authority may deem advisable;

(5) arrange or contract for the furnishing by any person or agency, public or private, of services, privileges, works or facilities for or in connection with a housing project or the occupants thereof and include in any construction contract let in connection with a housing project stipulations requiring that the contractor and subcontractors comply with employment requirements, including those in the constitution and laws of this state, as to minimum wages and maximum hours of labor and comply with any conditions that the state or federal government may have attached to its financial aid of the project;

(6) within its area of operation, investigate the living, dwelling and housing conditions and the means and methods of improving those conditions; determine where slum areas exist or where there is a shortage of decent, safe and sanitary dwelling accommodations for low- and moderate-income persons; make studies and recommendations relating to the problem of clearing, replanning and reconstructing slum areas and the problem of providing dwelling accommodations for low- and moderate-income persons and cooperate with the state or any political subdivision of the state in action taken in connection with the problems identified; and engage in research, studies and experimentation on the subject of housing; and

(7) exercise all or any part or combination of powers granted in this subsection.

B. To standardize the delivery of affordable housing programs and affordable housing services in New Mexico, regional housing authorities within their jurisdictions may:

(1) create partnerships between state, federal, city and county governments, nonprofit entities and the private sector that will provide the necessary resources to carry out the planning, financing, development and delivery of affordable housing and affordable housing programs;

(2) assist local housing authorities or housing nonprofit agencies in developing the knowledge, expertise and technical capacity to provide a comprehensive approach to the development and delivery of affordable housing and affordable housing programs; or

(3) provide or secure planning, technical assistance and training that city or county governments and nonprofit entities may need in an effort to enhance the local affordable housing delivery system.

C. In the event a local housing authority is declared by the federal department of housing and urban development to be in default on its annual contributions contract with that department, the local housing authority may by resolution of its governing body transfer its assets and operations to the regional housing authority or local housing authority within which jurisdiction it lies.

D. In the event of a resolution pursuant to Subsection C of this section, the appropriate regional housing authority or local housing authority shall accept by resolution of its board of commissioners a transfer of the assets and operations of a local housing authority that has been declared by the federal department of housing and urban development to be in default on its annual contributions contract with that department."

Chapter 48 Section 7 Laws 2009

Section 7. Section 11-3A-8 NMSA 1978 (being Laws 1994, Chapter 132, Section 8, as amended) is amended to read:

"11-3A-8. REQUIREMENTS RESPECTING LEASE.--

A. Prior to the leasing of any housing project, the regional housing authority shall determine and find the following:

(1) the amount necessary in each year to pay indebtedness proposed to fund the housing project; and

(2) the amount necessary to be paid each year into any reserve funds that the regional housing authority may deem advisable to establish in connection with the retirement of any indebtedness and the maintenance of the housing project and, unless the terms under which the housing project is to be leased provide that the lessee shall maintain the housing project and carry all proper insurance with respect to it, the estimated cost of maintaining the housing project in good repair and keeping it properly insured.

B. The determinations and findings of the regional housing authority required to be made in this section shall be set forth in the proceedings under which the proposed indebtedness is to be incurred.

C. Prior to the incurrence of any indebtedness, the regional housing authority shall lease or sell the housing project to a lessee or purchaser under an agreement that is conditioned upon completion of the housing project and that provides for payment to the regional housing authority of rentals or payments in an amount that is found, based on the determinations and findings, to:

(1) pay the indebtedness incurred to fund the housing project;

(2) build up and maintain any reserve deemed by the regional housing authority to be advisable in connection with the housing project; and

(3) pay the costs of maintaining the housing project in good repair and keeping it properly insured, unless the agreement of lease obligates the lessee to pay for the maintenance and insurance of the housing project."

Chapter 48 Section 8 Laws 2009

Section 8. Section 11-3A-9 NMSA 1978 (being Laws 1994, Chapter 132, Section 9, as amended) is amended to read:

"11-3A-9. NONPROFIT CORPORATIONS.--Every regional housing authority, in addition to other powers conferred by the Regional Housing Law, shall have, if authorized by resolution of its board of commissioners and approved by the state board of finance, the power to create nonprofit corporations to carry out the powers and duties set forth in Section 11-3A-7 NMSA 1978. The articles of incorporation and bylaws, and any subsequent changes, shall be recommended for approval by the state board of finance and the New Mexico mortgage finance authority. Such nonprofit corporations shall be subject to all of the duties and limitations imposed on the regional housing authority and its board of commissioners."

Chapter 48 Section 9 Laws 2009

Section 9. Section 11-3A-10 NMSA 1978 (being Laws 1994, Chapter 132, Section 10, as amended) is amended to read:

"11-3A-10. PROHIBITED ACTIONS.--Neither the regional housing authority nor any of its contractors or their subcontractors may enter into any contract, subcontract or agreement in connection with a housing project under any contract in which any of the following persons has an interest, direct or indirect, during the person's tenure or for one year thereafter:

A. any present or former member of the board of commissioners of the regional housing authority or any member of the member's immediate family. The prohibition established by this subsection shall not apply to any member who has not served on the governing body of a resident management corporation, and who otherwise has not occupied a policymaking position with the resident management corporation or the regional housing authority;

B. any employee of the regional housing authority who formulates policy or who influences decisions with respect to a housing project, any member of the employee's immediate family or any partner of the employee; or

C. any public official, member of a governing body or state legislator, or any member of such person's immediate family, who exercises functions or responsibilities with respect to the housing project or the regional housing authority."

Chapter 48 Section 10 Laws 2009

Section 10. Section 11-3A-12 NMSA 1978 (being Laws 1994, Chapter 132, Section 12, as amended) is amended to read:

"11-3A-12. STATE POLICY--OPERATION NOT FOR PROFIT.--

A. It is declared to be the policy of this state that each regional housing authority shall manage and operate its housing projects and affordable housing programs in an efficient manner so as to enable it to fix the rentals for dwelling accommodations at the lowest possible rates consistent with its providing decent, safe and sanitary dwelling accommodations.

B. No regional housing authority shall construct or operate a housing project for profit.

C. A regional housing authority shall set the rental rates for dwellings in the housing projects it manages and operates at no higher rates than it finds to be necessary in order to produce revenues that, together with any grants or subsidies from the state or federal government or other sources for housing projects, will be sufficient to:

(1) pay, as they become due, indebtedness or other obligations of the regional housing authority incurred pursuant to the Regional Housing Law;

(2) meet the cost of and provide for maintaining and operating the housing projects, including the cost of any insurance, the administrative expenses of the regional housing authority incurred in connection with the housing projects and the funding of operational reserves the regional housing authority deems appropriate;

(3) fund operational reserves to secure the payment of indebtedness as the regional housing authority deems appropriate; and

(4) allow private, profit-making entities to enter into agreements with the regional housing authority, without the agreements affecting the nonprofit status of the regional housing authority or conflicting with the intent of the creation of the regional housing authority."

Chapter 48 Section 11 Laws 2009

Section 11. Section 11-3A-13 NMSA 1978 (being Laws 1994, Chapter 132, Section 13, as amended) is amended to read:

"11-3A-13. SALES, RENTALS AND TENANT SELECTION.--

A. In the operation or management of housing projects or the sale of any property pursuant to the Regional Housing Law, a regional housing authority shall:

(1) rent, lease or sell the dwelling accommodations in the housing project only to persons falling within the standards adopted by the regional housing authority, which standards shall comply with state and federal law;

(2) rent, lease or sell to a person dwelling accommodations consisting of the number of rooms, but no greater number, that it deems necessary to provide safe and sanitary accommodations to the proposed occupants without overcrowding; and

(3) reject any person as a tenant in any federally subsidized housing project if the person has an annual gross income in excess of federally established standards.

B. Nothing contained in this section or Section 11-3A-12 NMSA 1978 shall be construed as limiting the power of a regional housing authority to vest in an obligee the right, in the event of a default by the regional housing authority, to take possession and operate a housing project or cause the appointment of a receiver for the housing project, free from all the restrictions imposed by this section or Section 11-3A-12 NMSA 1978."

Chapter 48 Section 12 Laws 2009

Section 12. Section 11-3A-19 NMSA 1978 (being Laws 1994, Chapter 132, Section 19, as amended) is amended to read:

"11-3A-19. REMEDIES OF AN OBLIGEE.--An obligee of a regional housing authority shall have the right, in addition to all other rights that may be conferred on such obligee, subject only to any contractual restrictions binding upon such obligee, to:

A. compel by mandamus, suit, action or proceeding at law or in equity, the regional housing authority and its officers, agents or employees to perform every term, provision and covenant contained in any contract of the regional housing authority with or for the benefit of the obligee and to require the carrying out of all covenants and agreements of the regional housing authority and the fulfillment of all duties imposed upon the regional housing authority by the Regional Housing Law; and

B. enjoin by suit, action or proceeding in equity, any acts or things that may be unlawful or in violation of the rights of the obligee of the regional housing authority."

Chapter 48 Section 13 Laws 2009

Section 13. Section 11-3A-20 NMSA 1978 (being Laws 1994, Chapter 132, Section 20, as amended) is amended to read:

"11-3A-20. ADDITIONAL REMEDIES CONFERRABLE TO AN OBLIGEE.--A regional housing authority shall have the power by its resolution, trust indenture, lease or other contract to confer upon any obligee holding or representing a specified amount in indebtedness, or holding a lease, the right, in addition to all rights that may otherwise

be conferred, upon default as defined in the resolution or instrument, by suit, action or proceeding in any court of competent jurisdiction:

A. to cause possession of any housing project or any part of a housing project to be surrendered to the obligee and retained by the holder of debt or trustee so long as the regional housing authority continues in default;

B. to obtain the appointment of a receiver of any housing project of the regional housing authority and of the rents and profits from the housing project. If a receiver is appointed, the receiver may enter and take possession of all or a part of the housing project and, so long as the regional housing authority continues in default, operate and maintain the housing project and collect and receive all fees, rents, revenues or other charges arising from the housing project and shall keep the money in a separate account and apply it in accordance with the obligations of the regional housing authority as the court directs; and

C. to require the regional housing authority and its officers and agents to account for the money actually received as if it and they were the trustees of an express trust."

Chapter 48 Section 14 Laws 2009

Section 14. Section 11-3A-21 NMSA 1978 (being Laws 1994, Chapter 132, Section 21, as amended) is amended to read:

"11-3A-21. EXEMPTION OF PROPERTY FROM EXECUTION SALE.--All real property owned or held by a regional housing authority for the purposes of the Regional Housing Law shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall be issued against property of the regional housing authority or shall any judgment against a regional housing authority be a charge or lien on the regional housing authority's real property; provided, however, that the provisions of this section shall not apply to or limit the right of obligees to pursue any remedies for the enforcement of any pledge or lien given to them on rents, fees or revenues."

Chapter 48 Section 15 Laws 2009

Section 15. Section 11-3A-22 NMSA 1978 (being Laws 1994, Chapter 132, Section 22) is amended to read:

"11-3A-22. EXEMPTION OF PROPERTY FROM TAXATION.--The real property of a housing project, as defined in the Regional Housing Law, is declared to be public property used for essential public and governmental purposes and is property of a regional housing authority of this state and is exempt from taxation until a deed conveying that property to a nonexempt entity is executed and delivered by the regional housing authority."

Chapter 48 Section 16 Laws 2009

Section 16. Section 11-3A-23 NMSA 1978 (being Laws 1994, Chapter 132, Section 23, as amended) is amended to read:

"11-3A-23. AID FROM STATE OR FEDERAL GOVERNMENT.--In addition to the powers conferred upon a regional housing authority by other provisions of the Regional Housing Law, a regional housing authority is empowered to borrow money or accept contributions, grants or other financial assistance from the state or federal government for or in aid of any housing project or affordable housing program within its area of operation and, to these ends, to comply with conditions, trust indentures, leases or agreements as necessary, convenient or desirable. It is the purpose and intent of the Regional Housing Law to authorize every regional housing authority to do all things necessary, convenient or desirable to secure the financial aid or cooperation of the federal government in the undertaking, acquisition, construction, maintenance or operation of any housing project of a regional housing authority."

Chapter 48 Section 17 Laws 2009

Section 17. Section 11-3A-24 NMSA 1978 (being Laws 1994, Chapter 132, Section 24, as amended) is amended to read:

"11-3A-24. COOPERATION IN UNDERTAKING HOUSING PROJECTS AND AFFORDABLE HOUSING PROGRAMS.--For the purpose of aiding and cooperating in the planning, undertaking, construction or operation of housing projects and affordable housing programs located within the area in which it is authorized to act, a local public body may, upon such terms as it may determine, with or without consideration:

A. dedicate, sell, convey or lease any of its interest in any property or grant easements, licenses or any other rights or privileges to a regional housing authority;

B. cause parks, playgrounds, recreational, community, educational, water, sewer or drainage facilities, or any other works that it is otherwise empowered to undertake, to be furnished adjacent to or in connection with housing projects and affordable housing programs;

C. furnish, dedicate, close, pave, install, grade, regrade, plan or replan streets, roads, roadways, alleys, sidewalks or other places that it is otherwise empowered to undertake;

D. cause services to be furnished for housing projects and affordable housing programs of the character that the local public body is otherwise empowered to furnish;

E. enter into agreements with respect to the exercise by the local public body of its powers relating to the repair, elimination or closing of unsafe, unsanitary or unfit dwellings;

F. do any things necessary or convenient to aid and cooperate in the planning, undertaking, construction or operation of housing projects or affordable housing programs;

G. incur the entire expense of any public improvements made by the local public body in exercising the powers granted in the Regional Housing Law; and

H. enter into agreements, which may extend over any period, notwithstanding any provision or rule of law to the contrary, with a regional authority respecting action to be taken by the local public body pursuant to any of the powers granted by the Regional Housing Law. Any law or statute to the contrary notwithstanding, any sale, conveyance, lease or agreement provided for in this section may be made by a local public body without appraisal, public notice, advertisement or public bidding."

Chapter 48 Section 18 Laws 2009

Section 18. Section 11-3A-25 NMSA 1978 (being Laws 1994, Chapter 132, Section 25, as amended) is amended to read:

"11-3A-25. PROCEDURE FOR EXERCISING POWERS.--The exercise by a regional housing authority or other local public body of the powers granted in the Regional Housing Law may be authorized by resolution of the governing body of the regional housing authority or local public body adopted by a majority of the members of its governing body present at a meeting of the governing body. The resolution may be adopted at the meeting at which the resolution is introduced. The resolution shall take effect immediately and need not be laid over or published or posted."

Chapter 48 Section 19 Laws 2009

Section 19. Section 11-3A-30 NMSA 1978 (being Laws 2007, Chapter 50, Section 6) is amended to read:

"11-3A-30. FINANCIAL AND OPERATIONAL OVERSIGHT.--

A. Without the prior approval of the New Mexico mortgage finance authority, no regional housing authority shall:

(1) enter into any contract, memorandum of understanding or other agreement with a value greater than one hundred thousand dollars (\$100,000); or

(2) transfer, sell or liquidate any real or personal property with a value greater than one hundred thousand dollars (\$100,000).

B. Not less than thirty days prior to the beginning of its fiscal year, each regional housing authority and each nonprofit corporation established pursuant to Section 11-3A-9 NMSA 1978 shall submit a final operating budget for the subsequent fiscal year to the New Mexico mortgage finance authority for review.

C. The financial affairs of every regional housing authority and any nonprofit corporation created by a regional housing authority shall be thoroughly examined and audited annually by the state auditor, by personnel of the state auditor's office designated by the state auditor or by auditors approved by the state auditor. The audits shall be conducted in accordance with generally accepted auditing standards. Each regional housing authority shall submit to the state auditor, the department of finance and administration, the New Mexico mortgage finance authority, the Mortgage Finance Authority Act oversight committee and the legislative finance committee, within thirty days following the receipt of the annual audit of the regional housing authority, a copy of that audit.

D. Every regional housing authority shall submit an annual report of its financial and operational activities to the New Mexico mortgage finance authority for review and analysis and for dissemination to the department of finance and administration, the Mortgage Finance Authority Act oversight committee and the legislative finance committee. Each report shall set forth a complete operating and financial statement covering its operations since the previous report was presented.

E. Failure on the part of a regional housing authority to correct any qualified audit within one year of the release of the audit shall result in the abatement of any state funds until such corrective actions are taken. If a regional housing authority should receive a qualified audit opinion for more than two consecutive years, the oversight agency shall recommend corrective action to be taken."

Chapter 48 Section 20 Laws 2009

Section 20. A new section of the Regional Housing Law is enacted to read:

"TRANSITIONAL PROVISIONS--COMMISSIONERS--CONTRACTS AND AGREEMENTS.--

A. Members of boards of commissioners of regional housing authorities appointed prior to the effective date of this 2009 act shall continue to serve as members of boards of commissioners until their terms expire or their successors are appointed and qualified pursuant to the provisions of this 2009 act.

B. All contracts and agreements of regional housing authorities in effect on the effective date of this 2009 act shall continue in effect."

Chapter 48 Section 21 Laws 2009

Section 21. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

Senate Bill 20, aa, w/ec

Approved March 31, 2009

LAWS 2009, CHAPTER 49

AN ACT

RELATING TO PUBLIC SCHOOLS; OBLIGATING A COUNTY TO PAY FOR CATTLE GUARDS ONLY WHERE PUBLICLY OWNED FENCES INTERSECT A SCHOOL BUS ROUTE.

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

Chapter 49 Section 1 Laws 2009

Section 1. Section 22-16-8 NMSA 1978 (being Laws 1967, Chapter 16, Section 226) is amended to read:

"22-16-8. CATTLE GUARDS ON SCHOOL BUS ROUTES.--The board of county commissioners of each county shall construct cattle guards where privately owned fences intersect school bus routes on county roads when consent is obtained from each owner of real property upon which the cattle guards are to be constructed. The cost of constructing the cattle guards shall be paid out of the county road fund as other county road expenses are paid."

Senate Bill 553

Approved March 31, 2009

LAWS 2009, CHAPTER 50

AN ACT

MAKING AN APPROPRIATION FOR DRINKING WATER SYSTEM FINANCING;

DECLARING AN EMERGENCY.

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

Chapter 50 Section 1 Laws 2009

Section 1. APPROPRIATION.--Two million dollars (\$2,000,000) is appropriated from the public project revolving fund to the drinking water state revolving loan fund for expenditure in fiscal year 2009 and subsequent fiscal years to provide state matching funds for federal Safe Drinking Water Act of 1974 projects and to carry out the purposes of the Drinking Water State Revolving Loan Fund Act. Any unexpended or unencumbered balance at the end of a fiscal year shall not revert to the public project revolving fund.

Chapter 50 Section 2 Laws 2009

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

House Bill 77, aa, w/ec

Approved April 1, 2009

LAWS 2009, CHAPTER 51

AN ACT

RELATING TO PROFESSIONAL LICENSES; AMENDING THE PROFESSIONAL PSYCHOLOGIST ACT; PROVIDING FOR CRIMINAL BACKGROUND CHECKS; AMENDING LICENSURE REQUIREMENTS.

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

Chapter 51 Section 1 Laws 2009

Section 1. Section 61-9-10 NMSA 1978 (being Laws 1963, Chapter 92, Section 9, as amended) is amended to read:

"61-9-10. LICENSURE OF PSYCHOLOGISTS FROM OTHER AREAS--
RECIPROCITY.--Subject to the provisions of Section 61-9-10.1 NMSA 1978, upon application accompanied by a fee as required by the Professional Psychologist Act, the board may, without written or oral examination, issue a license to a person who furnishes, upon a form and in such manner as the board prescribes, evidence

satisfactory to the board that the person has been licensed or certified as a psychologist by another state, a territorial possession of the United States, the District of Columbia or another country for a minimum of five years. An applicant seeking reciprocity shall demonstrate to the satisfaction of the board that the training and education received by the applicant is equivalent to the requirements for a doctoral degree in psychology as provided in the Professional Psychologist Act."

Chapter 51 Section 2 Laws 2009

Section 2. Section 61-9-11 NMSA 1978 (being Laws 1963, Chapter 92, Section 10, as amended) is amended to read:

"61-9-11. LICENSURE--EXAMINATION.--

A. The board shall issue a license as a psychologist to an applicant who files an application upon a form and in such manner as the board prescribes, accompanied by the fee required by the Professional Psychologist Act, and who furnishes evidence satisfactory to the board that the applicant:

(1) has reached the age of majority;

(2) is of good moral character;

(3) is not in violation of any of the provisions of the Professional Psychologist Act and the rules adopted pursuant to that act;

(4) is a graduate of:

(a) a doctoral program that is designated as a doctoral program in psychology by a nationally recognized designation system or that is accredited by a nationally recognized accreditation body and holds a degree with a major in clinical, counseling or school psychology from a university offering a full-time course of study in psychology; or

(b) a doctoral program outside the United States or Canada that is equivalent to a program in Subparagraph (a) of this paragraph and holds a degree with a major in clinical, counseling or school psychology from a university offering a full-time course of study in psychology; the board shall promulgate by rule a list of board-approved credential inspection and verification services to appraise foreign degree programs;

(5) has had:

(a) a predoctoral internship approved by the American psychological association and one year of supervised professional training after receiving the doctoral degree;

(b) a predoctoral internship not approved by the American psychological association and one and one-half years of supervised professional training after receiving the doctoral degree; or

(c) after receiving the doctoral degree, at least two years of supervised experience in psychological work of a type satisfactory to the board;

(6) demonstrates professional competence by passing the examination for professional practice in psychology promulgated by the association of state and provincial psychology boards with a total raw score of 140 (seventy percent), before January 1, 1993 or, if after January 1, 1993, a score equal to or greater than the passing score recommended by the association of state and provincial psychology boards;

(7) demonstrates an awareness and knowledge of New Mexico cultures as determined by the board; and

(8) passes such jurisprudence examination as may be given by the board through an on-line testing and scoring mechanism.

B. Upon investigation of the application and other evidence submitted, including a criminal background check, the board shall, not less than thirty days prior to the examination, notify each applicant that the application and evidence submitted for licensure are satisfactory and accepted or unsatisfactory and rejected. If rejected, the notice shall state the reasons for rejection.

C. The place of examination shall be designated in advance by the board, and examinations shall be given at such time and place and under such supervision as the board may determine.

D. In the event an applicant fails to receive a passing grade, the applicant may apply for reexamination and shall be allowed to take a subsequent examination upon payment of the fee required by the Professional Psychologist Act.

E. The board shall keep a record of all examinations, and the grade assigned to each, as part of its records for at least two years subsequent to the date of examination."

Chapter 51 Section 3 Laws 2009

Section 3. 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, 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; or

(18) has aided or abetted the practice of psychology by a person not licensed by the board.

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."

Chapter 51 Section 4 Laws 2009

Section 4. A new section of the Professional Psychologist Act is enacted to read:

"CRIMINAL BACKGROUND CHECKS.--

A. The board may adopt rules that provide for criminal background checks for all licensees to include:

(1) requiring criminal history background checks of applicants for licensure pursuant to the Professional Psychologist Act;

(2) requiring applicants for licensure to be fingerprinted;

(3) providing for an applicant who has been denied licensure to inspect or challenge the validity of the background check record;

(4) establishing a fingerprint and background check fee not to exceed seventy-five dollars (\$75.00) to be paid by the applicant; and

(5) providing for submission of an applicant's fingerprint cards to the federal bureau of investigation to conduct a national criminal history background check and to the department of public safety to conduct a state criminal history check.

B. Arrest record information received from the department of public safety and the federal bureau of investigation shall be privileged and shall not be disclosed to persons not directly involved in the decision affecting the applicant.

C. Electronic live fingerprint scans may be used when conducting criminal history background checks."

Chapter 51 Section 5 Laws 2009

Section 5. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.

House Bill 370, aa

Approved April 1, 2009

LAWS 2009, CHAPTER 52

AN ACT

MAKING AN APPROPRIATION TO THE LOCAL GOVERNMENT PLANNING FUND.

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

Chapter 52 Section 1 Laws 2009

Section 1. APPROPRIATION.--Two million dollars (\$2,000,000) is appropriated from the public project revolving fund to the local government planning fund administered by the New Mexico finance authority for expenditure in fiscal year 2009 and subsequent fiscal years to fund local government planning for water or wastewater system development, economic development or long-term water management and water conservation strategies. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the public project revolving fund.

Senate Bill 23

Approved April 1, 2009

LAWS 2009, CHAPTER 53

AN ACT

RELATING TO MOTOR VEHICLES; AMENDING SECTIONS OF THE

OFF-HIGHWAY MOTOR VEHICLE ACT TO PROVIDE FOR REGULATION OF THE OPERATION OF OFF-HIGHWAY VEHICLES TO ENSURE THEIR SAFE AND RESPONSIBLE OPERATION; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978; PROVIDING PENALTIES; MAKING APPROPRIATIONS; DECLARING AN EMERGENCY.

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

Chapter 53 Section 1 Laws 2009

Section 1. Section 66-3-1001.1 NMSA 1978 (being Laws 2005, Chapter 325, Section 1) is amended to read:

"66-3-1001.1. DEFINITIONS.--As used in the Off-Highway Motor Vehicle Act:

- A. "board" means the off-highway motor vehicle advisory board;
- B. "department" means the department of game and fish;
- C. "division" means the motor vehicle division of the taxation and revenue department;
- D. "fund" means the trail safety fund;
- E. "off-highway motor vehicle" means a motor vehicle designed by the manufacturer for operation exclusively off the highway or road and includes:

(1) "all-terrain vehicle", which means a motor vehicle fifty inches or less in width, having an unladen dry weight of one thousand pounds or less, traveling on three or more low-pressure tires and having a seat designed to be straddled by the operator and handlebar-type steering control;

(2) "off-highway motorcycle", which means a motor vehicle traveling on not more than two tires and having a seat designed to be straddled by the operator and that has handlebar-type steering control;

(3) "snowmobile", which means a motor vehicle designed for travel on snow or ice and steered and supported in whole or in part by skis, belts, cleats, runners or low-pressure tires;

(4) "recreational off-highway vehicle", which means a motor vehicle designed for travel on four or more non-highway tires, for recreational use by one or more persons, and having:

(a) a steering wheel for steering control;

(b) non-straddle seating;

(c) maximum speed capability greater than thirty-five miles per hour;

(d) gross vehicle weight rating no greater than one thousand seven hundred fifty pounds;

(e) less than eighty inches in overall width, exclusive of accessories;

(f) engine displacement of less than one thousand cubic centimeters; and

(g) identification by means of a seventeen-character vehicle identification number; or

(5) by rule of the department, any other vehicles that may enter the market that fit the general profile of vehicles operated off the highway for recreational purposes;

F. "staging area" means a parking lot, trailhead or other location to or from which an off-highway motor vehicle is transported so that it may be placed into operation or removed from operation; and

G. "unpaved public roadway" means a dirt graveled street or road that is constructed, signed and maintained for regular passenger-car use by the general public."

Chapter 53 Section 2 Laws 2009

Section 2. Section 66-3-1004 NMSA 1978 (being Laws 1978, Chapter 35, Section 200, as amended) is amended to read:

"66-3-1004. REGISTRATION CERTIFICATE AND NONRESIDENT PERMIT FEES--RENEWAL--DISTRIBUTION OF FEES.--Fees shall be collected and distributed as follows:

A. the fees for registering an off-highway motor vehicle are:

(1) seventeen dollars (\$17.00) for each off-highway motor vehicle, of which five dollars (\$5.00) is appropriated to the division to defray the cost of making and issuing registration certificates, validating stickers and nonresident permits for off-highway motor vehicles. The remaining twelve dollars (\$12.00) shall be deposited in the motor vehicle suspense fund for distribution pursuant to Section 66-6-23 NMSA 1978; and

(2) an amount determined by rule of the department not to exceed forty dollars (\$40.00) for an off-highway user fee for each off-highway motor vehicle, which shall be distributed to the fund;

B. upon a change of ownership, the new owner shall make application and pay registration fees of:

(1) seventeen dollars (\$17.00) in the same manner as provided by rules of the division for original registration; and

(2) an amount determined by rule of the department not to exceed forty dollars (\$40.00) for an off-highway user fee for each off-highway motor vehicle, which shall be distributed to the fund;

C. except for an off-highway vehicle that is currently in compliance with another state's off-highway vehicle registration, user fee or similar law or rule demonstrated by certificate of registration, permit or similar evidence, the fees for a nonresident permit of an off-highway motor vehicle are either:

(1) seventeen dollars (\$17.00), of which five dollars (\$5.00) is appropriated to the division to defray the cost of making and issuing registration certificates, validating stickers and nonresident permits for off-highway motor vehicles. The remaining twelve dollars (\$12.00) shall be deposited in the motor vehicle suspense fund for distribution pursuant to Section 66-6-23 NMSA 1978, and an amount determined by rule of the department not to exceed forty dollars (\$40.00) for each off-highway motor vehicle, which shall be distributed to the fund; or

(2) seventeen dollars (\$17.00) for a ninety-day permit, of which five dollars (\$5.00) is appropriated to the division to defray the cost of making and issuing registration certificates, validating stickers and nonresident permits for off-highway

motor vehicles. The remaining twelve dollars (\$12.00) shall be deposited in the motor vehicle suspense fund for distribution pursuant to Section 66-6-23 NMSA 1978;

D. except as provided in Paragraph (2) of Subsection C of this section, each nonresident permit shall be:

(1) good for two years after the month in which the off-highway motor vehicle nonresident permit is issued; and

(2) renewed every two years;

E. the off-highway user fee for each off-highway motor vehicle shall be paid upon obtaining and renewing each registration certificate or nonresident permit;

F. duplicate registration certificates and nonresident permits shall be issued upon payment of a seven-dollar-fifty-cent (\$7.50) fee, which is appropriated to the division to defray the cost of making and issuing duplicate registration certificates and nonresident permits for off-highway motor vehicles;

G. a fee of one dollar (\$1.00) on registration certificates and nonresident permits shall be collected for the litter control and beautification fund; and

H. the department, in conjunction with other agencies and departments, may establish and maintain sites to collect fees and issue permits for residents and nonresidents."

Chapter 53 Section 3 Laws 2009

Section 3. Section 66-3-1010.1 NMSA 1978 (being Laws 2005, Chapter 325, Section 9) is amended to read:

"66-3-1010.1. OFF-HIGHWAY MOTOR VEHICLE SAFETY TRAINING ORGANIZATION--APPROVAL AND CERTIFICATION.--

A. An off-highway motor vehicle safety training organization that offers and conducts an off-highway motor vehicle safety training course shall be approved and certified by the department. Applicants for approval and certification shall submit an application to the department for consideration.

B. The department may approve and certify an organization that meets the minimum criteria established by the department for an off-highway motor vehicle safety training organization. Each approval and certification shall be renewed annually."

Chapter 53 Section 4 Laws 2009

Section 4. Section 66-3-1010.2 NMSA 1978 (being Laws 2005, Chapter 325, Section 10) is amended to read:

"66-3-1010.2. OFF-HIGHWAY MOTOR VEHICLE SAFETY PERMIT--REQUIREMENTS--ISSUANCE.--A person under the age of eighteen shall be required to successfully complete an off-highway motor vehicle safety training course for which the person shall have parental permission. The course shall be conducted by an off-highway motor vehicle safety training organization that is approved and certified by the department. Upon successful completion of the course, the person shall receive an off-highway motor vehicle safety permit issued by the organization."

Chapter 53 Section 5 Laws 2009

Section 5. Section 66-3-1010.3 NMSA 1978 (being Laws 2005, Chapter 325, Section 11) 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;

(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 53 Section 6 Laws 2009

Section 6. Section 66-3-1010.5 NMSA 1978 (being Laws 2005, Chapter 325, Section 13) is amended to read:

"66-3-1010.5. REQUIREMENTS OF DEALERS TO DISTRIBUTE SAFETY INFORMATION.--A dealer selling off-highway motor vehicles shall distribute information provided by the department to off-highway motor vehicle purchasers on state laws, environmental and cultural considerations, customs, safety requirements, training programs, operating characteristics and potential risk of injury associated with off-highway motor vehicles."

Chapter 53 Section 7 Laws 2009

Section 7. Section 66-3-1011 NMSA 1978 (being Laws 1975, Chapter 240, Section 11, as amended) is amended to read:

"66-3-1011. OPERATION ON STREETS OR HIGHWAYS--PROHIBITED AREAS.--

A. A person shall not operate an off-highway motor vehicle on any:

(1) limited access highway or freeway at any time; or

(2) any paved street or highway except as provided in Subsection B of this section.

B. Off-highway motor vehicles may cross streets or highways, except limited access highways or freeways, if the crossings are made after coming to a complete stop prior to entering the roadway. Off-highway motor vehicles shall yield the right of way to oncoming traffic and shall begin a crossing only when it can be executed safely and then cross in the most direct manner as close to a perpendicular angle as possible.

C. A person shall not operate an off-highway motor vehicle on state game commission-owned, -controlled or -administered land except as specifically allowed pursuant to Chapter 17, Article 6 NMSA 1978.

D. A person shall not operate an off-highway motor vehicle on land owned, controlled or administered by the state parks division of the energy, minerals and natural resources department, pursuant to Chapter 16, Article 2 NMSA 1978, except in areas designated by and permitted by rules adopted by the secretary of energy, minerals and natural resources.

E. 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 53 Section 8 Laws 2009

Section 8. Section 66-3-1015 NMSA 1978 (being Laws 1978, Chapter 35, Section 211, as amended) is amended to read:

"66-3-1015. ENFORCEMENT.--A wildlife conservation officer, state police officer or peace officer of this state or any of its political subdivisions, upon displaying the officer's badge of office, has the authority to enforce the provisions of the Off-Highway Motor Vehicle Act and may:

A. require an off-highway motor vehicle operator to produce:

(1) the registration certificate or nonresident permit;

(2) proof of successful completion of an off-highway motor vehicle training course conducted by an off-highway safety training organization approved and certified by the department, when required by Section 66-3-1010.2 NMSA 1978; and

(3) the personal identification of the operator; and

B. issue citations for violations of the provisions of the Off-Highway Motor Vehicle Act."

Chapter 53 Section 9 Laws 2009

Section 9. Section 66-3-1017 NMSA 1978 (being Laws 2005, Chapter 325, Section 19) is amended to read:

"66-3-1017. OFF-HIGHWAY MOTOR VEHICLE ADVISORY BOARD CREATED--MEMBERS--COMPENSATION.--

A. The "off-highway motor vehicle advisory board" is created to advise the department on matters related to administration of the Off-Highway Motor Vehicle Act. The board shall consist of the following seven members appointed by the governor:

(1) one landowner living near a national forest or bureau of land management property that is used extensively for recreational off-highway vehicle activity;

(2) one producer or one grazing permittee on public lands from the farming or livestock industry;

(3) one person from the off-highway motor vehicle industry;

(4) one off-highway motor vehicle user;

(5) one hunter or angler;

(6) one quiet recreationalist, such as a hiker, backpacker, birdwatcher, equestrian, mountain biker, rock climber or archaeological enthusiast; and

(7) one member with expertise in injury prevention or treatment.

B. The board shall select a chair and a vice chair.

C. The board shall meet at the call of the chair but not less than twice annually.

D. Members shall be appointed to staggered terms of two years each; provided that no more than four terms expire in any one year. The board members shall select by lot four members to serve initial terms of three years each. A vacancy shall be filled by appointment of the governor for the remainder of the unexpired term. Members of the board shall be entitled to reimbursement pursuant to the Per Diem and Mileage Act."

Chapter 53 Section 10 Laws 2009

Section 10. Section 66-3-1018 NMSA 1978 (being Laws 2005, Chapter 325, Section 20) is amended to read:

"66-3-1018. DEPARTMENT--POWERS AND DUTIES.--

A. The department shall cooperate with appropriate federal agencies, public and private organizations and corporations and local government units to implement the provisions of the Off-Highway Motor Vehicle Act.

B. The department:

(1) shall accept and evaluate all applications for approval and certification of an off-highway motor vehicle safety training organization and approve and certify those that meet the minimum criteria;

(2) shall notify the division of the off-highway motor vehicle safety training organizations that have received approval and certification;

(3) shall establish and revise as appropriate minimum criteria to approve and certify an off-highway motor vehicle safety training organization. The criteria shall include requirements for curriculum and materials for:

(a) training instructors to teach off-highway motor vehicle safety;

(b) training the public about off-highway motor vehicle safety and age-appropriate size-fit use of off-highway motor vehicles; and

(c) teaching responsible use of off-highway motor vehicles with respect to environmental considerations, private property restrictions, agricultural and rural lifestyles and cultural considerations, off-highway motor vehicle operating laws and prohibitions against operating off-highway motor vehicles under the influence of alcohol or drugs;

(4) shall implement a state off-highway motor vehicle safety training and certification program;

(5) shall adopt and promulgate rules regarding the:

(a) age-appropriate size-fit use of all-terrain vehicles or recreational off-highway motor vehicles;

(b) acceptance or accreditation of instruction or safety courses provided by other states; and

(c) standards covering the specifications of eye protection and safety helmets;

(6) may recommend, with public participation and input, off-highway motor vehicle park, facility and trail locations to the state, county, tribal or local governing body or private entity that owns or administers the land upon which the park,

facility or trail is located. The department shall establish criteria to recommend locations that include consideration of off-highway motor vehicle operating laws and effects on:

- (a) wildlife and the environment;
- (b) adjacent state, county, federal, tribal and private property;
- (c) other recreational and nonrecreational uses on the same or adjacent lands; and
- (d) archaeological, cultural and historic resources and customs;

(7) shall recommend restoration or, if deemed necessary, closure of off-highway motor vehicle tracks or trails to the state, county, tribal or local governing body or private entity that owns or administers the land upon which the tracks or trails are located if they pose significant or irreversible environmental damage, a danger to users or a public nuisance as determined by the department. The department shall consider the construction of alternative tracks or trails as part of the closure process;

(8) shall accept and evaluate all applications for grants from the fund for implementation of the provisions of the Off-Highway Motor Vehicle Act. The department shall establish criteria for grants from the fund that include consideration of the:

- (a) applicant's financial and legal status;
- (b) applicant's management plan, including specific measures to avoid or minimize environmental damage to public and private lands and danger to users and spectators;
- (c) operating budget for the park, trail, facility or staging area;
- (d) availability of matching funds; and
- (e) public participation and input;

(9) shall certify tour guides;

(10) shall prepare a management plan that accomplishes the purposes of the Off-Highway Motor Vehicle Act in a cost-effective manner and relies on existing agencies' available funding with specific qualifications for program implementation, which shall include joint powers agreements with the department of public safety and other law enforcement agencies for law enforcement and other

agencies as appropriate for carrying out the provisions of the Off-Highway Motor Vehicle Act;

(11) shall develop and implement an overall enforcement strategy for the entire state that includes:

(a) cooperation with federal, state and local law enforcement agencies to provide training and educational materials related to off-highway motor vehicle use;

(b) coordination efforts related to off-highway motor vehicle use with participating law enforcement agencies;

(c) developing strategies for addressing and minimizing impacts on farmers and ranchers in rural agricultural areas, on hunters and anglers and on non-motorized recreationalists by off-highway motor vehicle use; and

(d) using law enforcement DUI-type "blitzes" in heavily used areas, staging areas or other problem areas;

(12) shall develop and implement an overall educational strategy for the entire state that:

(a) incorporates materials developed by the United States department of agriculture forest service program that teaches trail etiquette and respect for natural resources;

(b) includes the development of New Mexico-specific written, video or other educational materials and educational programs that address the impact of off-highway motor vehicles on traditional living culture, agricultural land and private property; and

(c) includes the development and maintenance of a web site containing rules and regulations, safety information and educational material relating to resource protection and the impact of off-highway motor vehicles on traditional living culture, agricultural land and historical sites;

(13) shall develop an overall strategy for phased implementation of an information system to track information, such as use patterns, injury data, ecological data, natural resource data and data relating to the impact of off-highway motor vehicles on traditional living culture and on agricultural land. The strategy shall include:

(a) identification and implementation of appropriate data collecting mechanisms, such as a toll-free number or a web-based data collecting process; and

(b) development of an information system program capable of interfacing with existing government and private databases or other information systems;

(14) may implement noise enforcement by the testing of sound levels of off-highway motor vehicles at the time of registration and equip law enforcement officers with sound meters for field testing of sound levels;

(15) may contract with government or quasi-government agencies to conduct analysis of the impact of off-highway motor vehicle use on forests, rangeland and other natural resources and use the data obtained to make recommendations to the appropriate land management agency;

(16) shall review the definition of "off-highway motor vehicle" as needed to include new classes of off-highway motor vehicles as they become available in the marketplace;

(17) shall, in cooperation with the division, determine the size, composition, attachment mechanism, letter or number height and other properties of off-highway motor vehicle identification. This identification may be a traditional license plate, stick-on lettering as used for boat identification or another form of identification that is visible and readable;

(18) shall present its semiannual plans and progress to the advisory board for the board's input and response; and

(19) may collaborate with the appropriate land agencies to develop criteria for signage relating to off-road motor vehicle use, including the size, visibility, graphics and frequency of signage."

Chapter 53 Section 11 Laws 2009

Section 11. Section 66-3-1019 NMSA 1978 (being Laws 2005, Chapter 325, Section 21) is amended to read:

"66-3-1019. FUND CREATED--DISPOSITION.--

A. The "trail safety fund" is created in the state treasury. The fund is a nonreverting fund and consists of revenues from off-highway motor vehicle registration and user fees, grants and donations. No more than thirty percent of the fund may be used for administrative overhead, and at least fifty percent shall be devoted to law enforcement and education. Income from investment of the fund shall be credited to the fund. The fund shall be administered by the department, and money in the fund is appropriated to the department to carry out the purposes of the Off-Highway Motor Vehicle Act. Expenditures from the fund shall be by warrant of the secretary of finance

and administration upon vouchers signed by the director of the department of game and fish or the director's authorized representative.

B. The department shall make annual distributions from the fund for the following purposes:

- (1) administrative;
- (2) law enforcement;
- (3) education and training;
- (4) information system development and management;
- (5) resource monitoring and protection and trail building, maintenance and restoration; and
- (6) implementation of other provisions of the Off-Highway Motor Vehicle Act."

Chapter 53 Section 12 Laws 2009

Section 12. Section 66-3-1020 NMSA 1978 (being Laws 2005, Chapter 325, Section 22) is amended to read:

"66-3-1020. PENALTIES.--

A. A person who violates the provisions of the Off-Highway Motor Vehicle Act is guilty of a penalty assessment misdemeanor. A parent, guardian or custodian who causes or knowingly permits a child under the age of eighteen years to operate an off-highway motor vehicle in violation of the provisions of the Off-Highway Motor Vehicle Act is in violation of that act and subject to the same penalty as the child operating the off-highway motor vehicle in violation of that act.

B. As used in the Off-Highway Motor Vehicle Act, "penalty assessment misdemeanor" means violation of any provision of the Off-Highway Motor Vehicle Act for which a violator may be subject to the following:

CLASS 1 VIOLATIONS	SECTION	PENALTY
	VIOLATED	ASSESSMENT

failure to possess a

registration certificate

or nonresident permit	66-3-1010.3	\$10.00
violations involving		
headlights or taillights	66-3-1010.3	10.00
failure to possess an off-		
highway motor vehicle		
safety permit	66-3-1010.3	10.00
selling a vehicle that produces		
noise in excess of ninety-six		
decibels	66-3-1010.3	10.00
any violation of the Off-Highway		
Motor Vehicle Act not otherwise		
specifically defined elsewhere		
in this section	66-3-1010.3	10.00

CLASS 2 VIOLATIONS	SECTION	PENALTY
	VIOLATED	ASSESSMENT

failure to complete a required		
off-highway motor vehicle		
safety training course	66-3-1010.2	\$50.00
operating a vehicle in excess		
of ten miles per hour within		
two hundred feet of a business,		
animal shelter, horseback		
rider, bicyclist, pedestrian,		

livestock or occupied dwelling	66-3-1010.3	50.00
a person under the age of eighteen but at least fifteen years of age who operates an off-highway motor vehicle in violation of the supervision requirements of the Off-Highway Motor Vehicle Act	66-3-1010.3	50.00
operating an off-highway motor vehicle that produces noise that exceeds ninety-six decibels	66-3-1010.3	50.00
unauthorized installation, removal, destruction or defacing of a motor vehicle sign	66-3-1011	50.00
CLASS 3 VIOLATIONS	SECTION	PENALTY
	VIOLATED	ASSESSMENT
operating a vehicle that is not equipped with an approved spark arrester	66-3-1010.3	\$100.00

operating an off-highway

motor vehicle 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
100.00

66-3-1010.3

operating an off-highway

motor vehicle in pursuit of

or harassment of livestock

in any manner that negatively

affects the livestock's

condition
100.00

66-3-1010.3

operating an off-highway

motor vehicle on or within

an earthen tank or other

structure meant to water

livestock or wildlife

66-3-1010.3

100.00

operating a motor vehicle

in a manner that has a

direct negative effect on

or interferes with persons

engaged in agricultural

practices
100.00

66-3-1010.3

a person under the age of

eighteen operating an

off-highway motor vehicle

without wearing eye

protection and a safety

helmet
100.00

66-3-1010.3

a person under the age of

eighteen operating an

off-highway motor vehicle

while carrying a passenger
100.00

66-3-1010.3

a person under the age of

fifteen but at least ten

years of age who operates

an off-highway motor vehicle

in violation of the supervision

requirements of the Off-Highway

Motor Vehicle Act
100.00

66-3-1010.3

a person under the age of

ten operating an all-terrain
vehicle or recreational off-highway
motor vehicle that is not an
age-appropriate size-fit or
who operates an off-highway
motor vehicle in violation
of the supervision requirements
of this section
100.00

66-3-1010.3

CLASS 4 VIOLATIONS

SECTION

PENALTY

VIOLATED ASSESSMENT

operating an off-highway
motor vehicle in a
careless, reckless or
negligent manner so as
to endanger the person
or property of another
\$200.00

66-3-1010.3

operating an off-highway
motor vehicle on any road
or area closed to off-
highway motor vehicle
traffic under local, state
or federal regulations
200.00

66-3-1010.3

operating an off-highway

motor vehicle on a

limited-access highway

or freeway.
200.00.

66-3-1011

C. The penalty for second, third and subsequent violations within a three-year time period shall be increased as follows:

(1) a second violation in a class 1 penalty category involving failure to possess a registration certificate or nonresident permit shall be increased to a class 2 penalty category;

(2) any class 2 or class 3 violation for a second or greater infraction within a three-year period shall be increased to the next-highest penalty assessment category; and

(3) each subsequent violation in a class 4 penalty category will result in an additional penalty of two hundred dollars (\$200).

D. Multiple violations for the same incident shall be treated as a single event and shall not result in graduated penalties.

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

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

Chapter 53 Section 13 Laws 2009

Section 13. A new section of the Off-Highway Motor Vehicle Act is enacted to read:

"LEGISLATIVE OVERSIGHT.--In addition to reporting to the legislative finance committee pursuant to the performance review and budgeting process, the department shall report to the appropriate interim committee appointed by the New Mexico legislative council on the status of implementation of the Off-Highway Motor Vehicle Act.

The department shall report to the appropriate committee of the legislature on the status of existing and proposed rules and relevant enforcement issues."

Chapter 53 Section 14 Laws 2009

Section 14. TEMPORARY PROVISION--TRANSFER OF PERSONNEL, PROPERTY, CONTRACTS, RECORDS AND APPROPRIATIONS.--On July 1, 2009, all records, personnel, appropriations, money, equipment, supplies and other property of the tourism department pursuant to administration and enforcement of the Off-Highway Motor Vehicle Act shall be transferred to the department of game and fish and all contracts pursuant to the Off-Highway Motor Vehicle Act shall be binding and effective on the department of game and fish.

Chapter 53 Section 15 Laws 2009

Section 15. REPEAL.--Sections 66-3-1004.1 and 66-3-1016 NMSA 1978 (being Laws 2005, Chapter 325, Section 4 and Laws 1978, Chapter 35, Section 212, as amended) are repealed.

Chapter 53 Section 16 Laws 2009

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

SFL/SJC/SCORC/Senate Bill 379, aa, w/ec

Approved April 1, 2009

LAWS 2009, CHAPTER 54

AN ACT

RELATING TO MAGISTRATE COURTS; ELIMINATING CIRCUITS IN THE COLFAX, GUADALUPE, LEA AND QUAY MAGISTRATE DISTRICTS; MOVING THE THOREAU DIVISION TO GALLUP IN THE MCKINLEY DISTRICT; ELIMINATING A DIVISION IN THE LEA MAGISTRATE DISTRICT.

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

Chapter 54 Section 1 Laws 2009

Section 1. Section 35-1-7 NMSA 1978 (being Laws 1968, Chapter 62, Section 9, as amended) is amended to read:

"35-1-7. MAGISTRATE COURT--COLFAX DISTRICT.--There shall be two magistrates in Colfax magistrate district, division 1 in Raton and division 2 in Springer."

Chapter 54 Section 2 Laws 2009

Section 2. Section 35-1-13 NMSA 1978 (being Laws 1968, Chapter 62, Section 15, as amended) is amended to read:

"35-1-13. MAGISTRATE COURT--GUADALUPE DISTRICT.--There shall be one magistrate in Guadalupe magistrate district whose principal court is in Santa Rosa."

Chapter 54 Section 3 Laws 2009

Section 3. Section 35-1-16 NMSA 1978 (being Laws 1968, Chapter 62, Section 18, as amended) is amended to read:

"35-1-16. MAGISTRATE COURT--LEA DISTRICT.--

A. Through December 31, 2010, there shall be five magistrates in Lea magistrate district, division 1 in Lovington, divisions 2 and 5 operating as a single court in Hobbs, division 3 in Eunice and division 4. The division 3 magistrate shall ride circuit to Jal on a regularly scheduled basis and shall ride circuit to Hobbs as needed. The division 4 magistrate shall ride circuit to Lovington, Hobbs and Eunice.

B. On January 1, 2011, there shall be four magistrates in the Lea magistrate district, divisions 1 and 2 operating as a single court in Hobbs, division 3 in Eunice and division 4 in Lovington. The division 3 magistrate shall ride circuit to Jal on a regularly scheduled basis and shall ride circuit to Hobbs as needed.

C. Magistrate judges shall not be elected at large from the district but shall be elected by the voters of the division for which the magistrate sits. Magistrate judges shall reside in their divisions but shall have district-wide jurisdiction. For the 2010 and subsequent elections, the composition of the divisions for elections and residence purposes is as follows:

(1) division 1 is composed of Lea county precincts 23 through 30, 32 and 41 through 43;

(2) division 2 is composed of Lea county precincts 33 through 35, 44, 51 through 55 and 61;

(3) division 3 is composed of Lea county precincts 20, 22, 31, 36, 62 and 71 through 74; and

(4) division 4 is composed of Lea county precincts 2, 3, 10 through 18 and 21."

Chapter 54 Section 4 Laws 2009

Section 4. Section 35-1-20 NMSA 1978 (being Laws 1968, Chapter 62, Section 22, as amended) is amended to read:

"35-1-20. MAGISTRATE COURT--MCKINLEY DISTRICT.--There shall be three magistrates in McKinley magistrate district, divisions 1, 2 and 3 operating as a single court in Gallup. The division 3 magistrate shall ride circuit to Thoreau."

Chapter 54 Section 5 Laws 2009

Section 5. Section 35-1-23 NMSA 1978 (being Laws 1968, Chapter 62, Section 25, as amended) is amended to read:

"35-1-23. MAGISTRATE COURT--QUAY DISTRICT.--There shall be one magistrate in Quay magistrate district whose principal court is in Tucumcari."

Chapter 54 Section 6 Laws 2009

Section 6. TEMPORARY PROVISION--CLERK POSITIONS--OTHER RESOURCES.--The magistrate court clerk positions assigned to the magistrate courts shall not be decreased as a result of this act, but the administrative office of the courts shall reassign positions from the eliminated division in the Lea district to other magistrate courts. The administrative office of the courts shall reassign other resources, including furniture, equipment and supplies, to other magistrate courts as needed.

Chapter 54 Section 7 Laws 2009

Section 7. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.

Senate Bill 239, aa

Approved April 1, 2009

LAWS 2009, CHAPTER 55

AN ACT

RELATING TO LAW ENFORCEMENT; ALLOWING THE CHIEF OF THE STATE POLICE TO DETERMINE THE TIME PERIOD IN WHICH A MEMBER OF THE NEW MEXICO STATE POLICE MAY COMPLETE THE REQUIRED HOURS OF COLLEGE CREDIT.

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

Chapter 55 Section 1 Laws 2009

Section 1. Section 29-2-6 NMSA 1978 (being Laws 1941, Chapter 147, Section 6, as amended) is amended to read:

"29-2-6. QUALIFICATIONS OF MEMBERS.--

A. Members of the New Mexico state police, except the chief, shall:

(1) at the time of their appointment, be citizens of the United States;

(2) at the time of their appointment, have reached twenty-one years of age;

(3) except as otherwise provided in Subsection B of this section, at the time of their appointment, have completed at least sixty hours of college credit;

(4) be of good moral character and not have been convicted of a felony or infamous crime in the courts of this state or other state or any country or in the federal courts; and

(5) pass a physical examination the New Mexico state police may require.

B. Notwithstanding the requirement of Paragraph (3) of Subsection A of this section, the chief may appoint a member of the New Mexico state police who has at least thirty hours of college credit, and the chief shall determine an appropriate time period after appointment for the member to complete the additional thirty hours of college credit required.

C. A person shall not be commissioned a member of the New Mexico state police who is related by blood or marriage within the fourth degree to a member of the public safety advisory commission."

Senate Bill 426

Approved April 1, 2009

LAWS 2009, CHAPTER 56

AN ACT

RELATING TO CRIMINAL LAW; INCREASING THE AGE OF THE CHILD VICTIM IN THE CRIME OF AGGRAVATED CRIMINAL SEXUAL PENETRATION FROM UNDER NINE YEARS TO UNDER THIRTEEN YEARS OF AGE.

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

Chapter 56 Section 1 Laws 2009

Section 1. Section 30-9-11 NMSA 1978 (being Laws 1975, Chapter 109, Section 2, as amended) is amended to read:

"30-9-11. CRIMINAL SEXUAL PENETRATION.--

A. Criminal sexual penetration is the unlawful and intentional causing of a person to engage in sexual intercourse, cunnilingus, fellatio or anal intercourse or the causing of penetration, to any extent and with any object, of the genital or anal openings of another, whether or not there is any emission.

B. Criminal sexual penetration does not include medically indicated procedures.

C. Aggravated criminal sexual penetration consists of all criminal sexual penetration perpetrated on a child under thirteen years of age with an intent to kill or with a depraved mind regardless of human life. Whoever commits aggravated criminal sexual penetration is guilty of a first degree felony for aggravated criminal sexual penetration.

D. Criminal sexual penetration in the first degree consists of all criminal sexual penetration perpetrated:

(1) on a child under thirteen years of age; or

(2) by the use of force or coercion that results in great bodily harm or great mental anguish to the victim.

Whoever commits criminal sexual penetration in the first degree is guilty of a first degree felony.

E. Criminal sexual penetration in the second degree consists of all criminal sexual penetration perpetrated:

(1) by the use of force or coercion on a child thirteen to eighteen years of age;

(2) on an inmate confined in a correctional facility or jail when the perpetrator is in a position of authority over the inmate;

(3) by the use of force or coercion that results in personal injury to the victim;

(4) by the use of force or coercion when the perpetrator is aided or abetted by one or more persons;

(5) in the commission of any other felony; or

(6) when the perpetrator is armed with a deadly weapon.

Whoever commits criminal sexual penetration in the second degree is guilty of a second degree felony. Whoever commits criminal sexual penetration in the second degree when the victim is a child who is thirteen to eighteen years of age is guilty of a second degree felony for a sexual offense against a child and, notwithstanding the provisions of Section 31-18-15 NMSA 1978, shall be sentenced to a minimum term of imprisonment of three years, which shall not be suspended or deferred. The imposition of a minimum, mandatory term of imprisonment pursuant to the provisions of this subsection shall not be interpreted to preclude the imposition of sentencing enhancements pursuant to the provisions of the Criminal Sentencing Act.

F. Criminal sexual penetration in the third degree consists of all criminal sexual penetration perpetrated through the use of force or coercion not otherwise specified in this section.

Whoever commits criminal sexual penetration in the third degree is guilty of a third degree felony.

G. Criminal sexual penetration in the fourth degree consists of all criminal sexual penetration:

(1) not defined in Subsections D through F of this section perpetrated on a child thirteen to sixteen years of age when the perpetrator is at least eighteen years of age and is at least four years older than the child and not the spouse of that child; or

(2) perpetrated on a child thirteen to eighteen years of age when the perpetrator, who is a licensed school employee, an unlicensed school employee, a school contract employee, a school health service provider or a school volunteer, and who is at least eighteen years of age and is at least four years older than the child and not the spouse of that child, learns while performing services in or for a school that the child is a student in a school.

Whoever commits criminal sexual penetration in the fourth degree is guilty of a fourth degree felony."

Chapter 56 Section 2 Laws 2009

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.

Senate Bill 142

Approved April 1, 2009

LAWS 2009, CHAPTER 57

AN ACT

RELATING TO REGIONAL TRANSIT DISTRICTS; AUTHORIZING REGIONAL TRANSIT DISTRICTS TO EMPLOY LAW ENFORCEMENT OFFICERS; PROVIDING POWERS AND DUTIES OF COMMUTER RAIL SERVICE LAW ENFORCEMENT OFFICERS.

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

Chapter 57 Section 1 Laws 2009

Section 1. Section 73-25-1 NMSA 1978 (being Laws 2003, Chapter 65, Section 1) is amended to read:

"73-25-1. SHORT TITLE.--Chapter 73, Article 25 NMSA 1978 may be cited as the "Regional Transit District Act"."

Chapter 57 Section 2 Laws 2009

Section 2. A new section of the Regional Transit District Act is enacted to read:

"AUTHORIZATION TO EMPLOY COMMUTER RAIL SERVICE LAW ENFORCEMENT OFFICERS--POWERS AND DUTIES OF OFFICERS.--

A. A district that operates a commuter rail service may employ commuter rail service law enforcement officers for the district and assign duties to the officers.

B. At all times while on duty, commuter rail service law enforcement officers shall carry commissions of office issued by the district. Commuter rail service law enforcement officers shall have the powers of peace officers on all property, tracks, rights of way, easements, vehicles, buses, vans, railcars, locomotives and facilities owned, leased, licensed, maintained or operated by the district. Within this territory, a commuter rail service law enforcement officer may enforce all applicable laws, ordinances and regulations, but no arrest for violation of any law, ordinance or

regulation is valid unless, at the time of arrest, the commuter rail service law enforcement officer is wearing:

(1) a distinctive badge bearing the name of the district issued by the district; or

(2) a distinctive uniform prescribed and issued by the district.

C. A person employed by the district as a commuter rail service law enforcement officer shall fulfill the requirements for certification in Subsection A of Section 29-7-6 NMSA 1978 within one year of the date of first employment.

D. A district may contract with other law enforcement agencies to provide law enforcement services for the district."

Senate Bill 245

Approved April 1, 2009

LAWS 2009, CHAPTER 58

AN ACT

RELATING TO FINANCE; AUTHORIZING THE ISSUANCE OF BONDS SECURED BY A STATE GROSS RECEIPTS TAX INCREMENT FOR THE WINROCK/QUORUM TOWN CENTER REDEVELOPMENT TAX INCREMENT DEVELOPMENT PROJECT; IMPOSING REQUIREMENTS ON THE AUTHORIZATION; DECLARING AN EMERGENCY.

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

Chapter 58 Section 1 Laws 2009

Section 1. AUTHORIZATION OF ISSUANCE OF BONDS.--Pursuant to the provisions of Section 5-15-21 NMSA 1978 and subject to the requirements of this section, the legislature authorizes the issuance of bonds not to exceed one hundred thirty-seven million dollars (\$137,000,000) in net proceeds as adjusted for inflation, secured by tax increments authorized pursuant to the Tax Increment for Development Act to be pledged to pay the principal of and interest on the bonds, including a gross receipts tax increment attributed to the imposition of the state gross receipts tax within tax increment development district numbers 1 and 2, constituting a portion of the Winrock/Quorum Town Center redevelopment tax increment development project and the issuance of bonds not to exceed twenty-seven million dollars (\$27,000,000) in net proceeds as adjusted for inflation, secured by tax increments authorized pursuant to the

Tax Increment for Development Act to be pledged to pay the principal of and interest on the bonds, including a gross receipts tax increment attributed to the imposition of the state gross receipts tax within tax increment development district number 3, constituting a portion of the Winrock/Quorum Town Center redevelopment tax increment development project. The authorization is subject to:

A. the review by the New Mexico finance authority and the legislative finance committee and by a third party with expertise in development financing, selected by the New Mexico finance authority oversight committee, prior to issuance of any bonds of the master indenture applicable to bonds issued for the Winrock/Quorum Town Center redevelopment tax increment development project, provided that the costs incurred for the review by the third party shall be paid by the Winrock/Quorum Town Center redevelopment tax increment development project.

B. the review by the New Mexico finance authority of any amendments to the master indenture prior to the issuance of any bonds subsequent to such amendments; and

C. the review and recommendation of the legislative finance committee and the determination by the New Mexico finance authority that the master indenture and any amendments to the master indenture contain covenants and other provisions that assure that the proceeds of the bonds will be used as described in the tax increment development plan for the Winrock/Quorum Town Center redevelopment tax increment development project.

Chapter 58 Section 2 Laws 2009

Section 2. MANDATORY SINKING FUND--ADDITIONAL REQUIREMENTS.--

A. After reimbursement from bond proceeds of the property owners within districts 1, 2 and 3 for amounts expended by the property owners for eligible public infrastructure costs within the districts, all amounts of the tax increment revenues of the districts in excess of the amounts necessary to pay the principal, interest and any other payments on outstanding bonds when due shall be deposited into a sinking fund. Amounts deposited into the sinking fund shall be used to make additional payments on outstanding bonds sufficient to pay all principal, interest and any other payments due with respect to the bonds on the first date on which the bonds may be redeemed pursuant to the documents authorizing their issuance, or as soon thereafter as possible.

B. The New Mexico finance authority may require any additional covenants and provisions it determines are reasonably necessary or advisable to ensure that the principal, interest and other payments due with respect to the bonds authorized pursuant to Section 1 of this act are paid as soon as possible after tax increment revenues pledged to pay the bonds are available.

Chapter 58 Section 3 Laws 2009

Section 3. DURATION OF AUTHORIZATION.--The duration of the authorization for issuance of bonds in this act is fifty years, unless and until this act is repealed or modified by the legislature.

Chapter 58 Section 4 Laws 2009

Section 4. CERTAIN CAPITAL PROJECTS PROHIBITED.--

A. The legislature shall not approve or authorize any capital outlay projects within a Winrock/Quorum Town Center redevelopment tax increment district during the period that any bonds issued pursuant to Section 1 of this act are outstanding for that specific district, except for those buildings or facilities that are owned by the state or one of its agencies, institutions or political subdivisions and that are:

- (1) public school buildings or facilities;
- (2) higher education buildings or facilities;
- (3) cultural buildings or facilities;
- (4) buildings or facilities, exclusive of roads, used for public safety;

or

- (5) buildings used for other public purposes.

B. Nothing in this section prohibits the legislature from authorizing expenditures, pursuant to law, for economic development projects within a specific Winrock/Quorum Town Center redevelopment tax increment district for which any tax increment development bonds are outstanding.

Chapter 58 Section 5 Laws 2009

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

Senate Bill 467, aa, w/ec

Approved April 1, 2009

LAWS 2009, CHAPTER 59

AN ACT

RELATING TO TAXATION; CLARIFYING PROVISIONS OF THE SUSTAINABLE BUILDING TAX CREDITS; ALLOWING BUILDING OWNERS TO QUALIFY TO RECEIVE THE SUSTAINABLE BUILDING TAX CREDITS THROUGH TRANSFERABILITY; PROVIDING GREATER FLEXIBILITY TO MULTIFAMILY RESIDENTIAL BUILDINGS REGARDING OPPORTUNITIES TO BE QUALIFIED FOR SUSTAINABLE BUILDING TAX CREDITS.

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

Chapter 59 Section 1 Laws 2009

Section 1. Section 7-2-18.19 NMSA 1978 (being Laws 2007, Chapter 204, Section 3) is amended to read:

"7-2-18.19. SUSTAINABLE BUILDING TAX CREDIT.--

A. The tax credit provided by this section may be referred to as the "sustainable building tax credit". The sustainable building tax credit shall be available for the construction in New Mexico of a sustainable building, the renovation of an existing building in New Mexico into a sustainable building or the permanent installation of manufactured housing, regardless of where the housing is manufactured, that is a sustainable building. The tax credit provided in this section may not be claimed with respect to the same sustainable building for which the sustainable building tax credit provided in the Corporate Income and Franchise Tax Act has been claimed.

B. A taxpayer who files an income tax return is eligible to be granted a sustainable building tax credit by the department if the taxpayer submits a document issued pursuant to Subsection I of this section with the taxpayer's income tax return.

C. The amount of the sustainable building tax credit that may be claimed with respect to a sustainable commercial building shall be calculated based on the certification level the building has achieved in the LEED green building rating system and the amount of qualified occupied square footage in the building, as indicated on the following chart:

LEED Rating Level	Qualified Occupied Square Footage	Tax Credit per Square Foot
LEED-NC Silver	First 10,000	\$3.50
	Next 40,000	\$1.75

	Over 50,000	
	up to 500,000	\$.70
LEED-NC Gold	First 10,000	\$4.75
	Next 40,000	\$2.00
	Over 50,000	
	up to 500,000	\$1.00
LEED-NC Platinum	First 10,000	\$6.25
	Next 40,000	\$3.25
	Over 50,000	
	up to 500,000	\$2.00
LEED-EB or CS Silver	First 10,000	\$2.50
	Next 40,000	\$1.25
	Over 50,000	
	up to 500,000	\$.50
LEED-EB or CS Gold	First 10,000	\$3.35
	Next 40,000	\$1.40
	Over 50,000	
	up to 500,000	\$.70
LEED-EB or CS Platinum	First 10,000	\$4.40
	Next 40,000	\$2.30
	Over 50,000	
	up to 500,000	\$1.40
LEED-CI Silver	First 10,000	\$1.40

	Next 40,000	\$.70
	Over 50,000	
	up to 500,000	\$.30
LEED-CI Gold	First 10,000	\$1.90
	Next 40,000	\$.80
	Over 50,000	
	up to 500,000	\$.40
LEED-CI Platinum	First 10,000	\$2.50
	Next 40,000	\$1.30
	Over 50,000	
	up to 500,000	\$.80.

D. The amount of the sustainable building tax credit that may be claimed with respect to a sustainable residential building shall be calculated based on the amount of qualified occupied square footage, as indicated on the following chart:

Rating System/Level	Qualified Occupied Square Footage	Tax Credit per Square Foot
LEED-H Silver or Build	First 2,000	\$5.00
Green NM Silver	Next 1,000	\$2.50
LEED-H Gold or Build	First 2,000	\$6.85
Green NM Gold	Next 1,000	\$3.40
LEED-H Platinum or Build	First 2,000	\$9.00
Green NM Emerald	Next 1,000	\$4.45
EPA ENERGY STAR		

Manufactured Housing

Up to 3,000

\$3.00.

E. A person that is a building owner may apply for a certificate of eligibility for the sustainable building tax credit from the energy, minerals and natural resources department after the construction, installation or renovation of the sustainable building is complete. Applications shall be considered in the order received. If the energy, minerals and natural resources department determines that the building owner meets the requirements of this subsection and that the building with respect to which the tax credit application is made meets the requirements of this section as a sustainable residential building or a sustainable commercial building, the energy, minerals and natural resources department may issue a certificate of eligibility to the building owner, subject to the limitation in Subsection F of this section. The certificate shall include the rating system certification level awarded to the building, the amount of qualified occupied square footage in the building and a calculation of the maximum amount of sustainable building tax credit for which the building owner would be eligible. The energy, minerals and natural resources department may issue rules governing the procedure for administering the provisions of this subsection. If the certification level for the sustainable residential building is awarded on or after January 1, 2007, the energy, minerals and natural resources department may issue a certificate of eligibility to a building owner who is:

(1) the owner of the sustainable residential building at the time the certification level for the building is awarded; or

(2) the subsequent purchaser of a sustainable residential building with respect to which no tax credit has been previously claimed.

F. The energy, minerals and natural resources department may issue a certificate of eligibility only if the total amount of sustainable building tax credits represented by certificates of eligibility issued by the energy, minerals and natural resources department pursuant to this section and pursuant to the Corporate Income and Franchise Tax Act shall not exceed in any calendar year an aggregate amount of five million dollars (\$5,000,000) with respect to sustainable commercial buildings and an aggregate amount of five million dollars (\$5,000,000) with respect to sustainable residential buildings; provided that no more than one million two hundred fifty thousand dollars (\$1,250,000) of the aggregate amount with respect to sustainable residential buildings shall be for manufactured housing. If for any taxable year, the energy, minerals and natural resources department determines that the applications for sustainable building tax credits with respect to sustainable residential buildings for that taxable year exceed the aggregate limit set in this section, the energy, minerals and natural resources department may issue certificates of eligibility under the aggregate annual limit for sustainable commercial buildings to building owners of multifamily dwelling units that meet the requirements of the energy, minerals and natural resources department and of this section; provided that applications for sustainable building credits for other sustainable commercial buildings total less than the full amount allocated for tax credits for sustainable commercial buildings.

G. Installation of a solar thermal system or a photovoltaic system eligible for the solar market development tax credit pursuant to Section 7-2-18.14 NMSA 1978 may not be used as a component of qualification for the rating system certification level used in determining eligibility for the sustainable building tax credit, unless a solar market development tax credit pursuant to Section 7-2-18.14 NMSA 1978 has not been claimed with respect to that system and the building owner and the taxpayer claiming the sustainable building tax credit certify that such a tax credit will not be claimed with respect to that system.

H. To be eligible for the sustainable building tax credit, the building owner shall provide to the taxation and revenue department a certificate of eligibility issued by the energy, minerals and natural resources department pursuant to the requirements of Subsection E of this section and any other information the taxation and revenue department may require to determine the amount of the tax credit for which the building owner is eligible.

I. If the requirements of this section have been complied with, the department shall issue to the building owner a document granting a sustainable building tax credit. The document shall be numbered for identification and declare its date of issuance and the amount of the tax credit allowed pursuant to this section. The document may be submitted by the building owner with that taxpayer's income tax return, if applicable, or may be sold, exchanged or otherwise transferred to another taxpayer. The parties to such a transaction shall notify the department of the sale, exchange or transfer within ten days of the sale, exchange or transfer.

J. Except as provided in Subsection K of this section, the sustainable building tax credit represented by the document issued pursuant to Subsection I of this section shall be applied against the taxpayer's income tax liability for the taxable year for which the credit is approved and the three subsequent taxable years, in increments of twenty-five percent of the total credit amount in each of the four taxable years. If the amount of the credit available in a taxable year exceeds the taxpayer's income tax liability for that taxable year, the excess may be carried forward for up to seven years.

K. If the total amount of a sustainable building tax credit approved by the department is less than

twenty-five thousand dollars (\$25,000), the entire amount of the credit may be applied against the taxpayer's income tax liability for the taxable year for which the credit is approved. If the amount of the credit exceeds the taxpayer's income tax liability for that taxable year, the excess may be carried forward for up to seven years.

L. A taxpayer who otherwise qualifies and claims a sustainable building tax credit with respect to a sustainable building owned by a partnership or other business association of which the taxpayer is a member may claim a credit only in proportion to that taxpayer's interest in the partnership or association. The total credit claimed in the aggregate by all members of the partnership or association with respect

to the sustainable building shall not exceed the amount of the credit that could have been claimed by a sole owner of the property.

M. A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the sustainable building tax credit that would have been allowed on a joint return.

N. For the purposes of this section:

(1) "build green New Mexico rating system" means the certification standards adopted by the homebuilders association of central New Mexico;

(2) "LEED-CI" means the LEED rating system for commercial interiors;

(3) "LEED-CS" means the LEED rating system for the core and shell of buildings;

(4) "LEED-EB" means the LEED rating system for existing buildings;

(5) "LEED gold" means the rating in compliance with, or exceeding, the second-highest rating awarded by the LEED certification process;

(6) "LEED" means the most current leadership in energy and environmental design green building rating system guidelines developed and adopted by the United States green building council;

(7) "LEED-H" means the LEED rating system for homes;

(8) "LEED-NC" means the LEED rating system for new buildings and major renovations;

(9) "LEED platinum" means the rating in compliance with, or exceeding, the highest rating awarded by the LEED certification process;

(10) "LEED silver" means the rating in compliance with, or exceeding, the third-highest rating awarded by the LEED certification process;

(11) "manufactured housing" means a multisectioned home that is:

(a) a manufactured home or modular home;

(b) a single-family dwelling with a heated area of at least thirty-six feet by twenty-four feet and a total area of at least eight hundred sixty-four square feet;

(c) constructed in a factory to the standards of the United States department of housing and urban development, the National Manufactured Housing Construction and Safety Standards Act of 1974 and the Housing and Urban Development Zone Code 2 or New Mexico construction codes up to the date of the unit's construction; and

(d) installed consistent with the Manufactured Housing Act and rules adopted pursuant to that act relating to permanent foundations;

(12) "qualified occupied square footage" means the occupied spaces of the building as determined by:

(a) the United States green building council for those buildings obtaining LEED certification;

(b) the administrators of the build green New Mexico rating system for those homes obtaining build green New Mexico certification; and

(c) the United States environmental protection agency for ENERGY STAR-certified manufactured homes;

(13) "person" does not include state, local government, public school district or tribal agencies;

(14) "sustainable building" means either a sustainable commercial building or a sustainable residential building;

(15) "sustainable commercial building" means a building that has been registered and certified under the LEED-NC, LEED-EB, LEED-CS or LEED-CI rating system and that:

(a) is certified by the United States green building council at LEED silver or higher;

(b) achieves any prerequisite for and at least one point related to commissioning under LEED "energy and atmosphere", if included in the applicable rating system; and

(c) has reduced energy consumption, as follows: 1) through 2011, a fifty percent energy reduction will be required based on the national average for that building type as published by the United States department of energy; and beginning January 1, 2012, a sixty percent energy reduction will be required based on the national average for that building type as published by the United States department of energy; and 2) is substantiated by the United States environmental protection agency target finder energy performance results form, dated no sooner than the schematic design phase of development;

(16) "sustainable residential building" means:

(a) a building used as a single-family residence as registered and certified under the build green New Mexico or LEED-H rating system that: 1) is certified by the United States green building council as LEED-H silver or higher or by build green New Mexico as silver or higher; and 2) has achieved a home energy rating system index of sixty or lower as developed by the residential energy services network;

(b) a multifamily dwelling unit, as registered and certified under the LEED-H or build green New Mexico rating system that: 1) is certified by the United States green building council as LEED-H silver or higher or by build green New Mexico as silver or higher; and 2) has achieved a home energy rating system index of sixty or lower as developed by the residential energy services network; or

(c) manufactured housing that is ENERGY STAR-qualified by the United States environmental protection agency; and

(17) "tribal" means of, belonging to or created by a federally recognized Indian nation, tribe or pueblo."

Chapter 59 Section 2 Laws 2009

Section 2. Section 7-2A-21 NMSA 1978 (being Laws 2007, Chapter 204, Section 4) is amended to read:

"7-2A-21. SUSTAINABLE BUILDING TAX CREDIT.--

A. The tax credit provided by this section may be referred to as the "sustainable building tax credit". The sustainable building tax credit shall be available for the construction in New Mexico of a sustainable building, the renovation of an existing building in New Mexico into a sustainable building or the permanent installation of manufactured housing, regardless of where the housing is manufactured, that is a sustainable building. The tax credit provided in this section may not be claimed with respect to the same sustainable building for which the sustainable building tax credit provided in the Income Tax Act has been claimed.

B. A taxpayer that files a corporate income tax return is eligible to be granted a sustainable building tax credit by the department if the taxpayer submits a document issued pursuant to Subsection I of this section with the taxpayer's corporate income tax return.

C. The amount of the sustainable building tax credit that may be claimed with respect to a sustainable commercial building shall be calculated based on the certification level the building has achieved in the LEED green building rating system and the amount of qualified occupied square footage in the building, as indicated on the following chart:

LEED Rating Level	Qualified Occupied Square Footage	Tax Credit per Square Foot
LEED-NC Silver	First 10,000	\$3.50
	Next 40,000	\$1.75
	Over 50,000	
	up to 500,000	\$.70
LEED-NC Gold	First 10,000	\$4.75
	Next 40,000	\$2.00
	Over 50,000	
	up to 500,000	\$1.00
LEED-NC Platinum	First 10,000	\$6.25
	Next 40,000	\$3.25
	Over 50,000	
	up to 500,000	\$2.00
LEED-EB or CS Silver	First 10,000	\$2.50
	Next 40,000	\$1.25
	Over 50,000	
	up to 500,000	\$.50
LEED-EB or CS Gold	First 10,000	\$3.35
	Next 40,000	\$1.40
	Over 50,000	
	up to 500,000	\$.70

LEED-EB or CS

Platinum	First 10,000	\$4.40
	Next 40,000	\$2.30
	Over 50,000	
	up to 500,000	\$1.40
LEED-CI Silver	First 10,000	\$1.40
	Next 40,000	\$.70
	Over 50,000	
	up to 500,000	\$.30
LEED-CI Gold	First 10,000	\$1.90
	Next 40,000	\$.80
	Over 50,000	
	up to 500,000	\$.40
LEED-CI Platinum	First 10,000	\$2.50
	Next 40,000	\$1.30
	Over 50,000	
	up to 500,000	\$.80.

D. The amount of the sustainable building tax credit that may be claimed with respect to a sustainable residential building shall be calculated based on the amount of qualified occupied square footage, as indicated on the following chart:

Rating System/Level	Qualified Occupied Square Footage	Tax Credit per Square Foot
LEED-H Silver or Build	First 2,000	\$5.00

Green NM Silver	Next 1,000	\$2.50
LEED-H Gold or Build	First 2,000	\$6.85
Green NM Gold	Next 1,000	\$3.40
LEED-H Platinum or Build	First 2,000	\$9.00
Green NM Emerald	Next 1,000	\$4.45
EPA ENERGY STAR		
Manufactured Housing	Up to 3,000	\$3.00.

E. A person that is a building owner may apply for a certificate of eligibility for the sustainable building tax credit from the energy, minerals and natural resources department after the construction, installation or renovation of the sustainable building is complete. Applications shall be considered in the order received. If the energy, minerals and natural resources department determines that the building owner meets the requirements of this subsection and that the building with respect to which the tax credit application is made meets the requirements of this section as a sustainable residential building or a sustainable commercial building, the energy, minerals and natural resources department may issue a certificate of eligibility to the building owner, subject to the limitation in Subsection F of this section. The certificate shall include the rating system certification level awarded to the building, the amount of qualified occupied square footage in the building and a calculation of the maximum amount of sustainable building tax credit for which the building owner would be eligible. The energy, minerals and natural resources department may issue rules governing the procedure for administering the provisions of this subsection. If the certification level for the sustainable residential building is awarded on or after January 1, 2007, the energy, minerals and natural resources department may issue a certificate of eligibility to a building owner who is:

(1) the owner of the sustainable residential building at the time the certification level for the building is awarded; or

(2) the subsequent purchaser of a sustainable residential building with respect to which no tax credit has been previously claimed.

F. The energy, minerals and natural resources department may issue a certificate of eligibility only if the total amount of sustainable building tax credits represented by certificates of eligibility issued by the energy, minerals and natural resources department pursuant to this section and pursuant to the Income Tax Act shall not exceed in any calendar year an aggregate amount of five million dollars (\$5,000,000) with respect to sustainable commercial buildings and an aggregate amount of five million dollars (\$5,000,000) with respect to sustainable residential

buildings; provided that no more than one million two hundred fifty thousand dollars (\$1,250,000) of the aggregate amount with respect to sustainable residential buildings shall be for manufactured housing. If for any taxable year, the energy, minerals and natural resources department determines that the applications for sustainable building tax credits with respect to sustainable residential buildings for that taxable year exceed the aggregate limit set in this section, the energy, minerals and natural resources department may issue certificates of eligibility under the aggregate annual limit for sustainable commercial buildings to building owners of multifamily dwelling units that meet the requirements of the energy, minerals and natural resources department and of this section; provided that applications for sustainable building credits for other sustainable commercial buildings total less than the full amount allocated for tax credits for sustainable commercial buildings.

G. Installation of a solar thermal system or a photovoltaic system eligible for the solar market development tax credit pursuant to Section 7-2-18.14 NMSA 1978 may not be used as a component of qualification for the rating system certification level used in determining eligibility for the sustainable building tax credit, unless a solar market development tax credit pursuant to Section 7-2-18.14 NMSA 1978 has not been claimed with respect to that system and the building owner and the taxpayer claiming the sustainable building tax credit certify that such a tax credit will not be claimed with respect to that system.

H. To be eligible for the sustainable building tax credit, the building owner shall provide to the taxation and revenue department a certificate of eligibility issued by the energy, minerals and natural resources department pursuant to the requirements of Subsection E of this section and any other information the taxation and revenue department may require to determine the amount of the tax credit for which the building owner is eligible.

I. If the requirements of this section have been complied with, the department shall issue to the building owner a document granting a sustainable building tax credit. The document shall be numbered for identification and declare its date of issuance and the amount of the tax credit allowed pursuant to this section. The document may be submitted by the building owner with that taxpayer's income tax return, if applicable, or may be sold, exchanged or otherwise transferred to another taxpayer. The parties to such a transaction shall notify the department of the sale, exchange or transfer within ten days of the sale, exchange or transfer.

J. Except as provided in Subsection K of this section, the sustainable building tax credit represented by the document issued pursuant to Subsection I of this section shall be applied against the taxpayer's corporate income tax liability for the taxable year for which the credit is approved and the three subsequent taxable years, in increments of twenty-five percent of the total credit amount in each of the four taxable years. If the amount of the credit available in a taxable year exceeds the taxpayer's corporate income tax liability for that taxable year, the excess may be carried forward for up to seven years.

K. If the total amount of a sustainable building tax credit approved by the department is less than

twenty-five thousand dollars (\$25,000), the entire amount of the credit may be applied against the taxpayer's corporate income tax liability for the taxable year for which the credit is approved. If the amount of the credit exceeds the taxpayer's corporate income tax liability for that taxable year, the excess may be carried forward for up to seven years.

L. A taxpayer that otherwise qualifies and claims a sustainable building tax credit with respect to a sustainable building owned by a partnership or other business association of which the taxpayer is a member may claim a credit only in proportion to that taxpayer's interest in the partnership or association. The total credit claimed in the aggregate by all members of the partnership or association with respect to the sustainable building shall not exceed the amount of the credit that could have been claimed by a sole owner of the property.

M. For the purposes of this section:

(1) "build green New Mexico rating system" means the certification standards adopted by the homebuilders association of central New Mexico;

(2) "LEED-CI" means the LEED rating system for commercial interiors;

(3) "LEED-CS" means the LEED rating system for the core and shell of buildings;

(4) "LEED-EB" means the LEED rating system for existing buildings;

(5) "LEED gold" means the rating in compliance with, or exceeding, the second-highest rating awarded by the LEED certification process;

(6) "LEED" means the most current leadership in energy and environmental design green building rating system guidelines developed and adopted by the United States green building council;

(7) "LEED-H" means the LEED rating system for homes;

(8) "LEED-NC" means the LEED rating system for new buildings and major renovations;

(9) "LEED platinum" means the rating in compliance with, or exceeding, the highest rating awarded by the LEED certification process;

(10) "LEED silver" means the rating in compliance with, or exceeding, the third-highest rating awarded by the LEED certification process;

(11) "manufactured housing" means a multisectioned home that is:

(a) a manufactured home or modular home;

(b) a single-family dwelling with a heated area of at least thirty-six feet by twenty-four feet and a total area of at least eight hundred sixty-four square feet;

(c) constructed in a factory to the standards of the United States department of housing and urban development, the National Manufactured Housing Construction and Safety Standards Act of 1974 and the Housing and Urban Development Zone Code 2 or New Mexico construction codes up to the date of the unit's construction; and

(d) installed consistent with the Manufactured Housing Act and rules adopted pursuant to that act relating to permanent foundations;

(12) "qualified occupied square footage" means the occupied spaces of the building as determined by:

(a) the United States green building council for those buildings obtaining LEED certification;

(b) the administrators of the build green New Mexico rating system for those homes obtaining build green New Mexico certification; and

(c) the United States environmental protection agency for ENERGY STAR-certified manufactured homes;

(13) "person" does not include state, local government, public school district or tribal agencies;

(14) "sustainable building" means either a sustainable commercial building or a sustainable residential building;

(15) "sustainable commercial building" means a building that has been registered and certified under the LEED-NC, LEED-EB, LEED-CS or LEED-CI rating system and that:

(a) is certified by the United States green building council at LEED silver or higher;

(b) achieves any prerequisite for and at least one point related to commissioning under LEED "energy and atmosphere", if included in the applicable rating system; and

(c) has reduced energy consumption, as follows: 1) through 2011, a fifty percent energy reduction will be required based on the national average for that building type as published by the United States department of energy; and beginning January 1, 2012, a sixty percent energy reduction will be required based on the national average for that building type as published by the United States department of energy; and 2) is substantiated by the United States environmental protection agency target finder energy performance results form, dated no sooner than the schematic design phase of development;

(16) "sustainable residential building" means:

(a) a building used as a single-family residence as registered and certified under the build green New Mexico or LEED-H rating systems that: 1) is certified by the United States green building council as LEED-H silver or higher or by build green New Mexico as silver or higher; and 2) has achieved a home energy rating system index of sixty or lower as developed by the residential energy services network;

(b) a multifamily dwelling unit, as registered and certified under the LEED-H or build green New Mexico rating system that: 1) is certified by the United States green building council as LEED-H silver or higher or by build green New Mexico as silver or higher; and 2) has achieved a home energy rating system index of sixty or lower as developed by the residential energy services network; or

(c) manufactured housing that is ENERGY STAR-qualified by the United States environmental protection agency; and

(17) "tribal" means of, belonging to or created by a federally recognized Indian nation, tribe or pueblo."

SCORC/Senate Bill 291, aa

Approved April 1, 2009

LAWS 2009, CHAPTER 60

AN ACT

RELATING TO HIGHER EDUCATION; ENACTING THE AMERICAN INDIAN POST-SECONDARY EDUCATION ACT; CREATING A DIVISION IN THE HIGHER EDUCATION DEPARTMENT; PROVIDING POWERS AND DUTIES; CREATING A

FUND; AUTHORIZING MEMORANDA OF UNDERSTANDING BETWEEN THE DEPARTMENT AND TRIBAL COLLEGES AND FEDERAL BUREAU OF INDIAN EDUCATION SCHOOLS.

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

Chapter 60 Section 1 Laws 2009

Section 1. Section 9-25-4 NMSA 1978 (being Laws 2005, Chapter 289, Section 4, as amended) is amended to read:

"9-25-4. DEPARTMENT CREATED.--

A. The "higher education department" is created in the executive branch. The department is a cabinet department and includes the following divisions:

- (1) the administrative services division;
- (2) the planning and research division;
- (3) the financial aid division;
- (4) the public information and communications division;
- (5) the adult basic education division;
- (6) the information technology division;
- (7) the private and proprietary schools division;
- (8) the public schools liaison division; and
- (9) the American Indian post-secondary education division.

B. The secretary may organize the department and divisions of the department and may transfer or merge functions between divisions and bureaus in the interest of efficiency and economy."

Chapter 60 Section 2 Laws 2009

Section 2. SHORT TITLE.--Sections 2 through 7 of this act may be cited as the "American Indian Post-Secondary Education Act".

Chapter 60 Section 3 Laws 2009

Section 3. DEFINITIONS.--As used in the American Indian Post-Secondary Education Act:

A. "bureau of Indian education school" means a school located in New Mexico that is under the control of the bureau of Indian education of the United States department of the interior;

B. "department" means the higher education department;

C. "division" means the American Indian post-secondary education division of the department;

D. "fund" means the American Indian post-secondary education fund;

E. "public post-secondary educational institution" means an institution of higher education delineated in Article 12, Section 11 of the constitution of New Mexico or a community college, branch community college or technical and vocational institute organized pursuant to Chapter 21, Article 13, 14 or 16 NMSA 1978;

F. "secretary" means the secretary of higher education;

G. "tribal college" means a tribally, federally or congressionally chartered post-secondary educational institution located within New Mexico that is accredited by the north central association of colleges and schools; and

H. "tribe" means an Indian nation, tribe or pueblo located within New Mexico.

Chapter 60 Section 4 Laws 2009

Section 4. DEPARTMENT RULES--MEMORANDA OF UNDERSTANDING.--

A. The department shall consult with tribes, bureau of Indian education schools and tribal colleges when adopting rules to carry out the provisions of the American Indian Post-Secondary Education Act.

B. The secretary may enter into memoranda of understanding with tribal colleges, bureau of Indian education schools and tribes for data collection and data sharing and for other matters related to implementation of the American Indian Post-Secondary Education Act.

Chapter 60 Section 5 Laws 2009

Section 5. AMERICAN INDIAN POST-SECONDARY EDUCATION DIVISION DUTIES.--

A. The division shall:

(1) develop and implement policies that positively affect the post-secondary educational success of American Indian students;

(2) provide assistance to public post-secondary educational institutions and tribal colleges in the planning, development, implementation and evaluation of recruitment and retention strategies designed for American Indian college students;

(3) seek funding to assist public educational institutions and tribal colleges as needed to develop support services to increase the enrollment, retention and graduation rates of American Indians at public post-secondary educational institutions and tribal colleges, including:

(a) academic support and transition programs; and

(b) institutional efforts to increase academic financial support;

(4) develop a system for consistent data collection and sharing on the enrollment, retention and graduation rates of American Indian students at public post-secondary educational institutions and tribal colleges; and

(5) conduct outreach to tribes concerning financial aid opportunities for American Indian students.

B. The director of the division shall serve as a liaison with the Indian education advisory council.

Chapter 60 Section 6 Laws 2009

Section 6. REPORTS.--

A. Each public post-secondary educational institution shall submit an annual American Indian post-secondary education status report to the division. The department may enter into agreements with tribal colleges to provide the same annual status reports. The status reports shall be submitted in a form prescribed by the division and shall include the following information through which American Indian post-secondary educational performance is measured and aligned with the higher education strategic priorities:

(1) student recruitment;

(2) student retention;

- (3) student attrition;
- (4) remediation needs, by course type;
- (5) graduation rate and types and fields of degrees;
- (6) student financial aid data, including student demographic data;

and

(7) annual goals and objectives of American Indian education programs, including graduate-level participation by American Indians.

B. The division shall compile the data collected pursuant to Subsection A of this section and publish an annual state American Indian post-secondary education status report.

Chapter 60 Section 7 Laws 2009

Section 7. AMERICAN INDIAN POST-SECONDARY EDUCATION FUND CREATED--GRANTS--APPLICATIONS.--

A. The "American Indian post-secondary education fund" is created as a nonreverting fund in the state treasury. The fund consists of appropriations, gifts, grants, donations and income from investment of the fund. The fund shall be administered by the department, and money in the fund is appropriated to the department to carry out the purposes of the American Indian Post-Secondary Education Act. Disbursements from the fund shall be by warrant of the secretary of finance and administration pursuant to vouchers signed by the secretary of higher education or the secretary's authorized representative.

B. Grants may be awarded for special projects related to recruitment, retention and graduation of American Indian students, including student conferences, cultural awareness training for faculty and staff at public post-secondary educational institutions and tribal colleges, academic support and transition programs and other projects approved by the division.

C. Applications for grants shall be in the form prescribed by the division. The division, with the secretary's approval, shall promulgate rules on the grant application and award process, including:

- (1) who may apply for grants;
- (2) information required in the application process;
- (3) how applications will be evaluated and awarded;

- (4) accounting and financial reporting requirements for grantees;
- (5) reporting requirements on the use of a grant and the outcomes of the special project funded by the grant; and
- (6) any other information deemed necessary by the division.

HAFC/House Bill 50

Approved April 2, 2009

LAWS 2009, CHAPTER 61

AN ACT

RELATING TO TAXATION; AUTHORIZING CONTINUATION OF THE INCREMENT OF THE COUNTY HEALTH CARE GROSS RECEIPTS TAX IMPOSED BY CERTAIN COUNTIES FOR SUPPORT OF INDIGENT PATIENTS; DECLARING AN EMERGENCY.

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

Chapter 61 Section 1 Laws 2009

Section 1. Section 7-20E-18 NMSA 1978 (being Laws 1991, Chapter 212, Section 7, as amended) is amended to read:

"7-20E-18. COUNTY HEALTH CARE GROSS RECEIPTS TAX--AUTHORITY TO IMPOSE RATE.--

A. The majority of the members of the governing body of any county may enact an ordinance imposing an excise tax at a rate of one-sixteenth percent of the gross receipts of any person engaging in business in the county for the privilege of engaging in business in the county. Any ordinance imposing an excise tax pursuant to this section shall not be subject to a referendum. The governing body of a county shall, at the time of enacting an ordinance imposing the tax, dedicate the revenue to the county-supported medicaid fund. This tax is to be referred to as the "county health care gross receipts tax".

B. In addition to the imposition of the county health care gross receipts tax authorized by Subsection A of this section, the majority of the members of the governing body of a county having a population of more than five hundred thousand persons according to the most recent federal decennial census may enact an ordinance imposing an additional one-sixteenth percent increment of county health care gross

receipts tax; provided that the imposition of the additional increment shall be for a period that ends no later than June 30, 2009. To continue an increment after June 30, 2009 or beyond any five-year period for which the increment has been imposed, the members of the governing body shall review the need for the increment and if the majority of the members vote in favor of continuing the increment imposed pursuant to this subsection, the increment shall be imposed for an additional period of five years. The governing body of the county shall, at the time of enacting an ordinance imposing the additional increment of county health care gross receipts tax, dedicate the revenue to the support of indigent patients.

C. Any ordinance enacted pursuant to the provisions of Subsection A or B of this section shall include an effective date of either July 1 or January 1 in accordance with the provisions of the County Local Option Gross Receipts Taxes Act."

Chapter 61 Section 2 Laws 2009

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

House Bill 135, aa, w/ec

Approved April 2, 2009

LAWS 2009, CHAPTER 62

AN ACT

RELATING TO TAXATION; PROVIDING FOR AN EXEMPTION FROM THE GROSS RECEIPTS TAX FOR PROVIDING CERTAIN SERVICES DURING SCHOOL EVENTS SANCTIONED BY THE NEW MEXICO ACTIVITIES ASSOCIATION.

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

Chapter 62 Section 1 Laws 2009

Section 1. A new section of the Gross Receipts and Compensating Tax Act is enacted to read:

"EXEMPTION--OFFICIATING AT NEW MEXICO ACTIVITIES ASSOCIATION-SANCTIONED SCHOOL EVENTS.--Exempted from the gross receipts tax are the receipts from refereeing, umpiring, scoring or other officiating at school events sanctioned by the New Mexico activities association."

House Bill 174, aa

Approved April 2, 2009

LAWS 2009, CHAPTER 63

AN ACT

RELATING TO EDUCATORS; EXPANDING THE PURPOSES FOR WHICH THE EDUCATOR LICENSURE FUND MAY BE EXPENDED.

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

Chapter 63 Section 1 Laws 2009

Section 1. Section 22-8-44 NMSA 1978 (being Laws 1997, Chapter 238, Section 6, as amended) is amended to read:

"22-8-44. EDUCATOR LICENSURE FUND--DISTRIBUTION--
APPROPRIATION.--

A. The "educator licensure fund" is created in the state treasury and shall be administered by the department. The fund shall consist of money collected from application fees for licensure or for renewal of licensure by the department.

B. Subject to legislative appropriation, money in the fund is appropriated to the department for the following purposes:

(1) to fund the educator background check program;

(2) to enforce educator ethics requirements; and

(3) to process applications for licensure or for renewal of licensure, including review of professional development dossiers.

C. Money in the fund and any interest that may accrue to the fund shall not revert at the end of the fiscal year but shall remain to the credit of the fund."

Chapter 63 Section 2 Laws 2009

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.

House Bill 188

Approved April 2, 2009

LAWS 2009, CHAPTER 64

AN ACT

RELATING TO EDUCATION; ALLOWING REGIONAL EDUCATION COOPERATIVES TO PROVIDE EDUCATION-RELATED SERVICES TO NONMEMBERS; ALLOWING COOPERATIVES TO APPLY FOR AND RECEIVE GOVERNMENT AND PRIVATE FUNDING FOR EDUCATIONAL PROGRAMS; CHANGING ACCOUNTABILITY PROCEDURES.

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

Chapter 64 Section 1 Laws 2009

Section 1. Section 22-2B-3 NMSA 1978 (being Laws 1993, Chapter 232, Section 3, as amended) is amended to read:

"22-2B-3. REGIONAL EDUCATION COOPERATIVES AUTHORIZED.--

A. The department may authorize the existence and operation of "regional education cooperatives". Upon authorization by the department, local school boards may join with other local school boards or other state-supported educational institutions to form cooperatives to provide education-related services. Cooperatives shall be deemed individual state agencies administratively attached to the department; provided that:

(1) pursuant to the rules of the department, cooperatives may own, and have control and management over, buildings and land independent of the director of the property control division of the general services department;

(2) cooperatives shall not submit budgets to the department of finance and administration but shall submit them to the department. The department shall, by rule, determine the provisions of the Public School Finance Act relating to budgets and expenditures that are applicable to cooperatives; and

(3) pursuant to the rules of the department, the secretary may, after considering the factors specified in Section 22-8-38 NMSA 1978, designate a cooperative council as a board of finance with which all funds appropriated or distributed to it shall be deposited. If such a designation is not made or if such a designation is suspended by the secretary, the money appropriated or to be distributed

to a cooperative shall be deposited with the state treasurer. Unexpended or unencumbered balances in the account of a cooperative shall not revert.

B. The department shall, by rule, establish minimum criteria for the establishment and operation of cooperatives. The department shall also establish procedures for oversight of cooperatives to ensure compliance with department rule. Cooperatives shall be exempt from the provisions of the Personnel Act.

C. With council approval, a cooperative may provide revenue-generating education-related services to nonmembers, so long as those services do not detract from the cooperative's ability to fulfill its responsibilities to its members.

D. With council approval, a cooperative may apply for and receive public and private grants as well as gifts, donations, bequests and devises and use them to further the purposes and goals of the cooperative.

E. Each cooperative shall cooperate with the department as required by federal-state plans or department rules in the effectuation and administration of its educational programs. Each cooperative shall submit reports to the department at such times and in such form as required by department rule. Reports shall include an evaluation of the effectiveness of the technical assistance and other services provided to members of the cooperative and any nonmember public and private entities to which the cooperative provided educational services. The reports and evaluations submitted pursuant to this subsection shall be made available upon request to the legislative education study committee and the legislative finance committee."

Chapter 64 Section 2 Laws 2009

Section 2. Section 22-2B-5 NMSA 1978 (being Laws 1993, Chapter 232, Section 5) is amended to read:

"22-2B-5. REGIONAL EDUCATION COORDINATING COUNCILS--DUTIES.--

A. Each council shall oversee the function and operation of a cooperative. At the direction of the council, the cooperative shall provide:

- (1) education-related services to members of the cooperative;
- (2) technical assistance and staff development opportunities to members of the cooperative;
- (3) cooperative purchasing capabilities and fiscal management opportunities to members of the cooperative;
- (4) such additional services to members of the cooperative as may be determined by the council to be appropriate; and

(5) revenue-generating education-related services to nonmembers when the council determines that the provision of such services will not interfere with the cooperative's ability to fulfill its responsibilities to its members.

B. Pursuant to rule of the department, each council shall:

(1) adopt a budget and administrative guidelines as necessary to carry out the purposes of the cooperative; and

(2) hire an executive director and necessary additional staff."

Chapter 64 Section 3 Laws 2009

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.

House Bill 197

Approved April 2, 2009

LAWS 2009, CHAPTER 65

AN ACT

RELATING TO REAL PROPERTY; AMENDING THE NEW MEXICO SUBDIVISION ACT TO PROVIDE FOR TRIBAL NOTIFICATION IN SPECIFIED INSTANCES.

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

Chapter 65 Section 1 Laws 2009

Section 1. Section 47-6-2 NMSA 1978 (being Laws 1973, Chapter 348, Section 2, as amended) is amended to read:

"47-6-2. DEFINITIONS.--As used in the New Mexico Subdivision Act:

A. "board of county commissioners" means the governing board of a county;

B. "common promotional plan" means a plan or scheme of operation, undertaken by a single subdivider or a group of subdividers acting in concert, to offer for sale or lease parcels of land where the land is either contiguous or part of the same

area of land or is known, designated or advertised as a common unit or by a common name;

C. "final plat" means a map, chart, survey, plan or replat certified by a licensed, registered land surveyor containing a description of the subdivided land with ties to permanent monuments prepared in a form suitable for filing of record;

D. "immediate family member" means a husband, wife, father, stepfather, mother, stepmother, brother, stepbrother, sister, stepsister, son, stepson, daughter, stepdaughter, grandson, stepgrandson, granddaughter, stepgranddaughter, nephew and niece, whether related by natural birth or adoption;

E. "Indian nation, tribe or pueblo" means any federally recognized Indian nation, tribe or pueblo located wholly or partially in New Mexico;

F. "lease" means to lease or offer to lease land;

G. "parcel" means land capable of being described by location and boundaries and not dedicated for public or common use;

H. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other entity;

I. "preliminary plat" means a map of a proposed subdivision showing the character and proposed layout of the subdivision and the existing conditions in and around it and need not be based upon an accurate and detailed survey of the land;

J. "sell" means to sell or offer to sell land;

K. "subdivide" means to divide a surface area of land into a subdivision;

L. "subdivider" means any person who creates or who has created a subdivision individually or as part of a common promotional plan or any person engaged in the sale, lease or other conveyance of subdivided land; however, "subdivider" does not include any duly licensed real estate broker or salesperson acting on another's account;

M. "subdivision" means the division of a surface area of land, including land within a previously approved subdivision, into two or more parcels for the purpose of sale, lease or other conveyance or for building development, whether immediate or future; but "subdivision" does not include:

(1) the sale, lease or other conveyance of any parcel that is thirty-five acres or larger in size within any twelve-month period, provided that the land has

been used primarily and continuously for agricultural purposes, in accordance with Section 7-36-20 NMSA 1978, for the preceding three years;

(2) the sale or lease of apartments, offices, stores or similar space within a building;

(3) the division of land within the boundaries of a municipality;

(4) the division of land in which only gas, oil, mineral or water rights are severed from the surface ownership of the land;

(5) the division of land created by court order where the order creates no more than one parcel per party;

(6) the division of land for grazing or farming activities; provided the land continues to be used for grazing or farming activities;

(7) the division of land resulting only in the alteration of parcel boundaries where parcels are altered for the purpose of increasing or reducing the size of contiguous parcels and where the number of parcels is not increased;

(8) the division of land to create burial plots in a cemetery;

(9) the division of land to create a parcel that is sold or donated as a gift to an immediate family member; however, this exception shall be limited to allow the seller or donor to sell or give no more than one parcel per tract of land per immediate family member;

(10) the division of land created to provide security for mortgages, liens or deeds of trust; provided that the division of land is not the result of a seller-financed transaction;

(11) the sale, lease or other conveyance of land that creates no parcel smaller than one hundred forty acres;

(12) the division of land to create a parcel that is donated to any trust or nonprofit corporation granted an exemption from federal income tax, as described in Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended; school, college or other institution with a defined curriculum and a student body and faculty that conducts classes on a regular basis; or church or group organized for the purpose of divine worship, religious teaching or other specifically religious activity; or

(13) the sale, lease or other conveyance of a single parcel from a tract of land, except from a tract within a previously approved subdivision, within any five-year period; provided that a second or subsequent sale, lease or other conveyance

from the same tract of land within five years of the first sale, lease or other conveyance shall be subject to the provisions of the New Mexico Subdivision Act; provided further that a survey shall be filed with the county clerk indicating the five-year holding period for both the original tract and the newly created tract;

N. "terrain management" means the control of floods, drainage and erosion and measures required for adapting proposed development to existing soil characteristics and topography;

O. "time of purchase, lease or other conveyance" means the time of signing any document obligating the person signing the document to purchase, lease or otherwise acquire a legal interest in land;

P. "type-one subdivision" means any subdivision containing five hundred or more parcels, any one of which is less than ten acres in size;

Q. "type-two subdivision" means any subdivision containing not fewer than twenty-five but not more than four hundred ninety-nine parcels, any one of which is less than ten acres in size;

R. "type-three subdivision" means any subdivision containing not more than twenty-four parcels, any one of which is less than ten acres in size;

S. "type-four subdivision" means any subdivision containing twenty-five or more parcels, each of which is ten acres or more in size; and

T. "type-five subdivision" means any subdivision containing not more than twenty-four parcels, each of which is ten acres or more in size."

Chapter 65 Section 2 Laws 2009

Section 2. Section 47-6-11 NMSA 1978 (being Laws 1973, Chapter 348, Section 11, as amended) is amended to read:

"47-6-11. PRELIMINARY PLAT APPROVAL--SUMMARY REVIEW.--

A. Preliminary plats shall be submitted for type-one, type-two, type-three, except type-three subdivisions that are subject to review under summary procedure as set forth in Subsection I of this section, and type-four subdivisions.

B. Prior to approving the preliminary plat, the board of county commissioners of the county in which the subdivision is located shall require that the subdivider furnish documentation of:

(1) water sufficient in quantity to fulfill the maximum annual water requirements of the subdivision, including water for indoor and outdoor domestic uses;

(2) water of an acceptable quality for human consumption and measures to protect the water supply from contamination;

(3) the means of liquid waste disposal for the subdivision;

(4) the means of solid waste disposal for the subdivision;

(5) satisfactory roads to each parcel, including ingress and egress for emergency vehicles, and utility easements to each parcel;

(6) terrain management to protect against flooding, inadequate drainage and erosion; and

(7) protections for cultural properties, archaeological sites and unmarked burials that may be affected directly by the subdivision, as required by the Cultural Properties Act.

C. In addition to the requirements of Subsection B of this section, prior to approving the preliminary plat, the board of county commissioners of the county in which the subdivision is located shall:

(1) determine whether the subdivider can fulfill the proposals contained in the subdivider's disclosure statement required by Section 47-6-17 NMSA 1978; and

(2) determine whether the subdivision will conform with the New Mexico Subdivision Act and the county's subdivision regulations.

D. The board of county commissioners shall not approve the preliminary plat if the subdivider cannot reasonably demonstrate that the subdivider can fulfill the requirements of Subsections B and C of this section.

E. Any subdivider submitting a preliminary plat for approval shall submit sufficient information to the board of county commissioners to permit the board to determine whether the subdivider can fulfill the requirements of Subsections B and C of this section.

F. In determining whether a subdivider can fulfill the requirements of Subsections B and C of this section, the board of county commissioners shall, within ten days after the preliminary plat is deemed complete, request opinions from:

(1) the state engineer to determine:

(a) whether the subdivider can furnish water sufficient in quantity to fulfill the maximum annual water requirements of the subdivision, including water for indoor and outdoor domestic uses; and

(b) whether the subdivider can fulfill the proposals in the subdivider's disclosure statement concerning water, excepting water quality;

(2) the department of environment to determine:

(a) whether the subdivider can furnish water of an acceptable quality for human consumption and measures to protect the water supply from contamination in conformity with state regulations promulgated pursuant to the Environmental Improvement Act;

(b) whether there are sufficient liquid and solid waste disposal facilities to fulfill the requirements of the subdivision in conformity with state regulations promulgated pursuant to the Environmental Improvement Act, the Water Quality Act and the Solid Waste Act; and

(c) whether the subdivider can fulfill the proposals contained in the subdivider's disclosure statement concerning water quality and concerning liquid and solid waste disposal facilities;

(3) the department of transportation to determine whether the subdivider can fulfill the state highway access requirements for the subdivision in conformity with state regulations promulgated pursuant to Section 67-3-16 NMSA 1978;

(4) the soil and water conservation district to determine:

(a) whether the subdivider can furnish terrain management sufficient to protect against flooding, inadequate drainage and erosion; and

(b) whether the subdivider can fulfill the proposals contained in the subdivider's disclosure statement concerning terrain management;

(5) each Indian nation, tribe or pueblo with a historical, cultural or resource tie with the county that submits at least annually, via certified mail, return receipt requested, a written request for notification to the board of county commissioners, which request indicates the Indian nation, tribe or pueblo's historical, cultural or resource tie with the county, its contact information and a listing of the types of documentation required to be submitted by a subdivider to the county that may be necessary for its review to determine:

(a) whether the subdivider can furnish, fulfill or otherwise meet the requirements set forth in Paragraphs (1) through (4) of this subsection; and

(b) how the subdivider's proposed plat may directly affect cultural properties, archaeological sites and unmarked burials; and

(6) such other public agencies as the county deems necessary, such as local school districts and fire districts, to determine whether there are adequate facilities to accommodate the proposed subdivision.

G. If, in the opinion of each appropriate public agency or an Indian nation, tribe or pueblo, a subdivider can fulfill the requirements of Subsection F of this section, the board of county commissioners shall weigh these opinions in determining whether to approve the preliminary plat at a public hearing to be held in accordance with Section 47-6-14 NMSA 1978.

H. If, in the opinion of the appropriate public agency or an Indian nation, tribe or pueblo, a subdivider cannot fulfill the requirements of Subsection F of this section or, if the appropriate public agency or the Indian nation, tribe or pueblo does not have sufficient information upon which to base an opinion on any one of these subjects, the subdivider shall be notified of this fact by the board of county commissioners, and the procedure set out below shall be followed:

(1) if the appropriate public agency or the Indian nation, tribe or pueblo has rendered an adverse opinion, the board of county commissioners shall give the subdivider a copy of the opinion;

(2) the subdivider shall be given thirty days from the date of notification to submit additional information to the public agency or the Indian nation, tribe or pueblo through the board of county commissioners; and

(3) the public agency or the Indian nation, tribe or pueblo shall have thirty days from the date the subdivider submits additional information to change its opinion or issue a favorable opinion when it has withheld one because of insufficient information. No more than thirty days following the date of the expiration of the thirty-day period, during which the public agency or the Indian nation, tribe or pueblo reviews any additional information submitted by the subdivider, the board of county commissioners shall hold a public hearing in accordance with Section 47-6-14 NMSA 1978 to determine whether to approve the preliminary plat. Where the public agency has rendered an adverse opinion, the subdivider has the burden of showing that the adverse opinion is incorrect either as to factual or legal matters. Where the Indian nation, tribe or pueblo has rendered an adverse opinion, the subdivider may submit additional information to the board of county commissioners. If a public agency disagrees with an adverse opinion rendered by an Indian nation, tribe or pueblo, that agency shall submit a response to the board of county commissioners.

I. If a type-three subdivision contains five or fewer parcels of land, and unless the land within the subdivision has been previously identified in the county's comprehensive plan, as amended or supplemented, or zoning ordinances as an area subject to unique circumstances or conditions that require additional review:

(1) if the smallest parcel is not less than three acres in size, the board of county commissioners shall use the same summary procedure for reviewing the subdivision as the board uses for reviewing type-five subdivisions; or

(2) if the smallest parcel is less than three acres in size, the board of county commissioners may use the same summary procedure for reviewing the subdivision as the board uses for reviewing type-five subdivisions.

J. Prior to approving the final plat of a type-five subdivision, the board of county commissioners of the county in which the subdivision is located shall:

(1) determine whether the subdivider can fulfill the proposals contained in the subdivider's disclosure statement required by Section 47-6-17 NMSA 1978; and

(2) determine whether the subdivision conforms with the New Mexico Subdivision Act and the county's subdivision regulations.

K. The board of county commissioners shall not approve the final plat of any type-five subdivision if the subdivider cannot reasonably demonstrate that the subdivider can fulfill the requirements of Subsection J of this section.

L. Any subdivider submitting a plat of a type-five subdivision shall submit sufficient information to the board of county commissioners to permit the board to determine whether the subdivider can fulfill the requirements of Subsection J of this section.

M. The board of county commissioners shall by regulation establish a procedure for summary review for certain type-three subdivisions, as provided in Subsection I of this section, and all type-five subdivisions. If the board of county commissioners fails to adopt criteria for summary review, the board of county commissioners shall approve the plat if it complies with Sections 47-6-3 and 47-6-4 NMSA 1978 within the time limitation set forth in Section 47-6-22 NMSA 1978. The board of county commissioners may delegate to any county administrative officer or planning commission member the authority to approve any subdivision under summary review. Approval by summary review is conclusive evidence of the approval of the board of county commissioners."

Chapter 65 Section 3 Laws 2009

Section 3. Section 47-6-20 NMSA 1978 (being Laws 1973, Chapter 348, Section 20, as amended) is amended to read:

"47-6-20. PUBLIC AGENCIES REQUIRED TO PROVIDE COUNTIES WITH INFORMATION.--

A. Any public agency receiving a request from the board of county commissioners for an opinion and any Indian nation, tribe or pueblo that chooses to submit an opinion pursuant to Section 47-6-11 NMSA 1978 shall furnish the board with the requested opinion within the time period set forth in Subsection A of Section 47-6-22 NMSA 1978. The board of county commissioners shall furnish the appropriate public agency and Indian nation, tribe or pueblo with all relevant information that the board has received from the subdivider on the subject for which the board is seeking an opinion. If the public agency or Indian nation, tribe or pueblo does not have sufficient information upon which to base an opinion, the public agency or Indian nation, tribe or pueblo shall notify the board of this fact.

B. All opinion requests mailed by the board of county commissioners shall be by certified mail, return receipt requested. Boards of county commissioners delivering opinion requests shall obtain receipts showing the day the opinion request was received by the particular public agency or Indian nation, tribe or pueblo."

Chapter 65 Section 4 Laws 2009

Section 4. Section 47-6-22 NMSA 1978 (being Laws 1973, Chapter 348, Section 22, as amended) is amended to read:

"47-6-22. TIME LIMIT ON ADMINISTRATIVE ACTION.--

A. All opinions required of public agencies or submitted by an Indian nation, tribe or pueblo shall be furnished to the board of county commissioners within thirty days after the public agencies or Indian nation, tribe or pueblo receives the written request and accompanying information from the board of county commissioners. If the board of county commissioners does not receive a requested opinion within the thirty-day period, the board shall proceed in accordance with its own best judgment concerning the subject of the opinion request. The failure of a public agency or Indian nation, tribe or pueblo to provide an opinion when requested by the board of county commissioners does not indicate that the subdivider's provisions concerning the subject of the opinion request were acceptable or unacceptable or adequate or inadequate.

B. Final plats submitted to the board of county commissioners for approval shall be approved or disapproved at a public meeting of the board of county commissioners within thirty days of the date the final plat is deemed complete.

C. If the board of county commissioners does not act upon a final plat within the required period of time, the subdivider shall give the board of county commissioners written notice of its failure to act. If the board of county commissioners fails to approve or reject the final plat within thirty days, the board of county commissioners shall, upon demand by the subdivider, issue a certificate stating that the final plat has been approved."

HHGAC House Bill 37, aa

Approved April 2, 2009

LAWS 2009, CHAPTER 66

AN ACT

RELATING TO ECONOMIC DEVELOPMENT; ENACTING THE NEW MEXICO RESEARCH APPLICATIONS ACT; PROVIDING FOR A NONPROFIT CORPORATION TO INTERACT WITH BUSINESS AND GOVERNMENT ENTITIES, UNIVERSITIES, PRIVATE FOUNDATIONS AND NATIONAL LABORATORIES FOR THE PURPOSE OF FOSTERING ECONOMIC DEVELOPMENT IN THE AREAS OF TECHNOLOGY AND INTELLECTUAL PROPERTY; REPEALING THE TECHNOLOGY RESEARCH COLLABORATIVE AND TRANSFERRING ITS PROPERTY TO THE ECONOMIC DEVELOPMENT DEPARTMENT; DECLARING AN EMERGENCY.

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

Chapter 66 Section 1 Laws 2009

Section 1. SHORT TITLE.--Sections 1 through 10 of this act may be cited as the "New Mexico Research Applications Act".

Chapter 66 Section 2 Laws 2009

Section 2. PURPOSES.--The purposes of the New Mexico Research Applications Act are to:

- A. promote the public welfare and prosperity of the people of New Mexico;
- B. foster economic development in the area of intellectual property within New Mexico;
- C. attract investments that will drive technological innovations in New Mexico;
- D. create high-value technology jobs in New Mexico with appropriately trained employees to fill such jobs;
- E. forge links, critical partnerships and collaboration among New Mexico's business communities, universities, private foundations, national laboratories and government through the development of a research applications center;

F. support educational initiatives in science, technology, engineering and mathematics in the state to ensure the availability of the future work force required to meet the goals of the New Mexico Research Applications Act; and

G. engage in cooperative ventures related to the use of research and development applications, including the use of research and development applications as a means of enhancing state and local resource development and promoting innovative technological advances in the areas of economic, community and work force development; education; science; technology; engineering; mathematics; research and development; conservation; and health care, within New Mexico.

Chapter 66 Section 3 Laws 2009

Section 3. DEFINITIONS.--As used in the New Mexico Research Applications Act:

A. "board" means the board of directors of the research applications center;

B. "department" means the economic development department;

C. "research applications center" means the nonprofit corporation created pursuant to the Nonprofit Corporation Act and the New Mexico Research Applications Act;

D. "technological innovations" includes research, development, prototype assembly, manufacturing, patenting, licensing, marketing and sale of inventions, ideas, practices, applications, processes, machines and technology and related property rights of all kinds; and

E. "university" means:

(1) a New Mexico educational institution named in Article 12, Section 11 of the constitution of New Mexico;

(2) a community college organized pursuant to the Community College Act; or

(3) a technical and vocational institute organized pursuant to the Technical and Vocational Institute Act.

Chapter 66 Section 4 Laws 2009

Section 4. RESEARCH APPLICATIONS CENTER--FORMATION--BOARD OF DIRECTORS--PUBLIC ACCESS TO MEETINGS AND MINUTES.--

A. The department shall, pursuant to the Nonprofit Corporation Act and internal revenue service regulations pertaining to nonprofit corporations, incorporate a corporation with the name "New Mexico research applications center"; provided that, if that name is not available, the department shall select another name that reflects the purposes of the New Mexico Research Applications Act.

B. The articles of incorporation shall include:

(1) provisions for appointing the board pursuant to Subsection C of this section;

(2) provisions requiring that board vacancies shall be filled by the appropriate appointing authority;

(3) a statement that board members, subject to the availability of funds, shall receive per diem and mileage at the rate provided in the Per Diem and Mileage Act for nonsalaried public officers and shall receive no other compensation, perquisite or allowance;

(4) a statement that the corporation will have no members;

(5) provisions that prohibit any board action inconsistent with the New Mexico Research Applications Act;

(6) provisions that prohibit the board from increasing the number of directors;

(7) a plan of distribution of the assets remaining after dissolution or final liquidation of the corporation. The plan shall require that, after all liabilities and obligations are paid, all funds of the corporation shall be deposited in the general fund and all other assets shall be distributed to the department of finance and administration; and

(8) any other provisions deemed necessary by the department to ensure compliance with the New Mexico Research Applications Act.

C. The board of directors shall be appointed in a manner that reflects the geographic, cultural and ethnic diversity of this state and provides for representation of the research institutions of this state. The board shall consist of twelve members with relevant experience or expertise in state government, local governments, businesses located in New Mexico, universities, private foundations, national laboratories or investments. The members shall be as follows:

(1) the secretary of economic development;

(2) the secretary of higher education;

(3) the secretary of workforce solutions;

(4) the chair of the New Mexico council of university presidents;

(5) the governor's science advisor;

(6) a member appointed by the governor, who shall be a director of a national laboratory located in New Mexico; and

(7) six members shall be appointed by the legislature as follows:

(a) one member appointed by the speaker of the house of representatives, who shall represent the business community;

(b) one member appointed by the majority leader of the house of representatives, who shall represent local governments;

(c) one member appointed by the minority leader of the house of representatives, who shall be a president of a New Mexico post-secondary public educational institution;

(d) one member appointed by the president pro tempore of the senate, who shall have expertise in rural economic development;

(e) one member appointed by the majority leader of the senate, who shall have expertise in venture capital; and

(f) one member appointed by the minority leader of the senate, who shall have expertise in health care.

D. The appointed members shall serve terms of four years except that, of the initial appointees, the member appointed by the governor, the member appointed by the speaker of the house of representatives, the member appointed by the president pro tempore of the senate and the member appointed by the minority leader of the house of representatives shall be appointed for terms of two years.

E. The governor, with the advice and consent of the senate, shall appoint one of the members as chair of the board. Board members may designate an alternate from within their organization or area of expertise to represent their interest, if approved by the appointing authority.

F. All meetings, minutes of meetings and reports of the board, the research applications center and any corporations formed by the research applications center shall be available and open to the public, except that portion of meetings, minutes or reports in which business-sensitive information, as determined by the board, is discussed. Minutes of all meetings and reports of the research applications center

and any corporations formed by the research applications center shall be provided by the board to the legislative finance committee and any other interim or standing legislative committees specified by the legislative finance committee within one month of the date of the meeting or date of the report.

G. The board shall hire a president who shall be the chief administrative officer of the research applications center.

Chapter 66 Section 5 Laws 2009

Section 5. RESEARCH APPLICATIONS CENTER--POWERS.--As directed by the board, the research applications center may:

A. acquire, by lease or purchase, the land, buildings, facilities, improvements and equipment necessary to achieve the purposes of the New Mexico Research Applications Act;

B. lease to any person any part or all of the land, buildings, facilities, improvements and equipment acquired pursuant to Subsection A of this section;

C. enter into contracts, joint powers agreements, memoranda of understanding and other agreements with public and private entities in order to carry out the purposes of the New Mexico Research Applications Act;

D. incur liabilities or borrow money at rates of interest that the research applications center may determine; provided that:

(1) any debt incurred shall be payable solely from the money available to the research applications center and does not create an obligation or indebtedness of the state within the meaning of any constitutional provision;

(2) no breach of any contractual obligation incurred pursuant to the New Mexico Research Applications Act shall impose a pecuniary liability or a charge upon the general credit or taxing power of the state, and any debt incurred is not a general obligation for which the state's full faith and credit is pledged; and

(3) the research applications center shall not incur any debt greater than one million dollars (\$1,000,000) or for a term longer than eight months without the prior approval of the state board of finance;

E. enter into business arrangements to carry out technological innovations with one or more business entities, governmental entities, universities, private foundations, national laboratories or other persons;

F. otherwise conduct, sponsor, finance and contract as necessary to further technological innovations;

G. purchase, take, receive or otherwise acquire; own; hold; dispose of; use; or otherwise deal in and with property, including an interest in or ownership of intangible personal property, intellectual property or technological innovations;

H. sell, convey, pledge, exchange, transfer or otherwise dispose of its assets and properties for consideration upon terms and conditions that the board shall determine;

I. solicit, receive and administer grants, contracts and gifts from federal, state and private sources;

J. invest and reinvest its funds;

K. employ officers and employees that it deems necessary, set their compensation and prescribe their duties;

L. enter into agreements with insurance carriers to insure against any loss in connection with its operations;

M. authorize retirement programs and other benefits for salaried officers and employees;

N. create such enterprise funds, revolving funds or other financial arrangements as it deems necessary to carry out the purposes of the New Mexico Research Applications Act; and

O. enter into license agreements and contracts involving intellectual property and technological innovations, including agreements for patents, copyrights, franchises and trademarks.

Chapter 66 Section 6 Laws 2009

Section 6. APPLICABILITY OF OTHER LAWS.--

A. Except as otherwise provided in the New Mexico Research Applications Act, the research applications center shall not be deemed to be the state, or one of its agencies, instrumentalities, institutions or political subdivisions for the purpose of applying any other laws, including those relating to personnel, meetings of the board, gross receipts taxes, disposition or acquisition of property, capital outlays, per diem and mileage and inspection of records.

B. The research applications center shall be deemed:

(1) an agency of the state when applying laws relating to the furnishing of goods and services by the research applications center to the state or any other agency, political subdivision or institution of the state;

(2) a local public body for purposes of the Procurement Code, except that the board may exempt a specific procurement from the application of the Procurement Code if it makes a finding that compliance with the Procurement Code would impede the purposes of the New Mexico Research Applications Act; and

(3) a governmental entity for purposes of the Tort Claims Act; provided that the research applications center may enter into agreements with insurance carriers to insure against risk in connection with its operations even though the risk may be included among the risks covered by the Tort Claims Act.

Chapter 66 Section 7 Laws 2009

Section 7. ANNUAL AUDIT AND REPORT.--

A. The board shall contract annually with an independent certified public accountant, approved by the state auditor, to perform an examination and audit of the accounts and books of the research applications center, including its receipts, disbursements, contracts, leases, sinking funds, investments and any other records and papers relating to its financial standing. The certified public accountant shall make a determination as to whether the research applications center has complied with the provisions of the New Mexico Research Applications Act. The person performing the audit shall furnish copies of the audit report to the governor; the public regulation commission, where they shall be placed on file and made available for inspection by the general public; and the legislative finance committee.

B. An annual report of the activities during the previous fiscal year of the research applications center shall be provided by the board to the legislative finance committee at least ninety days in advance of each regular legislative session. The report shall contain an operating budget for the current fiscal year, a proposed budget for the next fiscal year, a list of the present employee positions and the salaries paid for each position and a list of all contracts entered into during the past fiscal year and the current fiscal year to date and the amount expended to date under each contract. The legislative finance committee shall forward any report submitted to any interim or standing legislative committees as deemed appropriate. Upon request of the appropriate committee, the board or the board of directors of any corporation formed by the research applications center shall appear before any interim or standing legislative committee to provide an accounting of all activities.

Chapter 66 Section 8 Laws 2009

Section 8. CONFLICTS OF INTEREST.--

A. If any director, officer or employee of the research applications center is interested directly or indirectly or is an officer or employee of or has any ownership interest in a legal entity interested directly or indirectly in a contract or potential contract with the research applications center, except for any agency, instrumentality, institution

or political subdivision of the state, the interest shall be disclosed to the board and shall be set forth in the minutes of the board. The director, officer or employee having the interest shall not participate on behalf of the research applications center in the authorization of the contract.

B. Any director, officer or employee of the research applications center shall enter into a nondisclosure agreement that at a minimum provides:

(1) a clear description of confidential information that the research applications center may disclose to the director, officer or employee;

(2) a clear description of the limitations on the use of confidential information by the director, officer or employee;

(3) a confidentiality period that requires the director, officer or employee to hold confidential information in confidence until that information becomes generally publicly known;

(4) that the director, officer or employee shall be prohibited from acquiring an intellectual property right;

(5) for the return of all confidential information to the research applications center upon request;

(6) remedies for unauthorized disclosure of confidential information under the nondisclosure agreement, which may provide for liquidated damages, specific performance or injunction against further disclosure or breach, in addition to all other remedies available at law or equity to the research applications center for unauthorized disclosure of confidential information by the director, officer or employee; and

(7) for the award of reasonable attorney fees and costs incurred by the research applications center in seeking enforcement of the nondisclosure agreement.

C. Nothing in this section shall prohibit an officer, director or employee of a financial institution from participating as a member of the board in setting general policies of the research applications center, nor shall any provision of this section be construed as prohibiting a financial institution of New Mexico from making loans guaranteed pursuant to the provisions of the New Mexico Research Applications Act because an officer, director or employee of the financial institution serves as a member of the board.

Chapter 66 Section 9 Laws 2009

Section 9. CONTRACTS INVOLVING PUBLIC EMPLOYEES.--Except as provided in Section 10 of the New Mexico Research Applications Act, the research

applications center shall not enter into any contract involving services or property of a value in excess of twenty thousand dollars (\$20,000) with an employee of the state or one of its agencies, instrumentalities, institutions or political subdivisions or with a business in which the employee has a controlling interest unless the board makes a determination, in writing, that the employee:

A. is employed by a university;

B. is principally involved in research, public service, economic development or instruction; and

C. is able to provide services that are not readily available from another person or is able to provide services that are less expensive or of higher quality than are otherwise available.

Chapter 66 Section 10 Laws 2009

Section 10. TRANSFER OF TECHNOLOGY--OWNERSHIP OF INTELLECTUAL PROPERTY.--

A. Notwithstanding the provisions of Section 9 of the New Mexico Research Applications Act, Section 10-16-7, 13-1-190, 21-1-17 or 21-1-35 NMSA 1978 or of any other statute, ordinance or policy regulating the conduct of public employees, an officer or employee of a university who is principally involved in research, public service, economic development or instruction may, subject to Subsection B of this section, apply to the secretary of economic development for permission to establish and maintain a substantial interest in a private entity that provides or receives equipment, material, supplies or services in connection with the research applications center in order to facilitate the transfer of technology developed by the officer or employee from the research applications center to commercial and industrial enterprises for economic development.

B. The secretary of economic development may grant the permission only if all of the following conditions are met:

(1) the employer of the officer or employee certifies to the secretary that the employer does not object to the proposed relationship;

(2) the officer or employee provides a detailed description of the officer's or employee's interest in the private entity;

(3) the nature of the proposed undertaking is fully described;

(4) the officer or employee demonstrates, to the satisfaction of the secretary, that the proposed undertaking may benefit the economy of this state;

(5) the officer or employee demonstrates to the satisfaction of the secretary that the proposed undertaking will not adversely affect research, public service or instructional activities at any educational institution; and

(6) the officer's or employee's interest in the private entity or benefit from the interest will not adversely affect any substantial state interest.

C. An officer or employee of a university who is principally involved in research, public service, economic development or instruction may develop, create or commercialize new intellectual property for the state and encourage new opportunities for business and increased jobs. Intellectual property created by an employee or agent of a university associated with the research applications center shall be owned by the university. Intellectual property created jointly shall be owned jointly. If the intellectual property is created using federal funds, the applicable federal laws and regulations shall govern the ownership.

D. The board may establish policies for the implementation of this section.

Chapter 66 Section 11 Laws 2009

Section 11. Section 10-16-7 NMSA 1978 (being Laws 1967, Chapter 306, Section 7, as amended) is amended to read:

"10-16-7. CONTRACTS INVOLVING PUBLIC OFFICERS OR EMPLOYEES.--A state agency shall not enter into a contract for services, construction or items of tangible personal property with a public officer or employee of the state, with the family of the public officer or employee or with a business in which the public officer or employee or the family of the public officer or employee has a substantial interest unless the public officer or employee has disclosed the public officer's or employee's substantial interest and unless the contract is awarded pursuant to the Procurement Code, except that the potential contractor shall not be eligible for a sole source or small purchase contract; provided that this section does not apply to a contract of official employment with the state or to contracts made pursuant to the provisions of the University Research Park and Economic Development Act or the New Mexico Research Applications Act. A person negotiating or executing a contract on behalf of a state agency shall exercise due diligence to ensure compliance with the provisions of this section."

Chapter 66 Section 12 Laws 2009

Section 12. Section 13-1-190 NMSA 1978 (being Laws 1984, Chapter 65, Section 163, as amended) is amended to read:

"13-1-190. UNLAWFUL EMPLOYEE PARTICIPATION PROHIBITED.--

A. Except as permitted by the University Research Park and Economic Development Act or the New Mexico Research Applications Act, it is unlawful for any

state agency or local public body employee, as defined in the Procurement Code, to participate directly or indirectly in a procurement when the employee knows that the employee or any member of the employee's immediate family has a financial interest in the business seeking or obtaining a contract.

B. An employee or any member of an employee's immediate family who holds a financial interest in a disclosed blind trust shall not be deemed to have a financial interest with regard to matters pertaining to that trust."

Chapter 66 Section 13 Laws 2009

Section 13. Section 21-1-17 NMSA 1978 (being Laws 1889, Chapter 138, Section 68, as amended) is amended to read:

"21-1-17. INTEREST IN CONTRACTS BY BOARD MEMBERS OR EMPLOYEES PROHIBITED.--No employee or member of a board of regents of a state educational institution shall have direct or indirect financial interest in any contract for building or improving any of that state educational institution or for the furnishing of supplies or services to that institution except as permitted pursuant to the University Research Park and Economic Development Act or the New Mexico Research Applications Act, or unless it complies with provisions of the Governmental Conduct Act and the Procurement Code."

Chapter 66 Section 14 Laws 2009

Section 14. TEMPORARY PROVISION--TRANSFER.--On the effective date of this act, all personnel, appropriations, money, records, property, equipment and supplies of the technology research collaborative shall be transferred to the economic development department for the use of the research applications center and all existing contracts, agreements and obligations in effect for the technology research collaborative shall be binding and effective on the economic development department.

Chapter 66 Section 15 Laws 2009

Section 15. REPEAL.--Section 21-11-8.5 NMSA 1978 (being Laws 2005, Chapter 81, Section 1) is repealed.

Chapter 66 Section 16 Laws 2009

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

Approved April 2, 2009

LAWS 2009, CHAPTER 67

AN ACT

RELATING TO ELECTIONS; REQUIRING CERTAIN CAMPAIGN REPORTS TO BE FILED BIANNUALLY; CHANGING REPORTING REQUIREMENTS; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 1997; AMENDING AND REPEALING SECTIONS OF THE NMSA 1978.

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

Chapter 67 Section 1 Laws 2009

Section 1. Section 1-19-26 NMSA 1978 (being Laws 1979, Chapter 360, Section 2, as amended) is amended to read:

"1-19-26. DEFINITIONS.--As used in the Campaign Reporting Act:

A. "advertising campaign" means an advertisement or series of advertisements used for a political purpose and disseminated to the public either in print, by radio or television broadcast or by any other electronic means, including telephonic communications, and may include direct or bulk mailings of printed materials;

B. "anonymous contribution" means a contribution the contributor of which is unknown to the candidate or the candidate's agent or the political committee or its agent who accepts the contribution;

C. "bank account" means an account in a financial institution located in New Mexico;

D. "campaign committee" means two or more persons authorized by a candidate to raise, collect or expend contributions on the candidate's behalf for the purpose of electing the candidate to office;

E. "candidate" means an individual who seeks or considers an office in an election covered by the Campaign Reporting Act, including a public official, who either has filed a declaration of candidacy or nominating petition or:

(1) for a non-statewide office, has received contributions or made expenditures of one thousand dollars (\$1,000) or more or authorized another person or campaign committee to receive contributions or make expenditures of one thousand dollars (\$1,000) or more for the purpose of seeking election to the office; or

(2) for a statewide office, has received contributions or made expenditures of two thousand five hundred dollars (\$2,500) or more or authorized another person or campaign committee to receive contributions or make expenditures of two thousand five hundred dollars (\$2,500) or more for the purpose of seeking election to the office or for candidacy exploration purposes in the years prior to the year of the election;

F. "contribution" means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made or received for a political purpose, including payment of a debt incurred in an election campaign, but "contribution" does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee;

G. "deliver" or "delivery" means to deliver by certified or registered mail, telecopier, electronic transmission or facsimile or by personal service;

H. "election" means any primary, general or statewide special election in New Mexico and includes county and judicial retention elections but excludes municipal, school board and special district elections;

I. "election year" means an even-numbered year in which an election covered by the Campaign Reporting Act is held;

J. "expenditure" means a payment, transfer or distribution or obligation or promise to pay, transfer or distribute any money or other thing of value for a political purpose, including payment of a debt incurred in an election campaign or pre-primary convention, but does not include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee;

K. "person" means an individual or entity;

L. "political committee" means two or more persons, other than members of a candidate's immediate family or campaign committee or a husband and wife who make a contribution out of a joint account, who are selected, appointed, chosen, associated, organized or operated primarily for a political purpose; and "political committee" includes:

(1) political action committees or similar organizations composed of employees or members of any corporation, labor organization, trade or professional association or any other similar group that raises, collects, expends or contributes money or any other thing of value for a political purpose;

(2) a single individual whose actions represent that the individual is a political committee; and

(3) a person or an organization of two or more persons that within one calendar year expends funds in excess of five hundred dollars (\$500) to conduct an advertising campaign for a political purpose;

M. "political purpose" means influencing or attempting to influence an election or pre-primary convention, including a constitutional amendment or other question submitted to the voters;

N. "prescribed form" means a form or electronic format prepared and prescribed by the secretary of state;

O. "proper filing officer" means either the secretary of state or the county clerk as provided in Section 1-19-27 NMSA 1978;

P. "public official" means a person elected to an office in an election covered by the Campaign Reporting Act or a person appointed to an office that is subject to an election covered by that act; and

Q. "reporting individual" means every public official, candidate or treasurer of a campaign committee and every treasurer of a political committee."

Chapter 67 Section 2 Laws 2009

Section 2. Section 1-19-27 NMSA 1978 (being Laws 1979, Chapter 360, Section 3, as amended) is amended to read:

"1-19-27. REPORTS REQUIRED--PROPER FILING OFFICER.--

A. Except for those candidates and public officials who file a statement of no activity, all reporting individuals shall file with the proper filing officer a report of expenditures and contributions on a prescribed form.

B. The proper filing officer for filing reports of expenditures and contributions by a political committee is the secretary of state.

C. The proper filing officer for filing reports of expenditures and contributions or statements of no activity is the secretary of state for all candidates and public officials.

D. The secretary of state shall develop or contract for services to develop an electronic reporting system for receiving and for public inspection of reports of expenditures and contributions and statements of no activity to the Campaign Reporting Act. The electronic reporting system shall:

(1) enable a person to file reports online by filling out forms on the secretary of state's web site; and

(2) provide for encrypted transmissions."

Chapter 67 Section 3 Laws 2009

Section 3. Section 1-19-28 NMSA 1978 (being Laws 1979, Chapter 360, Section 4, as amended) is amended to read:

"1-19-28. FURNISHING REPORT FORMS--POLITICAL COMMITTEES--
CANDIDATES.--

A. The secretary of state annually shall furnish to all reporting individuals the prescribed forms for the reporting of expenditures and contributions, supplemental reports and a statement of no activity and the specific dates the reports and statement are due.

B. In addition to the provisions of Subsection A of this section, at the time of filing a declaration of candidacy or a nominating petition, the proper filing officer shall give the candidate the prescribed reporting forms and the schedule of specific dates for filing the required reports or a statement of no activity. The prescribed forms shall also be made available to all reporting individuals at the office of the secretary of state and in each county at the office of the county clerk."

Chapter 67 Section 4 Laws 2009

Section 4. Section 1-19-29 NMSA 1978 (being Laws 1993, Chapter 46, Section 5, as amended) is amended to read:

"1-19-29. TIME AND PLACE OF FILING REPORTS.--

A. Except as otherwise provided in this section, all reporting individuals shall file with the proper filing officer by 5:00 p.m. on the second Monday in April and October a report of all expenditures made and contributions received on or before the first Monday in those months and not previously reported. The report shall be filed biannually until the reporting individual's bank account has been closed and the other provisions specified in Subsection F of this section have been satisfied.

B. In an election year, instead of the biannual reports provided for in Subsection A of this section, all reporting individuals, except for public officials who are not candidates in an election that year, shall file reports of all expenditures made and contributions received or, if applicable, statements of no activity, according to the following schedule:

(1) by 5:00 p.m. on the second Monday in April, a report of all expenditures made and contributions received on or before the first Monday in April and not previously reported;

(2) by 5:00 p.m. on the second Monday in May, a report of all expenditures made and contributions received on or before the first Monday in May and not previously reported;

(3) by 5:00 p.m. on the second Monday in September, a report of all expenditures made and contributions received on or before the first Monday in September and not previously reported;

(4) by 5:00 p.m. on the second Monday in October, a report of all expenditures made and contributions received on or before the first Monday in October and not previously reported;

(5) by 5:00 p.m. on the Thursday before a primary, general or statewide special election, a report of all expenditures made and contributions received by 5:00 p.m. on the Tuesday before the election. Any contribution or pledge to contribute that is received after 5:00 p.m. on the Tuesday before the election and that is for five hundred dollars (\$500) or more in a legislative or non-statewide judicial election, or two thousand five hundred dollars (\$2,500) or more in a statewide election, shall be reported to the proper filing officer either in a supplemental report on a prescribed form within twenty-four hours of receipt or in the report to be filed by 5:00 p.m. on the Thursday before a primary, general or statewide special election, except that any such contribution or pledge to contribute that is received after 5:00 p.m. on the Friday before the election may be reported by 12:00 noon on the Monday before the election; and

(6) by 5:00 p.m. on the thirtieth day after a primary, general or statewide special election, a report of all expenditures made and contributions received on or before the twenty-fifth day after the election and not previously reported.

C. If a candidate or public official has not received any contributions and has not made any expenditures since the candidate's or official's last report was filed with the proper filing officer, the candidate or official shall only be required to file a statement of no activity, which shall not be required to be notarized, in lieu of a full report when that report would otherwise be due and shall not be required to file a full report until the next required filing date occurring after an expenditure is made or a contribution is received.

D. In an election year, a public official who is not a candidate shall file biannual reports of expenditures made and contributions received or statements of no activity in accordance with the schedule provided for in Subsection A of this section.

E. A report of expenditures and contributions filed after a deadline set forth in this section shall not be deemed to have been timely filed.

F. Except for candidates and public officials who file a statement of no activity, each reporting individual shall file a report of expenditures and contributions pursuant to the filing schedules set forth in this section, regardless of whether any expenditures were made or contributions were received during the reporting period. Reports shall be required until the reporting individual delivers a report to the proper filing officer stating that:

(1) there are no outstanding campaign debts;

(2) all money has been expended in accordance with the provisions of Section 1-19-29.1 NMSA 1978; and

(3) the bank account has been closed.

G. Each treasurer of a political committee shall file a report of expenditures and contributions pursuant to the filing schedules set forth in this section until the treasurer files a report that affirms that the committee has dissolved or no longer exists and that its bank account has been closed.

H. A reporting individual who is a candidate within the meaning of the Campaign Reporting Act because of the amount of contributions the candidate receives or expenditures the candidate makes and who does not ultimately file a declaration of candidacy or a nominating petition with the proper filing officer and does not file a statement of no activity shall file biannual reports in accordance with Subsection A of this section.

I. Reports required by this section shall be subscribed and sworn to by the candidate or the treasurer of the political committee. A report filed electronically shall be electronically authenticated by the candidate or the treasurer of the political committee using an electronic signature in conformance with the Electronic Authentication of Documents Act and the Uniform Electronic Transactions Act. For the purposes of the Campaign Reporting Act, a report that is electronically authenticated in accordance with the provisions of this subsection shall be deemed to have been subscribed and sworn to by the candidate or the treasurer of the political committee who was required to file the report.

J. Reports required by this section shall be filed electronically by all reporting individuals.

K. Reporting individuals may apply to the secretary of state for exemption from electronic filing in case of hardship, which shall be defined by the secretary of state."

Chapter 67 Section 5 Laws 2009

Section 5. Section 1-19-32.1 NMSA 1978 (being Laws 1981, Chapter 331, Section 9, as amended) is amended to read:

"1-19-32.1. REPORTS EXAMINATION--FORWARDING OF REPORTS.--

A. The secretary of state shall conduct a thorough examination of at least ten percent of all reports filed during a year by reporting individuals, selected at random at least forty days after the general election and ten days after the April reports are filed in a nonelection year, to determine compliance with the provisions of the Campaign Reporting Act. The examination may include an investigation of any discrepancies, including a cross-reference to reports filed by any other reporting individual. A reporting individual shall be notified in writing if a discrepancy is found in the report filed and shall be permitted to file a written explanation for the discrepancy within ten working days of the date of the notice. The notice, penalty and arbitration provisions set forth in Section 1-19-34.4 NMSA 1978 shall apply to examinations conducted under this section.

B. After the date stated in the notice of final action for submission of a written explanation, the secretary of state shall prepare an annual report of any unresolved discrepancies found after examination of the random sample provided for in Subsection A of this section. A copy of this report shall be transmitted to the attorney general for enforcement pursuant to the provisions of Section 1-19-36 NMSA 1978. This report is a public record open to public inspection and subject to the retention and destruction provisions set forth in Section 1-19-32 NMSA 1978."

Chapter 67 Section 6 Laws 2009

Section 6. Section 1-19-35 NMSA 1978 (being Laws 1979, Chapter 360, Section 11, as amended by Laws 1997, Chapter 12, Section 2 and also by Laws 1997, Chapter 112, Section 5) is amended to read:

"1-19-35. REPORTS AND STATEMENTS--LATE FILING PENALTY--FAILURE TO FILE.--

A. Except for the report required to be filed and delivered the Thursday prior to the election and any supplemental report, as required in Paragraph (5) of Subsection B of Section 1-19-29 NMSA 1978, that is due prior to the election, and subject to the provisions of Section 1-19-34.4 NMSA 1978, if a statement of no activity or a report of expenditures and contributions contains false or incomplete information or is filed after any deadline imposed by the Campaign Reporting Act, the responsible reporting individual or political committee, in addition to any other penalties or remedies prescribed by the Election Code, shall be liable for and shall pay to the secretary of state fifty dollars (\$50.00) per day for each regular working day after the time required by the Campaign Reporting Act for the filing of statements of no activity or reports of expenditures and contributions until the complete or true statement or report is filed, up to a maximum of five thousand dollars (\$5,000).

B. If any reporting individual files a false, intentionally incomplete or late report of expenditures and contributions due on the Thursday prior to the election, the reporting individual or political committee shall be liable and pay to the secretary of state five hundred dollars (\$500) for the first working day and fifty dollars (\$50.00) for each subsequent working day after the time required for the filing of the report until the true and complete report is filed, up to a maximum of five thousand dollars (\$5,000).

C. If a reporting individual fails to file or files a late supplemental report of expenditures and contributions as required in Paragraph (5) of Subsection B of Section 1-19-29 NMSA 1978, the reporting individual or political committee shall be liable for and pay to the secretary of state a penalty equal to the amount of each contribution received or pledged after the Tuesday before the election that was not timely filed.

D. All sums collected for the penalty shall be deposited in the state general fund. A report or statement of exception shall be deemed timely filed only if it is received by the proper filing officer by the date and time prescribed by law.

E. Any candidate who fails or refuses to file a report of expenditures and contributions or statement of no activity or to pay a penalty imposed by the secretary of state as required by the Campaign Reporting Act shall not, in addition to any other penalties provided by law:

(1) have the candidate's name printed upon the ballot if the violation occurs before and through the final date for the withdrawal of candidates; or

(2) be issued a certificate of nomination or election, if the violation occurs after the final date for withdrawal of candidates or after the election, until the candidate satisfies all reporting requirements of the Campaign Reporting Act and pays all penalties owed.

F. Any candidate who loses an election and who failed or refused to file a report of expenditures and contributions or a statement of no activity or to pay a penalty imposed by the secretary of state as required by the Campaign Reporting Act shall not be, in addition to any other penalties provided by law, permitted to file a declaration of candidacy or nominating petition for any future election until the candidate satisfies all reporting requirements of that act and pays all penalties owed."

Chapter 67 Section 7 Laws 2009

Section 7. REPEAL.--Section 1-19-33 NMSA 1978 (being Laws 1979, Chapter 360, Section 9, as amended) is repealed.

Approved April 2, 2009

LAWS 2009, CHAPTER 68

AN ACT

RELATING TO ELECTIONS; LIMITING CONTRIBUTIONS BY PERSONS AND POLITICAL COMMITTEES TO CANDIDATES AND POLITICAL COMMITTEES IN ELECTIONS COVERED BY THE CAMPAIGN REPORTING ACT; ALLOWING DONATION OF CAMPAIGN FUNDS TO A POLITICAL COMMITTEE.

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

Chapter 68 Section 1 Laws 2009

Section 1. A new section of the Campaign Reporting Act is enacted to read:

"CONTRIBUTION LIMITATIONS--CANDIDATES--POLITICAL COMMITTEES.--

A. The following contributions by the following persons are prohibited:

(1) from a person, not including a political committee, to a:

(a) candidate for nonstatewide office, including the candidate's campaign committee, in an amount that will cause that person's total contributions to the candidate to exceed two thousand three hundred dollars (\$2,300) during the primary election or two thousand three hundred dollars (\$2,300) during the general election;

(b) candidate for statewide office, including the candidate's campaign committee, in an amount that will cause that person's total contributions to the candidate to exceed five thousand dollars (\$5,000) during the primary election or five thousand dollars (\$5,000) during the general election; or

(c) political committee in an amount that will cause that person's total contributions to the political committee to exceed five thousand dollars (\$5,000) during a primary election or five thousand dollars (\$5,000) during a general election; and

(2) from a political committee to:

(a) a candidate for office, including the candidate's campaign committee, in an amount that will cause the political committee's total contributions to the candidate to exceed five thousand dollars (\$5,000) during the primary election or five thousand dollars (\$5,000) during the general election; or

(b) another political committee in an amount that will cause that political committee's total contributions to the political committee to exceed five thousand dollars (\$5,000) during a primary election or five thousand dollars (\$5,000) during a general election.

B. All contributions made by a person to a candidate, either directly or indirectly, including contributions that are in any way earmarked or otherwise directed through another person to a candidate, shall be treated as contributions from the person to that candidate.

C. A person, including a political committee, shall not knowingly accept or solicit a contribution, directly or indirectly, including a contribution earmarked or otherwise directed or coordinated through another person, including a political committee, that violates the contribution limits provided for in this section.

D. On the day after each general election, the contribution amounts provided in Subsection A of this section shall be increased by the percentage of the preceding two 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 shall be rounded to the nearest multiple of one hundred dollars (\$100). The secretary of state shall publish by October 1 before each general election the adjusted contribution limits that shall take effect the day after the following general election.

E. All contributions in excess of the limits imposed by the provisions of this section shall be deposited in the public election fund upon a finding by the secretary of state that the contribution limits have been exceeded.

F. The limitation on contributions to a candidate provided for in Subsection A of this section shall not apply to a candidate's own contribution from the candidate's personal funds to the candidate's own campaign.

G. For the purposes of this section:

(1) "primary election" means the period beginning on the day after the general election for the applicable office and ending on the day of the primary for that office; and

(2) "general election" means the period beginning on the day after the primary for the applicable office and ending on the day of the general election for that office."

Chapter 68 Section 2 Laws 2009

Section 2. Section 1-19-26 NMSA 1978 (being Laws 1979, Chapter 360, Section 2, as amended) is amended to read:

"1-19-26. DEFINITIONS.--As used in the Campaign Reporting Act:

A. "advertising campaign" means an advertisement or series of advertisements used for a political purpose and disseminated to the public either in print, by radio or television broadcast or by any other electronic means, including telephonic communications, and may include direct or bulk mailings of printed materials;

B. "anonymous contribution" means a contribution the contributor of which is unknown to the candidate or the candidate's agent or the political committee or its agent who accepts the contribution;

C. "bank account" means an account in a financial institution located in New Mexico;

D. "campaign committee" means two or more persons authorized by a candidate to raise, collect or expend contributions on the candidate's behalf for the purpose of electing the candidate to office;

E. "candidate" means an individual who seeks or considers an office in an election covered by the Campaign Reporting Act, including a public official, who either has filed a declaration of candidacy or nominating petition or:

(1) for a non-statewide office, has received contributions or made expenditures of one thousand dollars (\$1,000) or more or authorized another person or campaign committee to receive contributions or make expenditures of one thousand dollars (\$1,000) or more for the purpose of seeking election to the office; or

(2) for a statewide office, has received contributions or made expenditures of two thousand five hundred dollars (\$2,500) or more or authorized another person or campaign committee to receive contributions or make expenditures of two thousand five hundred dollars (\$2,500) or more for the purpose of seeking election to the office or for candidacy exploration purposes in the years prior to the year of the election;

F. "contribution" means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made or received for a political purpose, including payment of a debt incurred in an election campaign, but "contribution" does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee;

G. "deliver" or "delivery" means to deliver by certified or registered mail, telecopier, electronic transmission or facsimile or by personal service;

H. "election" means any primary, general or statewide special election in New Mexico and includes county and judicial retention elections but excludes municipal, school board and special district elections;

I. "election year" means an even-numbered year in which an election covered by the Campaign Reporting Act is held;

J. "expenditure" means a payment, transfer or distribution or obligation or promise to pay, transfer or distribute any money or other thing of value for a political purpose, including payment of a debt incurred in an election campaign or pre-primary convention, but does not include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee;

K. "person" means an individual or entity;

L. "political committee" means two or more persons, other than members of a candidate's immediate family or campaign committee or a husband and wife who make a contribution out of a joint account, who are selected, appointed, chosen, associated, organized or operated primarily for a political purpose; and "political committee" includes:

(1) political parties, political action committees or similar organizations composed of employees or members of any corporation, labor organization, trade or professional association or any other similar group that raises, collects, expends or contributes money or any other thing of value for a political purpose;

(2) a single individual whose actions represent that the individual is a political committee; and

(3) a person or an organization of two or more persons that within one calendar year expends funds in excess of five hundred dollars (\$500) to conduct an advertising campaign for a political purpose;

M. "political purpose" means influencing or attempting to influence an election or pre-primary convention, including a constitutional amendment or other question submitted to the voters;

N. "prescribed form" means a form or electronic format prepared and prescribed by the secretary of state;

O. "proper filing officer" means either the secretary of state or the county clerk as provided in Section 1-19-27 NMSA 1978;

P. "public official" means a person elected to an office in an election covered by the Campaign Reporting Act or a person appointed to an office that is subject to an election covered by that act;

Q. "reporting individual" means every public official, candidate or treasurer of a campaign committee and every treasurer of a political committee; and

R. "statement of exception" or "statement" means the prescribed form subscribed and sworn to by a candidate to indicate that the candidate does not intend to raise or expend the minimum amount required for the filing of a report of expenditures and contributions as provided in Section 1-19-33 NMSA 1978."

Chapter 68 Section 3 Laws 2009

Section 3. Section 1-19-29.1 NMSA 1978 (being Laws 1993, Chapter 46, Section 6, as amended) is amended to read:

"1-19-29.1. CAMPAIGN FUNDS--LIMITATION ON USE.--

A. It is unlawful for a candidate or the candidate's agent to make an expenditure of contributions received, except for the following purposes or as otherwise provided in this section:

(1) expenditures of the campaign;

(2) expenditures of legislators that are reasonably related to performing the duties of the office held, including mail, telephone and travel expenditures to serve constituents, but excluding personal and legislative session living expenses;

(3) donations to the state general fund;

(4) donations to an organization to which a federal income tax deduction would be permitted under Subparagraph (A) of Paragraph (1) of Subsection (b) of Section 170 of the Internal Revenue Code of 1986, as amended;

(5) expenditures to eliminate the campaign debt of the candidate for the office sought or expenditures incurred by the candidate when seeking election to another public office covered by the Campaign Reporting Act;

(6) donations to a political committee or to another candidate seeking election to public office; or

(7) disbursements to return unused funds pro rata to the contributors if no campaign debt exists.

B. A judge subject to a nonpartisan retention election or a candidate for judicial office shall solicit or accept campaign funds and return unused funds in accordance with the provisions of the Code of Judicial Conduct.

C. No contributions solicited for or received in a federal election campaign may be used in a state election campaign."

Chapter 68 Section 4 Laws 2009

Section 4. Section 1-19-34.3 NMSA 1978 (being Laws 1993, Chapter 46, Section 14, as amended) is amended to read:

"1-19-34.3. CONTRIBUTIONS IN ONE NAME GIVEN FOR ANOTHER PROHIBITED.--It is unlawful for a person to make a contribution in the name of another person, and no person shall knowingly accept a contribution made by one person in the name of another person."

Chapter 68 Section 5 Laws 2009

Section 5. SEVERABILITY.--If any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

Chapter 68 Section 6 Laws 2009

Section 6. EFFECTIVE DATE.--The effective date of the provisions of this act is November 3, 2010.

SRC/Senate Bills 116, 262, 346 & 521, aa

Approved April 2, 2009

LAWS 2009, CHAPTER 69

AN ACT

CREATING THE ELECTRONIC MEDICAL RECORDS ACT; ALLOWING THE CREATION, MAINTENANCE AND USE OF ELECTRONIC MEDICAL RECORDS; CLARIFYING INDIVIDUAL RIGHTS WITH RESPECT TO THE DISCLOSURE OF INFORMATION CONTAINED IN ELECTRONIC MEDICAL RECORDS; CLARIFYING THE PROTECTION OF PRIVACY OF ELECTRONIC MEDICAL RECORDS.

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

Chapter 69 Section 1 Laws 2009

Section 1. SHORT TITLE.--This act may be cited as the "Electronic Medical Records Act".

Chapter 69 Section 2 Laws 2009

Section 2. PURPOSE.--The purpose of the Electronic Medical Records Act is to provide for the use, disclosure and protection of electronic medical records.

Chapter 69 Section 3 Laws 2009

Section 3. DEFINITIONS.--As used in the Electronic Medical Records Act:

A. "demographic information" means information that identifies the individual who is the subject of the health care information, including the individual's name, date of birth and address and other information necessary to identify the individual, that may be used to identify the individual or that associates the individual with the individual's electronic medical record;

B. "disclose" means to release, transfer, provide, give access to or otherwise divulge in any other manner information outside the entity holding the information;

C. "electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities;

D. "electronic medical record" means an electronic record of an individual patient's health care information that may contain demographic information;

E. "electronic signature" means an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by an individual with the intent to sign the record;

F. "health care" means care, services or supplies related to the health of an individual and includes:

(1) preventive, diagnostic, therapeutic, rehabilitative, maintenance or palliative care and counseling;

(2) services, assessments or procedures that are concerned with the physical or mental condition or functional status of an individual or that affect the structure or function of the body of an individual; and

(3) the sale or dispensing of a drug, a device, a piece of equipment or other item in accordance with a prescription;

G. "health care group purchaser" means a person who is licensed, certified or otherwise authorized or permitted by the New Mexico Insurance Code to pay for or purchase health care on behalf of an identified individual or group of individuals, regardless of whether the cost of coverage or services is paid for by the purchaser or the persons receiving coverage or services;

H. "health care information" means any information, whether oral or recorded in any form or medium, related to the past, present or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual;

I. "health care institution" means an institution, facility or agency licensed, certified or otherwise authorized or permitted by law to provide health care in the ordinary course of business;

J. "health information exchange" means an arrangement among persons participating in a defined secure electronic network service, such as a regional health information organization, that allows the sharing of health care information about individual patients among different health care institutions or unaffiliated providers. The use of an electronic medical record system by a health care provider, by or within a health care institution or by an organized health care arrangement as defined by the federal Health Insurance Portability and Accountability Act of 1996 does not constitute a health information exchange;

K. "information" means data, including text, images, sounds and codes and computer programs, software and databases;

L. "provider" means an individual who is licensed, certified or otherwise authorized or permitted by law to provide health care in the ordinary course of business or practice of a profession;

M. "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;

N. "record locator service" means an information service that contains demographic information and the location of health care information of a specified individual across different health care institutions or unaffiliated providers that participate in the service. The use of an electronic medical record system by a health care provider or by an organized health care arrangement as defined by the federal Health Insurance Portability and Accountability Act of 1996 does not constitute a record locator service; and

O. "treatment" means the provision, coordination or management of health care and related services by one or more providers, including the coordination or management of health care by a provider with a third party; consultation between

providers relating to an individual; or the referral of an individual for health care from one provider to another.

Chapter 69 Section 4 Laws 2009

Section 4. ELECTRONIC MEDICAL RECORDS--ELECTRONIC SIGNATURES--LEGAL RECOGNITION.--If a law or rule requires a medical record to be in writing, or if a law or rule requires a signature pertaining to a medical record, an electronic medical record or an electronic signature satisfies that law or rule, except for a court rule.

Chapter 69 Section 5 Laws 2009

Section 5. RETENTION OF ELECTRONIC MEDICAL RECORDS.--

A. If a law or rule requires that a medical record be retained, the requirement is satisfied by retaining an electronic record that:

(1) accurately reflects the medical record; and

(2) remains accessible and is capable of being accurately reproduced for later reference.

B. If a law or rule requires a medical record to be presented or retained in its original form or provides consequences if the medical record is not presented or retained in its original form, that law or rule is satisfied by an electronic medical record retained in accordance with Subsection A of this section.

C. A medical record retained as an electronic medical record in accordance with Subsection A of this section satisfies a law or rule requiring a person to retain a medical record for evidentiary, audit or other purposes.

Chapter 69 Section 6 Laws 2009

Section 6. USE AND DISCLOSURE OF ELECTRONIC HEALTH CARE INFORMATION.--

A. A provider, health care institution, health information exchange or health care group purchaser shall not use or disclose health care information in an individual's electronic medical record to another person without the consent of the individual except as allowed by state or federal law.

B. A provider, health care institution or health care group purchaser may disclose demographic information and information about the location of an individual's electronic medical records to a record locator service in accordance with state or federal law. A provider or health care institution participating in a health information exchange using a record locator service shall not have access to demographic information,

information about the location of the individual's electronic medical records or information in an individual's electronic medical record except in connection with the treatment of the individual or as permitted by the consent of the individual or as otherwise permitted by state or federal law.

C. A record locator service shall maintain an audit log of persons obtaining access to information in the record locator service, which audit log shall contain, at a minimum, information on:

- (1) the identity of the person obtaining access to the information;
- (2) the identity of the individual whose information was obtained;
- (3) the location from which the information was obtained;
- (4) the specific information obtained; and
- (5) the date that the information was obtained.

D. The audit log shall be made available by a health information exchange on the request of an individual whose health care information is the subject of the audit log; provided, however, that the audit log made available to the individual shall include only information related to that individual. The audit log shall be made available to the requesting individual annually for a fee not to exceed twenty-five cents (\$.25) per page as established by the department of health.

E. A record locator service shall provide a mechanism under which individuals may exclude their demographic information and information about the location of their electronic medical records from the record locator service. A person operating a record locator service or a health information exchange that receives an individual's request to exclude all of the individual's information from the record locator service is responsible for removing that information from the record locator service within thirty days. An individual's request for exclusion of information shall be in writing and shall include a waiver of liability for any harm caused by the exclusion of the individual's information.

F. When information in an individual's electronic medical record is requested using a record locator service or a health information exchange:

- (1) the requesting provider or health care institution shall warrant that the request is for the treatment of the individual, is permitted by the individual's written authorization or is otherwise permitted by state or federal law; and
- (2) the person disclosing the information may rely upon the warranty of the person making the request that the request is for the treatment of the

individual, is permitted with the consent of the individual or is otherwise permitted by state or federal law.

G. Notwithstanding any other provision of law, information in an individual's electronic medical record may be disclosed:

(1) to a provider that has a need for information about the individual to treat a condition that poses an immediate threat to the life of any individual and that requires immediate medical attention; and

(2) except as provided in the Electronic Medical Records Act, to a record locator service or a health information exchange for the development and operation of the record locator service and the health information exchange.

Chapter 69 Section 7 Laws 2009

Section 7. LIABILITY.--If an individual requests to exclude all of the individual's information from the record locator service pursuant to Subsection E of Section 6 of the Electronic Medical Records Act, the record locator service, health information exchange, health care institution or provider shall not be liable for any harm to the individual caused by the exclusion of the individual's information.

Chapter 69 Section 8 Laws 2009

Section 8. OUT-OF-STATE DISCLOSURES.--A disclosure otherwise permissible under the Electronic Medical Records Act may be made to providers, health care group purchasers, health care institutions, health information exchanges or record locator services located or operating outside of the state.

Chapter 69 Section 9 Laws 2009

Section 9. EXCLUSION OF CERTAIN INSURERS.--Nothing in the Electronic Medical Records Act shall be construed to apply to a person operating as a property and casualty insurer, workers' compensation insurer, life insurer, long-term care insurer or disability income insurer.

Chapter 69 Section 10 Laws 2009

Section 10. STATE AGENCY--ELECTRONIC MEDICAL RECORDS.--If a state agency requires the use of electronic medical records for any type of health care or health coverage program, the agency shall allow a health care group purchaser, health care institution, health information exchange, provider, record locator service or any other person to use any public, proprietary or open source hardware or software; provided that the hardware or software complies with federal interoperability-certified laws or rules.

SFL/Senate Bill 278, aa

Approved April 2, 2009

LAWS 2009, CHAPTER 70

AN ACT

RELATING TO GOVERNMENT ADMINISTRATION; REQUIRING THE GENERAL SERVICES DEPARTMENT TO PREPARE EQUIPMENT REPLACEMENT PLANS; AUTHORIZING EQUIPMENT REPLACEMENT REVOLVING FUNDS.

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

Chapter 70 Section 1 Laws 2009

Section 1. Section 9-17-1 NMSA 1978 (being Laws 1983, Chapter 301, Section 1) is amended to read:

"9-17-1. SHORT TITLE.--Chapter 9, Article 17 NMSA 1978 may be cited as the "General Services Department Act"."

Chapter 70 Section 2 Laws 2009

Section 2. A new section of the General Services Department Act is enacted to read:

"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 general services department shall establish and maintain a five-year equipment replacement plan for each of the department's enterprise functions. No later than December 1 of each year, the plans shall be submitted to the department of finance and administration and to the legislature, along with a reconciliation report reflecting financial activity in the preceding fiscal year in each of the equipment replacement revolving funds established pursuant to this section.

B. Upon the request of the secretary of general services, the state treasurer shall establish such "equipment replacement revolving funds" in the state treasury as are necessary to administer each of the general services department's enterprise functions. The 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 funds shall be credited to the funds, and money in the funds shall not revert at the end of a fiscal year. Expenditures from the funds shall be made only pursuant to an appropriation from the legislature and only for the purpose of acquiring and replacing capital equipment used to provide enterprise services, pursuant to the five-year equipment replacement plans.

C. The general services department shall record amounts due to the equipment replacement revolving funds each calendar quarter, based on the calculation of depreciation applicable to each enterprise 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.

D. The general services department may make initial transfers from its operating funds to establish the beginning fund balances as of July 1, 2009. The transfers shall be based on amounts so designated in the audited financial statements of the department as of June 30, 2009."

Senate Bill 425

Approved April 2, 2009

LAWS 2009, CHAPTER 71

AN ACT

MAKING AN APPROPRIATION TO THE PROPERTY CONTROL DIVISION OF THE GENERAL SERVICES DEPARTMENT TO PURCHASE REAL PROPERTY FOR THE SOUTHERN NEW MEXICO CORRECTIONAL FACILITY AND THE JP TAYLOR JUVENILE JUSTICE CENTER FROM THE FEDERAL BUREAU OF LAND MANAGEMENT.

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

Chapter 71 Section 1 Laws 2009

Section 1. APPROPRIATION.--Five thousand dollars (\$5,000) is appropriated from the property control reserve fund to the capital program fund for expenditure by the property control division of the general services department in fiscal years 2010 and 2011 to purchase from the federal bureau of land management the real property currently occupied by the southern New Mexico correctional facility and the JP Taylor juvenile justice center. Any unexpended or unencumbered balance remaining at the end of fiscal year 2011 shall revert to the property control reserve fund.

Senate Bill 429

Approved April 2, 2009

LAWS 2009, CHAPTER 72

AN ACT

RELATING TO CONTROLLED SUBSTANCES; AMENDING THE CONTROLLED SUBSTANCES ACT TO DELETE THE REQUIREMENT THAT CERTAIN REGISTRATIONS NEED TO BE OBTAINED ANNUALLY.

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

Chapter 72 Section 1 Laws 2009

Section 1. Section 30-31-12 NMSA 1978 (being Laws 1972, Chapter 84, Section 12, as amended) is amended to read:

"30-31-12. REGISTRATION REQUIREMENTS.--

A. A person who manufactures, distributes or dispenses a controlled substance or who proposes to engage in the manufacture, distribution or dispensing of a controlled substance shall obtain a registration issued by the board in accordance with its regulations.

B. Persons registered by the board to manufacture, distribute, dispense or conduct research with controlled substances may possess, manufacture, distribute, dispense, prescribe or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of the Controlled Substances Act.

C. The following persons need not register and may lawfully possess controlled substances:

(1) an agent of a registered manufacturer, distributor or dispenser of a controlled substance if the agent is acting in the usual course of the agent's principal's business or employment;

(2) a common or contract carrier or warehouseman, or an employee whose possession of a controlled substance is in the usual course of the common or contract carrier or warehouseman's business; or

(3) an ultimate user.

D. The board may waive by regulation the requirement for registration of certain manufacturers, distributors or dispensers if it is consistent with the public health and safety.

E. The board may inspect the establishment of a registrant or applicant for registration in accordance with the board's regulations."

Chapter 72 Section 2 Laws 2009

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.

Senate Bill 356

Approved April 2, 2009

LAWS 2009, CHAPTER 73

AN ACT

RELATING TO JUVENILE AND ADULT CORRECTIONS; PROHIBITING THE USE OF RESTRAINTS ON CERTAIN PREGNANT WOMEN; PROVIDING EXCEPTIONS.

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

Chapter 73 Section 1 Laws 2009

Section 1. RESTRAINTS ON PREGNANT PRISONERS.--

A. An adult or juvenile correctional facility, detention center or local jail shall use the least restrictive restraints necessary when the facility has actual or constructive knowledge that an inmate is in the second or third trimester of pregnancy. No restraints of any kind shall be used on an inmate who is in labor, delivering her baby or recuperating from the delivery unless there are compelling grounds to believe that the inmate presents:

(1) an immediate and serious threat of harm to herself, staff or others; or

(2) a substantial flight risk and cannot be reasonably contained by other means.

B. If an inmate who is in labor or who is delivering her baby is restrained, only the least restrictive restraints necessary to ensure safety and security shall be used.

Senate Bill 423, aa

Approved April 2, 2009

LAWS 2009, CHAPTER 74

AN ACT

RELATING TO HEALTH INSURANCE; REQUIRING COVERAGE FOR DIAGNOSIS AND TREATMENT OF AUTISM SPECTRUM DISORDER.

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

Chapter 74 Section 1 Laws 2009

Section 1. A new section of Chapter 59A, Article 22 NMSA 1978 is enacted to read:

"COVERAGE FOR AUTISM SPECTRUM DISORDER DIAGNOSIS AND TREATMENT.--

A. An individual or group health insurance policy, health care plan or certificate of health insurance that is delivered, issued for delivery or renewed in this state shall provide coverage to an eligible individual who is nineteen years of age or younger, or an eligible individual who is twenty-two years of age or younger and is enrolled in high school, for:

(1) well-baby and well-child screening for diagnosing the presence of autism spectrum disorder; and

(2) treatment of autism spectrum disorder through speech therapy, occupational therapy, physical therapy and applied behavioral analysis.

B. Coverage required pursuant to Subsection A of this section:

(1) shall be limited to treatment that is prescribed by the insured's treating physician in accordance with a treatment plan;

(2) shall be limited to thirty-six thousand dollars (\$36,000) annually and shall not exceed two hundred thousand dollars (\$200,000) in total lifetime benefits.

Beginning January 1, 2011, the maximum benefit shall be adjusted annually on January 1 to reflect any change from the previous year in the medical component of the then-current consumer price index for all urban consumers published by the bureau of labor statistics of the United States department of labor;

(3) shall not be denied on the basis that the services are habilitative or rehabilitative in nature;

(4) may be subject to other general exclusions and limitations of the insurer's policy or plan, including, but not limited to, coordination of benefits, participating provider requirements, restrictions on services provided by family or household members and utilization review of health care services, including the review of medical necessity, case management and other managed care provisions; and

(5) may be limited to exclude coverage for services received under the federal Individuals with Disabilities Education Improvement Act of 2004 and related state laws that place responsibility on state and local school boards for providing specialized education and related services to children three to twenty-two years of age who have autism spectrum disorder.

C. The coverage required pursuant to Subsection A of this section shall not be subject to dollar limits, deductibles or coinsurance provisions that are less favorable to an insured than the dollar limits, deductibles or coinsurance provisions that apply to physical illnesses that are generally covered under the individual or group health insurance policy, health care plan or certificate of health insurance, except as otherwise provided in Subsection B of this section.

D. An insurer shall not deny or refuse to issue health insurance coverage for medically necessary services or refuse to contract with, renew, reissue or otherwise terminate or restrict health insurance coverage for an individual because the individual is diagnosed as having autism spectrum disorder.

E. The treatment plan required pursuant to Subsection B of this section shall include all elements necessary for the health insurance plan to pay claims appropriately. These elements include, but are not limited to:

- (1) the diagnosis;
- (2) the proposed treatment by types;
- (3) the frequency and duration of treatment;
- (4) the anticipated outcomes stated as goals;
- (5) the frequency with which the treatment plan will be updated; and

(6) the signature of the treating physician.

F. This section shall not be construed as limiting benefits and coverage otherwise available to an insured under a health insurance plan.

G. The provisions of this section shall not apply to policies intended to supplement major medical group-type coverages such as medicare supplement, long-term care, disability income, specified disease, accident only, hospital indemnity or other limited-benefit health insurance policies.

H. As used in this section:

(1) "autism spectrum disorder" means a condition that meets the diagnostic criteria for the pervasive developmental disorders published in the *Diagnostic and Statistical Manual of Mental Disorders*, fourth edition, text revision, also known as DSM-IV-TR, published by the American psychiatric association, including autistic disorder; Asperger's disorder; pervasive development disorder not otherwise specified; Rett's disorder; and childhood disintegrative disorder;

(2) "habilitative or rehabilitative services" means treatment programs that are necessary to develop, maintain and restore to the maximum extent practicable the functioning of an individual; and

(3) "high school" means a school providing instruction for any of the grades nine through twelve."

Chapter 74 Section 2 Laws 2009

Section 2. A new section of Chapter 59A, Article 23 NMSA 1978 is enacted to read:

"COVERAGE FOR AUTISM SPECTRUM DISORDER DIAGNOSIS AND TREATMENT.--

A. A blanket or group health insurance policy or contract that is delivered, issued for delivery or renewed in this state shall provide coverage to an eligible individual who is nineteen years of age or younger, or an eligible individual who is twenty-two years of age or younger and is enrolled in high school, for:

(1) well-baby and well-child screening for diagnosing the presence of autism spectrum disorder; and

(2) treatment of autism spectrum disorder through speech therapy, occupational therapy, physical therapy and applied behavioral analysis.

B. Coverage required pursuant to Subsection A of this section:

(1) shall be limited to treatment that is prescribed by the insured's treating physician in accordance with a treatment plan;

(2) shall be limited to thirty-six thousand dollars (\$36,000) annually and shall not exceed two hundred thousand dollars (\$200,000) in total lifetime benefits. Beginning January 1, 2011, the maximum benefit shall be adjusted annually on January 1 to reflect any change from the previous year in the medical component of the then-current consumer price index for all urban consumers published by the bureau of labor statistics of the United States department of labor;

(3) shall not be denied on the basis that the services are habilitative or rehabilitative in nature;

(4) may be subject to other general exclusions and limitations of the insurer's policy or plan, including, but not limited to, coordination of benefits, participating provider requirements, restrictions on services provided by family or household members and utilization review of health care services, including the review of medical necessity, case management and other managed care provisions; and

(5) may be limited to exclude coverage for services received under the federal Individuals with Disabilities Education Improvement Act of 2004 and related state laws that place responsibility on state and local school boards for providing specialized education and related services to children three to twenty-two years of age who have autism spectrum disorder.

C. The coverage required pursuant to Subsection A of this section shall not be subject to dollar limits, deductibles or coinsurance provisions that are less favorable to an insured than the dollar limits, deductibles or coinsurance provisions that apply to physical illnesses that are generally covered under the blanket or group health insurance policy or contract, except as otherwise provided in Subsection B of this section.

D. An insurer shall not deny or refuse to issue health insurance coverage for medically necessary services or refuse to contract with, renew, reissue or otherwise terminate or restrict health insurance coverage for an individual because the individual is diagnosed as having autism spectrum disorder.

E. The treatment plan required pursuant to Subsection B of this section shall include all elements necessary for the health insurance plan to pay claims appropriately. These elements include, but are not limited to:

(1) the diagnosis;

(2) the proposed treatment by types;

(3) the frequency and duration of treatment;

- (4) the anticipated outcomes stated as goals;
- (5) the frequency with which the treatment plan will be updated; and
- (6) the signature of the treating physician.

F. This section shall not be construed as limiting benefits and coverage otherwise available to an insured under a health insurance plan.

G. The provisions of this section shall not apply to policies intended to supplement major medical group-type coverages such as medicare supplement, long-term care, disability income, specified disease, accident only, hospital indemnity or other limited-benefit health insurance policies.

H. As used in this section:

(1) "autism spectrum disorder" means a condition that meets the diagnostic criteria for the pervasive developmental disorders published in the *Diagnostic and Statistical Manual of Mental Disorders*, fourth edition, text revision, also known as DSM-IV-TR, published by the American psychiatric association, including autistic disorder; Asperger's disorder; pervasive development disorder not otherwise specified; Rett's disorder; and childhood disintegrative disorder;

(2) "habilitative or rehabilitative services" means treatment programs that are necessary to develop, maintain and restore to the maximum extent practicable the functioning of an individual; and

(3) "high school" means a school providing instruction for any of the grades nine through twelve."

Chapter 74 Section 3 Laws 2009

Section 3. A new section of Chapter 59A, Article 46 NMSA 1978 is enacted to read:

"COVERAGE FOR AUTISM SPECTRUM DISORDER DIAGNOSIS AND TREATMENT.--

A. An individual or group health maintenance contract that is delivered, issued for delivery or renewed in this state shall provide coverage to an eligible individual who is nineteen years of age or younger, or an eligible individual who is twenty-two years of age or younger and is enrolled in high school, for:

(1) well-baby and well-child screening for diagnosing the presence of autism spectrum disorder; and

(2) treatment of autism spectrum disorder through speech therapy, occupational therapy, physical therapy and applied behavioral analysis.

B. Coverage required pursuant to Subsection A of this section:

(1) shall be limited to treatment that is prescribed by the insured's treating physician in accordance with a treatment plan;

(2) shall be limited to thirty-six thousand dollars (\$36,000) annually and shall not exceed two hundred thousand dollars (\$200,000) in total lifetime benefits. Beginning January 1, 2011, the maximum benefit shall be adjusted annually on January 1 to reflect any change from the previous year in the medical component of the then-current consumer price index for all urban consumers published by the bureau of labor statistics of the United States department of labor;

(3) shall not be denied on the basis that the services are habilitative or rehabilitative in nature;

(4) may be subject to other general exclusions and limitations of the insurer's policy or plan, including, but not limited to, coordination of benefits, participating provider requirements, restrictions on services provided by family or household members and utilization review of health care services, including the review of medical necessity, case management and other managed care provisions; and

(5) may be limited to exclude coverage for services received under the federal Individuals with Disabilities Education Improvement Act of 2004 and related state laws that place responsibility on state and local school boards for providing specialized education and related services to children three to twenty-two years of age who have autism spectrum disorder.

C. The coverage required pursuant to Subsection A of this section shall not be subject to dollar limits, deductibles or coinsurance provisions that are less favorable to an insured than the dollar limits, deductibles or coinsurance provisions that apply to physical illnesses that are generally covered under the individual or group health maintenance contract, except as otherwise provided in Subsection B of this section.

D. An insurer shall not deny or refuse to issue health insurance coverage for medically necessary services or refuse to contract with, renew, reissue or otherwise terminate or restrict health insurance coverage for an individual because the individual is diagnosed as having autism spectrum disorder.

E. The treatment plan required pursuant to Subsection B of this section shall include all elements necessary for the health insurance plan to pay claims appropriately. These elements include, but are not limited to:

- (1) the diagnosis;
- (2) the proposed treatment by types;
- (3) the frequency and duration of treatment;
- (4) the anticipated outcomes stated as goals;
- (5) the frequency with which the treatment plan will be updated; and
- (6) the signature of the treating physician.

F. This section shall not be construed as limiting benefits and coverage otherwise available to an insured under a health insurance plan.

G. The provisions of this section shall not apply to policies intended to supplement major medical group-type coverages such as medicare supplement, long-term care, disability income, specified disease, accident only, hospital indemnity or other limited-benefit health insurance policies.

H. As used in this section:

(1) "autism spectrum disorder" means a condition that meets the diagnostic criteria for the pervasive developmental disorders published in the *Diagnostic and Statistical Manual of Mental Disorders*, fourth edition, text revision, also known as DSM-IV-TR, published by the American psychiatric association, including autistic disorder; Asperger's disorder; pervasive development disorder not otherwise specified; Rett's disorder; and childhood disintegrative disorder;

(2) "habilitative or rehabilitative services" means treatment programs that are necessary to develop, maintain and restore to the maximum extent practicable the functioning of an individual; and

(3) "high school" means a school providing instruction for any of the grades nine through twelve."

Chapter 74 Section 4 Laws 2009

Section 4. A new section of Chapter 59A, Article 47 NMSA 1978 is enacted to read:

"COVERAGE FOR AUTISM SPECTRUM DISORDER DIAGNOSIS AND TREATMENT.--

A. An individual or group health insurance policy, health care plan or certificate of health insurance delivered or issued for delivery in this state shall provide

coverage to an eligible individual who is twenty-two years of age or younger and is enrolled in high school, for:

(1) well-baby and well-child screening for diagnosing the presence of autism spectrum disorder; and

(2) treatment of autism spectrum disorder through speech therapy, occupational therapy, physical therapy and applied behavioral analysis.

B. Coverage required pursuant to Subsection A of this section:

(1) shall be limited to treatment that is prescribed by the insured's treating physician in accordance with a treatment plan;

(2) shall be limited to thirty-six thousand dollars (\$36,000) annually and shall not exceed two hundred thousand dollars (\$200,000) in total lifetime benefits. Beginning January 1, 2011, the maximum benefit shall be adjusted annually on January 1 to reflect any change from the previous year in the medical component of the then-current consumer price index for all urban consumers published by the bureau of labor statistics of the United States department of labor;

(3) shall not be denied on the basis that the services are habilitative or rehabilitative in nature;

(4) may be subject to other general exclusions and limitations of the insurer's policy or plan, including, but not limited to, coordination of benefits, participating provider requirements, restrictions on services provided by family or household members and utilization review of health care services, including the review of medical necessity, case management and other managed care provisions; and

(5) may be limited to exclude coverage for services received under the federal Individuals with Disabilities Education Improvement Act of 2004 and related state laws that place responsibility on state and local school boards for providing specialized education and related services to children three to twenty-two years of age who have autism spectrum disorder.

C. The coverage required pursuant to Subsection A of this section shall not be subject to dollar limits, deductibles or coinsurance provisions that are less favorable to an insured than the dollar limits, deductibles or coinsurance provisions that apply to physical illnesses that are generally covered under the individual or group health maintenance contract, except as otherwise provided in Subsection B of this section.

D. An insurer shall not deny or refuse to issue health insurance coverage for medically necessary services or refuse to contract with, renew, reissue or otherwise

terminate or restrict health insurance coverage for an individual because the individual is diagnosed as having autism spectrum disorder.

E. The treatment plan required pursuant to Subsection B of this section shall include all elements necessary for the health insurance plan to pay claims appropriately. These elements include, but are not limited to:

- (1) the diagnosis;
- (2) the proposed treatment by types;
- (3) the frequency and duration of treatment;
- (4) the anticipated outcomes stated as goals;
- (5) the frequency with which the treatment plan will be updated; and
- (6) the signature of the treating physician.

F. This section shall not be construed as limiting benefits and coverage otherwise available to an insured under a health insurance plan.

G. The provisions of this section shall not apply to policies intended to supplement major medical group-type coverages such as medicare supplement, long-term care, disability income, specified disease, accident only, hospital indemnity or other limited-benefit health insurance policies.

H. As used in this section:

(1) "autism spectrum disorder" means a condition that meets the diagnostic criteria for the pervasive developmental disorders published in the *Diagnostic and Statistical Manual of Mental Disorders*, fourth edition, text revision, also known as DSM-IV-TR, published by the American psychiatric association, including autistic disorder; Asperger's disorder; pervasive development disorder not otherwise specified; Rett's disorder; and childhood disintegrative disorder;

(2) "habilitative or rehabilitative services" means treatment programs that are necessary to develop, maintain and restore to the maximum extent practicable the functioning of an individual; and

(3) "high school" means a school providing instruction for any of the grades nine through twelve."

Approved April 2, 2009

LAWS 2009, CHAPTER 75

AN ACT

RELATING TO INSPECTION OF PUBLIC RECORDS; ALLOWING ELECTRONIC REQUESTS PURSUANT TO THE INSPECTION OF PUBLIC RECORDS ACT.

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

Chapter 75 Section 1 Laws 2009

Section 1. Section 14-2-8 NMSA 1978 (being Laws 1993, Chapter 258, Section 5) is amended to read:

"14-2-8. PROCEDURE FOR REQUESTING RECORDS.--

A. Any person wishing to inspect public records may submit an oral or written request to the custodian. However, the procedures set forth in this section shall be in response to a written request. The failure to respond to an oral request shall not subject the custodian to any penalty.

B. Nothing in the Inspection of Public Records Act shall be construed to require a public body to create a public record.

C. A written request shall provide the name, address and telephone number of the person seeking access to the records and shall identify the records sought with reasonable particularity. No person requesting records shall be required to state the reason for inspecting the records.

D. A custodian receiving a written request shall permit the inspection immediately or as soon as is practicable under the circumstances, but not later than fifteen days after receiving a written request. If the inspection is not permitted within three business days, the custodian shall explain in writing when the records will be available for inspection or when the public body will respond to the request. The three-day period shall not begin until the written request is delivered to the office of the custodian.

E. In the event that a written request is not made to the custodian having possession of or responsibility for the public records requested, the person receiving the request shall promptly forward the request to the custodian of the requested public records, if known, and notify the requester. The notification to the requester shall state the reason for the absence of the records from that person's custody or control, the records' location and the name and address of the custodian.

F. For the purposes of this section, "written request" includes an electronic communication, including email or facsimile; provided that the request complies with the requirements of Subsection C of this section."

House Bill 598

Approved April 3, 2009

LAWS 2009, CHAPTER 76

AN ACT

RELATING TO PUBLIC OFFICERS AND EMPLOYEES; AUTHORIZING A STATE EMPLOYEE WHO HAS ENTERED INTO A COLLECTIVE BARGAINING AGREEMENT TO ENTER ARBITRATION TO RESOLVE A CONTESTED DISMISSAL, DEMOTION OR SUSPENSION.

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

Chapter 76 Section 1 Laws 2009

Section 1. Section 10-9-1 NMSA 1978 (being Laws 1961, Chapter 240, Section 1) is amended to read:

"10-9-1. SHORT TITLE.--Chapter 10, Article 9 NMSA 1978 may be cited as the "Personnel Act"."

Chapter 76 Section 2 Laws 2009

Section 2. Section 10-9-18 NMSA 1978 (being Laws 1980, Chapter 47, Section 2, as amended) is amended to read:

"10-9-18. APPEALS BY EMPLOYEES TO THE BOARD.--

A. An employee who is dismissed, demoted or suspended may, within thirty days after the dismissal, demotion or suspension, appeal to the board. The appealing employee and the agency whose action is reviewed have the right to be heard publicly and to present facts pertinent to the appeal.

B. An applicant denied permission to take an examination or who is disqualified may appeal to the board.

C. The technical rules of evidence shall not apply to appeals to the board.

D. A record shall be made of the hearing, which shall be transcribed if there is an appeal to the district court. Costs of the transcripts, including one copy for the board, shall be paid initially by the agency. The cost of the transcripts may be assessed by the court to the losing party on appeal.

E. The board may designate a hearing officer who may be a member of the board or any qualified state employee to preside over and take evidence at any hearing held pursuant to this section. The hearing officer shall prepare and submit to the board a summary of the evidence taken at the hearing and proposed findings of fact. The board shall render a decision, which shall include findings of fact and conclusions of law.

F. If the board finds that the action taken by the agency was without just cause, the board may modify the disciplinary action or order the agency to reinstate the appealing employee to the employee's former position or to a position of like status and pay. Every consideration shall be given to placing the appealing employee in the same geographical location in which the employee was employed prior to the disciplinary action. The board may recommend that the appealing employee be reinstated by an agency other than the one that disciplined the appealing employee. When the board orders an agency to reinstate an appealing employee, the reinstatement shall be effective within thirty days of the board's order. The board may award back pay as of the date of the dismissal, demotion or suspension or as of the later date as the board may specify.

G. A party aggrieved by the decision of the board made pursuant to this section may appeal the decision to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

H. Where the public employer has entered into a collective bargaining agreement pursuant to the Public Employee Bargaining Act covering the employee, such an employee who is dismissed, demoted or suspended may, within thirty days after the dismissal, demotion or suspension, irrevocably elect to appeal the action through arbitration. An appeal under this subsection shall be conducted in accordance with procedures and requirements as set forth in Subsections A, C and D of this section. The arbitrator shall have all of the powers of the board as set forth in Subsection F of this section. A party aggrieved by the decision of the arbitrator may appeal the decision pursuant to Subsection G of this section. The selection of an arbitrator shall be conducted in accordance with selection procedures set forth in the collective bargaining agreement that covers the employee."

House Bill 15, aa

Approved April 3, 2009

LAWS 2009, CHAPTER 77

AN ACT

RELATING TO LEGAL PROCEDURE; AMENDING SECTION 14-11-13 NMSA 1978 (BEING LAWS 1965, CHAPTER 254, SECTION 1, AS AMENDED) TO INCLUDE MAS NEW MEXICO TO THE LIST OF PUBLICATIONS IN WHICH REQUIRED LEGAL NOTICES SHALL BE PUBLISHED.

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

Chapter 77 Section 1 Laws 2009

Section 1. Section 14-11-13 NMSA 1978 (being Laws 1965, Chapter 254, Section 1, as amended) is amended to read:

"14-11-13. OFFICIAL SPANISH NEWSPAPERS.--For the purpose of publishing legal notices in Spanish as required by law for any agencies of the state, the Santa Rosa News published at Santa Rosa, the New Mexican and the Santa Fe News, both published at Santa Fe, El Hispano published at Albuquerque, the Alpha News published at Las Vegas, the Rio Grande Sun published at Espanola, the Taos News published at Taos and Mas New Mexico published at Santa Fe and Albuquerque are recognized as official Spanish language newspapers of this state."

House Bill 821

Approved April 3, 2009

LAWS 2009, CHAPTER 78

AN ACT

RELATING TO COURT PROCEEDINGS; ENACTING THE UNIFORM UNSWORN FOREIGN DECLARATIONS ACT; AMENDING THE DEFINITION OF PERJURY.

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

Chapter 78 Section 1 Laws 2009

Section 1. SHORT TITLE.--Sections 1 through 8 of this act may be cited as the "Uniform Unsworn Foreign Declarations Act".

Chapter 78 Section 2 Laws 2009

Section 2. DEFINITIONS.--As used in the Uniform Unsworn Foreign Declarations Act:

A. "boundaries of the United States" means the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands and any territory or insular possession subject to the jurisdiction of the United States;

B. "law" includes the federal or a state constitution, a federal or state statute, a judicial decision or order, a rule of court, an executive order and an administrative rule, regulation or order;

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

D. "sign" means, with present intent to authenticate or adopt a record:

(1) to execute or adopt a tangible symbol; or

(2) to attach to or logically associate with the record an electronic symbol, sound or process.

E. "state" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States;

F. "sworn declaration" means a declaration in a signed record given under oath. The term includes a sworn statement, verification, certificate and affidavit; and

G. "unsworn declaration" means a declaration in a signed record that is not given under oath, but is given under penalty of perjury.

Chapter 78 Section 3 Laws 2009

Section 3. APPLICABILITY.--The Uniform Unsworn Foreign Declarations Act applies to an unsworn declaration by a declarant who at the time of making the declaration is physically located outside the boundaries of the United States whether or not the location is subject to the jurisdiction of the United States. The Uniform Unsworn Foreign Declarations Act does not apply to a declaration by a declarant who is physically located on property that is within the boundaries of the United States and subject to the jurisdiction of another country or a federally recognized Indian tribe.

Chapter 78 Section 4 Laws 2009

Section 4. VALIDITY OF UNSWORN DECLARATION.--

A. Except as otherwise provided in Subsection B of this section, if a law of New Mexico requires or permits use of a sworn declaration, an unsworn declaration meeting the requirements of the Uniform Unsworn Foreign Declarations Act has the same effect as a sworn declaration.

B. The Uniform Unsworn Foreign Declarations Act does not apply to:

- (1) a deposition;
- (2) an oath of office;
- (3) an oath required to be given before a specified official other than a notary public;
- (4) a declaration to be recorded in records affecting real property pursuant to Section 14-9-1 or 14-9-7 NMSA 1978; or
- (5) an oath required for self-proved wills by Section 45-2-504 NMSA 1978.

Chapter 78 Section 5 Laws 2009

Section 5. REQUIRED MEDIUM.--If a law of New Mexico requires that a sworn declaration be presented in a particular medium, an unsworn declaration shall be presented in that medium.

Chapter 78 Section 6 Laws 2009

Section 6. FORM OF UNSWORN DECLARATION.--An unsworn declaration pursuant to the Uniform Unsworn Foreign Declarations Act shall be in substantially the following form:

"I declare under penalty of perjury under the law of New Mexico that the foregoing is true and correct and that I am physically located outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands and any territory or insular possession subject to the jurisdiction of the United States.

Executed on the _____ day of _____, _____, at

(date) (month) (year)

_____,

(city or other location, and state)

_____.

(country)

(printed name)

(signature)".

Chapter 78 Section 7 Laws 2009

Section 7. UNIFORMITY OF APPLICATION AND CONSTRUCTION.--In applying and construing the Uniform Unsworn Foreign Declarations 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 78 Section 8 Laws 2009

Section 8. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.--The Uniform Unsworn Foreign Declarations 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 78 Section 9 Laws 2009

Section 9. Section 30-25-1 NMSA 1978 (being Laws 1963, Chapter 303, Section 25-1) is amended to read:

"30-25-1. PERJURY.--

A. Perjury consists of making a false statement under oath, affirmation or penalty of perjury, material to the issue or matter involved in the course of any judicial, administrative, legislative or other official proceeding or matter, knowing such statement to be untrue.

B. Whoever commits perjury is guilty of a fourth degree felony."

Chapter 78 Section 10 Laws 2009

Section 10. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.

House Bill 792

Approved April 3, 2009

LAWS 2009, CHAPTER 79

AN ACT

RELATING TO THE ENVIRONMENT; MAKING ENFORCEMENT OF THE NIGHT SKY PROTECTION ACT MANDATORY.

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

Chapter 79 Section 1 Laws 2009

Section 1. Section 74-12-11 NMSA 1978 (being Laws 2001, Chapter 151, Section 2) is repealed and a new Section 74-12-11 NMSA 1978 is enacted to read:

"ENFORCEMENT.--In order to promote the purposes of the Night Sky Protection Act and to provide uniform minimum outdoor lighting standards throughout the state, the construction industries division of the regulation and licensing department shall enforce the Night Sky Protection Act as it pertains to public buildings subject to permit and inspection under the Construction Industries Licensing Act and each political subdivision of the state shall fully enforce the provisions of the Night Sky Protection Act."

House Bill 362, aa

Approved April 3, 2009

LAWS 2009, CHAPTER 80

AN ACT

RELATING TO INSURANCE; REPLACING THE ANNUAL TITLE INSURANCE HEARING WITH A BIENNIAL HEARING; PROVIDING FOR THE FILING OF RATES LOWER THAN THE PROMULGATED RATE SUBJECT TO PRIOR APPROVAL; PROVIDING FOR DISCOUNTED PREMIUMS FOR CERTAIN LOAN TRANSACTIONS; PROHIBITING INDUCEMENTS FOR THE REFERRAL OF TITLE BUSINESS; PROVIDING FOR TITLE PREMIUM COMPARISON GUIDES; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978; DECLARING AN EMERGENCY.

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

Chapter 80 Section 1 Laws 2009

Section 1. Section 59A-16-17 NMSA 1978 (being Laws 1984, Chapter 127, Section 283) is amended to read:

"59A-16-17. UNFAIR DISCRIMINATION, REBATES PROHIBITED--OTHER COVERAGES.--

A. No property, casualty, marine and transportation, surety, vehicle or title insurer, or nonprofit health care or prepaid dental plan or other insurance-type organization, or any employee or representative thereof, and no broker, agent, solicitor or other representative shall pay, allow or give, or offer to pay, allow or give, directly or indirectly, as an inducement to insurance or coverage, or after insurance or coverage has been effected, any rebate, discount, abatement, credit or reduction of the premium named in a policy, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any valuable consideration or inducement whatever, not specified or provided for in the policy, except to the extent provided for in an applicable filing with the superintendent as provided by law.

B. No title insurer or title insurance agent shall:

(1) pay, directly or indirectly, to the insured or any person acting as agent, representative, attorney or employee of the owner, lessee, mortgagee, existing or prospective, of the real property, or interest therein, that is the subject matter of title insurance or as to which a service is to be performed any commission or part of its fee or charges or other consideration as inducement or compensation for the placing of any order for a title insurance policy or for performance of any escrow or other service by the insurer with respect thereto;

(2) issue any policy or perform any service in connection with which it or any agent or other person has paid or contemplates paying any commission, rebate or inducement in violation of this section;

(3) give or receive, directly or indirectly, any consideration or thing of value for the referral of title insurance business or escrow or other service provided by a title insurer or title insurance agent unless otherwise permitted by regulation of the superintendent; or

(4) enter into a reinsurance agreement with an affiliate of a real estate developer, real estate agency, mortgage lender or referrer of title business without the prior written approval of the superintendent.

C. No insured named in a policy or any employee of such insured shall knowingly receive or accept, directly or indirectly, any such rebate, discount, abatement,

credit or reduction of premium, or any such special favor or advantage or valuable consideration or inducement.

D. No such insurer or organization shall make or permit any unfair discrimination between insureds or property having like insuring or risk characteristics, in the premium or rates charged for insurance or coverage, or in the dividends or other benefits payable thereon or in any other of the terms and conditions of the insurance or coverage.

E. Nothing in this section shall be construed as prohibiting the payment of commissions or other compensation to licensed agents, brokers, solicitors or other representatives; or as prohibiting the extension of credit to an insured for the payment of any premium and for which credit a reasonable rate of interest is charged and collected; or as prohibiting any insurer or agent from allowing or returning to its participating policyholders, members or subscribers, dividends, savings or unabsorbed premium deposits. As to title insurance, nothing in this section shall prohibit bulk rates or special rates for customers of prescribed classes if such bulk or special rates are provided for in the currently effective schedule of fees and charges of the title insurer as filed with the superintendent.

F. This section does not apply to wet marine and transportation insurance."

Chapter 80 Section 2 Laws 2009

Section 2. Section 59A-17-11.1 NMSA 1978 (being Laws 2007, Chapter 367, Section 6) is amended to read:

"59A-17-11.1. CONSUMER INFORMATION.--

A. The superintendent shall use, develop or cause to be developed a consumer information system that will provide and disseminate price and other relevant information on a readily available basis to purchasers of homeowners, private passenger non-fleet automobile or property insurance for personal, family or household needs as well as for title insurance, including escrow, closing and settlement charges for one to four family residential property transactions, and for any other types of personal or commercial insurance designated by the superintendent. To the extent deemed necessary and appropriate by the superintendent, insurers, advisory organizations and other persons or organizations involved in conducting the business of insurance in New Mexico, to which this section applies, shall cooperate in the development and utilization of a consumer information system.

B. An insurer writing homeowners insurance or private passenger non-fleet automobile insurance in New Mexico shall, upon renewal or upon the transfer of a policy to another insurer under the same ownership or management as the transferring insurer, provide its policyholders with written notification of their right to obtain from the

insurer a detailed written explanation of the reasons why their policy premium has changed or is about to change."

Chapter 80 Section 3 Laws 2009

Section 3. Section 59A-30-1 NMSA 1978 (being Laws 1985, Chapter 28, Section 1) is amended to read:

"59A-30-1. SHORT TITLE.--Chapter 59A, Article 30 NMSA 1978 may be cited as the "New Mexico Title Insurance Law"."

Chapter 80 Section 4 Laws 2009

Section 4. Section 59A-30-2 NMSA 1978 (being Laws 1985, Chapter 28, Section 2) is amended to read:

"59A-30-2. PURPOSE AND LEGISLATIVE INTENT OF ARTICLE.--

A. The purpose of the New Mexico Title Insurance Law is to provide a comprehensive body of law for the effective regulation and active supervision of the business of title insurance transacted within this state in accordance with the McCarran-Ferguson Act (P.L. 79-15, 15 U.S.C. Sections 1011-1015)

B. The legislature intends that the business of title insurance be regulated by the state to provide for the protection of consumers and purchasers of title insurance policies and the financial stability of the title insurance industry.

C. The legislature intends that the title insurance market be competitive for all title insurance agents, that regulation of the title insurance industry does not disproportionately impact independent title agencies and that regulation of the industry does not place independent title insurance agents at a competitive disadvantage with underwriter-owned title companies."

Chapter 80 Section 5 Laws 2009

Section 5. Section 59A-30-3 NMSA 1978 (being Laws 1985, Chapter 28, Section 3, as amended) is amended to read:

"59A-30-3. DEFINITIONS.--As used in the New Mexico Title Insurance Law:

A. "agency agreement" means a document executed by a title insurer and title insurance agent that defines the compensation of the title insurance agent and the scope of the title insurance agent's authority;

B. "basic premium rate" means the premium rate for an original owner's policy of title insurance;

C. "business of title insurance" means:

(1) issuing as title insurer or offering to issue as title insurer a title insurance policy; or

(2) transacting or proposing to transact by a title insurer or title insurance agent any of the following activities when conducted or performed in contemplation of the issuance of a title insurance policy:

(a) soliciting or negotiating the issuance of a title insurance policy;

(b) guaranteeing, warranting or otherwise insuring the correctness of title searches;

(c) executing title insurance policies;

(d) effecting contracts of reinsurance;

(e) abstracting, searching or examining titles; or

(f) doing or proposing to do any business in substance equivalent to the business of title insurance in a manner designed to evade the provisions of the New Mexico Title Insurance Law or other laws applicable to the business of title insurance;

D. "charge" means any consideration, other than premiums billed by a title insurance agent or title insurer or both, for the performance of services, including but not necessarily limited to:

(1) consideration for the supervising or handling of escrows, settlements, closings, preparation of abstracts, delivery or recording of transfer and lien documents and disbursing funds;

(2) consideration for services commenced but not completed; and

(3) consideration for title searches conducted for a purpose other than issuance of a title insurance policy.

"Charge" does not include consideration collected by a title insurer or title insurance agent when the consideration is limited to the amount billed for services rendered by a third party;

E. "premium" means the consideration for issuing a title insurance policy and includes the consideration for searching and examining a title when conducted or performed for the purpose of the issuance of a title insurance policy;

F. "available funds" means funds subject to immediate withdrawal by cash or check in a depository account with a financial institution, held in the name of and subject to the control of a title insurance agent, title insurer or third party fiduciary, not including a person or entity that is a party to the transaction, cooperating in the closing of a transaction with a title insurance agent or title insurer;

G. "title insurance agent" means a person licensed as an agent under the Insurance Code and appointed by a title insurer;

H. "title insurance policy" or "policy" means a contract indemnifying against loss or damage arising from any of the following that exist on or before the effective date of the policy:

(1) defects in the insured title;

(2) liens or encumbrances on the insured title;

(3) unmarketability of the insured title;

(4) invalidity or unenforceability of liens or encumbrances on the property that is the subject of the policy; or

(5) lack of legal right of access to and from the property.

"Title insurance policy" or "policy" does not include an abstract; and

I. "title insurer" means any person authorized under the laws of this state to transact as insurer the business of title insurance."

Chapter 80 Section 6 Laws 2009

Section 6. Section 59A-30-4 NMSA 1978 (being Laws 1985, Chapter 28, Section 4) is amended to read:

"59A-30-4. CONTROL AND SUPERVISION BY SUPERINTENDENT.--

A. Title insurers and title insurance agents shall operate in New Mexico under the control and supervision of the superintendent. The superintendent shall promulgate such rules and regulations as are necessary to carry out the provisions of the New Mexico Title Insurance Law. The superintendent may adopt uniform rules and regulations to address underwriting standards and practices, including but not limited to rules and regulations that prohibit title insurers from insuring specified risks that the superintendent determines may pose an unreasonable risk to the financial stability of title insurers.

B. No title insurer or title insurance agent shall collect any premium, issue any title insurance policy or agency agreement, or reinsure any portion of the risk assumed under any title insurance policy, other than in conformance with the New Mexico Title Insurance Law and rules and regulations adopted by the superintendent as authorized by the New Mexico Title Insurance Law."

Chapter 80 Section 7 Laws 2009

Section 7. Section 59A-30-6 NMSA 1978 (being Laws 1985, Chapter 28, Section 6, as amended) is amended to read:

"59A-30-6. PREMIUMS--AGENCY AGREEMENTS--DUTY TO PROMULGATE REASONABLE RATES--EXCEPTION.--

A. The superintendent shall promulgate the premium rates of title insurers and title insurance agents for title insurance policies and the percentage of premium to be retained by title insurers under agency agreements, except that premium rates for reinsurance as between title insurers shall not be promulgated by the superintendent. No premium that has not been promulgated or approved by the superintendent shall be charged for any title insurance policy. The superintendent shall not promulgate charges of title insurers and title insurance agents other than premium rates for title insurance policies and the percentage of premium to be retained by title insurers under agency agreements.

B. The superintendent shall promulgate additional premium rates for searches or examinations of title conducted or performed for the purpose of issuance of a title insurance policy when the search or examination involves more than one chain of title or other unusual complexity.

C. Premium rates promulgated by the superintendent shall not be excessive, inadequate or unfairly discriminatory and shall contain an allowance permitting a profit that is not unreasonable in relation to the risks incurred in the business of title insurance. Premium rates may include an allowance for recoupment of assessments made pursuant to the Title Insurance Guaranty Act.

D. Title insurance agents shall retain not less than eighty percent of the gross premiums collected on commitments, policies and endorsements issued for one to four family residential property transactions with a liability amount of not more than two million dollars (\$2,000,000); provided, however, that from July 1, 2009 until otherwise ordered by the superintendent, title insurance agents shall retain not less than eighty-one percent of the gross premiums collected on commitments, policies and endorsements issued for one to four family residential property transactions with a liability amount of not more than two million dollars (\$2,000,000). The portion of the premium to be retained by the title insurance agent for policies with a liability amount greater than two million dollars (\$2,000,000) shall be set by rule.

E. A title insurer may file with the superintendent proposed title insurance rates for a specific county or counties lower than the premium rate promulgated by the superintendent. The superintendent shall provide notice of the filed title insurance rates to all agents and underwriters doing business in that county or counties and may conduct a hearing. In determining whether to approve filed title insurance rates, the superintendent shall consider the interests and protection of consumers and independent title insurance agents and the potential impact on competition within the title insurance industry. Upon approval of the filed title insurance rates, the title insurer and its agents shall use the filed and approved title insurance rates.

F. The superintendent shall adopt rules to establish standards and procedures by which a title insurance rate lower than the promulgated rate shall be filed and may be approved."

Chapter 80 Section 8 Laws 2009

Section 8. A new section of the New Mexico Title Insurance Law, Section 59A-30-6.1 NMSA 1978, is enacted to read:

"59A-30-6.1. PREMIUMS--REFINANCED PROPERTY.--The premium rates for title insurance policies issued in connection with the refinance of an existing mortgage or deed of trust, where a prior loan policy has been issued and a copy of the policy or a closing statement evidencing the issuance of the policy is furnished to the insurer or title insurance agent showing title vested in the same borrower and covering the same property, shall not exceed the percentage of the basic premium rate promulgated or approved by the superintendent as follows:

A. forty percent of the current basic premium rate applied to any amount up to the amount of the previous policy insuring the mortgage or deed of trust being refinanced, if the new policy is issued within three years from the date of the prior policy;

B. fifty percent of the current basic premium rate applied to any amount up to the amount of the previous policy insuring the mortgage or deed of trust being refinanced, if the new policy is issued more than three years but less than five years from the date of the prior policy;

C. sixty percent of the current basic premium rate applied to any amount up to the amount of the previous policy insuring the mortgage or deed of trust being refinanced, if the new policy is issued more than five years but less than ten years from the date of the prior policy;

D. eighty percent of the current basic premium rate applied to any amount up to the amount of the previous policy insuring the mortgage or deed of trust being refinanced, if the new policy is issued more than ten years but less than twenty years from the date of the prior policy; or

E. the premium for insurance coverage above the amount of the previous policy shall be ninety percent of the current basic premium rate as set by rule. In no event shall the premium collected be less than the minimum premium based on the promulgated or approved rate for a loan policy."

Chapter 80 Section 9 Laws 2009

Section 9. A new section of the New Mexico Title Insurance Law, Section 59A-30-6.2 NMSA 1978, is enacted to read:

"59A-30-6.2. PREMIUMS--INDIAN NATION, TRIBE OR PUEBLO TRUST PROPERTY.--Title insurance policies purchased in association with the acquisition of title to property by the United States in trust for a federally recognized Indian nation, tribe or pueblo located wholly or partially in New Mexico where no monetary consideration is paid, shall be issued subject to the promulgated or filed and approved premium rates for the original issuance of a title insurance policy on the same property for an amount equal to the reduced liability limit for the acquisition provided for by the United States department of justice, unless a higher liability amount is required by the United States."

Chapter 80 Section 10 Laws 2009

Section 10. Section 59A-30-7 NMSA 1978 (being Laws 1985, Chapter 28, Section 7) is amended to read:

"59A-30-7. REPORTING OF EXPERIENCE.--The superintendent shall promulgate reasonable rules, including rules providing statistical plans, for use thereafter by all title insurers and title insurance agents in the recording and reporting of revenue, loss and expense experience so that the experience of title insurers and title insurance agents may be made available to the superintendent at least annually in such form and detail as may be necessary to aid the superintendent in promulgating or approving premium rates."

Chapter 80 Section 11 Laws 2009

Section 11. Section 59A-30-8 NMSA 1978 (being Laws 1985, Chapter 28, Section 8, as amended) is amended to read:

"59A-30-8. HEARINGS--NOTICE.--

A. The superintendent shall commence a hearing during November of each odd-numbered calendar year to consider promulgation of premium rates and any other matters related to the regulation of the business of title insurance deemed necessary by the superintendent.

B. The superintendent may, in the superintendent's discretion, hold a public hearing at any time to consider promulgation of premium rates and such other matters and subjects related to the regulation of the business of title insurance as the superintendent shall determine necessary or proper.

C. Notice of the public hearings provided for in Subsections A and B of this section shall be as provided in Subsection A of Section 59A-4-16 NMSA 1978.

D. The superintendent may promulgate premium rates and forms of title insurance policies only after a public hearing as provided in Subsections A and B of this section.

E. After the collection of all evidence relevant to the hearing, the superintendent shall file a notice of closure of the administrative record. The superintendent shall issue a decision within sixty days following the filing of the notice of closure of the administrative record for the public hearing provided for in Subsections A and B of this section. However, if the superintendent determines that the data and information presented to the superintendent pursuant to Section 59A-30-7 NMSA 1978 are incomplete, inaccurate or otherwise insufficient to determine whether a change in rates is warranted, the superintendent shall require a party, intervenor or participant at the public hearing to furnish the additional necessary data and information, and, in such event, the period of time allowed for the superintendent to issue a decision shall commence from the date such additional data and information are furnished."

Chapter 80 Section 12 Laws 2009

Section 12. Section 59A-30-9 NMSA 1978 (being Laws 1985, Chapter 28, Section 9, as amended) is amended to read:

"59A-30-9. REVIEW--APPEALS.--A person aggrieved by an order of the superintendent promulgating, approving or disapproving rates under the New Mexico Title Insurance Law shall have the rights to review and appeal provided for in Sections 59A-17-34 and 59A-17-35 NMSA 1978. The request for review shall be filed no later than thirty days after the superintendent's issuance of the order that promulgated, approved or disapproved the rates."

Chapter 80 Section 13 Laws 2009

Section 13. A new section of the New Mexico Title Insurance Law is enacted to read:

"REPORTING BY SUPERINTENDENT.--The superintendent shall compile a report for the commission and the legislature no later than October 1 each year beginning in 2010 detailing title insurance statistics, including a report on the status of price competition within the title insurance industry in New Mexico. Annual reports shall be made available to interested parties and the general public."

Chapter 80 Section 14 Laws 2009

Section 14. REPEAL.--Section 59A-30-15 NMSA 1978 (being Laws 1985, Chapter 28, Section 16) is repealed.

Chapter 80 Section 15 Laws 2009

Section 15. SEVERABILITY.--If any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

Chapter 80 Section 16 Laws 2009

Section 16. EFFECTIVE DATE.--The effective date of the provisions of Sections 1 through 7 and 10 through 15 of this act is July 1, 2009. The effective date of the provisions of Section 8 of this act is May 1, 2009.

Chapter 80 Section 17 Laws 2009

Section 17. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

HBIC/House Bills 488 & 357, w/ec

Approved April 3, 2009

LAWS 2009, CHAPTER 81

AN ACT

RELATING TO GAMES OF CHANCE; REPEALING THE BINGO AND RAFFLE ACT; ENACTING THE NEW MEXICO BINGO AND RAFFLE ACT; REGULATING CERTAIN GAMES OF CHANCE; REQUIRING LICENSES AND PERMITS; PROVIDING CIVIL AND CRIMINAL PENALTIES; IMPOSING TAXES.

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

Chapter 81 Section 1 Laws 2009

Section 1. SHORT TITLE.--Sections 1 through 26 of this act may be cited as the "New Mexico Bingo and Raffle Act".

Chapter 81 Section 2 Laws 2009

Section 2. PURPOSE.--The purpose of the New Mexico Bingo and Raffle Act is to authorize and regulate certain games of chance by licensed nonprofit organizations.

Chapter 81 Section 3 Laws 2009

Section 3. GAMING CONTROL BOARD TO ADMINISTER ACT.--The gaming control board shall implement the state's policy on games of chance consistent with the provisions of the New Mexico Bingo and Raffle Act. It shall fulfill all duties assigned to it pursuant to the New Mexico Bingo and Raffle Act, and it shall have the authority necessary to carry out those duties.

Chapter 81 Section 4 Laws 2009

Section 4. DEFINITIONS.--As used in the New Mexico Bingo and Raffle Act:

A. "bingo" means a game of chance in which each player has one or more bingo cards printed with different numbers on which to place markers when the respective numbers are drawn and announced by a bingo caller;

B. "bingo caller" means the individual who, in the game of bingo, draws and announces numbers;

C. "bingo employee" means a person connected directly with a game of chance such as cashiers, floor sales clerks and pull-tab workers. A bingo employee may or may not be a member of a qualified organization;

D. "bingo manager" means the person responsible for overseeing bingo and pull-tab activities conducted pursuant to a bingo license;

E. "board" means the gaming control board;

F. "charitable organization" means an organization, not for pecuniary profit, that is operated for the relief of poverty, distress or other condition of public concern in New Mexico and that has been granted an exemption from federal income tax as an organization described in Section 501(c) of the United States Internal Revenue Code of 1986, as amended or renumbered;

G. "chartered branch, lodge or chapter of a national or state organization" means a branch, lodge or chapter that is a civic or service organization, not for pecuniary profit, and that is authorized by its written constitution, charter, articles of incorporation or bylaws to engage in a fraternal, civic or service purpose in New Mexico;

H. "distributor" means a person, other than a manufacturer, who provides equipment to a qualified organization but does not manufacture the equipment;

I. "educational organization" means an organization within the state, not organized for pecuniary profit, whose primary purpose is educational in nature and designed to develop the capabilities of individuals by instruction;

J. "environmental organization" means an organization within the state, not organized for pecuniary profit, that is primarily concerned with the protection and preservation of the natural environment;

K. "equipment" means:

(1) with respect to bingo:

(a) the receptacle and numbered objects drawn from it;

(b) the master board upon which the numbered objects are placed as drawn;

(c) the cards or sheets bearing numbers or other designations to be covered and the objects used to cover them;

(d) the board or signs, however operated, used to announce or display the numbers or designations as they are drawn; and

(e) all other articles having a significant effect on the outcome of a game and necessary to the operation, conduct and playing of bingo; and

(2) with respect to pull-tabs:

(a) the pull-tabs;

(b) the pull-tab flares; and

(c) the dispensing machines;

L. "fraternal organization" means an organization within the state, except college and high school fraternities, not for pecuniary profit, that is a branch, lodge or chapter of a national or state organization and that exists for the common business, brotherhood or other interests of its members;

M. "game accountant" means the individual in charge of preparing and submitting the quarterly report form;

N. "game of chance" means that specific kind of game of chance commonly known as bingo, that specific kind of game of chance commonly known as a raffle or that specific game of chance commonly known as pull-tab;

O. "gross receipts" means proceeds received by a bingo licensee from the sale of bingo cards, raffle tickets or pull-tab tickets; the sale of rights in any manner connected with participation in a game of chance or the right to participate in a game of chance, including any admission fee or charge; the sale of playing materials; and all other miscellaneous receipts;

P. "lawful purposes" means:

(1) educational, charitable, patriotic, religious or public-spirited purposes that benefit an indefinite number of persons either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them in establishing themselves in life, by erecting or maintaining public buildings or works, by providing legal assistance to peace officers or firefighters in defending civil or criminal actions arising out of the performance of their duties or by otherwise lessening the burden of government. "Lawful purposes" includes the erection, acquisition, improvement, maintenance, insurance or repair of property, real, personal or mixed, if the property is used for one or more of the benefits stated in this paragraph; or

(2) augmenting the revenue of and promoting the New Mexico state fair;

Q. "licensee" means any qualified organization to which a bingo license has been issued by the board or any person to which a manufacturer's or distributor's license has been issued by the board;

R. "manufacturer" means a person who manufactures, fabricates, assembles, produces, programs or makes modifications to equipment for use or play in games of chance in New Mexico or for sale or distribution outside of New Mexico;

S. "occasion" means a single gathering at which a series of successive bingo games are played;

T. "permittee" means any person issued a permit by the board;

U. "premises" means a room, hall, enclosure or outdoor area that is identified on a license issued pursuant to the New Mexico Bingo and Raffle Act and used for the purpose of playing games of bingo or pull-tabs;

V. "prize" means cash or merchandise won for participation in a game of chance;

W. "progressive pot" means a prize from a pull-tab or a portion of a prize from a pull-tab that is allowed to carry over from one pull-tab game to the next so that the carried-over prizes are allowed to accumulate into a larger prize;

X. "pull-tab" means gaming pieces used in a game of chance that are made completely of paper or paper products with concealed numbers or symbols that must be exposed by the player to determine wins or losses or a gaming piece that is made completely of paper or paper products with an instant-win component that must be exposed by the player on a concealed card and can be used in a speed round for additional winnings utilizing a bingo blower. A "pull-tab" includes a tip board and can include a progressive pot;

Y. "qualified organization" means a bona fide chartered branch, lodge or chapter of a national or state organization or any bona fide religious, charitable, environmental, fraternal, educational or veterans' organization operating without profit to its members that has been in existence in New Mexico continuously for a period of two years immediately prior to conducting a raffle or making an application for a license under the New Mexico Bingo and Raffle Act and that has had a membership engaged in carrying out the objects of the corporation or organization. A voluntary firefighter's organization is a qualified organization and a labor organization is a qualified organization for the purposes of the New Mexico Bingo and Raffle Act if they use the proceeds from a game of chance solely for scholarship or charitable purposes;

Z. "raffle" means a drawing where multiple persons buy tickets to win a prize and the winner is determined by the drawing of the ticket stub out of a container that holds all the ticket stubs sold for the event;

AA. "religious organization" means an organization, church, body of communicants or group, not for pecuniary profit, gathered in common membership for mutual support and edification in piety, worship and religious observances or a society, not for pecuniary profit, of individuals united for religious purposes at a definite place; and

BB. "veterans' organization" means an organization within the state or any branch, lodge or chapter of a national or state organization within this state, not for pecuniary profit, the membership of which consists of individuals who were members of the armed services or forces of the United States.

Chapter 81 Section 5 Laws 2009

Section 5. APPLICATION OF ACT.--The New Mexico Bingo and Raffle Act applies to:

A. unless exempted pursuant to Section 26 of that act, qualified organizations that conduct games of chance and the games of chance conducted by the qualified organizations;

B. persons who provide equipment to qualified organizations for use or play of games of chance in New Mexico; and

C. persons who manufacture, fabricate, assemble, produce, program or make modifications to equipment for use or play of games of chance in New Mexico or for sale or distribution outside of New Mexico.

Chapter 81 Section 6 Laws 2009

Section 6. BOARD--POWERS.--The board may:

A. grant, deny, suspend, condition or revoke licenses or permits issued pursuant to the New Mexico Bingo and Raffle Act, establish the terms for each classification of license to be issued pursuant to that act and set fees for submitting an application for a license;

B. compel the production of documents, books and tangible items, including documents showing the receipts and disbursements of a licensee;

C. investigate the operations of a licensee and place a designated representative on the premises for the purpose of observing compliance with the New Mexico Bingo and Raffle Act and rules or orders of the board;

D. summon witnesses;

E. take testimony under oath for the effective discharge of the board's authority;

F. appoint a hearing officer to conduct hearings required by the New Mexico Bingo and Raffle Act or rules adopted pursuant to that act;

G. make rules to hold, conduct and operate all games of chance held in the state except those specifically exempted under the New Mexico Bingo and Raffle Act;

H. adopt rules to implement the New Mexico Bingo and Raffle Act and to ensure that games of chance conducted in New Mexico are conducted with fairness and that the participants and patrons are protected against illegal practices on any premises;

I. determine qualifications for licensees;

J. establish a system of standard operating procedures for licensees;

K. adopt rules establishing a system of licensing distributors and manufacturers and licensing and governing qualified organizations;

L. adopt rules establishing a system of permits for individuals designated as bingo managers, bingo callers and such other bingo employees as the board requires;

M. require a statement under oath by the applicant for a license to be issued pursuant to the New Mexico Bingo and Raffle Act that the information on the application is true;

N. inspect any games of chance being conducted;

O. make on-site inspections of premises where games of chance are being held;

P. inspect all equipment used for games of chance;

Q. regulate the monetary value of prizes to be awarded for games of chance;

R. require disclosure of information sufficient to make a determination of the suitability of an applicant for a license or permit to be issued pursuant to the New Mexico Bingo and Raffle Act;

S. adopt and enforce all rules necessary to implement and administer the provisions of the New Mexico Bingo and Raffle Act; and

T. provide an annual report to the governor regarding the board's administration of the New Mexico Bingo and Raffle Act.

Chapter 81 Section 7 Laws 2009

Section 7. ORGANIZATIONS ELIGIBLE FOR BINGO LICENSES.--

A. Any qualified organization is eligible to apply for a bingo license to be issued by the board under the New Mexico Bingo and Raffle Act.

B. The New Mexico state fair:

(1) may apply to the board for and shall be issued a bingo license pursuant to the New Mexico Bingo and Raffle Act to conduct games of chance on the grounds of the New Mexico state fair during the state fair; and

(2) shall pay a licensing fee to the board of one hundred dollars (\$100) per calendar year at the time of application for or renewal of a license issued pursuant to the New Mexico Bingo and Raffle Act.

C. A qualified organization may conduct a raffle on the grounds of the New Mexico state fair during the state fair only after obtaining express prior approval of the state fair commission and the board.

Chapter 81 Section 8 Laws 2009

Section 8. CLASSIFICATIONS OF LICENSES AND PERMITS.--

A. The board shall establish and may issue the following categories of licenses:

- (1) bingo license;
- (2) distributor's license; and
- (3) manufacturer's license.

B. The board shall establish and may issue permits for the following employees:

- (1) bingo manager;
- (2) bingo caller; and
- (3) any other bingo employee position for which the board, by rule, requires a permit.

Chapter 81 Section 9 Laws 2009

Section 9. DISCLOSURE OF BACKGROUND INFORMATION.--

A. The board may require an applicant for a license or permit to be issued pursuant to the New Mexico Bingo and Raffle Act to disclose information sufficient for the board to make a determination as to the applicant's suitability. The board may adopt rules to coordinate the manner in which the information is produced.

B. An applicant shall provide all of the information required by the board.

C. The cost of a background investigation, not to exceed one hundred dollars (\$100), shall be paid by the applicant.

Chapter 81 Section 10 Laws 2009

Section 10. APPLICATION FOR LICENSES OR PERMITS.--

A. Each applicant for a license or permit to be issued under the New Mexico Bingo and Raffle Act shall file with the board a written application in the form prescribed by the board, duly executed and verified and containing:

- (1) the name and address of the applicant;

(2) if not an individual, sufficient facts relating to its incorporation or organization to enable the board to determine whether or not the applicant is qualified and the names and addresses of its officers, members of the board of directors and managers;

(3) such other information deemed necessary by the board to ensure that the applicant complies with the provisions of the New Mexico Bingo and Raffle Act and rules adopted pursuant to that act; and

(4) an affirmation signed by the applicant or the applicant's agent that the information contained in the application is true and accurate. The application shall be signed by the applicant or the applicant's agent, and the signature shall be notarized.

B. In addition to the requirements of Subsection A of this section, each applicant for a bingo license shall provide the board with the following:

(1) the names of the bingo manager, the bingo caller and the game accountant, and a statement from those persons that they shall be responsible for the holding, operation and conduct of games of chance in accordance with the terms of the license and the provisions of the New Mexico Bingo and Raffle Act;

(2) sufficient facts relating to the organization to enable the board to determine whether or not it is a qualified organization;

(3) the exact location at which the applicant will conduct bingo and pull-tabs;

(4) the specific kind of games of chance intended to be conducted; and

(5) whether the premises are owned or leased and, if leased, the name and address of the fee owner of the land or, if the owner is a corporation, the names of the directors and members of the board of directors.

C. The failure to accurately and truthfully provide the information required in Subsection A or B of this section is a violation of the New Mexico Bingo and Raffle Act and shall subject the applicant to the provisions of Sections 14, 23 and 25 of that act.

Chapter 81 Section 11 Laws 2009

Section 11. STANDARDS FOR GRANTING A LICENSE OR PERMIT.--

A. An application for a bingo license shall not be granted unless the applicant is a qualified organization and is authorized to do business in New Mexico.

B. An application for a manufacturer's license or a distributor's license shall not be granted unless the applicant is qualified to do business in New Mexico.

C. An application for a permit shall not be granted if the applicant has been convicted of a felony offense or a violation of the New Mexico Bingo and Raffle Act within ten years of the date of application.

D. The board may establish by rule additional qualifications for a licensee or permittee as it deems in the public interest.

Chapter 81 Section 12 Laws 2009

Section 12. LICENSES AND PERMITS--SPECIFIC REQUIREMENTS.--

A. A license issued pursuant to the New Mexico Bingo and Raffle Act shall be valid for three years and may be renewed for successive three-year terms.

B. A permit issued pursuant to the New Mexico Bingo and Raffle Act shall be valid for three years from the date of issuance and may be renewed for successive three-year terms.

C. A license or permit or a renewal of a license or permit is not transferable.

Chapter 81 Section 13 Laws 2009

Section 13. FEES FOR LICENSES AND PERMITS--DISPOSITION OF REVENUE.--

A. Fees for licenses and permits issued pursuant to the New Mexico Bingo and Raffle Act shall be established by board rule but shall not exceed the following amounts:

(1) bingo license, five hundred dollars (\$500) for the initial license and five hundred dollars (\$500) for each renewal;

(2) manufacturer's license, five hundred dollars (\$500) for the initial license and five hundred dollars (\$500) for each renewal;

(3) distributor's license, five hundred dollars (\$500) for the initial license and five hundred dollars (\$500) for each renewal; and

(4) permit, seventy-five dollars (\$75.00) for the initial permit and seventy-five dollars (\$75.00) for each renewal.

B. All administrative receipts, including license and permit fees, collected pursuant to the New Mexico Bingo and Raffle Act shall be deposited in the general fund.

Chapter 81 Section 14 Laws 2009

Section 14. FORFEITURE OF LICENSE--INELIGIBILITY TO APPLY FOR LICENSE OR PERMIT.--Any person who makes a material false statement in an application for a license or permit to be issued pursuant to the New Mexico Bingo and Raffle Act or in any statement submitted with the application, fails to keep sufficient books and records to substantiate the quarterly reports required under Section 19 of the New Mexico Bingo and Raffle Act, falsifies any books or records insofar as they relate to a transaction connected with the holding, operating and conducting of a game of chance under any such license or permit or violates any of the provisions of the New Mexico Bingo and Raffle Act or of any term of the license or permit, in addition to any other criminal or civil penalties that may be imposed, may, at the option of the board, be required to forfeit any license issued under that act and be ineligible to apply for a license under that act for at least one year thereafter.

Chapter 81 Section 15 Laws 2009

Section 15. PERSONS PERMITTED TO CONDUCT BINGO AND PULL-TAB GAMES--PREMISES.--

A. The officers of a bingo licensee shall designate a bingo manager to be in charge and primarily responsible for the conduct of all games of bingo and pull-tabs. The bingo manager shall supervise all activities on the occasion for which the bingo manager is in charge. The bingo manager shall be familiar with the provisions of the state laws, the rules of the board and the provisions of the bingo license. The bingo manager shall be present on the premises continuously during the games and for a period of at least thirty minutes after the last game.

B. The bingo manager shall designate a game accountant to be primarily responsible for the proper preparation of the quarterly reports in accordance the New Mexico Bingo and Raffle Act.

C. For a bingo game, the bingo manager shall designate a bingo caller to be responsible for drawing and announcing the bingo numbers.

D. The premises where any game of chance is being held, operated or conducted or where it is intended that any equipment be used shall at all times be open to inspection by the board and its agents and employees and by peace officers of the state or any political subdivision of the state.

E. No owner or co-owner of the premises or, if a corporation is the owner of the premises, any officer, director or stockholder owning more than ten percent of the

outstanding stock shall be designated as a bingo manager, a game accountant or a bingo caller.

Chapter 81 Section 16 Laws 2009

Section 16. DISPLAY OF LICENSE.--Each license issued pursuant to the New Mexico Bingo and Raffle Act shall contain a statement of the name and address of the licensee, date of issuance and date of expiration. Any such license issued for the conduct of any games of bingo or pull-tab shall be conspicuously displayed at the place where the games are to be conducted.

Chapter 81 Section 17 Laws 2009

Section 17. EQUIPMENT.--

A. No bingo or pull-tab game shall be conducted with any equipment except that which is purchased or leased from a licensed distributor or manufacturer or another bingo licensee.

B. The equipment used in the playing of a bingo or pull-tab game and the method of play shall be such that each bingo card or pull-tab has an equal opportunity to be a winner. The objects or balls to be drawn shall be essentially the same as to size, shape, weight, balance and all other characteristics that may influence their selection.

C. Electronic bingo machines and video pull-tabs are not authorized for use on the premises.

Chapter 81 Section 18 Laws 2009

Section 18. CONDUCT OF GAMES OF CHANCE.--

A. For games of bingo:

(1) a bingo licensee may hold, operate or conduct no more than two hundred sixty occasions in any twelve-month period;

(2) occasions shall not be conducted more than six times in any one calendar week, with no occasion lasting more than four hours and not more than three occasions conducted in one calendar day by any one licensee;

(3) when any merchandise prize is awarded in a bingo game, its value shall be its current retail price. No merchandise prize shall be redeemable or convertible into cash;

(4) the aggregate amount of all prizes offered or given in all bingo games played on a single occasion shall not exceed two thousand five hundred dollars (\$2,500), exclusive of pull-tabs, raffles and door prizes;

(5) all objects or balls to be used in a game shall be present in the receptacle before the game is begun. All numbers announced shall be plainly and clearly audible to all the players present. Where more than one room is used for any one game, the receptacle and the bingo caller shall be present in the room where the greatest number of players are present, and all numbers announced shall be plainly audible to the players in that room and also audible to the players in the other rooms;

(6) the receptacle and the bingo caller who removes the objects or balls from the receptacle shall be visible to all the players at all times except where more than one room is used for any one game, in which case the provisions of Paragraph (5) of this subsection shall prevail;

(7) the particular arrangement of numbers required to be covered in order to win the game and the amount of the prize shall be clearly and audibly described and announced to the players immediately before each game is begun;

(8) any player is entitled to call for a verification of all numbers drawn at the time a winner is determined and for a verification of the objects or balls remaining in the receptacle and not yet drawn. The verification shall be made in the immediate presence of the bingo manager; and

(9) no person who is not physically present on the premises where the game is actually conducted shall be allowed to participate as a player in the game.

B. For a raffle:

(1) all raffle tickets sold shall be represented in the container from which the winner is drawn;

(2) the drawing shall be open to the public;

(3) each raffle ticket shall display all information as directed by the board; and

(4) when any merchandise prize is awarded in a raffle, its value shall be its current retail price. No merchandise prize shall be redeemable or convertible into cash.

C. For games of pull-tabs:

(1) pull-tabs shall be sold only on the premises;

(2) winners shall be paid only on the premises; and

(3) when any merchandise prize is awarded in a pull-tab game, its value shall be its current retail price. No merchandise prize shall be redeemable or convertible into cash.

Chapter 81 Section 19 Laws 2009

Section 19. QUARTERLY REPORTS REQUIRED--ACCOUNTING REQUIREMENTS.--

A. On or before April 25, July 25, October 25 and January 25, the game accountant shall file with the board, upon forms prescribed by the board, a duly verified statement covering the preceding calendar quarter showing the amount of the gross receipts derived during that period from games of chance, the total amount of prizes paid, the name and address of each person to whom has been paid six hundred dollars (\$600) or more and the purpose of the expenditure, the gross receipts derived from each game of chance and the uses to which the net proceeds have been or are to be applied. It is the duty of each bingo licensee to maintain and keep the books and records necessary to substantiate the particulars of each report.

B. If a bingo licensee fails to file reports within the time required or if the reports are not properly verified or not fully, accurately and truthfully completed, the licensee is subject to disciplinary action, including a suspension, until the default has been corrected.

C. All money collected or received from the sale of admission, extra regular cards, special game cards, sale of supplies and all other receipts from the games of chance shall be deposited in a bingo and raffle operating account of the bingo licensee that shall contain only such money. All expenses for the game shall be withdrawn from the account by consecutively numbered checks duly signed by specified officers of the licensee and payable to a specific person or organization. There shall be written on the check the nature of the expense for which the check is drawn.

D. No check shall be drawn to "cash" or a fictitious payee.

E. No portion of any contribution to lawful purposes, after it has been given over to another organization, shall be returned to the donor organization.

Chapter 81 Section 20 Laws 2009

Section 20. EXPENSES--COMPENSATION.--

A. No item of expense shall be incurred or paid in connection with the holding, operating or conducting of a game of chance held, operated or conducted pursuant to a bingo license except bona fide expenses in reasonable amounts for

goods, wares and merchandise furnished or services rendered reasonably necessary for the holding, operating or conducting of a game of chance. Bona fide expenses include expenditures for payroll, building and equipment rent, utilities, security, janitorial supplies, office supplies, equipment, insurance, bank charges, automated teller machine fees, legal fees, advertising, accounting fees, state and federal payroll-related taxes, state and federal gaming-related taxes and all other reasonable expenses necessary for the operation of games of chance.

B. A qualified organization desiring to retain the receipts derived from games of chance in the bingo and raffle operating account and for a period longer than one year shall apply to the board for special permission and, upon good cause shown, the board shall grant the request.

Chapter 81 Section 21 Laws 2009

Section 21. TAX IMPOSITION.--

A. A bingo and raffle tax equal to one-half percent of the gross receipts of any game of chance held, operated or conducted for or by a qualified organization shall be imposed on the qualified organization.

B. No other state or local gross receipts tax shall apply to a qualified organization's receipts generated by a game of chance authorized by the New Mexico Bingo and Raffle Act.

C. The tax imposed pursuant to this section shall be submitted quarterly to the taxation and revenue department on or before April 25, July 25, October 25 and January 25.

D. The taxation and revenue department shall administer the tax imposed in this section pursuant to the Tax Administration Act.

Chapter 81 Section 22 Laws 2009

Section 22. VIOLATION OF ACT.--

A. Unless exempted pursuant to Section 26 of the New Mexico Bingo and Raffle Act, it is a violation of that act for a qualified organization to hold a game of bingo or pull-tabs for profit or gain in any manner unless the person has been issued a bingo license by the board and has been authorized by the board to hold the game of chance.

B. It is a violation of the New Mexico Bingo and Raffle Act for a person who does not manufacture, fabricate, assemble, produce, program or make modifications to equipment to provide equipment to a qualified organization for use or play of games of chance in New Mexico unless the person has been issued a distributor's license pursuant to that act.

C. It is a violation of the New Mexico Bingo and Raffle Act for a person to manufacture, fabricate, assemble, produce, program or make modifications to equipment for use or play of games of chance in New Mexico or for sale or distribution outside of New Mexico unless the person has been issued a manufacturer's license pursuant to that act.

D. It is a violation of the New Mexico Bingo and Raffle Act for a person to act as a bingo manager, a bingo caller or any other bingo employee position for which the board, by rule, requires a permit unless the person has been issued a permit pursuant to that act.

Chapter 81 Section 23 Laws 2009

Section 23. ENFORCEMENT HEARINGS.--

A. A license or permit shall not be revoked or suspended without just cause.

B. The board shall make appropriate investigations to:

(1) determine whether there has been any violation of the New Mexico Bingo and Raffle Act or of any regulations adopted pursuant to that act;

(2) determine any facts, conditions, practices or matters that it deems necessary or proper to aid in the enforcement of the New Mexico Bingo and Raffle Act or regulations adopted pursuant to that act; or

(3) aid in adopting regulations.

C. If after an investigation the board is satisfied that a license or permit issued pursuant to the New Mexico Bingo and Raffle Act or prior approval by the board of any transaction for which approval was required by the provisions of the New Mexico Bingo and Raffle Act should be limited, conditioned, suspended or revoked, or that a fine should be levied, the board shall initiate a hearing by filing a complaint and transmitting a copy of it to the licensee or permittee, together with a summary of evidence in its possession bearing on the matter and the transcript of testimony at any investigative hearing conducted by or on behalf of the board. The complaint shall be a written statement of charges that sets forth in ordinary and concise language the acts or omissions with which the respondent is charged. It shall specify the statutes or regulations that the respondent is alleged to have violated but shall not consist merely of charges raised in the language of the statutes or regulations.

D. The respondent shall file an answer within thirty days after service of the complaint.

E. Upon filing the complaint, the board shall appoint a hearing examiner to conduct further proceedings.

F. The hearing examiner shall conduct proceedings in accordance with the New Mexico Bingo and Raffle Act and the regulations adopted by the board. At the conclusion of the proceedings, the hearing examiner may recommend that the board take any appropriate action, including revocation, suspension, limitation or conditioning of a license or permit issued pursuant to the New Mexico Bingo and Raffle Act or the imposition of a fine not to exceed one thousand dollars (\$1,000) for each violation or any combination of the foregoing actions.

G. The hearing examiner shall prepare a written decision containing the hearing examiner's recommendation to the board and shall serve it on all parties.

H. The board shall by a majority vote accept, reject or modify the recommendation.

I. If the board limits, conditions, suspends or revokes any license or permit issued pursuant to the New Mexico Bingo and Raffle Act or limits, conditions, suspends or revokes any prior approval or imposes any fine, it shall issue a written order specifying its action.

J. The board's order is effective on the date issued and continues in effect unless reversed upon judicial review, except that the board may stay its order pending a rehearing or judicial review upon such terms and conditions as it deems proper.

Chapter 81 Section 24 Laws 2009

Section 24. APPEALS.--

A. The decision of the board in denying, suspending or revoking any license or permit issued pursuant to the New Mexico Bingo and Raffle Act or imposing any fine shall be subject to review. A licensee or permittee aggrieved by a decision of the board may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

B. No proceeding to vacate, reverse or modify any final order rendered by the board shall operate to stay the execution or effect of any final order unless the district court, on application and three days' notice to the board, allows the stay. In the event a stay is ordered, the petitioner shall be required to execute the petitioner's bond in a sum the court may prescribe, with sufficient surety to be approved by the judge or clerk of the court, which bond shall be conditioned upon the faithful performance by the petitioner of the petitioner's obligation as a licensee or permittee and upon the prompt payment of all damages arising from or caused by the delay in the taking effect or enforcement of the order complained of and for all costs that may be assessed or required to be paid in connection with the proceedings.

Chapter 81 Section 25 Laws 2009

Section 25. DUTY TO ENFORCE ACT--CRIMINAL PENALTIES.--

A. It is the duty of all law enforcement officers to enforce the provisions of the New Mexico Bingo and Raffle Act. It is the duty of the district attorney of the county in which a violation is committed to prosecute such violation of that act in the manner and form as is now provided by law for the prosecutions of crimes and misdemeanors.

B. A licensee, a permittee or an officer, agent or employee of a licensee or any other person who willfully violates or who procures, aids or abets in the willful violation of the New Mexico Bingo and Raffle Act is guilty of a misdemeanor and, upon conviction thereof:

(1) for a first offense, 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; or

(2) for a subsequent offense, shall be punished by a fine of not more than two thousand five hundred dollars (\$2,500) or by imprisonment for not more than one year, or both.

Chapter 81 Section 26 Laws 2009

Section 26. EXEMPTIONS.--

A. Except as provided in Subsection B of this section, nothing in the New Mexico Bingo and Raffle Act shall be construed to apply to:

(1) a drawing or a prize at a fair or fiesta held in New Mexico under the sponsorship or authority of the state or any of its political subdivisions, or for the benefit of a religious organization situated in this state or for charitable purposes when all the proceeds of the sale or drawing shall be expended within New Mexico for the benefit of that political subdivision, religious organization or charitable purpose; or

(2) a bingo or a raffle held by a qualified organization that holds no more than one bingo occasion or one raffle in any three consecutive calendar months and not exceeding four occasions in one calendar year.

B. Notwithstanding the provisions of Subsection A of this section, no raffle with an individual prize exceeding seventy-five thousand dollars (\$75,000) shall be held without a ten-day prior notification to the board of the conduct of the event and a subsequent notification to the board of the names, addresses and phone numbers of all prize winners.

C. Nothing in the New Mexico Bingo and Raffle Act shall be construed to apply to a lottery established and operated pursuant to the New Mexico Lottery Act or gaming that is licensed and operated pursuant to the Gaming Control Act.

Chapter 81 Section 27 Laws 2009

Section 27. Section 30-19-6 NMSA 1978 (being Laws 1963, Chapter 303, Section 19-6, as amended) is amended to read:

"30-19-6. PERMISSIVE LOTTERY.--

A. Nothing in Chapter 30, Article 19 NMSA 1978 shall be held to prohibit any bona fide motion picture theater from offering prizes of cash or merchandise for advertising purposes, in connection with such business or for the purpose of stimulating business, whether or not any consideration other than a monetary consideration in excess of the regular price of admission is exacted for participation in drawings for prizes.

B. Nothing in Chapter 30, Article 19 NMSA 1978 shall be construed to apply to any activity:

(1) regulated by the New Mexico Bingo and Raffle Act; or

(2) specifically exempted from regulation by the provisions of the New Mexico Bingo and Raffle Act."

Chapter 81 Section 28 Laws 2009

Section 28. Section 60-2E-7 NMSA 1978 (being Laws 1997, Chapter 190, Section 9, as amended) is amended to read:

"60-2E-7. BOARD'S POWERS AND DUTIES.--

A. The board shall implement the state's policy on gaming consistent with the provisions of the Gaming Control Act and the New Mexico Bingo and Raffle Act. It has the duty to fulfill all responsibilities assigned to it pursuant to those acts, and it has all authority necessary to carry out those responsibilities. It may delegate authority to the executive director, but it retains accountability. The board is an adjunct agency.

B. The board shall:

(1) employ the executive director;

(2) make the final decision on issuance, denial, suspension and revocation of all licenses pursuant to and consistent with the provisions of the Gaming Control Act and the New Mexico Bingo and Raffle Act;

(3) develop, adopt and promulgate all regulations necessary to implement and administer the provisions of the Gaming Control Act and the New Mexico Bingo and Raffle Act;

(4) conduct itself, or employ a hearing officer to conduct, all hearings required by the provisions of the Gaming Control Act and other hearings it deems appropriate to fulfill its responsibilities;

(5) meet at least once each month; and

(6) prepare and submit an annual report in December of each year to the governor and the legislature, covering activities of the board in the most recently completed fiscal year, a summary of gaming activities in the state and any recommended changes in or additions to the laws relating to gaming in the state.

C. The board may:

(1) impose civil fines not to exceed twenty-five thousand dollars (\$25,000) for the first violation of any prohibitory provision of the Gaming Control Act or any prohibitory provision of a regulation adopted pursuant to that act and fifty thousand dollars (\$50,000) for subsequent violations;

(2) conduct investigations;

(3) subpoena persons and documents to compel access to or the production of documents and records, including books and memoranda, in the custody or control of a licensee;

(4) compel the appearance of employees of a licensee or persons for the purpose of ascertaining compliance with provisions of the Gaming Control Act or a regulation adopted pursuant to its provisions;

(5) administer oaths and take depositions to the same extent and subject to the same limitations as would apply if the deposition were pursuant to discovery rules in a civil action in the district court;

(6) sue and be sued subject to the limitations of the Tort Claims Act;

(7) contract for the provision of goods and services necessary to carry out its responsibilities;

(8) conduct audits, relevant to their gaming activities, of applicants, licensees and persons affiliated with licensees;

(9) inspect, examine, photocopy and audit all documents and records of an applicant or licensee relevant to the applicant's or licensee's gaming activities in the presence of the applicant or licensee or the applicant's or licensee's agent;

(10) require verification of income and all other matters pertinent to the gaming activities of an applicant or licensee affecting the enforcement of any provision of the Gaming Control Act;

(11) inspect all places where gaming activities are conducted and inspect all property connected with gaming in those places;

(12) summarily seize, remove and impound from places inspected any gaming devices, property connected with gaming, documents or records for the purpose of examination or inspection;

(13) inspect, examine, photocopy and audit documents and records, relevant to the affiliate's gaming activities, of an affiliate of an applicant or licensee that the board knows or reasonably suspects is involved in the financing, operation or management of the applicant or licensee. The inspection, examination, photocopying and audit shall be in the presence of a representative of the affiliate or its agent when practicable;

(14) conduct background investigations pursuant to the Horse Racing Act; and

(15) except for the powers specified in Paragraphs (1) and (4) of this subsection, carry out all or part of the foregoing powers and activities through the executive director.

D. The board shall monitor all activity authorized in an Indian gaming compact between the state and an Indian nation, tribe or pueblo. The board shall appoint the state gaming representative for the purposes of the compact."

Chapter 81 Section 29 Laws 2009

Section 29. TEMPORARY PROVISION--EXISTING LICENSEES, OBLIGATIONS, VIOLATIONS AND PROSECUTIONS.--

A. On the effective date of this act, a licensee under the Bingo and Raffle Act shall, for all purposes, be considered to be a licensee under the New Mexico Bingo and Raffle Act until the term of the license expires, at which time the license may be renewed under the New Mexico Bingo and Raffle Act.

B. Any taxes, fines, civil penalties or other obligations owed under the Bingo and Raffle Act on the effective date of this act shall be owed and enforceable under the New Mexico Bingo and Raffle Act.

C. Notwithstanding the repeal of the Bingo and Raffle Act, any violation of that act prior to its repeal may be investigated and prosecuted pursuant to the provisions of that act unless otherwise prohibited by law.

Chapter 81 Section 30 Laws 2009

Section 30. REPEAL.--Sections 60-2B-1 through 60-2B-14 NMSA 1978 (being Laws 1981, Chapter 259, Sections 1 through 9, Laws 2005, Chapter 349, Section 4 and Laws 1981, Chapter 259, Sections 10 through 14, as amended) are repealed.

Chapter 81 Section 31 Laws 2009

Section 31. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.

SJC/Senate Bill 228, aa

Approved April 3, 2009

LAWS 2009, CHAPTER 82

AN ACT

RELATING TO BUSINESS; REPEALING THE NEW MEXICO SECURITIES ACT OF 1986; ENACTING THE NEW MEXICO UNIFORM SECURITIES ACT; PROVIDING PENALTIES; MAKING AN APPROPRIATION.

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

Article 1
GENERAL PROVISIONS

Chapter 82 Section 101 Laws 2009

Section 101. SHORT TITLE.--Sections 101 through 701 of this act may be cited as the "New Mexico Uniform Securities Act".

Chapter 82 Section 102 Laws 2009

Section 102. DEFINITIONS.--As used in the New Mexico Uniform Securities Act, unless the context otherwise requires:

A. "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 or order issued pursuant to the New Mexico Uniform Securities Act;

B. "bank" means:

(1) a banking institution organized pursuant to the laws of the United States;

(2) a member bank of the federal reserve system;

(3) any other banking institution, whether incorporated or not, doing business pursuant to the laws of a state or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to be exercised by national banks pursuant to the authority of the comptroller of the currency pursuant to Section 1 of Public Law 87-722 (12 U.S.C. Section 92a) and that is supervised and examined by a state or federal agency having supervision over banks and that is not operated for the purpose of evading the New Mexico Uniform Securities Act; and

(4) a receiver, conservator or other liquidating agent of any institution or firm included in Paragraph (1), (2) or (3) of this subsection;

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 described in Paragraph (2) of Subsection D of this section if its activities as a broker-dealer are limited to those specified in Subsections 3(a)(4)(B)(i) through (vi), (viii) through (x) and (xi), if limited to unsolicited transactions; 3(a)(5)(B); and 3(a)(5)(C) of the federal Securities Exchange Act of 1934 (15 U.S.C. Sections 78c(a)(4) and (5)) or a bank that satisfies the conditions

described in Subsection 3(a)(4)(E) of the federal Securities Exchange Act of 1934 (15 U.S.C. Section 78c(a)(4));

(4) an international banking institution; or

(5) a person excluded by rule adopted or order issued pursuant to the New Mexico Uniform Securities Act;

D. "depository institution" means:

(1) a bank; or

(2) a savings institution, trust company, credit union or similar institution that is 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. "Depository institution" does not include:

(a) an insurance company or other organization primarily engaged in the business of insurance;

(b) a Morris plan bank; or

(c) an industrial loan company that is not an "insured depository institution" as defined in Section 3(c)(2) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c)(2), or any successor federal statute;

E. "director" means the director of the securities division of the regulation and licensing department;

F. "division" means the securities division of the regulation and licensing department, which for purposes of administering the provisions of the New Mexico Uniform Securities Act and conducting investigations of violations of that act shall be considered a law enforcement agency;

G. "federal covered investment adviser" means a person registered pursuant to the federal Investment Advisers Act of 1940;

H. "federal covered security" means a security that is, or upon completion of a transaction will be, a covered security pursuant to Section 18(b) of the federal Securities Act of 1933 (15 U.S.C. Section 77r(b)) or rules or regulations adopted pursuant to that section;

I. "filing" means the receipt pursuant to the New Mexico Uniform Securities Act of a record by the director, or a designee of the director, in a form and format designated by the director;

J. "fraud", "deceit" and "defraud" are not limited to common law deceit;

K. "guaranteed" means guaranteed as to payment of all principal and all interest;

L. "institutional investor" means any of the following, whether acting for itself or for others in a fiduciary capacity:

(1) a depository institution or international banking institution;

(2) an insurance company;

(3) a separate account of an insurance company;

(4) an investment company as defined in the federal Investment Company Act of 1940;

(5) a broker-dealer registered pursuant to the federal Securities Exchange Act of 1934;

(6) an employee pension, profit-sharing or benefit plan if the plan has total assets in excess of ten million dollars (\$10,000,000) or its investment decisions are made by a named fiduciary, as defined in the federal Employee Retirement Income Security Act of 1974, that is a broker-dealer registered pursuant to the federal Securities Exchange Act of 1934, an investment adviser registered or exempt from registration pursuant to the federal Investment Advisers Act of 1940, an investment adviser registered pursuant to the New Mexico Uniform Securities Act, a depository institution or an insurance company;

(7) a plan established and maintained by a state, a political subdivision of a state or an agency or instrumentality of a state or a political subdivision of a state for the benefit of its employees, if the plan has total assets in excess of ten million dollars (\$10,000,000) or its investment decisions are made by a duly designated public official or by a named fiduciary, as defined in the federal Employee Retirement Income Security Act of 1974, that is a broker-dealer registered pursuant to the federal Securities Exchange Act of 1934, an investment adviser registered or exempt from registration pursuant to the federal Investment Advisers Act of 1940, an investment adviser registered pursuant to the New Mexico Uniform Securities Act, a depository institution or an insurance company;

(8) a trust, if it has total assets in excess of ten million dollars (\$10,000,000), its trustee is a depository institution and its participants are exclusively

plans of the types identified in Paragraph (6) or (7) of this subsection, regardless of the size of their assets, except a trust that includes as participants self-directed individual retirement accounts or similar self-directed plans;

(9) an organization described in Section 501(c)(3) of the federal Internal Revenue Code of 1986 (26 U.S.C. Section 501(c)(3)), corporation, Massachusetts trust or similar business trust, limited liability company or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of ten million dollars (\$10,000,000);

(10) a small business investment company licensed by the small business administration pursuant to Section 301(c) of the federal Small Business Investment Act of 1958 (15 U.S.C. Section 681(c)) with total assets in excess of ten million dollars (\$10,000,000);

(11) a private business development company as defined in Section 202(a)(22) of the federal Investment Advisers Act of 1940 (15 U.S.C. Section 80b-2(a)(22)) with total assets in excess of ten million dollars (\$10,000,000);

(12) a federal covered investment adviser acting for its own account;

(13) a "qualified institutional buyer", as defined in Rule 144A(a)(i)(1), other than Rule 144A(a)(1)(H), adopted pursuant to the federal Securities Act of 1933

(17 C.F.R. 230.144A);

(14) a "major U.S. institutional investor" as defined in Rule 15a-6(b)(4)(i)(17 C.F.R. 240.15a-6) adopted pursuant to the federal Securities Exchange Act of 1934;

(15) any other person, other than an individual, of institutional character with total assets in excess of ten million dollars (\$10,000,000) not organized for the specific purpose of evading the New Mexico Uniform Securities Act; or

(16) any other person specified by rule adopted or order issued pursuant to the New Mexico Uniform Securities Act;

M. "insurance company" means a company organized as an insurance company whose primary business is writing insurance or reinsuring risks underwritten by insurance companies and that is subject to supervision by the insurance commissioner or a similar official or agency of a state;

N. "insured" means insured as to payment of all principal and all interest;

O. "international banking institution" means an international financial institution of which the United States is a member and whose securities are exempt from registration pursuant to the federal Securities Act of 1933;

P. "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 described in Paragraph (2) of Subsection D of this section; or

(7) any other person excluded by rule adopted or order issued pursuant to the New Mexico Uniform Securities Act;

Q. "investment adviser representative" means an individual employed by or associated with an investment adviser or federal covered investment adviser and who makes any 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 (15 U.S.C. Section 80b-3a) 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 (15 U.S.C. Section 80b-3a); or

(b) not a supervised person as "supervised person" is defined in Section 202(a)(25) of the federal Investment Advisers Act of 1940 (15 U.S.C. Section 80b-2(a)(25)); or

(4) is excluded by rule adopted or order issued pursuant to the New Mexico Uniform Securities Act;

R. "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;

S. "legal rate of interest" means the rate of interest set by Subsection A of Section 56-8-4 NMSA 1978 or its successor statutes;

T. "nonissuer transaction" or "nonissuer distribution" means a transaction or distribution not directly or indirectly for the benefit of the issuer;

U. "offer to purchase" includes an attempt or offer to obtain, or solicitation of an offer to sell, a security or interest in a security for value. "Offer to purchase" does not include a tender offer that is subject to Section 14(d) of the federal Securities Exchange Act of 1934 (15 U.S.C. 78n(d));

V. "person" means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; government; governmental subdivision, agency or instrumentality; public corporation; or any other legal or commercial entity;

W. "place of business" of a broker-dealer, an investment adviser or a federal covered investment adviser means:

(1) an office at which the broker-dealer, investment adviser or federal covered investment adviser regularly provides brokerage or investment advice or solicits, meets with or otherwise communicates with customers or clients; or

(2) a location that is held out to the general public as a location at which the broker-dealer, investment adviser or federal covered investment adviser provides brokerage or investment advice or solicits, meets with or otherwise communicates with customers or clients;

X. "predecessor act" means the New Mexico Securities Act of 1986;

Y. "price amendment" means the amendment to a registration statement filed pursuant to the federal Securities Act of 1933 or, if an amendment is not filed, the prospectus or prospectus supplement filed pursuant to that act that includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices and other matters dependent upon the offering price;

Z. "principal place of business" of a broker-dealer, investment adviser or federal covered investment adviser means the executive office of the broker-dealer, investment adviser or federal covered investment adviser from which the officers, partners or managers of the broker-dealer, investment adviser or federal covered investment adviser direct, control and coordinate the activities of the broker-dealer, investment adviser or federal covered investment adviser;

AA. "record", except in the phrases "of record", "official record" and "public 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;

BB. "sale" includes every contract of sale, contract to sell or disposition of a security or interest in a security for value, and "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to purchase, a security or interest in a security for value. Both terms include:

(1) a security given or delivered with, or as a bonus on account of, a purchase of securities or any other thing constituting part of the subject of the purchase and having been offered and sold for value;

(2) a gift of assessable stock involving an offer and sale; and

(3) a sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer and a sale or offer of a security that gives the holder a present or future right or privilege to convert the security into another security of the same or another issuer, including an offer of the other security;

CC. "securities and exchange commission" means the United States securities and exchange commission;

DD. "security" means a note; stock; treasury stock; security future; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting trust certificate; certificate of deposit for a security; fractional undivided interest in oil, gas or other mineral rights; put, call, straddle, option or privilege on a security, certificate of deposit or group or index of securities, including an interest therein or based on the value thereof; put, call, straddle, option or privilege entered into on a national securities exchange relating to foreign currency; or, in general, an interest or instrument commonly known as a "security"; or a certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of or warrant or right to subscribe to or purchase any of the foregoing.

"Security":

(1) includes both a certificated and an uncertificated security;

(2) does not include an insurance or endowment policy or annuity contract pursuant to which an insurance company promises to pay a fixed or variable sum of money either in a lump sum or periodically for life or other specified period;

(3) does not include an interest in a contributory or noncontributory pension or welfare plan subject to the federal Employee Retirement Income Security Act of 1974;

(4) does not include landowner royalties in the production of oil, gas or other minerals created through the execution of a lease of the lessor's mineral interest;

(5) includes an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor. As used in this paragraph, "common enterprise" means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a third party or other investors;

(6) includes any interest in a limited partnership or a limited liability company; and

(7) includes as an investment contract an investment in a viatical settlement or similar agreement;

EE. "self-regulatory organization" means a national securities exchange registered pursuant to the federal Securities Exchange Act of 1934, a national securities association of broker-dealers registered pursuant to that act, a clearing agency registered pursuant to that act or the municipal securities rulemaking board established pursuant to that act;

FF. "sign" means, with present intent to authenticate or adopt a record:

(1) to execute or adopt a tangible symbol; or

(2) to attach or logically associate with the record an electronic symbol, sound or process;

GG. "state" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States; and

HH. "underwriter" means any person who has purchased from an issuer with the intent to offer or sell a security or to distribute any security; who participates or has a direct or indirect participation in any undertaking; or who participates or has a participation in the direct or indirect underwriting of any undertaking. "Underwriter" does not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commission. As used in this subsection, "issuer" includes any person directly or indirectly controlling or controlled by the issuer; or any person under direct or indirect common control with the issuer.

Chapter 82 Section 103 Laws 2009

Section 103. REFERENCES TO FEDERAL STATUTES.--As used in the New Mexico Uniform Securities Act, "Securities Act of 1933" (15 U.S.C. Section 77a, et seq.), "Securities Exchange Act of 1934" (15 U.S.C. Section 78a, et seq.), "Public Utility Holding Company Act of 1935" (15 U.S.C. Section 79, et seq.), "Investment Company Act of 1940" (15 U.S.C. Section 80a-1, et seq.), "Investment Advisers Act of 1940" (15 U.S.C. Section 80b-1, et seq.), "Employee Retirement Income Security Act of 1974" (29 U.S.C. Section 1001, et seq.), "National Housing Act" (12 U.S.C. Section 1701, et seq.), "Commodity Exchange Act" (7 U.S.C. Section 1, et seq.), "Internal Revenue Code of 1986" (26 U.S.C. Section 1, et seq.), "Securities Investor Protection Act of 1970" (15 U.S.C. Section 78aaa, et seq.), "Securities Litigation Uniform Standards Act of 1998" (112 Stat. 3227), "Small Business Investment Act of 1958" (15 U.S.C. Section 661, et seq.) and "Electronic Signatures in Global and National Commerce Act" (15 U.S.C. Section 7001, et seq.) mean those statutes and the rules and regulations adopted pursuant to those statutes as in effect on the date of enactment of the New Mexico Uniform Securities Act, or as later amended.

Chapter 82 Section 104 Laws 2009

Section 104. REFERENCES TO FEDERAL AGENCIES.--A reference in the New Mexico Uniform Securities Act to an agency or department of the United States is also a reference to a successor agency or department.

Chapter 82 Section 105 Laws 2009

Section 105. ELECTRONIC RECORDS AND SIGNATURES.--The New Mexico Uniform Securities Act modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act, 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)). The New Mexico Uniform Securities Act authorizes the filing of records and signatures, when specified by provisions of the New Mexico Uniform Securities Act or by a rule adopted or order issued pursuant to the New Mexico Uniform Securities Act, in a manner consistent with Section 104(a) of the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7004(a)).

Article 2

EXEMPTIONS FROM REGISTRATION OF SECURITIES

Chapter 82 Section 201 Laws 2009

Section 201. EXEMPT SECURITIES.--The following securities are exempt from the requirements of Sections 301 through 306 of the New Mexico Uniform Securities Act and, unless otherwise noted, Section 504 of that act:

A. a security, including a revenue obligation or a separate security as defined in Rule 131 (17 C.F.R. 230.131) adopted pursuant to the federal Securities Act

of 1933, issued, insured or guaranteed by the United States, by a state, by a political subdivision of a state, by a public authority, agency or instrumentality of one or more states, including the New Mexico mortgage finance authority, by a political subdivision of one or more states or by a person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the congress or a certificate of deposit for any of the foregoing; but this exemption does not include a security issued by a New Mexico governmental entity, payable solely from the revenues of a nongovernmental commercial or industrial enterprise, unless such security is directly or indirectly insured or guaranteed by, or such revenues are derived from, a person whose securities are exempt from registration by this subsection or Subsection B, C, D, E or G of this section. For purposes of this subsection, a nongovernmental commercial or industrial enterprise does not include the financing of student loans or single-family residential mortgage loans;

B. a security issued, insured or guaranteed by a foreign government with which the United States maintains diplomatic relations, or any of its political subdivisions, if the security is recognized as a valid obligation by the issuer, insurer or guarantor;

C. a security issued by and representing or that will represent an interest in or a direct obligation of, or be guaranteed by:

(1) an international banking institution;

(2) a banking institution organized pursuant to the laws of the United States; a member bank of the federal reserve system; or a depository institution a substantial portion of the business of which consists or will consist of receiving deposits or share accounts that 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 exercising fiduciary powers that are similar to those permitted for national banks pursuant to the authority of the comptroller of currency pursuant to

Section 1 of Public Law 87-722 (12 U.S.C. Section 92a);

(3) a trust company or other institution that is authorized by federal or state law to exercise fiduciary powers of the type a national bank is permitted to exercise pursuant to the authority of the comptroller of the currency and is regulated, supervised and examined by an official or agency of a state or the United States; or

(4) any other depository institution, unless by rule or order the director proceeds pursuant to Section 204 of the New Mexico Uniform Securities Act;

D. a security issued by and representing an interest in, or a debt of, or insured or guaranteed by, an insurance company authorized to transact insurance in New Mexico pursuant to the New Mexico Insurance Code;

E. a security issued or guaranteed by a railroad, other common carrier, public utility or public utility holding company that is:

(1) regulated in respect to its rates and charges by the United States or a state;

(2) regulated in respect to the issuance or guarantee of the security by the United States, a state, Canada or a Canadian province or territory; or

(3) a public utility holding company registered pursuant to the federal Public Utility Holding Company Act of 1935 or a subsidiary of such a registered holding company within the meaning of that act;

F. a federal covered security specified in Section 18(b)(1) of the federal Securities Act of 1933 (15 U.S.C. Section 77r(b)(1)) or by rule adopted pursuant to that provision or a security listed or approved for listing on another securities market specified by rule pursuant to the New Mexico Uniform Securities Act; a put or a call option contract, a warrant or a subscription right on or with respect to such securities; an option or similar derivative security on a security or an index of securities or foreign currencies issued by a clearing agency registered pursuant to the federal Securities Exchange Act of 1934 and listed or designated for trading on a national securities exchange, a facility of a national securities exchange or a facility of a national securities association registered pursuant to the federal Securities Exchange Act of 1934 or an offer or sale of the underlying security in connection with the offer, sale or exercise of an option or other security that was exempt when the option or other security was written or issued; or an option or a derivative security designated by the securities and exchange commission pursuant to Section 9(b) of the federal Securities Exchange Act of 1934 (15 U.S.C. Section 78i(b));

G. a security issued by a person organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, social, athletic or reformatory purposes, or as a chamber of commerce, and not for pecuniary profit, no part of the net earnings of which inures to the benefit of a private stockholder or other person, or a security of a company that is excluded from the definition of an investment company pursuant to Section 3(c)(10)(B) of the federal Investment Company Act of 1940 (15 U.S.C. Section 80a-3(c)(10)(B)); except that with respect to the offer or sale of a note, bond, debenture or other evidence of indebtedness issued by such a person, a rule may be adopted pursuant to the New Mexico Uniform Securities Act limiting the availability of this exemption by classifying securities, persons and transactions, imposing different requirements for different classes, specifying with respect to Paragraph (2) of this subsection the scope of the exemption and the grounds for denial or suspension and requiring an issuer:

(1) to file a notice specifying the material terms of the proposed offer or sale and copies of any proposed sales and advertising literature to be used and

provide that the exemption becomes effective if the director does not disallow the exemption within the period established by the rule;

(2) to file a request for exemption authorization for which a rule pursuant to the New Mexico Uniform Securities Act may specify the scope of the exemption, the requirement of an offering statement, the filing of sales and advertising literature, the filing of consent to service of process complying with Section 611 of the New Mexico Uniform Securities Act and grounds for denial or suspension of the exemption; or

(3) to register pursuant to Section 304 of the New Mexico Uniform Securities Act;

H. a member's or owner's interest in, or a retention certificate or like security given in lieu of a cash patronage dividend issued by, a cooperative organized and operated as a nonprofit membership cooperative pursuant to the cooperative laws of a state, but not a member's or owner's interest, retention certificate or like security sold to persons other than bona fide members of the cooperative; and

I. a certificate of participation in a real property lease or an equipment trust certificate with respect to equipment leased or conditionally sold to a person, if any security issued by the person would be exempt pursuant to this section or would be a federal covered security pursuant to Section 18(b)(1) of the federal Securities Act of 1933 (15 U.S.C. Section 77r(b)(1)).

Chapter 82 Section 202 Laws 2009

Section 202. EXEMPT TRANSACTIONS.--The following transactions are exempt from the requirements of Sections 301 through 306 of the New Mexico Uniform Securities Act and, unless otherwise noted, Section 504 of that act:

A. an isolated nonissuer transaction, whether effected by or through a broker-dealer or not;

B. a nonissuer transaction by or through a broker-dealer registered, or exempt from registration pursuant to the New Mexico Uniform Securities Act, and a resale transaction by a sponsor of a unit investment trust registered pursuant to the federal Investment Company Act of 1940, in a security of a class that has been outstanding in the hands of the public for at least ninety days if, at the date of the transaction:

(1) the issuer of the security is engaged in business, the issuer is not in the organizational stage or in bankruptcy or receivership and the issuer is not a blank check, blind pool or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;

(2) the security is sold at a price reasonably related to its current market price;

(3) the security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security or a redistribution;

(4) a nationally recognized securities manual or its electronic equivalent designated by rule adopted or order issued pursuant to the New Mexico Uniform Securities Act or a record filed with the securities and exchange commission that is publicly available contains:

(a) a description of the business and operations of the issuer;

(b) the names of the issuer's executive officers and the names of the issuer's directors, if any;

(c) an audited balance sheet of the issuer as of a date within eighteen months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had an audited balance sheet, a pro forma balance sheet for the combined organization; and

(d) an audited income statement for each of the issuer's two immediately previous fiscal years or for the period of existence of the issuer, whichever is shorter, or, in the case of a reorganization or merger when each party to the reorganization or merger had audited income statements, a pro forma income statement; and

(5) any one of the following requirements is met:

(a) the issuer of the security has a class of equity securities listed on a national securities exchange registered pursuant to the federal Securities Exchange Act of 1934 or designated for trading on the national association of securities dealers automated quotation system;

(b) the issuer of the security is a unit investment trust registered pursuant to the federal Investment Company Act of 1940;

(c) the issuer of the security, including its predecessors, has been engaged in continuous business for at least three years; or

(d) the issuer of the security has total assets of at least two million dollars (\$2,000,000) based on an audited balance sheet as of a date within eighteen months before the date of the transaction or, in the case of a reorganization or

merger when the parties to the reorganization or merger each had the audited balance sheet, a pro forma balance sheet for the combined organization;

C. a nonissuer transaction by or through a broker-dealer registered or exempt from registration pursuant to the New Mexico Uniform Securities Act in a security or the American depository receipt representing such security of a foreign issuer that is a margin security defined in regulations or rules adopted by the board of governors of the federal reserve system;

D. a nonissuer transaction by or through a broker-dealer registered or exempt from registration pursuant to the New Mexico Uniform Securities Act in an outstanding security if the guarantor of the security is required to file reports with the securities and exchange commission pursuant to the reporting requirements of Section 13 or 15(d) of the federal Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)) and is current in such reporting;

E. a nonissuer transaction by or through a broker-dealer registered or exempt from registration pursuant to the New Mexico Uniform Securities Act in a security that:

(1) is rated at the time of the transaction by a nationally recognized statistical rating organization in one of its four highest rating categories; or

(2) has a fixed maturity or a fixed interest or dividend if:

(a) a default has not occurred during the current fiscal year or within the three previous fiscal years or during the existence of the issuer and any predecessor if less than three fiscal years in the payment of principal, interest or dividends on the security;

(b) the issuer is engaged in business, is not in the organizational stage or in bankruptcy or receivership, and is not and has not been within the previous twelve months a blank check, blind pool or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person; and

(c) the transaction complies with any additional requirements that the director may by rule impose as a condition of this exemption;

F. a nonissuer transaction by or through a broker-dealer registered or exempt from registration pursuant to the New Mexico Uniform Securities Act effecting an unsolicited order or offer to purchase;

G. a nonissuer transaction executed by a bona fide pledgee without the purpose of evading the New Mexico Uniform Securities Act;

H. a nonissuer transaction by a federal covered investment adviser with investments under management in excess of one hundred million dollars (\$100,000,000) acting in the exercise of discretionary authority in a signed record for the account of others;

I. a transaction in a security, whether or not the security or transaction is otherwise exempt, in exchange for one or more bona fide outstanding securities, claims or property interests, or partly in such exchange and partly for cash, if the terms and conditions of the issuance and exchange or the delivery and exchange and the fairness of the terms and conditions have been approved by the director after a hearing;

J. a transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;

K. a transaction in a note, bond, debenture or other evidence of indebtedness secured by a mortgage or other security agreement if:

(1) the note, bond, debenture or other evidence of indebtedness is offered and sold with the mortgage or other security agreement as a unit;

(2) a general solicitation or general advertisement of the transaction is not made; and

(3) a commission or other remuneration is not paid or given, directly or indirectly, to a person not registered pursuant to the New Mexico Uniform Securities Act as a broker-dealer or as an agent;

L. a transaction by an executor, personal representative or administrator of an estate, sheriff, marshal, receiver, trustee in bankruptcy, guardian or conservator;

M. a sale or offer to sell to:

(1) an institutional investor;

(2) a federal covered investment adviser; or

(3) any other person exempted by rule adopted or order issued pursuant to the New Mexico Uniform Securities Act;

N. a sale or an offer to sell securities by or on behalf of an issuer, if the transaction is part of a single issue in which:

(1) there are not more than ten purchasers who are New Mexico residents, other than purchasers designated in Subsection M of this section during any twelve consecutive months;

(2) no general solicitation or general advertising is used in connection with the offer to sell or the sale of the securities; and

(3) no commission or other remuneration is paid or given, directly or indirectly, to a person other than a broker-dealer registered or not required to be registered pursuant to the New Mexico Uniform Securities Act or an agent registered pursuant to that act for soliciting a prospective purchaser in New Mexico, and either:

(a) the seller reasonably believes that all of the purchasers in New Mexico are purchasing for investment; or

(b) immediately before and immediately after the transaction, the issuer reasonably believes that the securities of the issuer are held by fifty or fewer beneficial owners and the transaction is part of an aggregate offering that does not exceed one million dollars (\$1,000,000) during any twelve consecutive months; but the director, by rule or order as to a security or transaction or a type of security or transaction, may withdraw or further condition this exemption or may waive one or more of the conditions of this subsection;

O. a transaction pursuant to an offer to existing security holders of the issuer, including persons that at the date of the transaction are holders of convertible securities, options or warrants, if a commission or other remuneration, other than a standby commission, is not paid or given, directly or indirectly, for soliciting a security holder in New Mexico;

P. an offer to sell, but not a sale, of a security not exempt from registration pursuant to the federal Securities Act of 1933 if:

(1) a registration or offering statement or similar record as required pursuant to the federal Securities Act of 1933 has been filed, but is not effective, or the offer is made in compliance with Rule 165 (17 C.F.R. 230.165) adopted pursuant to the federal Securities Act of 1933; and

(2) a stop order of which the offeror is aware has not been issued against the offeror by the director or the securities and exchange commission and an audit, inspection or proceeding that is public and that may culminate in a stop order is not known by the offeror to be pending;

Q. an offer to sell, but not a sale, of a security exempt from registration pursuant to the federal Securities Act of 1933 if:

(1) a registration statement has been filed pursuant to the New Mexico Uniform Securities Act, but is not effective;

(2) a solicitation of interest is provided in a record to offerees in compliance with a rule adopted by the director pursuant to the New Mexico Uniform Securities Act; and

(3) a stop order of which the offeror is aware has not been issued by the director pursuant to the New Mexico Uniform Securities Act and an audit, inspection or proceeding that may culminate in a stop order is not known by the offeror to be pending;

R. a transaction involving the distribution of the securities of an issuer to the security holders of another person in connection with a merger, consolidation, exchange of securities, sale of assets or other reorganization or conversion to which the issuer, or its parent or subsidiary, and the other person, or its parent or subsidiary, are parties;

S. a rescission offer, sale or purchase pursuant to Section 510 of the New Mexico Uniform Securities Act;

T. an offer or sale of a security to a person not a resident of New Mexico and not present in New Mexico if the offer or sale does not constitute a violation of the laws of the state or foreign jurisdiction in which the offeree or purchaser is present and is not part of an unlawful plan or scheme to evade the New Mexico Uniform Securities Act;

U. employees' stock purchase, savings, option, profit-sharing, pension or similar employees' benefit plan, including any securities, plan interests and guarantees issued pursuant to a compensatory benefit plan or compensation contract, contained in a record established by the issuer, its parents, its majority-owned subsidiaries or the majority-owned subsidiaries of the issuer's parent for the participation of their employees, including offers or sales of such securities to:

(1) bona fide directors; general partners; trustees, if the issuer is a business trust; officers; consultants; and advisors;

(2) family members who acquire such securities from those persons through gifts or domestic relations orders;

(3) former employees, directors, general partners, trustees, officers, consultants and advisors if those individuals were employed by or providing services to the issuer when the securities were offered; and

(4) insurance agents who are exclusive insurance agents of the issuer, or the issuer's subsidiaries or parents, or who derive more than fifty percent of their annual income from those organizations;

V. a transaction involving:

(1) a stock dividend or equivalent equity distribution, whether the corporation or other business organization distributing the dividend or equivalent equity distribution is the issuer or not, if nothing of value is given by stockholders or other equity holders for the dividend or equivalent equity distribution other than the surrender of a right to a cash or property dividend if each stockholder or other equity holder may elect to take the dividend or equivalent equity distribution in cash, property or stock;

(2) an act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims or property interests, or partly in such exchange and partly for cash; or

(3) the solicitation of tenders of securities by an offeror in a tender offer in compliance with Rule 162 (17 C.F.R. 230.162) adopted pursuant to the federal Securities Act of 1933;

W. a nonissuer transaction in an outstanding security by or through a broker-dealer registered or exempt from registration pursuant to the New Mexico Uniform Securities Act, if the issuer is a reporting issuer in a foreign jurisdiction designated by this subsection or by rule adopted or order issued pursuant to that act; has been subject to continuous reporting requirements in the foreign jurisdiction for not less than one hundred eighty days before the transaction; and the security is listed on the foreign jurisdiction's securities exchange that has been designated by this subsection or by rule adopted or order issued pursuant to the New Mexico Uniform Securities Act, or is a security of the same issuer that is of senior or substantially equal rank to the listed security or is a warrant or right to purchase or subscribe to any of the foregoing. For purposes of this subsection, Canada, together with its provinces and territories, is a designated foreign jurisdiction and the Toronto stock exchange, inc., is a designated securities exchange. After an administrative hearing in compliance with Subsection B of Section 604 of the New Mexico Uniform Securities Act, the director, by rule adopted or order issued pursuant to the New Mexico Uniform Securities Act, may revoke the designation of a securities exchange pursuant to this subsection if the director finds that revocation is necessary or appropriate in the public interest and for the protection of investors;

X. the issuance and offer and sale of securities by any issuer if:

(1) the issuer's principal office or principal place of business or a majority of its employees or assets are located in New Mexico;

(2) more than one-half of the proceeds from the offering shall be used by the issuer in operations of the issuer in New Mexico;

(3) no commission or other remuneration is paid or given, directly or indirectly, for soliciting or selling to any person in New Mexico except to broker-dealers and agents registered pursuant to the New Mexico Uniform Securities Act;

(4) an offering document is delivered to each purchaser or prospective purchaser prior to the sale of the securities disclosing such information as the director by rule or order may require;

(5) the total offering, including interest on installment payments, does not exceed two million five hundred thousand dollars (\$2,500,000); and

(6) the issuer claiming this exemption files notice with the director on a form prescribed by the director prior to the first offer and pays a fee of three hundred fifty dollars (\$350). The director may require any issuer using this exemption to file periodic reports not more often than quarterly to keep reasonably current the information contained in the notice and to disclose the progress of the offering. The director may impose conditions by rule or order with respect to issuers, broker-dealers or affiliates that by reason of prior misconduct will not be eligible to utilize this exemption. The issuance and offer and sale of securities pursuant to this subsection shall be subject to Subsection A of Section 504 of the New Mexico Uniform Securities Act;

Y. the issuance and offer and sale of securities by any issuer if:

(1) the total number of security holders does not and will not in consequence of the sale exceed twenty-five;

(2) the issuer reasonably believes that all buyers are purchasing for investment;

(3) no public advertising or general solicitation is used in connection with the offer or sale; and

(4) no commission or other remuneration is paid or given, directly or indirectly, for soliciting or selling to any person in New Mexico except to broker-dealers and sales representatives registered pursuant to the New Mexico Uniform Securities Act. The director by rule or order may impose additional requirements as a condition of the exemption established in this subsection as necessary for the protection of investors and to specify its application. Any notice filing that may be imposed pursuant to Section 203 of the New Mexico Uniform Securities Act shall not be deemed a condition of this exemption;

Z. any offer or sale of a preorganization certificate or subscription if:

(1) when such sale or offer is made by an agent, the agent is registered pursuant to the New Mexico Uniform Securities Act. No commission shall be paid to an agent not registered pursuant to that act;

(2) no public advertising or general solicitation is used in connection with the offer or sale;

(3) the number of subscribers does not exceed ten; and

(4) either no payment is made by any subscriber or any payment made by a subscriber is put into escrow until the entire issue is subscribed;

AA. a transaction:

(1) involving the offer to sell or the sale of one or more promissory notes each of which is directly secured by a first lien on a single parcel of real estate, or a transaction involving the offer to sell or the sale of participation interests in the notes if the notes and participation interests are originated by a depository institution and are offered and sold subject to the following conditions:

(a) the minimum aggregate sales price paid by each purchaser shall not be less than two hundred fifty thousand dollars (\$250,000);

(b) each purchaser must pay cash either at the time of the sale or within sixty days after the sale; and

(c) each purchaser may buy for that person's own account only;

(2) involving the offer to sell or the sale of one or more promissory notes directly secured by a first lien on a single parcel of real estate or participation interests in the notes, if the notes and participation interests are originated by a mortgagee approved by the secretary of housing and urban development pursuant to Sections 203 and 211 of the National Housing Act and are offered or sold, subject to the conditions specified in Paragraph (1) of this subsection, to a depository institution or insurance company, the federal home loan mortgage corporation, the federal national mortgage association or the government national mortgage association; and

(3) between any of the persons described in Paragraph (2) of this subsection involving a nonassignable contract to buy or sell the securities described in Paragraph (1) of this subsection, which contract is to be completed within two years, if:

(a) the seller of the securities pursuant to the contract is one of the parties described in Paragraph (1) or (2) of this subsection that may originate securities;

(b) the purchaser of securities pursuant to any contract is any other institution described in Paragraph (2) of this subsection; and

(c) the three conditions described in Paragraph (1) of this subsection are fulfilled;

BB. any transaction involving leases or interests in leases in oil, gas or other mineral rights between parties, each of whom is engaged in the business of exploring for or producing oil and gas or other valuable minerals as an ongoing business. For purposes of this subsection, "a party engaged in the business of exploring for or producing oil and gas or other valuable minerals as an ongoing business" means:

(1) any corporation, limited liability company, partnership or other business entity that is directly engaged in and derives at least eighty percent of its annual gross income from the exploration or production of oil, gas or other valuable minerals;

(2) any general partner or any employee who spends at least eighty percent of work time in the daily management of a business entity that is directly engaged in and derives at least eighty percent of its gross annual income from the exploration or production of oil, gas or other valuable minerals; or

(3) any corporation, limited liability company, partnership or other business entity that is directly engaged in the business of exploration and production of oil, gas or other valuable minerals and derives at least five million dollars (\$5,000,000) of annual gross income from such business; and

CC. any transaction involving the sale or offer of interests in and under oil, gas or mining rights located in New Mexico or fees, titles or contracts relating thereto, or such sale or offer of such interests, wherever located, made by an entity principally operating in New Mexico, provided that:

(1) the total number of sales by any one owner of interests, whether whole, fractional, segregated or undivided, in any oil, gas or mineral lease, fee or title, or contract relating thereto, shall not exceed twenty-five, provided that such sales shall be made only to persons meeting suitability standards established by rule or order of the director and that investors are provided with such disclosure documents and other information as the director may require by rule or order;

(2) no use is made of advertisement or public solicitation; and

(3) if such sale or offer is made by an agent for such owner or owners, such agent shall be registered pursuant to the New Mexico Uniform Securities Act. No commission shall be paid to an agent not registered pursuant to that act.

For the purposes of this subsection, "an entity principally operating in New Mexico" means a corporation or limited liability company organized pursuant to the law of New Mexico, a corporation in which a majority in interest of the shareholders are residents of New Mexico, a limited liability company in which a majority in interest of the members are residents of New Mexico, any form of partnership in which a majority in interest of the partners are residents of New Mexico, a trust in which a majority in

interest of the beneficiaries are residents of New Mexico or a sole proprietorship in which the owner is a resident of New Mexico.

Chapter 82 Section 203 Laws 2009

Section 203. ADDITIONAL EXEMPTIONS AND WAIVERS.--A rule adopted or order issued pursuant to the New Mexico Uniform Securities Act may exempt a security, transaction or offer; a rule pursuant to the New Mexico Uniform Securities Act may exempt a class of securities, transactions or offers from any or all of the requirements of Sections 301 through 306 and 504 of that act; and an order pursuant to the New Mexico Uniform Securities Act may waive, in whole or in part, any or all of the conditions for an exemption or offer pursuant to Sections 201 and 202 of that act. The director may by rule require notice of filing for any exemption contained in Section 201 or 202 of the New Mexico Uniform Securities Act and may require payment of a fee not to exceed three hundred fifty dollars (\$350) for any such notice of filing, except that no fee shall be required for filing a notice of exemption pursuant to Subsection Y of Section 202 of that act.

Chapter 82 Section 204 Laws 2009

Section 204. DENIAL, SUSPENSION, REVOCATION, CONDITION OR LIMITATION OF EXEMPTIONS.--

A. Except with respect to a federal covered security or a transaction involving a federal covered security, an order pursuant to the New Mexico Uniform Securities Act may deny, suspend application of, condition, limit or revoke an exemption created pursuant to Paragraph (4) of Subsection C of Section 201 of that act, Subsection G or H of Section 201 of that act or Section 202 of that act or an exemption or waiver created pursuant to Section 203 of that act with respect to a specific security, transaction or offer. An order pursuant to this section may be issued only pursuant to the procedures set forth in Subsection D of Section 306 or Section 604 of the New Mexico Uniform Securities Act and only prospectively.

B. A person does not violate Section 301, 303 through 306, 504 or 510 of the New Mexico Uniform Securities Act by an offer to sell, offer to purchase, sale or purchase effected after the entry of an order issued pursuant to this section if the person did not know, and in the exercise of reasonable care could not have known, of the order.

Article 3
REGISTRATION OF SECURITIES AND
NOTICE FILING OF FEDERAL COVERED SECURITIES

Chapter 82 Section 301 Laws 2009

Section 301. SECURITIES REGISTRATION REQUIREMENT.--It is unlawful for a person to offer or sell a security in New Mexico unless:

A. the security is a federal covered security;

B. the security, transaction or offer is exempted from registration pursuant to Sections 201 through 203 of the New Mexico Uniform Securities Act; or

C. the security is registered pursuant to the New Mexico Uniform Securities Act.

Chapter 82 Section 302 Laws 2009

Section 302. NOTICE FILING.--

A. With respect to a federal covered security, as defined in Section 18(b)(2) of the federal Securities Act of 1933 (15 U.S.C. Section 77r(b)(2)), that is not otherwise exempt pursuant to Sections 201 through 203 of the New Mexico Uniform Securities Act, a rule adopted or order issued pursuant to the New Mexico Uniform Securities Act may require the filing of any or all of the following records:

(1) before the initial offer of a federal covered security in New Mexico, all records that are part of a federal registration statement filed with the securities and exchange commission pursuant to the federal Securities Act of 1933 and a consent to service of process complying with Section 611 of the New Mexico Uniform Securities Act signed by the issuer and the payment of a fee of five hundred twenty-five dollars (\$525) for all investment companies other than a unit investment trust or two hundred dollars (\$200) for a unit investment trust; and

(2) after the initial offer of the federal covered security in New Mexico, all records that are part of an amendment to a federal registration statement filed with the securities and exchange commission pursuant to the federal Securities Act of 1933.

B. A notice filing pursuant to Subsection A of this section is effective for one year commencing on the later of the notice filing or the effectiveness of the offering filed with the securities and exchange commission. On or before expiration, the issuer may renew a notice filing by filing a copy of those records filed by the issuer with the securities and exchange commission that are required by rule or order pursuant to the New Mexico Uniform Securities Act to be filed and by paying a renewal fee of five hundred twenty-five dollars (\$525) for all investment companies other than a unit investment trust or two hundred dollars (\$200) for a unit investment trust. A previously filed consent to service of process complying with Section 611 of the New Mexico Uniform Securities Act may be incorporated by reference in a renewal. A renewed notice filing becomes effective upon the expiration of the filing being renewed.

C. With respect to a security that is a federal covered security pursuant to Section 18(b)(4)(D) of the federal Securities Act of 1933 (15 U.S.C. Section 77r(b)(4)(D)), including Rule 506 of Regulation D (17 C.F.R. 230.506), a rule pursuant to the New Mexico Uniform Securities Act may require a notice filing by or on behalf of an issuer to include a copy of Form D, including the appendix, as promulgated by the securities and exchange commission, and a consent to service of process complying with Section 611 of the New Mexico Uniform Securities Act signed by the issuer not later than fifteen days after the first sale of the federal covered security in New Mexico and the payment of a fee of three hundred fifty dollars (\$350) and the payment of a fee in an amount up to one thousand fifty dollars (\$1,050) as specified by the director by rule for any late filing.

D. Except with respect to a federal security pursuant to Section 18(b)(1) of the federal Securities Act of 1933 (15 U.S.C. Section 77r(b)(1)), if the director finds that there is a failure to comply with a notice or fee requirement of this section, the director may issue a stop order suspending the offer and sale of a federal covered security in New Mexico. If the deficiency is corrected, the stop order is void as of the time of its issuance and no penalty may be imposed by the director.

Chapter 82 Section 303 Laws 2009

Section 303. SECURITIES REGISTRATION BY COORDINATION.--

A. A security for which a registration statement has been filed pursuant to the federal Securities Act of 1933 in connection with the same offering may be registered by coordination pursuant to this section.

B. A registration statement and accompanying records pursuant to this section must contain or be accompanied by the following records in addition to the information specified in Section 305 of the New Mexico Uniform Securities Act and a consent to service of process complying with Section 611 of that act:

(1) a copy of the latest form of prospectus filed pursuant to the federal Securities Act of 1933;

(2) a copy of the articles of incorporation and bylaws or their substantial equivalents currently in effect; a copy of any agreement with or among underwriters; a copy of any indenture or other instrument governing the issuance of the security to be registered; and a specimen, copy or description of the security that is required by rule adopted or order issued pursuant to the New Mexico Uniform Securities Act;

(3) copies of any other information or any other records filed by the issuer pursuant to the federal Securities Act of 1933 requested by the director; and

(4) an undertaking to forward each amendment to the federal prospectus, other than an amendment that delays the effective date of the registration statement, promptly after it is filed with the securities and exchange commission.

C. A registration statement pursuant to this section becomes effective simultaneously with or subsequent to the federal registration statement when all of the following conditions are satisfied:

(1) a stop order pursuant to Subsection D of this section or Section 306 of the New Mexico Uniform Securities Act or issued by the securities and exchange commission is not in effect and a proceeding is not pending against the issuer pursuant to Section 306 of the New Mexico Uniform Securities Act; and

(2) the registration statement has been on file for at least twenty days or a shorter period provided by rule adopted or order issued pursuant to the New Mexico Uniform Securities Act.

D. The registrant shall promptly notify the director in a record of the date when the federal registration statement becomes effective and of the content of any price amendment and shall promptly file a record containing the price amendment. If the notice is not timely received, the director may issue a stop order, without prior notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with this section. The director shall promptly notify the registrant of an order by telegram, telephone or electronic means and promptly confirm this notice by a record. If the registrant subsequently complies with the notice requirements of this section, the stop order is void as of the date of its issuance.

E. If the federal registration statement becomes effective before each of the conditions in this section is satisfied or is waived by the director, the registration statement is automatically effective pursuant to the New Mexico Uniform Securities Act when all the conditions are satisfied or waived. If the registrant notifies the director of the date when the federal registration statement is expected to become effective, the director shall promptly notify the registrant by telegram, telephone or electronic means and promptly confirm this notice by a record, indicating whether all the conditions are satisfied or waived and whether the director intends the institution of a proceeding pursuant to Section 306 of the New Mexico Uniform Securities Act. The notice by the director does not preclude the institution of such a proceeding.

Chapter 82 Section 304 Laws 2009

Section 304. SECURITIES REGISTRATION BY QUALIFICATION.--

A. A security may be registered by qualification pursuant to this section.

B. A registration statement pursuant to this section shall contain the information or records specified in Section 305 of the New Mexico Uniform Securities

Act, a consent to service of process complying with Section 611 of that act and, if required by rule adopted pursuant to that act, the following information or records:

(1) with respect to the issuer and any significant subsidiary, its name, address and form of organization; the state or foreign jurisdiction and date of its organization; the general character and location of its business; a description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged;

(2) with respect to each director and officer of the issuer, and other person having a similar status or performing similar functions, the person's name, address and principal occupation for the previous five years; the amount of securities of the issuer held by the person as of the thirtieth day before the filing of the registration statement; the amount of the securities covered by the registration statement to which the person has indicated an intention to subscribe; and a description of any material interest of the person in any material transaction with the issuer or a significant subsidiary effected within the previous three years or proposed to be effected;

(3) with respect to persons covered by Paragraph (2) of this subsection, the aggregate sum of the remuneration paid to those persons during the previous twelve months and estimated to be paid during the next twelve months, directly or indirectly, by the issuer, and all predecessors, parents, subsidiaries and affiliates of the issuer;

(4) with respect to a person owning of record or owning beneficially, if known, ten percent or more of the outstanding shares of any class of equity security of the issuer, the information specified in Paragraph (2) of this subsection other than the person's occupation;

(5) with respect to a promoter, if the issuer was organized within the previous three years, the information or records specified in Paragraph (2) of this subsection, any amount paid to the promoter within that period or intended to be paid to the promoter and the consideration for the payment;

(6) with respect to a person on whose behalf any part of the offering is to be made in a nonissuer distribution, the person's name and address; the amount of securities of the issuer held by the person as of the date of the filing of the registration statement; a description of any material interest of the person in any material transaction with the issuer or any significant subsidiary effected within the previous three years or proposed to be effected; and a statement of the reasons for making the offering;

(7) the capitalization and long-term debt, on both a current and pro forma basis, of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration, whether in the form of cash, physical assets,

services, patents, goodwill or anything else of value, for which the issuer or any subsidiary has issued its securities within the previous two years or is obligated to issue its securities;

(8) the kind and amount of securities to be offered; the proposed offering price or the method by which it is to be computed; any variation at which a proportion of the offering is to be made to a person or class of persons other than the underwriters, with a specification of the person or class; the basis on which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finder's fees, including separately cash, securities, contracts or anything else of value to accrue to the underwriters or finders in connection with the offering or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering and accounting charges; the name and address of each underwriter and each recipient of a finder's fee; a copy of any underwriting or selling group agreement pursuant to which the distribution is to be made or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities that are to be offered otherwise than through an underwriter;

(9) the estimated monetary proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the estimated amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve the purposes stated; the sources of the funds; and, if a part of the proceeds is to be used to acquire property, including goodwill, otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons that have received commissions in connection with the acquisition and the amounts of the commissions and other expenses in connection with the acquisition, including the cost of borrowing money to finance the acquisition;

(10) a description of any stock options or other security options outstanding, or to be created in connection with the offering, and the amount of those options held or to be held by each person required to be named in Paragraph (2), (4), (5), (6) or (8) of this subsection and by any person that holds or will hold ten percent or more in the aggregate of those options;

(11) the dates of, parties to and general effect concisely stated of each managerial or other material contract made or to be made otherwise than in the ordinary course of business to be performed in whole or in part at or after the filing of the registration statement or that was made within the previous two years, and a copy of the contract;

(12) a description of any pending litigation, action or proceeding to which the issuer is a party and that materially affects its business or assets and any litigation, action or proceeding known to be contemplated by governmental authorities;

(13) a copy of any prospectus, pamphlet, circular, form letter, advertisement or other sales literature intended as of the effective date to be used in connection with the offering and any solicitation of interest used in compliance with Paragraph (2) of Subsection Q of Section 202 of the New Mexico Uniform Securities Act;

(14) a specimen or copy of the security being registered, unless the security is uncertificated; a copy of the issuer's articles of incorporation and bylaws or their substantial equivalents, in effect; and a copy of any indenture or other instrument covering the security to be registered;

(15) a signed or conformed copy of an opinion of counsel concerning the legality of the security being registered, with an English translation if it is in a language other than English, that states whether the security when sold will be validly issued, fully paid and nonassessable and, if a debt security, a binding obligation of the issuer;

(16) a signed or conformed copy of a consent of any accountant, engineer, appraiser or other person whose profession gives authority for a statement made by the person, if the person is named as having prepared or certified a report or valuation, other than an official record, that is public, which is used in connection with the registration statement;

(17) a balance sheet of the issuer as of a date within four months before the filing of the registration statement; a statement of income and a statement of cash flow for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the immediately previous fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than three years; and, if any part of the proceeds of the offering is to be applied to the purchase of a business, the financial statements that would be required if that business were the registrant; and

(18) any additional information or records required by rule adopted or order issued pursuant to the New Mexico Uniform Securities Act.

C. A registration statement pursuant to this section becomes effective thirty days, or any shorter period provided by rule adopted or order issued pursuant to the New Mexico Uniform Securities Act, after the date the registration statement or the last amendment other than a price amendment is filed, if:

(1) a stop order is not in effect and a proceeding is not pending pursuant to Section 306 of the New Mexico Uniform Securities Act;

(2) the director has not issued an order pursuant to Section 306 of the New Mexico Uniform Securities Act delaying effectiveness; or

(3) the applicant or registrant has not requested that effectiveness be delayed.

D. The director may delay effectiveness once for not more than ninety days if the director determines the registration statement is not complete in all material respects and promptly notifies the applicant or registrant of that determination. The director may also delay effectiveness for a further period of not more than thirty days if the director determines that the delay is necessary or appropriate.

E. A rule adopted or order issued pursuant to the New Mexico Uniform Securities Act may require as a condition of registration pursuant to this section that a prospectus containing a specified part of the information or record specified in Subsection B of this section be sent or given to each person to which an offer is made, before or concurrently, with the earliest of:

(1) the first offer made in a record to the person otherwise than by means of a public advertisement, by or for the account of the issuer or another person on whose behalf the offering is being made or by an underwriter or broker-dealer that is offering part of an unsold allotment or subscription taken by the person as a participant in the distribution;

(2) the confirmation of a sale made by or for the account of the person;

(3) payment pursuant to such a sale; or

(4) delivery of the security pursuant to such a sale.

Chapter 82 Section 305 Laws 2009

Section 305. SECURITIES REGISTRATION FILINGS.--

A. A registration statement may be filed by the issuer, a person on whose behalf the offering is to be made or a broker-dealer registered pursuant to the New Mexico Uniform Securities Act.

B. A person filing a registration statement shall pay a filing fee of one-tenth of one percent of the maximum aggregate offering price at which the registered securities are to be offered in New Mexico, but not less than five hundred twenty-five dollars (\$525) nor more than two thousand five hundred dollars (\$2,500) or five hundred twenty-five dollars (\$525) if the person is an issuer or a person acting on behalf of an issuer and is claiming an exemption from the registration requirements of federal law regarding small company offerings under Rule 504 of Regulation D (17 C.F.R. 230.504).

If a registration statement is withdrawn before the effective date or a preeffective stop order is issued pursuant to Section 306 of the New Mexico Uniform Securities Act, the director shall retain the fee set forth in this subsection.

C. A registration statement filed pursuant to Section 303 or 304 of the New Mexico Uniform Securities Act shall specify:

(1) the amount of securities to be offered in New Mexico;

(2) the states in which a registration statement or similar record in connection with the offering has been or is to be filed; and

(3) any adverse order, judgment or decree issued in connection with the offering by a state securities regulator, the securities and exchange commission or a court.

D. A record filed pursuant to the New Mexico Uniform Securities Act or the predecessor act within five years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the record is currently accurate.

E. In the case of a nonissuer distribution, information or a record may not be required pursuant to Subsection I of this section or Section 304 of the New Mexico Uniform Securities Act, unless it is known to the person filing the registration statement or to the person on whose behalf the distribution is to be made or unless it can be furnished by those persons without unreasonable effort or expense.

F. A rule adopted or order issued pursuant to the New Mexico Uniform Securities Act may require as a condition of registration that a security issued within the previous five years or to be issued to a promoter for a consideration substantially less than the public offering price or to a person for a consideration other than cash be deposited in escrow; and that the proceeds from the sale of the registered security in New Mexico be impounded until the issuer receives a specified amount from the sale of the security either in New Mexico or elsewhere. The conditions of any escrow or impoundment required pursuant to this subsection may be established by rule adopted or order issued pursuant to the New Mexico Uniform Securities Act, but the director shall not reject a depository institution solely because of its location in another state.

G. A rule adopted or order issued pursuant to the New Mexico Uniform Securities Act may require as a condition of registration that a security registered pursuant to that act be sold only on a specified form of subscription or sale contract and that a signed or conformed copy of each contract be filed pursuant to that act or preserved for a period specified by the rule or order, which shall not be longer than five years.

H. Except while a stop order is in effect pursuant to Section 306 of the New Mexico Uniform Securities Act, a registration statement is effective for one year after its effective date, or for any longer period designated in an order pursuant to that act during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by an underwriter or broker-dealer that is still offering part of an unsold allotment or subscription taken as a participant in the distribution. For the purposes of a nonissuer transaction, all outstanding securities of the same class identified in the registration statement as a security registered pursuant to the New Mexico Uniform Securities Act are considered to be registered while the registration statement is effective. If any securities of the same class are outstanding, a registration statement shall not be withdrawn until one year after its effective date. A registration statement may be withdrawn only with the approval of the director.

I. While a registration statement is effective, a rule adopted or order issued pursuant to the New Mexico Uniform Securities Act may require the person that filed the registration statement to file reports, not more often than quarterly, to keep the information or other record in the registration statement reasonably current and to disclose the progress of the offering.

J. A registration statement may be amended after its effective date. The posteffective amendment becomes effective when the director so orders. If a posteffective amendment is made to increase the number of securities specified to be offered or sold, the person filing the amendment shall pay an additional registration fee of three times the fee otherwise payable, calculated in the manner specified in Subsection B of this section, with respect to the additional securities to be offered and sold, unless the maximum filing fee has been paid. If the maximum filing fee was paid at the time of filing the original registration statement, no additional filing fee is required to be paid with the amendment. A posteffective amendment relates back to the date of the offering of the additional securities being registered if, within one year after the date of the sale, the amendment is filed and the additional registration fee is paid.

Chapter 82 Section 306 Laws 2009

Section 306. DENIAL, SUSPENSION AND REVOCATION OF SECURITIES REGISTRATION.--

A. The director may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, a registration statement if the director finds that the order is in the public interest and that:

(1) the registration statement as of its effective date or before the effective date in the case of an order denying effectiveness, an amendment pursuant to Subsection J of Section 305 of the New Mexico Uniform Securities Act as of its effective date or a report pursuant to Subsection I of Section 305 of that act, is incomplete in a

material respect or contains a statement that, in the light of the circumstances under which it was made, was false or misleading with respect to a material fact;

(2) the New Mexico Uniform Securities Act or a rule adopted or order issued pursuant to that act or a condition imposed pursuant to that act has been willfully violated, in connection with the offering, by the person filing the registration statement; by the issuer, a partner, officer or director of the issuer or a person having a similar status or performing a similar function; a promoter of the issuer; or a person directly or indirectly controlling or controlled by the issuer; but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer; or by an underwriter;

(3) the security registered or sought to be registered is the subject of a permanent or temporary injunction of a court of competent jurisdiction or an administrative stop order or similar order issued pursuant to any federal, foreign or state law other than the New Mexico Uniform Securities Act applicable to the offering, but the director shall not institute a proceeding against an effective registration statement pursuant to this paragraph more than one year after the date of the order or injunction on which it is based, and the director shall not issue an order pursuant to this paragraph on the basis of an order or injunction issued pursuant to the securities act of another state unless the order or injunction was based on conduct that would constitute, as of the date of the order, a ground for a stop order pursuant to this section;

(4) the issuer's enterprise or method of business includes or would include activities that are unlawful where performed;

(5) with respect to a security sought to be registered pursuant to Section 303 of the New Mexico Uniform Securities Act, there has been a failure to comply with the undertaking required by Paragraph (4) of Subsection B of Section 303 of that act;

(6) the applicant or registrant has not paid the filing fee, but the director shall void the order if the deficiency is corrected; or

(7) the offering:

(a) will work or tend to work a fraud upon purchasers or would so operate;

(b) has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions or other compensation, or promoters' profits or participations or unreasonable amounts or kinds of options; or

(c) is being made on terms that are unfair, unjust or inequitable.

B. To the extent practicable, the director by rule adopted or order issued pursuant to the New Mexico Uniform Securities Act shall publish standards that provide notice of conduct that violates Paragraph (7) of Subsection A of this section.

C. The director shall not institute a stop order proceeding against an effective registration statement on the basis of conduct or a transaction known to the director when the registration statement became effective unless the proceeding is instituted within thirty days after the registration statement became effective.

D. The director may summarily revoke, deny, postpone or suspend the effectiveness of a registration statement pending final determination of an administrative proceeding. Upon the issuance of the order, the director shall promptly notify each person specified in Subsection E of this section that the order has been issued, the reasons for the revocation, denial, postponement or suspension and that within fifteen days after the receipt of a request in a record from the person the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the director within thirty days after the date of service of the order, the order becomes final. If a hearing is requested or ordered, the director, after notice of and opportunity for hearing for each person subject to the order, may modify or vacate the order or extend the order until final determination.

E. If a hearing is requested or ordered, such hearing shall be conducted pursuant to Subsection B of Section 604 of the New Mexico Uniform Securities Act. A stop order shall not be issued pursuant to this section, except in accordance with Subsection D of this section, without:

(1) appropriate notice to the applicant or registrant, the issuer and the person on whose behalf the securities are to be or have been offered;

(2) opportunity for hearing; and

(3) findings of fact and conclusions of law in a record.

F. The director shall modify or vacate a stop order entered pursuant to this section if the director finds that the conditions that prompted entry have changed or that it is otherwise in the public interest or for the protection of investors.

Chapter 82 Section 307 Laws 2009

Section 307. WAIVER AND MODIFICATION.--The director may waive or modify, in whole or in part, any or all of the requirements of Sections 302 and 303 of the New Mexico Uniform Securities Act and Subsection B of Section 304 of that act or the requirement of any information or record in a registration statement or in a periodic report filed pursuant to Subsection I of Section 305 of that act.

Article 4

BROKER-DEALERS, AGENTS, INVESTMENT ADVISERS,
INVESTMENT ADVISER REPRESENTATIVES AND FEDERAL
COVERED INVESTMENT ADVISERS

Chapter 82 Section 401 Laws 2009

Section 401. BROKER-DEALER REGISTRATION REQUIREMENT AND
EXEMPTIONS.--

A. It is unlawful for a person to transact business in New Mexico as a broker-dealer unless the person is registered pursuant to the New Mexico Uniform Securities Act as a broker-dealer or is exempt from registration as a broker-dealer pursuant to Subsection B or D of this section.

B. The following persons are exempt from the registration requirement of Subsection A of this section:

(1) a broker-dealer without a place of business in New Mexico if its only transactions effected in New Mexico are with:

(a) the issuer of the securities involved in the transactions;

(b) a broker-dealer registered as a broker-dealer pursuant to the New Mexico Uniform Securities Act or not required to be registered as a broker-dealer pursuant to that act;

(c) an institutional investor;

(d) a nonaffiliated federal covered investment adviser with investments under management in excess of one hundred million dollars (\$100,000,000) acting for the account of others pursuant to discretionary authority in a signed record;

(e) a bona fide preexisting customer whose principal place of residence is not in New Mexico and the person is registered as a broker-dealer pursuant to the federal Securities Exchange Act of 1934 or not required to be registered pursuant to that act and is registered pursuant to the securities act of the state in which the customer maintains a principal place of residence;

(f) a bona fide preexisting customer whose principal place of residence is in New Mexico but was not present in New Mexico when the customer relationship was established, if: 1) the broker-dealer is registered pursuant to the federal Securities Exchange Act of 1934 or not required to be registered or licensed pursuant to that act and is registered pursuant to the securities laws of the state in which the customer relationship was established and where the customer had maintained a

principal place of residence; and 2) within forty-five days after the customer's first transaction in New Mexico, the person files an application for registration as a broker-dealer in New Mexico and no further transactions are effected more than forty-five days after the date on which the application is filed. Only unsolicited transactions are permitted pursuant to this subparagraph; or

(g) any other person exempted by rule adopted or order issued pursuant to the New Mexico Uniform Securities Act; and

(2) a person that deals solely in United States government securities and is supervised as a dealer in government securities by the board of governors of the federal reserve system, the comptroller of the currency, the federal deposit insurance corporation or the office of thrift supervision.

C. It is unlawful for a broker-dealer, or for an issuer engaged in offering, offering to purchase, purchasing or selling securities in New Mexico, directly or indirectly, to employ or associate with an individual to engage in an activity related to securities transactions in New Mexico if the registration of the individual is suspended or revoked or the individual is barred from employment or association with a broker-dealer, an issuer, an investment adviser or a federal covered investment adviser by an order of the director pursuant to the New Mexico Uniform Securities Act, the securities and exchange commission or a self-regulatory organization. A broker-dealer or issuer does not violate this subsection if the broker-dealer or issuer did not know, and in the exercise of reasonable care could not have known, of the suspension, revocation or bar. Upon request from a broker-dealer or issuer and for good cause, an order pursuant to the New Mexico Uniform Securities Act may modify or waive, in whole or in part, the application of the prohibitions of this subsection to the broker-dealer.

D. A rule adopted or order issued pursuant to the New Mexico Uniform Securities Act may permit:

(1) a broker-dealer that is registered in Canada or other foreign jurisdiction and that does not have a place of business in New Mexico to effect transactions in securities with or for, or attempt to effect the purchase or sale of any securities by:

(a) an individual from Canada or other foreign jurisdiction who is temporarily present in New Mexico and with whom the broker-dealer had a bona fide customer relationship before the individual entered the United States;

(b) an individual from Canada or other foreign jurisdiction who is present in New Mexico and whose transactions are in a self-directed tax advantaged retirement plan of which the individual is the holder or contributor in that foreign jurisdiction; or

(c) an individual who is present in New Mexico, with whom the broker-dealer customer relationship arose while the individual was temporarily or permanently a resident in Canada or the other foreign jurisdiction; and

(2) an agent who represents a broker-dealer that is exempt pursuant to this subsection to effect transactions in securities or attempt to effect the purchase or sale of securities in New Mexico as permitted for a broker-dealer described in Paragraph (1) of this subsection.

Chapter 82 Section 402 Laws 2009

Section 402. AGENT REGISTRATION REQUIREMENT AND EXEMPTIONS.--

A. It is unlawful for an individual to transact business in New Mexico as an agent unless the individual is registered pursuant to the New Mexico Uniform Securities Act as an agent or is exempt from registration as an agent pursuant to Subsection B of this section.

B. The following individuals are exempt from the registration requirement of Subsection A of this section:

(1) an individual who represents a broker-dealer in effecting transactions in New Mexico limited to those described in Section 15(h)(2) of the federal Securities Exchange Act of 1934 (15 U.S.C. Section 78(h)(2));

(2) an individual who represents a broker-dealer that is exempt pursuant to Subsection B or D of Section 401 of the New Mexico Uniform Securities Act;

(3) an individual who represents an issuer with respect to an offer or sale of the issuer's own securities or those of the issuer's parent or any of the issuer's subsidiaries, and who is not compensated in connection with the individual's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities;

(4) an individual who represents a broker-dealer registered in New Mexico pursuant to Subsection A of Section 401 of the New Mexico Uniform Securities Act or exempt from registration pursuant to Subsection B of Section 401 of that act in the offer and sale of securities for an account of a nonaffiliated federal covered investment adviser with investments under management in excess of one hundred million dollars (\$100,000,000) acting for the account of others pursuant to discretionary authority in a signed record;

(5) an individual who represents an issuer in connection with the purchase by the issuer of the issuer's own securities;

(6) an individual who represents an issuer and who restricts participation to performing clerical or ministerial acts; or

(7) any other individual exempted by rule adopted or order issued pursuant to the New Mexico Uniform Securities Act.

C. The registration of an agent is effective only while the agent is employed by or associated with a broker-dealer registered pursuant to the New Mexico Uniform Securities Act or an issuer that is offering, selling or purchasing its securities in New Mexico. The registration of an agent is only effective with respect to transactions effected as an employee or agent on behalf of the broker-dealer or issuer for whom the agent is registered.

D. It is unlawful for a broker-dealer, or an issuer engaged in offering, selling or purchasing securities in New Mexico, to employ or associate with an agent who transacts business in New Mexico on behalf of broker-dealers or issuers unless the agent is registered pursuant to Subsection A of this section or exempt from registration pursuant to Subsection B of this section.

E. An individual shall not act as an agent for more than one broker-dealer or one issuer at a time, unless the broker-dealer or the issuer for which the agent acts is affiliated by direct or indirect common control or is authorized by rule or order pursuant to the New Mexico Uniform Securities Act.

Chapter 82 Section 403 Laws 2009

Section 403. INVESTMENT ADVISER REGISTRATION REQUIREMENT AND EXEMPTIONS.--

A. It is unlawful for a person to transact business in New Mexico as an investment adviser unless the person is registered pursuant to the New Mexico Uniform Securities Act as an investment adviser or is exempt from registration as an investment adviser pursuant to Subsection B of this section.

B. The following persons are exempt from the registration requirement of Subsection A of this section:

(1) a person without a place of business in New Mexico that is registered pursuant to the securities act of the state in which the person has its principal place of business if its only clients in New Mexico are:

(a) federal covered investment advisers, investment advisers registered pursuant to the New Mexico Uniform Securities Act or broker-dealers registered pursuant to that act;

(b) institutional investors;

(c) bona fide preexisting clients whose principal places of residence are not in New Mexico if the investment adviser is registered pursuant to the securities act of the state in which the clients maintain principal places of residence; or

(d) any other client exempted by rule adopted or order issued pursuant to the New Mexico Uniform Securities Act;

(2) a person without a place of business in New Mexico if the person has had, during the preceding twelve months, not more than five clients that are residents in New Mexico in addition to those specified pursuant to Paragraph (1) of this subsection; or

(3) any other person exempted by rule adopted or order issued pursuant to the New Mexico Uniform Securities Act.

C. It is unlawful for an investment adviser, directly or indirectly, to employ or associate with an individual to engage in an activity related to investment advice in New Mexico if the registration of the individual is suspended or revoked or the individual is barred from employment or association with an investment adviser, federal covered investment adviser or broker-dealer by an order of the director pursuant to the New Mexico Uniform Securities Act, the securities and exchange commission or a self-regulatory organization, unless the investment adviser did not know, and in the exercise of reasonable care could not have known, of the suspension, revocation or bar. Upon request from the investment adviser and for good cause, the director, by order, may waive, in whole or in part, the application of the prohibitions of this subsection to the investment adviser.

D. It is unlawful for an investment adviser to employ or associate with an individual required to be registered pursuant to the New Mexico Uniform Securities Act as an investment adviser representative who transacts business in New Mexico on behalf of the investment adviser unless the individual is registered pursuant to Subsection A of Section 404 of the New Mexico Uniform Securities Act or is exempt from registration pursuant to Subsection B of Section 404 of that act.

Chapter 82 Section 404 Laws 2009

Section 404. INVESTMENT ADVISER REPRESENTATIVE REGISTRATION REQUIREMENT AND EXEMPTIONS.--

A. It is unlawful for an individual to transact business in New Mexico as an investment adviser representative unless the individual is registered pursuant to the New Mexico Uniform Securities Act as an investment adviser representative or is exempt from registration as an investment adviser.

B. The following individuals are exempt from the registration requirement of Subsection A of this section:

(1) an individual who is employed by or associated with an investment adviser that is exempt from registration pursuant to Subsection B of Section 403 of the New Mexico Uniform Securities Act or a federal covered investment adviser that is excluded from the notice filing requirements of Section 405 of that act; and

(2) any other individual exempted by rule adopted or order issued pursuant to the New Mexico Uniform Securities Act.

C. The registration of an investment adviser representative is not effective while the investment adviser representative is not employed by or associated with an investment adviser registered pursuant to the New Mexico Uniform Securities Act or a federal covered investment adviser that has made or is required to make a notice filing under that act.

D. The registration of an investment adviser representative is only effective with respect to transactions effected or advice rendered as an employee or agent on behalf of the investment adviser for whom the investment adviser representative is registered.

E. An individual may transact business as an investment adviser representative for more than one investment adviser or federal covered investment adviser unless a rule adopted or order issued pursuant to the New Mexico Uniform Securities Act prohibits or limits an individual from acting as an investment adviser representative for more than one investment adviser or federal covered investment adviser.

F. It is unlawful for an individual acting as an investment adviser representative, directly or indirectly, to conduct business in New Mexico on behalf of an investment adviser or a federal covered investment adviser if the registration of the individual as an investment adviser representative is suspended or revoked or the individual is barred from employment or association with an investment adviser or a federal covered investment adviser by an order of the director pursuant to the New Mexico Uniform Securities Act, the securities and exchange commission or a self-regulatory organization. Upon request from an investment adviser or a federal covered investment adviser and for good cause, the director, by order issued, may waive, in whole or in part, the application of the requirements of this subsection to the investment adviser or the federal covered investment adviser.

G. An investment adviser registered pursuant to the New Mexico Uniform Securities Act, a federal covered investment adviser that has filed a notice pursuant to Section 405 of that act or a broker-dealer registered pursuant to that act is not required to employ or associate with an individual as an investment adviser representative if the only compensation paid to the individual for a referral of investment advisory clients is paid to an investment adviser registered pursuant to the New Mexico Uniform Securities Act, a federal covered investment adviser that has filed a notice pursuant to Section 405 of that act or a broker-dealer registered pursuant to that act with which the individual is

employed or associated as an investment adviser representative, subject to such conditions as the director may impose by rule or by order.

Chapter 82 Section 405 Laws 2009

Section 405. FEDERAL COVERED INVESTMENT ADVISER NOTICE FILING REQUIREMENT.--

A. Except with respect to a federal covered investment adviser described in Subsection B of this section, it is unlawful for a federal covered investment adviser to transact business in New Mexico as a federal covered investment adviser unless the federal covered investment adviser complies with Subsection C of this section.

B. The following federal covered investment advisers are not required to comply with Subsection C of this section:

(1) a federal covered investment adviser without a place of business in New Mexico if its only clients in New Mexico are:

(a) federal covered investment advisers, investment advisers registered pursuant to the New Mexico Uniform Securities Act and broker-dealers registered pursuant to that act;

(b) institutional investors;

(c) bona fide preexisting clients whose principal places of residence are not in New Mexico; or

(d) other clients specified by rule adopted or order issued pursuant to the New Mexico Uniform Securities Act;

(2) a federal covered investment adviser without a place of business in New Mexico if the person has had, during the preceding twelve months, not more than five clients that are residents in New Mexico in addition to those specified pursuant to Paragraph (1) of this subsection; and

(3) any other person excluded by rule adopted or order issued pursuant to the New Mexico Uniform Securities Act.

C. A person acting as a federal covered investment adviser not excluded pursuant to Subsection B of this section shall file a notice, a consent to service of process complying with Section 611 of the New Mexico Uniform Securities Act and such records as have been filed with the securities and exchange commission pursuant to the federal Investment Advisers Act of 1940 required by rule adopted or order issued pursuant to the New Mexico Uniform Securities Act and pay the fees specified in Subsection E of Section 410 of that act.

D. The notice pursuant to Subsection C of this section becomes effective upon its filing.

Chapter 82 Section 406 Laws 2009

Section 406. REGISTRATION BY BROKER-DEALER, AGENT, INVESTMENT ADVISER AND INVESTMENT ADVISER REPRESENTATIVE.--

A. A person shall register as a broker-dealer, agent, investment adviser or investment adviser representative by filing an application and a consent to service of process complying with Section 611 of the New Mexico Uniform Securities Act and paying the fee specified in Section 410 of that act and any reasonable fees charged by the designee of the director for processing the filing. The application shall contain:

(1) the information or record required for the filing of a uniform application; and

(2) upon request by the director, any other financial or other information or record that the director determines is appropriate.

B. If the information or record contained in an application filed pursuant to Subsection A of this section is or becomes inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment.

C. If an order is not in effect or a proceeding is not pending pursuant to Section 412 of the New Mexico Uniform Securities Act, registration becomes effective at noon on the forty-fifth day after a completed application is filed, unless the registration is denied. A rule adopted or order issued pursuant to the New Mexico Uniform Securities Act may set an earlier effective date or may defer the effective date until noon on the forty-fifth day after the filing of any amendment completing the application.

D. A registration is effective until midnight on December 31 of the year for which the application for registration is filed. Unless an order is in effect pursuant to Section 412 of the New Mexico Uniform Securities Act, a registration may be automatically renewed each year by filing such records as are required by rule adopted or order issued pursuant to that act by paying the fee specified in Section 410 of that act and by paying costs charged by the designee of the director for processing the filings.

E. A rule adopted or order issued pursuant to the New Mexico Uniform Securities Act may impose such other conditions, not inconsistent with the federal National Securities Markets Improvement Act of 1996. An order issued pursuant to the New Mexico Uniform Securities Act may waive, in whole or in part, specific requirements in connection with registration as are in the public interest and for the protection of investors.

Chapter 82 Section 407 Laws 2009

Section 407. SUCCESSION AND CHANGE IN REGISTRATION OF BROKER-DEALER OR INVESTMENT ADVISER.--

A. A broker-dealer or investment adviser may succeed to the current registration of another broker-dealer or investment adviser or a notice filing of a federal covered investment adviser, and a federal covered investment adviser may succeed to the current registration of an investment adviser or notice filing of another federal covered investment adviser, by filing as a successor an application for registration pursuant to Section 401 or 403 of the New Mexico Uniform Securities Act or a notice pursuant to Section 405 of that act for the unexpired portion of the current registration or notice filing.

B. A broker-dealer or investment adviser that changes its form of organization or state of incorporation or organization may continue its registration by filing an amendment to its registration if the change does not involve a material change in its financial condition or management. The amendment becomes effective when filed or on a date designated by the registrant in its filing. The new organization is a successor to the original registrant for the purposes of the New Mexico Uniform Securities Act. If there is a material change in financial condition or management, the broker-dealer or investment adviser shall file a new application for registration. A predecessor registered pursuant to the New Mexico Uniform Securities Act shall stop conducting its securities business other than winding down transactions and shall file for withdrawal of broker-dealer or investment adviser registration within forty-five days after filing its amendment to effect succession.

C. A broker-dealer or investment adviser that changes its name may continue its registration by filing an amendment to its registration. The amendment becomes effective when filed or on a date designated by the registrant.

D. A change of control of a broker-dealer or investment adviser may be made in accordance with a rule adopted or order issued pursuant to the New Mexico Uniform Securities Act.

Chapter 82 Section 408 Laws 2009

Section 408. TERMINATION OF EMPLOYMENT OR ASSOCIATION OF AGENT AND INVESTMENT ADVISER REPRESENTATIVE AND TRANSFER OF EMPLOYMENT OR ASSOCIATION.--

A. If an agent registered pursuant to the New Mexico Uniform Securities Act terminates employment by or association with a broker-dealer or issuer, or if an investment adviser representative registered pursuant to that act terminates employment by or association with an investment adviser or federal covered investment adviser, or if either registrant terminates activities that require registration as an agent or investment adviser representative, the broker-dealer, issuer, investment adviser or federal covered investment adviser shall promptly file a notice of termination.

B. If an agent registered pursuant to the New Mexico Uniform Securities Act terminates employment by or association with a broker-dealer registered pursuant to that act and begins employment by or association with another broker-dealer registered pursuant to that act; or if an investment adviser representative registered pursuant to the New Mexico Uniform Securities Act terminates employment by or association with an investment adviser registered pursuant to that act or a federal covered investment adviser that has filed a notice pursuant to Section 405 of that act and begins employment by or association with another investment adviser registered pursuant to that act or a federal covered investment adviser that has filed a notice pursuant to Section 405 of that act then, upon the filing by or on behalf of the registrant, within thirty days after the filing of notice of termination pursuant to Subsection A of this section, of an application for registration that complies with the requirement of Subsection A of Section 406 of that act and payment of the filing fee required pursuant to Section 410 of that act, the registration of the agent or investment adviser representative is immediately effective as of the date of the completed filing if the agent's central registration depository record or successor record or the investment adviser representative's investment adviser registration depository record or successor record does not contain a new or amended disciplinary disclosure within the previous twelve months.

C. The director may prevent the effectiveness of a transfer of an agent or investment adviser representative pursuant to Subsection B of this section based on the public interest and the protection of investors.

D. If the director determines that a registrant or applicant for registration is no longer in existence or has ceased to act as a broker-dealer, agent, investment adviser or investment adviser representative, or is the subject of an adjudication of incapacity or is subject to the control of a committee, conservator or guardian, or cannot reasonably be located, a rule adopted or order issued pursuant to the New Mexico Uniform Securities Act may require the registration be canceled or terminated or the application denied. The director may reinstate a canceled or terminated registration, with or without hearing, and may make the registration retroactive.

Chapter 82 Section 409 Laws 2009

Section 409. WITHDRAWAL OF REGISTRATION OF BROKER-DEALER, AGENT, INVESTMENT ADVISER AND INVESTMENT ADVISER REPRESENTATIVE. -Withdrawal of registration by a broker-dealer, agent, investment adviser or investment adviser representative becomes effective sixty days after the filing of the application to withdraw or within any shorter period as provided by rule adopted or order issued pursuant to the New Mexico Uniform Securities Act unless a revocation or suspension proceeding is pending when the application is filed. If a proceeding is pending, withdrawal becomes effective when and upon such conditions as required by rule adopted or order issued pursuant to the New Mexico Uniform Securities Act. The director may institute a revocation or suspension proceeding pursuant to Section 412 of the New Mexico Uniform Securities Act within one year after the withdrawal became

effective automatically and issue a revocation or suspension order as of the last date on which registration was effective if a proceeding is not pending.

Chapter 82 Section 410 Laws 2009

Section 410. FILING FEES.--

A. A person shall pay a fee of three hundred dollars (\$300) when initially filing an application for registration as a broker-dealer and when filing a renewal of registration as a broker-dealer.

B. The fee for an individual shall be fifty dollars (\$50.00) when filing an application for registration as an agent, when filing a renewal of registration as an agent and when filing for a change of registration as an agent.

C. A person shall pay a fee of three hundred dollars (\$300) when filing an application for registration as an investment adviser and when filing a renewal of registration as an investment adviser.

D. The fee for an individual shall be fifty dollars (\$50.00) when filing an application for registration as an investment adviser representative, when filing a renewal of registration as an investment adviser representative and when filing a change of registration as an investment adviser representative.

E. A federal covered investment adviser required to file a notice pursuant to Section 405 of the New Mexico Uniform Securities Act shall pay an initial fee of three hundred dollars (\$300) and an annual fee of three hundred dollars (\$300).

F. A person required to pay a filing or notice fee pursuant to this section may transmit the fee through or to a designee as a rule or order provides pursuant to the New Mexico Uniform Securities Act.

G. An investment adviser representative who is registered as an agent pursuant to Section 402 of the New Mexico Uniform Securities Act and who represents a person that is both registered as a broker-dealer pursuant to Section 401 of that act and registered as an investment adviser pursuant to Section 403 of that act or required as a federal covered investment adviser to make a notice filing pursuant to Section 405 of that act is not required to pay an initial or annual registration fee for registration as an investment adviser representative.

H. If an application made pursuant to Subsection A, B, C, D or E of this section is denied or withdrawn, the director shall retain any fees paid.

Chapter 82 Section 411 Laws 2009

Section 411. POST-REGISTRATION REQUIREMENTS.--

A. Subject to Section 15(h) of the federal Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the federal Investment Advisers Act of 1940 (15 U.S.C. Section 80b-22), a rule adopted or order issued pursuant to the New Mexico Uniform Securities Act may establish minimum financial requirements for broker-dealers registered or required to be registered pursuant to the New Mexico Uniform Securities Act and investment advisers registered or required to be registered pursuant to the New Mexico Uniform Securities Act.

B. Subject to Section 15(h) of the federal Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222(b) of the federal Investment Advisers Act of 1940 (15 U.S.C. Section 80b-22), a broker-dealer registered or required to be registered pursuant to the New Mexico Uniform Securities Act and an investment adviser registered or required to be registered pursuant to the New Mexico Uniform Securities Act shall file such financial reports as are required by a rule adopted or order issued pursuant to the New Mexico Uniform Securities Act. If the information contained in a record filed pursuant to this subsection is or becomes inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment.

C. Subject to Section 15(h) of the federal Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the federal Investment Advisers Act of 1940 (15 U.S.C. Section 80b-22):

(1) a broker-dealer registered or required to be registered pursuant to the New Mexico Uniform Securities Act and an investment adviser registered or required to be registered pursuant to the New Mexico Uniform Securities Act shall make and maintain the accounts, correspondence, memoranda, papers, books and other records required by rule adopted or order issued pursuant to the New Mexico Uniform Securities Act;

(2) broker-dealer records required to be maintained pursuant to Paragraph (1) of this subsection may be maintained in any form of data storage acceptable pursuant to Section 17(a) of the federal Securities Exchange Act of 1934 (15 U.S.C. Section 78q(a)) if they are readily accessible to the director; and

(3) investment adviser records required to be maintained pursuant to Paragraph (1) of this subsection may be maintained in any form of data storage required by rule adopted or order issued pursuant to the New Mexico Uniform Securities Act.

D. The records of a broker-dealer registered or required to be registered pursuant to the New Mexico Uniform Securities Act and of an investment adviser registered or required to be registered pursuant to that act are subject to such reasonable periodic, special or other audits or inspections by a representative of the director, within or without New Mexico, as the director considers necessary or appropriate in the public interest and for the protection of investors. An audit or inspection may be made at any time and without prior notice. The director may copy,

and remove for audit or inspection copies of, all records the director reasonably considers necessary or appropriate to conduct the audit or inspection. The director may assess a reasonable charge for conducting an audit or inspection pursuant to this subsection.

E. Subject to Section 15(h) of the federal Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the federal Investment Advisers Act of 1940 (15 U.S.C. Section 80b-22), a rule adopted or order issued pursuant to the New Mexico Uniform Securities Act may require a broker-dealer or investment adviser that has custody of or discretionary authority over funds or securities of a customer or client to obtain insurance or post a bond or other satisfactory form of security in an amount not to exceed two million dollars (\$2,000,000). The director may determine the requirements of the insurance, bond or other satisfactory form of security. Insurance or a bond or other satisfactory form of security shall not be required of a broker-dealer registered pursuant to the New Mexico Uniform Securities Act whose net capital exceeds, or of an investment adviser registered pursuant to that act whose minimum financial requirements exceed, the amounts required by rule or order pursuant to that act. The insurance, bond or other satisfactory form of security shall permit an action by a person to enforce any liability on the insurance, bond or other satisfactory form of security if instituted within the time limitations in Paragraph (2) of Subsection J of Section 509 of the New Mexico Uniform Securities Act.

F. Subject to Section 15(h) of the federal Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the federal Investment Advisers Act of 1940 (15 U.S.C. Section 80b-22), an agent shall not have custody of funds or securities of a customer except under the supervision of a broker-dealer, and an investment adviser representative shall not have custody of funds or securities of a client except under the supervision of an investment adviser or a federal covered investment adviser. A rule adopted or order issued pursuant to the New Mexico Uniform Securities Act may prohibit, limit or impose conditions on a broker-dealer regarding custody of funds or securities of a customer and on an investment adviser regarding custody of securities or funds of a client.

G. With respect to an investment adviser registered or required to be registered pursuant to the New Mexico Uniform Securities Act, a rule adopted or order issued pursuant to that act may require that information or other records be furnished or disseminated to clients or prospective clients in New Mexico as necessary or appropriate in the public interest and for the protection of investors and advisory clients.

H. A rule adopted or order issued pursuant to the New Mexico Uniform Securities Act may require an individual registered pursuant to Section 402 or 404 of that act to participate in a continuing education program approved by the securities and exchange commission and administered by a self-regulatory organization, or, in the absence of such a program, a rule adopted or order issued pursuant to the New Mexico Uniform Securities Act may require continuing education for an individual registered pursuant to Section 404 of that act.

Chapter 82 Section 412 Laws 2009

Section 412. DENIAL, REVOCATION, SUSPENSION, WITHDRAWAL, RESTRICTION, CONDITION OR LIMITATION OF REGISTRATION.--

A. If the director finds that the order is in the public interest and that Subsection C of this section authorizes the action, an order issued pursuant to the New Mexico Uniform Securities Act may postpone, deny, suspend or revoke any registration, limit the investment advisory activities that an applicant or registered person may perform in New Mexico or bar an applicant or registered person or a person who is a partner, officer or director or a person occupying a similar status or performing a similar function for an applicant or registered person from association with a registered broker-dealer or investment adviser or a federal covered investment adviser.

B. If the director finds that the order is in the public interest and Subsection C of this section authorizes the action, an order pursuant to the New Mexico Uniform Securities Act may censure or impose a bar on a registrant. If the director finds that the order is in the public interest and Paragraph (1), (2), (4), (5), (6), (8), (9), (10), (12) or (13) of Subsection C of this section authorizes the action, the director may also impose a civil penalty on a registrant in an amount not to exceed ten thousand dollars (\$10,000) for each violation.

C. A person may be disciplined pursuant to Subsection A or B of this section, or both, if the person, or in the case of a broker-dealer or investment adviser, a partner, officer, director or a person having a similar status or performing similar functions or a person directly or indirectly controlling the broker-dealer or investment adviser:

(1) has filed an application for registration in New Mexico pursuant to the New Mexico Uniform Securities Act or the predecessor act within the previous ten years that, as of the effective date of registration or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained a statement that, in light of the circumstances under which it was made, was false or misleading with respect to a material fact;

(2) willfully violated or willfully failed to comply with the New Mexico Uniform Securities Act or the predecessor act or a rule adopted or order issued pursuant to the New Mexico Uniform Securities Act or the predecessor act within the previous ten years;

(3) has been convicted of a felony or within the previous ten years has been convicted of a misdemeanor involving a security, a commodity future or an option contract or an aspect of a business involving securities, commodities, investments, franchises, insurance, banking or finance;

(4) is enjoined or restrained by a court of competent jurisdiction in an action instituted by the director pursuant to the New Mexico Uniform Securities Act or the predecessor act, a state, the securities and exchange commission or the United States from engaging in or continuing an act, practice or course of business involving an aspect of a business involving securities, commodities, investments, franchises, insurance, banking or finance;

(5) is the subject of an order, issued after notice and opportunity for hearing by:

(a) the securities, depository institution, insurance or other financial services regulator of a state or by the securities and exchange commission or other federal agency denying, revoking, barring or suspending registration as a broker-dealer, agent, investment adviser, federal covered investment adviser or investment adviser representative;

(b) the securities regulator of a state or by the securities and exchange commission against a broker-dealer, agent, investment adviser, investment adviser representative or federal covered investment adviser;

(c) the securities and exchange commission or by a self-regulatory organization suspending or expelling the registrant from membership in the self-regulatory organization;

(d) a court adjudicating a United States postal service fraud order;

(e) the insurance regulator of a state denying, suspending or revoking registration as an insurance agent; or

(f) a depository institution or financial services regulator suspending or barring the person from the depository institution or other financial services business;

(6) is the subject of an adjudication or determination, after notice and opportunity for hearing, by the securities and exchange commission, the commodity futures trading commission, the federal trade commission, a federal depository institution regulator or a depository institution, insurance or other financial services regulator of a state that the person willfully violated the federal Securities Act of 1933, the federal Securities Exchange Act of 1934, the federal Investment Advisers Act of 1940, the federal Investment Company Act of 1940 or the federal Commodity Exchange Act, the securities or commodities law of a state or a federal or state law pursuant to which a business involving investments, franchises, insurance, banking or finance is regulated;

(7) is insolvent, either because the person's liabilities exceed the person's assets or because the person cannot meet the person's obligations as they mature, but the director shall not enter an order against an applicant or registrant pursuant to this paragraph without a finding of insolvency as to the applicant or registrant;

(8) refuses to allow or otherwise impedes the director from conducting an audit or inspection pursuant to Subsection D of Section 411 of the New Mexico Uniform Securities Act or refuses access to a registrant's office to conduct an audit or inspection pursuant to Subsection D of Section 411 of that act;

(9) has failed to reasonably supervise an agent, investment adviser representative or other individual, if the agent, investment adviser representative or other individual was subject to the person's supervision and while under that person's supervision committed a violation of the New Mexico Uniform Securities Act or the predecessor act or a rule adopted or order issued pursuant to that act or the predecessor act within the previous ten years;

(10) has not paid the proper filing fee within thirty days after having been notified by the director of a deficiency, but the director shall vacate an order pursuant to this paragraph when the deficiency is corrected;

(11) after notice and opportunity for a hearing, has been found within the previous ten years:

(a) by a court of competent jurisdiction to have willfully violated the laws of a foreign jurisdiction pursuant to which the business of securities, commodities, investment, franchises, insurance, banking or finance is regulated;

(b) to have been the subject of an order of a securities regulator of a foreign jurisdiction denying, revoking or suspending the right to engage in the business of securities as a broker-dealer, agent, investment adviser, investment adviser representative or similar person; or

(c) to have been suspended or expelled from membership by or participation in a securities exchange or securities association operating pursuant to the securities laws of a foreign jurisdiction;

(12) is the subject of a cease and desist order issued by the securities and exchange commission or issued pursuant to the securities, commodities, investment, franchise, banking, finance or insurance laws of a state;

(13) has engaged in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance or insurance business within the previous ten years; or

(14) is not qualified on the basis of factors such as training, experience and knowledge of the securities business. However, in the case of an application by an agent for a broker-dealer that is a member of a self-regulatory organization or by an individual for registration as an investment adviser representative, a denial order shall not be based on this paragraph if the individual has successfully completed all examinations required by Subsection D of this section. The director may require an applicant for registration pursuant to Section 402 or 404 of the New Mexico Uniform Securities Act who has not been registered in a state within the two years preceding the filing of an application in New Mexico to successfully complete an examination.

D. A rule adopted or order issued pursuant to the New Mexico Uniform Securities Act may require that an examination, including an examination developed or approved by an organization of securities regulators, be successfully completed by a class of individuals or all individuals. An order issued pursuant to the New Mexico Uniform Securities Act may waive, in whole or in part, an examination as to an individual and a rule adopted pursuant to that act may waive, in whole or in part, an examination as to a class of individuals if the director determines that the examination is not necessary or appropriate in the public interest and for the protection of investors.

E. The director may postpone, suspend or deny an application summarily; restrict, condition, limit or suspend a registration; or censure, bar or impose a civil penalty on a registrant before final determination of an administrative proceeding. Upon the issuance of an order, the director shall promptly notify each person subject to the order that the order has been issued, the reasons for the action and that within fifteen days after the receipt of a request in a record from the person, the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the administrator within thirty days after the date of service of the order, the order becomes final by operation of law. If a hearing is requested or ordered, the director, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend the order until final determination.

F. If a hearing is requested or ordered, such hearing shall be conducted pursuant to Subsection B of Section 604 of the New Mexico Uniform Securities Act. An order shall not be issued pursuant to this section, except in accordance with Subsection E of this section, without:

- (1) appropriate notice to the applicant or registrant;
- (2) opportunity for hearing; and
- (3) findings of fact and conclusions of law in a record.

G. A person that controls, directly or indirectly, a person not in compliance with this section may be disciplined by order of the director pursuant to Subsection A or B of this section, or both, to the same extent as the noncomplying person, unless the

controlling person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct that is a ground for discipline pursuant to this section.

H. The director shall not institute a proceeding pursuant to Subsection A or B of this section based solely on material facts actually known by the director unless an investigation or the proceeding is instituted within one year after the director actually acquires knowledge of the material facts.

Article 5

FRAUD AND LIABILITIES

Chapter 82 Section 501 Laws 2009

Section 501. SECURITIES FRAUD.--It is unlawful for a person, in connection with the offer, sale or purchase of a security, directly or indirectly:

A. to employ a device, scheme or artifice to defraud;

B. to make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statement made, in the light of the circumstances pursuant to which it is made, not misleading; or

C. to engage in an act, practice or course of business that operates or would operate as a fraud or deceit upon another person.

Chapter 82 Section 502 Laws 2009

Section 502. PROHIBITED CONDUCT IN PROVIDING INVESTMENT ADVICE.-

A. It is unlawful for a person that advises others for compensation, either directly or indirectly 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 part of a regular business, issues or promulgates analyses or reports relating to securities:

(1) to employ a device, scheme or artifice to defraud another person; or

(2) to engage in an act, practice or course of business that operates or would operate as a fraud or deceit upon another person.

B. A rule adopted pursuant to the New Mexico Uniform Securities Act may define an act, practice or course of business of an investment adviser or an investment adviser representative as fraudulent, deceptive or manipulative and may prescribe

means reasonably designed to prevent investment advisers and investment adviser representatives from engaging in acts, practices and courses of business defined as fraudulent, deceptive or manipulative.

C. A rule adopted pursuant to the New Mexico Uniform Securities Act may specify the contents of an investment advisory contract entered into, extended or renewed by an investment adviser.

Chapter 82 Section 503 Laws 2009

Section 503. EVIDENTIARY BURDEN.--

A. In a civil action or administrative proceeding pursuant to the New Mexico Uniform Securities Act, a person claiming an exemption, exception, preemption or exclusion has the burden to prove the applicability of the claim.

B. In a criminal proceeding pursuant to the New Mexico Uniform Securities Act, a person claiming an exemption, exception, preemption or exclusion has the burden of going forward with evidence of the claim.

Chapter 82 Section 504 Laws 2009

Section 504. FILING OF SALES AND ADVERTISING LITERATURE.--

A. Except as otherwise provided in Subsection B of this section, a rule adopted or order issued pursuant to the New Mexico Uniform Securities Act may require the filing of a prospectus, pamphlet, circular, form letter, advertisement, sales literature or other advertising record relating to a security or investment advice addressed or intended for distribution to prospective investors, including clients or prospective clients of a person registered or required to be registered as an investment adviser.

B. This section does not apply to sales and advertising literature specified in Subsection A of this section that relates to a federal covered security or a federal covered investment adviser or that the director determines by rule or order to be excluded from the requirements of Subsection A of this section.

Chapter 82 Section 505 Laws 2009

Section 505. MISLEADING FILINGS.--It is unlawful for a person to make or cause to be made, in a record that is used in an action or proceeding or filed pursuant to the New Mexico Uniform Securities Act, a statement that, at the time and in the light of the circumstances pursuant to which it is made, is false or misleading in a material respect or, in connection with the statement, to omit to state a material fact necessary to make the statement made, in the light of the circumstances pursuant to which it was made, not false or misleading.

Chapter 82 Section 506 Laws 2009

Section 506. MISREPRESENTATIONS CONCERNING REGISTRATION OR EXEMPTION.--The filing of an application for registration, a registration statement, a notice filing pursuant to the New Mexico Uniform Securities Act, the registration of a person, the notice filing by a person or the registration of a security pursuant to that act does not constitute a finding by the director that a record filed pursuant to the New Mexico Uniform Securities Act is true, complete and not misleading. The filing or registration or the availability of an exemption, exception, preemption or exclusion for a security or a transaction does not mean that the director has passed upon the merits or qualifications of, or recommended or given approval to, a person, security or transaction. It is unlawful to make, or cause to be made, to a purchaser, customer, client or prospective customer or client a representation inconsistent with this section.

Chapter 82 Section 507 Laws 2009

Section 507. QUALIFIED IMMUNITY.--A broker-dealer, agent, investment adviser, federal covered investment adviser or investment adviser representative is not liable to another broker-dealer, agent, investment adviser, federal covered investment adviser or investment adviser representative for defamation relating to a statement that is contained in a record required by the director, or designee of the director, the securities and exchange commission or a self-regulatory organization, unless the person knew, or should have known at the time that the statement was made, that it was false in a material respect or the person acted in reckless disregard of the statement's truth or falsity.

Chapter 82 Section 508 Laws 2009

Section 508. CRIMINAL PENALTIES.--

A. A person who willfully violates Section 501 or 502 of the New Mexico Uniform Securities Act is guilty of a third degree felony and, upon conviction, shall be fined not more than five thousand dollars (\$5,000) or imprisoned not more than three years, or both, for each violation. For purposes of Subsection B of Section 31-18-13 NMSA 1978, the minimum term prescribed by this subsection is three years.

B. A person who willfully violates Section 505 of the New Mexico Uniform Securities Act knowing the statement made to be false or misleading in a material respect is guilty of a third degree felony and, upon conviction, shall be fined not more than five thousand dollars (\$5,000) or imprisoned not more than three years, or both, for each violation. For purposes of Subsection B of Section 31-18-13 NMSA 1978, the minimum term prescribed by this subsection is three years.

C. No criminal penalties apply to violations of Section 504 of the New Mexico Uniform Securities Act or the notice filing requirements of Section 302 or 405 of that act.

D. Except as provided in Subsections A through C of this section, a person who willfully violates any provision of the New Mexico Uniform Securities Act or a rule adopted or order issued pursuant to that act is guilty of a fourth degree felony and, upon conviction, shall be fined not more than five thousand dollars (\$5,000) or imprisoned not more than eighteen months, or both, for each violation. For purposes of Subsection B of Section 31-18-13 NMSA 1978, the minimum term prescribed by this subsection is eighteen months.

E. An individual convicted of violating a rule or order pursuant to the New Mexico Uniform Securities Act may be fined, but shall not be imprisoned, if the individual did not have knowledge of the rule or order.

F. For the purposes of this section, "willfully" means purposely or intentionally committing the act or making the omission and does not require an intent to violate the law or knowledge that the act or omission is unlawful.

G. Each offense shall constitute a separate offense, and a prosecution for any one of such offenses shall not bar prosecution or conviction for any other offenses.

H. All persons convicted of criminal violations of the New Mexico Uniform Securities Act shall be sentenced in accordance with the Criminal Sentencing Act or its successor statute.

I. No indictment or information may be brought pursuant to this section more than five years after the alleged violation.

J. The attorney general or the proper district attorney, with or without a referral from the director, may institute criminal proceedings pursuant to the New Mexico Uniform Securities Act. The attorney general or district attorney may request assistance from the director or employees of the division. When so requested by the director, the attorney general shall commission as a special assistant attorney general any attorney employed by the director or contracted with by the director and approved by the attorney general to assist the director in carrying out the director's duties, including providing legal advice and prosecuting offenders.

K. The New Mexico Uniform Securities Act does not limit the power of New Mexico to punish a person for conduct that constitutes a crime pursuant to other laws of New Mexico.

Chapter 82 Section 509 Laws 2009

Section 509. CIVIL LIABILITY.--

A. Enforcement of civil liability pursuant to this section is subject to the federal Securities Litigation Uniform Standards Act of 1998 (P.L. 105-353, 112 Stat. 3227, et seq.).

B. A person is liable to the purchaser if the person sells a security in violation of Section 301 of the New Mexico Uniform Securities Act or, by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statement made, in light of the circumstances pursuant to which it is made, not misleading, the purchaser not knowing the untruth or omission and the seller not sustaining the burden of proof that the seller did not know and, in the exercise of reasonable care, could not have known of the untruth or omission. An action pursuant to this subsection is governed by the following:

(1) the purchaser may maintain an action to recover the consideration paid for the security, less the amount of any income received on the security, and interest at the legal rate of interest from the date of the purchase, costs and reasonable attorney fees determined by the court, upon the tender of the security, or for actual damages as provided in Paragraph (3) of this subsection;

(2) the tender referred to in Paragraph (1) of this subsection may be made any time before entry of judgment. Tender requires only notice in a record of ownership of the security and willingness to exchange the security for the amount specified. A purchaser that no longer owns the security may recover actual damages as provided in Paragraph (3) of this subsection; and

(3) actual damages in an action arising pursuant to this subsection are the amount that would be recoverable upon a tender less the value of the security when the purchaser disposed of it, and interest at the legal rate of interest from the date of the purchase, costs and reasonable attorney fees determined by the court.

C. A person is liable to the seller if the person buys a security by means of an untrue statement of a material fact or omission to state a material fact necessary in order to make the statement made, in light of the circumstances pursuant to which it is made, not misleading, the seller not knowing of the untruth or omission, and the purchaser not sustaining the burden of proof that the purchaser did not know, and in the exercise of reasonable care could not have known, of the untruth or omission. An action pursuant to this subsection is governed by the following:

(1) the seller may maintain an action to recover the security, and any income received on the security, costs and reasonable attorney fees determined by the court, upon the tender of the purchase price, or for actual damages as provided in Paragraph (3) of this subsection;

(2) the tender referred to in Paragraph (1) of this subsection may be made any time before entry of judgment. Tender requires only notice in a record of the present ability to pay the amount tendered and willingness to take delivery of the security for the amount specified. If the purchaser no longer owns the security, the seller may recover actual damages as provided in Paragraph (3) of this subsection; and

(3) actual damages in an action arising pursuant to this subsection are the difference between the price at which the security was sold and the value the security would have had at the time of the sale in the absence of the purchaser's conduct causing liability, and interest at the legal rate of interest from the date of the sale of the security, costs and reasonable attorney fees determined by the court.

D. A person acting as a broker-dealer or agent that sells or buys a security in violation of Subsection A of Section 401 of the New Mexico Uniform Securities Act, Subsection A of Section 402 of that act or Section 506 of that act is liable to the customer. The customer, if a purchaser, may maintain an action for recovery of actual damages as specified in Paragraphs (1) through (3) of Subsection B of this section, or, if a seller, for a remedy as specified in Paragraphs (1) through (3) of Subsection C of this section.

E. A person acting as an investment adviser or investment adviser representative that provides investment advice for compensation in violation of Subsection A of Section 403 of the New Mexico Uniform Securities Act, Subsection A of Section 404 of that act or Section 506 of that act is liable to the client. The client may maintain an action to recover the consideration paid for the advice, interest at the legal rate of interest from the date of payment, costs and reasonable attorney fees determined by the court.

F. A person that receives, directly or indirectly, any consideration for providing investment advice to another person and that employs a device, scheme or artifice to defraud the other person or engages in an act, practice or course of business that operates or would operate as a fraud or deceit on the other person, is liable to the other person. An action pursuant to this subsection is governed by the following:

(1) the person defrauded may maintain an action to recover the consideration paid for the advice and the amount of any actual damages caused by the fraudulent conduct, interest at the legal rate of interest from the date of the fraudulent conduct, costs and reasonable attorney fees determined by the court, less the amount of any income received as a result of the fraudulent conduct; and

(2) this subsection does not apply to a broker-dealer or its agents if the investment advice provided is solely incidental to transacting business as a broker-dealer and no special compensation is received for the investment advice.

G. The following persons are liable jointly and severally with and to the same extent as persons liable pursuant to Subsections B through F of this section:

(1) a person that directly or indirectly controls a person liable pursuant to Subsections B through F of this section, unless the controlling person sustains the burden of proof that the person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist;

(2) an individual who is a managing partner, executive officer or director of a person liable pursuant to Subsections B through F of this section, including an individual having a similar status or performing similar functions, unless the individual sustains the burden of proof that the individual did not know and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist;

(3) an individual who is an employee of or associated with a person liable pursuant to Subsections B through F of this section and who materially aids the conduct giving rise to the liability, unless the individual sustains the burden of proof that the individual did not know and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist; and

(4) a person that is a broker-dealer, agent, investment adviser or investment adviser representative that materially aids the conduct giving rise to the liability pursuant to Subsections B through F of this section, unless the person sustains the burden of proof that the person did not know and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which liability is alleged to exist.

H. A person liable pursuant to this section has a right of contribution as in cases of contract against any other person liable pursuant to this section for the same conduct.

I. A cause of action pursuant to this section survives the death of an individual who might have been a plaintiff or defendant.

J. A person shall not obtain relief unless the suit is brought:

(1) within two years after discovery of the violation or after discovery should have been made by the exercise of reasonable diligence; and

(2) within five years after the act or transaction constituting the violation.

K. A person that has made, or has engaged in the performance of, a contract in violation of the New Mexico Uniform Securities Act or a rule adopted or order issued pursuant to that act, or that has acquired a purported right pursuant to the contract with knowledge of conduct by reason of which its making or performance was in violation of the New Mexico Uniform Securities Act, may not base an action on the contract.

L. A condition, stipulation or provision binding a person purchasing or selling a security or receiving investment advice to waive compliance with the New

Mexico Uniform Securities Act, or a rule adopted or order issued pursuant to that act, is void.

M. The rights and remedies provided by the New Mexico Uniform Securities Act are in addition to any other rights or remedies that may exist, but that act does not create a cause of action not specified in this section or Subsection E of Section 411 of that act.

Chapter 82 Section 510 Laws 2009

Section 510. RESCISSION OFFERS.--A purchaser, seller or recipient of investment advice shall not maintain an action pursuant to Section 509 of the New Mexico Uniform Securities Act if:

A. the purchaser, seller or recipient of investment advice receives in a record, before the action is instituted:

(1) an offer stating the respect in which liability pursuant to Section 509 of the New Mexico Uniform Securities Act may have arisen and fairly advising the purchaser, seller or recipient of investment advice of that person's rights in connection with the offer, and any financial or other information necessary to correct all material misrepresentations or omissions in the information that was required by the New Mexico Uniform Securities Act to be furnished to that person at the time of the purchase, sale or investment advice;

(2) if the basis for relief pursuant to this section may have been a violation of Subsection B of Section 509 of the New Mexico Uniform Securities Act, an offer to repurchase the security for cash, payable on delivery of the security, equal to the consideration paid, and interest at the legal rate of interest from the date of the purchase, less the amount of any income received on the security; or, if the purchaser no longer owns the security, an offer to pay the purchaser upon acceptance of the offer damages in an amount that would be recoverable upon a tender, less the value of the security when the purchaser disposed of it, and interest at the legal rate of interest from the date of the purchase in cash equal to the damages computed in the manner provided in this subsection;

(3) if the basis for relief pursuant to this section may have been a violation of Subsection C of Section 509 of the New Mexico Uniform Securities Act, an offer to tender the security, on payment by the seller of an amount equal to the purchase price paid, less income received on the security by the purchaser and interest at the legal rate of interest from the date of the sale; or if the purchaser no longer owns the security, an offer to pay the seller upon acceptance of the offer, in cash, damages in the amount of the difference between the price at which the security was purchased and the value the security would have had at the time of the purchase in the absence of the purchaser's conduct that may have caused liability and interest at the legal rate of interest from the date of the sale;

(4) if the basis for relief pursuant to this section may have been a violation of Subsection D of Section 509 of the New Mexico Uniform Securities Act; and if the customer is a purchaser, an offer to pay as specified in Paragraph (2) of this subsection; or, if the customer is a seller, an offer to tender or to pay as specified in Paragraph (3) of this subsection;

(5) if the basis for relief pursuant to this section may have been a violation of Subsection E of Section 509 of the New Mexico Uniform Securities Act, an offer to reimburse in cash the consideration paid for the advice and interest at the legal rate of interest from the date of payment; or

(6) if the basis for relief pursuant to this section may have been a violation of Subsection F of Section 509 of the New Mexico Uniform Securities Act, an offer to reimburse in cash the consideration paid for the advice, the amount of any actual damages that may have been caused by the conduct and interest at the legal rate of interest from the date of the violation causing the loss;

B. the offer pursuant to Subsection A of this section states that the offer must be accepted by the purchaser at any time within a specified period of not less than thirty days, or such shorter or longer period as the director by order prescribes, and contains such other terms and conditions, if any, as the director specifies;

C. the offer pursuant to Subsection A of this section is delivered to the purchaser, seller or recipient of investment advice, or sent in a manner that ensures receipt by the purchaser, seller or recipient of investment advice;

D. the purchaser, seller or recipient of investment advice timely accepts the offer made pursuant to Subsections A through C of this section in a record; and

E. the offer made and accepted in compliance with Subsections A through D of this section is paid in accordance with the terms of the offer; or

F. the purchaser, seller or recipient of investment advice receives an offer in compliance with Subsections A through C of this section but fails to accept the offer in a record within the period specified in the offer.

Article 6 ADMINISTRATION AND JUDICIAL REVIEW

Chapter 82 Section 601 Laws 2009

Section 601. ADMINISTRATION.--

A. The director shall administer the New Mexico Uniform Securities Act. The director shall be appointed by the superintendent of regulation and licensing subject to confirmation by the senate. The director shall be chosen solely on the basis of fitness

to perform the duties of the office and shall have a minimum of five years relevant experience in the securities or finance field, relevant education and demonstrable knowledge of securities laws and regulations. The division is under the supervision and control of the superintendent of regulation and licensing, subject, however, to the exemptions set forth in Section 9-16-11 NMSA 1978. The director shall, with the approval of the superintendent of regulation and licensing, hire pursuant to the Personnel Act and assign duties to employees necessary to assist the director in the director's duties, and the director may, with the approval of the superintendent of regulation and licensing, appoint commissioned peace officers who shall have the powers of police officers for the purpose of investigating and enforcing the provisions of the New Mexico Uniform Securities Act. Such peace officers shall comply with the certification provisions of Section 29-7-6 NMSA 1978.

B. The director may by rule impose fees as necessary for examination, claims of exemption, requests for advisory opinions and other miscellaneous filings for which no fees are specified elsewhere in the New Mexico Uniform Securities Act and may also require payment of reasonable costs of investigation resulting from enforcement actions taken pursuant to Section 602, 603 or 604 of that act.

C. It is unlawful for the director or an officer, employee or designee of the director to use for personal benefit or the benefit of others records or other information obtained by or filed with the director that are not public pursuant to Subsection B of Section 607 of the New Mexico Uniform Securities Act. The New Mexico Uniform Securities Act does not authorize the director or an officer, employee or designee of the director to disclose the record or information, except in accordance with Section 602 of that act, Subsection C of Section 607 of that act or Section 608 of that act.

D. Except as stated in the New Mexico Uniform Securities Act, that act does not create or diminish a privilege or exemption that exists at common law, by statute or by rule or otherwise.

E. The director may develop and implement investor education initiatives to inform the public about investing in securities, with particular emphasis on the prevention and detection of securities fraud. In developing and implementing these initiatives, the director may collaborate with public and nonprofit organizations with an interest in investor education. The director may accept a grant or donation to the securities enforcement and investor education fund established in Subsection F of this section from a person that is not affiliated with the securities industry or from a nonprofit organization, regardless of whether the organization is affiliated with the securities industry, to develop and implement investor education initiatives. This subsection does not authorize the director to require participation or monetary contributions of a registrant in an investor education program.

F. The "securities enforcement and investor education fund" is created as a nonreverting fund in the state treasury to provide money for the purposes specified in Subsections E and G of this section. The division may establish and adopt rules as

required to administer the fund. The securities enforcement and investor education fund shall be administered by the division. The fund shall consist of:

(1) five dollars (\$5.00) of each fee collected from registrants pursuant to Subsections B and D of Section 410 of the New Mexico Uniform Securities Act;

(2) all or any portion of civil penalties, costs of investigation and other administrative assessments collected by the division through enforcement actions pursuant to the New Mexico Uniform Securities Act;

(3) appropriations, grants or donations to the fund; and

(4) income from investment of the fund.

G. Money in the securities enforcement and investor education fund shall be appropriated by the legislature to the division and shall be used for consumer education and training in matters concerning securities laws and investment issues; education and training of investigative and prosecutorial staff of the division; and costs incurred for the investigation and prosecution of civil and criminal violations of the New Mexico Uniform Securities Act, including expert and other consultant fees, witness fees, deposition costs and travel and training expenses. Money shall be disbursed from the fund only on warrant of the secretary of finance and administration upon vouchers signed by the director or the director's authorized representative. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the general fund.

Chapter 82 Section 602 Laws 2009

Section 602. INVESTIGATIONS AND SUBPOENAS.--

A. The director may:

(1) conduct public or private investigations within or outside of New Mexico that the director considers necessary or appropriate to determine whether a person has violated, is violating or is about to violate the New Mexico Uniform Securities Act, or a rule adopted or order issued pursuant to that act, or to aid in the enforcement of the New Mexico Uniform Securities Act or in the adoption of rules and forms pursuant to that act;

(2) require or permit a person to testify, file a statement or produce a record, under oath or otherwise as the director determines, as to all the facts and circumstances concerning a matter to be investigated or about which an action or proceeding is to be instituted; and

(3) publish a record concerning an action, proceeding or an investigation pursuant to or a violation of the New Mexico Uniform Securities Act or a rule adopted or order issued pursuant to that act if the director determines it is necessary or appropriate in the public interest and for the protection of investors.

B. For the purpose of an investigation pursuant to the New Mexico Uniform Securities Act, the director or the director's designated officer may administer oaths and affirmations, subpoena witnesses, seek compulsion of attendance, take evidence, require the filing of statements and require the production of any records that the director considers relevant or material to the investigation.

C. If a person does not appear or refuses to testify, file a statement, produce records or otherwise does not obey a subpoena as required by the director pursuant to the New Mexico Uniform Securities Act, the director may apply to the district court of Santa Fe county or other appropriate district court or to a court of another state, a federal court or a court of a foreign jurisdiction, or the director may refer the matter to the attorney general or the proper district attorney to enforce compliance. The court may:

- (1) hold the person in contempt;
- (2) order the person to appear before the director;
- (3) order the person to testify about the matter under investigation or in question;
- (4) order the production of records;
- (5) grant injunctive relief, including restricting or prohibiting the offer or sale of securities or the providing of investment advice;
- (6) impose a civil penalty of not more than ten thousand dollars (\$10,000) for each violation; and
- (7) grant any other necessary or appropriate relief.

D. This section does not preclude a person from applying to the appropriate district court or a court of another state for relief from a request to appear, testify, file a statement, produce records or obey a subpoena.

E. An individual is not excused from attending, testifying, filing a statement, producing a record or other evidence or obeying a subpoena of the director pursuant to the New Mexico Uniform Securities Act or in an action or proceeding instituted by the director pursuant to that act on the grounds that the required testimony, statement, record or other evidence, directly or indirectly, may tend to incriminate the individual or subject the individual to a criminal fine, penalty or forfeiture. If the individual

refuses to testify, file a statement or produce a record or other evidence on the basis of the individual's privilege against self-incrimination, the director may apply to the district court of Santa Fe county or other appropriate district court or to a court of another state, a federal court or a court of a foreign jurisdiction to compel the testimony, the filing of the statement, the production of the record or the giving of other evidence. The testimony, record or other evidence compelled pursuant to such an order shall not be used, directly or indirectly, against the individual in a criminal case, except in a prosecution for perjury or contempt or otherwise failing to comply with the order.

F. At the request of the securities regulator of another state or a foreign jurisdiction, the director may provide assistance if the requesting regulator states that it is conducting an investigation to determine whether a person has violated, is violating or is about to violate a law or rule of the other state or foreign jurisdiction relating to securities matters that the requesting regulator administers or enforces. The director may provide the assistance by using the authority to investigate and the powers conferred by this section as the director determines is necessary or appropriate. The assistance may be provided without regard to whether the conduct described in the request would also constitute a violation of the New Mexico Uniform Securities Act or other law of New Mexico if occurring in New Mexico. In deciding whether to provide the assistance, the director may consider whether the requesting regulator is permitted and has agreed to provide assistance reciprocally within its state or foreign jurisdiction to the director on securities matters when requested; whether compliance with the request would violate or prejudice the public policy of New Mexico; and the availability of resources and employees of the director to carry out the request for assistance.

Chapter 82 Section 603 Laws 2009

Section 603. CIVIL ENFORCEMENT.--

A. If the director believes that a person has engaged, is engaging or is about to engage in an act, practice or course of business constituting a violation of the New Mexico Uniform Securities Act or a rule adopted or order issued pursuant to that act or that a person has, is or is about to engage in an act, practice or course of business that materially aids a violation of the New Mexico Uniform Securities Act or a rule adopted or order issued pursuant to that act, the director may maintain an action to enjoin the act, practice or course of business and to enforce compliance with the New Mexico Uniform Securities Act or a rule adopted or order issued pursuant to that act.

B. In an action pursuant to this section and on a proper showing, the court may:

(1) issue a permanent or temporary injunction, restraining order or declaratory judgment;

(2) order other appropriate or ancillary relief, which may include:

(a) an asset freeze, accounting, writ of attachment, writ of general or specific execution and appointment of a receiver or conservator, that may be the director, for the defendant or the defendant's assets;

(b) ordering the director to take charge and control of a defendant's property, including investment accounts and accounts in a depository institution, rents and profits; to collect debts; and to acquire and dispose of property;

(c) imposing a civil penalty of up to ten thousand dollars (\$10,000) for each violation;

(d) an order of rescission, restitution or disgorgement directed to a person that has engaged in an act, practice or course of business constituting a violation of the New Mexico Uniform Securities Act or the predecessor act or a rule adopted or order issued pursuant to the New Mexico Uniform Securities Act or the predecessor act;

(e) ordering the payment of prejudgment and postjudgment interest; and

(f) ordering the payment of litigation expenses of the director;
and

(3) order such other relief as the court considers appropriate.

C. If a person violates a provision of the New Mexico Uniform Securities Act and the violation is directed toward, targets or is committed against a person who, at the time of the violation, is sixty-two years of age or older, the court, in addition to any other civil penalties provided for pursuant to the New Mexico Uniform Securities Act or a rule issued pursuant to that act, may impose an additional civil penalty not to exceed ten thousand dollars (\$10,000) for each violation.

D. The director shall not be required to post a bond in an action or proceeding pursuant to the New Mexico Uniform Securities Act.

Chapter 82 Section 604 Laws 2009

Section 604. ADMINISTRATIVE ENFORCEMENT.--

A. If the director determines that a person has engaged, is engaging or is about to engage in an act, practice or course of business constituting a violation of the New Mexico Uniform Securities Act or a rule adopted or order issued pursuant to that act or that a person has materially aided, is materially aiding or is about to materially aid an act, practice or course of business constituting a violation of the New Mexico Uniform Securities Act or a rule adopted or order issued pursuant to that act, the director may:

(1) issue an order directing the person to cease and desist from engaging in the act, practice or course of business or to take other action necessary or appropriate to comply with the New Mexico Uniform Securities Act;

(2) issue an order denying, suspending, revoking or conditioning the exemptions for a broker-dealer pursuant to Subparagraph (d) or (f) of Paragraph (1) of Subsection B of Section 401 the New Mexico Uniform Securities Act or an investment adviser pursuant to Subparagraph (c) of Paragraph (1) of Subsection B of Section 403 of that act; or

(3) issue an order pursuant to Section 204 of the New Mexico Uniform Securities Act.

B. For any administrative proceeding authorized by the New Mexico Uniform Securities Act, including proceedings related to notices and orders pursuant to Section 204 of that act, Subsection E of Section 306 of that act, Subsection F of Section 412 of that act or Subsection A of this section:

(1) the director may commence an administrative proceeding by entering either a notice of intent to do a contemplated act or a summary order. The notice of intent or summary order may be entered without notice and without opportunity for hearing and need not be supported by findings of fact or conclusions of law, but shall be in a record;

(2) upon entry of a notice of intent or summary order, the director shall promptly notify in a record all parties against whom action is taken or contemplated that the notice or summary order has been entered and the reasons for the notice or summary order. The director shall send parties against whom action is taken or contemplated a notice of opportunity for hearing on the matters set forth in the order or notice of intent. The notice shall state that the parties have fifteen days from receipt of the notice to file with the director a request in a record for a hearing. The director shall set the matter for hearing no more than sixty nor less than fifteen days from receipt of the request for hearing and shall promptly notify the parties of the time and place for hearing;

(3) the director, whether or not a request in a record for hearing is received from any interested party, may set the matter down for hearing on the director's own motion;

(4) the director may by order take the action contemplated in the notice of intent or make a summary order final:

(a) fifteen days after the parties against whom action is taken or contemplated receive notice of the right to request a hearing if those parties fail to request a hearing; or

(b) one day following the date set for a hearing requested by a party if the party fails to appear at the hearing;

(5) if a hearing is requested or ordered, the director, after notice of the opportunity for hearing to all persons against whom action is taken or contemplated, may modify or vacate the order or extend the order until final determination;

(6) for the purpose of conducting any hearing pursuant to this section, the director shall have the power to call any party to testify under oath at such hearing to require the attendance of witnesses and the production of books, records and papers and to take the depositions of witnesses; and for that purpose the director is authorized, at the request of the person requesting such hearing or upon the director's own initiative, to issue a subpoena for any witness or a subpoena duces tecum to compel the production of any books, records or papers. At the director's option or when state law or court rules require such process, the subpoena may be directed to the sheriff or other law enforcement agency in the county where such witness resides;

(7) a party entitled to a hearing pursuant to this section may appear on the party's own behalf or may be represented by an attorney. A party has the right to present all relevant evidence and to examine all opposing witnesses who appear on any matter relevant to the issues;

(8) upon making a request in a record to another party, any party is entitled to:

(a) obtain the names and addresses of witnesses who will or may be called by the other party to testify at the hearing; and

(b) inspect and copy any documents or items that the other party will or may introduce in evidence at the hearing;

(9) the director shall pass upon the admissibility of evidence and may exclude evidence that is incompetent, irrelevant, immaterial or unduly repetitious;

(10) the director may conduct the hearing, or the director may appoint a hearing officer to conduct the hearing. A hearing officer shall have the same powers and authority in conducting a hearing as the director. The hearing officer shall be admitted to the practice of law in this state and shall be possessed of such additional qualifications as the director may require. The director may direct the hearing officer to submit to the director a report setting forth in a record proposed findings of fact and conclusions of law and a recommendation of the action to be taken by the director. The director may order additional testimony to be taken or permit the introduction of further documentary evidence; and

(11) a final order or order after hearing shall include entry of findings of fact and conclusions of law in a record.

C. In a final order pursuant to Subsection B of this section, the director may impose a civil penalty of up to ten thousand dollars (\$10,000) for each violation. For purposes of determining the amount of a civil penalty imposed pursuant to this subsection, the director shall consider, among other factors, the frequency and persistence of the conduct constituting a violation of the New Mexico Uniform Securities Act or a rule or order of the director pursuant to that act, the number of persons adversely affected by the conduct and the resources of the person committing the violation.

D. If a person violates a provision of the New Mexico Uniform Securities Act and the violation is directed toward, targets or is committed against a person who, at the time of the violation, is sixty-two years of age or older, the director, in addition to any other administrative penalties provided for pursuant to the New Mexico Uniform Securities Act or a rule issued pursuant to that act, may impose an additional administrative penalty not to exceed ten thousand dollars (\$10,000) for each violation.

E. In a final order, the director may charge the actual cost of an investigation or proceeding for a violation of the New Mexico Uniform Securities Act or a rule adopted or order issued pursuant to that act.

F. If a petition for judicial review of a final order is not filed in accordance with Section 609 of the New Mexico Uniform Securities Act, the director may file a certified copy of the final order with the clerk of the appropriate district court. The order so filed has the same effect as a judgment of the court and may be recorded, enforced or satisfied in the same manner as a judgment of the court.

G. If a person does not comply with an order pursuant to this section, the director may petition the district court of Santa Fe county or other appropriate district court or a court of another state, a federal court or a court of a foreign jurisdiction to enforce the order. The court shall not require the director to post a bond in an action or proceeding pursuant to this section. If the court finds, after service and opportunity for hearing, that the person was not in compliance with the order, the court may adjudge the person in civil contempt of the order. The court may impose a further civil penalty against the person for contempt in an amount not greater than ten thousand dollars (\$10,000) for each violation and may grant any other relief the court determines is just and proper in the circumstances.

Chapter 82 Section 605 Laws 2009

Section 605. RULES, FORMS, ORDERS, INTERPRETATIVE OPINIONS AND HEARINGS.--

A. The director may:

(1) issue forms and orders and, after notice and comment, may adopt and amend rules necessary or appropriate to carry out the New Mexico Uniform

Securities Act and may repeal rules, including rules and forms governing registration statements, applications, notice filings, reports and other records;

(2) by rule, define terms, whether or not used in the New Mexico Uniform Securities Act, but those definitions shall not be inconsistent with that act; and

(3) by rule, classify securities, persons and transactions and adopt different requirements for different classes.

B. Pursuant to the New Mexico Uniform Securities Act, a rule or form shall not be adopted or amended, or an order issued or amended, unless the director finds that the rule, form, order or amendment is necessary or appropriate in the public interest or for the protection of investors and is consistent with the purposes intended by the New Mexico Uniform Securities Act. In adopting a rule, the director may use the director's own experience, technical competence, specialized knowledge and judgment. In adopting, amending and repealing rules and forms, Section 608 of the New Mexico Uniform Securities Act applies in order to achieve uniformity among the states and coordination with federal laws in the form and content of registration statements, applications, reports and other records, including the adoption of uniform rules, forms and procedures.

C. Subject to Section 15(h) of the federal Securities Exchange Act and Section 222 of the federal Investment Advisers Act of 1940, the director may require that a financial statement filed pursuant to the New Mexico Uniform Securities Act be prepared in accordance with generally accepted accounting principles in the United States and comply with other requirements specified by rule adopted or order issued pursuant to the New Mexico Uniform Securities Act. A rule adopted or order issued pursuant to the New Mexico Uniform Securities Act may establish:

(1) subject to Section 15(h) of the federal Securities Exchange Act and Section 222 of the federal Investment Advisers Act of 1940, the form and content of financial statements required pursuant to the New Mexico Uniform Securities Act;

(2) whether unconsolidated financial statements shall be filed; and

(3) whether required financial statements shall be audited by an independent certified public accountant.

D. The director may provide interpretative opinions or issue determinations that the director will not institute a proceeding or an action pursuant to the New Mexico Uniform Securities Act against a specified person for engaging in a specified act, practice or course of business if the determination is consistent with that act. A rule adopted or order issued pursuant to the New Mexico Uniform Securities Act may establish a reasonable charge for interpretative opinions or determinations that the director will not institute an action or a proceeding.

E. A civil or administrative penalty pursuant to the New Mexico Uniform Securities Act shall not be imposed for, and liability does not arise from, conduct that is engaged in or omitted in good faith believing that conduct conforms to a rule, form or order of the director pursuant to the New Mexico Uniform Securities Act.

F. A hearing in an administrative proceeding pursuant to the New Mexico Uniform Securities Act shall be conducted in public unless the director for good cause consistent with that act determines that the hearing will not be so conducted.

Chapter 82 Section 606 Laws 2009

Section 606. ADMINISTRATIVE FILES AND OPINIONS.--

A. The director shall maintain, or designate a person to maintain, a register of applications for registration of securities; registration statements; notice filings; applications for registration of broker-dealers, agents, investment advisers and investment adviser representatives; notice filings by federal covered investment advisers that are or have been effective pursuant to the New Mexico Uniform Securities Act or the predecessor act; notices of claims of exemption from registration or notice filing requirements contained in a record; orders issued pursuant to the New Mexico Uniform Securities Act or the predecessor act; and interpretative opinions or no action determinations issued pursuant to the New Mexico Uniform Securities Act.

B. The director shall make all rules, forms, interpretative opinions and orders available to the public.

C. The director shall furnish a copy of a record that is a public record or a certification that the public record does not exist to a person that so requests. A rule adopted pursuant to the New Mexico Uniform Securities Act may establish a reasonable charge for furnishing the record or certification. A copy of the record certified or a certificate by the director of a record's nonexistence is prima facie evidence of a record or its nonexistence.

Chapter 82 Section 607 Laws 2009

Section 607. PUBLIC RECORDS--CONFIDENTIALITY.--

A. Except as otherwise provided in Subsection B of this section, records obtained by the director or filed pursuant to the New Mexico Uniform Securities Act, including a record contained in or filed with a registration statement, application, notice filing or report, are public records and are available for public examination.

B. The following records are not public records and are not available for public examination pursuant to Subsection A of this section:

(1) a record obtained by the director in connection with an audit or inspection pursuant to Subsection D of Section 411 of the New Mexico Uniform Securities Act or an investigation pursuant to Section 602 of that act, except that information that is introduced at a hearing constitutes public information unless otherwise ordered by the director;

(2) a part of a record filed in connection with a registration statement pursuant to Sections 301 and 303 through 305 of the New Mexico Uniform Securities Act or a record pursuant to Subsection D of Section 411 of that act that contains trade secrets or confidential information if the person filing the registration statement or report has asserted a claim of confidentiality or privilege that is authorized by law;

(3) a record that is not required to be provided to the director or filed pursuant to the New Mexico Uniform Securities Act and is provided to the director only on the condition that the record will not be subject to public examination or disclosure;

(4) a nonpublic record received from a person specified in Subsection A of Section 608 of the New Mexico Uniform Securities Act; and

(5) any social security number, residential address unless used as a business address and residential telephone number unless used as a business telephone number contained in a record that is filed.

C. If disclosure is for the purpose of a civil, administrative or criminal investigation, action or proceeding or to a person specified in Subsection A of Section 608 of the New Mexico Uniform Securities Act, the director may disclose a record obtained in connection with an audit or inspection pursuant to Subsection D of Section 411 of that act or a record obtained in connection with an investigation pursuant to Section 602 of that act.

Chapter 82 Section 608 Laws 2009

Section 608. UNIFORMITY AND COOPERATION WITH OTHER AGENCIES.--

A. The director may, in the director's discretion, cooperate, coordinate, consult and, subject to Section 607 of the New Mexico Uniform Securities Act, share records and information with the securities regulator of another state, Canada, a Canadian province or territory, a foreign jurisdiction, the securities and exchange commission, the United States department of justice, the commodity futures trading commission, the federal trade commission, the securities investor protection corporation, a self-regulatory organization, a national or international organization of securities regulators, a federal or state banking and insurance regulator and a governmental law enforcement agency to effectuate greater uniformity in securities

matters among the federal government, self-regulatory organizations, states and foreign governments.

B. In cooperating, coordinating, consulting and sharing records and information pursuant to this section and in acting by rule, order or waiver pursuant to the New Mexico Uniform Securities Act, the director shall, in the director's discretion, take into consideration in carrying out the public interest the following general policies:

(1) maximizing effectiveness of regulation for the protection of investors;

(2) maximizing uniformity in federal and state regulatory standards;
and

(3) minimizing burdens on the business of capital formation, without adversely affecting essentials of investor protection.

C. The cooperation, coordination, consultation and sharing of records and information authorized by this section includes:

(1) establishing or employing one or more designees as a central depository for registration and notice filings pursuant to the New Mexico Uniform Securities Act and for records required or allowed to be maintained pursuant to that act;

(2) developing and maintaining uniform forms;

(3) conducting a joint examination or investigation;

(4) holding a joint administrative hearing;

(5) instituting and prosecuting a joint civil or administrative proceeding;

(6) sharing and exchanging personnel;

(7) coordinating registrations pursuant to Sections 301 and 401 through 404 of the New Mexico Uniform Securities Act and exemptions pursuant to Section 203 of that act;

(8) sharing and exchanging records, subject to Section 607 of the New Mexico Uniform Securities Act;

(9) formulating rules, statements of policy, guidelines, forms and interpretative opinions and releases;

(10) formulating common systems and procedures;

(11) notifying the public of proposed rules, forms, statements of policy and guidelines;

(12) attending conferences and other meetings among securities regulators, which may include representatives of governmental and private sector organizations involved in capital formation, deemed necessary or appropriate to promote or achieve uniformity; and

(13) developing and maintaining a uniform exemption from registration for small issuers and taking other steps to reduce the burden of raising investment capital by small businesses.

Chapter 82 Section 609 Laws 2009

Section 609. JUDICIAL REVIEW.--

A. A final order issued by the director pursuant to the New Mexico Uniform Securities Act is subject to judicial review in accordance with the provisions of Section 39-3-1.1 NMSA 1978.

B. The filing of an appeal pursuant to Subsection A of this section does not, unless specifically ordered by the court, operate as a stay of the director's order or rule, and the director may enforce or ask the court to enforce the order pending the outcome of the review proceedings.

Chapter 82 Section 610 Laws 2009

Section 610. JURISDICTION.--

A. Sections 301 and 302 of the New Mexico Uniform Securities Act, Subsection A of Section 401 of that act, Subsection A of Section 402 of that act, Subsection A of Section 403 of that act, Subsection A of Section 404 of that act and Sections 501, 506, 509 and 510 of that act do not apply to a person that sells or offers to sell a security, unless the offer to sell or the sale is made in New Mexico or the offer to purchase or the purchase is made and accepted in New Mexico.

B. Subsection A of Section 401 of the New Mexico Uniform Securities Act, Subsection A of Section 402 of that act, Subsection A of Section 403 of that act, Subsection A of Section 404 of that act and Sections 501, 506, 509 and 510 of that act do not apply to a person that purchases or offers to purchase a security, unless the offer to purchase or the purchase is made in New Mexico or the offer to sell or the sale is made and accepted in New Mexico.

C. For the purpose of this section, an offer to sell or to purchase a security is made in New Mexico, whether or not either party is then present in New Mexico, if the offer:

(1) originates from within New Mexico; or

(2) is directed by the offeror to a place in New Mexico and received at the place to which it is directed.

D. For the purpose of this section, an offer to purchase or to sell is accepted in New Mexico, whether or not either party is then present in New Mexico, if the acceptance:

(1) is communicated to the offeror in New Mexico and the offeree reasonably believes the offeror to be present in New Mexico and the acceptance is received at the place in New Mexico to which it is directed; and

(2) has not previously been communicated to the offeror, orally or in a record, outside New Mexico.

E. An offer to sell or to purchase is not made in New Mexico when a publisher circulates or there is circulated on the publisher's behalf in New Mexico a bona fide newspaper or other publication of general, regular and paid circulation that is not published in New Mexico, or that is published in New Mexico but has had more than two-thirds of its circulation outside New Mexico during the previous twelve months or when a radio or television program or other electronic communication, except specifically addressed electronic mail or messaging, originating outside New Mexico is received in New Mexico. A radio or television program or other electronic communication is considered as having originated in New Mexico if either the broadcast studio or the originating source of transmission is located in New Mexico, unless:

(1) the program or communication is syndicated and distributed from outside New Mexico for redistribution to the general public in New Mexico;

(2) the program or communication is supplied by a radio, television or other electronic network with the electronic signal originating from outside New Mexico for redistribution to the general public in New Mexico;

(3) the program or communication is an electronic communication that originates outside New Mexico and is captured for redistribution to the general public in New Mexico by a community antenna or cable, radio, cable television or other electronic system; or

(4) the program or communication consists of an electronic communication that originates in New Mexico, but that is not intended for distribution to the general public in New Mexico.

F. Subsection A of Section 403 of the New Mexico Uniform Securities Act, Subsection A of Section 404 of that act, Subsection A of Section 405 of that act and Sections 502, 505 and 506 of that act apply to a person if the person engages in an act,

practice or course of business instrumental in effecting prohibited or actionable conduct in New Mexico, whether or not either party is then present in New Mexico.

Chapter 82 Section 611 Laws 2009

Section 611. SERVICE OF PROCESS.--

A. A consent to service of process complying with this section shall be signed and filed in the form required by a rule or order pursuant to the New Mexico Uniform Securities Act. A consent appointing the director as the person's agent for service of process in a noncriminal action or proceeding against the person, or the person's successor or personal representative pursuant to the New Mexico Uniform Securities Act or a rule adopted or order issued pursuant to that act after the consent is filed, has the same force and validity as if the service were made personally on the person filing the consent. A person that has filed a consent complying with this subsection in connection with a previous application for registration or notice filing need not file an additional consent.

B. If a person, including a nonresident of New Mexico, engages in an act, practice or course of business prohibited or made actionable by the New Mexico Uniform Securities Act or a rule adopted or order issued pursuant to that act and the person has not filed a consent to service of process pursuant to Subsection A of this section, the act, practice or course of business constitutes the appointment of the director as the person's agent for service of process in a noncriminal action or proceeding against the person or the person's successor or personal representative.

C. Service pursuant to Subsection A or B of this section may be made by providing a copy of the process to the office of the director, but it is not effective unless:

(1) the plaintiff, which may be the director, promptly sends notice of the service and a copy of the process, return receipt requested, to the defendant or respondent at the address set forth in the consent to service of process or, if a consent to service of process has not been filed, at the last known address, or takes other reasonable steps to give notice; and

(2) the plaintiff files an affidavit of compliance with this subsection in the action or proceeding on or before the return day of the process, if any, or within the time that the court, or the director in a proceeding before the director, allows.

D. Service pursuant to Subsection C of this section may be used in a proceeding before the director or by the director in a civil action in which the director is the moving party.

E. If process is served pursuant to Subsection C of this section, the court, or the director in a proceeding before the director, shall order continuances as are

necessary or appropriate to afford the defendant or respondent reasonable opportunity to defend.

Chapter 82 Section 612 Laws 2009

Section 612. 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.

Article 7
TRANSITION

Chapter 82 Section 701 Laws 2009

Section 701. APPLICATION OF ACT TO EXISTING PROCEEDINGS AND EXISTING RIGHTS AND DUTIES.--

A. The predecessor act exclusively governs all actions or proceedings that are pending on the effective date of the New Mexico Uniform Securities Act or may be instituted on the basis of conduct occurring before the effective date of the New Mexico Uniform Securities Act, but a civil action shall not be maintained to enforce any liability pursuant to the predecessor act unless instituted within any period of limitation that applied when the cause of action accrued or within five years after the effective date of the New Mexico Uniform Securities Act, whichever is earlier.

B. All effective registrations pursuant to the predecessor act, all administrative orders relating to the registrations, rules, statements of policy, interpretative opinions, declaratory rulings, no action determinations and conditions imposed on the registrations pursuant to the predecessor act remain in effect while they would have remained in effect if the New Mexico Uniform Securities Act had not been enacted. They are considered to have been filed, issued or imposed pursuant to the New Mexico Uniform Securities Act, but are exclusively governed by the predecessor act.

C. The predecessor act exclusively applies to an offer or sale made within one year after the effective date of the New Mexico Uniform Securities Act pursuant to an offering made in good faith before the effective date of the New Mexico Uniform Securities Act on the basis of an exemption available pursuant to the predecessor act.

Chapter 82 Section 702 Laws 2009

Section 702. TEMPORARY PROVISION--TRANSFER OF FUNDS.--On the effective date of this act, all money in the securities education and training fund shall be transferred to the securities enforcement and investor education fund.

Chapter 82 Section 703 Laws 2009

Section 703. REPEAL.--Sections 58-13B-1 through 58-13B-57 NMSA 1978 (being Laws 1986, Chapter 7, Sections 1 through 56, and Laws 1989, Chapter 176, Section 9, as amended) are repealed.

Chapter 82 Section 704 Laws 2009

Section 704. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 2010.

Senate Bill 362, aa

Approved April 3, 2009

LAWS 2009, CHAPTER 83

AN ACT

RELATING TO HEALTH; CREATING THE OFFICE OF THE GOVERNOR'S COUNCIL ON WOMEN'S HEALTH; PROVIDING THE POWERS AND DUTIES OF THE OFFICE OF THE GOVERNOR'S COUNCIL ON WOMEN'S HEALTH.

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

Chapter 83 Section 1 Laws 2009

Section 1. A new section of Chapter 28, Article 3 NMSA 1978 is enacted to read:

"OFFICE OF THE GOVERNOR'S COUNCIL ON WOMEN'S HEALTH
CREATED.--

A. The "office of the governor's council on women's health" is created and is administratively attached to the commission on the status of women.

B. The office of the governor's council on women's health shall:

(1) serve as a clearinghouse for education and information on women's health;

(2) recommend performance measures and outcomes specific to women's health;

(3) report annually by September 1 to the governor on women's health policy issues;

(4) assist in developing policy to improve women's health and well-being, including policies that explain and explore the links between women's health and economic security; and

(5) assist state agencies, including the department of health, to improve access to health care for women.

C. The governor shall appoint the director of the office of the governor's council on women's health, who shall serve at the pleasure of the governor.

D. The governor shall appoint advisors to the office of the governor's council on women's health to represent the geographic diversity of the state as follows:

(1) one representative from each of the following:

(a) the commission on the status of women;

(b) the department of health;

(c) the New Mexico health policy commission;

(d) the children, youth and families department;

(e) the human services department;

(f) the Indian affairs department;

(g) the veterans' services department; and

(h) the office on African American affairs;

(2) one representative of providers of women's health services;

(3) two representatives from rural counties; and

(4) four representatives of advocacy, community or consumer groups.

E. Advisors to the office of the governor's council on women's health shall serve at the pleasure of the governor, shall meet at least four times per year and shall serve for two-year terms.

F. For purposes of conducting business, a majority of the advisors to the office of the governor's council on women's health shall constitute a quorum.

G. The advisors to the office of the governor's council on women's health may organize statewide meetings and focus groups to involve members of the public further in improving women's health and to identify emerging issues around women's health care delivery and services."

Senate Bill 210, aa

Approved April 3, 2009

LAWS 2009, CHAPTER 84

AN ACT

RELATING TO DOMESTIC VIOLENCE SHELTERS; CLARIFYING THAT REQUIRING A LAW ENFORCEMENT OFFICER TO SHOW A VALID SEARCH WARRANT BEFORE ALLOWING ENTRANCE INTO A DOMESTIC VIOLENCE SHELTER DOES NOT CONSTITUTE THE CRIME OF RESISTING OR OBSTRUCTING AN OFFICER OR HARBORING A FELON.

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

Chapter 84 Section 1 Laws 2009

Section 1. ENTRY INTO DOMESTIC VIOLENCE SAFE HOUSE OR SHELTER--
SEARCH WARRANT.--

A. It is not a violation of Section 30-22-1 or Section 30-22-4 NMSA 1978 for a person who is a member, resident, employee or volunteer of or is otherwise associated with a domestic violence safe house or shelter to request that a law enforcement officer show a valid search warrant before allowing the officer to enter the domestic violence safe house or shelter. Nothing in this section shall prevent a law enforcement officer from executing a valid search warrant.

B. Prior to attempting to serve an arrest warrant within a domestic violence safe house or shelter, a law enforcement officer shall obtain a valid search warrant, unless exigent circumstances exist necessitating immediate entry.

Senate Bill 279, aa

Approved April 3, 2009

LAWS 2009, CHAPTER 85

AN ACT

RELATING TO MOTOR VEHICLES; ENACTING A NEW SECTION OF THE MOTOR VEHICLE CODE TO PROVIDE FOR SPECIAL BASS FISHING REGISTRATION PLATES; MAKING AN APPROPRIATION.

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

Chapter 85 Section 1 Laws 2009

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

"SPECIAL BASS FISHING REGISTRATION PLATES--PROCEDURES--FEE.--

A. The department shall establish and issue a standardized special registration plate with a logo specified in Section 66-3-424 NMSA 1978 featuring bass fishing for any private motor vehicle except a motorcycle. The department shall adopt procedures for application for and issuance of the special bass fishing registration plates.

B. The director of the department of game and fish shall designate a "bass fishing" logo design committee that includes a bass fishing federation representative and that shall determine the design of the special wildlife artwork logo. No personalized or vanity design variation of the special bass fishing registration plates shall be issued.

C. For a fee of twenty-five dollars (\$25.00), which shall be in addition to the regular motor vehicle registration fees, an owner of a motor vehicle may apply for the issuance of a special bass fishing registration plate. The owner of a motor vehicle shall apply for the plate and pay the twenty-five-dollar (\$25.00) fee for the first year and ten dollars (\$10.00) for each subsequent year if the owner wishes to retain and renew the special bass fishing registration plate.

D. The revenue from the additional fee for a special bass fishing registration plate shall be distributed as follows:

(1) ten dollars (\$10.00) of the initial fee collected shall be retained by the division and is appropriated to the division to defray the cost of making and issuing special registration plates for bass fishing; and

(2) fifteen dollars (\$15.00) of the initial fee and the entire renewal fee collected shall be distributed to the bass habitat management program of the game protection fund."

Chapter 85 Section 2 Laws 2009

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2010.

House Bill 645, aa

Approved April 6, 2009

LAWS 2009, CHAPTER 86

AN ACT

RELATING TO REGISTRATION PLATES; CREATING A SPECIAL REGISTRATION PLATE FOR RETIRED LAW ENFORCEMENT OFFICERS.

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

Chapter 86 Section 1 Laws 2009

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

"STANDARDIZED SPECIAL REGISTRATION PLATE FOR RETIRED NEW MEXICO LAW ENFORCEMENT OFFICERS.--

A. The division shall issue a standardized special registration plate with a logo specified in Section 66-3-424 NMSA 1978 indicating that the recipient is a person who is a retired New Mexico law enforcement officer upon submission by the person of proof satisfactory to the division that the person is a retired New Mexico law enforcement officer. The proof shall include the submission of a retirement commission from a New Mexico law enforcement agency.

B. A person shall not make any representation as being a retired New Mexico law enforcement officer if that person is, in fact, not a retired New Mexico law enforcement officer. The secretary shall determine what constitutes satisfactory proof that a person is a retired New Mexico law enforcement officer.

C. A person who violates the provisions of Subsection B of this section is guilty of a petty misdemeanor and shall be sentenced pursuant to Section 31-19-1 NMSA 1978.

D. A fee of twenty-five dollars (\$25.00), which is in addition to the regular motor vehicle registration fee, shall be collected by the division for the original issuance of the special registration plate for retired New Mexico law enforcement officers.

E. Ten dollars (\$10.00) of the fee collected pursuant to Subsection D of this section shall be retained by the division and is appropriated to the division to defray the cost of making and issuing special registration plates for retired New Mexico law enforcement officers. The remaining fifteen dollars (\$15.00) shall be deposited in the motor vehicle suspense fund for distribution pursuant to Section 66-6-23 NMSA 1978.

F. The secretary shall approve the final logo design for the special registration plate for retired New Mexico law enforcement officers. The logo shall be clearly marked as "retired New Mexico law enforcement officer" for issuance to retired New Mexico law enforcement officers."

Chapter 86 Section 2 Laws 2009

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2010.

House Bill 801, aa

Approved April 6, 2009

LAWS 2009, CHAPTER 87

AN ACT

RELATING TO SPECIAL REGISTRATION PLATES; PROVIDING FOR THE ISSUANCE OF REGISTRATION PLATES FOR SUPPORT OF 4-H; MAKING AN APPROPRIATION.

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

Chapter 87 Section 1 Laws 2009

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

"SPECIAL NEW MEXICO STATE 4-H REGISTRATION PLATE.--

A. The division shall issue a standardized special registration plate with a logo specified in Section 66-3-424 NMSA 1978 indicating support for 4-H.

B. For a fee of thirty-five dollars (\$35.00), which shall be in addition to the regular motor vehicle registration fees, the owner of a vehicle may apply for issuance of a special 4-H registration plate. The owner shall apply and pay the fee each year to retain and renew the special 4-H registration plate.

C. Revenue from the additional fee for a special 4-H registration plate shall be distributed as follows:

(1) ten dollars (\$10.00) of the additional fee collected shall be retained by and is appropriated to the department to defray the cost of making and issuing the special registration plate with the 4-H logo; and

(2) twenty-five dollars (\$25.00) of the additional fee shall be distributed to and is appropriated to the board of regents of New Mexico state university for the New Mexico state 4-H office and for 4-H youth programs in the state.

D. The 4-H logo shall be in accordance with federal laws or regulations of the United States department of agriculture."

Chapter 87 Section 2 Laws 2009

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2010.

House Bill 772, aa

Approved April 6, 2009

LAWS 2009, CHAPTER 88

AN ACT

RELATING TO MOTOR VEHICLES; PROVIDING FOR SPECIAL REGISTRATION PLATES FOR SURVIVING SPOUSES OR PARENTS OF SERVICE MEMBERS KILLED IN AN ARMED CONFLICT WITH AN ENEMY OF THE UNITED STATES; REQUIRING SUBMISSION OF PROOF; PROVIDING A PENALTY.

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

Chapter 88 Section 1 Laws 2009

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

"REGISTRATION PLATES--GOLD STAR FAMILIES--SUBMISSION OF PROOF--PENALTY.--

A. Except as provided in Subsection B of this section, the division shall issue distinctive registration plates to the surviving mother, father, stepparent or spouse of a service member killed in an armed conflict with an enemy of the United States upon the submission by the person of proof satisfactory to the division that the person's son, daughter, stepchild or spouse was a service member killed in an armed conflict with an enemy of the United States.

B. For each family of a service member described in Subsection A of this section, the division shall issue special registration plates for no more than four vehicles.

C. No fee, including the regular registration fee applicable to the passenger motor vehicle, if any, shall be collected for issuance of the first special registration plate issued to the mother or spouse of a service member described in Subsection A of this section. No fee other than the regular registration fee applicable to the passenger motor vehicle, if any, shall be collected for issuance of the three additional special registration plates issued to the family of a service member described in Subsection A of this section.

D. The special registration plate issued pursuant to this section shall be known as the "gold star families" special registration plate.

E. The division, with the advice and consultation of the gold star mothers, shall determine the color and design of the gold star families registration plate and provide for its issuance.

F. No person shall falsely claim to be a surviving mother, father, stepparent or spouse of a service member killed in an armed conflict with an enemy of the United States so as to be eligible to be issued special registration plates pursuant to this section.

G. Any person who violates the provisions of Subsection F of this section is guilty of a misdemeanor."

House Bill 164, aa

Approved April 6, 2009

LAWS 2009, CHAPTER 89

AN ACT

RELATING TO MOTOR VEHICLES; ENACTING A NEW SECTION OF CHAPTER 66, ARTICLE 3 NMSA 1978 TO PROVIDE FOR A COMMEMORATIVE SCOUTING REGISTRATION PLATE.

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

Chapter 89 Section 1 Laws 2009

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

"SPECIAL COMMEMORATIVE SCOUTING REGISTRATION PLATE--
PROCEDURES--FEE.--

A. The division shall develop, establish and issue a special commemorative scouting registration plate celebrating the centennial of the boy scouts of America in consultation with the boy scouts of America and in accordance with the provisions of this section and shall adopt and promulgate rules and procedures for application for and issuance of the special commemorative scouting registration plate.

B. For a fee of ten dollars (\$10.00), which fee shall be in addition to the regular motor vehicle registration fees, any owner of a motor vehicle may apply for the issuance of a special commemorative scouting registration plate. The owner of a motor vehicle shall apply and pay a fee for a special commemorative scouting registration plate each year that the owner wishes to retain and renew the plate.

C. The revenue from the special commemorative scouting registration plates shall be distributed so that ten dollars (\$10.00) of the fee collected for each registration plate shall be retained by and is appropriated to the division for the manufacture and issuance of the special commemorative scouting registration plate."

House Bill 671, aa

Approved April 6, 2009

LAWS 2009, CHAPTER 90

AN ACT

RELATING TO MOTOR VEHICLES; AUTHORIZING SPECIAL FARM AND RANCH COMMUNITY REGISTRATION PLATES; MAKING AN APPROPRIATION.

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

Chapter 90 Section 1 Laws 2009

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

"SPECIAL FARM AND RANCH COMMUNITY REGISTRATION PLATE.--

A. The department shall issue a standardized special registration plate with a logo as specified in Section 66-3-424 NMSA 1978 indicating support for the New Mexico farm and ranch community.

B. For a fee of thirty-five dollars (\$35.00), which is in addition to the regular motor vehicle registration fees, the owner of a vehicle may apply for issuance of a special farm and ranch community registration plate. The owner shall apply for and pay the fee each year to retain and renew the special farm and ranch community registration plate.

C. The revenue from the additional fee for the special farm and ranch community registration plate shall be distributed as follows:

(1) ten dollars (\$10.00) of the additional fee shall be retained by and is appropriated to the department to defray the cost of making and issuing the special farm and ranch community registration plate; and

(2) twenty-five dollars (\$25.00) of the additional fee collected shall be distributed to and is appropriated to the farm and ranch heritage museum for educational programs."

Chapter 90 Section 2 Laws 2009

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2010.

House Bill 567, aa

Approved April 6, 2009

LAWS 2009, CHAPTER 91

AN ACT

RELATING TO HIGHER EDUCATION; CHANGING THE DISTRIBUTION OF THE HIGHER EDUCATION ENDOWMENT FUND.

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

Chapter 91 Section 1 Laws 2009

Section 1. Section 21-1-27.1 NMSA 1978 (being Laws 2002, Chapter 31, Section 1, as amended) is amended to read:

"21-1-27.1. HIGHER EDUCATION ENDOWMENT FUND CREATED.--

A. The "higher education endowment fund" is created in the state treasury. The fund shall consist of appropriations, income from investment of the fund, gifts, grants, donations and bequests.

B. The higher education endowment fund shall be administered by the higher education department. Money shall be disbursed only on warrant of the secretary of finance and administration upon voucher signed by the secretary of higher education or the secretary's authorized representative.

C. Money shall be disbursed from the higher education endowment fund only to establish endowments at public post-secondary educational institutions as provided in this section. An institution shall not receive a disbursement for an endowment until that institution has notified the department that it has received matching funds for the endowment from other than governmental sources in the amount specified in this section.

D. Money in the higher education endowment fund is appropriated to the department to be disbursed for endowment purposes, including endowed chairs, lectureships, professorships, scholarships for students, graduate assistantships and faculty development programs that will enhance the quality of public post-secondary education in New Mexico. The department, by rule, shall establish procedures for disbursing money from the fund. Not less than five percent of each institution's total endowment effort resulting from amounts specified in this section shall address one or more of the governor's initiatives.

E. Appropriations to the higher education endowment fund shall be disbursed to public post-secondary educational institutions based on the following distribution proportions and matching requirements:

(1) the university of New Mexico shall be entitled to draw eighteen percent of each appropriation and New Mexico state university and the New Mexico institute of mining and technology shall each be entitled to draw sixteen percent of each appropriation; provided that no disbursement shall be made pursuant to this paragraph until an institution has shown to the satisfaction of the department that it has received matching funds in an amount equal to at least fifty percent of the disbursement;

(2) the university of New Mexico health sciences center shall be entitled to draw twelve percent of each appropriation; provided that no disbursement shall be made pursuant to this paragraph until the center has shown to the satisfaction of the department that it has received matching funds in an amount equal to at least fifty percent of the disbursement;

(3) New Mexico highlands university, eastern New Mexico university, western New Mexico university and northern New Mexico college shall each draw an equal share of a total of eighteen percent of each appropriation; provided that no disbursement shall be made pursuant to this paragraph until an institution has shown to the satisfaction of the department that it has received matching funds in an amount equal to at least forty percent of the disbursement; and

(4) the New Mexico military institute, independent community colleges, branch community colleges and technical and vocational institutes may draw a share of a total of twenty percent of each appropriation using a distribution formula approved by the higher education department; provided that no disbursement shall be made pursuant to this paragraph until an institution has shown to the satisfaction of the department that it has received matching funds in an amount equal to at least thirty percent of the disbursement.

F. Distributions from the higher education endowment fund are made over a three-year cycle with unmatched balances reverting to the general fund at the end of the third fiscal year. The department shall notify each eligible institution of the specific amount it may match during the first two fiscal years of each three-year cycle. Allocations not matched during the first two years of each cycle are made available for supplemental or second round matching by other eligible public post-secondary educational institutions during the third fiscal year. Four-year public post-secondary educational institutions may apply for supplemental matches to amounts originally designated for other four-year institutions. Two-year public post-secondary educational institutions may apply for supplemental matches to amounts originally designated for other two-year institutions. Successful submissions for supplemental matches shall be determined by the department in a manner that affords equitable participation over time based on guidelines for supplemental distributions from the fund.

G. The endowment funds of the institutions shall not be expended but shall be invested by the institutions in accordance with the prudent investor rule and in accordance with the provisions of Section 21-1-38 NMSA 1978. The income from the investments shall be used by the institutions to provide funding for chairs, lectureships, professorships, scholarships for students, graduate assistantships and faculty development programs, including paying all or a portion of the salary of the faculty member or the expenses necessary to support associated academic activities.

H. The department shall report annually to the legislative finance committee on disbursements made pursuant to this section. The report shall include the

amounts disbursed to each institution, the amount of matching funds and their source and the purpose of the endowments."

Chapter 91 Section 2 Laws 2009

Section 2. APPLICABILITY.--The provisions of Section 1 of this act apply to appropriations and distributions for fiscal year 2010 and subsequent fiscal years.

Chapter 91 Section 3 Laws 2009

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.

House Bill 766

Approved April 6, 2009

LAWS 2009, CHAPTER 92

AN ACT

RELATING TO SCHOOL TRANSPORTATION; PROVIDING FOR LIENS ON CONTRACTOR-OWNED SCHOOL BUSES; LIMITING A SCHOOL BUS CONTRACTOR'S ABILITY TO ENCUMBER SCHOOL BUSES; CLARIFYING THAT CONTRACT TERMINATION INCLUDES NONRENEWAL.

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

Chapter 92 Section 1 Laws 2009

Section 1. Section 22-8-27 NMSA 1978 (being Laws 1967, Chapter 16, Section 77, as amended) is amended to read:

"22-8-27. TRANSPORTATION EQUIPMENT.--

A. The department shall establish a systematic program for the purchase of necessary school bus transportation equipment.

B. In establishing a system for the replacement of school-district-owned buses, the department shall provide for the replacement of school buses on a twelve-year cycle. School districts requiring additional buses to accommodate growth in the school district or to meet other special needs may petition the department for additional buses. Under exceptional circumstances, school districts may also petition the

department for permission to replace buses prior to the completion of a twelve-year cycle or to use buses in excess of twelve years contingent upon satisfactory annual safety inspections.

C. In establishing a system for the use of contractor-owned buses by school districts or state-chartered charter schools, the department shall establish a schedule for the payment of rental fees for the use of contractor-owned buses. The department shall establish procedures to ensure the systematic replacement of buses on a twelve-year replacement cycle. School districts requiring additional buses to accommodate growth in the school district or to meet other special needs may petition the department for additional buses. Under exceptional circumstances, school districts may also petition the department for permission to replace buses prior to the completion of a twelve-year cycle or to use buses in excess of twelve years contingent upon satisfactory annual safety inspections.

D. The school district shall file a lien on every contractor-owned school bus under the contract on which the contractor owes money, which lien shall have priority second only to a lien securing the purchase-money obligation. The school district shall perfect its lien on each contractor-owned school bus by filing the lien with the motor vehicle division of the taxation and revenue department. The lien shall be recorded on the title of the school bus. A school bus contractor shall not refinance or use a school bus on which a school district has a lien as collateral for any other loan without prior written permission of the department. A school bus lien shall be collected and enforced as provided in Chapter 55, Article 9 NMSA 1978. The school district shall release its lien on a school bus:

(1) when the department authorizes a replacement of the school bus; or

(2) when the contractor has reimbursed the school district the amount calculated pursuant to Subsection E of this section if the school bus service contract is terminated or not renewed and the contractor owes the school district as provided in that subsection.

E. No school district shall pay rental fees for any one bus for a period in excess of five years. In the event a school bus service contract is terminated or not renewed by either party, the department shall calculate the remaining number of years that a bus could be used based on a twelve-year replacement cycle and calculate a value reflecting that use. The school district shall deduct an amount equal to that value from any remaining amount due on the contract, or if no balance remains on the contract, the contractor shall reimburse the school district an amount equal to the value calculated.

F. If the school district fails to take action to collect money owed to it when a school bus contract is terminated or not renewed, the department may deduct the amount from the school district's transportation distribution."

Chapter 92 Section 2 Laws 2009

Section 2. Section 22-16-3 NMSA 1978 (being Laws 1967, Chapter 16, Section 221, as amended) is amended to read:

"22-16-3. SCHOOL BUS SERVICE CONTRACTS.--

A. A school district may provide transportation services to students through the use of school bus service contracts. School districts may enter into school bus service contracts with individual school bus owner-operators or with school bus fleet owners or with both. A school district shall not enter into any school bus fleet service contract with any person who is simultaneously employed by that school district as an individual school bus owner-operator.

B. All contracts entered into by a school district to provide school bus service to students attending public school within the school district shall be approved by the local school board. The contracts shall be in writing on forms approved by the department and the department shall require documentation that the school district has filed a lien on each school bus as provided in Section 22-8-27 NMSA 1978.

C. In addition to approving the form of the contract, the department shall, by rule, establish the parameters of school bus service contracts to include recognition of fuel costs, operation and maintenance costs and employee salary and benefits costs. In entering into school bus service contracts, school districts shall give preference to in-state service providers and the use of multiple providers. Upon request, the department shall provide assistance to local school districts in the negotiation and award of school bus service contracts.

D. A school district may enter into a school bus service contract for a term not to exceed five years. A school bus service contract may provide, at the expiration of the term of the contract, for annual renewal of the school bus service contract on the same terms and conditions at the option of the local school board.

E. In the event a contract with a school bus operator is terminated or not renewed by either party, the buses owned by the operator that are used pursuant to the operator's school bus service contract shall be appraised by three qualified appraisers appointed by the local school board and approved by the state transportation director. The operator succeeding to the contract shall purchase, with the approval of the operator whose contract was terminated, all of the buses owned by the former operator at their appraised value."

Chapter 92 Section 3 Laws 2009

Section 3. APPLICABILITY.--This act applies to contracts, including contract renewals, entered into on or after June 19, 2009.

HJC/House Bill 485

Approved April 6, 2009

LAWS 2009, CHAPTER 93

AN ACT

RELATING TO PUBLIC SCHOOL FINANCE; INCREASING THE NUMBER OF SCHOOL DISTRICT ATHLETIC ACTIVITIES IN WHICH A HOME SCHOOL STUDENT MAY PARTICIPATE.

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

Chapter 93 Section 1 Laws 2009

Section 1. Section 22-8-23.8 NMSA 1978 (being Laws 2007, Chapter 365, Section 2) is amended to read:

"22-8-23.8. HOME SCHOOL STUDENT ACTIVITIES PROGRAM UNIT.--The home school student activities program unit for a school district is determined by multiplying the number of home school students who are participating in school district activities governed by the New Mexico activities association by the cost differential factor of 0.1. The home school student activities program unit shall be paid to the school district in which it is generated. A home school student is eligible to participate in up to three school district athletic activities at the public school in the attendance zone in which the student resides, according to the New Mexico activities association guidelines. The school district shall verify each home school student's academic eligibility to participate in school district athletic activities."

House Bill 704, aa

Approved April 6, 2009

LAWS 2009, CHAPTER 94

AN ACT

RELATING TO LAND GRANTS; ENACTING THE LAND GRANT SUPPORT ACT; ESTABLISHING A LAND GRANT COUNCIL; PROVIDING FOR POWERS AND DUTIES; CHANGING THE USE OF A PRIOR APPROPRIATION.

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

Chapter 94 Section 1 Laws 2009

Section 1. SHORT TITLE.--This act may be cited as the "Land Grant Support Act".

Chapter 94 Section 2 Laws 2009

Section 2. DEFINITIONS.--As used in the Land Grant Support Act:

A. "council" means the land grant council; and

B. "land grant" means a patented community land grant-merced organized and operating as a political subdivision of the state.

Chapter 94 Section 3 Laws 2009

Section 3. LAND GRANT COUNCIL--PURPOSE.--

A. The "land grant council" is created and is administratively attached to the department of finance and administration. The general purposes of the council are to establish a land grant support program to provide advice and assistance to land grants and to serve as a liaison between land grants and the federal, state and local governments.

B. The council shall consist of five members appointed by the governor from the boards of directors of land grants for staggered terms of four years, with two members of the initial council selected by lot to serve an initial term of two years.

C. The council may hire staff and contract for services to carry out the purposes of the Land Grant Support Act.

D. The council shall appoint a chairperson and may appoint such other officers as it deems necessary.

E. The council shall meet at least quarterly. Meetings of the council shall be called by the chairperson of the council or at the request of at least three members of the council.

F. Members of the council are entitled to receive per diem and mileage in accordance with the provisions of the Per Diem and Mileage Act.

Chapter 94 Section 4 Laws 2009

Section 4. LAND GRANT SUPPORT PROGRAM--COUNCIL DIRECTOR POWERS AND DUTIES.--

A. The council, through its staff or contract agents, may apply for and accept any public or private grants, gifts or donations for the benefit of the land grant support program, the council or land grants in general or particular.

B. The council, through its staff or contract agents, may:

(1) assist land grants in all areas of land grant fiscal and programmatic management, including planning, economic development and infrastructure development;

(2) establish cooperative purchasing capabilities for land grants;

(3) perform special studies and undertake surveys of interest to land grants and report the findings;

(4) serve as fiscal agent and administrator for federal and state grants-in-aid and other funding for a land grant when necessary;

(5) facilitate or enter into agreements with state and federal agencies on behalf of land grants;

(6) enter into contracts to carry out the purposes of the Land Grant Support Act; and

(7) provide other assistance to land grants.

C. The council, through its staff or contract agents, shall:

(1) facilitate the exchange of experience and advice among land grants;

(2) serve as a liaison between land grants and federal, state and local agencies;

(3) promote cooperation between land grants and, by consultation and advice, assist in the coordination of land grant programs;

(4) provide board development opportunities and technical assistance to the governing boards of land grants;

(5) provide short- and long-range planning assistance to land grants;

(6) conduct training sessions for land grants on topics of interest, such as:

(a) local, state and national zoning trends and concerns and other land-use issues;

(b) state requirements for political subdivisions on such topics as open meetings, public records, procurement, risk management, tort claims and financial accountability;

(c) techniques of historical research;

(d) grant writing;

(e) economic development strategies; and

(f) rangeland management and water conservation;

(7) disseminate information to relevant federal, state and local agencies on land grant issues and activities and, when requested, on the status of individual land grants;

(8) develop and promote federal legislation for an appropriate congressional response to longstanding community land grant claims in New Mexico; and

(9) review state and federal policies, plans and legislation affecting land grants in New Mexico.

Chapter 94 Section 5 Laws 2009

Section 5. REPORT TO GOVERNOR AND LEGISLATURE.--The council shall report to the governor and the legislature by December 1 of each year on the state of land grants in New Mexico and the activities of the council for that year.

Chapter 94 Section 6 Laws 2009

Section 6. CHANGE OF USE OF PRIOR APPROPRIATION.--The unexpended balance of the general fund appropriation to the department of finance and administration in Subsection 8 of Section 50 of Chapter 92 of Laws 2008 for land grant facilities and infrastructure projects related to water, wastewater, communications and roads statewide shall not be expended for the original purpose but is appropriated to the following agencies in the following amounts for expenditure in fiscal years 2009 through 2011 for the following purposes:

A. to the department of finance and administration, fifty thousand dollars (\$50,000) to provide technical assistance to land grants; and

B. to the land grant council, one hundred fifty thousand dollars (\$150,000) to carry out the duties imposed by and the purposes of the Land Grant Support Act.

H AFC/House Bill 85

Approved April 6, 2009

LAWS 2009, CHAPTER 95

AN ACT

RELATING TO IDENTITY SECURITY; REQUIRING POLICE REPORTS; PROVIDING FOR IDENTITY THEFT PASSPORTS; ALLOWING FOR REMOVAL OF A FALSE IDENTITY IN CRIMINAL RECORDS; EXTENDING THE TIME LIMIT FOR PROSECUTION OF CERTAIN CRIMES; CLARIFYING DEFINITIONS.

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

Chapter 95 Section 1 Laws 2009

Section 1. A new section of Chapter 29 NMSA 1978 is enacted to read:

"IDENTITY THEFT REPORTS.--When a law enforcement officer interviews an alleged identity theft victim, the law enforcement officer shall make a written report of the information provided by the victim and by witnesses on appropriate forms provided by the attorney general. A copy of the police report shall be filed with the office of the attorney general."

Chapter 95 Section 2 Laws 2009

Section 2. Section 30-1-8 NMSA 1978 (being Laws 1963, Chapter 303, Section 30-1-8, as amended) is amended to read:

"30-1-8. TIME LIMITATIONS FOR COMMENCING PROSECUTION.--A person shall not be prosecuted, tried or punished in any court of this state unless the indictment is found or information or complaint is filed within the time as provided:

A. for a second degree felony, within six years from the time the crime was committed;

B. for a third or fourth degree felony, within five years from the time the crime was committed;

C. for a misdemeanor, within two years from the time the crime was committed;

D. for a petty misdemeanor, within one year from the time the crime was committed;

E. for any crime against or violation of Section 51-1-38 NMSA 1978, within three years from the time the crime was committed;

F. for a felony pursuant to Section 7-1-71.3, 7-1-72 or 7-1-73 NMSA 1978, within five years from the time the crime was committed; provided that for a series of crimes involving multiple filing periods within one calendar year, the limitation shall begin to run on December 31 of the year in which the crimes occurred;

G. for an identity theft crime pursuant to Section 30-16-24.1 NMSA 1978, within five years from the time the crime was discovered;

H. for any crime not contained in the Criminal Code or where a limitation is not otherwise provided for, within three years from the time the crime was committed; and

I. for a capital felony or a first degree violent felony, no limitation period shall exist and prosecution for these crimes may commence at any time after the occurrence of the crime."

Chapter 95 Section 3 Laws 2009

Section 3. Section 30-16-24.1 NMSA 1978 (being Laws 2001, Chapter 138, Section 1, as amended) is amended to read:

"30-16-24.1. THEFT OF IDENTITY--OBTAINING IDENTITY BY ELECTRONIC FRAUD.--

A. Theft of identity consists of willfully obtaining, recording or transferring personal identifying information of another person without the authorization or consent of that person and with the intent to defraud that person or another or with the intent to sell or distribute the information to another for an illegal purpose.

B. Obtaining identity by electronic fraud consists of knowingly and willfully soliciting, requesting or taking any action by means of a fraudulent electronic communication with intent to obtain the personal identifying information of another.

C. As used in this section:

(1) "fraudulent electronic communication" means a communication by a person that is an electronic mail message, web site or any other use of the internet that contains fraudulent, false, fictitious or misleading information that depicts or includes the name, logo, web site address, email address, postal address, telephone number or any other identifying information of a business, organization or state agency, to which the person has no legitimate claim of right;

(2) "personal identifying information" means information that alone or in conjunction with other information identifies a person, including the person's name, address, telephone number, driver's license number, social security number, date of birth, biometric data, place of employment, mother's maiden name, demand deposit account number, checking or savings account number, credit card or debit card number, personal identification number, electronic identification code, automated or electronic signature, passwords or any other numbers or information that can be used to obtain access to a person's financial resources, obtain identification, act as identification or obtain goods or services; and

(3) "biometric data" means data, such as finger, voice, retina or iris prints or deoxyribonucleic acid, that capture, represent or enable the reproduction of unique physical attributes of a person.

D. Whoever commits theft of identity is guilty of a fourth degree felony.

E. Whoever commits obtaining identity by electronic fraud is guilty of a fourth degree felony.

F. Prosecution pursuant to this section shall not prevent prosecution pursuant to any other provision of the law when the conduct also constitutes a violation of that other provision.

G. In a prosecution brought pursuant to this section, the theft of identity or obtaining identity by electronic fraud shall be considered to have been committed in the county:

(1) where the person whose identifying information was appropriated, obtained or sought resided at the time of the offense; or

(2) in which any part of the offense took place, regardless of whether the defendant was ever actually present in the county.

H. A person found guilty of theft of identity or of obtaining identity by electronic fraud shall, in addition to any other punishment, be ordered to make restitution for any financial loss sustained by a person injured as the direct result of the offense. In addition to out-of-pocket costs, restitution may include payment for costs, including attorney fees, incurred by that person in clearing the person's credit history, credit rating, criminal history or criminal charges or costs incurred in connection with a

legal proceeding to satisfy a debt, lien, judgment or other obligation of that person arising as a result of the offense.

I. The sentencing court shall issue written findings of fact and may issue orders as are necessary to correct public records and errors in credit reports and identifying information that contain false information as a result of the theft of identity or of obtaining identity by electronic fraud."

Chapter 95 Section 4 Laws 2009

Section 4. IDENTITY THEFT PASSPORT--DATABASE.--

A. The attorney general, in cooperation with the department of public safety and the motor vehicle division of the taxation and revenue department, shall issue an identity theft passport to a person who claims to be a victim of identity theft pursuant to Section 30-16-24.1 NMSA 1978 and who provides to the attorney general:

(1) a certified copy of a court order obtained pursuant to Section 5 of this 2009 act or a full set of fingerprints;

(2) a driver's license or other government-issued identification or record; and

(3) other information as required by the attorney general.

B. An identity theft passport shall contain a picture of the person to whom it was issued and other information as the attorney general deems appropriate.

C. The attorney general may enter into a memorandum of understanding with the motor vehicle division of the taxation and revenue department for the development and issuance of a secure form of identity theft passport. When an identity theft passport is issued, the motor vehicle division shall note on the person's driver record that an identity theft passport has been issued.

D. An identify theft passport shall be accepted as evidence of identity by law enforcement officers and others who may challenge the person's identity.

E. The attorney general shall maintain a database of identity theft victims who have reported to a law enforcement agency or have been issued an identity theft passport. The attorney general may provide access to the database only to criminal justice agencies. For purposes of identification and authentication, the attorney general may allow access to specific information about a person who has become a victim of identity theft to that person or to that person's authorized representative.

F. The attorney general shall keep on file each application for an identity theft passport and each police report of identity theft submitted by a law enforcement agency.

G. The attorney general shall prepare and make available to local law enforcement agencies and to the general public an information packet that includes information on how to prevent and stop identity theft.

Chapter 95 Section 5 Laws 2009

Section 5. EXPUNGEMENT FROM POLICE AND COURT RECORDS.--

A. A person whose name or other identifying information was used, without consent or authorization, by another person who was charged, arrested or convicted of a crime while using that person's name or identification may, with notice to the prosecutor, file a petition in the criminal action, if pending, or if the criminal action is not pending, then in a court of competent jurisdiction, requesting expungement of the petitioner's personal identifying information from the record. If the court finds that the petitioner did not commit the offense with which the petitioner's identity has been associated, the court shall expunge the petitioner's personal identifying information from the record.

B. When a court finds that a petitioner did not commit the offense with which the petitioner's identity has been associated, the court shall order that the petitioner's name and other identifying information contained in the court records be removed and the records labeled to show that, due to identity theft, the information is not accurate and does not reflect the perpetrator's true identity. The court may also order expungement of the innocent party's arrest information pursuant to Section 29-3-8.1 NMSA 1978.

Chapter 95 Section 6 Laws 2009

Section 6. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.

HJC/House Bill 279, w/cc

Approved April 6, 2009

LAWS 2009, CHAPTER 96

AN ACT

RELATING TO BOARDS AND COMMISSIONS; EXTENDING THE SUNSET DATES FOR CERTAIN BOARDS AND COMMISSIONS; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2003.

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

Chapter 96 Section 1 Laws 2009

Section 1. Section 9-15-51 NMSA 1978 (being Laws 2003, Chapter 166, Section 4 and Laws 2003, Chapter 170, Section 4, as amended) is amended to read:

"9-15-51. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The office of military base planning and support and the military base planning commission are terminated on July 1, 2015 pursuant to the provisions of the Sunset Act. The office and the commission shall continue to operate according to the provisions of Sections 9-15-48 through 9-15-51 NMSA 1978 until July 1, 2016. Effective July 1, 2016, Sections 9-15-48 through 9-15-51 NMSA 1978 are repealed."

Chapter 96 Section 2 Laws 2009

Section 2. Section 61-2-18 NMSA 1978 (being Laws 1979, Chapter 12, Section 3, as amended) is amended to read:

"61-2-18. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The board of optometry is terminated on July 1, 2015 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of the Optometry Act until July 1, 2016. Effective July 1, 2016, the Optometry Act is repealed."

Chapter 96 Section 3 Laws 2009

Section 3. Section 61-4-17 NMSA 1978 (being Laws 1979, Chapter 77, Section 2, as amended) is amended to read:

"61-4-17. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The chiropractic board is terminated on July 1, 2015 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of the Chiropractic Physician Practice Act until July 1, 2016. Effective July 1, 2016, the Chiropractic Physician Practice Act is repealed."

Chapter 96 Section 4 Laws 2009

Section 4. Section 61-5A-30 NMSA 1978 (being Laws 1994, Chapter 55, Section 42, as amended by Laws 2003, Chapter 409, Section 20 and by Laws 2003, Chapter 428, Section 4) is amended to read:

"61-5A-30. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The New Mexico board of dental health care is terminated on July 1, 2015 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of the Dental Health Care Act and the Impaired Dentists and Dental Hygienists Act until July 1, 2016. Effective July 1, 2016, the Dental Health Care Act and the Impaired Dentists and Dental Hygienists Act are repealed."

Chapter 96 Section 5 Laws 2009

Section 5. Section 61-8-17 NMSA 1978 (being Laws 1979, Chapter 385, Section 2, as amended) is amended to read:

"61-8-17. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The board of podiatry is terminated on July 1, 2015 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of the Podiatry Act until July 1, 2016. Effective July 1, 2016, the Podiatry Act is repealed."

Chapter 96 Section 6 Laws 2009

Section 6. Section 61-9-19 NMSA 1978 (being Laws 1978, Chapter 188, Section 2, as amended) is amended to read:

"61-9-19. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The New Mexico state board of psychologist examiners is terminated on July 1, 2015 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of the Professional Psychologist Act until July 1, 2016. Effective July 1, 2016, the Professional Psychologist Act is repealed."

Chapter 96 Section 7 Laws 2009

Section 7. Section 61-10-22 NMSA 1978 (being Laws 1979, Chapter 36, Section 2, as amended) is amended to read:

"61-10-22. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The board of osteopathic medical examiners is terminated on July 1, 2015 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of Chapter 61, Article 10 NMSA 1978 until July 1, 2016. Effective July 1, 2016, Chapter 61, Article 10 NMSA 1978 is repealed."

Chapter 96 Section 8 Laws 2009

Section 8. Section 61-11-29 NMSA 1978 (being Laws 1979, Chapter 266, Section 2, as amended) is amended to read:

"61-11-29. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The board of pharmacy is terminated on July 1, 2015 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of the Pharmacy Act until July 1, 2016. Effective July 1, 2016, the Pharmacy Act is repealed."

Chapter 96 Section 9 Laws 2009

Section 9. Section 61-12B-16 NMSA 1978 (being Laws 1984, Chapter 103, Section 17, as amended) is amended to read:

"61-12B-16. TERMINATION OF BOARD--DELAYED REPEAL.--The advisory board of respiratory care practitioners is terminated on July 1, 2015 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of the Respiratory Care Act until July 1, 2016. Effective July 1, 2016, the Respiratory Care Act is repealed."

Chapter 96 Section 10 Laws 2009

Section 10. Section 61-12D-17 NMSA 1978 (being Laws 1997, Chapter 89, Section 17, as amended) is amended to read:

"61-12D-17. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The physical therapy board is terminated on July 1, 2015 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of the Physical Therapy Act until July 1, 2016. Effective July 1, 2016, the Physical Therapy Act is repealed."

Chapter 96 Section 11 Laws 2009

Section 11. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.

House Bill 286, aa

Approved April 6, 2009

LAWS 2009, CHAPTER 97

AN ACT

RELATING TO UNEMPLOYMENT COMPENSATION; AMENDING THE UNEMPLOYMENT COMPENSATION LAW TO INCREASE TEMPORARILY THE WEEKLY BENEFIT AMOUNT.

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

Chapter 97 Section 1 Laws 2009

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

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

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

B. Weekly benefits shall be as follows:

(1) except as provided in Paragraph (2) of this subsection, an individual's "weekly benefit amount" is an amount equal to fifty-three and one-half percent of the average weekly wage for insured work paid to the individual in that quarter of the individual's base period in which total wages were highest. No benefit as so computed may be less than ten percent or more than fifty-three and one-half percent of the state's average weekly wage for all insured work. The state's average weekly wage shall be computed from all wages reported to the department from employing units in accordance with rules of the secretary for the period ending June 30 of each calendar year divided by the total number of covered employees divided by fifty-two, effective for the benefit years commencing on or after the first Sunday of the following calendar year. An individual is not eligible to receive benefits unless the individual has wages in at least two quarters of that individual's base period. For the purposes of this subsection, "total wages" means all remuneration for insured work, including commissions and bonuses and the cash value of all remuneration in a medium other than cash;

(2) from July 1, 2009 through June 30, 2011, an individual's "weekly benefit amount" shall be an amount equal to sixty percent of the average weekly wage for insured work paid to the individual in that quarter of the individual's base period in which total wages were highest, and no benefit as so computed may be less than ten percent or more than sixty percent of the state's average weekly wage for all insured work;

(3) an eligible individual who is unemployed in any week during which the individual is in a continued claims status shall be paid, with respect to the week, a benefit in an amount equal to the individual's weekly benefit amount, less that part of the wages, if any, or earnings from self-employment, payable to the individual with respect to such week that is in excess of one-fifth of the individual's weekly benefit amount. For purposes of this subsection only, "wages" includes all remuneration for

services actually performed in a week for which benefits are claimed, vacation pay for a period for which the individual has a definite return-to-work date, wages in lieu of notice and back pay for loss of employment but does not include payments through a court for time spent in jury service;

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

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

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

C. An individual otherwise eligible for benefits shall be paid for each week of unemployment, in addition to the amount payable under Subsection B of this section, the sum of twenty-five dollars (\$25.00) for each unemancipated child under the age of eighteen, up to a maximum of four and subject to the maximum stated in Subsection D of this section, of the individual who is in fact dependent upon and wholly or mainly supported by the individual, including:

(1) a child in the individual's custody pending the adjudication of a petition filed by the individual for the adoption of the child in a court of competent jurisdiction; or

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

D. Dependency benefits shall not exceed fifty percent of the individual's weekly benefit rate. The amount of dependency benefits determined as of the beginning of an individual's benefit year shall not be reduced for the duration of the benefit year, but this provision does not prevent the transfer of dependents' benefits from one spouse to another in accordance with this subsection. If both the husband and wife receive benefits with respect to a week of unemployment, only one of them is entitled to a dependency allowance with respect to a child. The division shall prescribe standards as to who may receive a dependency allowance when both the husband and wife are eligible to receive unemployment compensation benefits. Dependency benefits shall not be paid unless the individual submits documentation satisfactory to the division establishing the existence of the claimed dependent. If the provisions of this subsection are satisfied, an otherwise eligible individual who has been appointed guardian of a dependent child by a court of competent jurisdiction shall be paid dependency benefits.

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

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

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

H. The division, on its own initiative, may reconsider a monetary determination whenever it is determined that an error in computation or identity has occurred or that wages of the claimant pertinent to such determination but not considered have been newly discovered or that the benefits have been allowed or denied on the basis of misrepresentation of fact, but no redetermination shall be made after one year from the date of the original monetary determination. Notice of a

redetermination shall be given to all interested parties and shall be subject to an appeal in the same manner as the original determination. In the event that an appeal involving an original monetary determination is pending at the time a redetermination is issued, the appeal, unless withdrawn, shall be treated as an appeal from redetermination."

House Bill 20

Approved April 6, 2009

LAWS 2009, CHAPTER 98

AN ACT

RELATING TO THE ENVIRONMENT; ENACTING A NEW SECTION OF THE AIR QUALITY CONTROL ACT TO PROVIDE FOR REGULATION OF SOURCES OF EMISSIONS THAT CAUSE THE FORMATION OF OZONE.

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

Chapter 98 Section 1 Laws 2009

Section 1. A new section of the Air Quality Control Act is enacted to read:

"DUTIES AND POWERS OF ENVIRONMENTAL IMPROVEMENT BOARD AND LOCAL BOARD FOR ATTAINMENT AND MAINTENANCE OF NATIONAL AMBIENT AIR QUALITY STANDARDS FOR OZONE.--

A. If the environmental improvement board or the local board determines that emissions from sources within its jurisdiction cause or contribute to ozone concentrations in excess of ninety-five percent of a national ambient air quality standard for ozone, it shall adopt a plan, including regulations, to control emissions of oxides of nitrogen and volatile organic compounds to provide for attainment and maintenance of the standard. Regulations adopted pursuant to this section shall be limited to sources of emissions within the area of the state where the ozone concentrations exceed ninety-five percent of the national ambient air quality standard.

B. Notwithstanding the limitations in Section 74-2-5 NMSA 1978, the environmental improvement board or the local board may adopt standards of performance for sources of emissions for which no federal standard of performance has been adopted and may adopt standards of performance more stringent than federal standards of performance for sources for which a federal standard of performance has been adopted. The standards of performance shall reflect the degree of emission

limitation achievable through the application of control technology that is reasonably available considering technological and economic feasibility. The standards of performance may be more stringent than applicable federal standards of performance if the board determines that the federal standards of performance do not reflect the degree of emission limitation achievable through the application of control technology that is reasonably available, considering technological and economic feasibility, and that methods to further reduce emissions are commercially available and will result in substantially greater reductions in emissions than the federal standards for such sources.

C. In adopting regulations, the environmental improvement board or the local board shall consider the following:

(1) the public interest, including the social and economic value of the sources of emissions and subjects of air contaminants;

(2) previous experience with equipment and methods available to control the air contaminants involved;

(3) energy, environmental and economic impacts and other social costs;

(4) efforts by sources of emissions to reduce emissions prior to the effective date of regulations adopted under this section; and

(5) for existing sources of emissions, the remaining useful life of any existing source to which the regulation would apply.

D. No regulation adopted pursuant to this section shall require emission reductions for sources that between March 25, 2004 and January 1, 2009:

(1) implemented and are operating reasonable control measures, considering technological and economic feasibility, that result in quantifiable reductions for emission of oxides of nitrogen or volatile organic compounds; or

(2) are mandated by other requirements enforceable by the department or the local authority to implement reductions in emissions of oxides of nitrogen or volatile organic compounds."

HBIC/House Bill 195

Approved April 6, 2009

LAWS 2009, CHAPTER 99

AN ACT

RELATING TO TAXATION; PROVIDING A DEDUCTION FOR SPECIAL FUEL CONSISTING OF VEGETABLE OIL OR ANIMAL FAT FROM SPECIAL FUEL EXCISE TAX AND GROSS RECEIPTS PAID.

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

Chapter 99 Section 1 Laws 2009

Section 1. A new section of the Gross Receipts and Compensating Tax Act is enacted to read:

"DEDUCTION--GROSS RECEIPTS--SPECIAL FUEL, DYED DIESEL.--Receipts from selling special fuel consisting of at least ninety-nine percent vegetable oil or animal fat may be deducted from gross receipts if the deduction from the special fuel excise tax pursuant to Section 7-16A-10 NMSA 1978 is claimed."

Chapter 99 Section 2 Laws 2009

Section 2. Section 7-16A-10 NMSA 1978 (being Laws 1992, Chapter 51, Section 10, as amended) is amended to read:

"7-16A-10. DEDUCTIONS--SPECIAL FUEL EXCISE TAX--SPECIAL FUEL SUPPLIERS.--In computing the tax due, the following amounts of special fuel may be deducted from the total amount of special fuel received in New Mexico during the tax period, provided that satisfactory proof thereof is furnished to the department:

A. special fuel received in New Mexico, but exported from this state by a rack operator, special fuel supplier or dealer, other than in the fuel supply tank of a motor vehicle or sold for export by a rack operator or distributor; provided that, in either case:

(1) the person exporting the special fuel is registered in or licensed by the destination state to pay that state's special fuel or equivalent fuel tax;

(2) proof is submitted that the destination state's special fuel or equivalent fuel tax has been paid or is not due with respect to the special fuel; or

(3) the destination state's special fuel or equivalent fuel tax is paid to New Mexico in accordance with the terms of an agreement entered into pursuant to Section 9-11-12 NMSA 1978 with the destination state;

B. special fuel sold to the United States or any agency or instrumentality thereof for the exclusive use of the United States or any agency or instrumentality

thereof. Special fuel sold to the United States includes special fuel delivered into the supply tank of a government-licensed vehicle;

C. special fuel sold to the state of New Mexico or any political subdivision, agency or instrumentality thereof for the exclusive use of the state of New Mexico or any political subdivision, agency or instrumentality thereof. Special fuel sold to the state of New Mexico includes special fuel delivered into the supply tank of a government-licensed vehicle;

D. special fuel sold to an Indian nation, tribe or pueblo or any agency or instrumentality thereof for the exclusive use of the Indian nation, tribe or pueblo or any agency or instrumentality thereof. Special fuel sold to an Indian nation, tribe or pueblo includes special fuel delivered into the supply tank of a government-licensed vehicle;

E. special fuel dyed in accordance with federal regulations;

F. special fuel that is number 2 diesel fuel sold for the generation of power to propel a vehicle authorized by contract with the public education department as a school bus; provided that the fuel has a distillation temperature of five hundred degrees Fahrenheit at a ten percent recovery point and six hundred forty degrees Fahrenheit at a ninety percent recovery point;

G. special fuel received in New Mexico on which New Mexico special fuel excise tax was paid by the out-of-state terminal at which the special fuel was loaded, provided that documentation that the special fuel was to be imported into New Mexico was provided to the terminal operator by the person receiving the fuel; and

H. special fuel received in New Mexico that consists of at least ninety-nine percent vegetable oil or animal fat; provided that the use is restricted to an auxiliary fuel system that is subject to a certificate of conformity pursuant to the federal Clean Air Act."

Chapter 99 Section 3 Laws 2009

Section 3. Section 7-16A-10 NMSA 1978 (being Laws 1992, Chapter 51, Section 10, as amended by Section 2 of this act) is repealed and a new Section 7-16A-10 NMSA 1978 is enacted to read:

"7-16A-10. DEDUCTIONS--SPECIAL FUEL EXCISE TAX--SPECIAL FUEL SUPPLIERS.--In computing the tax due, the following amounts of special fuel may be deducted from the total amount of special fuel received in New Mexico during the tax period, provided that satisfactory proof thereof is furnished to the department:

A. special fuel received in New Mexico, but exported from this state by a rack operator, special fuel supplier or dealer, other than in the fuel supply tank of a

motor vehicle or sold for export by a rack operator or distributor; provided that, in either case:

(1) the person exporting the special fuel is registered in or licensed by the destination state to pay that state's special fuel or equivalent fuel tax;

(2) proof is submitted that the destination state's special fuel or equivalent fuel tax has been paid or is not due with respect to the special fuel; or

(3) the destination state's special fuel or equivalent fuel tax is paid to New Mexico in accordance with the terms of an agreement entered into pursuant to Section 9-11-12 NMSA 1978 with the destination state;

B. special fuel sold to the United States or any agency or instrumentality thereof for the exclusive use of the United States or any agency or instrumentality thereof. Special fuel sold to the United States includes special fuel delivered into the supply tank of a government-licensed vehicle;

C. special fuel sold to the state of New Mexico or any political subdivision, agency or instrumentality thereof for the exclusive use of the state of New Mexico or any political subdivision, agency or instrumentality thereof. Special fuel sold to the state of New Mexico includes special fuel delivered into the supply tank of a government-licensed vehicle;

D. special fuel sold to an Indian nation, tribe or pueblo or any agency or instrumentality thereof for the exclusive use of the Indian nation, tribe or pueblo or any agency or instrumentality thereof. Special fuel sold to an Indian nation, tribe or pueblo includes special fuel delivered into the supply tank of a government-licensed vehicle;

E. special fuel dyed in accordance with federal regulations;

F. special fuel that is number 2 diesel fuel sold for the generation of power to propel a vehicle authorized by contract with the public education department as a school bus; provided that the fuel has a distillation temperature of five hundred degrees Fahrenheit at a ten percent recovery point and six hundred forty degrees Fahrenheit at a ninety percent recovery point; and

G. special fuel received in New Mexico on which New Mexico special fuel excise tax was paid by the out-of-state terminal at which the special fuel was loaded, provided that documentation that the special fuel was to be imported into New Mexico was provided to the terminal operator by the person receiving the fuel."

Chapter 99 Section 4 Laws 2009

Section 4. DELAYED REPEAL.--Section 1 of this act is repealed effective July 1, 2014.

Chapter 99 Section 5 Laws 2009

Section 5. EFFECTIVE DATES.--

A. The effective date of the provisions of Sections 1 and 2 of this act is July 1, 2009.

B. The effective date of the provisions of Section 3 of this act is July 1, 2014.

House Bill 554, aa

Approved April 6, 2009

LAWS 2009, CHAPTER 100

AN ACT

RELATING TO SPECIAL DISTRICTS; ENACTING A SECTION OF THE NMSA 1978 TO PROVIDE FOR THE CREATION OF THE LOWER RIO GRANDE PUBLIC WATER WORKS AUTHORITY; PROVIDING FOR POWERS AND DUTIES OF THE AUTHORITY.

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

Chapter 100 Section 1 Laws 2009

Section 1. A new section of Chapter 73 NMSA 1978 is enacted to read:

"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 merger shall include the combining and commingling of water rights with the authority, and 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.

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;

entities; (7) entering into joint powers agreements with other governmental

rights of way; (8) acquiring and disposing of real property, personal property and

(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;

needed; (10) hiring and retaining agents, employees and consultants, as

(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 law;

(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. 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 but not limited to water conservation and reclamation, source water protection, drainage, flood control, solid waste, planning and zoning."

Approved April 6, 2009

LAWS 2009, CHAPTER 101

AN ACT

RELATING TO PESTICIDES; CHANGING CERTAIN APPLICATOR LICENSING REQUIREMENTS.

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

Chapter 101 Section 1 Laws 2009

Section 1. Section 76-4-3 NMSA 1978 (being Laws 1973, Chapter 366, Section 3, as amended) is amended to read:

"76-4-3. DEFINITIONS.--As used in the Pesticide Control Act:

A. "equipment" means any type of ground, water or aerial equipment, device or contrivance using motorized, mechanical or pressurized power to apply any pesticide on land and anything that may be growing, habitating or stored on or in such land, but does not include any pressurized hand-sized household device used by a homeowner to apply a pesticide or any equipment, device or contrivance of which the person who is applying the pesticide on the person's own land is the source of power or energy in making the pesticide application;

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

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

D. "device" means any instrument or contrivance other than a firearm that is intended for trapping, destroying, repelling or mitigating any pest or any other form of plant or animal life, other than humans and other than bacteria, viruses or other microorganisms on or in any living thing other than plants, but does not include equipment used for the application of pesticides when sold separately therefrom, or traps used to control predators or rodents or sterilization using dry heat or steam;

E. "distribute" means to offer for sale, hold for sale, sell, barter or supply in this state;

F. "environment" includes water, air and land and all plants and every living thing in water, in air and on land and the existing interrelationships;

G. "insect" means any of the numerous small invertebrate animals belonging principally to the class insecta, including beetles, bugs, bees, flies, and to

other allied classes of arthropods, including spiders, mites, ticks, millipedes, centipedes and sowbugs;

H. "ingredient statement" means a statement that contains the name and percentage of each ingredient of any pesticide that is intended for one of the purposes under Paragraphs (1) through (4) of Subsection N of this section, and the total percentage of all ingredients in the pesticide not for one of those purposes. If the pesticide contains arsenic in any form, the ingredient statement shall contain a statement of the percentages of total and water-soluble arsenic, calculated as elemental arsenic;

I. "label" means the written, printed or graphic matter on or attached to the pesticide or device or any of its containers or wrappers;

J. "labeling" means all labels and all other written, printed or graphic matter accompanying the pesticide or device at any time; or to which reference is made on the label or in literature accompanying the pesticide or device, except to current official publications of the department, the United States environmental protection agency, United States departments of agriculture, the interior and health and human services, state agricultural universities and other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides;

K. "land" means all land and water areas, including air space, and all living things and all structures, buildings, contrivances and machinery appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation;

L. "person" has the extended meaning ascribed to it in Subsection E of Section 12-2A-3 NMSA 1978;

M. "pest" means any living organism injurious to other living organisms, except humans, viruses, bacteria or other microorganisms in or on other living organisms other than plants, that the board by rule declares to be a pest;

N. "pesticide" means any substance or mixture of substances intended for:

(1) preventing, destroying, repelling or mitigating any pest;

(2) causing the leaves or foliage to drop from a plant, with or without causing abscission;

(3) artificially accelerating the drying of plant tissue; or

(4) accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior, of ornamental or crop plants or the produce thereof, through physiological action, but not including substances that are intended as

plant nutrients, trace elements, nutritional chemicals, plant inoculants or soil amendments;

O. "pesticide dealer" means any person who distributes highly toxic pesticides, restricted use pesticides or both, which pesticides are restricted by rule to distribution only by licensed pesticide dealers;

P. "pest management consultant" means any individual who offers or supplies technical advice or makes recommendations to the user of highly toxic pesticides, restricted use pesticides or both, which pesticides are restricted by rule to distribution only by licensed pesticide dealers;

Q. "registrant" means a person who has registered any pesticide pursuant to the provisions of the Pesticide Control Act;

R. "restricted use pesticide" means any pesticide or device designated by the board as requiring specific restrictions to prevent unreasonable adverse effects on the environment, including humans, beneficial insect predators and parasites, pollinating insects, animals, crops, wildlife and lands but excluding the pests the pesticide or device is intended to prevent, destroy, control or mitigate;

S. "unreasonable adverse effects on the environment" means an unreasonable risk to humans or the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide;

T. "noncommercial applicator" means a person who uses or demonstrates restricted use pesticides and does not qualify as a private applicator and is not required to have a commercial applicator's license;

U. "private applicator" means a certified applicator who uses or supervises the use of any pesticide that is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by the certified applicator or the certified applicator's employer or on the property of another person if applied without compensation other than trading of personal services between producers of agricultural commodities;

V. "public applicator" means a certified applicator who as an employee of a federal, state, county or municipal agency or municipal corporation uses any pesticide that is classified for restricted use or any general use pesticide, when applied to sites or under conditions identified by rule promulgated by the board; and

W. "commercial applicator" means a certified applicator, whether or not the certified applicator is a private applicator with respect to some uses, who for compensation uses or supervises the use of any pesticide for any purpose on any property other than as provided by Sections 76-4-19 and 76-4-20.1 NMSA 1978."

Chapter 101 Section 2 Laws 2009

Section 2. Section 76-4-19 NMSA 1978 (being Laws 1973, Chapter 366, Section 19, as amended) is amended to read:

"76-4-19. APPLICATION OF ACT TO GOVERNMENTAL ENTITIES--PUBLIC APPLICATOR'S LICENSE REQUIRED.--

A. A public applicator shall be subject to the provisions of the Pesticide Control Act and rules adopted pursuant to that act.

B. Public applicators shall be subject to examinations or other licensing provisions as provided in the Pesticide Control Act or by rule promulgated by the board. The department shall issue a limited license without fee to the public applicator who has qualified for the license. The public applicator license shall be valid only when the applicator is acting as an applicator applying pesticides used by federal, state, county or municipal agencies or municipal corporations. Government research personnel shall be exempt from this licensing requirement only when applying general use pesticides to experimental plots."

Chapter 101 Section 3 Laws 2009

Section 3. Section 76-4-20.1 NMSA 1978 (being Laws 1979, Chapter 394, Section 8) is amended to read:

"76-4-20.1. NONCOMMERCIAL APPLICATOR LICENSE.--

A. A noncommercial applicator shall not use a restricted use or state restricted use pesticide without having a valid current noncommercial applicator license issued by the department for the license use categories and subcategories in which the pesticide application is made.

B. Application for an original or renewal license shall be on a form prescribed by the department. An annual prescribed fee shall be charged for each noncommercial applicator license issued.

C. The department shall not issue a noncommercial applicator license until the applicant has passed a written certification examination to demonstrate to the department the applicant's knowledge of how to apply pesticides under the classifications for which the applicant has applied and the applicant's knowledge of the nature and effect of pesticides the applicant may apply under such classifications.

D. The department shall renew any applicant's license under the classification for which the applicant is certified; provided that the applicant's license is not under a suspension or revocation order and the applicant has complied with the provisions of the Pesticide Control Act.

E. Nothing in this section shall imply the right to apply pesticides for hire without first having obtained a commercial applicator license."

House Bill 715, aa

Approved April 6, 2009

LAWS 2009, CHAPTER 102

AN ACT

RELATING TO ANIMALS; AUTHORIZING EUTHANASIA TECHNICIANS TO PURCHASE, POSSESS AND ADMINISTER CONTROLLED SUBSTANCES FOR THE EUTHANASIA AND PRE-EUTHANASIA OF ANIMALS; CHANGING THE NAME OF THE ANIMAL SHELTERING SERVICES ACT AND THE ANIMAL SHELTERING SERVICES BOARD; CHANGING CERTAIN REQUIREMENTS AFFECTING THE BOARD AND EUTHANASIA AGENCIES; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2008.

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

Chapter 102 Section 1 Laws 2009

Section 1. Section 26-1-2 NMSA 1978 (being Laws 1967, Chapter 23, Section 2, as amended by Laws 2008, Chapter 9, Section 3 and by Laws 2008, Chapter 44, Section 4) is amended to read:

"26-1-2. DEFINITIONS.--As used in the New Mexico Drug, Device and Cosmetic Act:

A. "board" means the board of pharmacy or its duly authorized agent;

B. "person" includes an individual, partnership, corporation, association, institution or establishment;

C. "biological product" means a virus, therapeutic serum, toxin, antitoxin or analogous product applicable to the prevention, treatment or cure of diseases or injuries of humans and domestic animals and, as used within the meaning of this definition:

(1) a "virus" is interpreted to be a product containing the minute living cause of an infectious disease and includes filterable viruses, bacteria, rickettsia, fungi and protozoa;

(2) a "therapeutic serum" is a product obtained from blood by removing the clot or clot components and the blood cells;

(3) a "toxin" is a product containing a soluble substance poisonous to laboratory animals or humans in doses of one milliliter or less of the product and having the property, following the injection of nonfatal doses into an animal, or causing to be produced therein another soluble substance that specifically neutralizes the poisonous substance and that is demonstrable in the serum of the animal thus immunized; and

(4) an "antitoxin" is a product containing the soluble substance in serum or other body fluid of an immunized animal that specifically neutralizes the toxin against which the animal is immune;

D. "controlled substance" means a drug, substance or immediate precursor enumerated in Schedules I through V of the Controlled Substances Act;

E. "drug" means articles:

(1) recognized in an official compendium;

(2) intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in 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 does not include devices or their component parts or accessories;

F. "dangerous drug" means a drug, other than a controlled substance enumerated in Schedule I of the Controlled Substances Act, that because of a potentiality for harmful effect or the method of its use or the collateral measures necessary to its use is not safe except under the supervision of a practitioner licensed by law to direct the use of such drug and hence for which adequate directions for use cannot be prepared. "Adequate directions for use" means directions under which the 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 of a practitioner licensed by law to administer or prescribe the drug if it:

(1) is a habit-forming drug and contains any quantity of a narcotic or hypnotic substance or a chemical derivative of such substance that has been found under the federal act and the board to be habit forming;

(2) because of its toxicity or other potential for harmful effect or the method of its use or the collateral measures necessary to its use is not safe for use except under the supervision of a practitioner licensed by law to administer or prescribe the drug;

(3) is limited by an approved application by Section 505 of the federal act to the use under the professional supervision of a practitioner licensed by law to administer or prescribe the drug;

(4) bears the legend: "Caution: federal law prohibits dispensing without prescription.";

(5) bears the legend: "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian."; or

(6) bears the legend "RX only";

G. "counterfeit drug" means a drug that is deliberately and fraudulently mislabeled with respect to its identity, ingredients or sources. Types of such pharmaceutical counterfeits may include:

(1) "identical copies", which are counterfeits made with the same ingredients, formulas and packaging as the originals but not made by the original manufacturer;

(2) "look-alikes", which 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;

H. "device", except when used in Subsection P of this section and in Subsection G of Section 26-1-3, Subsection L and Paragraph (4) of Subsection A of Section 26-1-11 and Subsection C of Section 26-1-24 NMSA 1978, means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar or related article, including any component, part or accessory, that is:

(1) recognized in an official compendium;

(2) intended for use in the diagnosis of disease or other conditions or in the cure, mitigation, treatment or prevention of disease in 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;

I. "prescription" means an order given individually for the person for whom prescribed, either directly from a licensed practitioner or the practitioner's agent to the pharmacist, including by means of electronic transmission, or indirectly by means of a written order signed by the prescriber, and bearing the name and address of the prescriber, 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;

J. "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 or other person licensed or certified to prescribe and administer drugs that are subject to the New Mexico Drug, Device and Cosmetic Act;

K. "cosmetic" means:

(1) articles intended to be rubbed, poured, sprinkled or sprayed on, introduced into or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness or altering the appearance; and

(2) articles intended for use as a component of any articles enumerated in Paragraph (1) of this subsection, except that the term shall not include soap;

L. "official compendium" means the official United States pharmacopoeia national formulary or the official homeopathic pharmacopoeia of the United States or any supplement to either of them;

M. "label" means a display of written, printed or graphic matter upon the immediate container of an article. A requirement made by or under the authority of the New Mexico Drug, Device and Cosmetic Act that any word, statement or other information appear on the label shall not be considered to be complied with unless the word, statement or other information also appears on the outside container or wrapper,

if any, of the retail package of the article or is easily legible through the outside container or wrapper;

N. "immediate container" does not include package liners;

O. "labeling" means all labels and other written, printed or graphic matter:

(1) on an article or its containers or wrappers; or

(2) accompanying an article;

P. "misbranded" means a label to an article that is misleading. In determining whether the label is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device or any combination of the foregoing, but also the extent to which the label fails to reveal facts material in the light of such representations or material with respect to consequences that may result from the use of the article to which the label relates under the conditions of use prescribed in the label or under such conditions of use as are customary or usual;

Q. "advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or that are likely to induce, directly or indirectly, the purchase of drugs, devices or cosmetics;

R. "antiseptic", when used in the labeling or advertisement of an antiseptic, shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be or represented as an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder or such other use as involves prolonged contact with the body;

S. "new drug" means a drug:

(1) the composition of which is such that the drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and efficacy of drugs, as safe and effective for use under the conditions prescribed, recommended or suggested in the labeling thereof; or

(2) the composition of which is such that the drug, as a result of investigation to determine its safety and efficacy for use under such conditions, has become so recognized, but that has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions;

T. "contaminated with filth" applies to a drug, device or cosmetic not securely protected from dirt, dust and, as far as may be necessary by all reasonable means, from all foreign or injurious contaminations, or a drug, device or cosmetic found to contain dirt, dust, foreign or injurious contamination or infestation;

U. "selling of drugs, devices or cosmetics" shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession and holding of any such article for sale and the sale and the supplying or applying of any such article in the conduct of a drug or cosmetic establishment;

V. "color additive" means a material that:

(1) is a dye, pigment or other substance made by a process of synthesis or similar artifice or extracted, isolated or otherwise derived, with or without intermediate or final change of identity, from a vegetable, mineral, animal or other source; or

(2) when added or applied to a drug or cosmetic or to the human body or a part thereof, is capable, alone or through reaction with other substances, of imparting color thereto; except that such term does not include any material that has been or hereafter is exempted under the federal act;

W. "federal act" means the Federal Food, Drug and Cosmetic Act;

X. "restricted device" means a device for which the sale, distribution or use is lawful only upon the written or oral authorization of a practitioner licensed by law to administer, prescribe or use the device and for which the federal food and drug administration requires special training or skills of the practitioner to use or prescribe. This definition does not include custom devices defined in the federal act and exempt from performance standards or premarket approval requirements under Section 520(b) of the federal act;

Y. "prescription device" means a device that, because of its potential for harm, the method of its use or the collateral measures necessary to its use, is not safe except under the supervision of a practitioner licensed in this state to direct the use of such device and for which "adequate directions for use" cannot be prepared, but that bears the label: "Caution: federal law restricts this device to sale by or on the order of a _____", the blank to be filled with the word "physician", "physician assistant", "certified advanced practice chiropractic physician", "doctor of oriental medicine", "dentist", "veterinarian", "euthanasia technician", "certified nurse practitioner", "clinical nurse specialist", "pharmacist", "pharmacist clinician" or "certified nurse-midwife" or with the descriptive designation of any other practitioner licensed in this state to use or order the use of the device;

Z. "valid practitioner-patient relationship" means a professional relationship, as defined by the practitioner's licensing board, between the practitioner and the patient; and

AA. "pedigree" means the recorded history of a drug."

Chapter 102 Section 2 Laws 2009

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;

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) bongs; or

(m) ice pipes or chillers; and

(13) in determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

(a) statements by the owner or by anyone in control of the object concerning its use;

(b) the proximity of the object, in time and space, to a direct violation of the Controlled Substances Act or any other law relating to controlled substances or controlled substance analogs;

(c) the proximity of the object to controlled substances or controlled substance analogs;

(d) the existence of any residue of a controlled substance or controlled substance analog on the object;

- (e) instructions, written or oral, provided with the object concerning its use;
- (f) descriptive materials accompanying the object that explain or depict its use;
- (g) the manner in which the object is displayed for sale; and
- (h) expert testimony concerning its use;

W. "controlled substance analog" means a substance other than a controlled substance that has a chemical structure substantially similar to that of a controlled substance in Schedule I, II, III, IV or V or that was specifically designed to produce effects substantially similar to that of controlled substances in Schedule I, II, III, IV or V. Examples of chemical classes in which controlled substance analogs are found include the following:

- (1) phenethylamines;
- (2) N-substituted piperidines;
- (3) morphinans;
- (4) ecgonines;
- (5) quinazolinones;
- (6) substituted indoles; and
- (7) arylcycloalkylamines.

Specifically excluded from the definition of "controlled substance analog" are those substances that are generally recognized as safe and effective within the meaning of the Federal Food, Drug and Cosmetic Act or have been manufactured, distributed or possessed in conformance with the provisions of an approved new drug application or an exemption for investigational use within the meaning of Section 505 of the Federal Food, Drug and Cosmetic Act;

X. "human consumption" includes application, injection, inhalation, ingestion or any other manner of introduction;

Y. "drug-free school zone" means a public school, 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 102 Section 3 Laws 2009

Section 3. Section 77-1B-1 NMSA 1978 (being Laws 2007, Chapter 60, Section 1) is amended to read:

"77-1B-1. SHORT TITLE.--Chapter 77, Article 1B NMSA 1978 may be cited as the "Animal Sheltering Act"."

Chapter 102 Section 4 Laws 2009

Section 4. Section 77-1B-2 NMSA 1978 (being Laws 2007, Chapter 60, Section 2) 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 L 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 dog pound; 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 animal sheltering board;

D. "department" means the regulation and licensing department;

E. "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;

F. "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;

G. "euthanasia" means to produce a humane death of an animal by standards deemed acceptable by the board as set forth in its rules;

H. "euthanasia agency" means a facility that provides shelter to animals on a regular basis, including a dog pound, a humane society or a public or private shelter facility that temporarily houses stray, unwanted or injured animals, and that performs euthanasia;

I. "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;

J. "euthanasia instructor" means a veterinarian or a euthanasia technician certified by the board to instruct other individuals in euthanasia techniques;

K. "euthanasia technician" means a person licensed by the board to euthanize animals for a euthanasia agency;

L. "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;

M. "rescue organization" means an organization that rescues animals and is not involved in the breeding of animals;

N. "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

O. "veterinarian" means a person who is licensed as a doctor of veterinary medicine by the board of veterinary medicine pursuant to the Veterinary Practice Act."

Chapter 102 Section 5 Laws 2009

Section 5. Section 77-1B-3 NMSA 1978 (being Laws 2007, Chapter 60, Section 3) is amended to read:

"77-1B-3. ANIMAL SHELTERING BOARD CREATED--MEMBERS--QUALIFICATIONS--TERMS--VACANCIES--REMOVAL.--

A. The "animal sheltering board" is created. The board shall consist of nine 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;

(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;

(6) one representative of the New Mexico association of counties;

(7) one representative of the New Mexico municipal league;

(8) one member of a rescue organization; and

(9) one member of the domestic pet breeder community.

B. No more than two board members shall be appointed from any one county within the state. Appointments shall be made in such manner that the terms of no more than three board members expire on July 1 of each year.

C. The board is administratively attached to the department.

D. 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.

E. The governor shall appoint board members for terms of four years, except in the first year of the enactment of the Animal Sheltering Act, when board members shall be appointed for staggered terms. Of the first appointments, three board members shall be appointed for four-year terms, two board members shall be appointed for three-year terms, two board members shall be appointed for two-year terms and two board members shall be appointed for one-year terms. 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 a board member expires. Board members shall hold office until their successors are duly qualified and appointed. Vacancies shall be filled by appointment by the governor for the unexpired term within sixty days of the vacancy to maintain the required composition of the board.

F. Members of the board shall be reimbursed for per diem and mileage as provided in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance, but shall be permitted to attend at least one conference or seminar per year relevant to their board positions as the board's budget will allow.

G. A simple majority of the appointed board members constitutes a quorum.

H. The board shall hold at least one regular meeting each year and may meet at such other times as it deems necessary.

I. A board member shall not serve more than two full or partial terms, consecutive or otherwise.

J. A board member failing to attend three duly noticed meetings, regular or special, within a twelve-month period, without an excuse acceptable to the board, may be removed as a board member.

K. The board shall elect a chair and other officers as it deems necessary to administer its duties.

L. The department shall hire employees to execute the daily operations of the board."

Chapter 102 Section 6 Laws 2009

Section 6. Section 77-1B-4 NMSA 1978 (being Laws 2007, Chapter 60, Section 4) 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 subject to appropriation by the legislature to the department 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 department to carry out the purposes of the Animal Sheltering Act.

D. 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 superintendent of regulation and licensing or the superintendent's designee.

E. Unexpended and unencumbered balances in the fund at the end of a fiscal year shall not revert to the general fund."

Chapter 102 Section 7 Laws 2009

Section 7. Section 77-1B-5 NMSA 1978 (being Laws 2007, Chapter 60, Section 5) is amended to read:

"77-1B-5. BOARD POWERS AND DUTIES.--The board shall:

A. provide board-recommended standards regarding the infrastructure for all animal shelters;

B. provide board-recommended operating standards for all animal shelters;

C. adopt methods and procedures acceptable for conducting emergency field euthanasia;

D. adopt, promulgate and revise rules necessary to carry out the provisions of the Animal Sheltering Act;

E. have authority to issue licenses and certificates pursuant to the Animal Sheltering Act;

F. 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;

G. 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;

H. implement continuing education requirements for licensees and certificate holders pursuant to the Animal Sheltering Act;

I. 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;

J. provide for all examinations and for issuance and renewal of licenses and certificates;

K. establish fees not to exceed one hundred fifty dollars (\$150) for licenses and certificates pursuant to the Animal Sheltering Act;

L. establish committees as the board deems necessary to effect the provisions of the Animal Sheltering Act;

M. apply for injunctive relief to enforce the provisions of the Animal Sheltering Act;

N. conduct national criminal background checks on applicants seeking licensure or certification under the Animal Sheltering Act;

O. keep a record of all proceedings;

P. make an annual report to the legislature and to the governor;

Q. provide for the inspection of animal shelters and euthanasia agencies;

R. 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;

S. develop mechanisms to address complaints of licensee and certificate holder misconduct and noncompliance;

T. develop and recommend dog and cat spay and neuter plans and community outreach plans in support of and in conjunction with animal shelters and euthanasia agencies;

U. disburse money from the animal care and facility fund;

V. provide board-recommended standards for maintaining records concerning health care and disposition of animals; and

W. refer to national animal control association standards in determining its regulations."

Chapter 102 Section 8 Laws 2009

Section 8. Section 77-1B-6 NMSA 1978 (being Laws 2007, Chapter 60, Section 6) is amended to read:

"77-1B-6. EUTHANASIA TECHNICIAN--LICENSE.--

A. The board shall have authority to license euthanasia technicians.

B. A person, other than a veterinarian licensed to practice in New Mexico, who engages in euthanasia for a euthanasia agency in this state shall be licensed by the board.

C. Applicants for licensure by examination as a euthanasia technician shall be required to pass a euthanasia technician examination approved by the board and shall be required to complete a training course approved by the board in euthanasia practices.

D. A person licensed to practice as a euthanasia technician shall:

(1) have passed the examination to qualify as a euthanasia technician;

(2) hold a certificate of completion in a training course in euthanasia issued within three years of the date that the euthanasia technician examination is successfully completed;

(3) have attained an age of at least eighteen years;

(4) not be guilty of fraud or deceit in procuring or attempting to procure a license;

(5) pay the required fee to be determined by the board, but not to exceed fifty dollars (\$50.00); and

(6) comply with all other requirements established by the board.

E. The board may issue a license to practice as a euthanasia technician without examination to an applicant who meets the qualifications required for euthanasia technicians in this state as set forth in Paragraphs (3) through (6) of Subsection D of this section. The application for a license as a euthanasia technician shall be accompanied by proof of completion of training in euthanasia practices, as approved by the board.

F. A person whose euthanasia technician license expires while the person is on active duty with a branch of the armed forces of the United States, called into service or training with the state militia or in training or education under the supervision of the United States government prior to induction into military service may have the license restored without paying renewal fees, if within two years after the termination of that service, training or education, except under conditions other than honorable, the board is furnished with satisfactory evidence that the person had been engaged in the service, training or education."

Chapter 102 Section 9 Laws 2009

Section 9. A new section of the Animal Sheltering Act is enacted to read:

"EUTHANASIA TECHNICIAN AUTHORITY DEFINED.--A euthanasia technician may purchase, possess and administer euthanasia drugs for the purpose of performing euthanasia and pre-euthanasia on animals for a euthanasia agency. A formulary shall be developed by the board and be approved by the board of pharmacy."

Chapter 102 Section 10 Laws 2009

Section 10. Section 77-1B-7 NMSA 1978 (being Laws 2007, Chapter 60, Section 7) is amended to read:

"77-1B-7. EUTHANASIA INSTRUCTORS--CERTIFICATION.--

A. The board shall have authority over the certification of euthanasia instructors.

B. A person certified to practice as a euthanasia instructor shall:

(1) have passed the examination approved by the board to qualify as a euthanasia instructor;

(2) have completed training in euthanasia practices, as defined by the board, within one year preceding the date the application for certification is submitted;

(3) have participated in the euthanasia of animals for a minimum of three years preceding the date of application;

(4) not have been found guilty of fraud or deceit in procuring or attempting to procure any type of certification; and

(5) pay the required fee.

C. The board may certify an applicant as a euthanasia instructor without an examination if the applicant has been certified or licensed under the laws of another state and the applicant meets the qualifications set forth in Paragraphs (3) through (5) of Subsection B of this section.

D. A person whose euthanasia instructor certification expires while on active duty with the armed forces of the United States, called into service or training with the state militia or in training or education under the supervision of the United States government prior to induction into military service may have the certification restored without paying renewal fees, if within two years after the termination of that service,

training or education, except under conditions other than honorable, the board is furnished with satisfactory evidence that the person has been engaged in such service, training or education."

Chapter 102 Section 11 Laws 2009

Section 11. Section 77-1B-8 NMSA 1978 (being Laws 2007, Chapter 60, Section 8) is amended to read:

"77-1B-8. EUTHANASIA AGENCIES--INSPECTIONS--EXEMPTIONS.--

A. The board shall have authority over the licensing of euthanasia agencies. All euthanasia agencies shall be licensed by the board prior to euthanasia being performed by that agency.

B. The board shall adopt rules governing the procedures for administering euthanasia.

C. The board shall establish rules for inspecting a facility holding or claiming to hold a license as a euthanasia agency in this state.

D. The board shall establish policies and procedures for record keeping and for securing, using and disposing of euthanasia drugs in accordance with requirements of the Controlled Substances Act, the United States drug enforcement administration's Controlled Substances Act and the rules of the board of pharmacy.

E. Euthanasia agencies using controlled substances shall have on staff or under contract a consulting pharmacist as that position is defined in the Pharmacy Act.

F. A supervising veterinarian is not required to be on the premises of a euthanasia agency when euthanasia is performed.

G. Nothing in the Animal Sheltering Act shall be construed as allowing a euthanasia technician or a euthanasia instructor to engage in the practice of veterinary medicine when performing the duties set forth in that act.

H. Nothing in the Animal Sheltering Act shall be construed as preventing a euthanasia instructor from euthanizing animals during a board-approved course on euthanasia instruction.

I. Nothing in the Animal Sheltering Act affects wildlife rehabilitators working under the auspices of the department of game and fish.

J. A veterinary clinic serving as a euthanasia agency pursuant to a contract with a local government is exempt from the provisions of the Animal Sheltering

Act; provided that the veterinary clinic is subject to licensure and rules adopted pursuant to the Veterinary Practice Act.

K. A municipal facility that is a zoological park is exempt from the provisions of the Animal Sheltering Act."

Chapter 102 Section 12 Laws 2009

Section 12. Section 77-1B-9 NMSA 1978 (being Laws 2007, Chapter 60, Section 9) 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 department 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; and

(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 a person in the department to disclose or use for that person's own advantage information derived from reports or records submitted to the department or the board pursuant to that act."

Chapter 102 Section 13 Laws 2009

Section 13. Section 77-1B-10 NMSA 1978 (being Laws 2007, Chapter 60, Section 10) is amended to read:

"77-1B-10. ENFORCEMENT AND INJUNCTIONS.--

A. The board or the board's designees shall enforce the provisions of the Animal Sheltering Act.

B. Whenever the board has reasonable cause to believe a violation of a provision of the Animal Sheltering Act or a rule adopted pursuant to that act has occurred that creates a health risk for the animals or the community and immediate enforcement is deemed necessary, the board may issue a cease and desist order to require a person to cease violations. At any time after service of the order to cease and desist, the person may request a prompt hearing to determine whether a violation occurred. If a person fails to comply with a cease and desist order within twenty-four hours, the board may bring a suit for a temporary restraining order and for injunctive relief to prevent further violations.

C. Whenever the board possesses evidence that indicates a person has engaged in or intends to engage in an act or practice constituting a violation of the Animal Sheltering Act or a rule adopted pursuant to that act, the board may seek temporarily or permanently to restrain or enjoin the act or practice. The board shall not be required to post a bond when seeking a temporary or permanent injunction."

Chapter 102 Section 14 Laws 2009

Section 14. Section 77-1B-11 NMSA 1978 (being Laws 2007, Chapter 60, Section 11) is amended to read:

"77-1B-11. DISCIPLINARY ACTIONS--EUTHANASIA TECHNICIANS, EUTHANASIA AGENCIES AND EUTHANASIA INSTRUCTORS--HEARINGS--PENALTIES.--

A. 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 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 102 Section 15 Laws 2009

Section 15. Section 77-1B-12 NMSA 1978 (being Laws 2007, Chapter 60, Section 12) is amended to read:

"77-1B-12. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The animal sheltering board is terminated on July 1, 2011 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of the Animal Sheltering Act until July 1, 2012. Effective July 1, 2012, the Animal Sheltering Act is repealed."

House Bill 593, aa

Approved April 6, 2009

LAWS 2009, CHAPTER 103

AN ACT

RELATING TO ANIMALS; PROHIBITING THE USE OF GAS CHAMBERS FOR THE EUTHANASIA OF CERTAIN ANIMALS; AMENDING SECTIONS OF THE NMSA 1978.

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

Chapter 103 Section 1 Laws 2009

Section 1. Section 77-1-12 NMSA 1978 (being Laws 1901, Chapter 105, Section 5, as amended) is amended to read:

"77-1-12. LOCAL CONTROL BY ORDINANCE--DOGS AND CATS RUNNING AT LARGE.--Each municipality and each county shall make provision by ordinance for the seizure and disposition of dogs and cats running at large and not kept or claimed by any person on the person's premises; provided, however, that the ordinance does not conflict with the provisions of Chapter 77, Article 1B NMSA 1978."

Chapter 103 Section 2 Laws 2009

Section 2. Section 77-1B-8 NMSA 1978 (being Laws 2007, Chapter 60, Section 8) is amended to read:

"77-1B-8. EUTHANASIA AGENCIES--INSPECTIONS--EXEMPTIONS.--

A. The board shall have authority over the licensing of euthanasia agencies. All euthanasia agencies shall be licensed by the board prior to euthanasia being performed by that agency.

B. The board shall adopt rules governing the procedures for administering euthanasia; provided that the use of carbon monoxide gas chambers shall be prohibited for the euthanasia of cats and dogs.

C. The board shall establish rules for inspecting a facility holding or claiming to hold a license as a euthanasia agency in this state.

D. The board shall establish policies and procedures for record keeping and for securing, using and disposing of euthanasia drugs in accordance with requirements of the Controlled Substances Act, the United States drug enforcement administration's Controlled Substances Act and the rules of the board of pharmacy.

E. Euthanasia agencies using controlled substances shall have on staff or under contract a consulting pharmacist as that position is defined in the Pharmacy Act.

F. A supervising veterinarian is not required to be on the premises of a euthanasia agency when euthanasia is performed.

G. Nothing in Chapter 77, Article 1B NMSA 1978 shall be construed as allowing a euthanasia technician or a euthanasia instructor to engage in the practice of veterinary medicine when performing the duties set forth in that act.

H. Nothing in Chapter 77, Article 1B NMSA 1978 shall be construed as preventing a euthanasia instructor from euthanizing animals during a board-approved course on euthanasia instruction.

I. Nothing in Chapter 77, Article 1B NMSA 1978 affects wildlife rehabilitators working under the auspices of the department of game and fish.

J. A veterinary clinic serving as a euthanasia agency pursuant to a contract with a local government is exempt from the provisions of Chapter 77, Article 1B NMSA 1978; provided that the veterinary clinic is subject to licensure and rules adopted pursuant to the Veterinary Practice Act.

K. A municipal facility that is a zoological park is exempt from the provisions of Chapter 77, Article 1B NMSA 1978."

House Bill 265, aa

Approved April 6, 2009

LAWS 2009, CHAPTER 104

AN ACT

RELATING TO PAYMENT OF WAGES; PROVIDING EMPLOYEES PROTECTION FROM RETALIATION; EXTENDING THE STATUTE OF LIMITATIONS PERIOD; PROVIDING FOR INJUNCTIVE RELIEF; INCREASING LIABILITY FOR FAILURE TO PAY WAGES; PROVIDING PENALTIES.

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

Chapter 104 Section 1 Laws 2009

Section 1. Section 37-1-5 NMSA 1978 (being Laws 1947, Chapter 44, Section 1) is amended to read:

"37-1-5. ACTIONS FOR WAGE AND HOUR VIOLATIONS.--A civil action to enforce any provision of Chapter 50, Article 4 NMSA 1978 shall be commenced within three years after a violation last occurs. The three-year period shall be tolled during a labor relations division of the workforce solutions department investigation of an employer, but such an investigation shall not be deemed a prerequisite to a person bringing a civil action, nor shall it operate to bar a civil action brought pursuant to Chapter 50, Article 4 NMSA 1978."

Chapter 104 Section 2 Laws 2009

Section 2. A new section of Chapter 50, Article 4 NMSA 1978 is enacted to read:

"CONTINUING COURSE OF CONDUCT.--A civil action to enforce any provision of Chapter 50, Article 4 NMSA 1978 may encompass all violations that occurred as part of a continuing course of conduct regardless of the date on which they occurred."

Chapter 104 Section 3 Laws 2009

Section 3. A new section of the Minimum Wage Act is enacted to read:

"RETALIATION PROHIBITED.--It is a violation of the Minimum Wage Act for an employer or any other person to discharge, demote, deny promotion to or in any other way discriminate against a person in the terms or conditions of employment in retaliation for the person asserting a claim or right pursuant to the Minimum Wage Act or assisting another person to do so or for informing another person about employment rights or other rights provided by law."

Chapter 104 Section 4 Laws 2009

Section 4. Section 50-4-26 NMSA 1978 (being Laws 1955, Chapter 200, Section 5, as amended) is amended to read:

"50-4-26. ENFORCEMENT--PENALTIES--EMPLOYEES' REMEDIES.--

A. An employer who violates any of the provisions of the Minimum Wage Act is guilty of a misdemeanor and upon conviction shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

B. The director of the labor relations division of the workforce solutions department shall enforce and prosecute violations of the Minimum Wage Act. The director may institute in the name of the state an action in the district court of the county wherein the employer who has failed to comply with the Minimum Wage Act resides or has a principal office or place of business, for the purpose of prosecuting violations. The district attorney for the district wherein any violation hereof occurs shall aid and assist the director in the prosecution.

C. In addition to penalties provided pursuant to this section, an employer who violates any provision of Section 50-4-22 NMSA 1978 shall be liable to the employees affected in the amount of their unpaid or underpaid minimum wages plus interest, and in an additional amount equal to twice the unpaid or underpaid wages.

D. An action to recover such liability may be maintained in any court of competent jurisdiction by any one or more employees for and on behalf of the employee or employees and for other employees similarly situated, or such employee or employees may designate an agent or representative to maintain such action on behalf of all employees similarly situated.

E. The court in any action brought under Subsection D of this section shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow costs of the action and reasonable attorney fees to be paid by the defendant. In any proceedings brought pursuant to the provisions of this section, the employee shall not be required to pay any filing fee or other court costs necessarily incurred in such proceedings.

F. In addition to any remedy or punishment provided pursuant to the Minimum Wage Act, a court may order appropriate injunctive relief, including requiring an employer to post in the place of business a notice describing violations by the employer as found by the court or a copy of a cease and desist order applicable to the employer."

HJC/House Bill 489

Approved April 6, 2009

LAWS 2009, CHAPTER 105

AN ACT

RELATING TO OPEN MEETINGS; REQUIRING CONFERENCE COMMITTEES TO BE PUBLIC MEETINGS.

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

Chapter 105 Section 1 Laws 2009

Section 1. Section 10-15-2 NMSA 1978 (being Laws 1974, Chapter 91, Section 2) is amended to read:

"10-15-2. STATE LEGISLATURE--MEETINGS.--

A. Unless otherwise provided by joint house and senate rule, all meetings of any committee or policy-making body of the legislature held for the purpose of discussing public business or for the purpose of taking any action within the authority of or the delegated authority of the committee or body are declared to be public meetings open to the public at all times. Reasonable notice of meetings shall be given to the public by publication or by the presiding officer of each house prior to the time the meeting is scheduled.

B. The provisions of Subsection A of this section do not apply to matters relating to personnel or matters adjudicatory in nature or to investigative or quasi-judicial proceedings relating to ethics and conduct or to a caucus of a political party.

C. For the purposes of this section, "meeting" means a gathering of a quorum of the members of a standing committee or conference committee held for the purpose of taking any action within the authority of the committee or body."

House Bill 393, aa

Approved April 6, 2009

LAWS 2009, CHAPTER 106

AN ACT

RELATING TO HEALTH CARE; AMENDING SECTIONS OF THE MEDICAL RADIATION HEALTH AND SAFETY ACT; RENAMING THE MEDICAL RADIATION HEALTH AND SAFETY ACT AS THE MEDICAL IMAGING AND RADIATION THERAPY HEALTH AND SAFETY ACT.

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

Chapter 106 Section 1 Laws 2009

Section 1. Section 61-14E-1 NMSA 1978 (being Laws 1983, Chapter 317, Section 1) is amended to read:

"61-14E-1. SHORT TITLE.--Chapter 61, Article 14E NMSA 1978 may be cited as the "Medical Imaging and Radiation Therapy Health and Safety Act"."

Chapter 106 Section 2 Laws 2009

Section 2. Section 61-14E-2 NMSA 1978 (being Laws 1983, Chapter 317, Section 2) is amended to read:

"61-14E-2. PURPOSE OF ACT.--The purpose of the Medical Imaging and Radiation Therapy Health and Safety Act is to maximize the protection practicable for the citizens of New Mexico from ionizing and non-ionizing radiation in the practice of medical imaging. This purpose is effectuated by establishing requirements for appropriate education and training of persons operating medical equipment emitting ionizing and non-ionizing radiation, establishing standards of education and training for the persons who administer medical imaging and radiation therapy procedures and providing for the appropriate examination and licensure of those persons."

Chapter 106 Section 3 Laws 2009

Section 3. Section 61-14E-3 NMSA 1978 (being Laws 1983, Chapter 317, Section 3, as amended) is amended to read:

"61-14E-3. ADMINISTRATION--ENFORCEMENT.--The administration and enforcement of the Medical Imaging and Radiation Therapy Health and Safety Act is vested in the department."

Chapter 106 Section 4 Laws 2009

Section 4. Section 61-14E-4 NMSA 1978 (being Laws 1983, Chapter 317, Section 4, as amended) is amended to read:

"61-14E-4. DEFINITIONS.--As used in the Medical Imaging and Radiation Therapy Health and Safety Act:

A. "advisory council" means the medical imaging and radiation therapy advisory council;

B. "board" means the environmental improvement board;

C. "certificate of limited practice" means a certificate issued pursuant to the Medical Imaging and Radiation Therapy Health and Safety Act to persons who perform restricted diagnostic radiography under direct supervision of a licensed practitioner limited to the following specific procedures:

(1) the viscera of the thorax;

(2) extremities;

(3) radiation to humans for diagnostic purposes in the practice of dentistry;

(4) axial/appendicular skeleton; or

(5) the foot, ankle or lower leg;

D. "certified nurse practitioner" means a person licensed pursuant to Section 61-3-23.2 NMSA 1978;

E. "credential" or "certification" means the recognition awarded to an individual who meets the requirements of a credentialing or certification organization;

F. "credentialing organization" or "certification organization" means a nationally recognized organization recognized by the board that issues credentials or certification through testing or evaluations that determine whether an individual meets defined standards for training and competence in a medical imaging modality;

G. "department" means the department of environment;

H. "diagnostic medical sonographer" means a person, including a vascular technologist or echocardiographer, other than a licensed practitioner, who provides patient care services using ultrasound;

I. "division" means the environmental health division of the department of environment;

J. "ionizing radiation" means alpha particles, beta particles, gamma rays, x-rays, neutrons, high-speed electrons, high-speed protons and other particles capable of producing ions; "ionizing radiation" does not include non-ionizing radiation, such as sound waves, radio waves or microwaves, or visible, infrared or ultraviolet light;

K. "license" means a document issued by the department pursuant to the Medical Imaging and Radiation Therapy Health and Safety Act to an individual who has met the requirements of licensure;

L. "licensed practitioner" means a person licensed to practice medicine, dentistry, podiatry, chiropractic or osteopathy in this state;

M. "licensure" means a grant of authority through a license or limited license to perform specific medical imaging and radiation therapy services pursuant to the Medical Imaging and Radiation Therapy Health and Safety Act;

N. "magnetic resonance technologist" means a person other than a licensed practitioner who performs magnetic resonance procedures under the supervision of a licensed practitioner using magnetic fields and radio frequency signals;

O. "medical imaging" means the use of substances or equipment emitting ionizing or non-ionizing radiation on humans for diagnostic or interventional purposes;

P. "medical imaging modality" means:

- (1) diagnostic medical sonography and all of its subspecialties;
- (2) magnetic resonance imaging and all of its subspecialties;
- (3) nuclear medicine technology and all of its subspecialties;
- (4) radiation therapy and all of its subspecialties; and
- (5) radiography and all of its subspecialties;

Q. "medical imaging professional" means a person who is a magnetic resonance technologist, radiographer, nuclear medicine technologist or diagnostic medical sonographer and who is licensed pursuant to the Medical Imaging and Radiation Therapy Health and Safety Act;

R. "non-ionizing radiation" means the optical radiations, including ultraviolet, visible, infrared and lasers, static and time-varying electric and magnetic fields and radio frequency, including microwave radiation and ultrasound;

S. "nuclear medicine technologist" means a person other than a licensed practitioner who applies radiopharmaceutical agents to humans for diagnostic or therapeutic purposes under the direction of a licensed practitioner;

T. "physician assistant" means a person licensed pursuant to Section 61-6-7 or 61-10A-4 NMSA 1978;

U. "radiation therapy" means the application of ionizing radiation to humans for therapeutic purposes;

V. "radiation therapy technologist" means a person other than a licensed practitioner whose application of radiation to humans is for therapeutic purposes;

W. "radiographer" means a person other than a licensed practitioner whose application of radiation to humans is for diagnostic purposes;

X. "radiography" means the application of radiation to humans for diagnostic purposes, including adjustment or manipulation of x-ray systems and accessories, including image receptors, positioning of patients, processing of films and any other action that materially affects the radiation dose to patients;

Y. "radiologist" means a licensed practitioner certified by the American board of radiology, the British royal college of radiology, the American osteopathic board of radiology or the American chiropractic board of radiology; and

Z. "radiologist assistant" means an individual licensed as a radiographer as defined in the Medical Imaging and Radiation Therapy Health and Safety Act who holds additional certification as a registered radiologist assistant by the American registry of radiologic technologists and who works under the supervision of a radiologist; provided that a radiologist assistant shall not interpret images, render diagnoses or prescribe medications or therapies."

Chapter 106 Section 5 Laws 2009

Section 5. Section 61-14E-5 NMSA 1978 (being Laws 1983, Chapter 317, Section 5) is amended to read:

"61-14E-5. BOARD--POWERS--DUTIES.--The board shall, pursuant to the advice and recommendations of the advisory council and following the procedures set forth in Section 74-1-9 NMSA 1978:

A. adopt and promulgate such rules, regulations and licensure standards as may be necessary to effectuate the provisions of the Medical Imaging and Radiation Therapy Health and Safety Act and to maintain high standards of practice as verified by credentialing organizations for medical imaging and radiation therapy; and

B. adopt rules and regulations establishing continuing education requirements as a condition of licensure renewal for the purpose of protecting the health and well-being of the citizens of New Mexico and promoting current knowledge and practice as verified by credentialing organizations for medical imaging and radiation therapy."

Chapter 106 Section 6 Laws 2009

Section 6. Section 61-14E-6 NMSA 1978 (being Laws 1983, Chapter 317, Section 6) is amended to read:

"61-14E-6. DIVISION--POWERS--DUTIES.--The division, pursuant to the rules and regulations promulgated by the board, shall:

A. maintain and enforce licensure standards for magnetic resonance, radiography, radiation therapy technology, nuclear medicine technology, diagnostic medical sonography and radiology and licensure standards for restricted diagnostic radiography;

B. refer to national educational accreditation standards for educational programs and, pursuant to those standards, establish criteria for education programs of magnetic resonance, radiography, radiation therapy technology, nuclear medicine technology and diagnostic medical sonography;

C. provide for surveys of educational programs preparing persons for certification under the Medical Imaging and Radiation Therapy Health and Safety Act;

D. grant, deny or withdraw approval from educational programs for failure to meet prescribed standards, provided that a majority of the board concurs in any decision;

E. establish procedures for examination, certification and renewal of certificates of applicants; and

F. establish scope of practice and ethics rules."

Chapter 106 Section 7 Laws 2009

Section 7. Section 61-14E-7 NMSA 1978 (being Laws 1983, Chapter 317, Section 7, as amended) is amended to read:

"61-14E-7. LICENSURE--EXCEPTIONS.--

A. It is unlawful, unless licensed by the department as a medical imaging professional or radiation therapist, for any person to:

(1) use ionizing or non-ionizing radiation on humans;

(2) use any title, abbreviation, letters, figures, signs or other devices to indicate that the person is a licensed medical imaging professional or radiation therapist; or

(3) engage in any of the medical imaging modalities as defined by the Medical Imaging and Radiation Therapy Health and Safety Act.

B. Notwithstanding any other provision of the Medical Imaging and Radiation Therapy Health and Safety Act, the requirement of a medical imaging license shall not apply to a licensed practitioner or auxiliary or health practitioner licensed or certified by an independent board; provided that any certification and examination program for auxiliaries or health practitioners established by an independent board shall be submitted to the advisory council and approved by the board. The requirement of a medical imaging license shall also not apply to a student who is enrolled in and attending a required individual education program of a school or college of medicine, osteopathy, chiropractic, podiatry, dentistry or dental hygiene to apply radiation to humans under the supervision of a licensed practitioner or under the direct supervision of a licensed medical imaging professional or radiation therapist.

C. Notwithstanding any other provision of the Medical Imaging and Radiation Therapy Health and Safety Act, the requirement of a license shall not apply to a student completing clinical requirements of an approved education program working under the supervision of a licensed practitioner or under the direct supervision of a medical imaging professional or radiation therapist licensed in the practice for which the student is seeking licensure.

D. The department shall adopt rules and regulations for the education and licensure of advanced medical imaging professionals.

E. The department may require students in medical imaging and radiation therapy educational programs to register with the department while enrolled in an approved education program."

Chapter 106 Section 8 Laws 2009

Section 8. Section 61-14E-9 NMSA 1978 (being Laws 1983, Chapter 317, Section 9, as amended) is amended to read:

"61-14E-9. FEES FOR LICENSURE.--After the promulgation of rules and regulations, the department shall charge and collect the following fees:

A. an application fee not to exceed ten dollars (\$10.00);

B. an examination fee not to exceed one hundred fifty dollars (\$150) to cover the costs the department incurs in administering the initial examination required for limited certification;

C. a biennial licensure fee not to exceed one hundred dollars (\$100);

D. a temporary licensure fee not to exceed fifty dollars (\$50.00) to cover a period no longer than twelve months when new graduates of an approved program are in the process of taking required licensure examinations; and

E. miscellaneous fees, such as for requests for duplicate or replacement licenses, legal name change and written verification, not to exceed twenty-five dollars (\$25.00)."

Chapter 106 Section 9 Laws 2009

Section 9. Section 61-14E-10 NMSA 1978 (being Laws 1983, Chapter 317, Section 10, as amended) is amended to read:

"61-14E-10. FUND ESTABLISHED--DISPOSITION--METHOD OF PAYMENT.--

A. There is created in the state treasury the "radiologic technology fund".

B. All fees received by the department pursuant to the Medical Imaging and Radiation Therapy Health and Safety Act shall be deposited with the state treasurer. The state treasurer shall place the money to the credit of the radiologic technology fund.

C. Payments out of the radiologic technology fund shall be on vouchers issued and signed by the person designated by the department upon warrants drawn by the department of finance and administration and shall be used by the department for the purpose of meeting necessary expenses incurred in the enforcement of the purposes of the Medical Imaging and Radiation Therapy Health and Safety Act, the duties imposed by that act and the promotion of education and standards for medical imaging technology and radiation therapy in this state. All money unexpended or unencumbered at the end of the fiscal year shall remain in the radiologic technology fund for use in accordance with the provisions of the Medical Imaging and Radiation Therapy Health and Safety Act."

Chapter 106 Section 10 Laws 2009

Section 10. Section 61-14E-11 NMSA 1978 (being Laws 1983, Chapter 317, Section 11) is amended to read:

"61-14E-11. SUSPENSION--REVOCATION--APPLICATION OF UNIFORM LICENSING ACT.--The board, pursuant to the advice and recommendation of the

advisory council, may deny, revoke or suspend any license held or applied for under the Medical Imaging and Radiation Therapy Health and Safety Act, pursuant to the procedures established in the Uniform Licensing Act, upon grounds that the medical imaging professional, radiation therapist or the applicant:

A. is guilty of fraud or deceit in procuring or attempting to procure a license or certificate of limited practice;

B. is convicted of a felony subsequent to certification;

C. is unfit or incompetent;

D. is habitually intemperate or is addicted to the use of habit-forming drugs;

E. is mentally incompetent;

F. has aided and abetted a person who does not possess a license pursuant to the Medical Imaging and Radiation Therapy Health and Safety Act or otherwise authorized by that act in engaging in the activities of a license holder;

G. has engaged in any practice beyond the scope of authorized activities of an individual licensed or a certificate of limited practice holder pursuant to the Medical Imaging and Radiation Therapy Health and Safety Act;

H. is guilty of unprofessional conduct or unethical conduct as defined by rules promulgated by the board;

I. has interpreted a diagnostic imaging procedure for a patient, the patient's family or the public; or

J. has willfully or repeatedly violated any provisions of the Medical Imaging and Radiation Therapy Health and Safety Act."

Chapter 106 Section 11 Laws 2009

Section 11. Section 61-14E-12 NMSA 1978 (being Laws 1983, Chapter 317, Section 12, as amended) is amended to read:

"61-14E-12. VIOLATIONS--PENALTIES.--It is a misdemeanor for any person, firm, association or corporation to:

A. knowingly or willfully employ as a medical imaging professional or radiation therapist any person who is required to but does not possess a valid license or certificate of limited practice to engage in the practice of medical imaging or radiation therapy;

B. sell, fraudulently obtain or furnish any medical imaging technology or radiation therapy license or certificate of limited practice or to aid or abet therein;

C. practice medical imaging or radiation therapy as defined by the Medical Imaging and Radiation Therapy Health and Safety Act unless exempted or licensed to do so under the provisions of that act; or

D. otherwise violate any provisions of the Medical Imaging and Radiation Therapy Health and Safety Act.

The department shall assist the proper legal authorities in the prosecution of all persons violating the provisions of the Medical Imaging and Radiation Therapy Health and Safety Act. In prosecutions under that act, it shall not be necessary to prove a general course of conduct. Proof of a single act, a single holding out or a single attempt shall constitute a violation, and, upon conviction, such person shall be sentenced to be imprisoned in the county jail for a definite term not to exceed one year or to the payment of a fine of not more than one thousand dollars (\$1,000) or both. The department shall notify within thirty days of a final disciplinary action any credentialing organization through which the person is credentialed or certified."

Chapter 106 Section 12 Laws 2009

Section 12. A new section of the Medical Imaging and Radiation Therapy Health and Safety Act is enacted to read:

"MEDICAL IMAGING AND RADIATION THERAPY ADVISORY COUNCIL--
CREATION AND ORGANIZATION.--

A. The "medical imaging and radiation therapy advisory council" is established, consisting of eleven members. The members shall be appointed by the governor, after consultation with the secretary of environment and professional organizations representing medical imaging and radiation therapy, for three-year staggered terms. The governor shall fill any vacancy occurring on the council within sixty days of the vacancy. The replacement appointee shall serve the remainder of the original member's unexpired term.

B. The members of the council shall be:

(1) six medical imaging professionals licensed by the department, representing each medical imaging modality defined under the Medical Imaging and Radiation Therapy Health and Safety Act, including one licensed radiographer and one licensed radiologist assistant;

(2) one individual who holds a certificate of limited practice in radiography;

(3) three physicians licensed pursuant to Section 61-6-1 or 61-10-1 NMSA 1978, each of whom represents a different medical specialty, only one of whom shall be a radiologist and at least one of whom shall be from a rural area; and

(4) one member of the general public who is not licensed by the department nor a relative of anyone licensed by the department.

C. The council may create ad hoc disciplinary review committees to consider medical matters and make recommendations to the council. Ad hoc disciplinary review committees shall, at a minimum, include:

(1) one individual licensed by the department in the specific modality in question and who holds similar credentials as the individual under disciplinary review;

(2) one physician, licensed pursuant to Section 61-6-1 or 61-10-1 NMSA 1978, who is experienced in the modality in question; and

(3) one member of the general public.

D. A member shall serve no more than two consecutive three-year terms.

E. A member of the council may receive per diem and mileage as provided for non-salaried public officers in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance in connection with the discharge of the duties as a council member.

F. A member failing to attend three consecutive regular and properly noticed meetings of the council without a reasonable excuse shall be automatically removed from the council.

G. In the event of a vacancy, the department shall immediately notify the governor of the vacancy. Within ninety days of receiving notice of a vacancy, the governor shall appoint a qualified person to fill the remainder of the unexpired term.

H. A majority of the council members currently serving constitutes a quorum of the council.

I. The council shall meet at least once a year and at such other times as it deems necessary.

J. The council shall annually elect officers as deemed necessary to administer its duties.

K. Notwithstanding the provisions of Subsections A through I of this section, members shall initially be appointed by the governor so that five members shall

be appointed for terms of three years and six members shall be appointed for terms of five years. Thereafter, the additional members shall be appointed by the governor for staggered terms of three years each.

L. As used in this section:

(1) "relative" means a person's spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, half-brother, half-sister or spouse's parent; and

(2) "rural" means an area or location within a county having fifty thousand or fewer inhabitants as of the last federal decennial census."

HJC/HHGAC/House Bill 498, aa

Approved April 6, 2009

LAWS 2009, CHAPTER 107

AN ACT

RELATING TO STATE PROCUREMENT; REQUIRING CERTAIN STATE DEPARTMENTS TO DEVELOP AND MAINTAIN AN ONLINE PUBLIC DATABASE OF STATE CONTRACTS AND CONTRACTORS.

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

Chapter 107 Section 1 Laws 2009

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

"CONTRACT DATABASE.--

A. The department of finance and administration, the department of information technology, the department of transportation and the general services department shall jointly develop a database of all state contracts with a term beginning on or after January 1, 2010 and having a value of more than twenty thousand dollars (\$20,000) entered into pursuant to the Procurement Code or otherwise within the purview of any state agency. The general services department shall coordinate the maintenance of the database with the assistance of the other departments.

B. The general services department shall make the database available to the public on its online web site no later than January 1, 2010. The database shall be searchable by contractor name, subject matter, date, price or consideration, contract

number, amendments and other categories of information that the departments identified in Subsection A of this section agree are necessary to inform the public fully about state contracts."

HBIC/House Bill 546

Approved April 6, 2009

LAWS 2009, CHAPTER 108

AN ACT

RELATING TO INTERGOVERNMENTAL RELATIONS; ENACTING THE NEW MEXICO-SONORA COMMISSION ACT; PROVIDING FOR COOPERATIVE ACTIVITIES BETWEEN NEW MEXICO AND THE MEXICAN STATE OF SONORA.

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

Chapter 108 Section 1 Laws 2009

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

Chapter 108 Section 2 Laws 2009

Section 2. DEFINITIONS.--As used in the New Mexico-Sonora Commission Act:

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

Chapter 108 Section 3 Laws 2009

Section 3. NEW MEXICO-SONORA COMMISSION CREATED--MEMBERS--ADMINISTRATION.--

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

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

- (1) the governor of New Mexico;

(2) the secretary of economic development;

(3) the secretary of tourism;

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

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

C. The members of the commission representing Sonora shall be appointed or assigned according to regulations and procedures governing commissions in that state.

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

E. The economic development department shall keep a record of commission proceedings.

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

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

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

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

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

Chapter 108 Section 4 Laws 2009

Section 4. POWERS AND DUTIES.--

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

B. The commission may:

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

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

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

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

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

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

Chapter 108 Section 5 Laws 2009

Section 5. CONFLICT OF INTEREST.--A member of the commission who performs a function or duty pursuant to the New Mexico-Sonora Commission Act shall not have a direct or indirect financial interest in an activity undertaken by the commission.

Chapter 108 Section 6 Laws 2009

Section 6. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.

House Bill 295, aa

Approved April 6, 2009

LAWS 2009, CHAPTER 109

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE; CHANGING CERTAIN PESTICIDE APPLICATOR LICENSING REQUIREMENTS.

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

Chapter 109 Section 1 Laws 2009

Section 1. Section 76-4-3 NMSA 1978 (being Laws 1973, Chapter 366, Section 3, as amended) is amended to read:

"76-4-3. DEFINITIONS.--As used in the Pesticide Control Act:

A. "equipment" means any type of ground, water or aerial equipment, device or contrivance using motorized, mechanical or pressurized power to apply any pesticide on land and anything that may be growing, habitating or stored on or in such land, but does not include any pressurized hand-sized household device used by a homeowner to apply a pesticide or any equipment, device or contrivance of which the person who is applying the pesticide on the person's own land is the source of power or energy in making the pesticide application;

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

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

D. "device" means any instrument or contrivance other than a firearm that is intended for trapping, destroying, repelling or mitigating any pest or any other form of plant or animal life, other than humans and other than bacteria, viruses or other microorganisms on or in any living thing other than plants, but does not include equipment used for the application of pesticides when sold separately therefrom, or traps used to control predators or rodents or sterilization using dry heat or steam;

E. "distribute" means to offer for sale, hold for sale, sell, barter or supply in this state;

F. "environment" includes water, air and land and all plants and every living thing in water, in air and on land and the existing interrelationships;

G. "insect" means any of the numerous small invertebrate animals belonging principally to the class insecta, including beetles, bugs, bees, flies, and to other allied classes of arthropods, including spiders, mites, ticks, millipedes, centipedes and sowbugs;

H. "ingredient statement" means a statement that contains the name and percentage of each ingredient of any pesticide that is intended for one of the purposes under Paragraphs (1) through (4) of Subsection N of this section, and the total percentage of all ingredients in the pesticide not for one of those purposes. If the

pesticide contains arsenic in any form, the ingredient statement shall contain a statement of the percentages of total and water-soluble arsenic, calculated as elemental arsenic;

I. "label" means the written, printed or graphic matter on or attached to the pesticide or device or any of its containers or wrappers;

J. "labeling" means all labels and all other written, printed or graphic matter accompanying the pesticide or device at any time; or to which reference is made on the label or in literature accompanying the pesticide or device, except to current official publications of the department, the United States environmental protection agency, United States departments of agriculture, the interior and health and human services, state agricultural universities and other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides;

K. "land" means all land and water areas, including air space, and all living things and all structures, buildings, contrivances and machinery appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation;

L. "person" has the extended meaning ascribed to it in Subsection E of Section 12-2A-3 NMSA 1978;

M. "pest" means any living organism injurious to other living organisms, except humans, viruses, bacteria or other microorganisms in or on other living organisms other than plants, that the board by rule declares to be a pest;

N. "pesticide" means any substance or mixture of substances intended for:

(1) preventing, destroying, repelling or mitigating any pest;

(2) causing the leaves or foliage to drop from a plant, with or without causing abscission;

(3) artificially accelerating the drying of plant tissue; or

(4) accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior, of ornamental or crop plants or the produce thereof, through physiological action, but not including substances that are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants or soil amendments;

O. "pesticide dealer" means any person who distributes highly toxic pesticides, restricted use pesticides or both, which pesticides are restricted by rule to distribution only by licensed pesticide dealers;

P. "pest management consultant" means any individual who offers or supplies technical advice or makes recommendations to the user of highly toxic pesticides, restricted use pesticides or both, which pesticides are restricted by rule to distribution only by licensed pesticide dealers;

Q. "registrant" means a person who has registered any pesticide pursuant to the provisions of the Pesticide Control Act;

R. "restricted use pesticide" means any pesticide or device designated by the board as requiring specific restrictions to prevent unreasonable adverse effects on the environment, including humans, beneficial insect predators and parasites, pollinating insects, animals, crops, wildlife and lands but excluding the pests the pesticide or device is intended to prevent, destroy, control or mitigate;

S. "unreasonable adverse effects on the environment" means an unreasonable risk to humans or the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide;

T. "noncommercial applicator" means a person who uses or demonstrates restricted use pesticides and does not qualify as a private applicator and is not required to have a commercial applicator's license;

U. "private applicator" means a certified applicator who uses or supervises the use of any pesticide that is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by the certified applicator or the certified applicator's employer or on the property of another person if applied without compensation other than trading of personal services between producers of agricultural commodities;

V. "public applicator" means a certified applicator who as an employee of a federal, state, county or municipal agency or municipal corporation uses any pesticide that is classified for restricted use or any general use pesticide, when applied to sites or under conditions identified by rule promulgated by the board; and

W. "commercial applicator" means a certified applicator, whether or not the certified applicator is a private applicator with respect to some uses, who for compensation uses or supervises the use of any pesticide for any purpose on any property other than as provided by Sections 76-4-19 and 76-4-20.1 NMSA 1978."

Chapter 109 Section 2 Laws 2009

Section 2. Section 76-4-19 NMSA 1978 (being Laws 1973, Chapter 366, Section 19, as amended) is amended to read:

"76-4-19. APPLICATION OF ACT TO GOVERNMENTAL ENTITIES--PUBLIC APPLICATOR'S LICENSE REQUIRED.--

A. A public applicator shall be subject to the provisions of the Pesticide Control Act and rules adopted pursuant to that act.

B. Public applicators shall be subject to examinations or other licensing provisions as provided in the Pesticide Control Act or by rule promulgated by the board. The department shall issue a limited license without fee to the public applicator who has qualified for the license. The public applicator license shall be valid only when the applicator is acting as an applicator applying pesticides used by federal, state, county or municipal agencies or municipal corporations. Government research personnel shall be exempt from this licensing requirement only when applying general use pesticides to experimental plots."

Chapter 109 Section 3 Laws 2009

Section 3. Section 76-4-20.1 NMSA 1978 (being Laws 1979, Chapter 394, Section 8) is amended to read:

"76-4-20.1. NONCOMMERCIAL APPLICATOR LICENSE.--

A. A noncommercial applicator shall not use a restricted use or state restricted use pesticide without having a valid current noncommercial applicator license issued by the department for the license use categories and subcategories in which the pesticide application is made.

B. Application for an original or renewal license shall be on a form prescribed by the department. An annual prescribed fee shall be charged for each noncommercial applicator license issued.

C. The department shall not issue a noncommercial applicator license until the applicant has passed a written certification examination to demonstrate to the department the applicant's knowledge of how to apply pesticides under the classifications for which the applicant has applied and the applicant's knowledge of the nature and effect of pesticides the applicant may apply under such classifications.

D. The department shall renew any applicant's license under the classification for which the applicant is certified; provided that the applicant's license is not under a suspension or revocation order and the applicant has complied with the provisions of the Pesticide Control Act.

E. Nothing in this section shall imply the right to apply pesticides for hire without first having obtained a commercial applicator license."

Approved April 6, 2009

LAWS 2009, CHAPTER 110

AN ACT

RELATING TO PUBLICLY OWNED VEHICLES; PROVIDING FOR THE PURCHASE OF VEHICLES THAT MEET CORPORATE AVERAGE FUEL ECONOMY STANDARDS ISSUED BY THE FEDERAL GOVERNMENT.

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

Chapter 110 Section 1 Laws 2009

Section 1. Section 13-1B-3 NMSA 1978 (being Laws 1992, Chapter 58, Section 3, as amended) is amended to read:

"13-1B-3. ACQUISITION OF VEHICLES--EXEMPTIONS.--

A. Seventy-five percent of vehicles acquired in fiscal year 2003 and each fiscal year thereafter by the agencies and departments of state government and educational institutions shall be vehicles that:

(1) meet or exceed the corporate average fuel economy standards for vehicles issued by the national highway transportation safety administration of the United States department of transportation;

(2) are hybrid vehicles;

(3) are capable of operating on alternative fuel with either bi-fuel capability or dedicated engine configurations; or

(4) are plug-in electric vehicles.

B. Certified law enforcement pursuit vehicles and emergency vehicles are exempt from the provisions of the Alternative Fuel Acquisition Act. The department may exempt additional vehicles from the requirements of Subsection A of this section upon demonstration by the acquiring entity that:

(1) a vehicle that meets the corporate average fuel economy standards is not suitable for its intended use or is unavailable from an original vehicle manufacturer;

(2) alternative fuels are unavailable at a cost within fifteen percent of the cost of conventional fuel within the normal driving range of these vehicles; or

(3) a vehicle suitable for its intended use and capable of operating on alternative fuel or a gas-electric hybrid is not available from an original equipment manufacturer.

C. Equipment and installation procedures shall conform to all applicable state and federal safety and environmental regulations and standards.

D. The agencies and departments of state government, political subdivisions and educational institutions may submit loan applications to the department to acquire loans to facilitate the acquisition of their vehicles.

E. Agencies and departments of state government and educational institutions shall provide to the department by September 1, 2003 and by September 1 of each year thereafter the total number of vehicles acquired in the preceding fiscal year and the number of those vehicles that meet the requirements of Paragraphs (1) through (4) of Subsection A of this section and the make, model, fuel or power type of and corporate average fuel economy rating for each of those vehicles."

Senate Bill 450, aa

Approved April 6, 2009

LAWS 2009, CHAPTER 111

AN ACT

RELATING TO EMERGENCY RESPONSE; ENACTING THE EMERGENCY COMMUNICATIONS INTEROPERABILITY ACT; ESTABLISHING THE INTEROPERABILITY PLANNING COMMISSION; ASSIGNING DUTIES TO THE HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT; REQUIRING STATE AND LOCAL AGENCY COMPLIANCE.

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

Chapter 111 Section 1 Laws 2009

Section 1. A new section of Chapter 12 NMSA 1978 is enacted to read:

"SHORT TITLE.--This act may be cited as the "Emergency Communications Interoperability Act"."

Chapter 111 Section 2 Laws 2009

Section 2. A new section of Chapter 12 NMSA 1978 is enacted to read:

"DEFINITIONS.--As used in the Emergency Communications Interoperability Act:

A. "department" means the homeland security and emergency management department;

B. "first responder" means a public safety employee or volunteer whose duties include responding rapidly to an emergency, including but not limited to:

(1) a law enforcement officer;

(2) a firefighter or certified volunteer firefighter; and

(3) an emergency medical services provider;

C. "infrastructure equipment" means the underlying fixed equipment required to establish interoperable communications between radio systems used by local, state, tribal and federal agencies and first responders; and

D. "interoperability" means coordination of critical information communication systems or networks, including radio and emergency coordination information equipment, that are consistently operable with all relevant local, state, tribal and federal agencies and first responders."

Chapter 111 Section 3 Laws 2009

Section 3. A new section of Chapter 12 NMSA 1978 is enacted to read:

"INTEROPERABILITY PLANNING COMMISSION--CREATED.--

A. The "interoperability planning commission" is created and administratively attached to the department.

B. The interoperability planning commission is a permanent advisory commission created to advise and support the department on emergency response and homeland security activities relating to interoperability, the obtaining of funding and the use of available funding.

C. The commission consists of twelve members, including:

(1) the lieutenant governor;

(2) the homeland security advisor;

- designee;
- (3) the secretary of information technology or the secretary's designee;
- (4) the adjutant general or a representative from the department of military affairs;
- (5) the secretary of energy, minerals and natural resources or the secretary's designee;
- (6) the state fire marshal or the fire marshal's designee;
- (7) the secretary of Indian affairs or the secretary's designee;
- (8) the secretary of transportation or the secretary's designee;
- (9) the secretary of health or the secretary's designee;
- (10) the secretary of public safety or the secretary's designee;
- (11) the executive director of the New Mexico municipal league or the executive director's designee; and
- (12) the executive director of the New Mexico association of counties or the executive director's designee.

D. The commission shall appoint a chair and vice chair from among its members. The commission shall meet at the call of the chair but no less than two times each year.

E. Members of the commission, or their designees, who are not supported by public money may be reimbursed for per diem and mileage pursuant to the Per Diem and Mileage Act, but shall not receive any other compensation, perquisite or allowance."

Chapter 111 Section 4 Laws 2009

Section 4. A new section of Chapter 12 NMSA 1978 is enacted to read:

"INTEROPERABILITY PLANNING COMMISSION--DUTIES.--The interoperability planning commission shall advise the department on:

A. the development and coordination of a statewide interoperable emergency communications plan in compliance with national incident management system guidelines, including an integrated public safety radio communications system and other coordinated critical information systems, to achieve interoperability within and between local, state, tribal and federal agencies and first responders;

B. implementation of the interoperable emergency communications plan by state and local agencies and shall provide specific directions for methods by which agencies shall implement those strategies;

C. priorities relating to the interoperable emergency communications plan;
and

D. other matters relating to planning, development, coordination, promotion and implementation of the interoperable emergency communications plan."

Chapter 111 Section 5 Laws 2009

Section 5. A new section of Chapter 12 NMSA 1978 is enacted to read:

"INTEROPERABILITY--DEPARTMENT.--The department shall:

A. establish, implement and administer a statewide interoperable emergency communications plan and standards for a statewide integrated public safety radio communications system;

B. train representatives of entities in the state that are involved in emergency response and homeland security activities with respect to interoperability;

C. require that all radio communications at emergency incidents adhere to the national incident management system guidelines established by the federal department of homeland security and statewide integrated public safety radio communications standards;

D. use appropriated money, including money from relevant federal homeland security grants, for the purposes of designing and promulgating systems compliant with the standards established under Subsection A of this section and to enable the implementation and maintenance of a statewide interoperable public safety radio communications system; and

E. report annually to the appropriate interim legislative committee."

Chapter 111 Section 6 Laws 2009

Section 6. A new section of Chapter 12 NMSA 1978 is enacted to read:

"INTEROPERABILITY--AGENCY COMPLIANCE.--All state and local agency budgets and plans to purchase infrastructure equipment shall conform to the interoperability standards developed by the department."

Senate Bill 173

Approved April 6, 2009

LAWS 2009, CHAPTER 112

AN ACT

RELATING TO COURTS; CREATING THE ELECTRONIC SERVICES FUND; PROVIDING FOR THE ESTABLISHMENT OF ELECTRONIC SERVICES FEES TO DEFRAY THE COST OF PROVIDING ELECTRONIC FILING AND PUBLIC ACCESS TO COURT DOCUMENTS; AUTHORIZING THE ADMINISTRATIVE OFFICE OF THE COURTS TO ENTER INTO AGREEMENTS TO PROVIDE ELECTRONIC FILING AND ACCESS SERVICES; MAKING AN APPROPRIATION.

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

Chapter 112 Section 1 Laws 2009

Section 1. A new section of Chapter 34, Article 1 NMSA 1978 is enacted to read:

"ELECTRONIC SERVICES FUND--CREATED--PURPOSE--ELECTRONIC SERVICES FEE ESTABLISHED.--

A. The "electronic services fund" is created in the state treasury to be administered by the administrative office of the courts. The fund consists of electronic services fees, appropriations, gifts, grants and donations. Interest earned on money in the fund shall be credited to the fund. Balances in the fund shall not revert to the general fund at the end of a fiscal year.

B. Money in the fund is subject to appropriation by the legislature to the administrative office of the courts for the purpose of defraying the costs of operating and maintaining electronic filing services and providing public access to electronic documents in appellate, district, metropolitan and magistrate courts, consistent with rules promulgated by the supreme court.

C. The supreme court is authorized to establish by rule reasonable electronic services fees to cover the expense of providing electronic services to the public, including electronic document filing, access to electronic documents and ancillary services.

D. The administrative office of the courts is authorized to enter into agreements with electronic filing companies to provide electronic services, collect the electronic services fees and remit those fees to the administrative office of the courts. An agreement approved by the supreme court may further allow an electronic filing company to retain a portion of the electronic services fees collected and to remit the

remainder of those fees to the administrative office of the courts for deposit in the electronic services fund.

E. Disbursements from the electronic services fund shall be made by warrants drawn by the secretary of finance and administration upon vouchers issued and signed by the director of the administrative office of the courts or the director's designee."

Chapter 112 Section 2 Laws 2009

Section 2. A new section of Chapter 34, Article 2 NMSA 1978 is enacted to read:

"SUPREME COURT--ELECTRONIC SERVICES FEE.--The clerk of the supreme court may charge and collect from persons who use electronic services an electronic services fee in an amount established by supreme court rule. Proceeds from the electronic services fee shall be remitted to the administrative office of the courts for deposit in the electronic services fund."

Chapter 112 Section 3 Laws 2009

Section 3. A new section of Chapter 34, Article 5 NMSA 1978 is enacted to read:

"COURT OF APPEALS--ELECTRONIC SERVICES FEE.--The clerk of the court of appeals may charge and collect from persons who use electronic services an electronic services fee in an amount established by supreme court rule. Proceeds from the electronic services fee shall be remitted to the administrative office of the courts for deposit in the electronic services fund."

Chapter 112 Section 4 Laws 2009

Section 4. A new section of Chapter 34, Article 6 NMSA 1978 is enacted to read:

"DISTRICT COURT--ELECTRONIC SERVICES FEE.--A district court may charge and collect from persons who use electronic services an electronic services fee in an amount established by supreme court rule. Proceeds from the electronic services fee shall be remitted to the administrative office of the courts for deposit in the electronic services fund."

Chapter 112 Section 5 Laws 2009

Section 5. A new section of Chapter 34, Article 8A NMSA 1978 is enacted to read:

"METROPOLITAN COURT--ELECTRONIC SERVICES FEE.--A metropolitan court may charge and collect from persons who use electronic services an electronic

services fee in an amount established by supreme court rule. Proceeds from the electronic services fee shall be remitted to the administrative office of the courts for deposit in the electronic services fund."

Chapter 112 Section 6 Laws 2009

Section 6. A new section of Chapter 35, Article 6 NMSA 1978 is enacted to read:

"MAGISTRATE COURT--ELECTRONIC SERVICES FEE.--A magistrate court may charge and collect from persons who use electronic services an electronic services fee in an amount established by supreme court rule. Proceeds from the electronic services fee shall be remitted to the administrative office of the courts for deposit in the electronic services fund."

Senate Bill 277, aa

Approved April 6, 2009

LAWS 2009, CHAPTER 113

AN ACT

RELATING TO PUBLIC UTILITIES; PROVIDING FOR FUTURE TEST PERIODS; PROVIDING FOR THE CONSIDERATION OF FUTURE TEST PERIODS AND CONSTRUCTION WORK IN PROGRESS IN DETERMINING RATES; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2005.

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

Chapter 113 Section 1 Laws 2009

Section 1. Section 62-3-3 NMSA 1978 (being Laws 1967, Chapter 96, Section 3, as amended by Laws 2005, Chapter 339, Section 2 and by Laws 2005, Chapter 341, Section 12) is amended to read:

"62-3-3. DEFINITIONS.--Unless otherwise specified, when used in the Public Utility Act:

A. "affiliated interest" means a person who directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with a public utility. Control includes instances when:

(1) a person is an officer, director, partner, trustee or person of similar status or function;

(2) a person owns directly or indirectly or has a beneficial interest in ten percent or more of voting securities of a person;

(3) a person has a level of ownership of securities other than voting securities that the commission establishes as creating a presumption of control; and

(4) the possession of the power to direct or cause the direction of the management and policies of a person exists in fact, notwithstanding the lack of ownership of ten percent or more of the person's voting securities;

B. "commission" means the public regulation commission;

C. "commissioner" means a member of the commission;

D. "municipality" means a municipal corporation organized under the laws of the state, and H-class counties;

E. "person" means an individual, firm, partnership, company, rural electric cooperative organized under Laws 1937, Chapter 100 or the Rural Electric Cooperative Act, corporation or lessee, trustee or receiver appointed by any court. "Person" does not mean a class A county as described in Section 4-36-10 NMSA 1978 or a class B county as described in Section 4-36-8 NMSA 1978. "Person" does not mean a municipality as defined in this section unless the municipality has elected to come within the terms of the Public Utility Act as provided in Section 62-6-5 NMSA 1978. In the absence of voluntary election by a municipality to come within the provisions of the Public Utility Act, the municipality shall be expressly excluded from the operation of that act and from the operation of all its provisions, and no such municipality shall for any purpose be considered a public utility;

F. "securities" means stock, stock certificates, bonds, notes, debentures, mortgages or deeds of trust or similar evidences of indebtedness issued, executed or assumed by a utility;

G. "public utility" or "utility" means every person not engaged solely in interstate business and, except as stated in Sections 62-3-4 and 62-3-4.1 NMSA 1978, that may own, operate, lease or control:

(1) any plant, property or facility for the generation, transmission or distribution, sale or furnishing to or for the public of electricity for light, heat or power or other uses;

(2) any plant, property or facility for the manufacture, storage, distribution, sale or furnishing to or for the public of natural or manufactured gas or

mixed or liquefied petroleum gas for light, heat or power or other uses; but "public utility" or "utility" shall not include any plant, property or facility used for or in connection with the business of the manufacture, storage, distribution, sale or furnishing of liquefied petroleum gas in enclosed containers or tank truck for use by others than consumers who receive their supply through any pipeline system operating under municipal authority or franchise and distributing to the public;

(3) any plant, property or facility for the supplying, storage, distribution or furnishing to or for the public of water for manufacturing, municipal, domestic or other uses; provided, however, that nothing contained in this paragraph shall be construed to apply to irrigation systems, the chief or principal business of which is to supply water for the purpose of irrigation;

(4) any plant, property or facility for the production, transmission, conveyance, delivery or furnishing to or for the public of steam for heat or power or other uses;

(5) any plant, property or facility for the supplying and furnishing to or for the public of sanitary sewers for transmission and disposal of sewage produced by manufacturing, municipal, domestic or other uses; provided that "public utility" or "utility" as used in the Public Utility Act does not include any utility owned or operated by a class A county as described in Section 4-36-10 NMSA 1978 either directly or through a corporation owned by or under contract with such a county; or

(6) any plant, property or facility for the sale or furnishing to or for the public of goods or services to reduce the consumption of or demand for electricity or natural gas, and is either a public utility under the definitions found in Paragraph (1) or (2) of this subsection, or is an alternative energy efficiency provider as described in Section 62-17-7 NMSA 1978;

H. "rate" means every rate, tariff, charge or other compensation for utility service rendered or to be rendered by a utility and every rule, regulation, practice, act, requirement or privilege in any way relating to such rate, tariff, charge or other compensation and any schedule or tariff or part of a schedule or tariff thereof;

I. "renewable energy" means electrical energy generated by means of a low- or zero-emission generation technology that has substantial long-term production potential and may include, without limitation, the following energy sources: solar, wind, hydropower, geothermal, landfill gas, anaerobically digested waste biomass or fuel cells that are not fossil fueled. "Renewable energy" does not include fossil fuel or nuclear energy;

J. "service" or "service regulation" means every rule, regulation, practice, act or requirement relating to the service or facility of a utility;

K. "Class I transaction" means the sale, lease or provision of real property, water rights or other goods or services by an affiliated interest to a public utility with which it is affiliated or by a public utility to its affiliated interest;

L. "Class II transaction" means:

(1) the formation after May 19, 1982 of a corporate subsidiary by a public utility or a public utility holding company by a public utility or its affiliated interest;

(2) the direct acquisition of the voting securities or other direct ownership interests of a person by a public utility if such acquisition would make the utility the owner of ten percent or more of the voting securities or other direct ownership interests of that person;

(3) the agreement by a public utility to purchase securities or other ownership interest of a person other than a nonprofit corporation, contribute additional equity to, acquire additional equity interest in or pay or guarantee any bonds, notes, debentures, deeds of trust or other evidence of indebtedness of any such person; provided, however, that a public utility may honor all agreements entered into by such utility prior to May 19, 1982; or

(4) the divestiture by a public utility of any affiliated interest that is a corporate subsidiary of the public utility;

M. "corporate subsidiary" means any person ten percent or more of whose voting securities or other ownership interests are directly owned by a public utility;

N. "public utility holding company" means an affiliated interest that controls a public utility through the direct or indirect ownership of voting securities of that public utility;

O. "voting securities" means securities that carry the present right to vote for the election of directors or other members of the governing body ultimately responsible for the management of the organization; and

P. "future test period" means a twelve-month period beginning no later than the date a proposed rate change is expected to take effect."

Chapter 113 Section 2 Laws 2009

Section 2. Section 62-6-14 NMSA 1978 (being Laws 1941, Chapter 84, Section 26, as amended) is amended to read:

"62-6-14. VALUATION BY THE COMMISSION.--

A. When in the exercise of its powers and jurisdiction it is necessary for the commission to consider or ascertain the valuation of the properties or business of a public utility, or make any other determination involved in the fixing or setting of rates for a utility, the commission shall give due consideration to the history and development of the property and business of the particular public utility, to the original cost thereof, to the cost of reproduction as a going concern, to the revenues, investment and expenses of the utility in this state and otherwise subject to the commission's jurisdiction, to construction work in progress and to other elements of value and rate-making formulae and methods recognized by the laws of the land for rate-making purposes.

B. For the purpose of making such valuation or determinations, the members of the commission and its duly authorized agents and employees shall at all reasonable times have free access to the property, accounts, records and memoranda of the utility whose property and rights are being valued, and the utility shall aid and cooperate with the commission and its duly authorized agents and employees to the fullest degree for the purpose of facilitating the investigation.

C. In making any determination involving the rates or service of a utility, the commission may change its past practices or procedures, provided that substantial evidence on the record justifies such a change.

D. The commission shall set rates based on a test period that the commission determines best reflects the conditions to be experienced during the period when the rates determined by the commission take effect. If a future test period is proposed, the commission shall give due consideration that the future test period may best reflect those conditions.

E. Upon a request to include construction work in progress in the rate base, the commission shall grant the request only upon a finding that a project's costs are reasonable. The commission shall not include the associated allowance for funds used during construction in income. The projects for which the commission shall grant a request include environmental improvement projects and generation and transmission investments for which the utility has obtained a certificate of public convenience and necessity; provided that the projects are anticipated to be in service no later than five months after the end of a utility's test period, but in no event later than twenty-four months after the filing date of a utility's rate proceeding."

Senate Bill 477, aa

Approved April 6, 2009

LAWS 2009, CHAPTER 114

AN ACT

RELATING TO STATE BUILDINGS; AUTHORIZING STATE OFFICE BUILDING TAX REVENUE BONDS FOR AN EXECUTIVE OFFICE BUILDING; INCREASING THE AMOUNT OF A CERTAIN TAX DISTRIBUTION; EXTENDING THE EXPENDITURE PERIOD AND EXPANDING THE PURPOSES OF CERTAIN APPROPRIATIONS; MAKING APPROPRIATIONS; DECLARING AN EMERGENCY.

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

Chapter 114 Section 1 Laws 2009

Section 1. Section 6-21C-4 NMSA 1978 (being Laws 2001, Chapter 199, Section 4, as amended) is amended to read:

"6-21C-4. NEW MEXICO FINANCE AUTHORITY SHALL ISSUE BUILDING BONDS--APPROPRIATION OF PROCEEDS.--

A. The New Mexico finance authority is authorized to issue and sell revenue bonds, known as "state office building tax revenue bonds", payable solely from the state building bonding fund, in compliance with the State Building Bonding Act for the purpose of acquiring state office buildings and related facilities and other critical state facilities within the master planning jurisdiction of the capitol buildings planning commission when the acquisition has been reviewed by the capitol buildings planning commission and has been authorized by legislative act and the director of the property control division of the general services department has certified the need for the issuance of the bonds; provided that the total amount of state office building tax revenue bonds outstanding at any one time shall not exceed one hundred fifteen million dollars (\$115,000,000).

B. The net proceeds from the building bonds are appropriated to the property control division of the general services department for the purpose of acquiring state office buildings and related facilities and other critical state facilities within the master planning jurisdiction of the capitol buildings planning commission, the acquisition of which shall be consistent with the State Building Bonding Act and the authorizing legislation."

Chapter 114 Section 2 Laws 2009

Section 2. Section 6-21C-5 NMSA 1978 (being Laws 2001, Chapter 199, Section 5, as amended) is amended to read:

"6-21C-5. STATE BUILDING BONDING FUND CREATED--MONEY IN THE FUND PLEDGED.--

A. The "state building bonding fund" is created as a special fund within the New Mexico finance authority. The fund shall be administered by the New Mexico finance authority as a special account. The fund shall consist of money appropriated

and transferred to the fund and gross receipts tax revenues distributed to the fund by law. Earnings of the fund shall be credited to the fund. Balances in the fund at the end of any fiscal year shall remain in the fund, except as provided in this section.

B. Money in the state building bonding fund is pledged for the payment of principal and interest on all building bonds issued pursuant to the State Building Bonding Act. Money in the fund is appropriated:

(1) to the New Mexico finance authority for the purpose of paying debt service, including redemption premiums, on the building bonds and the expenses incurred in the issuance, payment and administration of the bonds; and

(2) if specifically authorized in the law authorizing the acquisition of a building, to the property control division of the general services department for expenditures for required maintenance and repairs of that building but only if the authority determines that money in the fund is sufficient to meet the requirements of Paragraph (1) of this subsection.

C. On the last day of January and July of each year, the New Mexico finance authority shall estimate the amount needed to make debt service and other payments during the next twelve months from the state building bonding fund on the building bonds issued pursuant to the State Building Bonding Act plus the amount that may be needed for any required reserves and, if specifically authorized in the law authorizing the acquisition of a building, the amount that may be needed for required maintenance and repairs of that building. The New Mexico finance authority shall transfer to the general fund any balance in the state building bonding fund above the estimated amounts.

D. Any balance remaining in the state building bonding fund shall be transferred to the general fund upon certification by the New Mexico finance authority that:

(1) the director of the property control division of the general services department and the New Mexico finance authority have agreed that the building bonds issued pursuant to the State Building Bonding Act have been retired, that no additional obligations of the state building bonding fund exist and that no additional expenditures from the fund are necessary; or

(2) a court of jurisdiction has ruled that the building bonds have been retired, that no additional obligations of the state building bonding fund exist and that no additional expenditures from the fund are necessary.

E. The building bonds issued pursuant to the State Building Bonding Act shall be payable solely from the state building bonding fund or, with the approval of the bondholders, such other special funds as may be provided by law and do not create an obligation or indebtedness of the state within the meaning of any constitutional

provision. No breach of any contractual obligation incurred pursuant to that act shall impose a pecuniary liability or a charge upon the general credit or taxing power of the state, and the bonds are not general obligations for which the state's full faith and credit is pledged.

F. The state does hereby pledge that the state building bonding fund shall be used only for the purposes specified in this section and pledged first to pay the debt service on the building bonds issued pursuant to the State Building Bonding Act. The state further pledges that any law authorizing the distribution of taxes or other revenues to the state building bonding fund or authorizing expenditures from the fund shall not be amended or repealed or otherwise modified so as to impair the bonds to which the state building bonding fund is dedicated as provided in this section."

Chapter 114 Section 3 Laws 2009

Section 3. Section 7-1-6.42 NMSA 1978 (being Laws 2001, Chapter 199, Section 12, as amended) is amended to read:

"7-1-6.42. DISTRIBUTION--STATE BUILDING BONDING FUND--GROSS RECEIPTS TAX.--A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the state building bonding fund in the amount of six hundred eighty thousand dollars (\$680,000) from the net receipts attributable to the gross receipts tax imposed by the Gross Receipts and Compensating Tax Act. The distribution shall be made:

- A. after the required distribution pursuant to Section 7-1-6.4 NMSA 1978;
- B. contemporaneously with other distributions of net receipts attributable to the gross receipts tax for payment of debt service on outstanding bonds or to a fund dedicated for that purpose; and
- C. prior to any other distribution of net receipts attributable to the gross receipts tax."

Chapter 114 Section 4 Laws 2009

Section 4. Laws 2001, Chapter 166, Section 2, as amended by Laws 2004, Chapter 123, Section 7, Laws 2005, Chapter 320, Section 4 and by Laws 2007, Chapter 64, Section 4, is amended to read:

"Section 2. STATE OFFICE BUILDING TAX REVENUE BONDS--
AUTHORIZATION--CONTINGENCY.--

A. The New Mexico finance authority may issue and sell state office building tax revenue bonds in compliance with the State Building Bonding Act when the director of the property control division of the general services department certifies to the authority that the proceeds from the state office building tax revenue bonds are

needed for one or more of the purposes specified in Laws 2001, Chapter 166, Section 1, as amended by Laws 2007, Chapter 64, Section 3. The authority shall schedule the issuance and sale of the bonds in the most expeditious and economical manner possible. Except as provided in Subsections B and C of this section, net proceeds from the sale of the bonds are appropriated to the property control division of the general services department for expenditure in fiscal year 2001 and subsequent fiscal years for the purposes specified in Laws 2001, Chapter 166, Section 1, as amended by Laws 2007, Chapter 64, Section 3.

B. Two hundred fifty thousand dollars (\$250,000) of the proceeds from the bonds issued pursuant to Subsection A of this section are appropriated to the legislative council service for expenditure in fiscal years 2004 through 2008 for the purpose of providing funding for the capitol buildings planning commission, master planning process for state facilities and for annual updates to master plans, but excluding any payments for salaries, benefits and costs of state employees. Any unexpended or unencumbered balance remaining at the end of fiscal year 2008 shall revert to the state building bonding fund.

C. Three hundred fifty thousand dollars (\$350,000) of the proceeds from the bonds issued pursuant to Subsection A of this section are appropriated to the legislative council service for expenditure in fiscal years 2007 through 2012 for the purpose of providing funding for the capitol buildings planning commission, master planning process for state facilities and annual updates to master plans, but excluding any payments for salaries, benefits and costs of state employees. Any unexpended or unencumbered balance remaining at the end of fiscal year 2012 shall revert to the state building bonding fund."

Chapter 114 Section 5 Laws 2009

Section 5. STATE OFFICE BUILDING TAX REVENUE BONDS-- AUTHORIZATION FOR EXECUTIVE OFFICE BUILDING.--

A. The New Mexico finance authority may issue and sell state office building tax revenue bonds in compliance with the State Building Bonding Act when the director of the property control division of the general services department certifies to the authority that the proceeds from the state office building tax revenue bonds are needed for the purpose specified in Subsection B of this section. The authority shall schedule the issuance and sale of the bonds in the most expeditious and economical manner possible. Net proceeds from the sale of the bonds, after providing for debt service until occupancy, are appropriated to the property control division of the general services department for expenditure in fiscal year 2010 and subsequent fiscal years for the purpose specified in Subsection B of this section.

B. The property control division of the general services department, after issuing a request for proposals, shall enter into contracts for a design and build project

delivery system for the planning, designing, constructing, equipping and furnishing of a new executive office building in the main capitol campus in Santa Fe.

C. The distribution of gross receipts taxes pursuant to Section 7-1-6.42 NMSA 1978, as increased in Section 3 of this 2009 act, contains a component for the maintenance and repair of the executive office building that, over the period that the bonds are outstanding, approximates the amount that will be needed for the maintenance and repair of the building. Pursuant to Paragraph (2) of Subsection B of Section 6-21C-5 NMSA 1978, the property control division of the general services department is authorized to expend a portion of the state building bonding fund for required maintenance and repairs on the executive office building.

Chapter 114 Section 6 Laws 2009

Section 6. Laws 2007, Chapter 64, Section 6 is amended to read:

"Section 6. APPROPRIATIONS.--The following amounts from the following sources are appropriated to the property control division of the general services department for expenditure in fiscal years 2007 through 2011 for the acquisition of the property within the west capitol complex owned by the United States general services administration and the United States forest service. Any unexpended or unencumbered balance remaining at the end of fiscal year 2011 shall revert proportionately to the originating fund:

A. one million five hundred thousand dollars (\$1,500,000) from the property control reserve fund; and

B. three million five hundred thousand dollars (\$3,500,000) from the public buildings repair fund."

Chapter 114 Section 7 Laws 2009

Section 7. EXPANSION OF PURPOSE FOR MASTER PLANNING AND COMPLETION OF PARKING STRUCTURE.--One million dollars (\$1,000,000) of the unexpended balance of the appropriations to the legislative council service in Subsections A, B and C of Section 1 of Chapter 192 of Laws 2007 for the purpose of constructing and renovating capitol north and the capitol and as reauthorized for an expanded purpose in Laws 2008, Chapter 83, Section 381 may be expended by the legislative council service in fiscal years 2009 through 2012 for the purpose of providing funding for the capitol buildings planning commission master planning process for statewide state facilities, including feasibility studies and annual updates to master plans, and, if needed, the completion of the parking structure in the central capitol campus in Santa Fe, but excluding any payments for salaries, benefits and costs of state employees.

Chapter 114 Section 8 Laws 2009

Section 8. EFFECTIVE DATE.--The effective date of the provisions of Section 3 of this act is the later of:

A. July 1, 2011; or

B. the first day of the month following the day that 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 distribution is needed to make debt service payments on the bonds issued pursuant to Section 5 of this act.

Chapter 114 Section 9 Laws 2009

Section 9. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

SFC/Senate Bill 221, w/ec

Approved April 6, 2009

LAWS 2009, CHAPTER 115

AN ACT

MAKING AN APPROPRIATION FOR THE PURPOSE OF DEVELOPING A GEOGRAPHIC INFORMATION SYSTEM TO BE USED BY EXECUTIVE AND LEGISLATIVE AGENCIES.

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

Chapter 115 Section 1 Laws 2009

Section 1. APPROPRIATION--GEOGRAPHIC INFORMATION SYSTEM.--Five hundred seventy-five thousand dollars (\$575,000) is appropriated from the public school capital outlay fund to the public school facilities authority for expenditure in fiscal years 2010 through 2012 for the purpose of contracting with the bureau of business and economic research at the university of New Mexico to develop, in conjunction with the public school capital outlay council, the legislative finance committee, the legislative education study committee, the taxation and revenue department, the department of finance and administration the department of information technology and the public education department, a portable and secure geographic information system to be used by executive and legislative agencies and to be developed through management by the bureau of business and economic research at the university of New Mexico. Any

unexpended or unencumbered balance remaining at the end of fiscal year 2012 shall revert to the public school capital outlay fund.

Senate Bill 217, aa

Approved April 6, 2009

LAWS 2009, CHAPTER 116

AN ACT

RELATING TO THE LEGISLATURE; CREATING THE INTERIM MILITARY AND VETERANS' AFFAIRS COMMITTEE.

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

Chapter 116 Section 1 Laws 2009

Section 1. CREATION OF INTERIM MILITARY AND VETERANS' AFFAIRS COMMITTEE--MEMBERS--APPOINTMENT--TERMS--VOTING.--

A. There is created a joint interim committee of the legislature to be called the "military and veterans' affairs committee". The committee shall function from the date of its appointment until the second session of the forty-ninth legislature. The committee shall be composed of eight voting members.

B. The New Mexico legislative council shall appoint four members from the house of representatives and four members from the senate. At the time of making the appointment, the New Mexico legislative council shall designate the chair and vice chair of the committee. Members shall be appointed so as to give the two major political parties in each house the same proportionate representation on the committee as prevails in each house; provided that in no event shall either of the parties have less than one member from each house on the committee.

C. No action shall be taken by the committee if a majority of the total membership from either house on the committee rejects such action.

Chapter 116 Section 2 Laws 2009

Section 2. DUTIES OF THE MILITARY AND VETERANS' AFFAIRS COMMITTEE--STAFF--SUBCOMMITTEES--REPORTING.--

A. The military and veterans' affairs committee shall conduct meetings in several geographically dispersed areas of the state and shall conduct hearings relating to military issues and veterans' issues. The committee shall make an annual report and recommend any necessary legislation to each session of the legislature. The committee shall also make legislative recommendations to the federal congress and regulatory recommendations to the United States department of veterans affairs and the United States department of defense.

B. The staff for the committee shall be provided by the legislative council service.

C. Subcommittees shall be created only by majority vote of all members appointed to the committee and with the prior approval of the New Mexico legislative council. A subcommittee shall be composed of at least one member from the senate and one member from the house of representatives, and at least one member of the minority party shall be a member of the subcommittee. All meetings and expenditures of a subcommittee shall be approved by the full committee in advance of the meeting or expenditure, and the approval shall be shown in the minutes of the committee.

D. The committee shall make a report of its findings and recommendations for the consideration of each session of the legislature. The report and suggested legislation shall be made available to the New Mexico legislative council on or before December 15 preceding each session.

Senate Bill 529, aa

Approved April 6, 2009

LAWS 2009, CHAPTER 117

AN ACT

RELATING TO SCHOOL PERSONNEL; ELIMINATING THE ONE-YEAR

THREE-A LICENSURE REQUIREMENT FOR APPLICANTS OF REGULAR LEVEL THREE-B LICENSES; PROVIDING FOR A PROVISIONAL LEVEL THREE-B LICENSE FOR CERTAIN LEVEL TWO LICENSEES; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2007.

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

Chapter 117 Section 1 Laws 2009

Section 1. Section 22-10A-11 NMSA 1978 (being Laws 2003, Chapter 153, Section 42, as amended by Laws 2007, Chapter 303, Section 1 and by Laws 2007, Chapter 304, Section 2) is amended to read:

"22-10A-11. LEVEL THREE LICENSURE--TRACKS FOR TEACHERS, COUNSELORS AND SCHOOL ADMINISTRATORS.--

A. A level three-A license is a nine-year license granted to a teacher who meets the qualifications for that level and who annually demonstrates instructional leader competencies. If a level three-A teacher does not demonstrate essential competency in a given school year, the school district shall provide the teacher with additional professional development and peer intervention during the following school year. If by the end of that school year the teacher fails to demonstrate essential competency, a school district may choose not to contract with the teacher to teach in the classroom.

B. The department shall grant a level three-A license to an applicant who has been a level two teacher for at least three years and holds a post-baccalaureate degree or national board for professional teaching standards certification; demonstrates instructional leader competence as required by the department and verified by the local superintendent through the highly objective uniform statewide standard of evaluation; and meets other qualifications for the license.

C. With the adoption by the department of a highly objective uniform statewide standard of evaluation for level three-A teachers, the minimum salary for a level three-A teacher for a standard nine and one-half month contract shall be as follows:

- (1) for the 2003-2004 school year, thirty thousand dollars (\$30,000);
- (2) for the 2004-2005 school year, thirty-five thousand dollars (\$35,000);
- (3) for the 2005-2006 school year, forty thousand dollars (\$40,000);
- (4) for the 2006-2007 school year, forty-five thousand dollars (\$45,000); and
- (5) for the 2007-2008 school year, fifty thousand dollars (\$50,000).

D. A level three-B license is a nine-year license granted to a school administrator who meets the qualifications for that level. Licenses may be renewed upon satisfactory annual demonstration of instructional leader and administrative competency.

E. The department shall grant a level three-B license to an applicant who:

(1) holds a level two license and meets the requirements for a level three-A license or who holds a current level two teacher's license and for at least four years, has held the highest-ranked counselor license as provided in Chapter 22, Article 10A NMSA 1978 and rules promulgated by the department;

(2) holds a post-baccalaureate degree or national board for professional teaching standards certification;

(3) has satisfactorily completed department-approved courses in administration and a department-approved administration apprenticeship program; and

(4) demonstrates instructional leader competence required by the department and verified by the local superintendent through the highly objective uniform statewide standard of evaluation.

F. Beginning with the 2007-2008 school year, the minimum annual salary for a level three-B school principal or assistant school principal shall be fifty thousand dollars (\$50,000) multiplied by the applicable responsibility factor.

G. By the beginning of the 2008-2009 school year, the department shall adopt a highly objective uniform statewide standard of evaluation, which includes data sources linked to student achievement and educational plan for student success progress, for level three-B school principals and assistant school principals and rules for the implementation of that evaluation system linked to the level of responsibility at each school level."

Chapter 117 Section 2 Laws 2009

Section 2. A new section of the School Personnel Act is enacted to read:

"LEVEL THREE-B PROVISIONAL LICENSURE FOR SCHOOL PRINCIPALS.--

A. A school district that has a shortage of qualified school principal candidates may request that the department issue a provisional three-B license to a level two teacher whom the school district believes has the potential to be an effective school principal.

B. To qualify for a provisional three-B license, the candidate shall:

(1) meet the requirements for a level three-A license;

(2) be enrolled in a department-approved induction and mentoring program in the school district; and

(3) be accepted into a department-approved school administrator preparation program.

C. The provisional license is a four-year license and is not renewable. To maintain the provisional license, the licensee must receive satisfactory evaluations each year from the school district's mentoring program and from the school administrator preparation program. At the end of the four years, the provisional license may be converted to a regular level three-B license if the candidate:

(1) satisfactorily completes the school district's mentoring program;
and

(2) satisfactorily completes the department-approved school administrator preparation program."

Senate Bill 133, aa

Approved April 6, 2009

LAWS 2009, CHAPTER 118

AN ACT

RELATING TO PUBLIC SCHOOLS; ALLOWING FOR THE CONTINUATION OF FAMILY AND YOUTH RESOURCES PROGRAM GRANTS WHEN A SCHOOL'S POVERTY LEVEL FLUCTUATES.

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

Chapter 118 Section 1 Laws 2009

Section 1. Section 22-2D-3 NMSA 1978 (being Laws 2003, Chapter 153, Section 66) is amended to read:

"22-2D-3. PROGRAMS--PURPOSE--FUNCTIONS.--

A. A "family and youth resources program" may be created in any public school in the state. Except as provided in Subsection D of this section, the department shall accept applications for grants from public schools in which eighty percent of the students are eligible for the free or reduced-fee lunch program to fund their program.

B. The purpose of the program is to provide an intermediary for students and their families at public schools to access social and health care services. The goal of the program is to forge mutual long-term relationships with public and private agencies and community-based, civic and corporate organizations to help students attain high academic achievement by meeting certain nonacademic needs of students and their families.

C. A program shall include the employment of a resource liaison, who shall:

(1) assess student and family needs and match those needs with appropriate public or private providers, including civic and corporate sponsors;

(2) make referrals to health care and social service providers;

(3) collaborate and coordinate with health and social service agencies and organizations through school-based and off-site delivery systems;

(4) recruit service providers and business, community and civic organizations to provide needed services and goods that are not otherwise available to a student or the student's family;

(5) establish partnerships between the school and community organizations such as civic, business and professional groups and organizations; and recreational, social and after-school programs such as boys' and girls' clubs and boy and girl scouts;

(6) identify and coordinate age-appropriate resources for students in need of:

(a) counseling, training and placement for employment;

(b) drug and alcohol abuse counseling;

(c) family crisis counseling; and

(d) mental health counseling;

(7) promote family support and parent education programs; and

(8) seek out other services or goods a student or the student's family needs to assist the student to stay in school and succeed.

D. A public school or group of public schools that has received a grant to establish a family and youth resources program may continue to be eligible for funding if its percentage of students eligible for the free or reduced-fee price lunch program drops below eighty percent, so long as it maintains an average of eighty percent or more for any three-year period."

Approved April 6, 2009

LAWS 2009, CHAPTER 119

AN ACT

RELATING TO SCHOOL PERSONNEL; CHANGING THE DISTRIBUTION OF MENTORSHIP PROGRAM FUNDING.

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

Chapter 119 Section 1 Laws 2009

Section 1. Section 22-10A-9 NMSA 1978 (being Laws 2003, Chapter 153, Section 40, as amended) is amended to read:

"22-10A-9. TEACHER MENTORSHIP PROGRAM FOR LEVEL ONE TEACHERS--PURPOSE--DEPARTMENT DUTIES.--

A. The purpose of the teacher mentorship program is to provide beginning teachers with an effective transition into the teaching field, to build on their initial preparation and to ensure their success in teaching; to improve the achievement of students; and to retain capable teachers in the classroom and to remove teachers who show little promise of success.

B. The department shall develop a framework for a teacher mentorship program for all level one teachers. The department shall work with licensed school employees, representatives from teacher preparation programs and the higher education department to establish the framework.

C. The framework shall include:

(1) individual support and assistance for each beginning teacher from a designated mentor;

(2) structured training for mentors;

(3) an ongoing, formative evaluation that is used for the improvement of teaching practice;

(4) procedures for a summative evaluation of beginning teachers' performance during at least the first three years of teaching, including annual assessment of suitability for license renewal, and for final assessment of beginning teachers seeking level two licensure;

(5) support from local school boards, school administrators and other school district personnel; and

(6) regular review and evaluation of the teacher mentorship program.

D. The department shall:

(1) require submission and approval of each school district's teacher mentorship program;

(2) provide technical assistance to school districts that do not have a well-developed teacher mentorship program in place;

(3) encourage school districts to collaborate with teacher preparation program administrators at institutions of higher education, career educators, educational organizations, regional service centers and other state and community leaders in the teacher mentorship program; and

(4) distribute no less than fifty percent of available funds for mentorship programs to school districts on or before September 15 of each fiscal year according to the estimated number of beginning teachers on the fortieth day of the school year and, on or before January 15 of each fiscal year, distribute the balance of the available funds based on the actual number of beginning teachers on the fortieth day of the school year, adjusted for any over- or under-estimation made in the first allocation.

E. The department shall require that teacher preparation programs collaborate with colleges of arts and sciences and high schools to develop a model to provide mentorship services with structured supervision and feedback to each of their graduates who have obtained a teaching position in a public high school, including charter schools; develop cost estimates; and provide recommendations to the legislative education study committee by November 1, 2007. The model shall provide for the following:

(1) mentorship services for the first year as a level one teacher to each of their graduates who has obtained a teaching position in any New Mexico public high school, including charter schools; provided that teacher preparation programs may enter into contracts or memoranda of agreement with each other or with level three teachers in providing services to their students;

(2) an annual report to the department of the number of teachers that have completed each of their programs the previous spring or summer and have been hired by public high schools, including charter schools, for the following school year; and

(3) an annual report providing a description of the mentorship services that will be provided to each of their teachers, including the name of the teacher, the grade level the teacher has been hired to teach and the name of the school and district where the teacher has been hired."

Senate Bill 146

Approved April 6, 2009

LAWS 2009, CHAPTER 120

AN ACT

RELATING TO MOTOR VEHICLES; AUTHORIZING SPECIAL SANTA FE FOUR HUNDREDTH ANNIVERSARY REGISTRATION PLATES; MAKING AN APPROPRIATION.

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

Chapter 120 Section 1 Laws 2009

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

"SPECIAL SANTA FE FOUR HUNDREDTH ANNIVERSARY REGISTRATION PLATE.--

A. Except as provided in Subsection E of this section, the department shall issue a special registration plate commemorating the four hundredth anniversary of the city of Santa Fe.

B. For a fee of thirty-five dollars (\$35.00), which is in addition to the regular motor vehicle registration fee, the owner of a vehicle may apply for issuance of a special Santa Fe four hundredth anniversary registration plate. Until July 1, 2012, the owner shall apply for and pay the fee each year to retain and renew the special Santa Fe four hundredth anniversary registration plate. After June 30, 2012, a person may renew a special Santa Fe four hundredth anniversary registration plate by paying only the regular motor vehicle registration fee.

C. The revenue from the additional fee for the special Santa Fe four hundredth anniversary registration plate shall be distributed as follows:

(1) ten dollars (\$10.00) of the additional fee shall be retained by and is appropriated to the department to defray the cost of making and issuing the special Santa Fe four hundredth anniversary registration plate; and

(2) twenty-five dollars (\$25.00) of the additional fee collected is appropriated to the local government division of the department of finance and administration to be distributed to the city of Santa Fe to commemorate the four hundredth anniversary of the city of Santa Fe.

D. The design of the special Santa Fe four hundredth anniversary registration plate shall be left to the discretion of the department in consultation with the public purpose interest group requesting the plate.

E. The department shall only issue special Santa Fe four hundredth anniversary registration plates for applications received on or before June 30, 2012."

SFC/SPAC/Senate Bill 631

Approved April 6, 2009

LAWS 2009, CHAPTER 121

AN ACT

RELATING TO NUISANCE ORDINANCES; RAISING CERTAIN NUISANCE VIOLATION PENALTIES AND FEES; ESTABLISHING PROCEDURE FOR CHALLENGES TO THE IMPOSITION OF PENALTIES FOR THE VIOLATION OF CERTAIN NUISANCE ORDINANCES; PROVIDING FOR DISTRIBUTION OF PENALTIES AND FEES; REQUIRING AN AUDIT; MAKING AN APPROPRIATION.

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

Chapter 121 Section 1 Laws 2009

Section 1. Section 3-18-17 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-17-14, as amended) is amended to read:

"3-18-17. NUISANCES AND OFFENSES--REGULATION OR PROHIBITION.--A municipality, including a home rule municipality that has adopted a charter pursuant to Article 10, Section 6 of the constitution of New Mexico, may by ordinance:

A. define a nuisance, abate a nuisance and impose penalties upon a person who creates or allows a nuisance to exist; provided that:

(1) the total amount of assessed penalties, fines, fees and costs imposed by an ordinance for failure to obey a traffic sign or signal, including a red light offense or violation, or for a speeding offense or violation shall not exceed one hundred dollars (\$100), provided that the total for unlawful parking in a space or for blocking an

access intended for persons with significant mobility limitation shall not be less than or exceed the fines provided in Section 66-7-352.5 NMSA 1978;

(2) in a municipality with a population of two hundred thousand or greater as of the last federal decennial census, the penalties, fines, fees, costs and procedure imposed for failure to obey a traffic sign or signal, including a red light offense or violation, or for a speeding offense or violation shall be subject to the following:

(a) each month, or other period set by contract, the municipality shall retain from the gross total amount of penalties, fines, fees and costs assessed and collected that month or period an amount subject to audit that is equal to the sum of the setup, maintenance, support and processing services fees charged for that month or period pursuant to contractual terms by a vendor providing systems and services that assist the municipality in imposing penalties or fines and costs or fees as provided in Paragraph (1) of this subsection;

(b) less the retention authorized in Subparagraph (a) of this paragraph: 1) one-half of the net total amount assessed in penalties, fines, fees and costs by the municipality shall be remitted to the state treasurer and distributed to the administrative office of the courts, of which ten percent shall be credited to DWI drug court programs and ninety percent shall be transferred to the New Mexico finance authority for deposit into the metropolitan court bond guarantee fund; and 2) one-half shall be retained by the municipality for municipal traffic safety programs and to offset the municipality's reasonable costs directly related to administering a program imposing penalties or fines and costs or fees as provided in Paragraph (1) of this subsection;

(c) in fiscal year 2009, and annually thereafter, the municipality shall cause an audit of the program and contract described in Subparagraph (a) of this paragraph to be conducted by the state auditor or an independent auditor selected by the state auditor;

(d) if in the audit conducted pursuant to Subparagraph (c) of this paragraph it is determined that any amount retained by the municipality pursuant to this paragraph is in excess of the amount the municipality is authorized to retain, the municipality shall remit, when the audit is finalized, the amount in excess to the state treasurer to be distributed and transferred as provided in Item 1) of Subparagraph (b) of this paragraph; and

(e) a hearing provided for a contested nuisance ordinance offense or violation shall be held by a hearing officer appointed by the presiding judge of the civil division of the district court with jurisdiction over the municipality, and the hearing itself shall be conducted following the rules of evidence and civil procedure for the district courts. The burden of proof for violations and defenses is a preponderance of the evidence. A determination by the hearing officer shall not impose a total amount

of penalties, fines, fees and costs in excess of that provided in the nuisance ordinance;
and

(3) in a municipality other than a municipality with a population of two hundred thousand or greater as of the last federal decennial census, the penalties, fines, fees, costs and procedure imposed for failure to obey a traffic sign or signal, including a red light offense or violation, or for a speeding offense or violation shall be subject to the following:

(a) each month, or other period set by contract, the municipality shall retain from the gross total amount of penalties, fines, fees and costs assessed and collected that month or period an amount subject to audit that is equal to the sum of the setup, maintenance, support and processing services fees charged for that month or period pursuant to contractual terms by a vendor providing systems and services that assist the municipality in imposing penalties or fines and costs or fees as provided in Paragraph (1) of this subsection;

(b) less the retention authorized in Subparagraph (a) of this paragraph: 1) one-half of the net total amount assessed in penalties, fines, fees and costs by the municipality shall be remitted to the state treasurer, of which sixty-five percent shall be credited to the court automation fund, twenty percent to the traffic safety education and enforcement fund and fifteen percent to the judicial education fund; and 2) one-half of the net total amount assessed in penalties, fines, fees and costs shall be retained by the municipality for municipal traffic safety programs and to offset the municipality's reasonable costs directly related to administering a program imposing penalties or fines and costs or fees as provided in Paragraph (1) of this subsection;

(c) in fiscal year 2009, and annually thereafter, the municipality shall cause an audit of the program and contract described in Subparagraph (a) of this paragraph and the money collected and distributed pursuant to this paragraph to be conducted by the state auditor or an independent auditor selected by the state auditor;

(d) if in the audit conducted pursuant to Subparagraph (c) of this paragraph it is determined that any amount retained by the municipality pursuant to this paragraph is in excess of the amount the municipality is authorized to retain, the municipality shall remit, when the audit is finalized, the amount in excess to the state treasurer to be distributed and transferred as provided in Item 1) of Subparagraph (b) of this paragraph; and

(e) a hearing provided for a contested nuisance ordinance offense or violation shall be held by a hearing officer appointed by the presiding judge of the civil division of the district court with jurisdiction over the municipality, and the hearing itself shall be conducted following the rules of evidence and civil procedure for the district courts. The burden of proof for offenses or violations and defenses is a preponderance of the evidence. A determination by the hearing officer shall not impose

a total amount of penalties, fines, fees and costs in excess of that provided in the nuisance ordinance;

B. regulate or prohibit any amusement or practice that tends to annoy persons on a street or public ground; and

C. prohibit and suppress:

(1) gambling and the use of fraudulent devices or practices for the purpose of obtaining money or property;

(2) the sale, possession or exhibition of obscene or immoral publications, prints, pictures or illustrations;

(3) public intoxication;

(4) disorderly conduct; and

(5) riots, noises, disturbances or disorderly assemblies in any public or private place."

Senate Bill 519, aa

Approved April 6, 2009

LAWS 2009, CHAPTER 122

AN ACT

RELATING TO REAL PROPERTY; ENACTING THE NEW MEXICO MORTGAGE LOAN ORIGINATOR LICENSING ACT; CREATING LICENSING REQUIREMENTS FOR MORTGAGE LOAN ORIGINATORS; PROVIDING PENALTIES; AMENDING THE MORTGAGE LOAN COMPANY AND LOAN BROKER ACT; AMENDING THE HOME LOAN PROTECTION ACT; PROSCRIBING CERTAIN PRACTICES; CREATING A FUND; MAKING AN APPROPRIATION.

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

Chapter 122 Section 1 Laws 2009

Section 1. SHORT TITLE.--Sections 1 through 24 of this act may be cited as the "New Mexico Mortgage Loan Originator Licensing Act".

Chapter 122 Section 2 Laws 2009

Section 2. FINDINGS--PURPOSE.--

A. The activities of mortgage loan originators and the origination or offering of financing for residential real property have a direct, valuable and immediate impact upon New Mexico's consumers, New Mexico's economy, the neighborhoods and communities of New Mexico and the housing and real estate industry. The legislature finds that accessibility to mortgage credit is vital to New Mexico's residents. The legislature also finds that it is essential for the protection of the residents of New Mexico and the stability of New Mexico's economy that reasonable standards for licensing and regulation of the business practices of mortgage loan originators be imposed. The legislature further finds that the obligations of mortgage loan originators to consumers in connection with originating or making residential mortgage loans are such as to warrant the regulation of the mortgage lending process.

B. The purpose of the New Mexico Mortgage Loan Originator Licensing Act is to protect consumers seeking mortgage loans.

Chapter 122 Section 3 Laws 2009

Section 3. DEFINITIONS.--As used in the New Mexico Mortgage Loan Originator Licensing Act:

A. "clerical or support duties" may include, subsequent to the receipt of an application:

(1) the receipt, collection, distribution and analysis of information common for the processing or underwriting of a residential mortgage loan; and

(2) communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms;

B. "depository institution" has the same meaning as the definition of depository institution in Section 3 of the Federal Deposit Insurance Act and includes any credit union;

C. "director" means the director of the financial institutions division of the regulation and licensing department;

D. "dwelling" means a residential structure that contains one to four units whether or not that structure is attached to real property. "Dwelling" includes an individual condominium unit, an individual cooperative unit, a mobile home and a trailer if used as a residence;

E. "federal banking agencies" means the board of governors of the federal reserve system, the comptroller of the currency, the director of the office of thrift supervision, the national credit union administration and the federal deposit insurance corporation;

F. "immediate family member" means a spouse, child, sibling, parent, grandparent or grandchild, and "immediate family member" includes a stepparent, a stepchild, a stepsibling and an adoptive relationship;

G. "individual" means a natural person;

H. "license" means a license issued pursuant to Section 6 of the New Mexico Mortgage Loan Originator Licensing Act;

I. "loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing, pursuant to the Mortgage Loan Company Act;

J. "mortgage loan company" means any person defined as such in the Mortgage Loan Company Act;

K. "mortgage loan originator" means an individual who for compensation or gain or in the expectation of compensation or gain takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan. "Mortgage loan originator" does not include:

(1) an individual engaged solely as a loan processor or underwriter except as otherwise provided in Subsection I of this section;

(2) a person that only performs real estate brokerage activities and is licensed or registered in accordance with New Mexico law, unless the person is compensated by a lender, a mortgage loan company or other mortgage loan originator or by any agent of such lender, mortgage loan company or other mortgage loan originator; and

(3) a person solely involved in extensions of credit relating to timeshare plans, as that term is defined in Section 101(53D) of Title 11 of the United States Code;

L. "nationwide mortgage licensing system and registry" means a mortgage licensing system developed and maintained by the conference of state bank supervisors and the American association of residential mortgage regulators for the licensing and registration of licensed mortgage loan originators;

M. "nontraditional mortgage product" means any mortgage product other than a thirty-year fixed rate mortgage;

N. "person" means a natural person, corporation, company, limited liability company, partnership or association;

O. "real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including:

(1) acting as a real estate agent or real estate broker for a buyer, seller, lessor or lessee of real property;

(2) bringing together parties interested in the sale, purchase, lease, rental or exchange of real property;

(3) negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental or exchange of real property, other than in connection with providing financing with respect to any such transaction;

(4) engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker pursuant to any applicable law; and

(5) offering to engage in any activity or to act in any capacity described in Paragraphs (1) through (4) of this subsection;

P. "registered mortgage loan originator" means any individual who:

(1) meets the definition of mortgage loan originator and is an employee of:

(a) a depository institution;

(b) a subsidiary that is: 1) owned and controlled by a depository institution; and 2) regulated by a federal banking agency; or

(c) an institution regulated by the farm credit administration;
and

(2) is registered with, and maintains a unique identifier through, the nationwide mortgage licensing system and registry;

Q. "residential mortgage loan" means any loan primarily for personal, family or household use that is secured by a mortgage, deed of trust or other equivalent consensual security interest on a dwelling or on residential real estate upon which is constructed or is intended to be constructed a dwelling as so defined;

R. "residential real estate" means any real property located in New Mexico upon which is constructed or intended to be constructed a dwelling;

S. "servicer" means a person that collects or receives payments, including principal, interest and trust items such as hazard insurance, property taxes and other amounts due, on behalf of a note holder or investor in accordance with the terms of a residential mortgage loan, and includes working with a borrower on behalf of a note holder or investor, when the borrower is in financial hardship or default, to modify either temporarily or permanently the terms of an existing residential mortgage loan; and

T. "unique identifier" means a number or other identifier assigned by protocols established by the nationwide mortgage licensing system and registry.

Chapter 122 Section 4 Laws 2009

Section 4. LICENSE AND REGISTRATION REQUIRED TO ORIGINATE MORTGAGE LOANS.--

A. Unless specifically exempted from the New Mexico Mortgage Loan Originator Licensing Act pursuant to Subsection B of this section, an individual shall not engage in the business of a mortgage loan originator with respect to any dwelling located in New Mexico without first obtaining and maintaining annually a license pursuant to that act. Each licensed mortgage loan originator must register with and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry. All new licenses and license renewals shall expire on December 31 of each year. All license renewal applications shall be submitted on or before November 1 of each year.

B. The following are exempt from the provisions of the New Mexico Mortgage Loan Originator Licensing Act:

(1) registered mortgage loan originators when acting for an entity defined in Subparagraphs (a) through (c) of Paragraph (1) of Subsection P of Section 3 of the New Mexico Mortgage Loan Originator Licensing Act;

(2) an individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual;

(3) an individual who offers or negotiates terms of a real property sale financed in whole or in part by the seller and secured by the seller's real property; or

(4) a licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage

loan company or other mortgage loan originator or by any agent of such lender, mortgage loan company or other mortgage loan originator.

C. A loan processor or underwriter who is an independent contractor shall not engage in the activities of a loan processor or underwriter unless the independent contractor loan processor or underwriter obtains and maintains a license pursuant to Subsection A of this section. Each contractor loan processor or underwriter licensed as a mortgage loan originator shall have and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry.

D. A mortgage loan originator who is currently licensed in another state through the nationwide mortgage licensing system and registry may be granted a temporary mortgage loan originator license valid for ninety days while the mortgage loan originator completes the education and testing requirements of the New Mexico Mortgage Loan Originator Licensing Act. The mortgage loan originator's current license in another state must be valid for more than ninety days beyond the date of application for a temporary license in order to receive a temporary license in New Mexico.

Chapter 122 Section 5 Laws 2009

Section 5. STATE LICENSE AND REGISTRATION APPLICATION AND ISSUANCE.--

A. Applicants for a license shall apply in a form as prescribed by the director. Each form shall contain content as set forth by rule, instruction or procedure of the director and may be changed or updated as necessary by the director in order to carry out the purposes of the New Mexico Mortgage Loan Originator Licensing Act.

B. In order to fulfill the purposes of the New Mexico Mortgage Loan Originator Licensing Act, the director may establish relationships or contracts with the nationwide mortgage licensing system and registry or other entities designated by the nationwide mortgage licensing system and registry to collect and maintain records and process transaction fees or other fees related to licensed mortgage loan originators or other individuals subject to that act.

C. In connection with an application for licensing as a mortgage loan originator, the applicant shall, at a minimum, furnish to the nationwide mortgage licensing system and registry information concerning the applicant's identity, including:

(1) fingerprints for submission to the federal bureau of investigation and any governmental agency or entity authorized to receive such information for a state, national and international criminal history background check; and

(2) personal history and experience in a form prescribed by the nationwide mortgage licensing system and registry, including the submission of

authorization for the nationwide mortgage licensing system and registry and the director to obtain:

(a) an independent credit report obtained from a consumer reporting agency described in Section 603(p) of the federal Fair Credit Reporting Act; and

(b) information related to any administrative, civil or criminal findings by any governmental jurisdiction.

D. For the purposes of this section and in order to reduce the points of contact that the federal bureau of investigation may have to maintain for purposes of Paragraph (1) of Subsection C of this section and Subparagraph (b) of Paragraph (2) of Subsection C of this section, the director may use the nationwide mortgage licensing system and registry as a channeling agent for requesting information from and distributing information to the federal department of justice or any governmental agency with mortgage industry oversight authority.

E. For the purposes of this section and in order to reduce the points of contact that the director may have to maintain for purposes of Subparagraphs (a) and (b) of Paragraph (2) of Subsection C of this section, the director may use the nationwide mortgage licensing system and registry as a channeling agent for requesting and distributing information to and from any source as directed by the director.

Chapter 122 Section 6 Laws 2009

Section 6. ISSUANCE OF LICENSE.--The director shall not issue a mortgage loan originator license unless the director makes at a minimum the following findings:

A. the applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction, except that a formal vacation of such revocation shall not be deemed a revocation;

B. the applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign or military court, not including a juvenile court:

(1) during the seven-year period preceding the date of the application for licensing and registration; or

(2) at any time preceding the date of application, if the felony involved an act of fraud or dishonesty, a breach of trust or money laundering; and

(3) provided that any pardon of a conviction shall not be a conviction for the purposes of this subsection;

C. the applicant has demonstrated financial responsibility, good character and general fitness so as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly and efficiently within the purposes of the New Mexico Mortgage Loan Originator Licensing Act. For the purposes of this subsection, an individual has shown that the individual is not financially responsible when the individual has shown a disregard in the management of the individual's own financial condition. A determination that an individual has not shown financial responsibility may include but is not limited to:

(1) current outstanding judgments, except judgments solely as a result of medical expenses;

(2) current outstanding tax liens or other government liens and filings;

(3) foreclosures within the past three years; or

(4) a pattern of seriously delinquent accounts within the past three years;

D. the applicant has completed the pre-licensing education requirement set forth in Section 7 of the New Mexico Mortgage Loan Originator Licensing Act;

E. the applicant has passed a written test that meets the test requirement set forth in Section 8 of the New Mexico Mortgage Loan Originator Licensing Act; and

F. the applicant has met the surety bond requirements set forth in Section 17 of the New Mexico Mortgage Loan Originator Licensing Act.

Chapter 122 Section 7 Laws 2009

Section 7. PRE-LICENSING EDUCATION OF MORTGAGE LOAN ORIGINATORS.--

A. In order to meet the pre-licensing education requirement referred to in Subsection D of Section 6 of the New Mexico Mortgage Loan Originator Licensing Act, an individual shall complete at least twenty hours of education approved in accordance with Subsection B of this section, which shall include at least:

(1) three hours of federal law and regulations;

(2) three hours of ethics, including instruction on fraud, consumer protection and fair lending issues;

(3) two hours of training related to lending standards for the nontraditional mortgage product marketplace; and

(4) three hours of New Mexico law and administrative rules.

B. For the purposes of Subsection A of this section, pre-licensing education courses shall be reviewed and approved by the nationwide mortgage licensing system and registry based upon reasonable standards. Review and approval of a pre-licensing education course shall include review and approval of the course provider.

C. Nothing in this section shall preclude any pre-licensing education course, as approved by the nationwide mortgage licensing system and registry, that is provided by the employer of the applicant or by an entity that is affiliated with the applicant by an agency contract, or by any subsidiary or affiliate of the employer or entity.

D. Pre-licensing education may be offered in a classroom, online or by any other means approved by the nationwide mortgage licensing system and registry.

E. The pre-licensing education requirements approved by the nationwide mortgage licensing system and registry in Paragraphs (1) through (4) of Subsection A of this section for any state shall be accepted as credit toward completion of pre-licensing education requirements in New Mexico.

F. An individual previously licensed pursuant to the New Mexico Mortgage Loan Originator Licensing Act subsequent to the effective date of that act applying to be licensed again shall prove that the individual has completed all of the continuing education requirements for the year in which the license was last held.

Chapter 122 Section 8 Laws 2009

Section 8. TESTING OF MORTGAGE LOAN ORIGINATORS.--

A. In order to meet the written test requirement referred to in Subsection E of Section 6 of the New Mexico Mortgage Loan Originator Licensing Act, an individual shall pass, in accordance with the standards established pursuant to this section, a qualified written test developed by the nationwide mortgage licensing system and registry and administered by a test provider approved by the nationwide mortgage licensing system and registry based upon reasonable standards.

B. A written test shall not be treated as a qualified written test for purposes of Subsection A of this section unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including:

(1) ethics;

(2) federal law and regulations pertaining to mortgage origination;

and (3) New Mexico law and rules pertaining to mortgage origination;

(4) federal and New Mexico law and regulations and rules, including those concerning fraud, consumer protection, the nontraditional mortgage product marketplace and fair lending issues.

C. Nothing in this section shall prohibit a test provider approved by the nationwide mortgage licensing system and registry from providing a test at the location of the employer of the applicant or the location of any subsidiary or affiliate of the employer of the applicant, or at the location of any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

D. An individual shall not be considered to have passed a qualified written test unless the individual achieves a test score of not less than seventy-five percent correct answers to questions.

E. An individual may retake a test two consecutive times, provided that each retake occurs at least thirty days after the preceding test. After failing three consecutive tests, an individual shall wait at least six months before taking the test again.

F. A licensed mortgage loan originator who fails to maintain a valid license for a period of five years or longer shall retake the test, not taking into account any time during which the individual is a registered mortgage loan originator.

Chapter 122 Section 9 Laws 2009

Section 9. STANDARDS FOR LICENSE RENEWAL.--

A. The minimum standards for license renewal for mortgage loan originators shall include the following:

(1) the mortgage loan originator continues to meet the minimum standards for license issuance pursuant to Section 6 of the New Mexico Mortgage Loan Originator Licensing Act;

(2) the mortgage loan originator has satisfied the annual continuing education requirements set forth in Section 10 of the New Mexico Mortgage Loan Originator Licensing Act; and

(3) the mortgage loan originator has paid all required fees for renewal of the license.

B. The license of a mortgage loan originator who fails to satisfy the minimum standards for license renewal shall expire. The director may adopt rules for

the reinstatement of expired licenses consistent with the standards established by the nationwide mortgage licensing system and registry.

Chapter 122 Section 10 Laws 2009

Section 10. CONTINUING EDUCATION FOR MORTGAGE LOAN ORIGINATORS.--

A. In order to meet the annual continuing education requirements set forth in Paragraph (2) of Subsection A of Section 9 of the New Mexico Mortgage Loan Originator Licensing Act, a licensed mortgage loan originator shall complete at least eight hours of education approved in accordance with Subsection B of this section, which shall include at least:

(1) three hours of federal law and regulations;

(2) two hours of ethics, including instruction on fraud, consumer protection and fair lending issues;

(3) two hours of training related to lending standards for the nontraditional mortgage product marketplace; and

(4) one hour of New Mexico law and administrative rules.

B. For the purposes of Subsection A of this section, continuing education courses shall be reviewed and approved by the nationwide mortgage licensing system and registry based upon reasonable standards. Review and approval of a continuing education course shall include review and approval of the course provider.

C. Nothing in this section shall preclude any education course, as approved by the nationwide mortgage licensing system and registry, that is provided by the employer of the mortgage loan originator or by an entity that is affiliated with the mortgage loan originator by an agency contract, or any subsidiary or affiliate of such employer or entity.

D. Continuing education may be offered in a classroom, online or by any other means approved by the nationwide mortgage licensing system and registry.

E. A licensed mortgage loan originator:

(1) except for the provisions of Subsection B of Section 9 of the New Mexico Mortgage Loan Originator Licensing Act and Subsection I of this section, may only receive credit for a continuing education course in the year in which the course is taken; and

(2) may not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

F. A licensed mortgage loan originator who is an approved instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of two hours' credit for every one hour taught.

G. An individual who has successfully completed the education requirements approved by the nationwide mortgage licensing system and registry and as set forth in Subsection A of this section for any state shall be accepted as credit toward completion of continuing education requirements in New Mexico.

H. A licensed mortgage loan originator who subsequently becomes unlicensed shall complete the continuing education requirements for the last year in which the license was held prior to issuance of a new or renewed license.

I. An individual who meets the requirements set forth in Paragraphs (1) and (3) of Subsection A of Section 9 of the New Mexico Mortgage Loan Originator Licensing Act may make up any deficiency in continuing education as established by rule promulgated by the director.

Chapter 122 Section 11 Laws 2009

Section 11. AUTHORITY TO REQUIRE LICENSE AND TO SET FEES.--

A. In addition to any other duties imposed upon the director by law, the director shall require mortgage loan originators to be licensed and registered through the nationwide mortgage licensing system and registry. In order to carry out this requirement, the director may participate in the nationwide mortgage licensing system and registry. For this purpose, the director may establish requirements as necessary, including but not limited to:

(1) background checks for:

(a) criminal history through fingerprint or other databases;

(b) civil or administrative records;

(c) credit history; or

(d) any other information deemed necessary by the nationwide mortgage licensing system and registry;

(2) payment of fees to apply for or renew licenses through the nationwide mortgage licensing system and registry;

(3) setting or resetting as necessary renewal or reporting dates;
and

(4) requirements for amending or surrendering a license or any other activities the director deems necessary for participation in the nationwide mortgage licensing system and registry.

B. The director shall establish by rule fees sufficient to cover the costs of administering the New Mexico Mortgage Loan Originator Licensing Act. These fees may include:

(1) an original and renewal license fee paid by each licensed mortgage loan originator;

(2) an application fee to cover the costs of processing applications;

(3) an examination or investigation fee to cover the costs of any examination or investigation of the books and records of a licensed mortgage loan originator or other person subject to the New Mexico Mortgage Loan Originator Licensing Act; and

(4) late fees, license amendment fees and any other fees associated with the costs of administering the New Mexico Mortgage Loan Originator Licensing Act.

C. Mortgage loan originators shall not be charged investigation fees for the processing of complaints when the investigation determines that no violation of the New Mexico Mortgage Loan Originator Licensing Act occurred or when the mortgage loan originator provides a remedy satisfactory to the complainant and the director and no order of the director is issued. All money, fees and penalties collected pursuant to the New Mexico Mortgage Loan Originator Licensing Act shall be deposited into the mortgage regulatory fund.

D. For the purposes of implementing an orderly and efficient licensing process, the director may establish licensing rules and interim procedures for licensing and acceptance of applications. For individuals previously registered or licensed pursuant to the Mortgage Loan Company and Loan Broker Act, the director may establish expedited review and licensing procedures.

Chapter 122 Section 12 Laws 2009

Section 12. NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY INFORMATION CHALLENGE PROCESS.--The director shall establish rules whereby mortgage loan originators may challenge information entered into the nationwide mortgage licensing system and registry by the director.

Chapter 122 Section 13 Laws 2009

Section 13. ENFORCEMENT--VIOLATIONS--PENALTIES.--

A. In order to ensure the effective supervision and enforcement of the New Mexico Mortgage Loan Originator Licensing Act, the director may:

(1) deny, suspend, revoke or decline to renew a license for a violation of the New Mexico Mortgage Loan Originator Licensing Act or rules issued pursuant to that act or an order or a directive entered pursuant to that act;

(2) deny, suspend, revoke or decline to renew a license if an applicant or licensed mortgage loan originator:

(a) fails at any time to meet the requirements of Section 6 or 9 of the New Mexico Mortgage Loan Originator Licensing Act; or

(b) withholds information or makes a material misstatement in an application for a license or renewal of a license;

(3) order restitution against mortgage loan originators for violations of that act;

(4) impose fines on mortgage loan originators pursuant to Subsections C through E of this section;

(5) order or direct such other affirmative action as the director deems necessary;

(6) bar or suspend a mortgage loan originator from licensure in New Mexico as a mortgage loan originator; and

(7) issue orders or directives pursuant to the New Mexico Mortgage Loan Originator Licensing Act as follows:

(a) order or direct mortgage loan originators to cease and desist from conducting business, including issuing an immediate temporary order to cease and desist;

(b) order or direct mortgage loan originators to cease any harmful activities or violations of that act, including issuing an immediate temporary order to cease and desist; and

(c) enter immediate temporary orders to cease business pursuant to a license issued pursuant to the authority granted pursuant to Section 4 of the New Mexico Mortgage Loan Originator Licensing Act if the director determines that

the license was erroneously granted or the licensed mortgage loan originator is currently in violation of that act.

B. The director may initiate one or more of the actions set forth in Section 15 of the New Mexico Mortgage Loan Originator Licensing Act.

C. It is a violation of the New Mexico Mortgage Loan Originator Licensing Act for a mortgage loan originator to:

(1) directly or indirectly employ any scheme, device or artifice to defraud or mislead borrowers or lenders or to defraud any person;

(2) engage in any unfair or deceptive practice toward any person;

(3) obtain property by fraud or misrepresentation;

(4) solicit or enter into a contract with a borrower that provides in substance that the mortgage loan originator may earn a fee or commission through "best efforts" to obtain a loan even though no loan is actually obtained for the borrower;

(5) solicit, advertise or enter into a contract for specific interest rates, points or other financing terms unless the terms are actually available at the time of soliciting, advertising or contracting;

(6) conduct any business covered by the New Mexico Mortgage Loan Originator Licensing Act without holding a valid license as required pursuant to that act, or assist or aid and abet any person in the conduct of business pursuant to that act without a valid license as required pursuant to that act;

(7) fail to make disclosures as required by the New Mexico Mortgage Loan Originator Licensing Act and any other applicable state or federal law, including rules and regulations thereunder;

(8) fail to comply with the provisions of the New Mexico Mortgage Loan Originator Licensing Act or rules or regulations promulgated pursuant to that act, or fail to comply with any other state or federal law, including rules and regulations thereunder, applicable to any business authorized or conducted pursuant to the New Mexico Mortgage Loan Originator Licensing Act;

(9) make, in any manner, a false or deceptive statement or representation, including, with regard to the rates, points or other financing terms or conditions for a residential mortgage loan, engaging in bait-and-switch advertising;

(10) negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any information or reports filed with a governmental agency or the nationwide mortgage licensing system and registry

or in connection with any investigation conducted by the director or another governmental agency;

(11) make any payment, threat or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person in connection with a residential mortgage loan or make any payment, threat or promise, directly or indirectly, to any appraiser of a property for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property. Nothing in this paragraph shall be construed to prohibit a mortgage loan originator from asking the appraiser to consider additional appropriate property information or provide further detail, substantiation or explanation for the appraiser's value conclusion;

(12) collect, charge, attempt to collect or charge, or to use or propose any agreement purporting to collect or charge, any fee prohibited by the New Mexico Mortgage Loan Originator Licensing Act;

(13) cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the director and the property insurer;

(14) fail to account truthfully for money belonging to a party to a residential mortgage loan transaction;

(15) engage in mortgage loan origination on behalf of more than one mortgage loan company;

(16) pay, receive or collect in whole or in part any commission, fee or other compensation for originating a mortgage loan in violation of the New Mexico Mortgage Loan Originator Licensing Act, including a mortgage loan originated by any unlicensed person other than an exempt person;

(17) charge or collect any fee, commission or rate of interest or make or originate any mortgage loan with terms or conditions or in a manner contrary to other applicable federal and state laws;

(18) advertise mortgage loans, including rates, margins, discounts, points, fees, commission or other material information, including material limitations on the loans, unless the person is able to make the mortgage loans available to a reasonable number of qualified applicants;

(19) coerce, extort, induce, bribe or intimidate or attempt to coerce, extort, induce, bribe or intimidate an appraiser to value property in excess of its fair market value;

(20) originate a mortgage loan that contains a pre-payment penalty;

(21) misrepresent a borrower's credit rating;

(22) misrepresent, inflate or fabricate, or encourage a borrower to misrepresent, inflate or fabricate, the source or amount of a borrower's actual income or assets, other than allowable grossed-up income not to exceed twenty-five percent per current agency guidelines as set by the director, in the application or underwriting process for a residential mortgage loan;

(23) originate a residential mortgage loan when the terms of that loan are in violation of the Home Loan Protection Act;

(24) originate a residential mortgage loan that does not require documentation and consideration of the borrower's reasonable ability to repay that loan pursuant to its terms. The borrower's ability to repay shall be demonstrated through reasonably reliable documentation that may include payroll receipts, tax returns, bank records, asset and credit evaluations, mortgage payment history or other similar reliable documentation. The provisions of this paragraph shall not apply to a residential mortgage loan originated pursuant to a government streamline program or a streamline program administered by a government-sponsored enterprise, to a reverse mortgage insured as part of a government program or to loss mitigation activities of a mortgage loan servicer or lender with which the borrower has a current relationship, so long as each of these exceptions, as applicable, provides the borrower with a reasonable, tangible net benefit; or

(25) originate a residential mortgage loan that does not require a determination of the borrower's reasonable ability to pay the costs set forth in this paragraph. In the case of an adjustable rate residential mortgage loan, the reasonable ability to pay shall be determined based on a fully indexed rate and repayment schedule that achieves full amortization over the life of the mortgage loan. The costs, as applicable, to be used in determining the borrower's reasonable ability to pay include principal, interest, real estate taxes, property insurance, property assessments, mortgage insurance premiums and other scheduled long-term monthly debt payments.

D. The director may impose a civil penalty on a mortgage loan originator if the director finds, on the record after notice and opportunity for hearing, that the mortgage loan originator has violated or failed to comply with any requirement of the Mortgage Loan Originator Licensing Act or any rule promulgated by the director pursuant to that act or any order issued pursuant to authority of that act.

E. The maximum amount of penalty for each act or omission described in Subsection C of this section shall be twenty-five thousand dollars (\$25,000).

F. Each violation or failure to comply with any directive or order of the director is a separate and distinct violation or failure.

Chapter 122 Section 14 Laws 2009

Section 14. NOTICE OF CONTEMPLATED ACTION--HEARINGS.--

A. When the director contemplates taking any action specified in Paragraphs (1) through (6) of Subsection A or in Subsection D of Section 13 of the New Mexico Mortgage Loan Originator Licensing Act, the director shall serve upon the licensed mortgage loan originator a written notice containing a statement:

(1) that the director has sufficient evidence that, if not rebutted or explained, will justify the director in taking the contemplated action;

(2) indicating the general nature of the evidence; and

(3) that unless the licensed mortgage loan originator within twenty days after service of the notice deposits in the mail a certified return receipt requested letter addressed to the director containing a request for a hearing, the director will take the contemplated action.

B. If the licensed mortgage loan originator does not mail a request for a hearing within the time and in the manner required by this section, the director may take the action contemplated in the notice, and such action shall be final and not subject to judicial review.

C. If the licensed mortgage loan originator mails a request for a hearing as required by this section, the director shall, within thirty days of receipt of the request, notify the licensed mortgage loan originator of the time and place of the hearing, the name of the person who shall conduct the hearing for the director and the statutes and regulations authorizing the director to take the contemplated action.

Chapter 122 Section 15 Laws 2009

Section 15. POWER OF THE COURT TO GRANT RELIEF.--

A. Upon a showing by the director that a person has or is about to violate the New Mexico Mortgage Loan Originator Licensing Act or any rule or order of the director pursuant to that act, the district court of the first judicial district or other appropriate district court in the state may grant or impose one or more of the following appropriate legal or equitable remedies:

(1) a temporary restraining order, permanent or temporary prohibitory or mandatory injunction or a writ of prohibition or mandamus;

(2) a civil penalty up to a maximum of twenty-five thousand dollars (\$25,000) for each violation;

(3) disgorgement;

(4) declaratory judgment;

(5) restitution to consumers;

(6) the appointment of a receiver or conservator for the defendant or the defendant's assets;

(7) recovery by the director of all costs and expenses for conducting an investigation or the bringing of any enforcement action under that act; or

(8) other relief as the court deems just.

B. In determining the appropriate relief to grant, the court shall consider enforcement actions taken and sanctions imposed by the director pursuant to Section 13 of the New Mexico Mortgage Loan Originator Licensing Act in connection with the transactions constituting violations of that act.

C. The court shall not require the director to post bond in an action pursuant to this section.

Chapter 122 Section 16 Laws 2009

Section 16. UNLICENSED ACTIVITY.--

A. An individual who acts as a mortgage loan originator without being properly licensed pursuant to the New Mexico Mortgage Loan Originator Licensing Act is, for a first offense, guilty of a misdemeanor and upon conviction shall be sentenced in accordance with the provisions of Subsection A of Section 31-19-1 NMSA 1978.

B. In the case of a conviction pursuant to Subsection A of this section, the court may impose a deferred sentence in accordance with Section 31-20-6 NMSA 1978.

C. An individual who violates Subsection A of this section is, for a second or subsequent offense, guilty of a fourth degree felony and upon conviction shall be sentenced in accordance with the provisions of Section 31-18-15 NMSA 1978.

Chapter 122 Section 17 Laws 2009

Section 17. SURETY BOND REQUIRED.--

A. Each mortgage loan originator shall be covered by a surety bond in accordance with this section. In the event the mortgage loan originator is an employee or exclusive agent of a mortgage loan company subject to the Mortgage Loan Company Act, the surety bond of the mortgage loan company subject to that act may be used in lieu of the mortgage loan originator's surety bond requirement.

B. The surety bond shall provide coverage for each mortgage loan originator in an amount as prescribed in Subsection E of this section.

C. The surety bond shall be in a form as prescribed by the director.

D. The director may promulgate rules with respect to the requirements for such surety bonds as are necessary to accomplish the purposes of the New Mexico Mortgage Loan Originator Licensing Act.

E. The penal sum of the surety bond shall be in an initial amount of fifty thousand dollars (\$50,000). Upon renewal of the license, the penal sum of the surety bond shall be in an amount that reflects the total dollar amount of mortgage loans originated annually in New Mexico by the licensed mortgage loan originator, as follows:

(1) zero dollars (\$0.00) to three million dollars (\$3,000,000), a surety bond of fifty thousand dollars (\$50,000);

(2) more than three million dollars (\$3,000,000) and less than ten million dollars (\$10,000,000), a surety bond of one hundred thousand dollars (\$100,000); and

(3) ten million dollars (\$10,000,000) or more, a surety bond of one hundred fifty thousand dollars (\$150,000).

F. Every bond shall provide for suit thereon by any person who has a cause of action pursuant to the New Mexico Mortgage Loan Originator Licensing Act.

G. When an action is commenced on a licensed mortgage loan originator's bond, the director may require the filing of a new bond.

H. Immediately upon recovery on any action on a bond, the licensed mortgage loan originator shall file a new bond.

Chapter 122 Section 18 Laws 2009

Section 18. CONFIDENTIALITY.--In order to promote more effective regulation and reduce regulatory burden through supervisory information-sharing, except as otherwise provided in Public Law 110-289, Section 1512, the requirements pursuant to any federal law or pursuant to the Inspection of Public Records Act regarding the privacy or confidentiality of any information or material provided to the nationwide mortgage licensing system and registry, and any privilege arising pursuant to federal or state law, including the rules of any federal or state court, with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the nationwide mortgage licensing system and registry. Such information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of

privilege or the loss of confidentiality protections provided by federal law or the Inspection of Public Records Act, and the director may enter into agreements or sharing arrangements with other governmental agencies, the conference of state bank supervisors, the American association of residential mortgage regulators or other associations representing governmental agencies as established by rule or order of the director.

Chapter 122 Section 19 Laws 2009

Section 19. POWERS AND DUTIES OF DIRECTOR.--

A. The director shall exercise general supervision and control over mortgage loan originators doing business in New Mexico.

B. In addition to the other duties imposed on the director by law, the director shall make reasonable rules necessary for the implementation of the New Mexico Mortgage Loan Originator Licensing Act; provided that promulgated rules shall be subject to judicial review in the manner set forth in Section 12-8-8 NMSA 1978. In addition to any authority allowed pursuant to the New Mexico Mortgage Loan Originator Licensing Act, the director may conduct investigations and examinations as follows:

(1) for the purposes of initial licensing, license renewal, license suspension, license revocation or termination or general or specific inquiry or investigation to determine compliance with the New Mexico Mortgage Loan Originator Licensing Act, the director shall have access to and may receive and use any books, accounts, records, files, documents, information or evidence, including:

(a) criminal, civil and administrative history information, including nonconviction data as specified in the Arrest Record Information Act;

(b) personal history and experience information, including independent credit reports obtained from a consumer reporting agency described in Section 603(p) of the federal Fair Credit Reporting Act; and

(c) any other documents, information or evidence the director deems relevant to the inquiry or investigation regardless of the location, possession, control or custody of such documents, information or evidence;

(2) for the purposes of investigating violations or complaints arising pursuant to the New Mexico Mortgage Loan Originator Licensing Act, or for the purposes of examination, the director may review, investigate or examine any individual subject to that act as often as necessary in order to carry out the purposes of that act. The director may direct, subpoena or order the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or subject matter of any such examination or investigation and may direct, subpoena or order such

persons to produce books, accounts, records, files and any other documents the director deems relevant to the inquiry;

(3) each mortgage loan originator shall make available to the director upon request the books and records relating to the operations of the mortgage loan originator. The director shall have access to the books and records and interview the officers, principals, mortgage loan originators, employees, independent contractors and agents of the mortgage loan originator concerning their business;

(4) each mortgage loan originator shall make or compile reports or prepare other information as directed by the director in order to carry out the purposes of this section, including:

(a) accounting compilations;

(b) information lists and data concerning loan transactions in a format prescribed by the director; and

(c) such other information deemed by the director to be necessary to carry out the purposes of this section;

(5) in making any examination or investigation authorized by the New Mexico Mortgage Loan Originator Licensing Act, the director may control access to any documents and records of the individual under examination or investigation. The director may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, no individual or person shall remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the director. Unless the director has reasonable grounds to believe the documents or records of the licensed mortgage loan originator have been, or are at risk of being, altered or destroyed for purposes of concealing a violation of the New Mexico Mortgage Loan Originator Licensing Act, the licensed mortgage loan originator or owner of the documents and records shall have access to the documents or records as necessary to conduct its ordinary business affairs;

(6) in order to carry out the purposes of this section, the director may:

(a) retain attorneys, accountants or other professionals and specialists as examiners, auditors or investigators to conduct or assist in the conduct of examinations or investigations;

(b) enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or

procedures and documents, records, information or evidence obtained pursuant to this section;

(c) use, hire, contract or employ public or privately available analytical systems, methods or software to examine or investigate the mortgage loan originator;

(d) accept and rely on examination or investigation reports made by other government officials, within or without this state; and

(e) accept audit reports made by an independent certified public accountant for the mortgage loan originator in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation or other writing of the director;

(7) the authority of this section shall remain in effect whether such a licensed mortgage loan originator or individual subject to the New Mexico Mortgage Loan Originator Licensing Act acts or claims to act pursuant to any licensing or registration law of New Mexico or claims to act without such authority;

(8) no licensed mortgage loan originator or individual who is the subject an of investigation or examination pursuant to this section shall knowingly withhold, abstract, remove, mutilate, destroy or secrete any books, records, computer records or other information; and

(9) applications for a license or a license renewal, and all papers, documents, reports and other written instruments filed with the director pursuant to the New Mexico Mortgage Loan Originator Licensing Act, are public documents and open to public inspection, except for files of ongoing examinations and investigations relating to violations of that act, which investigations do not culminate, or have not yet culminated, in administrative, civil or criminal action.

Chapter 122 Section 20 Laws 2009

Section 20. MORTGAGE LOAN ORIGINATOR DUTIES.--

A. A mortgage loan originator shall, enter into a fiduciary relationship with the borrower. For the purposes of this subsection, "fiduciary relationship" is a relationship in which a mortgage loan originator shall:

- (1) safeguard and account for any money handled for the borrower;
- (2) follow reasonable and lawful instructions from the borrower;
- (3) act with reasonable skill, care and diligence;

(4) act in good faith and engage in fair dealing in any transaction, practice or course of business regarding mortgage loans;

(5) direct, recommend and make reasonable efforts to secure a residential mortgage loan that is reasonably advantageous to the borrower, considering all of the circumstances, and has a net tangible benefit to the borrower;

(6) make a full and fair disclosure of all facts within the knowledge of the mortgage loan originator that are or may be material to the borrower's decision, rights or interests;

(7) disclose to the borrower the existence of all loans available to the mortgage loan originator, for which the borrower qualifies, that have terms that are as favorable or more favorable than those loans offered to the borrower by the mortgage loan originator;

(8) not steer the borrower to a loan or loans with terms that are clearly less favorable than those loans offered to the borrower by the mortgage loan originator; and

(9) maintain all information provided by the borrower or obtained regarding the borrower in strict confidence. However, the mortgage loan originator may disclose confidential information if required by law or rule or if the borrower authorizes the disclosure in writing in advance of the disclosure. Any such authorization shall specifically identify the nature of the information to be disclosed.

B. If not provided by the mortgage loan company, a mortgage loan originator shall, in addition to all other disclosures required by statute or common law:

(1) disclose at least two days prior to closing of the loan the total amount of any compensation the mortgage loan company expects to receive specific to the loan being offered, including origination fees, broker fees, yield spread premiums and other fees payable to the mortgage loan company by the lender or other third party at the time the loan is funded to the borrower; and

(2) clearly and conspicuously disclose in writing a mortgage loan summary, as specified by the director by rule.

Chapter 122 Section 21 Laws 2009

Section 21. PRIVATE RIGHT OF ACTION--DAMAGES--ENFORCEMENT BY ATTORNEY GENERAL.--

A. Any person who has suffered injury by reason of any method, act or practice in violation of the New Mexico Mortgage Loan Originator Licensing Act may sue in district court. Upon a showing that that act is being or has been violated and a

showing that the plaintiff has suffered injury, the court may award damages, punitive damages and injunctive relief and shall award the cost of the suit, including reasonable attorney fees.

B. Whenever the attorney general has reasonable belief that a person is using, has used or is about to use any method, act or practice in violation of the New Mexico Mortgage Loan Originator Licensing Act and enforcement proceedings would be in the public interest, the attorney general may bring an action in the name of the state alleging violations of that act. An enforcement action by the attorney general may be brought in the district court of the county in which the person that allegedly is using, has used or is about to use a method, act or practice in violation of the New Mexico Mortgage Loan Originator Licensing Act resides or has its principal place of business, or in the district court in any county in which the person allegedly is using, has used or is about to use a method, act or practice in violation of the New Mexico Mortgage Loan Originator Licensing Act. In any action filed by the attorney general pursuant to the New Mexico Mortgage Loan Originator Licensing Act, the attorney general may petition the district court for temporary or permanent injunctive relief and restitution. The attorney general acting on behalf of the state shall not be required to post bond when seeking a temporary or permanent injunction in an action brought pursuant to this section.

C. The relief provided in this section is in addition to remedies otherwise available pursuant to common law or other New Mexico statutes.

Chapter 122 Section 22 Laws 2009

Section 22. MORTGAGE CALL REPORTS.--A mortgage loan originator shall submit to the nationwide mortgage licensing system and registry reports of condition, which shall be in such form and shall contain such information as the nationwide mortgage licensing system and registry may require.

Chapter 122 Section 23 Laws 2009

Section 23. REPORT TO NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY.--Subject to state privacy laws, the director shall report regularly violations of the New Mexico Mortgage Loan Originator Licensing Act, as well as enforcement actions and other relevant information, to the nationwide mortgage licensing system and registry subject to the provisions set forth in Section 18 of the New Mexico Mortgage Loan Originator Licensing Act.

Chapter 122 Section 24 Laws 2009

Section 24. UNIQUE IDENTIFIER SHOWN.--The unique identifier of any person originating a residential mortgage loan shall be clearly shown on all residential mortgage loan application forms, solicitations or advertisements, including business cards or web sites, and on any other documents as established by rule or order of the director.

Chapter 122 Section 25 Laws 2009

Section 25. Section 58-21-1 NMSA 1978 (being Laws 1983, Chapter 86, Section 1, as amended) is amended to read:

"58-21-1. SHORT TITLE.--Chapter 58, Article 21 NMSA 1978 may be cited as the "Mortgage Loan Company Act"."

Chapter 122 Section 26 Laws 2009

Section 26. Section 58-21-2 NMSA 1978 (being Laws 1983, Chapter 86, Section 2, as amended) is amended to read:

"58-21-2. DEFINITIONS.--As used in the Mortgage Loan Company Act:

A. "affiliate" means a person who, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with another person;

B. "branch office" means any location, including a divisional office, separate from the principal place of business of the mortgage loan company that is identified by any means to the public or customers as a location at which the licensee holds itself out as a mortgage loan company;

C. "closing agent" means a person, including a title insurance agent or title insurance company, that acts in the normal course of business in a fiduciary capacity as a disinterested third party for the seller and buyer of real property for the purpose of consummating a sale of real property, including the performance of the following functions:

(1) preparation of deeds, mortgages, promissory notes, deeds of trust, real estate contracts, assignments or other documents incidental to the sale as permitted by law;

(2) calculations and disbursements of prorated taxes, insurance premiums, utility bills and other charges incidental to the sale;

(3) preparation of sellers' and buyers' closing statements;

(4) supervision of signing of documents;

(5) collection and disbursement of down payments, commissions of real estate licensees, fees and other charges pursuant to a sales agreement; and

(6) recordation of documents;

D. "division" means the financial institutions division of the regulation and licensing department;

E. "director" means the director of the financial institutions division of the regulation and licensing department;

F. "dwelling" means a residential structure that contains one to four units whether or not that structure is attached to real property. "Dwelling" includes an individual condominium unit, an individual cooperative unit, a mobile home and a trailer if used as a residence;

G. "individual" means a natural person;

H. "lender" means a person or government agency making a mortgage loan;

I. "mortgage loan company" means any person who, for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly:

(1) accepts an application for a mortgage loan; negotiates terms for a mortgage loan; or solicits, processes, originates, brokers or makes mortgage loans for others;

(2) offers to:

(a) accept an application for a mortgage loan;

(b) negotiate terms for a mortgage loan; or

(c) solicit, process, originate, broker or make mortgage loans for others; or

(3) closes mortgage loans that may be in the mortgage loan company's own name with funds provided by others and that are assigned to the mortgage lenders providing the funding of such loans;

J. "mortgage loan" means any loan primarily for personal, family or household use that is secured by a mortgage, deed of trust or other equivalent consensual security interest on a dwelling or residential real estate upon which is constructed or intended to be constructed a dwelling as so defined;

K. "net loan funds" means the mortgage loan amounts specified in the note and mortgage less lender-retained fees, as specified in the lender's instruction to the closing agent;

L. "person" means a natural person, corporation, company, limited liability company, partnership or association;

M. "qualified manager" means an individual, designated by a mortgage loan company, responsible for the activities of the licensed mortgage loan company's office, divisional office or branch office in conducting the business of that mortgage loan company's office, divisional office or branch office and who meets requirements as specified by the director; and

N. "servicer" means a person who collects or receives payments, including principal, interest and trust items such as hazard insurance, property taxes and other amounts due, on behalf of a note holder or investor in accordance with the terms of a residential mortgage loan, and includes working with a borrower on behalf of a note holder or investor, when the borrower is in financial hardship or default, to modify either temporarily or permanently the terms of an existing mortgage loan."

Chapter 122 Section 27 Laws 2009

Section 27. Section 58-21-3 NMSA 1978 (being Laws 1983, Chapter 86, Section 3, as amended by Laws 2001, Chapter 251, Section 2 and by Laws 2001, Chapter 264, Section 2) is amended to read:

"58-21-3. LICENSE REQUIRED--QUALIFIED MANAGER.--

A. It is unlawful for any person to transact business in the state of New Mexico, either directly or indirectly, as a mortgage loan company without first filing an application with the director, meeting requirements established by the director and obtaining a license under the Mortgage Loan Company Act.

B. A mortgage loan company shall designate at least one qualified manager who shall:

(1) obtain and maintain a mortgage loan originator license and unique identifier number pursuant to the New Mexico Mortgage Loan Originator Licensing Act; and

(2) have not less than two years verifiable experience as a principal, partner, officer, director, manager, processor or underwriter of a mortgage loan company or a mortgage loan originator or have equivalent lending experience in a related business during the four years immediately preceding the time of application.

C. A qualified manager shall serve as a qualified manager for only one mortgage loan company."

Chapter 122 Section 28 Laws 2009

Section 28. Section 58-21-4 NMSA 1978 (being Laws 1983, Chapter 86, Section 4, as amended by Laws 2001, Chapter 251, Section 3 and by Laws 2001, Chapter 264, Section 3) is amended to read:

"58-21-4. APPLICATION FOR LICENSE OR RENEWAL.--Each application for a license or license renewal as a mortgage loan company shall be filed in writing with the director, shall meet requirements established by the director and shall contain the following:

A. the applicant's name, the name of designated qualified managers, the New Mexico mortgage loan originator license number and national mortgage licensing system unique identifier number of each designated qualified manager and the name and location of every mortgage loan company office, divisional office or branch office that will be supervised by that qualified manager;

B. the name of the applicant and of each of the applicant's affiliates, engaged in the business of a mortgage loan company, and the name under which the applicant will conduct business in New Mexico, together with the articles of incorporation or articles of partnership;

C. the location of the applicant's principal office and of each branch office doing business in New Mexico;

D. the name, residence and business address of each person having an interest in the business as principal, partner, officer, trustee, director, manager or affiliate, specifying the capacity and title of each;

E. a financial statement of the applicant verified by a principal of the applicant;

F. the length of time the applicant has been engaged in the mortgage business in New Mexico and other jurisdictions;

G. disclosure of any action or proceeding, civil or criminal, judicial or administrative, completed or in progress, against the applicant or a principal, partner, director, officer, trustee, manager, employee or affiliate of the applicant;

H. the license fee; and

I. such other information and documentation as the director may require."

Chapter 122 Section 29 Laws 2009

Section 29. Section 58-21-5 NMSA 1978 (being Laws 1983, Chapter 86, Section 5, as amended by Laws 2001, Chapter 251, Section 4 and by Laws 2001, Chapter 264, Section 4) is amended to read:

"58-21-5. LICENSE FEES--DURATION OF LICENSE.--

A. A license shall expire on December 31 each year. Each licensee shall submit a renewal application on or before November 1 each year.

B. The director shall establish by rule fees that shall be sufficient to cover the costs of administering the Mortgage Loan Company Act. These fees may include:

- (1) an original and renewal license fee paid by each licensee;
- (2) an application fee to cover the costs of processing applications;
- (3) an examination and investigation fee for all licensees; and

(4) late fees, license amendment fees, supervisory fees, divisional office fees, branch office fees and any other fees associated with the costs of administering the Mortgage Loan Company Act.

C. A mortgage loan company shall not be charged investigation fees for the processing of complaints when the investigation determines that no violation of the Mortgage Loan Company Act occurred or when the mortgage loan company provides a remedy satisfactory to the complainant and the director and no order of the director is issued.

D. The following fees shall be deposited into the general fund:

- (1) original license fees;
- (2) license renewal fees;
- (3) examination fees;
- (4) investigation fees;
- (5) late fees; and
- (6) license amendment fees.

E. The following fees shall be deposited into the mortgage regulatory fund:

- (1) application fees;
- (2) divisional office fees;
- (3) branch office fees; and

(4) supervisory fees."

Chapter 122 Section 30 Laws 2009

Section 30. Section 58-21-6 NMSA 1978 (being Laws 1983, Chapter 86, Section 6, as amended) is amended to read:

"58-21-6. PERSONS EXEMPT FROM LICENSING.--The following persons shall be exempt from all provisions of the Mortgage Loan Company Act:

A. banks, trust companies, savings and loan associations, credit unions, insurance companies or real estate investment trusts as defined in 26 U.S.C.A. 856;

B. an attorney licensed to practice law in New Mexico who is not principally engaged in the business of negotiating loans secured by real or personal property, when that person renders services in the course of the person's practice as an attorney;

C. a New Mexico-licensed real estate broker rendering service in the performance of that person's duties as a real estate broker who obtains financing for a real estate transaction involving an actual bona fide sale of real estate or real estate contract handled by the broker and who receives only the customary real estate broker's commission in connection with the transaction;

D. a person doing an act under order of a court;

E. an individual making a single mortgage loan in a calendar year with the individual's own funds for the individual's own investment without the intent to resell the mortgage loan;

F. the United States of America, state of New Mexico or any of their branches, agencies, departments, boards, instrumentalities or institutions and all political subdivisions of the state and their agencies, instrumentalities and institutions; and

G. a company licensed as a small business investment company under the federal Small Business Investment Act of 1958."

Chapter 122 Section 31 Laws 2009

Section 31. Section 58-21-7 NMSA 1978 (being Laws 1983, Chapter 86, Section 7) is amended to read:

"58-21-7. SURETY BOND.--

A. Each mortgage loan company shall post and maintain with the director a corporate surety bond.

B. The penal sum of the surety bond shall be in an initial amount of fifty thousand dollars (\$50,000). Upon renewal of the license, the penal sum of the surety bond shall be in an amount that reflects the total dollar amount of mortgage loans originated annually in New Mexico by the licensee, as follows:

(1) zero dollars (\$0.00) to three million dollars (\$3,000,000), a surety bond of fifty thousand dollars (\$50,000);

(2) more than three million dollars (\$3,000,000) and less than ten million dollars (\$10,000,000), a surety bond of one hundred thousand dollars (\$100,000); and

(3) ten million dollars (\$10,000,000) or more, a surety bond of one hundred fifty thousand dollars (\$150,000).

C. Every bond shall provide for suit thereon by any person who has a cause of action under the Mortgage Loan Company Act.

D. The bond shall be in substantially the form as the director prescribes.

E. When an action is commenced on a licensee's bond, the director may require the filing of a new bond.

F. Immediately upon recovery upon any action on a bond, the licensee shall file a new bond."

Chapter 122 Section 32 Laws 2009

Section 32. Section 58-21-8 NMSA 1978 (being Laws 1983, Chapter 86, Section 8, as amended by Laws 2001, Chapter 251, Section 6 and by Laws 2001, Chapter 264, Section 6) is amended to read:

"58-21-8. VIOLATIONS.--The director may deny, suspend or revoke any license or impose other penalties when the applicant or licensee, or a principal, partner, director, officer, trustee, manager, employee or affiliate of the applicant or licensee:

A. lacks a good business reputation;

B. has violated a provision of the Mortgage Loan Company Act;

C. charges, collects or receives fees for procuring, negotiating or securing a loan in excess of the amounts allowed by the Mortgage Loan Company Act or by rules promulgated pursuant to that act;

D. has committed fraud in connection with a transaction subject to the Mortgage Loan Company Act;

E. has made a misrepresentation or false statement to or concealed an essential or material fact from a person in the course of the mortgage loan company business;

F. has knowingly made or caused to be made a false representation of material fact or has suppressed or withheld from the director information that the applicant or licensee possesses and that, if submitted by that person, would have rendered the applicant or licensee ineligible to be licensed pursuant to the Mortgage Loan Company Act;

G. has violated any provisions of any New Mexico statute relating to escrow agents or escrow companies;

H. has refused to permit an examination or investigation by the director of that person's books and records or has refused or failed, within a reasonable time, to furnish information or make a report that may be required by the director under the provisions of the Mortgage Loan Company Act;

I. has been convicted of a felony or any misdemeanor involving moral turpitude; subject, however, to the provisions of the Criminal Offender Employment Act;

J. appears to be conducting business in a manner that is injurious to persons;

K. conducts any business covered by the Mortgage Loan Company Act without holding a valid license as required by that act;

L. knowingly assists or aids and abets any person in the conduct of business covered by the Mortgage Loan Company Act without a valid license as required pursuant to that act;

M. hires or engages the services of a mortgage loan originator who is not licensed pursuant to the New Mexico Mortgage Loan Originator Licensing Act;

N. makes a mortgage loan without documenting and considering the borrower's reasonable ability to repay that loan pursuant to its terms. The borrower's ability to repay shall be demonstrated through reasonably reliable documentation that may include payroll receipts, tax returns, bank records, asset and credit evaluations, mortgage payment history or other similar reliable documentation. The provisions of this subsection shall not apply to a mortgage loan originated pursuant to a government streamline program or a streamline program administered by a government-sponsored enterprise, to a reverse mortgage insured as part of a government program or to loss mitigation activities of a mortgage loan servicer or lender with which the borrower has a

current relationship, so long as each of these exceptions, as applicable, provides the borrower with a reasonable, tangible net benefit; or

O. makes a mortgage loan without determining the borrower's reasonable ability to pay the costs set forth in this subsection. In the case of an adjustable rate mortgage loan, the reasonable ability to pay shall be determined based on a fully indexed rate and repayment schedule that achieves full amortization over the life of the mortgage loan. The costs, as applicable, to be used in determining the borrower's reasonable ability to pay include principal, interest, real estate taxes, property insurance, property assessments, mortgage insurance premiums and other scheduled long-term monthly debt payments."

Chapter 122 Section 33 Laws 2009

Section 33. Section 58-21-9 NMSA 1978 (being Laws 1983, Chapter 86, Section 9, as amended by Laws 2001, Chapter 251, Section 7 and by Laws 2001, Chapter 264, Section 7) is amended to read:

"58-21-9. POWERS AND DUTIES OF DIRECTOR.--

A. The director shall exercise general supervision and control over mortgage loan companies doing business in New Mexico. In addition to the other duties imposed on the director by law, the director shall:

(1) make reasonable rules necessary for the implementation of the Mortgage Loan Company Act; provided that promulgated rules shall be subject to judicial review in the manner set forth in Section 12-8-8 NMSA 1978;

(2) conduct investigations necessary to determine whether a person has engaged in or is about to engage in an act or practice constituting a violation of a provision of the Mortgage Loan Company Act; and

(3) conduct examinations, investigations and hearings in addition to those specifically provided for by law necessary and proper to the efficient administration of the Mortgage Loan Company Act.

B. The director may conduct an investigation upon complaint when it appears that a mortgage loan company is conducting business in a manner injurious to persons or when it appears that a person has improperly claimed an exemption pursuant to Section 58-21-6 NMSA 1978."

Chapter 122 Section 34 Laws 2009

Section 34. Section 58-21-10 NMSA 1978 (being Laws 1983, Chapter 86, Section 10) is amended to read:

"58-21-10. SUBPOENAS, OATHS AND EXAMINATION OF WITNESSES--
PENALTIES.--

A. In the conduct of any examination, investigation or hearing, the director may:

(1) compel the attendance of any person or obtain any documents by subpoena;

(2) administer oaths; and

(3) examine any person under oath concerning the business of any person subject to the provisions of the Mortgage Loan Company Act and in connection therewith require the production of any books, records or papers relevant to the inquiry.

B. In case of refusal to obey a subpoena issued to any person, the district court of the first judicial district of Santa Fe county, upon application by the director, may issue to the person an order requiring the person to appear before the director or the staff member designated by the director, there to produce documentary evidence if so ordered or to give evidence relating to the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court."

Chapter 122 Section 35 Laws 2009

Section 35. Section 58-21-12 NMSA 1978 (being Laws 1983, Chapter 86, Section 12, as amended by Laws 2001, Chapter 251, Section 9 and by Laws 2001, Chapter 264, Section 9) is amended to read:

"58-21-12. EXAMINATION OF RECORDS.--All the records required to be maintained by the Mortgage Loan Company Act are subject to examinations or investigations by representatives of the director within or without New Mexico as the director deems necessary or appropriate in the public interest or for the protection of investors. If the examination or investigation is conducted outside the state, the actual cost of travel for the examiners shall be reimbursed to the state by the mortgage loan company so examined or investigated."

Chapter 122 Section 36 Laws 2009

Section 36. Section 58-21-13 NMSA 1978 (being Laws 1983, Chapter 86, Section 13) is amended to read:

"58-21-13. PUBLIC INSPECTION OF APPLICATIONS.--Applications for licensing or a license renewal and all papers, documents, reports and other written instruments filed with the director under the Mortgage Loan Company Act are public documents and open to public inspection except for files of ongoing examinations and

investigations relating to violations of that act, which investigations do not culminate, or have not yet culminated, in administrative, civil or criminal action."

Chapter 122 Section 37 Laws 2009

Section 37. Section 58-21-14 NMSA 1978 (being Laws 1983, Chapter 86, Section 14) is amended to read:

"58-21-14. NOTICE OF CONTEMPLATED ACTION--HEARINGS.--

A. When the director contemplates taking any action specified in Section 58-21-8 NMSA 1978 and Paragraphs (1) through (7) of Subsection A of Section 58-21-28 NMSA 1978, the director shall serve upon the licensee a written notice containing a statement:

(1) that the director has sufficient evidence that, if not rebutted or explained, will justify the director in taking the contemplated action;

(2) indicating the general nature of the evidence; and

(3) that unless the licensee within twenty days after service of the notice deposits in the mail a certified return receipt requested letter addressed to the director and containing a request for a hearing, the director will take the contemplated action.

B. If the licensee does not mail a request for a hearing within the time and in the manner required by this section, the director may take the action contemplated in the notice, and such action shall be final and not subject to judicial review.

C. If the licensee mails a request for a hearing as required by this section, the director shall, within thirty days of receipt of the request, notify the licensee of the time and place of the hearing, the name of the person who shall conduct the hearing for the director and the statutes and regulations authorizing the director to take the contemplated action."

Chapter 122 Section 38 Laws 2009

Section 38. Section 58-21-15 NMSA 1978 (being Laws 1983, Chapter 86, Section 15, as amended by Laws 2001, Chapter 251, Section 10 and by Laws 2001, Chapter 264, Section 10) is amended to read:

"58-21-15. INVESTIGATIONS BY DIRECTOR.--

A. The director may make any public or private investigation, within or outside of this state, as the director finds necessary to determine whether a person has violated or is about to violate the Mortgage Loan Company Act or any rule or order of

the director under that act or to aid in enforcement of that act or in the rules under that act.

B. The director may publish information concerning a violation of the Mortgage Loan Company Act or a rule or order of the director under that act or concerning mortgage loan activities of persons that may operate as a fraud or deceit."

Chapter 122 Section 39 Laws 2009

Section 39. Section 58-21-17 NMSA 1978 (being Laws 1983, Chapter 86, Section 17) is amended to read:

"58-21-17. ESCROW SERVICES.--Any licensee under the Mortgage Loan Company Act who also performs any acts that are within the scope of activities regulated by any statutes of the state relating to escrow agents shall also comply with all provisions of those statutes, and the issuance of a license under the Mortgage Loan Company Act shall not serve to relieve the licensee from compliance with the provisions of such other statutes."

Chapter 122 Section 40 Laws 2009

Section 40. Section 58-21-18 NMSA 1978 (being Laws 1983, Chapter 86, Section 18, as amended by Laws 2001, Chapter 251, Section 11 and by Laws 2001, Chapter 264, Section 11) is amended to read:

"58-21-18. PERMISSIBLE CHARGES.--In connection with any loan originated, brokered, negotiated or made by a licensee pursuant to the Mortgage Loan Company Act, a mortgage loan company shall not collect, charge or receive broker fees in excess of six percent of the principal amount of the loan. A licensee may charge reasonable settlement, origination, transaction and other fees or charges not otherwise prohibited or limited by applicable state or federal laws."

Chapter 122 Section 41 Laws 2009

Section 41. Section 58-21-19 NMSA 1978 (being Laws 1983, Chapter 86, Section 19, as amended) is amended to read:

"58-21-19. COMPLIANCE WITH FEDERAL AND STATE LAW.--In connection with any loan originated, brokered, negotiated or made by a licensee pursuant to the Mortgage Loan Company Act, a licensee shall comply with:

- A. applicable federal or state laws;
- B. the provisions of the Home Loan Protection Act; and

C. the provisions of the New Mexico Mortgage Loan Originator Licensing Act."

Chapter 122 Section 42 Laws 2009

Section 42. Section 58-21-20 NMSA 1978 (being Laws 1983, Chapter 86, Section 20) is amended to read:

"58-21-20. FALSE STATEMENT UNLAWFUL.--It is unlawful for any person to make or cause to be made in any document filed with the director in any proceedings under the Mortgage Loan Company Act any statement that is at the time and in the light of the circumstances under which it is made false or misleading in any respect."

Chapter 122 Section 43 Laws 2009

Section 43. Section 58-21-21 NMSA 1978 (being Laws 1983, Chapter 86, Section 21) is amended to read:

"58-21-21. FRAUD UNLAWFUL.--It is unlawful for any mortgage loan company in connection with the origination, brokering, negotiating or making of any mortgage loan, directly or indirectly, to:

A. employ any device, scheme or artifice to defraud; or

B. engage in any act, practice or course of business that operates or would operate as a fraud or deceit upon any person."

Chapter 122 Section 44 Laws 2009

Section 44. Section 58-21-22 NMSA 1978 (being Laws 1983, Chapter 86, Section 22, as amended by Laws 2001, Chapter 251, Section 13 and Laws 2001, Chapter 264, Section 13) is amended to read:

"58-21-22. PENALTIES.--A person who violates Section 58-21-18, 58-21-19, 58-21-20 or 58-21-21 NMSA 1978, knowing the statement to be false or misleading in any respect, is guilty of a fourth degree felony and upon conviction shall be sentenced as provided for in Section 31-18-15 NMSA 1978. Civil and criminal penalties are in addition to any remedies available at common law."

Chapter 122 Section 45 Laws 2009

Section 45. Section 58-21-23 NMSA 1978 (being Laws 1983, Chapter 86, Section 23, as amended by Laws 2001, Chapter 251, Section 14 and by Laws 2001, Chapter 264, Section 14) is amended to read:

"58-21-23. FILING AND DESTRUCTION OF DOCUMENTS.--A document is filed when it is received by the director. The director may permit the destruction of any document filed under the Mortgage Loan Company Act with the division or the director after six years from the date of filing documents."

Chapter 122 Section 46 Laws 2009

Section 46. Section 58-21-23.2 NMSA 1978 (being Laws 2005, Chapter 191, Section 3, as amended) is amended to read:

"58-21-23.2. FUNDING OF REAL ESTATE TRANSACTIONS--
ENFORCEMENT.--

A. Unless the net loan funds necessary to complete a purchase of real property have been previously delivered to the seller or to the closing agent, a lender shall deliver the required net loan funds within two business days of the time that the lender deems the closing agent has fulfilled the requirements of the closing agent's duties, except for the recordation of documents, and shall:

(1) authorize the closing agent to record with the county clerk all documents necessary to complete the real estate transaction and release the proceeds of the real estate transaction in accordance with agreed upon escrow instructions;

(2) advise the closing agent of any funding conditions, as set forth in the lender's escrow instructions, that have not been satisfied and instruct the closing agent in writing what is to be done with any of the lender's funds held in escrow; or

(3) advise the closing agent that the documentation for the real estate transaction does not satisfy the lender's escrow instructions, specify the manner in which that documentation does not satisfy those instructions and instruct the closing agent in writing what is to be done with any of the lender's funds held in escrow.

B. In the event a lender does not comply with the requirements of Subsection A of this section, unreasonably refuses to approve the documentation necessary to complete a real estate action or unreasonably delays authorization of the recordation of closing documents and release of proceeds of a real estate transaction, the director of the division may, upon receipt of a complaint and in accordance with the procedures set forth in the Mortgage Loan Company Act, suspend or revoke any state registration or license issued to the lender for a period not to exceed one year."

Chapter 122 Section 47 Laws 2009

Section 47. Section 58-21-25 NMSA 1978 (being Laws 1983, Chapter 86, Section 25) is amended to read:

"58-21-25. NO IMPAIRMENT OF OTHER REMEDIES.--The Mortgage Loan Company Act is not intended to impair any remedies available to injured parties under other statutes or under common law."

Chapter 122 Section 48 Laws 2009

Section 48. Section 58-21-26 NMSA 1978 (being Laws 1983, Chapter 86, Section 26) is amended to read:

"58-21-26. EXEMPTION FROM AUTHORITY OF SUPERINTENDENT OF REGULATION AND LICENSING.--The responsibilities and authority of the director under the Mortgage Loan Company Act are explicitly exempted from the authority of the superintendent of regulation and licensing as set forth in Subsection B of Section 9-16-6 NMSA 1978."

Chapter 122 Section 49 Laws 2009

Section 49. Section 58-21-28 NMSA 1978 (being Laws 2001, Chapter 251, Section 15 and Laws 2001, Chapter 264, Section 15) is amended to read:

"58-21-28. ENFORCEMENT.--

A. In order to ensure the effective supervision and enforcement of the Mortgage Loan Company Act, the director may:

(1) deny, suspend, revoke or decline to renew a license for a violation of that act, rules issued pursuant to that act or order or directive entered pursuant to that act;

(2) deny, suspend, revoke or decline to renew a license if an applicant or licensee fails at any time to meet the requirements of licensing pursuant to that act or rules issued pursuant to that act;

(3) order restitution against persons subject to that act for violations of that act;

(4) impose fines on persons subject to that act pursuant to Subsections B through D of this section;

(5) order or direct such other affirmative action as the director deems necessary;

(6) deny the person's license application or suspend or revoke the person's license in New Mexico as a mortgage loan company;

(7) award damages to the injured party in double the amount of fees charged by the mortgage loan company for originating, brokering, negotiating or making a loan within the jurisdiction of that act;

(8) issue orders or directives pursuant to that act as follows:

(a) order or direct persons subject to that act to cease and desist from conducting business, including immediate temporary orders to cease and desist;

(b) order or direct persons subject to that act to cease and desist any harmful activities or violations of that act, including immediate temporary orders to cease and desist; and

(c) enter immediate temporary orders to cease business under a license issued pursuant to the authority granted pursuant to that act if the director determines that such license was erroneously granted or the licensee is currently in violation of that act; and

(9) initiate one or more of the actions specified in Section 58-21-29 NMSA 1978, as applicable.

B. The director may impose a civil penalty on a mortgage loan company or person subject to the Mortgage Loan Company Act if the director finds, on the record after notice and opportunity for hearing, that the mortgage loan company or person subject to that act has violated or failed to comply with any requirement of that act or any rule adopted by the director pursuant to that act or order issued pursuant to that act.

C. The maximum amount of penalty for each act or omission described in Section 58-21-8 NMSA 1978 shall be twenty-five thousand dollars (\$25,000).

D. Each violation or failure to comply with any directive or order of the director is a separate and distinct violation or failure."

Chapter 122 Section 50 Laws 2009

Section 50. Section 58-21-29 NMSA 1978 (being Laws 2001, Chapter 251, Section 16 and Laws 2001, Chapter 264, Section 16) is amended to read:

"58-21-29. POWER OF COURT TO GRANT RELIEF.--

A. Upon a showing by the director that a person has or is about to violate the Mortgage Loan Company Act or any rule or order of the director under that act, the district court of the first judicial district for Santa Fe county or other appropriate district court in the state may grant or impose one or more of the following appropriate legal or equitable remedies:

- (1) a temporary restraining order, permanent or temporary prohibitory or mandatory injunction or a writ of prohibition or mandamus;
- (2) a civil penalty up to a maximum of twenty-five thousand dollars (\$25,000) for each violation;
- (3) disgorgement;
- (4) declaratory judgment;
- (5) restitution to consumers;
- (6) the appointment of a receiver or conservator for the defendant or the defendant's assets;
- (7) recovery by the director of all costs and expenses for conducting an investigation or the bringing of any enforcement action under that act; or
- (8) other relief as the court deems just.

B. In determining the appropriate relief to grant, the court shall consider enforcement actions taken and sanctions imposed by the director under Section 58-21-28 NMSA 1978 in connection with the transactions constituting violations of the Mortgage Loan Company Act.

C. The court shall not require the director to post bond in an action under this section."

Chapter 122 Section 51 Laws 2009

Section 51. A new section of the Mortgage Loan Company Act is enacted to read:

"UNLICENSED ACTIVITY.--

A. A person that violates Subsection A of Section 58-21-3 NMSA 1978 for the first offense is guilty of a misdemeanor and upon conviction shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

B. In the case of a first conviction pursuant to Subsection A of this section, the court may impose a deferred sentence pursuant to the provisions of Section 31-20-6 NMSA 1978.

C. A person that violates Subsection A of Section 58-21-3 NMSA 1978 for a second or subsequent offense is guilty of a fourth degree felony and upon conviction shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978."

Chapter 122 Section 52 Laws 2009

Section 52. A new section of the Mortgage Loan Company Act is enacted to read:

"LICENSEE REQUIRED DISCLOSURES.--A mortgage loan company shall, in addition to other disclosures required pursuant to other statutes or common law:

- A. make all disclosures required by applicable federal and state laws;
- B. provide a revised "good faith estimate" and a copy of the borrower's lock-in agreement to the borrower within three days of locking in the loan rate, pricing and terms;
- C. make a full and fair disclosure of all facts within the knowledge of the mortgage loan company that are or may be material to the borrower's decision, rights or interests;
- D. disclose at least two days prior to closing of the loan, in a manner that can be understood by a reasonable borrower, the total amount of any compensation the mortgage loan company expects to receive specific to the loan being offered, including origination fees, broker fees, yield spread premiums and other fees payable to the mortgage loan company by the lender or other third party at the time the loan is funded to the borrower;
- E. clearly and conspicuously disclose in writing a mortgage loan summary, as specified by the director by rule; and
- F. enter into a signed contract with the borrower, as specified by the director by rule, that provides for mortgage loan rate float or rate lock-in. The borrower may choose to:
 - (1) rate float, which means that a loan rate has not been locked in and the borrower is responsible for instructing the mortgage loan company when to lock in the loan rate; or
 - (2) lock in a rate, which means the mortgage loan originator shall lock in a loan rate. The rate lock-in shall include the loan interest rate, pricing, terms, lock-in period and any fees required for an extension of the lock-in period."

Chapter 122 Section 53 Laws 2009

Section 53. A new section of the Mortgage Loan Company Act is enacted to read:

"MORTGAGE CALL REPORTS.--Each licensee shall submit to the nationwide mortgage licensing system and registry reports of condition, which shall be in such form and shall contain such information as the nationwide mortgage licensing system and registry may require."

Chapter 122 Section 54 Laws 2009

Section 54. Section 58-21A-1 NMSA 1978 (being Laws 2003, Chapter 436, Section 1) is amended to read:

"58-21A-1. SHORT TITLE.--Chapter 58, Article 21A NMSA 1978 may be cited as the "Home Loan Protection Act"."

Chapter 122 Section 55 Laws 2009

Section 55. Section 58-21A-3 NMSA 1978 (being Laws 2003, Chapter 436, Section 3) is amended to read:

"58-21A-3. DEFINITIONS.--As used in the Home Loan Protection Act:

A. "adjustable rate home loan" means a home loan that has an initial interest rate that adjusts to a variable interest rate at the end of a specified initial period or subsequent periods of time during the remaining term of the home loan;

B. "affiliate" means a person that controls, is controlled by or is under common control with another person;

C. "bona fide discount points" means loan discount points that are knowingly paid by the borrower for the express purpose of reducing, and which in fact do result in a bona fide reduction of, the annual percentage rate otherwise applicable to the home loan; provided, however, that discount points are not "bona fide discount points" if the annual percentage rate otherwise applicable to the home loan exceeds the conventional mortgage rate by more than:

(1) one and one-half percentage points for a home loan secured by a first lien; or

(2) three percentage points for a home loan secured by a junior lien;

D. "borrower" means a natural person obligated to repay a home loan, including a co-borrower, cosigner or guarantor;

E. "bridge loan" means a loan for the initial construction of a borrower's principal dwelling on land owned by the borrower with a maturity of less than eighteen

months that only requires the payment of interest until the entire unpaid balance is due and payable;

F. "conventional mortgage rate" means the most recently published annual yield on conventional mortgages published by the board of governors of the federal reserve system as of the fifteenth day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor;

G. "conventional prepayment penalty" means a prepayment penalty or fee that may be collected in a home loan and that is authorized by federal law; provided that a prepayment penalty is not a "conventional prepayment penalty" if the home loan:

(1) has an annual percentage rate that exceeds the conventional mortgage rate by more than two percent; or

(2) permits prepayment fees or penalties that exceed two percent of the amount prepaid;

H. "creditor" means a person who regularly offers or makes a home loan;

I. "high-cost home loan" means a home loan in which:

(1) the contract rate exceeds the rates threshold; or

(2) the total points and fees exceed the total points and fees threshold;

J. "home loan" means a loan, including an open-end credit plan, other than a reverse mortgage transaction or a bridge loan, where the principal amount does not exceed the conforming loan size limit for a single-family dwelling as established by the federal national mortgage association and where the loan is secured by:

(1) a mortgage or deed of trust on real estate in this state upon which there is located or there is to be located a structure:

(a) designed principally for occupancy by one to four families; and

(b) that is or will be occupied by a borrower as the borrower's principal residence; or

(2) a security interest on a manufactured home that is or will be occupied by a borrower as the borrower's principal residence;

K. "manufactured home" means a structure, transportable in one or more sections, which in the traveling mode is eight body feet or more in width or forty body

feet or more in length or, when erected on site is three hundred twenty or more square feet and which is built on a permanent chassis and designed to be used as a dwelling with a permanent foundation when erected on land secured in conjunction with the real property on which the manufactured home is located and connected to the required utilities and includes the plumbing, heating, air conditioning and electrical systems contained therein. "Manufactured home" includes any structure that meets all the requirements of this subsection except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the secretary of the United States department of housing and urban development and complies with the standards established under the federal National Manufactured Housing Construction and Safety Standards Act of 1974. "Manufactured home" does not include rental property or second homes or manufactured homes when not secured in conjunction with the real property on which the manufactured home is located;

L. "open-end loan" means a revolving debt that is secured by the equity in the borrower's home, including a home equity line of credit;

M. "points and fees" means:

(1) all amounts payable by a borrower at or before the closing of a home loan, exclusive of any time-price differential due at closing on the loan proceeds, including:

(a) loan discount points or other discounts;

(b) loan fees, broker fees or similar charges; and

(c) fees for preparation of loan-related documents; but

(d) does not include fees for the following purposes, if the amounts are bona fide and reasonable and paid to a person other than the creditor or an affiliate of the creditor: 1) service or carrying charges; 2) credit reports; 3) title exam, title insurance, title closing or similar purposes; 4) escrow charges for future payments of taxes and insurance; 5) fees for notarizing deeds and other documents; 6) appraisals, including fees related to any pest infestation or flood hazard inspections conducted prior to closing; 7) inspection performed prior to closing; 8) attorney fees, if the borrower has the right to select the attorney from an approved list or otherwise; 9) fire and hazard insurance and flood insurance premiums if the conditions in 12 C.F.R. s.226.4(d)(2) are met; 10) tax payment services; 11) surveys; 12) flood certification; 13) pest infestation and flood determination; and 14) federal housing administration upfront mortgage insurance, veterans administration funding fee, guaranteed rural housing loan guarantee fee or upfront premium private mortgage insurance at a percentage rate, as set by the director biannually, equal to the highest up-front government mortgage insurance percentage rate or United States department of veterans affairs funding fee percentage rate;

(2) all compensation, including yield spread premiums, paid directly or indirectly to a mortgage broker, including a broker that originates a loan in its own name in a table-funded transaction;

(3) the cost of all premiums financed by the creditor, directly or indirectly, for any credit life, credit disability, credit unemployment or credit property insurance, or any other life or health insurance, or any payments financed by the creditor, directly or indirectly, for any debt cancellation or suspension agreement or contract, except that insurance premiums calculated and paid on a monthly basis shall not be considered financed by the creditor; and

(4) for open-end loans, the points and fees included in Paragraphs (1) through (3) of this subsection that are known at or before closing plus the minimum additional fees the borrower would be required to pay to draw down an amount equal to the total credit line;

N. "rate threshold" means:

(1) for a first lien mortgage home loan, an interest rate equal to seven percentage points over the yield on treasury securities having comparable periods of maturity to the loan maturity as of the fifteenth day of the month immediately preceding the month in which the loan is made; and

(2) for a subordinate mortgage lien, an interest rate equal to nine percentage points over the yield on treasury securities having comparable periods of maturity to the loan maturity as of the fifteenth day of the month immediately preceding the month in which the loan is made;

O. "servicer" means a person who collects or receives payments, including principal, interest and trust items such as hazard insurance, property taxes and other amounts due, on behalf of a note holder or investor in accordance with the terms of a home loan, and includes working with a borrower on behalf of a note holder or investor, when the borrower is in financial hardship or default, to modify either temporarily or permanently the terms of an existing home loan;

P. "total points and fees" means the result obtained by subtracting the sum of the conventional prepayment penalties and the bona fide discount points paid from the sum of the points and fees, except that if the sum of the conventional prepayment penalties and the bona fide discount points paid exceeds two points, then only the amount that represents two points shall be subtracted; and

Q. "total points and fees threshold" means:

(1) for a home loan in which the total principal loan amount is twenty thousand dollars (\$20,000) or more, an amount equal to five percent of the total principal loan amount; and

(2) for a home loan in which the total principal loan amount is less than twenty thousand dollars (\$20,000), an amount equal to the lesser of one thousand dollars (\$1,000) or eight percent of the total principal loan amount."

Chapter 122 Section 56 Laws 2009

Section 56. Section 58-21A-4 NMSA 1978 (being Laws 2003, Chapter 436, Section 4) is amended to read:

"58-21A-4. PROHIBITED PRACTICES AND PROVISIONS REGARDING HOME LOANS.--

A. No creditor shall finance, directly or indirectly, credit life, credit disability, credit unemployment or credit property insurance, or any other life or health insurance, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract, provided that nothing in this subsection prohibits the payment or receipt of insurance premiums or debt cancellation or suspension fees calculated on the unpaid balance of a home loan and paid on a monthly basis.

B. No creditor shall knowingly and intentionally engage in the unfair act or practice of flipping a home loan. As used in this subsection, "flipping a home loan" means the making of a home loan to a borrower that refinances an existing home loan when the new loan does not have reasonable, tangible net benefit to the borrower considering all of the circumstances, including the terms of both the new and refinanced loans, the cost of the new loan and the borrower's circumstances.

C. No creditor shall make a home loan without documenting and considering the borrower's reasonable ability to repay that loan pursuant to its terms. The borrower's ability to repay shall be demonstrated through reasonably reliable documentation that may include payroll receipts, tax returns, bank records, asset and credit evaluations, mortgage payment history or other similar reliable documentation. The provisions of this subsection shall not apply to a home loan originated pursuant to a government streamline program or a streamline program administered by a government-sponsored enterprise, to a reverse mortgage insured as part of a government program or to loss mitigation activities of a home loan servicer or lender with which the borrower has a current relationship, so long as each of these exceptions, as applicable, provides the borrower with a reasonable, tangible net benefit.

D. No creditor shall make a home loan without determining the borrower's reasonable ability to pay the costs set forth in this subsection. In the case of an adjustable rate home loan, the reasonable ability to pay shall be determined based on a fully indexed rate and repayment schedule that achieves full amortization over the life of the home loan. The costs, as applicable, to be used in determining the borrower's reasonable ability to pay include principal, interest, real estate taxes, property insurance, property assessments, mortgage insurance premiums and other scheduled long-term monthly debt payments.

E. No creditor shall make or originate an adjustable rate home loan in which caps on payment increases may be less than that necessary to reduce principal and amortize the loan over the entire term of the loan regardless of interest rate adjustments resulting in negative amortization.

F. No creditor shall make or originate a home loan that includes terms under which more than two periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the borrower.

G. No creditor shall pay a contractor under a home-improvement contract from the proceeds of a home loan unless:

(1) the creditor is presented with a signed and dated completion certificate showing that the home improvements have been completed; or

(2) the instrument is payable jointly to the borrower and the contractor, or at the election of the borrower, through a third-party escrow agent in accordance with terms established in a written agreement signed by the borrower, the creditor and the contractor prior to the disbursement.

H. No creditor shall charge a borrower any fees or other charges, other than those that are bona fide, reasonable and actual, to modify, renew, extend or amend a home loan.

I. No creditor shall charge a borrower more than seventy-five dollars (\$75.00) to defer any payment due under the terms of a home loan.

J. No creditor shall recommend or encourage default on an existing loan or other debt prior to and in connection with the closing or planned closing of a home loan that refinances all or any portion of the existing loan or debt.

K. No creditor shall make a home loan that provides for a late payment fee except as follows:

(1) the late payment fee shall not be in excess of five percent of the amount of the payment past due;

(2) the late payment fee shall only be assessed for a payment past due for fifteen days or more;

(3) the late payment fee shall not be imposed more than once with respect to a single late payment, and no late payment fee shall be charged with respect to a subsequent payment that would have been a full payment but for the previous default or the imposition of the previous late payment fee;

(4) no late payment fee shall be charged unless the creditor notifies the borrower within forty-five days following the date the payment was due that a late payment fee has been imposed for a particular late payment. A late payment fee that the creditor has collected shall be reimbursed if the borrower presents proof of having made a timely payment; and

(5) a creditor shall treat each payment as posted on the same business day as it was received by the creditor, servicer, creditor's agent for making payments or at the address provided to the borrower by the creditor, servicer or creditor's agent for making payments.

L. No creditor shall make a home loan that contains a provision that permits the creditor, in its sole discretion, to accelerate the indebtedness, provided that this provision does not prohibit acceleration of a loan in good faith due to a borrower's failure to abide by the material terms of the loan.

M. No creditor shall make or originate a home loan that contains a provision that requires a penalty or premium for prepayment of the balance or any portion of the principal of the indebtedness.

N. No creditor shall make or originate a home loan that includes or uses one or more of the following lending practices:

(1) making a home loan primarily based upon the foreclosure or liquidation value of the borrower's collateral rather than on the borrower's ability to repay the home loan according to its terms;

(2) making or originating an adjustable rate home loan, except a home equity line of credit, where the interest rate and payment may change more frequently than annually during the term of the loan;

(3) making an adjustable rate home loan, except a home equity line of credit, where:

(a) the initial interest rate may be increased by more than two percent for loans with initial periods less than five years and six percent for loans with initial periods greater than or equal to five years;

(b) a periodic interest rate may be increased by more than two percent; and

(c) a lifetime interest rate cap is more than six percent over the initial rate;

(4) advertising terms of home loans, including interest rates, margins, discount points, fees, commissions or other material facts, including limitations

on the home loans, unless the creditor is able to make the advertised home loans available to a reasonable number of qualified applicants;

(5) misrepresenting a borrower's credit rating;

(6) misrepresenting, inflating or fabricating, or encouraging a borrower to misrepresent, inflate or fabricate, the source or amount of a borrower's actual income or assets, other than allowable grossed-up income not to exceed the twenty-five percent per agency guidelines established by rule by the director, in the application or underwriting process of a home loan; and

(7) making a home loan with an eighty percent or higher loan-to-value ratio for an owner-occupied residence if the creditor has failed to establish an escrow account for the payment of real estate taxes and property insurance."

Chapter 122 Section 57 Laws 2009

Section 57. Section 58-21A-5 NMSA 1978 (being Laws 2003, Chapter 436, Section 5) is amended to read:

"58-21A-5. LIMITATIONS AND PROHIBITED PRACTICES FOR HIGH-COST HOME LOANS.--

A. No creditor or mortgage loan originator making a high-cost home loan shall directly or indirectly finance any points or fees in excess of two percent of the principal loan amount.

B. No creditor shall make a high-cost home loan that contains a provision that increases the interest rate after default, provided that this provision does not apply to interest rate changes in a variable rate loan otherwise consistent with the provisions of the loan documents if the change in the interest rate is not triggered by the event of default or the acceleration of the indebtedness.

C. Without regard to whether a borrower is acting individually or on behalf of others similarly situated, a provision of a high-cost home loan agreement that allows a party to require a borrower to assert any claim or defense in a forum that is less convenient, more costly or more dilatory for the resolution of a dispute than a judicial forum where the borrower may otherwise properly bring a claim or defense or limits in any way any claim or defense the borrower may have is unconscionable and void.

D. No creditor or mortgage loan originator shall make a high-cost home loan without first receiving certification from a third-party, nonprofit counselor approved by the United States department of housing and urban development, the New Mexico mortgage finance authority or the director of the financial institutions division of the regulation and licensing department that the borrower has received counseling on the advisability of the loan transaction.

E. A creditor or mortgage loan originator shall not make a high-cost home loan unless the creditor has given the following notice, or a substantially similar notice, in writing, to the borrower, acknowledged in writing and signed by the borrower not later than the time the notice is required under the notice provision contained in 12 C.F.R. s.226.31(c):

NOTICE TO BORROWER

YOU SHOULD BE AWARE THAT YOU MIGHT BE ABLE TO OBTAIN A LOAN AT A LOWER COST. YOU SHOULD SHOP AROUND AND COMPARE LOAN RATES AND FEES. MORTGAGE LOAN RATES AND CLOSING COSTS AND FEES VARY BASED ON MANY FACTORS, INCLUDING YOUR PARTICULAR CREDIT AND FINANCIAL CIRCUMSTANCES, YOUR EMPLOYMENT HISTORY, THE LOAN-TO-VALUE REQUESTED AND THE TYPE OF PROPERTY THAT WILL SECURE YOUR LOAN. THE LOAN RATE AND FEES COULD ALSO VARY BASED ON WHICH CREDITOR OR BROKER YOU SELECT.

IF YOU ACCEPT THE TERMS OF THIS LOAN, THE CREDITOR WILL HAVE A MORTGAGE LIEN ON YOUR HOME. YOU COULD LOSE YOUR HOME AND ANY MONEY YOU PUT INTO IT IF YOU DO NOT MEET YOUR PAYMENT OBLIGATIONS UNDER THE LOAN.

YOU SHOULD CONSULT AN ATTORNEY-AT-LAW AND A QUALIFIED INDEPENDENT CREDIT COUNSELOR OR OTHER EXPERIENCED FINANCIAL ADVISOR REGARDING THE RATE, FEES AND PROVISIONS OF THIS MORTGAGE LOAN BEFORE YOU PROCEED. A LIST OF QUALIFIED COUNSELORS IS AVAILABLE BY CONTACTING THE NEW MEXICO REGULATION AND LICENSING DEPARTMENT.

YOU ARE NOT REQUIRED TO COMPLETE THIS LOAN AGREEMENT MERELY BECAUSE YOU HAVE RECEIVED THIS DISCLOSURE OR HAVE SIGNED A LOAN APPLICATION. REMEMBER, PROPERTY TAXES AND HOMEOWNER'S INSURANCE ARE YOUR RESPONSIBILITY. NOT ALL CREDITORS PROVIDE ESCROW SERVICES FOR THESE PAYMENTS. YOU SHOULD ASK YOUR CREDITOR ABOUT THESE SERVICES.

ALSO, YOUR PAYMENTS ON EXISTING DEBTS CONTRIBUTE TO YOUR CREDIT RATINGS. YOU SHOULD NOT ACCEPT ANY ADVICE TO IGNORE YOUR REGULAR PAYMENTS TO YOUR EXISTING CREDITORS."

Chapter 122 Section 58 Laws 2009

Section 58. Section 58-21A-6 NMSA 1978 (being Laws 2003, Chapter 436, Section 6) is amended to read:

"58-21A-6. DEFAULT--NOTICE--RIGHT TO CURE.--

A. Before an action is filed to foreclose or collect money due pursuant to a home loan or before other action is taken to seize or transfer ownership of property subject to a home loan, the creditor or creditor's assignee of the loan shall deliver to the borrower a notice of the right to cure the default informing the borrower of:

(1) the nature of the default;

(2) the borrower's right to cure the default by paying the sum of money required, provided that a creditor or assignee shall accept any partial payment made or tendered in response to the notice. If the amount necessary to cure the default will change within thirty days of the notice, due to the application of a daily interest rate or the addition of late fees, as allowed by the Home Loan Protection Act, the notice shall give sufficient information to enable the borrower to calculate the amount at any point within the thirty-day period;

(3) the date by which the borrower may cure the default to avoid a court action, acceleration and initiation of foreclosure or other action to seize the property, which date shall not be less than thirty days after the date the notice is delivered, and the name and address and telephone number of a person to whom the payment or tender shall be made;

(4) that if the borrower does not cure the default by the date specified, the creditor or assignee may file an action for money due or take steps to terminate the borrower's ownership in the property by requiring payment in full of the home loan and commencing a foreclosure proceeding or other action to seize the property; and

(5) the name and address and the telephone number of a person whom the borrower may contact if the borrower disagrees with the assertion that a default has occurred or the correctness of the calculation of the amount required to cure the default.

B. If a creditor or assignee asserts that grounds for acceleration exist and requires the payment in full of all sums secured by the home loan, the borrower, or anyone authorized to act on the borrower's behalf, may, at any time prior to the time title is transferred by means of foreclosure, by judicial proceeding and sale or otherwise, cure the default, and reinstate the home loan. Cure of the default shall reinstate the borrower to the same position as if the default had not occurred and shall nullify, as of the date of the cure, an acceleration of any obligation under the home loan arising from the default.

C. To cure a default under this section, a borrower shall not be required to pay any charge, fee or penalty attributable to the exercise of the right to cure a default, other than the fees specifically allowed by this subsection. The borrower shall not be liable for any attorney fees relating to the default that are incurred by the creditor or assignee prior to or during the thirty-day period set forth in Subsection A of this section, nor for any such fees in excess of one hundred dollars (\$100) that are incurred by the creditor or assignee after the expiration of the thirty-day period but prior to the time the creditor or assignee files a foreclosure or other judicial action or takes other action to seize or transfer ownership of the real estate. After the creditor or assignee files a foreclosure or other judicial action or takes other action to seize or transfer ownership of the real estate, the borrower shall only be liable for attorney fees that are reasonable and actually incurred by the creditor or assignee, based on a reasonable hourly rate and a reasonable number of hours.

D. If a default is cured prior to the initiation of any action to foreclose or to seize the residence, the creditor or assignee shall not institute a proceeding or other action for that default. If a default is cured after the initiation of any action, the creditor or assignee shall take such steps as are necessary to terminate the action.

E. A creditor or a creditor's assignee of a home loan that has the legal right to foreclose shall, in a foreclosure, use the judicial foreclosure procedures provided by law. In such a proceeding, the borrower may assert the nonexistence of a default and any other claim or defense to acceleration and foreclosure, including any based on a violation of the Home Loan Protection Act, though no such claim or defense shall be deemed a compulsory counterclaim."

Chapter 122 Section 59 Laws 2009

Section 59. MORTGAGE REGULATORY FUND--CREATED--PURPOSE--
APPROPRIATION.--

A. The "mortgage regulatory fund" is created as a nonreverting fund in the state treasury and shall be administered by the financial institutions division of the regulation and licensing department. The fund shall consist of application, licensing, renewal, examination, investigation and any other fees received that are associated with the costs of administering the New Mexico Mortgage Loan Originator Licensing Act, fees specified in Subsection E of Section 58-21-5 NMSA 1978 and any money that is appropriated or donated or that otherwise accrues to the fund. Money in the fund shall be invested by the state investment officer in the manner that land grant permanent funds are invested pursuant to Chapter 6, Article 8 NMSA 1978. Income from investment of the fund shall be credited to the fund.

B. Money in the mortgage regulatory fund is appropriated to the financial institutions division of the regulation and licensing department to carry out the provisions of the New Mexico Mortgage Loan Originator Licensing Act and the Mortgage Loan Company Act.

C. Money shall be disbursed from the mortgage regulatory fund only on warrant of the secretary of finance and administration upon vouchers signed by the director of the financial institutions division or the director's authorized representative. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the general fund.

Chapter 122 Section 60 Laws 2009

Section 60. SEVERABILITY.--If any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

Chapter 122 Section 61 Laws 2009

Section 61. EFFECTIVE DATE.--

A. The effective date of the provisions of Sections 4 and 16 of this act is July 31, 2010.

B. The effective date of the provisions of Sections 1 through 3, 5 through 15 and 17 through 60 of this act is July 31, 2009.

Senate Bill 342, aa

Approved April 6, 2009

LAWS 2009, CHAPTER 123

AN ACT

RELATING TO HIGHER EDUCATION; PROVIDING RESIDENT TUITION ELIGIBILITY FOR VETERANS OF THE UNITED STATES ARMED FORCES AT NEW MEXICO INSTITUTIONS OF HIGHER EDUCATION.

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

Chapter 123 Section 1 Laws 2009

Section 1. Section 21-1-4.5 NMSA 1978 (being Laws 2005, Chapter 168, Section 1) is amended to read:

"21-1-4.5. RESIDENT TUITION FOR VETERANS OF THE ARMED FORCES OF THE UNITED STATES AND FAMILIES OF MEMBERS OF THE ARMED FORCES.--

A. A veteran of the armed forces of the United States shall be deemed an in-state resident for purposes of determining tuition and fees at all state institutions of higher learning provided that veteran is eligible for veterans' education benefits under federal law. In order for a veteran who is not a resident of New Mexico to receive in-state tuition rates, the veteran shall use the veteran's federal educational benefits at a state public post-secondary institution.

B. A spouse or child of an active member of the armed forces who is assigned to duty in New Mexico shall be deemed an in-state resident for purposes of determining tuition and fees at all state institutions of higher learning.

C. A spouse or child of an active member of the armed forces who is assigned to duty elsewhere immediately following assignment to duty in New Mexico shall be deemed an in-state resident for purposes of determining tuition and fees at all state institutions of higher learning as long as the spouse or child resides continuously in New Mexico.

D. A spouse or child of an active member of the armed forces who dies or is killed shall be deemed an in-state resident for purposes of determining tuition and fees at all state institutions of higher learning if the spouse or child becomes a resident of New Mexico within sixty days of the date of death.

E. A veteran of the armed forces who pays tuition and fees at the rate provided for New Mexico residents under this section is entitled to pay tuition and fees at the rate provided for New Mexico residents in any subsequent term or semester while the veteran is enrolled in a degree or certificate program.

F. If an active member of the armed forces is stationed outside New Mexico and the member's spouse or child establishes residence in New Mexico and files with a state institution of higher learning at which the spouse or child plans to register a letter of intent to establish and continue residing in New Mexico, the spouse or child shall be deemed an in-state resident for purposes of determining tuition and fees at that state institution of higher learning without regard to length of time that the spouse or child has resided in the state.

G. A spouse or child of an active member of the armed forces who pays tuition and fees at the rate provided for New Mexico residents under this section is entitled to pay tuition and fees at the rate provided for New Mexico residents in any subsequent term or semester while the person is continuously enrolled in the same degree or certificate program. For purposes of this subsection, a person is not required to enroll in a summer term to remain continuously enrolled in a degree or certificate program. A person's eligibility to pay tuition and fees at the rate provided for New Mexico residents under this subsection does not terminate because the person is no longer a child or spouse of a member of the armed forces.

H. As used in this section, "armed forces" means the United States army, navy, air force, marine corps or coast guard.

I. As used in this section, a "veteran" means a person who has been discharged under conditions other than dishonorable from service in the army, navy, marine corps, air force or coast guard of the United States."

SEC/Senate Bill 136, aa

Approved April 6, 2009

LAWS 2009, CHAPTER 124

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 124 Section 1 Laws 2009

Section 1. **SHORT TITLE.**--This act may be cited as the "General Appropriation Act of 2009".

Chapter 124 Section 2 Laws 2009

Section 2. **DEFINITIONS.**--As used in the General Appropriation Act of 2009:

A. "agency" means an office, department, agency, institution, board, bureau, commission, court, district attorney, council or committee of state government;

B. "efficiency" means the measure of the degree to which services are efficient and productive and is often expressed in terms of dollars or time per unit of output;

C. "explanatory" means information that can help users to understand reported performance measures and to evaluate the significance of underlying factors that may have affected the reported information;

D. "federal funds" means any payments by the United States government to state government or agencies except those payments made in accordance with the federal Mineral Lands Leasing Act;

E. "full-time equivalent" or "FTE" means one or more authorized positions that alone or together receives or receive compensation for not more than two thousand eighty-eight hours worked in fiscal year 2010. The calculation of hours worked includes compensated absences but does not include overtime, compensatory time or sick leave paid pursuant to Section 10-7-10 NMSA 1978;

F. "general fund" means that fund created by Section 6-4-2 NMSA 1978 and includes federal Mineral Lands Leasing Act receipts and those payments made in accordance with the federal block grant and the federal Workforce Investment Act, but excludes the general fund operating reserve, the appropriation contingency fund, the tax stabilization reserve and any other fund, reserve or account from which general appropriations are restricted by law;

G. "interagency transfers" means revenue, other than internal service funds, legally transferred from one agency to another;

H. "internal service funds" means:

(1) revenue transferred to an agency for the financing of goods or services to another agency on a cost-reimbursement basis; and

(2) balances in agency internal service fund accounts appropriated by the General Appropriation Act of 2009;

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 2009;

(2) all revenue available to agencies from sources other than the general fund, internal service funds, interagency transfers and federal funds; and

(3) all revenue, the use of which is restricted by statute or agreement;

J. "outcome" means the measure of the actual impact or public benefit of a program;

K. "output" means the measure of the volume of work completed or the level of actual services or products delivered by a program;

L. "performance measure" means a quantitative or qualitative indicator used to assess a program;

M. "quality" means the measure of the quality of a good or service produced and is often an indicator of the timeliness, reliability or safety of services or products produced by a program;

N. "revenue" means all money received by an agency from sources external to that agency, net of refunds and other correcting transactions, other than from issue of debt, liquidation of investments or as agent or trustee for other governmental entities or private persons; and

O. "target" means the expected level of performance of a program's performance measures.

Chapter 124 Section 3 Laws 2009

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 2009, or so much as may be necessary, are appropriated from the indicated source for expenditure in fiscal year 2010 for the objects expressed.

D. Unexpended balances in agency accounts remaining at the end of fiscal year 2009 shall revert to the general fund by October 1, 2009, unless otherwise indicated in the General Appropriation Act of 2009 or otherwise provided by law.

E. Unexpended balances in agency accounts remaining at the end of fiscal year 2010 shall revert to the general fund by October 1, 2010, unless otherwise indicated in the General Appropriation Act of 2009 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 2009,

appropriations are made in that act for the expenditures of agencies and for other purposes as required by existing law for fiscal year 2010. If any other act of the first session of the forty-ninth 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 2009 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 2010 revenue collections with the revenue estimate. If the analyses indicate that revenues and transfers to the general fund are not expected to meet appropriations, then the department shall present a plan to the legislative finance committee that outlines the methods by which the administration proposes to address the deficit.

I. Pursuant to Sections 6-3-23 through 6-3-25 NMSA 1978, agencies whose revenue from state board of finance loans, from revenue appropriated by other acts of the legislature, or from gifts, grants, donations, bequests, insurance settlements, refunds or payments into revolving funds exceeds specifically appropriated amounts may request budget increases from the state budget division. If approved by the state budget division, such money is appropriated.

~~J. Pursuant to Section 6-4-2 NMSA 1978, federal funds received during fiscal year 2010 and not specifically appropriated shall be subject to future appropriation by the legislature provided, however, that an agency may request a budget increase during fiscal year 2010 from the state budget division if the agency submits documentation to the state budget division and to the legislative finance committee showing that all of the following five requirements have been met:~~

~~_____ (1) the requested budget increase is for federal funds the amount of which could not have been reasonably anticipated or known during the first session of the forty-ninth legislature and, therefore, could not have been requested by the agency or appropriated by the legislature;~~

~~_____ (2) the federal law authorizing the disbursement of the federal funds to the state requires the funds to be expended for specific programs or specific governmental functions without leaving a policy choice to the state of how the funds are to be expended;~~

~~_____ (3) the state has no discretion as to the programs or governmental functions for which the federal funds will be expended;~~

~~_____ (4) the executive branch has had no input into the selection of the programs or~~

~~governmental functions for which the federal funds are required to be expended; and~~

~~_____ (5) due to the emergency nature of the purpose of the federal funds or the likelihood that the federal funds will be unavailable in the future, the funds need to be budgeted and expended before the second session of the forty-ninth legislature.~~

~~_____ K. For fiscal year 2010, the number of permanent and term full-time-equivalent positions specified for each agency shows the maximum number of employees intended by the legislature for that agency, unless another provision of the General Appropriation Act of 2009 or another act of the first session of the forty-ninth legislature provides for additional employees.]~~*LINE-ITEM VETO* For purposes of the General Appropriation Act of 2009 and any other act of the first session of the forty-ninth legislature, no employee shall be deemed to have an annual salary greater than twenty thousand dollars (\$20,000) unless the employee's full-time-equivalent base annual salary is greater than that amount or unless the employee's base hourly wage is greater than nine dollars fifty-seven and nine-tenths cents (\$9.579).

L. Except for gasoline credit cards used solely for operation of official vehicles, telephone credit cards used solely for official business and procurement cards used as authorized by Section 6-5-9.1 NMSA 1978, none of the appropriations contained in the General Appropriation Act of 2009 may be expended for payment of agency-issued credit card invoices.

M. To prevent unnecessary spending, expenditures from the General Appropriation Act of 2009 for gasoline for state-owned vehicles at public gasoline service stations shall be made only for self-service gasoline provided that a state agency head may provide exceptions from the requirement to accommodate disabled persons or for other reasons the public interest may require.

N. For the purpose of administering the General Appropriation Act of 2009 and approving operating budgets, 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 124 Section 4 Laws 2009

<u>Item</u>	<u>General State Fund</u>	<u>Other State Funds</u>	<u>Intrnl Svc Funds/Inter-Agency/Trnsf</u>	<u>Federal Funds</u>	<u>Total/Target</u>
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Section 4. **FISCAL YEAR 2010 APPROPRIATIONS.--**

A. LEGISLATIVE

LEGISLATIVE COUNCIL SERVICE:

(1) Legislative building services:

Appropriations:

(a)	Personal services and		
	employee benefits	2,896.3	2,896.3
(b)	Contractual services	160.1	160.1
(c)	Other	1,049.2	1,049.2

Authorized FTE: 55.00 Permanent; 4.00 Temporary

(2) Energy council dues:

Appropriations:	32.0	32.0
Subtotal		4,137.6
TOTAL LEGISLATIVE	4,137.6	4,137.6

B. JUDICIAL

SUPREME COURT LAW LIBRARY:

The purpose of the supreme court law library program 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 rules, better understand the legal system and conduct their affairs in accordance with the principles of law.

Appropriations:

(a)	Personal services and		
	employee benefits	680.4	680.4
(b)	Contractual services	392.3	392.3
(c)	Other	628.9 1.5	630.4

Authorized FTE: 9.00 Permanent

Performance measures:

(a) Output:	Percent of updated titles	80%
(b) Output:	Number of research requests	7,000

Subtotal		1,703.1
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NEW MEXICO COMPILATION COMMISSION:

The purpose of the New Mexico compilation commission program is to publish in print and electronic format, distribute and sell (1) laws enacted by the legislature, (2) opinions of the supreme court and court of appeals, (3) rules approved by the supreme court, (4) attorney general opinions and (5) other state and federal rules and opinions and ensure the accuracy and reliability of its publications.

Appropriations:

(a)	Personal services and				
	employee benefits	166.1	342.1		508.2
(b)	Contractual services		948.0	400.0	1,348.0
(c)	Other	168.0		168.0	

Authorized FTE: 5.00 Permanent; 1.00 Term

Performance measures:

(a) Output: Amount of revenue collected, in thousands \$1,300

Subtotal 2,024.2

JUDICIAL STANDARDS COMMISSION:

The purpose of the judicial standards commission program is to provide a public review process addressing complaints involving judicial misconduct in order to preserve the integrity and impartiality of the judicial process.

Appropriations:

(a)	Personal services and				
	employee benefits	629.2			629.2
(b)	Contractual services		42.6		42.6
(c)	Other	116.0		116.0	

Authorized FTE: 7.00 Permanent; 1.00 Temporary

Performance measures:

(a) Efficiency: Upon knowledge of cause for emergency interim suspension,
time for commission to file petition for temporary

suspension, in days 2

(b) Output: Time for release of annual report to the public, from the
end of the fiscal year, in months 2

(c) Efficiency: For cases in which formal charges are filed, average time
for formal hearings to be reached, in meeting cycles 3

Subtotal 787.8

COURT OF APPEALS:

The purpose of the court of appeals program is to provide access to justice, resolve disputes justly and timely and maintain accurate records of legal proceedings that affect rights and legal status in order to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a) Personal services and		
employee benefits	5,158.4	5,158.4
(b) Contractual services	67.7	67.7
(c) Other	467.2 1.0	468.2

Authorized FTE: 62.50 Permanent

Performance measures:

(a) Explanatory: Cases disposed as a percent of cases filed 100%

Subtotal 5,694.3

SUPREME COURT:

The purpose of the supreme court program is to provide access to justice, resolve disputes justly and timely and maintain accurate records of legal proceedings that affect rights and legal status in order to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a) Personal services and

employee benefits	2,797.3		2,797.3
(b) Contractual services	39.7		39.7
(c) Other	192.9	192.9	

Authorized FTE: 34.00 Permanent

Performance measures:

(a) Explanatory: Cases disposed as a percent of cases filed 95%

Subtotal 3,029.9

ADMINISTRATIVE OFFICE OF THE COURTS:

(1) Administrative support:

The purpose of the administrative support program is to provide administrative support to the chief justice, all judicial branch units and the administrative office of the courts so that they can effectively administer the New Mexico court system.

Appropriations:

(a) Personal services and					
employee benefits	2,903.8	195.0	93.2	3,192.0	
(b) Contractual services	182.2	100.0	376.1	708.5	1,366.8
(c) Other	4,939.0	525.0	98.9	61.2	5,624.1

Authorized FTE: 38.80 Permanent; 4.00 Term

Performance measures:

(a) Outcome: Percent of jury summons successfully executed 92%

(b) Output: Average cost per juror \$42

(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	2,552.0	1,643.6	4,195.6
(b)	Contractual services		745.8	745.8
(c)	Other	295.8	2,776.2	3,072.0

Authorized FTE: 41.50 Permanent; 9.00 Term

Performance measures:

- (a) Quality: Percent of accurate driving-while-intoxicated court reports 98%
- (b) Quality: Average time to respond to automation calls for assistance,
in minutes 25

(3) Magistrate court:

The purpose of the magistrate court and warrant enforcement program is to provide access to justice, resolve disputes justly and timely and maintain accurate records of legal proceedings that affect rights and legal status in order to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a)	Personal services and employee benefits	16,712.5	2,557.9	19,270.4
(b)	Contractual services	226.8	268.0	70.0
(c)	Other	7,037.8	367.7	1,335.0
				8,740.5

Authorized FTE: 284.50 Permanent; 56.50 Term

Performance measures:

- (a) Outcome: Bench warrant revenue collected annually, in millions \$2.4
- (b) Explanatory: Percent of cases disposed as a percent of cases filed 95%
- (c) Efficiency: Percent of magistrate courts financial reports submitted to
fiscal services division and reconciled on a monthly basis 100%

(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 tempore and to adjudicate water rights disputes so that the constitutional rights and safety of citizens (especially children and families) are protected.

Appropriations:

(a)	Personal services and employee benefits	135.3	135.3	
(b)	Contractual services	6,008.7	380.0	6,388.7
(c)	Other	36.8	36.8	
(d)	Other financing uses	1,488.3		1,488.3

Authorized FTE: 2.00 Permanent

Performance measures:

(a) Output: Number of required events attended by attorneys in abuse
and neglect cases 8,000

(b) Output: Number of monthly supervised child visitations conducted 500

(c) Output: Number of cases to which court-appointed special advocates
volunteers are assigned 1,600

Subtotal 54,821.1

SUPREME COURT BUILDING COMMISSION:

The purpose of the supreme court building commission program 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)	Personal services and employee benefits	645.8	645.8	
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(b)	Contractual services	9.0		9.0
(c)	Other	159.0	159.0	

Authorized FTE: 15.80 Permanent

Performance measures:

(a) Quality:	Accuracy of fixed-assets inventory records	100%
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Subtotal	813.8
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DISTRICT COURTS:

(1) First judicial district:

The purpose of the first judicial district court program, statutorily created in Santa Fe, Rio Arriba and Los Alamos counties, is to provide access to justice, resolve disputes justly and timely and maintain accurate records of legal proceedings that affect rights and legal status in order to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a)	Personal services and				
	employee benefits	5,657.8	250.0	305.5	6,213.3
(b)	Contractual services	783.6	60.7	90.0	934.3
(c)	Other	164.3	183.5	40.0	387.8

Authorized FTE: 86.00 Permanent; 8.80 Term

The general fund appropriation to the first judicial district court in the contractual services category includes twenty-eight thousand six hundred dollars (\$28,600) to replace federal funds for the adult drug court in Santa Fe county.

Performance measures:

(a) Explanatory:	Cases disposed as a percent of cases filed	100%
(b) Quality:	Recidivism of adult drug-court graduates	9%
(c) Quality:	Recidivism of juvenile drug-court graduates	15%
(d) Output:	Number of adult drug-court graduates	18

- (e) Output: Number of juvenile drug-court graduates 17
- (f) Output: Number of days to process juror payment vouchers 5
- (g) Explanatory: Graduation rate, juvenile drug court 50%
- (h) Explanatory: Graduation rate, adult drug court 45%

(2) Second judicial district:

The purpose of the second judicial district court program, statutorily created in Bernalillo county, is to provide access to justice, resolve disputes justly and timely and maintain accurate records of legal proceedings that affect rights and legal status in order to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

- (a) Personal services and
employee benefits 20,391.8 759.9 1,481.2 22,632.9
- (b) Contractual services 407.5 407.5
- (c) Other 749.2 211.4 149.4 1,110.0

Authorized FTE: 331.50 Permanent; 28.50 Term

Performance measures:

- (a) Explanatory: Cases disposed as a percent of cases filed 95%
- (b) Quality: Recidivism of adult drug-court graduates 8%
- (c) Quality: Recidivism of juvenile drug-court graduates 10%
- (d) Output: Number of adult drug-court graduates 130
- (e) Output: Number of juvenile drug-court graduates 20
- (f) Output: Number of days to process juror payment vouchers 14
- (g) Explanatory: Graduation rate, adult drug court 55%
- (h) Explanatory: Graduation rate, juvenile drug court 70%

(3) Third judicial district:

The purpose of the third judicial district court program, statutorily created in Dona Ana county, is to provide access to justice, resolve disputes justly and timely and maintain accurate records of legal proceedings that affect rights and legal status in order to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a)	Personal services and				
	employee benefits	5,515.7		544.1	6,059.8
(b)	Contractual services	723.0	93.8	127.1	943.9
(c)	Other	332.5	67.3	56.6	456.4

Authorized FTE: 88.30 Permanent; 6.50 Term

The general fund appropriation to the third judicial district court in the personal services and employee benefits category includes one hundred eighty-two thousand four hundred dollars (\$182,400) for four court clerks.

Performance measures:

- (a) Explanatory: Cases disposed as a percent of cases filed 90%
- (b) Quality: Recidivism of adult drug-court graduates 10%
- (c) Output: Number of adult drug-court graduates 30
- (d) Output: Number of juvenile drug-court graduates 20
- (e) Explanatory: Graduation rate, adult drug court 70%
- (f) Explanatory: Graduation rate, juvenile drug court 70%

(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 in order to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a)	Personal services and			
	employee benefits	1,840.8		1,840.8

(b)	Contractual services	155.1	10.0	55.8	220.9
(c)	Other	158.0	20.0		178.0

Authorized FTE: 29.50 Permanent

Performance measures:

- (a) Explanatory: Cases disposed as a percent of cases filed 95%
- (b) Output: Number of days to process juror payment vouchers 12
- (c) Explanatory: Graduation rate, juvenile drug court 70%
- (d) Quality: Recidivism of juvenile drug-court graduates 15%
- (e) Output: Number of juvenile drug-court graduates 9

(5) Fifth judicial district:

The purpose of the fifth judicial district court program, statutorily created in Eddy, Chaves and Lea counties, is to provide access to justice, resolve disputes justly and timely and maintain accurate records of legal proceedings that affect rights and legal status in order to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a)	Personal services and				
	employee benefits	5,400.4		42.9	5,443.3
(b)	Contractual services	554.0	70.0	285.0	909.0
(c)	Other	313.9	45.0	11.1	370.0

Authorized FTE: 82.00 Permanent; 1.00 Term

The general fund appropriation to the fifth judicial district court in the contractual services category includes twenty thousand three hundred dollars (\$20,300) to replace federal funds for the juvenile drug court in Chaves county.

Performance measures:

- (a) Explanatory: Cases disposed as a percent of cases filed 95%
- (b) Output: Number of days to process juror payment vouchers 10

(c) Explanatory: Graduation rate, family drug court 50%

(d) Quality: Recidivism of family drug-court graduates 15%

(e) Output: Number of family drug-court graduates 9

(6) Sixth judicial district:

The purpose of the sixth judicial district court program, statutorily created in Grant, Luna and Hidalgo counties, is to provide access to justice, resolve disputes justly and timely and maintain accurate records of legal proceedings that affect rights and legal status in order to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a) Personal services and

employee benefits	2,291.1			2,291.1
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(b) Contractual services	763.9	14.2	87.9	866.0
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(c) Other	182.4	10.8	193.2	
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Authorized FTE: 35.50 Permanent; .50 Term

The general fund appropriation to the sixth judicial district court in the contractual services category includes one hundred forty-five thousand two hundred dollars (\$145,200) to replace federal funds for the adult drug court in Hidalgo county.

Performance measures:

(a) Explanatory: Cases disposed as a percent of cases filed 90%

(b) Quality: Recidivism of juvenile drug-court graduates 13%

(c) Output: Number of juvenile drug-court graduates 9

(d) Output: Number of days to process juror payment vouchers 14

(e) Explanatory: Graduation rate, juvenile drug court 90%

(7) Seventh judicial district:

The purpose of the seventh judicial district court program, statutorily created in Torrance, Socorro, Sierra and Catron counties, is to provide access to justice, resolve disputes justly and timely and maintain accurate records of legal proceedings that affect rights and legal status in order to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a)	Personal services and				
	employee benefits	1,869.3		282.0	2,151.3
(b)	Contractual services	295.1	28.0	82.5	405.6
(c)	Other	148.1	1.0	60.8	209.9

Authorized FTE: 32.00 Permanent; 4.00 Term

Performance measures:

(a) Explanatory: Cases disposed as a percent of cases filed 95%

(b) Output: Number of days to process juror payment vouchers 14

(8) Eighth judicial district:

The purpose of the eighth judicial district court program, statutorily created in Taos, Colfax and Union counties, is to provide access to justice, resolve disputes justly and timely and maintain accurate records of legal proceedings that affect rights and legal status in order to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a)	Personal services and				
	employee benefits	1,730.9			1,730.9
(b)	Contractual services	919.5	45.0	80.0	1,044.5
(c)	Other	117.5	26.0		143.5

Authorized FTE: 27.50 Permanent

The general fund appropriations to the eighth judicial district court include fifteen thousand nine hundred dollars (\$15,900) to replace federal funds for the adult drug court and one hundred fifty-three thousand nine hundred dollars (\$153,900) to replace federal funds for the juvenile drug court in Colfax county.

Performance measures:

(a) Explanatory: Cases disposed as a percent of cases filed 90%

(b) Quality: Recidivism of adult drug-court graduates 10%

(c) Quality: Recidivism of juvenile drug-court graduates 5%

- (d) Output: Number of adult drug-court graduates 18
- (e) Output: Number of juvenile drug-court graduates 15
- (f) Output: Number of days to process juror payment vouchers 9
- (g) Explanatory: Graduation rate, juvenile drug court 70%
- (h) Explanatory: Graduation rate, adult drug court 75%

(9) Ninth judicial district:

The purpose of the ninth judicial district court program, statutorily created in Curry and Roosevelt counties, is to provide access to justice, resolve disputes justly and timely and maintain accurate records of legal proceedings that affect rights and legal status in order to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

- (a) Personal services and
employee benefits 3,110.0 438.6 3,548.6
- (b) Contractual services 52.7 16.5 85.0 154.2
- (c) Other 155.3 26.5 82.3 264.1

Authorized FTE: 43.80 Permanent; 5.50 Term

Performance measures:

- (a) Explanatory: Cases disposed as a percent of cases filed 90%
- (b) Output: Number of days to process juror payment vouchers 14

(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 in order to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

- (a) Personal services and
employee benefits 693.6 693.6

(b)	Contractual services	8.4	25.0	33.4
(c)	Other	91.0	91.0	

Authorized FTE: 10.00 Permanent

Performance measures:

- (a) Explanatory: Cases disposed as a percent of cases filed 90%
- (b) Output: Number of days to process juror payment vouchers 6

(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 in order to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a)	Personal services and employee benefits	5,135.1	391.3	5,526.4
(b)	Contractual services	584.0	84.9	141.2
(c)	Other	461.3	48.1	19.2
			528.6	

Authorized FTE: 80.50 Permanent; 6.50 Term

The general fund appropriation to the eleventh judicial district court in the contractual services category includes fifty-seven thousand one hundred dollars (\$57,100) to replace federal funds for the juvenile drug court in McKinley county.

The general fund appropriations to the eleventh judicial district court include two hundred thousand dollars (\$200,000) for operating expenses for a pre-trial services program.

Performance measures:

- (a) Explanatory: Cases disposed as a percent of cases filed 90%
- (b) Quality: Recidivism of adult drug-court graduates 10%
- (c) Quality: Recidivism of juvenile drug-court graduates 10%
- (d) Output: Number of adult drug-court graduates 40

- (e) Output: Number of juvenile drug-court graduates 16
- (f) Output: Number of days to process juror payment vouchers 14
- (g) Explanatory: Graduation rate, juvenile drug court 75%
- (h) Explanatory: Graduation rate, adult drug court 70%

(12) Twelfth judicial district:

The purpose of the twelfth judicial district court program, statutorily created in Otero and Lincoln counties, is to provide access to justice, resolve disputes justly and timely and maintain accurate records of legal proceedings that affect rights and legal status in order to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

- (a) Personal services and
employee benefits 2,738.0 2,738.0
- (b) Contractual services 252.8 53.0 90.0 395.8
- (c) Other 154.2 154.2

Authorized FTE: 45.50 Permanent

Performance measures:

- (a) Explanatory: Cases disposed as a percent of cases filed 90%
- (b) Quality: Recidivism of juvenile drug-court participants 20%
- (c) Output: Number of juvenile drug-court graduates 14
- (d) Output: Number of days to process juror payment vouchers 14
- (e) Explanatory: Graduation rate, juvenile drug court 65%

(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 in order to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a)	Personal services and				
	employee benefits	5,143.1	195.8	5,338.9	
(b)	Contractual services	1,087.4	101.9	243.1	1,432.4
(c)	Other	434.1	4.0	82.2	520.3

Authorized FTE: 78.50 Permanent; 4.00 Term

Performance measures:

- (a) Explanatory: Cases disposed as a percent of cases filed 90%
- (b) Quality: Recidivism of juvenile drug-court graduates 15%
- (c) Output: Number of juvenile drug-court graduates 20
- (d) Output: Number of days to process juror payment vouchers 14
- (e) Explanatory: Graduation rate, juvenile drug court 65%

Subtotal 79,373.5

BERNALILLO COUNTY METROPOLITAN COURT:

The purpose of the Bernalillo county metropolitan court program is to provide access to justice, resolve disputes justly and timely and maintain accurate records of legal proceedings that affect rights and legal status in order to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a)	Personal services and				
	employee benefits	17,520.6	2,034.3	126.4	19,681.3
(b)	Contractual services	2,879.7	721.6		3,601.3
(c)	Other	2,766.8	351.6	3,118.4	
(d)	Other financing uses		30.0		30.0

Authorized FTE: 301.00 Permanent; 44.50 Term

Performance measures:

(a) Explanatory:	Cases disposed as a percent of cases filed	100%	
(b) Efficiency:	Cost per client per day for adult drug-court participants		\$15
(c) Quality:	Recidivism of driving-while-intoxicated/drug-court graduates	4%	
(d) Output:	Number of driving-while-intoxicated/drug-court graduates	240	
(e) Explanatory:	Graduation rate of drug-court participants	70%	
(f) Outcome:	Fees and fines collected as a percent of fees and fines assessed	95%	
Subtotal		26,431.0	

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	4,440.1	78.8	4,518.9
(b)	Contractual services	21.5		21.5
(c)	Other	491.7	491.7	

Authorized FTE: 70.00 Permanent; 2.00 Term

Performance measures:

- (a) Outcome: Percent of cases dismissed under the six-month rule <1%
- (b) Output: Number of cases prosecuted 2,500
- (c) Output: Number of cases referred for screening 3,000

(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 16,283.4 288.5 742.3 180.0 17,494.2
- (b) Contractual services 140.2 140.2
- (c) Other 757.0 16.3 773.3

Authorized FTE: 283.00 Permanent; 15.50 Term

Performance measures:

- (a) Outcome: Percent of cases dismissed under the six-month rule <2.5%
- (b) Output: Number of cases prosecuted 27,000
- (c) Output: Number of cases referred for screening 43,000

(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 4,286.7 561.2 53.6 715.7 5,617.2
- (b) Contractual services 29.1 29.1
- (c) Other 296.3 296.3

Authorized FTE: 62.00 Permanent; 21.00 Term

Performance measures:

- (a) Output: Number of cases referred for screening 5,800
- (b) Output: Number of cases prosecuted 4,600

(c) Outcome: Percent of cases dismissed under the six-month rule <0.3%

(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	2,950.4	2,950.4
(b)	Contractual services	80.8	80.8
(c)	Other	195.8	195.8

Authorized FTE: 42.00 Permanent

Performance measures:

(a) Output: Number of cases referred for screening 2,240

(b) Outcome: Percent of cases dismissed under the six-month rule <1%

(c) Output: Number of cases prosecuted 1,955

(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	3,967.2	3,967.2
(b)	Contractual services	148.7	148.7
(c)	Other	280.7	280.7

Authorized FTE: 60.00 Permanent

Performance measures:

(a) Outcome: Percent of cases dismissed under the six-month rule <1%

(b) Output: Number of cases prosecuted 3,900

(c) Output: Number of cases referred for screening 4,500

(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	2,328.0	247.8	102.0	2,677.8
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(b) Contractual services	19.5			19.5
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(c) Other	249.6	249.6		
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Authorized FTE: 35.00 Permanent; 6.00 Term

Performance measures:

(a) Outcome: Percent of cases dismissed under the six-month rule <1%

(b) Output: Number of cases prosecuted 1,900

(c) Output: Number of cases referred for screening 2,200

(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	2,190.1			2,190.1
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(b) Contractual services	52.9			52.9
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(c) Other 208.5 208.5

Authorized FTE: 36.00 Permanent; 1.00 Term

Performance measures:

(a) Outcome: Percent of cases dismissed under the six-month rule <2%

(b) Output: Number of cases prosecuted 2,000

(c) Output: Number of cases referred for screening 2,100

(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	2,394.4	2,394.4
(b) Contractual services	67.8	67.8
(c) Other	205.7	205.7

Authorized FTE: 36.00 Permanent

Performance measures:

(a) Output: Number of cases referred for screening 3,600

(b) Output: Number of cases prosecuted 1,600

(c) Outcome: Percent of cases dismissed under the six-month rule <3%

(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	2,649.1	2,649.1
(b) Contractual services	10.9	10.9
(c) Other	134.6	134.6

Authorized FTE: 39.00 Permanent

Performance measures:

- (a) Output: Number of cases prosecuted 3,000
- (b) Outcome: Percent of cases dismissed under the six-month rule <1%
- (c) Output: Number of cases referred for screening 3,000

(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	889.0	889.0
(b) Contractual services	7.9	7.9
(c) Other	118.2	118.2

Authorized FTE: 13.00 Permanent

Performance measures:

- (a) Outcome: Percent of cases dismissed under the six-month rule <1%
- (b) Output: Number of cases prosecuted 1,200
- (c) Output: Number of cases referred for screening 900

(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	3,137.7	386.4	46.6	62.1	3,632.8
(b)	Contractual services	114.1				114.1
(c)	Other	193.2	193.2			

Authorized FTE: 55.00 Permanent; 10.50 Term

Performance measures:

- (a) Output: Number of cases referred for screening 4,500
- (b) Output: Number of cases prosecuted 3,000
- (c) Outcome: Percent of cases dismissed under the six-month rule <0.5%

(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	1,933.5	26.1			1,959.6
(b)	Contractual services	11.6				11.6
(c)	Other	159.7	159.7			

Authorized FTE: 33.00 Permanent; 1.00 Term

Performance measures:

- (a) Outcome: Percent of cases dismissed under the six-month rule <1.5%
- (b) Output: Number of cases prosecuted 2,609
- (c) Output: Number of cases referred for screening 3,918

(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	2,413.6	48.0	225.6	2,687.2
(b)	Contractual services	6.3			6.3
(c)	Other	216.4	0.3		216.7

Authorized FTE: 39.00 Permanent; 8.50 Term

Performance measures:

- (a) Outcome: Percent of cases dismissed under the six-month rule <0.4%
- (b) Output: Number of cases prosecuted 3,300
- (c) Output: Number of cases referred for screening 4,800

(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	4,215.5	396.6		4,612.1
(b)	Contractual services	68.8			68.8
(c)	Other	495.7			495.7

Authorized FTE: 80.00 Permanent; 4.00 Term

Performance measures:

- (a) Outcome: Percent of cases dismissed under the six-month rule <0.2%

(b) Output: Number of cases prosecuted 8,000

(c) Output: Number of cases referred for screening 8,700

Subtotal 63,039.8

ADMINISTRATIVE OFFICE OF THE DISTRICT ATTORNEYS:

(1) Administrative support:

The purpose of the administrative support program is to provide fiscal, human resource, staff development, automation, victim program services and support to all district attorneys' offices in New Mexico and to members of the New Mexico children's safehouse network so that they may obtain and access the necessary resources in order to effectively and efficiently carry out their prosecutorial, investigative and programmatic functions.

Appropriations:

(a) Personal services and

employee benefits 979.0 979.0

(b) Contractual services 39.6 39.6

(c) Other 1,066.7 180.0 1,246.7

Authorized FTE: 13.00 Permanent

Performance measures:

(a) Output: Number of district attorney employees receiving training 975

(b) Output: Number of victim notification events and escapes reported,
monthly 7,000

Subtotal 2,265.3

TOTAL JUDICIAL 210,392.2 17,651.5 9,713.0 2,227.1 239,983.8

C. GENERAL CONTROL

ATTORNEY GENERAL:

(1) Legal services:

The purpose of the legal services program is to deliver quality legal services opinions, counsel and representation to state government entities and to enforce state law on behalf of the public so that New Mexicans have an open, honest, efficient government and enjoy the protection of state law.

Appropriations:

(a)	Personal services and		
	employee benefits	12,699.2	12,699.2
(b)	Contractual services	576.5	576.5
(c)	Other	1,938.9	104.0 2,042.9

Authorized FTE: 160.00 Permanent; 1.00 Term

The federal funds appropriation to the legal services program of the attorney general in the other category includes one hundred four thousand dollars (\$104,000) from the medicaid fraud division.

All revenue generated from antitrust cases and consumer protection settlements through the attorney general on behalf of the state, political subdivisions or private citizens shall revert to the general fund.

Performance measures:

(a)	Outcome: Percent of initial responses to requests for attorney
	general opinions made within three days of request 95%

(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	92.1	1,596.2 1,688.3
(b)	Contractual services	28.7	28.7
(c)	Other	407.3	407.3
(d)	Other financing uses		104.0 104.0

Authorized FTE: 21.00 Permanent

Performance measures:

(a) Outcome: Three-year projected savings resulting from fraud investigations, in millions \$12.2

(b) Explanatory: Total medicaid recoveries, in thousands \$2,000

Subtotal 17,546.9

STATE AUDITOR:

The purpose of the state auditor program is to audit the financial affairs of every agency annually so they can improve accountability and performance and to assure New Mexico citizens that funds are expended properly.

Appropriations:

(a) Personal services and				
employee benefits	2,099.1	418.1	62.4	2,579.6
(b) Contractual services	209.3			209.3
(c) Other	144.0	337.6	481.6	

Authorized FTE: 32.00 Permanent; 1.00 Term

Performance measures:

(a) Output: Total audit fees generated \$400,000

(b) Explanatory: Percent of audits completed by regulatory due date 75%

Subtotal 3,270.5

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	23,901.5	1,713.3	1,297.5	26,912.3

(b)	Contractual services	61.5	64.0	125.5	
(c)	Other	7,027.1	946.8	218.8	8,192.7

Authorized FTE: 560.00 Permanent; 26.00 Term; 31.70 Temporary

Performance measures:

(a) Outcome: Collections as a percent of collectable audit assessments

generated in the current fiscal year 40%

(b) Output: Percent of electronically filed returns for personal income

tax and combined reporting system 65%

(c) Outcome: Collections as a percent of collectable outstanding

balances from the end of the prior fiscal year 20%

(2) Motor vehicle:

The purpose of the motor vehicle program is to register, title and license vehicles, boats and motor vehicle dealers and to enforce operator compliance with the motor vehicle code and federal regulations by conducting tests, investigations and audits.

Appropriations:

(a) Personal services and

employee benefits 9,189.8 6,900.7 16,090.5

(b) Contractual services 1,816.1 1,280.8 3,096.9

(c) Other 4,114.7 2,411.4 6,526.1

Authorized FTE: 376.00 Permanent; 4.00 Term; 4.00 Temporary

Performance measures:

(a) Efficiency: Average call center wait time to reach an agent, in minutes 3.45

(b) Outcome: Percent of registered vehicles with liability insurance 91%

(c) Efficiency: Average wait time in q-matic-equipped offices, in minutes 14

(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	502.9	2,279.8	2,782.7
(b)	Contractual services	23.4	103.9	127.3
(c)	Other	107.3	470.5	577.8

Authorized FTE: 49.00 Permanent

Performance measures:

- (a) Output: Number of appraisals or valuations for companies conducting business within the state subject to state assessment 510
- (b) Outcome: Percent of counties in compliance with sales ratio standard of eighty-five percent assessed value to market value 90%

(4) Compliance enforcement:

The purpose of the compliance enforcement program is to support the overall mission of the New Mexico 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, in order to encourage and achieve voluntary compliance with New Mexico tax laws.

Appropriations:

(a)	Personal services and			
	employee benefits	1,974.3		1,974.3
(b)	Contractual services	20.1		20.1
(c)	Other	503.6	503.6	

Authorized FTE: 36.00 Permanent

Performance measures:

- (a) Outcome: Successful tax fraud prosecutions as a percent of total

cases prosecuted 100%

(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 in order to give agency personnel the resources needed to meet departmental objectives. For the general public, the program conducts hearings for resolving taxpayer protests and provides stakeholders with reliable information regarding the state's tax programs.

Appropriations:

(a) Personal services and

employee benefits	14,446.5	619.9	371.5	15,437.9
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(b) Contractual services	2,628.7		65.5	2,694.2
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(c) Other	4,633.5	52.2	151.9	4,837.6
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Authorized FTE: 229.00 Permanent

Notwithstanding the provisions of Subsection E of Section 7-1-6.41 NMSA 1978, in order to fund the fair share initiative, the department shall withhold an administrative fee in the amount of three and twenty-five hundredths percent of the distributions specified in Subsection E of Section 7-1-6.41 NMSA 1978 and, notwithstanding the provisions of Subsection F of that section, the portion of the fee equal to twenty-five hundredths percent of the amount to be distributed shall not be deposited in the general fund but shall be retained by the department and is included in the other state fund appropriations to the department.

Performance measures:

(a) Outcome: Percent of driving-while-intoxicated drivers license

revocations rescinded due to failure to hold hearings

within ninety days <1%

Subtotal	89,899.5
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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 in order to maximize distributions to the state's operating budget while preserving the real value of the funds for future generations of New Mexicans.

Appropriations:

(a)	Personal services and employee benefits	3,462.8	3,462.8
(b)	Contractual services	30,479.8	30,479.8
(c)	Other	996.9	996.9

Authorized FTE: 32.00 Permanent

The other state funds appropriation to the state investment council in the contractual services category includes twenty-nine million four hundred seventy-five thousand five hundred dollars (\$29,475,500) to be used only for money manager fees.

Performance measures:

- (a) Outcome: One-year annualized investment returns to exceed internal benchmarks, in basis points >25
- (b) Outcome: Five-year annualized investment returns to exceed internal benchmarks, in basis points >25
- (c) Outcome: One-year annualized percentile performance ranking in endowment investment peer universe <49
- (d) Outcome: Five-year annualized percentile performance ranking in endowment investment peer universe <49

Subtotal 34,939.5

DEPARTMENT OF FINANCE AND ADMINISTRATION:

(1) Policy development, fiscal analysis, budget oversight and education accountability:

The purpose of the policy development, fiscal analysis, budget oversight and education accountability program is to provide professional, coordinated policy development and analysis and oversight to the governor, the legislature and state agencies so they can advance the state's policies and initiatives using appropriate and accurate data to make informed decisions for the prudent use of the public's tax dollars.

Appropriations:

- (a) Personal services and

employee benefits	3,160.2		3,160.2
(b) Contractual services	177.1		177.1
(c) Other	218.6	218.6	

Authorized FTE: 35.00 Permanent

Performance measures:

(a) Outcome: Average number of working days to process budget adjustment

requests 5

(b) Output: Percent of state agencies monitored operating within

available resources 100%

(c) Outcome: Percent of agencies that develop and implement performance

monitoring plans 100%

(2) Community development, local government assistance and fiscal oversight:

The purpose of the community development, local government assistance and fiscal oversight program is to provide federal and state oversight assistance to counties, municipalities and special districts with planning, implementation and development of fiscal management so that entities can maintain strong, lasting communities.

Appropriations:

(a) Personal services and				
employee benefits	2,309.1	1,049.2	443.9	3,802.2
(b) Contractual services	2,039.3	1,933.1	12.3	3,984.7
(c) Other	132.2	33,338.9	14,084.1	47,555.2
(d) Other financing uses		300.0		300.0

Authorized FTE: 34.00 Permanent; 21.00 Term

Performance measures:

(a) Output: Number of capital projects older than five years for which

the funding are not expended or reverted 180

(b) Output: Percent of local entity budgets submitted to the local

government division by established deadline 95%

(c) Outcome: Percent of local capital outlay projects included in the

infrastructure capital improvement plan 90%

(d) Output: Percent of state agency capital outlay projects included in

the infrastructure capital improvement plan 95%

(3) Fiscal management and oversight:

The purpose of the fiscal management and oversight program is to provide for and promote financial accountability for public funds throughout state government and to provide state government agencies and the citizens of New Mexico with timely, factual and comprehensive information on the financial status and expenditures of the state.

Appropriations:

(a) Personal services and

employee benefits	4,456.7	593.9	5,050.6
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(b) Contractual services	381.2		381.2
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(c) Other	1,011.8	1,011.8	
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Authorized FTE: 70.00 Permanent

~~[The general fund appropriations to the fiscal management and oversight program of the department of finance and administration are contingent on: 1) executing a memorandum of understanding between the department of finance and administration and the department of information technology for the information technology consolidation for the statewide human resources, accounting and management reporting system, including defined parameters that measure the success of the program and including provisions that the parameters be presented to the legislative finance committee and other appropriate interim committees by October 1, 2009, and 2) access to the statewide human resources, accounting and management reporting system reports by the legislative finance committee staff as agreed among the legislative finance~~

~~committee, the department of finance and administration and the state personnel office.]~~*LINE-ITEM VETO*

The general fund appropriation of three hundred eighty-one thousand two hundred dollars (\$381,200) to the fiscal management and oversight program of the department of finance and administration in the contractual services category includes one hundred fifty thousand dollars (\$150,000) for the imaging system upgrade.

Performance measures:

- (a) Output: Number of regularly scheduled training courses for beginning, intermediate and advanced users of the statewide human resources, accounting and management reporting system 36
- (b) Efficiency: Percent of business days in statewide human resources, accounting and management reporting system is available to end-users during business hours (8:00 a.m. to 5:00 p.m. Monday through Friday) 97%

(4) Program support:

The purpose of program support is to provide other department of finance and administration programs with central direction to agency management processes to ensure consistency, legal compliance and financial integrity; to administer the executive's exempt salary plan; and to review and approve professional service contracts.

Appropriations:

- | | | |
|---|---------|---------|
| (a) Personal services and employee benefits | 1,554.4 | 1,554.4 |
| (b) Contractual services | 81.4 | 81.4 |
| (c) Other | 71.5 | 71.5 |

Authorized FTE: 20.00 Permanent

Performance measures:

- (a) Outcome: Percent of funds "certified in compliance" to the state controller as required, within fifteen days after month end 90%

(5) Dues and membership fees/special appropriations:

Appropriations:

- | | | |
|----------------------------------|------|------|
| (a) Council of state governments | 96.1 | 96.1 |
|----------------------------------|------|------|

(b)	Western interstate commission for higher education	125.0		125.0
(c)	Education commission of the states	60.5	60.5	
(d)	National association of state budget officers	15.7		15.7
(e)	National conference of state legislatures	132.1	132.1	
(f)	Western governors' association	36.0	36.0	
(g)	Governmental accounting standards board	15.7		15.7
(h)	National center for state courts	96.7	96.7	
(i)	National conference of insurance legislators	10.0		10.0
(j)	National council of legislators from gaming states	3.0		3.0
(k)	National governors' association	87.2	87.2	
(l)	Citizens' review board	404.2	190.0	594.2
(m)	Emergency water supply fund	150.0		150.0
(n)	Fiscal agent contract	689.9		689.9

(o)	State planning districts	849.1	849.1
(p)	State treasurer's audit	24.0	24.0
(q)	Youth mentoring program	2,561.6	2,561.6
(r)	Luna county teen court	21.9	21.9
(s)	Santa Fe teen court	65.6	65.6
(t)	Law enforcement enhancement fund	7,809.4	7,809.4
(u)	Leasehold community assistance	145.8	145.8
(v)	Acequia and community ditch education program	272.2	272.2
(w)	New Mexico acequia commission	16.4	16.4
(x)	Food banks	384.7	384.7
(y)	Weatherization	527.8	527.8
(z)	County detention of prisoners	4,871.3	4,871.3
(aa)	New Mexico rodeo	200.0	200.0
(bb)	San Miguel county clerk office	75.0	75.0
(cc)	Jail diversion program in Grant county	150.0	150.0

The general fund appropriation to the department of finance and administration for New Mexico rodeo includes fifty thousand dollars (\$50,000) to encourage the national junior and high school rodeo finals be held in New Mexico. ~~LINE-ITEM VETO~~

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 [~~and on review by the legislative finance committee~~], the secretary of the department of finance and administration is authorized to transfer from the general fund operating reserve to the state board of finance emergency fund the amount necessary to meet the emergency. Such transfers shall not exceed an aggregate amount of one million five hundred thousand dollars (\$1,500,000) in fiscal year 2010.

On certification by the state board of finance pursuant to Section 6-1-2 NMSA 1978 that a critical emergency exists due to a budget shortage resulting from appropriations made to state agencies in Section 4 of the 2009 General Appropriation Act that cannot be met by other revenues, transfers or federal funds [~~and on review by the legislative finance committee~~], the secretary of the department of finance and administration is authorized to transfer from the general fund operating reserve to the state board of finance emergency fund the amount necessary to meet the emergency. Such transfers shall not exceed an aggregate amount of seven hundred fifty thousand dollars (\$750,000) in fiscal year 2010.

Subtotal 87,435.8

PUBLIC SCHOOL INSURANCE AUTHORITY:

(1) Benefits:

The purpose of the benefits program is to provide an effective health insurance package to educational employees and their eligible family members so they are protected against catastrophic financial losses due to medical problems, disability or death.

Appropriations:

(a)	Contractual services	285,660.0	285,660.0
(b)	Other financing uses	660.1	660.1

Performance measures:

(a) Outcome: Average number of days to resolve inquiries and appeals

related to customer service claims 12

(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	2,057.5	55,819.9	57,877.4
(b)	Other financing uses	660.1	660.1	

Performance measures:

(a) Outcome: Percent variance of public property premium change between public school insurance authority and industry average 15%

(b) Outcome: Percent variance of workers' compensation premium change between public school insurance authority and industry average 7%

(c) Outcome: Percent variance of public liability premium change between public school insurance authority and industry average 15%

(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	867.0	867.0
(b) Contractual services	197.6	197.6
(c) Other	258.5	258.5

Authorized FTE: 11.00 Permanent

Subtotal 346,180.7

RETIREE HEALTH CARE AUTHORITY:

(1) Health care benefits administration:

The purpose of the health care 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	214,570.1	214,570.1
(b) Other financing uses	2,812.4	2,812.4

Performance measures:

(a) Output: Minimum number of years of long-term actuarial solvency 15

(b) Outcome: Total revenue generated, in millions \$221.3

(c) Efficiency: Average monthly per-participant claim cost, non-medicare
eligible \$755

(d) Output: Average monthly per-participant claim cost, medicare
eligible \$250

(2) Discount prescription drug:

The purpose of the discount prescription drug program is to reduce prescription drug expenditures for those covered participants.

Appropriations:

(a) Other 10.0 10.0

(3) Program support:

The purpose of program support is to provide administrative support for the healthcare benefits administration program to assist the agency in delivering its services to its constituents.

Appropriations:

(a) Personal services and employee benefits	1,636.7	1,636.7
(b) Contractual services	532.1	532.1
(c) Other	643.6	643.6

Authorized FTE: 25.00 Permanent

Any unexpended balances in program support of the retiree health care authority remaining at the end of fiscal year 2010 shall revert to the health care benefits administration program.

Subtotal 220,204.9

GENERAL SERVICES DEPARTMENT:

(1) Employee group health benefits:

The purpose of the employee group health benefits program is to effectively administer comprehensive health benefit plans to state and local government employees.

Appropriations:

(a)	Contractual services	21,756.4	21,756.4
(b)	Other	358,843.6	358,843.6
(c)	Other financing uses	1,188.0	1,188.0

Performance measures:

- (a) Efficiency: Percent change in state employee medical premium compared with the industry average 3%
- (b) Efficiency: Percent change in dental premium compared with the national average 3%
- (c) Explanatory: Percent of eligible state employees purchasing state health insurance 90%

(2) Risk management:

The purpose of the risk management program is to protect the state's assets against property, public liability and workers' compensation, state unemployment compensation and local public bodies unemployment compensation and surety bond losses so that agencies can perform their missions in an efficient and responsive manner.

Appropriations:

(a)	Personal services and employee benefits	4,357.6	4,357.6
(b)	Other	571.4	571.4
(c)	Other financing uses	2,201.3	2,201.3

Authorized FTE: 65.00 Permanent

Performance measures:

- (a) Explanatory: Projected financial position of the public property fund 350%

(b) Explanatory: Projected financial position of the workers' compensation fund 50%

(3) Risk management funds:

Appropriations:

(a)	Public liability	3,859.3	34,631.4	38,490.7
(b)	Surety bond	158.1	158.1	
(c)	Public property reserve	808.1	7,288.7	8,096.8
(d)	Local public body unemployment compensation reserve fund		2,528.3	2,528.3
(e)	Workers' compensation retention	23,011.8	23,011.8	
(f)	State unemployment compensation	4,248.5		4,248.5
(g)	Employee assistance		720.0	720.0

(4) State printing services:

The purpose of the state printing services program is to provide quality information processing services that are both timely and cost-effective so agencies can perform their missions in an efficient and responsive manner.

Appropriations:

(a)	Personal services and employee benefits	1,290.2		1,290.2
(b)	Contractual services	13.0		13.0
(c)	Other	1,005.3	1,005.3	
(d)	Other financing uses	92.3		92.3

Authorized FTE: 26.00 Permanent

Performance measures:

(a) Efficiency: Percent of printing operations that break even, including
sixty days of operating reserve 95%

(5) Business office space management and maintenance services:

The purpose of the business office space management and maintenance services program is to provide employees and the public with effective property management and maintenance so that agencies can perform their missions in an efficient and responsive manner.

Appropriations:

(a)	Personal services and employee benefits	7,460.5	7,460.5
(b)	Contractual services	451.8	451.8
(c)	Other	6,413.1	6,413.1
(d)	Other financing uses	162.7	162.7

Authorized FTE: 173.00 Permanent

Performance measures:

(a) Explanatory: Percent of state-controlled office space occupied 90%

(b) Efficiency: Percent of property control capital projects on schedule
within approved budget 90%

(c) Outcome: Annual percent reduction of greenhouse gas emissions for
state-owned buildings served by building services division
relative to fiscal year 2005 baseline 3%

(d) Explanatory: Percent of projects greater than one million dollars in
compliance with appropriation guidelines 100%

(e) Outcome: Percent of electricity purchased by the building services
division from renewable energy sources 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 that agencies can perform their missions in an efficient and responsive manner.

Appropriations:

(a)	Personal services and			
	employee benefits	2,550.8		2,550.8
(b)	Contractual services	79.0		79.0
(c)	Other	10,966.5	10,966.5	
(d)	Other financing uses	366.8		366.8

Authorized FTE: 38.00 Permanent

Performance measures:

- (a) Explanatory: Percent of short-term vehicle use 80%
- (b) Output: Percent of cars and other light-duty vehicles purchased by state agencies that exceed existing federal fuel efficiency standards for passenger vehicles 100%
- (c) Efficiency: Percent of total available aircraft fleet hours used 90%

(7) Procurement services:

The purpose of the procurement services program is to provide a procurement process for tangible property for government entities to ensure compliance with the Procurement Code so that agencies can perform their missions in an efficient and responsive manner.

Appropriations:

(a)	Personal services and			
	employee benefits	1,492.1	396.6	1,888.7
(b)	Other	176.0	53.1	229.1
(c)	Other financing uses	70.3	16.2	86.5

Authorized FTE: 31.00 Permanent

Performance measures:

(a) Outcome: Percent of all price agreement renewals considered for

"best value" strategic sourcing option 5%

(b) Quality: Percent of customers satisfied with procurement services 80%

(8) Program support:

The purpose of program support is to manage the program performance process to demonstrate success.

Appropriations:

(a) Personal services and

employee benefits	1,000.0	1,968.3	2,968.3
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(b) Contractual services		346.1	346.1
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(c) Other	572.1	572.1	
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(d) Other financing uses		877.0	877.0
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Authorized FTE: 40.00 Permanent

The internal service funds/interagency transfers appropriation to program support of the general services department in the other financing uses category includes eight hundred seventy-seven thousand dollars (\$877,000) for transfer to the department of information technology from over-assessments on information technology and telecommunications services.

Any unexpended balances in program support of the general services department remaining at the end of fiscal year 2010 shall revert to the procurement services, printing services, risk management, employee group benefits, business office space management and maintenance and transportation services programs based on the proportion of the individual program's assessments for program support.

Performance measures:

(a) Efficiency: Average number of working days to process purchase orders

and invoices 4 and 8

(b) Quality: Percent decrease of audit findings compared with the

previous fiscal year, contingent on audits being completed

on a timely basis 100%

Subtotal 503,992.3

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	4,346.9	4,346.9
(b) Contractual services	23,329.6	23,329.6
(c) Other	874.8	874.8

Authorized FTE: 57.00 Permanent; 2.00 Term

The other state funds appropriation to the educational retirement program of the educational retirement board in the contractual services category includes twenty-one million one hundred twenty-three thousand one hundred dollars (\$21,123,100) to be used only for investment manager and consulting fees.

The other state funds appropriation to the educational retirement program of the educational retirement board in the contractual services category includes seven hundred thousand dollars (\$700,000) for payment of custody services associated with the fiscal agent contract.

Performance measures:

(a) Outcome: Average rate of return over a cumulative five-year period 8%

(b) Outcome: Funding period of unfunded actuarial accrued liability, in
years 30

Subtotal 28,551.3

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	682.8	30.0	712.8
(b)	Other	42.0		42.0

Performance measures:

(a) Output: Percent of criminal and juvenile justice bills analyzed for a legislative session 100%

(b) Output: Number of research projects completed 13

(c) Efficiency: Percent of total state justice personnel with access to offender query 75%

(d) Outcome: Percent of total possible victims who receive automated victim notification 25%

Subtotal 754.8

PUBLIC DEFENDER DEPARTMENT:

(1) Criminal legal services:

The purpose of the criminal legal services program is to provide effective legal representation and advocacy for eligible clients so that their liberty and constitutional rights are protected and to serve the community as a partner in assuring a fair and efficient criminal justice system that also sustains New Mexico's statutory and constitutional mandate to adequately fund a statewide indigent defense system.

Appropriations:

(a)	Personal services and employee benefits	25,383.6		25,383.6
(b)	Contractual services	11,154.7	50.0	11,204.7
(c)	Other	6,160.2	111.3	6,271.5

Authorized FTE: 403.00 Permanent

Performance measures:

(a) Output:	Number of alternative sentencing treatment placements for felony and juvenile clients	5,800	
(b) Efficiency:	Percent of cases in which application fees were collected		30%
(c) Quality:	Percent of felony cases resulting in a reduction of original formally filed charges	35%	
(d) Explanatory:	Annual attorney full-time-equivalent vacancy rate		7%
Subtotal		42,859.8	

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	3,739.3	3,739.3
(b)	Contractual services	109.3	109.3
(c)	Other	605.0	605.0

Authorized FTE: 40.30 Permanent

Performance measures:

(a) Output:	Number of days to answer or refer to the proper entity constituent requests for information	4	
Subtotal		4,453.6	

LIEUTENANT GOVERNOR:

(1) State ombudsman:

The purpose of the state ombudsman program is to facilitate and promote cooperation and understanding between the citizens of New Mexico and the agencies of state government, refer any complaints or special problems citizens may have to the proper entities and keep records of activities and make an annual report to the governor.

Appropriations:

(a)	Personal services and employee benefits	721.8		721.8
(b)	Contractual services	48.1		48.1
(c)	Other	69.8	69.8	

Authorized FTE: 8.00 Permanent

Subtotal 839.7

DEPARTMENT OF INFORMATION TECHNOLOGY:

(1) Enterprise services:

The purpose of the enterprise services program is to provide enterprise information technology and customer support services and training to improve and streamline agency systems by promoting consolidation of services duplicated within agencies and to provide oversight and compliance through project certification and compliance monitoring with the state's information technology strategic plan and the state information architecture plan.

Appropriations:

(a)	Personal services and employee benefits	926.2	5,230.2	6,156.4
(b)	Contractual services		4,538.4	4,538.4
(c)	Other	7,934.8	7,934.8	
(d)	Other financing uses		3,626.5	3,626.5

Authorized FTE: 76.00 Permanent

The internal service funds/interagency transfers appropriation to the enterprise services program of the department of information technology in the other category includes one million three hundred thousand dollars (\$1,300,000) for the statewide human resources, accounting and management reporting system for equipment and software upgrades.

The internal service funds/interagency transfers appropriation to the enterprise services program of the department of information technology includes eight hundred seventy-seven thousand dollars (\$877,000) from program support of the general services department.

Performance measures:

(a) Outcome: Percent of executive agency certified projects reviewed

monthly for compliance and oversight requirements 100%

(b) Output: Percent of information technology projects that require and

receive a formal architecture review prior to project

implementation 100%

(2) Enterprise operations:

The purpose of the enterprise operations 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	7,644.5	7,644.5
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(b) Contractual services	6,925.2	6,925.2
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(c) Other	19,371.7	19,371.7
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(d) Other financing uses	2,796.5	2,796.5
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Authorized FTE: 99.00 Permanent

Performance measures:

(a) Output: Percent of servers successfully backed up as scheduled 100%

(3) 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	3,384.8	3,384.8
(b) Contractual services	170.0	170.0
(c) Other	219.1	219.1

Authorized FTE: 43.00 Permanent

Performance measures:

(a) Output: Percent of accounts receivable dollars collected within
sixty days of the invoice due date 60%

(b) Outcome: Dollar amount of account receivables over sixty days \$7,500,000

(c) Outcome: Percent of mainframe services meeting federal standards for
cost recovery 100%

(d) Outcome: Percent of voice, data and radio services meeting federal
standards for cost recovery 100%

Subtotal 62,767.9

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	5,920.6	5,920.6
(b) Contractual services	30,895.0	30,895.0
(c) Other	1,373.7	1,373.7

Authorized FTE: 76.00 Permanent; 12.00 Term

The other state funds appropriation to the pension administration program of the public employees retirement association in the contractual services category includes twenty-six million five hundred ninety-three thousand three hundred dollars (\$26,593,300) to be used only for investment manager and consulting fees.

The other state funds appropriation to the pension administration program of the public employees retirement association in the contractual services category includes two million sixty-two thousand four hundred dollars (\$2,062,400) to be used only for fiscal agent custody services.

The other state funds appropriation to the pension administration program of the public employees retirement association in the contractual services category includes six hundred thousand dollars (\$600,000) to be used only for investment-related legal fees.

~~[The public employees retirement association shall report quarterly to the department of finance and administration and the legislative finance committee on changes to the information technology contract, including the status of enhancements and other deliverables.]~~ *LINE-ITEM VETO*

Performance measures:

(a) Efficiency: Average number of days to respond to requests for benefit

estimates, military buy-backs and service credit

verifications 15-30

(b) Outcome: Five-year average annualized investment returns to exceed

internal benchmark, in basis points >50

(c) Explanatory: Number of years needed to finance the unfunded actuarial

accrued liability for the public employees retirement fund

with current statutory contribution rates 30

(d) Outcome: Five-year annualized performance ranking in a national

survey of fifty to sixty similar large public pension plans

in the United States, as a percentile <50th

Subtotal 38,189.3

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, governmental agencies,

historical records repositories and the public so that the state can effectively create, preserve, protect and properly dispose of records, facilitate their use and understanding and protect the interests of the people of New Mexico.

Appropriations:

(a)	Personal services and				
	employee benefits	2,389.7	53.9	11.6	2,455.2
(b)	Contractual services	135.6	10.0	20.0	165.6
(c)	Other	367.8	117.3	19.8	504.9

Authorized FTE: 40.00 Permanent; 2.00 Term

Performance measures:

(a) Outcome: Maximum number of days between rule effective date and

online availability 30

(b) Outcome: Percent of total records items scheduled, reviewed, amended

or replaced within a five-year period 50%

Subtotal 3,125.7

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.

Appropriations:

(a)	Personal services and				
	employee benefits	2,658.0			2,658.0
(b)	Contractual services	762.7			762.7
(c)	Other	342.9	1,500.0		1,842.9

Authorized FTE: 41.00 Permanent; 1.00 Temporary

Performance measures:

(a) Output: Percent of partnership registration requests processed

within the three-day statutory deadline 100%

(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) Contractual services 25.0 25.0

(b) Other 856.4 856.4

Performance measures:

(a) Outcome: Percent of campaign reports filed electronically by the due

date 100%

(b) Outcome: Percent of voting machines tested 100%

Subtotal 6,145.0

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 4,096.0 4,096.0

(b) Contractual services 31.7 31.7

(c) Other 345.2 60.0 405.2

Authorized FTE: 64.00 Permanent

Any unexpended balances remaining in the state employees' career development conference fund at the end of fiscal year 2010 shall not revert to the general fund.

Performance measures:

- (a) Outcome: Average number of days to fill a vacant position 40
 - (b) Output: Percent of large agencies that incorporate the state personnel office core management training objectives into their agency-specific management training 100%
 - (c) Outcome: Percent of managers in medium to small agencies who successfully complete the management and supervision training sponsored by the state personnel office 85%
 - (d) Outcome: Percent of union grievances resolved prior to formal arbitration 98%
 - (e) Outcome: Percent of new employees who successfully complete their probationary period 85%
 - (f) Outcome: Number of rule compliance audit reviews performed during the fiscal year 4
 - (g) Output: Percent of eligible employees with a completed performance appraisal on record at the close of the fiscal year 99%
 - (h) Outcome: Number of personnel system review audits performed during the fiscal year 3
 - (i) Outcome: Average employee pay as a percent of board-approved comparator market based on legislative authorization 100%
 - (j) Outcome: Percent of new hire employee turnover 25%
- Subtotal 4,532.9

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	246.1		246.1
(b)	Contractual services	4.1		4.1
(c)	Other	73.4	73.4	

Authorized FTE: 3.00 Permanent

Subtotal 323.6

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	3,198.0		3,198.0	
(b)	Contractual services	366.9		366.9	
(c)	Other	654.7	41.0	4.0	699.7

Authorized FTE: 42.00 Permanent

Performance measures:

(a) Outcome: Percent of employee development and appraisal assessments

closed out by the deadline 100%

(b) Outcome: One-year annualized investment return on local government

investment pool to exceed internal benchmark, in basis

points 5

(c) Outcome: Percent of agencies rating overall satisfaction with state investment office services as good or better in annual survey 90%

(d) Outcome: One-year annualized investment return on general fund core portfolio to exceed internal benchmarks, in basis points 5

(e) Outcome: Percent of employees rating their employment experience satisfactory or better in annual survey 80%

(f) Outcome: Number of outstanding agency bank transactions unreconciled after seven days, at month-end 0

(g) Outcome: Percent increase of local government investment pool average balance over the prior fiscal year end 10%

(h) Outcome: Maximum number of audit findings 3

Subtotal 4,264.6

TOTAL GENERAL CONTROL 199,260.6 407,071.6 876,029.9 17,916.2
1,500,278.3

D. COMMERCE AND INDUSTRY

BOARD OF EXAMINERS FOR ARCHITECTS:

(1) Architectural registration:

The purpose of the architectural registration program is to provide architectural registration to approved applicants so they can practice architecture.

Appropriations:

(a) Personal services and

employee benefits 259.4 259.4

(b) Contractual services 14.4 14.4

(c) Other 94.8 94.8

Authorized FTE: 4.00 Permanent

Subtotal 368.6

BORDER AUTHORITY:

(1) Border development:

The purpose of the border development program is to encourage and foster trade development of 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	336.5	26.4	362.9
(b) Contractual services	70.0	5.3	75.3
(c) Other	107.3	8.3	115.6

Authorized FTE: 5.00 Permanent

Performance measures:

(a) Outcome: Annual trade share of New Mexico ports within the west

Texas and New Mexico region 3.1%

Subtotal 553.8

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 that they may increase their awareness of New Mexico as a premier tourist destination.

Appropriations:

(a) Personal services and		
employee benefits	1,707.7	1,707.7

(b)	Contractual services	838.5	838.5
(c)	Other 4,633.6	85.0	4,718.6

Authorized FTE: 40.50 Permanent; 1.00 Term

The general fund appropriations to the marketing and promotion program of the tourism department include four hundred thousand dollars (\$400,000) in the contractual services category and three million eight hundred thousand dollars (\$3,800,000) in the other category for direct marketing, promotion and advertising and, of the appropriation in the other category, one hundred thousand dollars (\$100,000) shall be used on statewide advertising efforts with the state parks division of the energy, minerals and natural resources department, one hundred thousand dollars (\$100,000) shall be used on statewide advertising efforts with the cultural affairs department and fifty thousand dollars (\$50,000) shall be used on statewide advertising efforts to promote golf tourism.

Performance measures:

- (a) Outcome: New Mexico's domestic tourism market share 1.25%
- (b) Output: Print advertising conversion rate 25%
- (c) Output: Broadcast conversion rate 34%
- (d) Explanatory: Number of visits to visitor information centers 1,100,000

(2) Tourism development:

The purpose of the tourism development program is to provide constituent services for communities, regions and other entities so that they may identify their needs and assistance can be provided to locate resources to fill those needs, whether internal or external to the organization.

Appropriations:

(a)	Personal services and employee benefits	261.3	249.7	511.0
(b)	Contractual services	44.8	251.0	295.8
(c)	Other 1,192.1	921.5	2,113.6	
(d)	Other financing uses	20.0		20.0

Authorized FTE: 7.00 Permanent

The general fund appropriation to the tourism development program of the tourism department in the other category includes nine hundred eighty thousand dollars (\$980,000) for the cooperative advertising program and the other financing uses category includes twenty thousand dollars (\$20,000) for the intertribal ceremonial office.

Performance measures:

- (a) Efficiency: Number of off-highway vehicle trails developed 3
- (b) Outcome: Number of partnered cooperative advertising applications
 received 35

(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 that the audience can learn about New Mexico from cultural, historical and educational perspectives.

Appropriations:

- (a) Personal services and
 employee benefits 1,196.3 1,196.3
- (b) Contractual services 971.1 971.1
- (c) Other 2,402.8 2,402.8

Authorized FTE: 17.00 Permanent

Performance measures:

- (a) Outcome: Relative qualified circulation +/-1%
- (b) Output: Advertising revenue per issue, in thousands \$125
- (c) Outcome: Circulation rate 106,000
- (d) Output: Collection rate 99.2%

(4) Sports authority:

The purpose of the sports authority program is to recruit new events and retain existing events of professional and amateur sports to advance the economy and tourism in the state.

Appropriations:

- (a) Personal services and
 employee benefits 210.8 210.8

(b)	Contractual services	75.9		75.9
(c)	Other	269.2	269.2	

Authorized FTE: 3.00 Permanent

Performance measures:

(a)	Outcome: Number of new minor sporting events attracted to New Mexico	10
(b)	Outcome: Number of new major sporting events attracted to New Mexico	2

(5) 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	1,249.0	24.6	10.0	1,283.6
(b)	Contractual services	28.5			28.5
(c)	Other	544.0	544.0		

Authorized FTE: 19.00 Permanent

Subtotal 17,187.4

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	1,921.9		1,921.9
(b)	Contractual services	1,293.7		1,293.7

(c) Other 195.3 195.3

Authorized FTE: 28.00 Permanent

Performance measures:

(a) Outcome: Total number of rural jobs created 1,500

(b) Outcome: Total number of jobs created through business relocations
facilitated by the economic development partnership 4,000

(c) Outcome: Total number of jobs created due to economic development
department efforts 4,500

(d) Outcome: Percent of employees whose wages were subsidized by the job
training incentive program still employed by the company
after one year 60%

(e) Outcome: Number of jobs created by mainstreet 400

(2) Film:

The purpose of the film program is to maintain the core business for film location services and stimulate growth in digital film media to maintain the economic vitality of the New Mexico film industry.

Appropriations:

(a) Personal services and
employee benefits 788.0 788.0

(b) Contractual services 223.2 223.2

(c) Other 440.0 440.0

Authorized FTE: 12.00 Permanent

Performance measures:

(a) Output: Number of media industry worker days 177,000

(3) Mexican affairs:

The purpose of the Mexican affairs program is to produce new high-paying employment opportunities for New Mexicans so they can increase their wealth and improve their quality of life.

Appropriations:

(a)	Personal services and employee benefits	278.2	278.2
(b)	Contractual services	137.7	137.7
(c)	Other	97.6	97.6

Authorized FTE: 4.00 Permanent

Performance measures:

(a) Outcome: Dollar value of New Mexico exports to Mexico as a result of
the Mexican affairs program, in millions \$350

(4) Technology commercialization:

The purpose of the technology commercialization program is to increase the start-up, relocation and growth of technology-based businesses in New Mexico to give New Mexico citizens the opportunity for high-paying jobs.

Appropriations:

(a)	Personal services and employee benefits	228.0	228.0
(b)	Contractual services	12.4	12.4
(c)	Other	23.9	23.9

Authorized FTE: 3.00 Permanent

Performance measures:

(a) Outcome: Amount of investment as a result of office of science and
technology efforts, in millions \$10

(b) Output: Number of new angel investors found as a result of office

of science and technology efforts 12

(5) Program support:

The purpose of program support is to provide central direction to agency management processes and fiscal support to agency programs to ensure consistency, continuity and legal compliance.

Appropriations:

(a)	Personal services and employee benefits	1,710.9	1,710.9
(b)	Contractual services	1,601.0	1,601.0
(c)	Other	259.9	259.9

Authorized FTE: 23.00 Permanent

Subtotal 9,211.7

REGULATION AND LICENSING DEPARTMENT:

(1) Construction industries and manufactured housing:

The purpose of the construction industries and manufactured housing program is to provide code compliance oversight; issue licenses, permits and citations; perform inspections; administer examinations; process complaints; and enforce laws and rules relating to general construction and manufactured housing standards to industry professionals.

Appropriations:

(a)	Personal services and employee benefits	7,929.3	7,929.3
(b)	Contractual services	66.5	66.5
(c)	Other	1,462.3 100.0 250.0 109.0	1,921.3

Authorized FTE: 135.00 Permanent; 3.00 Term

Performance measures:

(a) Output: Percent of consumer complaint cases resolved out of the
total number of complaints filed 96%

(b) Efficiency: Percent of reviews of commercial plans completed within a
 standard time based on valuation of project 90%

(2) Financial institutions and securities:

The purpose of the financial institutions and securities program is to issue charters and licenses, perform examinations; investigate complaints; enforce laws and rules; and promote investor protection and confidence so that capital formation is maximized and a secure financial infrastructure is available to support economic development.

Appropriations:

(a)	Personal services and employee benefits	2,671.3	150.5	2,821.8
(b)	Contractual services	4.9	198.5	203.4
(c)	Other	323.5	171.4	494.9

Authorized FTE: 46.00 Permanent

Performance measures:

(a) Outcome: Percent of statutorily complete applications processed
 within a standard number of days by type of application 93%

(b) Outcome: Percent of examination reports mailed to a depository
 institution within thirty days of exit from the institution
 or the exit conference meeting 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	920.6	920.6
(b)	Contractual services	45.6	45.6

(c) Other 46.0 46.0

Authorized FTE: 16.00 Permanent

Performance measures:

(a) Output: Number of days to resolve an administrative citation that
does not require a hearing 30

(b) Outcome: Number of days to issue a restaurant (beer and wine) liquor
license 120

(4) Program support:

The purpose of program support is to provide leadership and centralized direction, financial management, information systems support and human resources support for all agency organizations in compliance with governing regulations, statutes and procedures so they can license qualified applicants, verify compliance with statutes and resolve or mediate consumer complaints.

Appropriations:

(a) Personal services and			
employee benefits	1,901.5	948.2	2,849.7
(b) Contractual services	103.5	144.5	248.0
(c) Other	299.7	341.4	641.1

Authorized FTE: 35.70 Permanent; 4.00 Term

(5) New Mexico public accountancy board:

The purpose of the public accountancy board program is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a) Personal services and			
employee benefits	297.0	297.0	
(b) Contractual services	20.0	20.0	
(c) Other	137.5	137.5	

(d)	Other financing uses	67.7	67.7
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Authorized FTE: 5.00 Permanent

(6) Board of acupuncture and oriental medicine:

The purpose of the acupuncture and oriental medicine board program is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and		
	employee benefits	192.9	192.9
(b)	Contractual services	19.2	19.2
(c)	Other	16.1	16.1
(d)	Other financing uses	16.1	16.1

Authorized FTE: 3.20 Permanent

Performance measures:

(a) Efficiency: Percent of initial applications and renewals processed
within three days of receipt of completed application 80%

(7) New Mexico athletic commission:

The purpose of the athletic commission program is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and		
	employee benefits	81.8	81.8
(b)	Contractual services	14.0	14.0
(c)	Other	30.0	30.0
(d)	Other financing uses	23.0	23.0

Authorized FTE: 1.00 Permanent

(8) Athletic trainer practice board:

The purpose of the athletic trainer practice board program is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and employee benefits	7.3	7.3
(b)	Contractual services	0.9	0.9
(c)	Other	6.4	6.4
(d)	Other financing uses	2.9	2.9

Authorized FTE: .20 Permanent

(9) Board of barbers and cosmetologists:

The purpose of the barbers and cosmetology board program is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and employee benefits	654.1	654.1
(b)	Contractual services	50.0	50.0
(c)	Other	104.1	104.1
(d)	Other financing uses	140.4	140.4

Authorized FTE: 12.90 Permanent

(10) Chiropractic board:

The purpose of the chiropractic board program is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and employee benefits	134.9	134.9
(b)	Contractual services	1.6	1.6
(c)	Other 25.6	25.6	
(d)	Other financing uses	18.4	18.4

Authorized FTE: 2.10 Permanent

(11) Counseling and therapy practice board:

The purpose of the counseling and therapy practice board program is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and employee benefits	278.9	278.9
(b)	Contractual services	15.5	15.5
(c)	Other 107.1	107.1	
(d)	Other financing uses	67.1	67.1

Authorized FTE: 5.90 Permanent

(12) New Mexico board of dental health care:

The purpose of the dental health care board program is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and employee benefits	320.0	320.0
(b)	Contractual services	21.7	21.7
(c)	Other 60.9	60.9	

(d) Other financing uses	64.1	64.1
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Authorized FTE: 5.90 Permanent

Performance measures:

(a) Output: Average number of days to process a completed application
and issue a license 3

(13) Interior design board:

The purpose of the interior design board program is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a) Personal services and employee benefits	8.7	8.7
(b) Other	11.5	11.5
(c) Other financing uses	6.7	6.7

Authorized FTE: .20 Permanent

(14) Board of landscape architects:

The purpose of the landscape architects board program is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a) Personal services and employee benefits	19.2	19.2
(b) Contractual services	0.3	0.3
(c) Other	10.6	10.6
(d) Other financing uses	4.6	4.6

Authorized FTE: .30 Permanent

(15) Massage therapy board:

The purpose of the massage therapy board program is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and		
	employee benefits	182.8	182.8
(b)	Contractual services	18.0	18.0
(c)	Other	48.5	48.5
(d)	Other financing uses	37.9	37.9

Authorized FTE: 3.50 Permanent

(16) Board of nursing home administrators:

The purpose of the nursing home administrators board program is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and		
	employee benefits	35.0	35.0
(b)	Contractual services	0.2	0.2
(c)	Other	8.2	8.2
(d)	Other financing uses	7.3	7.3

Authorized FTE: .60 Permanent

(17) Nutrition and dietetics practice board:

The purpose of the nutrition and dietetics practice board program is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and		
	employee benefits	21.2	21.2

(b)	Other	12.2	12.2	
(c)	Other financing uses		3.2	3.2

Authorized FTE: .30 Permanent

(18) Board of examiners for occupational therapy:

The purpose of the occupational therapy examiners board program is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and employee benefits	50.6	50.6	
(b)	Contractual services	2.0		2.0
(c)	Other	17.7	17.7	
(d)	Other financing uses	9.3		9.3

Authorized FTE: .60 Permanent

(19) Board of optometry:

The purpose of the optometry board program is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and employee benefits	55.7	55.7	
(b)	Contractual services	11.5		11.5
(c)	Other	12.9	12.9	
(d)	Other financing uses	9.4		9.4

Authorized FTE: .80 Permanent

(20) Board of osteopathic medical examiners:

The purpose of the osteopathic medical examiners board program is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and		
	employee benefits	64.7	64.7
(b)	Contractual services	2.0	2.0
(c)	Other	24.3	24.3
(d)	Other financing uses	8.3	8.3

Authorized FTE: 1.00 Permanent

(21) Board of pharmacy:

The purpose of the pharmacy board program is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and		
	employee benefits	1,165.0	1,165.0
(b)	Contractual services	30.9	30.9
(c)	Other	262.3	262.3
(d)	Other financing uses	263.7	263.7

Authorized FTE: 12.00 Permanent

(22) Physical therapy board:

The purpose of the physical therapy board program is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and		
	employee benefits	97.8	97.8

(b)	Contractual services	3.0	3.0
(c)	Other	26.4	26.4
(d)	Other financing uses	19.1	19.1

Authorized FTE: 1.60 Permanent

(23) Board of podiatry:

The purpose of the podiatry board program is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and employee benefits	20.0	20.0
(b)	Contractual services	0.5	0.5
(c)	Other	10.8	10.8
(d)	Other financing uses	3.7	3.7

Authorized FTE: .30 Permanent

(24) Private investigations advisory board:

The purpose of the private investigations advisory board program is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and employee benefits	80.0	80.0
(b)	Contractual services	5.0	5.0
(c)	Other	30.8	30.8
(d)	Other financing uses	23.9	23.9

Authorized FTE: 1.40 Permanent

(25) New Mexico state board of psychologist examiners:

The purpose of the psychologist examiners board program is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and		
	employee benefits	120.0	120.0
(b)	Contractual services	20.0	20.0
(c)	Other	44.1	44.1
(d)	Other financing uses	34.4	34.4

Authorized FTE: 2.30 Permanent

(26) Real estate appraisers board:

The purpose of the real estate appraisers board program is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and		
	employee benefits	103.0	103.0
(b)	Contractual services	12.5	12.5
(c)	Other	34.6	34.6
(d)	Other financing uses	26.4	26.4

Authorized FTE: 2.10 Permanent

(27) New Mexico real estate commission:

The purpose of the real estate commission program is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and		
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	employee benefits	555.0	555.0
(b)	Contractual services	261.5	261.5
(c)	Other	246.0	246.0
(d)	Other financing uses	290.0	290.0

Authorized FTE: 11.00 Permanent

(28) Advisory board of respiratory care practitioners:

The purpose of the respiratory care practitioners advisory board program is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and		
	employee benefits	51.7	51.7
(b)	Other	6.3	6.3
(c)	Other financing uses	9.6	9.6

Authorized FTE: .80 Permanent

(29) Board of social work examiners:

The purpose of the social work examiners board program is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and		
	employee benefits	280.0	280.0
(b)	Contractual services	3.0	3.0
(c)	Other	85.0	85.0
(d)	Other financing uses	47.7	47.7

Authorized FTE: 5.00 Permanent

(30) Speech language pathology, audiology and hearing aid dispensing practices board:

The purpose of the speech language pathology, audiology and hearing aid dispensing practices board program is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and		
	employee benefits	130.0	130.0
(b)	Contractual services	2.7	2.7
(c)	Other	21.2	21.2
(d)	Other financing uses	23.3	23.3

Authorized FTE: 2.00 Permanent

(31) Board of thanatopractice:

The purpose of the thanatopractice board program is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and		
	employee benefits	95.0	95.0
(b)	Contractual services	7.5	7.5
(c)	Other	30.4	30.4
(d)	Other financing uses	18.1	18.1

Authorized FTE: 1.80 Permanent

(32) Naprapathic practice board:

The purpose of the naprapathic practice board program is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Other	5.4	5.4
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(33) Animal sheltering services board:

The purpose of the animal sheltering services board program is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and employee benefits	64.0	64.0
(b)	Contractual services	30.0	30.0
(c)	Other	6.0	6.0

Authorized FTE: 2.00 Permanent

(34) Signed language interpreting practices board:

The purpose of the signed language interpreting practices board program is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and employee benefits	86.5	86.5
(b)	Contractual services	8.0	8.0
(c)	Other	45.4	45.4
(d)	Other financing uses	20.9	20.9

Authorized FTE: 2.40 Permanent

Subtotal 26,758.0

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 provisions of adequate and reliable services at fair, just and reasonable rates so that the interests of the consumers and regulated industries are balanced to promote and protect the public interest.

Appropriations:

(a)	Personal services and employee benefits	6,978.2	155.4	7,133.6
(b)	Contractual services	223.8		223.8
(c)	Other	788.9	788.9	

Authorized FTE: 89.70 Permanent

The internal service funds/interagency transfers appropriation to the policy and regulation program of the public regulation commission in the personal services and employee benefits category includes fifty-one thousand two hundred dollars (\$51,200) from the pipeline safety fund and one hundred four thousand two hundred dollars (\$104,200) from the insurance operations fund.

Performance measures:

- (a) Outcome: Comparison of average commercial electric rates between major New Mexico utilities and selected utilities in regional western states +/-5%
- (b) Outcome: The amount of kilowatt hours of renewable energy provided annually by New Mexico's electric utilities, measured as a percent of total retail kilowatt hours sold by New Mexico's electric utilities to New Mexico's retail electric utility customers 6%
- (c) Efficiency: Average number of days for a rate case to reach final order <215
- (d) Outcome: Comparison of average residential electric rates between major New Mexico utilities and selected utilities in regional western states +/-5%

(2) Insurance policy:

The purpose of the insurance policy program is to assure easy public access to reliable insurance products that meet consumers' needs and are underwritten by dependable, reputable, financially sound

companies that charge fair rates and are represented by trustworthy, qualified agents, while promoting a positive competitive business climate.

Appropriations:

(a)	Personal services and employee benefits	5,959.8	5,959.8
(b)	Contractual services	427.2	427.2
(c)	Other	790.8	790.8

Authorized FTE: 88.00 Permanent

The internal service funds/interagency transfers appropriations to the insurance policy program of the public regulation commission include forty-four thousand two hundred dollars (\$44,200) from the title insurance maintenance fund, one hundred ten thousand five hundred dollars (\$110,500) from the insurance fraud fund, two hundred fifty-nine thousand five hundred dollars (\$259,500) from the patient's compensation fund, and five million two hundred thirty-nine thousand five hundred dollars (\$5,239,500) from the insurance operations fund.

The internal service funds/interagency transfers appropriations to the insurance policy program of the public regulation commission include one million one hundred sixty-nine thousand four hundred dollars (\$1,169,400) for the insurance fraud bureau from the insurance fraud fund.

The internal service funds/interagency transfers appropriations to the insurance policy program of the public regulation commission include three hundred fifty-four thousand seven hundred dollars (\$354,700) for the title insurance bureau from the title insurance maintenance assessment fund.

Performance measures:

(a) Output: Percent of internal and external insurance-related

grievances closed within one hundred eighty days of filing 100%

(b) Efficiency: Percent of insurance fraud bureau complaints processed and

recommended for either further administrative action or

closure within sixty days 86%

(3) Public safety:

The purpose of the public safety program is to provide services and resources to the appropriate entities to enhance their ability to protect the public from fire and pipeline hazards and other risk as assigned to the public regulation commission.

Appropriations:

(a)	Personal services and employee benefits	3,276.4	395.3	3,671.7
(b)	Contractual services	379.3	15.6	394.9
(c)	Other	1,833.6	184.1	2,017.7

Authorized FTE: 53.30 Permanent; 1.00 Term

The internal service funds/interagency transfers appropriations to the public safety program of the public regulation commission include two million five hundred thirty-six thousand eight hundred dollars (\$2,536,800) for the office of the state fire marshal from the fire protection fund.

The internal service funds/interagency transfers appropriations to the public safety program of the public regulation commission include one million seven hundred forty thousand eight hundred dollars (\$1,740,800) for the firefighter training academy from the fire protection fund.

The internal service funds/interagency transfers appropriations to the public safety program of the public regulation commission include nine hundred seventy-five thousand two hundred dollars (\$975,200) for the pipeline safety bureau from the pipeline safety fund.

Performance measures:

(a) Output: Number of personnel completing training through the state

firefighter training academy 4,050

(b) Outcome: Percent of fire departments' insurance service office

ratings of nine or ten that have been reviewed by survey or
audit 95%

(c) Outcome: Percent of statewide fire districts with insurance office

ratings of eight or better 65%

(4) Program support:

The purpose of program support is to provide administrative support and direction to ensure consistency, compliance, financial integrity and fulfillment of the agency mission.

Appropriations:

(a) Personal services and

	employee benefits	2,597.6	416.0	3,013.6
(b)	Contractual services	89.1	17.2	106.3
(c)	Other	385.1	77.0	462.1

Authorized FTE: 53.00 Permanent

The internal service funds/interagency transfers appropriations to program support of the public regulation commission include eighty-seven thousand dollars (\$87,000) from the insurance fraud fund, three hundred thousand five hundred dollars (\$300,500) from the fire protection fund, forty-one thousand two hundred dollars (\$41,200) from the title insurance maintenance fund, sixty-three thousand six hundred dollars (\$63,600) from the public regulation commission reproduction fund and seventeen thousand nine hundred dollars (\$17,900) from the patient's compensation fund.

(5) Patient's compensation fund:

Appropriations:

(a)	Contractual services		435.0	435.0
(b)	Other	10,050.0		10,050.0
(c)	Other financing uses		281.3	281.3
	Subtotal		35,756.7	

MEDICAL BOARD:

(1) Licensing and certification:

The purpose of the licensing and certification program is to provide regulation and licensure to medical doctors, physician assistants and anesthesiologist assistants and to ensure competent and ethical medical care to consumers.

Appropriations:

(a)	Personal services and			
	employee benefits		1,056.5	1,056.5
(b)	Contractual services		322.7	322.7
(c)	Other	328.1		328.1

Authorized FTE: 14.00 Permanent

Performance measures:

(a) Output: Number of tri-annual physician licenses issued or renewed 3,600

(b) Output: Number of biennial physician assistant licenses issued or renewed 260

(c) Outcome: Number of days to issue a physician license 75

Subtotal 1,707.3

BOARD OF NURSING:

(1) Licensing and certification:

The purpose of the licensing and certification program is to provide regulations to nurses, hemodialysis technicians and 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	1,243.0	1,243.0
(b) Contractual services	222.9	222.9
(c) Other	1,020.3	1,020.3

Authorized FTE: 19.00 Permanent

Performance measures:

(a) Output: Number of licenses issued 14,000

Subtotal 2,486.2

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	88.6	6,709.4	6,798.0
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(b)	Contractual services	282.5	3,528.1	3,810.6
(c)	Other	64.2	3,731.5	695.0
				4,490.7

Authorized FTE: 78.00 Permanent

The internal service funds/interagency transfers appropriation to the New Mexico state fair in the other category includes six hundred ninety-five thousand dollars (\$695,000) from parimutuel revenues for debt service on negotiable bonds issued for capital improvements.

The general fund appropriation to the New Mexico state fair includes four hundred thirty-five thousand three hundred dollars (\$435,300) for the operation of the African-American performing arts center and exhibit hall at the New Mexico state fair.

Performance measures:

(a) Outcome: Percent of surveyed attendees at the annual state fair

event rating their experience as satisfactory or better 90%

(b) Output: Number of paid attendees at annual state fair event 500,000

(c) Output: Percent of surveyed attendees at the annual state fair

event indicating the state fair has improved 45%

(d) Output: Number of total attendees at annual state fair event 690,000

Subtotal 15,099.3

STATE BOARD OF LICENSURE FOR PROFESSIONAL ENGINEERS AND SURVEYORS:

(1) Regulation and licensing:

The purpose of the regulation and licensing program is to regulate the practices of engineering and surveying in the state as they relate to the welfare of the public in safeguarding life, health and property and to provide consumers with licensed professional engineers and licensed professional surveyors.

Appropriations:

(a) Personal services and

employee benefits 536.1 536.1

(b) Contractual services 64.6 64.6

(c) Other 222.6 222.6

Authorized FTE: 9.00 Permanent

Performance measures:

(a) Output: Number of licenses or certifications issued 639

Subtotal 823.3

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	4,253.8	4,253.8
(b) Contractual services	784.6	784.6
(c) Other	1,245.5	1,245.5

Authorized FTE: 63.00 Permanent; .50 Temporary

Performance measures:

(a) Quality: Percent of time central monitoring system is operational 100%

(b) Output: Percent variance identified between actual tribal quarterly
payments to the state and the audited financial statements
received from the tribe for 2009 calendar year <10%

(c) Outcome: Ratio of gaming revenue generated to general funds expended 28:1

Subtotal 6,283.9

STATE RACING COMMISSION:

(1) Horseracing regulation:

The purpose of the horseracing regulation program is to provide regulation in an equitable manner to New Mexico's 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	1,189.5	1,189.5
(b)	Contractual services	833.1	833.1
(c)	Other	291.7	291.7

Authorized FTE: 17.30 Permanent; .60 Term; 1.80 Temporary

Performance measures:

(a) Outcome: Percent of equine samples testing positive for illegal substances 0.8%

(b) Output: Total amount collected from parimutuel revenues, in millions \$1.1

Subtotal 2,314.3

BOARD OF VETERINARY MEDICINE:

(1) Veterinary licensing and regulatory:

The purpose of the veterinary licensing and regulatory program is to regulate the profession of veterinary medicine in accordance with the Veterinary Practice Act and to promote continuous improvement

in veterinary practices and management in order to protect the public.

Appropriations:

(a)	Personal services and employee benefits	151.2	151.2
(b)	Contractual services	127.0	127.0
(c)	Other	57.8	57.8

Authorized FTE: 3.00 Permanent

Performance measures:

(a) Output: Number of veterinarian licenses issued annually 60

Subtotal 336.0

CUMBRES AND TOLTEC SCENIC RAILROAD COMMISSION:

The purpose of the Cumbres and Toltec scenic railroad commission is to provide railroad excursions into the scenic San Juan mountains.

Appropriations:

(a) Personal services and

employee benefits 137.8 137.8

(b) Contractual services 99.2 3,550.7 3,649.9

(c) Other 117.5 117.5

Authorized FTE: 2.90 Permanent

Any revenues generated by the Cumbres and Toltec scenic railroad commission in fiscal year 2010, such as ticket sales, are appropriated to the Cumbres and Toltec scenic railroad commission to use for operating expenses of the railroad.

Subtotal 3,905.2

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 110.5 110.5

(b) Contractual services 19.8 19.8

(c) Other 18.5 18.5

Authorized FTE: 1.00 Term

Performance measures:

- (a) Outcome: Number of community support organizations benefiting from the activities of the commission and the office 5

Subtotal 148.8

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 790.0 790.0
- (b) Contractual services 208.4 208.4
- (c) Other 247.3 247.3

Authorized FTE: 9.00 Permanent

Performance measures:

- (a) Outcome: Annual aerospace jobs created due to spaceport authority efforts 150

- (b) Output: Number of visitors to the x-prize cup 25,000

Subtotal 1,245.7

TOTAL COMMERCE AND INDUSTRY 58,265.5 47,911.9 17,304.8 704.0
124,186.2

E. AGRICULTURE, ENERGY AND NATURAL RESOURCES

CULTURAL AFFAIRS DEPARTMENT:

- (1) Museums and monuments:

The purpose of the museums and monuments program is to develop and enhance the quality of state museums and monuments by providing the highest standards in exhibitions, performances and programs showcasing the arts, history and science of New Mexico and cultural traditions worldwide.

Appropriations:

(a)	Personal services and				
	employee benefits	16,124.6	2,248.4	50.0	18,423.0
(b)	Contractual services	1,151.9	423.1	95.0	1,670.0
(c)	Other	5,124.5	1,437.5	110.0	6,672.0

Authorized FTE: 335.00 Permanent; 46.80 Term

Performance measures:

- (a) Output: Attendance to museum and monument exhibitions, performances, films and other presenting programs 841,000
- (b) Output: Number of participants to off-site educational, outreach and special events related to museum missions 160,000
- (c) Output: Number of participants at on-site educational, outreach and special events related to museum missions 320,000

(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	813.7	949.5	1,812.0	736.1 4,311.3
(b)	Contractual services	13.9	195.0	83.7	292.6
(c)	Other	97.4	243.8	123.8	465.0

Authorized FTE: 35.00 Permanent; 37.50 Term; 6.00 Temporary

The internal service funds/interagency transfers appropriation to the preservation program of the cultural affairs department includes one million dollars (\$1,000,000) from the department of transportation for archaeological studies related to highway projects.

Performance measures:

(a) Output: Number of participants in educational, outreach and special

events related to preservation mission 5,800

(b) Outcome: Percent of grant funds from recurring appropriations

distributed to communities outside of Santa Fe, Albuquerque

and Las Cruces 60%

(c) Output: Annually completed number of historic structures preserved,

using preservation tax credits 55

(d) Output: Dollar value of construction underway on historic buildings

using state and federal tax credits, in millions \$5

(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	2,234.0	725.5	2,959.5
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(b) Contractual services	822.3	331.0	1,153.3
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(c) Other	1,286.6	35.0	725.5	2,047.1
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Authorized FTE: 42.00 Permanent; 14.00 Term

The general fund appropriation to the library services program of the cultural affairs department in the contractual services category includes seven hundred fifty-five thousand dollars (\$755,000) for adult literacy services.

Performance measures:

(a) Outcome: Percent of grant funds from recurring appropriations distributed to communities outside of Santa Fe, Albuquerque and Las Cruces 85%

(b) Output: Total number of library materials catalogued in systemwide access to libraries in state agencies and keystone library automation system online databases, available through the internet 1,012,000

(c) Output: Number of participants in educational, outreach and special events related to library mission 18,000

(4) Arts:

The purpose of the arts program is to preserve, enhance and develop the arts in New Mexico through partnerships, public awareness and education.

Appropriations:

(a)	Personal services and employee benefits	800.3	146.2	946.5
(b)	Contractual services	1,003.6	406.9	1,410.5
(c)	Other	154.7	154.7	

Authorized FTE: 11.50 Permanent; 4.50 Term

Performance measures:

(a) Output: Number of arts trails brochures marketing cultural tourism loops distributed statewide 100,000

(b) Output: Number of professional organizations supported throughout New Mexico for arts activities 166

(c) Output: Number of clients provided professional development

training in arts industry 3,450

(d) Outcome: Percent of grant funds from recurring appropriations distributed to communities outside of Santa Fe, Albuquerque and Las Cruces 35%

(e) Output: Attendance at programs provided by arts organizations statewide, funded by New Mexico arts from recurring appropriations 1,400,000

(f) Output: Number of musicians, music groups and businesses supporting the music industry who have registered on nmmusic.org website 1,000

(g) Output: Number of participants in educational and outreach programs and workshops, including participants from rural areas 4,300

(h) Output: Number of individuals or businesses provided training in establishing and marketing arts-based cottage industries 1,500

(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	3,418.3	3,418.3
(b)	Contractual services	426.5 37.4	463.9
(c)	Other	216.1 130.5	346.6

Authorized FTE: 45.70 Permanent; 2.00 Temporary

Any unexpended balances in the cultural affairs department remaining at the end of fiscal year 2010 from appropriations made from the general fund shall not revert.

Performance measures:

(a) Outcome: Percent of performance targets in the General Appropriation

Act, met (excluding this measure) 80%

(b) Output: Percent of department supervisory and managerial staff who

completed targeted professional development training 5%

Subtotal 44,734.3

NEW MEXICO LIVESTOCK BOARD:

(1) Livestock inspection:

The purpose of the livestock inspection program is to protect the livestock industry from loss of livestock by theft or straying and to help control the spread of dangerous diseases of livestock.

Appropriations:

(a) Personal services and

employee benefits	1,026.8	2,771.0	3,797.8
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(b) Contractual services		305.0	305.0
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(c) Other	1,074.2	1,074.2	
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Authorized FTE: 67.00 Permanent

Performance measures:

(a) Efficiency: Average percentage of investigation findings completed

within one month 60%

(b) Output: Number of road stops per month 60

(c) Outcome: Number of livestock thefts reported per one thousand head

inspected 1

(d) Outcome: Number of disease cases per one thousand head inspected .05

(2) Administration:

The purpose of the administration program is to provide administrative and logistical services to employees.

Appropriations:

(a)	Personal services and employee benefits	146.4	478.5	624.9
(b)	Contractual services		37.4	37.4
(c)	Other	158.8	158.8	

Authorized FTE: 8.00 Permanent

Subtotal 5,998.1

DEPARTMENT OF GAME AND FISH:

(1) Sport hunting and fishing:

The purpose of the sport hunting and fishing program is to provide a statewide system for hunting activities as well as self-sustaining and hatchery-supported fisheries taking into account hunter safety, quality hunts, high-demand areas, guides and outfitters, quotas and assuring that local and financial interests receive consideration.

Appropriations:

(a)	Personal services and employee benefits	8,662.5	4,702.3	13,364.8
(b)	Contractual services	607.5	713.2	1,320.7
(c)	Other	3,787.1	2,208.2	5,995.3
(d)	Other financing uses	124.4	372.9	497.3

Authorized FTE: 195.00 Permanent; 2.00 Term; 1.50 Temporary

Performance measures:

(a) Output: Acres of accessible sportsperson opportunity through the
open gate program 60,000

(b) Outcome: Percent of anglers satisfied with opportunity and success 80%

(c) Outcome: Number of days of elk hunting opportunity provided to New Mexico resident hunters on an annual basis 165,000

(d) Outcome: Percent of public hunting licenses drawn by New Mexico resident hunters 80%

(e) Output: Annual output of fish from the department's hatchery system, in pounds 425,000

(2) Conservation services:

The purpose of the conservation services program is to provide information and technical guidance to any person wishing to conserve and enhance wildlife habitat and recover indigenous species of threatened and endangered wildlife.

Appropriations:

(a) Personal services and employee benefits	1,149.6	1,532.3	2,681.9
(b) Contractual services	911.5	693.9	1,605.4
(c) Other	3,027.3	419.7	3,447.0

Authorized FTE: 33.00 Permanent; 8.00 Term; .50 Temporary

Performance measures:

(a) Output: Number of state threatened and endangered species studied and conserved through recovery planning and the comprehensive wildlife conservation strategy for New Mexico 35

(b) Output: Number of recreational days of access provided by the gaining access into nature project 10,000

(c) Outcome: Number of acres of wildlife habitat conserved, enhanced or positively affected statewide 100,000

(3) Wildlife depredation and nuisance abatement:

The purpose of the wildlife depredation and nuisance abatement program is to provide complaint administration and intervention processes to private landowners, leaseholders and other New Mexicans so they may be relieved of and precluded from property damage, annoyances or risks to public safety caused by protected wildlife.

Appropriations:

(a)	Personal services and		
	employee benefits	329.7	329.7
(b)	Contractual services	130.7	130.7
(c)	Other	739.3	739.3

Authorized FTE: 5.00 Permanent

Performance measures:

(a) Outcome: Percent of depredation complaints resolved within the
mandated one-year timeframe 95%

(4) Program support:

The purpose of program support is to provide an adequate and flexible system of direction, oversight, accountability and support to all divisions so they may successfully attain planned outcomes for all department programs.

Appropriations:

(a)	Personal services and		
	employee benefits	4,326.8	138.0 4,464.8
(b)	Contractual services	684.7	21.0 705.7
(c)	Other	2,183.5	141.0 2,324.5

Authorized FTE: 61.00 Permanent

Performance measures:

(a) Output: Percent of special hunt applications processed without error 99.8%

Subtotal 37,607.1

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT:

(1) Renewable energy and energy efficiency:

The purpose of the renewable energy and energy efficiency program is to develop and implement clean energy programs in order to decrease per capita energy consumption; 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	1,189.8	150.3	1,340.1
(b)	Contractual services	63.3		63.3
(c)	Other	30.3	34.4	64.7

Authorized FTE: 13.00 Permanent; 2.00 Term

Performance measures:

- (a) Outcome: Percent of retail electricity sales from investor-owned utilities in New Mexico from renewable energy sources 10%
- (b) Output: Number of inventoried clean energy projects evaluated annually 50
- (c) Outcome: Percent reduction in energy use in public facilities receiving energy efficiency retrofit projects through the Energy Efficiency and Renewable Energy Bonding Act, the Public Facilities Energy Efficiency Act, the Water Conservation Act or the clean energy projects program 15%

(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	3,287.3	105.9	985.1	4,378.3
(b)	Contractual services	121.0	2.0	915.1	1,038.1
(c)	Other	288.4	603.2	2,429.2	3,320.8

Authorized FTE: 59.00 Permanent; 11.00 Term

Performance measures:

(a) Output: Number of acres restored in New Mexico's forests and
watersheds 8,000

(b) Outcome: Percent of at-risk communities participating in
collaborative wildfire protection planning 25%

(c) Output: Number of nonfederal wildland firefighters provided
professional and technical incident command system training 500

(3) State parks:

The purpose of the state parks program is to create the best recreational opportunities possible in state parks by preserving cultural and natural resources, continuously improving facilities and providing quality, fun activities and to do it all efficiently.

Appropriations:

(a)	Personal services and employee benefits	9,549.0	4,109.3	489.2	14,147.5
(b)	Contractual services	297.4	353.5	3,800.3	4,451.2
(c)	Other	1,545.0	7,016.6	2,620.0	2,300.3
(d)	Other financing uses		2,468.8		2,468.8

Authorized FTE: 246.00 Permanent; 6.00 Term; 48.00 Temporary

Performance measures:

(a) Outcome: Percent of visitors satisfied with state parks 80%

(b) Explanatory: Self-generated revenue per visitor, in dollars \$0.87

(c) Output: Number of interpretive programs available to park visitors 2,600

(d) Explanatory: Number of visitors to state parks 4,000,000

(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	522.8	727.7		1,542.3	2,792.8
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(b) Contractual services		11.6	9.0		3,016.2	3,036.8
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(c) Other	73.5	227.9		284.2	585.6
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Authorized FTE: 17.00 Permanent; 15.00 Term

Performance measures:

(a) Output: Percent of abandoned uranium mines with current site assessments 20%

(b) Outcome: Percent of permitted mines with approved reclamation plans and adequate financial assurance posted to cover the cost of reclamation 100%

(5) Oil and gas conservation:

The purpose of the oil and gas conservation program is to assure the conservation and responsible development of oil and gas resources through professional and dynamic regulation.

Appropriations:

(a) Personal services and

employee benefits	3,449.1		624.1	100.0	357.6	4,530.8
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(b) Contractual services		107.7	5,705.5		28.5	50.0	5,891.7
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- (c) Other 817.4 569.5 18.6 1,405.5
- (d) Other financing uses 118.4 118.4

Authorized FTE: 63.00 Permanent; 5.00 Term

Performance measures:

- (a) Outcome: Percent increase in the amount of water diverted from disposal for other uses 10%

- (b) Output: Number of inspections of oil and gas wells and associated facilities 23,500

- (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 3,281.3 213.8 375.1 3,870.2
- (b) Contractual services 18.1 18.1
- (c) Other 250.0 374.6 624.6
- (d) Other financing uses 1,611.6 1,611.6

Authorized FTE: 46.00 Permanent; 3.00 Term

Subtotal 69,240.8

YOUTH CONSERVATION CORPS:

The purpose of the youth conservation corps program is to provide funding for the employment of New Mexicans between the age 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	149.3	149.3	
(b)	Contractual services	3,605.4		3,605.4
(c)	Other	60.4	60.4	
(d)	Other financing uses	50.0		50.0

Authorized FTE: 2.00 Permanent

Performance measures:

- (a) Output: Number of youth employed annually 900
- (b) Outcome: Percent of projects completed within one year 95%

Subtotal 3,865.1

INTERTRIBAL CEREMONIAL OFFICE:

The purpose of the intertribal ceremonial office is to aid in the planning, coordination and development of an intertribal ceremonial event in coordination with the Native American population in order to host a successful event.

Appropriations:

~~[(a) Personal services and~~

~~employee benefits 100.3 12.7 113.0]~~

(b) Contractual services 3.8 0.6 4.4

(c) Other ~~[55.0]~~ 6.7 61.7

~~[Authorized FTE: 2.00 Permanent] LINE-ITEM VETO~~

The internal service funds/interagency transfers appropriations to the intertribal ceremonial office include twenty thousand dollars (\$20,000) from the tourism department.

Performance measures:

- (a) Output: Number of intertribal ceremonial tickets sold 7,000

Subtotal 179.1

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	10,606.9	10,606.9
(b)	Contractual services	693.2	693.2
(c)	Other	2,094.4	2,094.4
(d)	Other financing uses	571.7	571.7

Authorized FTE: 155.00 Permanent

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 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) Output: Total trust revenue generated, in millions \$456.4
- (b) Outcome: Bonus income per leased acre from oil and gas activities \$300
- (c) Outcome: Dollars generated through oil, natural gas and mineral
audit activities, in millions \$3.5
- (d) Output: Average income per acre from oil, natural gas and mineral
activities \$200
- (e) Output: Average income per acre from agriculture leasing activities \$0.86
- (f) Output: Average income per acre from commercial leasing activities \$12.68
- (g) Output: Percent of total trust revenue generated allocated to
beneficiaries 97%

Subtotal 13,966.2

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 non-federal dams within the state, to owners and operators of such dams so they can operate the dam safely.

Appropriations:

(a)	Personal services and				
	employee benefits	10,681.9	449.2		11,131.1
(b)	Contractual services	469.3	1.3	564.5	1,035.1
(c)	Other	326.0	108.9	1,203.2	1,638.1

Authorized FTE: 184.50 Permanent

The internal service funds/interagency transfers appropriations to the water resource allocation program of the state engineer include one hundred forty-seven thousand six hundred dollars (\$147,600) from the improvement of Rio Grande income fund and one million six hundred twenty thousand one hundred dollars (\$1,620,100) from the New Mexico irrigation works construction fund.

Performance measures:

(a) Outcome: Number of dams inspected per year to establish baseline 110

(b) Outcome: Number of transactions abstracted annually into the water

administration technical engineering resource system

database 22,000

(c) Output: Average number of unprotested new and pending applications

processed per month 70

(d) Explanatory: Number of unprotested and unaggrieved water right

applications backlogged 597

(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	3,977.4	66.0	150.0	4,193.4	
(b)	Contractual services	1,541.2	18.0	4,455.2	6,014.4	
(c)	Other	5.0	30.9	3,862.3	3,898.2	

Authorized FTE: 54.00 Permanent

The internal service funds/interagency transfers appropriations to the interstate stream compact compliance and water development program of the state engineer include seven hundred seventy-nine thousand one hundred dollars (\$779,100) from the improvement of Rio Grande income fund and seven million two hundred fifty-six thousand one hundred dollars (\$7,256,100) from the irrigation works construction fund.

Revenue from the sale of water to United States government agencies by New Mexico for the emergency drought water agreement dated April 2003, which expires February 28, 2013, and from contractual reimbursements associated with state engineer use of the revenue is appropriated to the state engineer for the conservation and recovery of the listed species in the middle Rio Grande basin, including the optimizing of middle Rio Grande conservancy district operations.

Revenue from the sale of water to United States government agencies by New Mexico resulting from litigation settlement between New Mexico and the United States implemented by the conservation water agreement dated June 29, 2001, and from contractual reimbursements associated with state engineer use of the revenue is appropriated to the state engineer for use as required by the conservation water agreement.

The other state funds appropriations to the interstate stream compact compliance and water development program of the state engineer include one hundred thousand dollars (\$100,000) from the game protection fund for Ute dam operation. Any unexpended balances remaining at the end of fiscal year 2010 from this appropriation shall revert to the game protection fund.

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) to (a) match seventeen and one-half percent of the cost of work undertaken by the United States army corps of engineers pursuant to the Federal Water Resources Development Act of 1986 provided that no amount of this appropriation shall be expended for any project unless the appropriate acequia system or community ditch has agreed to provide seven and one-half percent of the cost from any source other than the irrigation works construction fund or improvement of Rio Grande income fund, and provided that no more than two hundred fifty thousand dollars (\$250,000) shall be allocated to one acequia per fiscal year; and (b) for the construction, improvement, repair and protection from floods of dams, reservoirs, ditches, flumes and appurtenances of community ditches in the state through the interstate stream commission 80/20 program, provided that not more than one hundred twenty thousand dollars (\$120,000) of this

appropriation shall be used for any one community ditch and that the state funds three hundred thousand dollars (\$300,000) for engineering services for approved acequia 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. The interstate stream commission's authority also includes five hundred thousand dollars (\$500,000) for loans to irrigation districts, conservancy districts and soil and water conservation districts for re-loan to farmers for implementation of water conservation improvements.

The interstate stream commission's authority to make loans from the New Mexico irrigation works construction fund includes two million dollars (\$2,000,000) to 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.

The internal services funds/interagency transfers appropriations to the interstate stream compact compliance and water development program of the state engineer include eighty-two thousand three hundred dollars (\$82,300) from the game protection fund for Eagle Nest dam operations.

Performance measures:

(a) Outcome: Cumulative state-line delivery credit per the Pecos river

compact and amended decree at the end of calendar year, in
acre feet (final accounting will be available at end of
fiscal year) 0

(b) Outcome: Rio Grande river compact accumulated delivery credit or

deficit at end of 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	1,638.7	3,206.4	4,845.1
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(b) Contractual services

	1,731.0	1,731.0
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(c) Other

375.6	375.6
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Authorized FTE: 71.00 Permanent

The internal service funds/interagency transfers appropriations to the litigation and adjudication program of the state engineer include one million nine hundred thirteen thousand dollars (\$1,913,000) from the New Mexico irrigation works construction fund and three million four hundred thousand dollars (\$3,400,000) from the water project fund pursuant to Section 72-4(A)-9 NMSA 1978.

Performance measures:

(a) Outcome: Number of offers to defendants in adjudications 1,000

(b) Outcome: Percent of all water rights that have judicial

determinations 45%

(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	3,505.4	33.3	3,538.7
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(b) Contractual services

212.4	212.4
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(c) Other

468.2	468.2
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Authorized FTE: 45.00 Permanent

The internal service funds/interagency transfers appropriations to program support of the state engineer include seven hundred thirteen thousand nine hundred dollars (\$713,900) from the New Mexico irrigation works construction fund.

Performance measures:

(a) Output: Percent of department contracts that include performance

measures 100%

(5) New Mexico irrigation works construction fund:

Appropriations:

(a) Other financing uses

11,503.1

11,503.1

(6) Improvement of Rio Grande income fund:

Appropriations:

(a) Other financing uses	926.7	926.7
Subtotal	51,511.1	

ORGANIC COMMODITY COMMISSION:

(1) New Mexico organic:

The purpose of the New Mexico organic program is to provide consumers of organic products in New Mexico with credible assurance about the veracity of organic claims made and to enhance the development of local economies tied to agriculture, through rigorous regulatory oversight of the organic industry in New Mexico and through ongoing educational and market assistance projects.

Appropriations:

(a) Personal services and employee benefits	218.6	49.6	268.2
(b) Contractual services	4.3	104.4	108.7
(c) Other	87.5	87.5	

Authorized FTE: 5.00 Permanent

Performance measures:

- (a) Outcome: Percent increase in New Mexico organic market as measured
by clients' gross sales of organic products 10%
- (b) Output: Percent of organic farms inspected annually 100%

Subtotal	464.4
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TOTAL AGRICULTURE, ENERGY AND

NATURAL RESOURCES	82,360.9	90,802.1	21,311.4	33,091.8
	227,566.2			

F. HEALTH, HOSPITALS AND HUMAN SERVICES

COMMISSION ON THE STATUS OF WOMEN:

(1) Status of women:

The purpose of the commission on the status of women program is to provide information, public events, leadership, support services and career development to individuals, agencies and women's organizations so they can improve the economic, health and social status of women in New Mexico.

Appropriations:

(a)	Personal services and			
	employee benefits	515.7	413.7	929.4
(b)	Contractual services	47.5	760.7	808.2
(c)	Other	229.1	60.0	265.6
			554.7	

Authorized FTE: 8.00 Permanent; 8.00 Term

The internal service funds/interagency transfers appropriations to the status of women program of the commission on the status of women include one million four hundred forty thousand dollars (\$1,440,000) for the teamworks program directed toward workforce development for adult women on temporary assistance for needy families from the federal block grant to New Mexico.

The other state funds appropriation to the status of women program of the commission on the status of women includes ten thousand dollars (\$10,000) from the women in transition fund to host conferences and seminars and associated expenses and fifty thousand dollars (\$50,000) from the commission on the status of women conference fund to host the governor's award for outstanding New Mexico women, the pioneer award, the trailblazer award and various conference booths.

Revenue collected for ticket sales in excess of expenses for conference, awards, seminars and summits shall not revert.

Performance measures:

(a) Outcome: Percent of teamworks participants employed at nine months

after initial employment placement 45%

(b) Output: Number of temporary assistance for needy families clients

served through the teamworks program 1,000

Subtotal 2,292.3

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	351.9		351.9
(b)	Contractual services	245.8		245.8
(c)	Other	223.2	223.2	

Authorized FTE: 5.00 Permanent

Subtotal 820.9

COMMISSION FOR DEAF AND HARD-OF-HEARING PERSONS:

(1) Deaf and hard-of-hearing:

The purpose of the deaf and hard-of-hearing program is to provide advocacy, outreach, referral, education and oversight of the New Mexico telecommunications relay network for deaf and hard-of-hearing citizens, government agencies, institutions, businesses and hearing individuals affiliated with those who have a hearing loss so they may become more aware of accessibility and services available and have equal access to telecommunications services.

Appropriations:

(a)	Personal services and employee benefits		1,036.1	1,036.1
(b)	Contractual services	413.1	1,690.9	2,104.0
(c)	Other	355.1	355.1	
(d)	Other financing uses		626.8	626.8

Authorized FTE: 15.00 Permanent

The internal service funds/interagency transfers appropriation to the deaf and hard-of-hearing program of the commission for the deaf and hard-of-hearing persons in the other financing uses category includes four hundred sixty-six thousand dollars (\$466,000) 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.

The internal service funds/interagency transfers appropriation to the deaf and hard-of-hearing program of the commission for the deaf and hard-of-hearing persons in the other financing uses category includes one hundred sixty thousand eight hundred dollars (\$160,800) to transfer to the signed language

interpreting practices board program of the regulation and licensing department.

The internal service funds/interagency transfers appropriation to the deaf and hard-of-hearing program of the commission for the deaf and hard-of-hearing persons in the contractual services category includes fifty thousand dollars (\$50,000) for additional operational support[~~of the community outreach program for the deaf~~].*LINE-ITEM VETO*

Performance measures:

(a) Output: Number of information referrals, outreach and clients served 12,500

(b) Output: Hours provided by the sign language interpreter referral

service 40,000

(c) Output: Number of accessible technology equipment distributions 1,750

Subtotal 4,122.0

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 190.7 190.7

(b) Contractual services 47.0 47.0

(c) Other 142.5 142.5

Authorized FTE: 3.00 Permanent

Subtotal 380.2

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	843.5	490.1	3,645.5	4,979.1
(b)	Contractual services		39.7	167.4	207.1
(c)	Other	1,185.2		1,787.3	2,972.5

Authorized FTE: 106.50 Permanent; 1.00 Term

Any unexpended balances in the commission for the blind remaining at the end of fiscal year 2010 from appropriations made from the general fund shall not revert.

Performance measures:

(a) Outcome: Average employment wage for the blind or visually impaired

person \$15

(b) Output: Number of quality employment opportunities for blind or

visually impaired consumers 50

(c) Output: Number of blind or visually impaired consumers trained in

the skills of blindness to enable them to live

independently in their homes and communities 600

(d) Output: Number of employment opportunities provided for blind

business entrepreneurs in different vending and food

facilities through the business enterprise program 32

Subtotal 8,158.7

INDIAN AFFAIRS DEPARTMENT:

(1) Indian affairs:

The purpose of the Indian affairs program is to serve as the coordinating agency for intergovernmental and interagency programs concerning tribal governments and the state.

Appropriations:

(a) Personal services and

	employee benefits	1,262.0		1,262.0
(b)	Contractual services	917.4	238.9	1,156.3
(c)	Other	1,242.3	400.0	1,642.3

Authorized FTE: 16.00 Permanent

The other state funds appropriation to the Indian affairs program of the Indian affairs department includes four hundred thousand dollars (\$400,000) from the tobacco settlement program fund for tobacco cessation and prevention programs for Native American communities throughout the state.

Performance measures:

(a) Output: Number of capital projects over fifty thousand dollars

(\$50,000) completed and closed 70

(b) Output: Number of capital outlay projects under fifty thousand

dollars (\$50,000) completed and closed 80

Subtotal 4,060.6

AGING AND LONG-TERM SERVICES DEPARTMENT:

(1) Consumer and elder rights:

The purpose of the consumer and elder rights program is to provide current information, assistance, counseling, education and support to older individuals and persons with disabilities, residents of long-term care facilities and their families and caregivers that allow them to protect their rights and make informed choices about quality service.

Appropriations:

(a) Personal services and

employee benefits 752.5 141.5 768.1 1,662.1

(b) Contractual services 21.7 26.0 47.7

(c) Other 164.0 21.5 325.3 510.8

Authorized FTE: 18.50 Permanent; 6.50 Term

Performance measures:

- (a) Output: Number of ombudsman cases resolved 6,100
- (b) Outcome: Number of individuals calling the resource center in need of two or more daily living services who receive information, referral and follow-up services 13,000
- (c) Output: Number of persons accessing the aging and long-term services department's resource center 15,000

(2) Aging network:

The purpose of the aging network program is to provide supportive social and nutrition services for older individuals and persons with disabilities so they can remain independent and involved in their communities and to provide training, education and work experience to older individuals so they can enter or re-enter the workforce and receive appropriate income and benefits.

Appropriations:

(a)	Personal services and				
	employee benefits	5.5		5.5	
(b)	Contractual services	100.0	15.0		115.0
(c)	Other	27,100.0	69.5	319.7	7,396.8
					34,886.0
(d)	Other financing uses	187.6			187.6

Authorized FTE: .50 Term

The general fund appropriation to the aging network program of the aging and long-term services department in the other category to supplement funding from the federal Older Americans Act shall be contracted to the designated area agencies on aging.

The internal service funds/interagency transfers appropriation to the aging network program of the aging and long-term services department in the other category includes three hundred nineteen thousand seven hundred dollars (\$319,700) for the gold mentor program.

Any unexpended balances remaining at the end of fiscal year 2010 in other state funds from conference registration fees shall not revert.

Performance measures:

- (a) Outcome: Percent of individuals participating in the federal older

worker program obtaining unsubsidized permanent employment 20.5%

(b) Outcome: Percent of temporary assistance for needy families clients

placed in meaningful employment 40%

(c) Output: Number of adult daycare service hours provided 160,000

(d) Output: Number of hours of respite care provided 150,000

(e) Output: Number of congregate meals provided through the aging

network 1,700,000

(f) Output: Number of home-delivered meals provided through the aging

network 2,000,000

(3) Long-term services:

The purpose of the long-term services program is to administer home- and community-based long-term service programs that support individuals in the least restrictive environment possible.

Appropriations:

(a) Personal services and

employee benefits	1,877.6	1,986.2	521.4	4,385.2
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(b) Contractual services	325.4	1,879.0	240.0	2,444.4
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(c) Other	446.9	149.0	67.6	663.5
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(d) Other financing uses	2,050.0			2,050.0
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Authorized FTE: 56.00 Permanent; 5.00 Term

Any unexpended balances remaining from the general fund appropriation made to the long-term services program of the aging and long-term services department in Section 4 of Chapter 3 of Laws 2008 for long-term brain injury waiver services shall not revert to the general fund but shall be deposited into the brain injury services fund and are appropriated to the long-term services program of the aging and long-term services department for the purposes specified in Section 24-1-24 NMSA 1978.

~~[By September 1, 2009, the aging and long-term services department and the human services department shall report to the department of finance and administration and the legislative finance committee on implementation of coordinated long-term services, including enrollment, cost per client, administrative costs and projected savings to be used to increase enrollment of clients.]LINE-ITEM VETO~~

(a) Outcome: Percent of disabled and elderly medicaid waiver clients who receive services within ninety days of eligibility

determination 100%

(b) Outcome: Average number of months that individuals are on the disabled and elderly waiver registry prior to receiving an

allocation for services 24

(c) Output: Number of brain injury clients served through the self-directed waiver 135

(d) Output: Number of individuals on the self-directed mi via waiver 400

(e) Output: Number of persons reintegrated from nursing homes into home- and community-based medicaid services 150

(4) 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 7,643.9 7,643.9

(b) Contractual services 915.2 2,471.0 3,386.2

(c) Other 2,736.4 2,736.4

Authorized FTE: 140.00 Permanent

Performance measures:

(a) Outcome: Percent of adults with repeat maltreatment 9%

(b) Outcome: Percent of cases closed within ninety days of referral 70%

(c) Output: Number of adults receiving adult protective services

intervention 6,250

(5) Program support:

The purpose of program support is to provide clerical, record-keeping and administrative support in the areas of personnel, budget, procurement and contracting to agency staff, outside contractors and external control agencies to implement and manage programs.

Appropriations:

(a) Personal services and

employee benefits	3,998.0	287.2	573.3	4,858.5
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(b) Contractual services	145.5	4.0	15.6	165.1
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(c) Other	554.8	139.1	55.8	749.7
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Authorized FTE: 58.00 Permanent; 4.00 Term

The internal service funds/interagency transfers appropriation to program support of the aging and long-term services department includes four hundred thirty thousand three hundred dollars (\$430,300) for the gold mentor program.

Subtotal				66,497.6
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HUMAN SERVICES DEPARTMENT:

(1) 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 the program fosters recovery and supports the health and resilience of all New Mexicans.

Appropriations:

(a) Personal services and

employee benefits	1,872.3	613.9	322.2	2,808.4
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(b) Contractual services	41,625.4	604.9	14,460.0	56,690.3
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(c) Other	635.2	21.0	200.0	81.2	937.4
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(d) Other financing uses	279.4	1,512.8	1,792.2
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Authorized FTE: 26.00 Permanent; 17.00 Term

Performance measures:

- (a) Outcome: Youth suicide rate among fifteen to nineteen year olds
served by statewide entity 3
- (b) Outcome: Percent of people receiving substance abuse treatment who
demonstrate improvement on two or more domains on the
addiction severity index for alcohol 80%
- (c) Outcome: Suicide rate among adults age twenty and older per one
hundred thousand (calendar year) 15
- (d) Outcome: Percent of people receiving substance abuse treatment who
demonstrate improvement on two or more domains on the
addiction severity index for drugs 75%
- (e) Outcome: Percent of children and adolescents receiving behavioral
health services who are successful in school 81%
- (f) Outcome: Suicide rate among children age fifteen to nineteen per one
hundred thousand (based on three-year averages) 14

(2) Medicaid physical health managed care:

The purpose of the medicaid physical health managed care 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) Other 294,206.2 1,073,464.5 1,367,670.7

The appropriations to the medicaid physical health managed care program of the human services department in the other category include one billion one hundred sixty-three million one hundred twelve thousand seven hundred dollars (\$1,163,112,700) for physical health managed care, two hundred two million four hundred fifty-eight thousand dollars (\$202,458,000) for the state coverage insurance program, and one million six hundred thousand dollars (\$1,600,000) for premium assistance programs. ~~The department shall report monthly to the department of finance and administration and the legislative finance committee on enrollment by cohort and per-member per-month costs by cohort for each program and shall report quarterly on projected expenditures and the variance from this appropriation for the programs.]~~ *LINE-ITEM VETO*

The general fund appropriation to the medicaid physical health managed care program of the human services department in the other category includes two hundred thousand dollars (\$200,000) to offset potential rate increases due to New Mexico medical insurance pool assessments, contingent on enactment of Senate Bill 161 or similar legislation of the first session of the forty-ninth legislature.

Performance measures:

(a) Output: Number of adults enrolled in state coverage insurance 35,000

(b) Output: Number of employers participating in state coverage
insurance 1,000

(c) Outcome: Percent of children in medicaid managed care receiving
early and periodic screening, diagnosis and treatment
services as measured by healthcare effectiveness data and
information set 69%

(d) Output: Percent increase of eligible adults, with incomes below one
hundred percent of federal poverty level, who get
healthcare coverage through medical assistance programs 2%

(e) Output: Percent increase of eligible children under age five who
get healthcare coverage through medical assistance programs 2%

~~(f) Output: Average monthly enrollment in medicaid physical health
managed care 307,000~~

~~(g) Efficiency: Average per member per month cost for physical health
managed care \$310~~

~~(h) Efficiency: Average per member per month cost for state coverage
insurance \$462]~~

(3) 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	4,730.3		6,152.1	10,882.4	
(b)	Contractual services	6,737.4	600.0	19,082.1	26,419.5	
(c)	Other	220,366.2	63,890.0	108,958.0	1,577,597.9	1,970,812.1
(d)	Other financing uses	12,559.0		24,985.0	26,571.0	64,115.0

Authorized FTE: 153.00 Permanent; 11.00 Term

The other state funds appropriations to the medical assistance program of the human services department include five million nine hundred eighty-five thousand dollars (\$5,985,000) from the tobacco settlement program fund for breast and cervical cancer treatment and for medicaid[~~expansion~~].*LINE-ITEM VETO*

The other state funds appropriations to the medical assistance program of the human services department include twenty-two million four hundred fifty thousand dollars (\$22,450,000) from the tobacco settlement program fund for medicaid[~~expansion~~].*LINE-ITEM VETO*

The appropriations to the medical assistance program of the human services department in the other category include seven hundred million five hundred twenty-two thousand two hundred dollars (\$700,522,200) for the coordination of long-term services program. [~~The department shall report monthly to the department of finance and administration and the legislative finance committee on enrollment by cohort and per member per month costs by cohort for the program and shall report quarterly on projected expenditures and the variance from this appropriation for the program.~~]*LINE-ITEM VETO*

Performance measures:

- (a) Output: Percent increase of eligible children under age twenty-one who get healthcare coverage through medical assistance programs 5%

~~[(b) Output: Average monthly enrollment in medicaid coordination of long-term care services program 38,000]~~

~~(c) Efficiency: Average per member per month cost for the coordination of long-term care services program \$1,505]~~

- (4) Medicaid behavioral health:

The federal funds appropriations to the income support program of the human services department include fifteen million nine hundred twenty thousand dollars (\$15,920,000) from the federal temporary assistance for needy families block grant for support services, including one million seven hundred twenty thousand dollars (\$1,720,000) for employment-related costs, eight hundred thousand dollars (\$800,000) for transportation services, six hundred thousand dollars (\$600,000) for a family-strengthening and fatherhood program, eight hundred thousand dollars (\$800,000) for a substance abuse program and twelve million dollars (\$12,000,000) for job training and placement.

The federal funds appropriations to the income support program of the human services department include forty-eight million nine hundred nine thousand three hundred dollars (\$48,909,300) from the temporary assistance for needy families block grant for transfers to other agencies, including thirty-nine million six hundred nineteen thousand three hundred dollars (\$39,619,300) to the children, youth and families department for childcare programs, three million six hundred thousand dollars (\$3,600,000) to the children, youth and families department for domestic violence programs, one million five hundred thousand dollars (\$1,500,000) to the children, youth and families department for pre-kindergarten programs, one million five hundred thousand dollars (\$1,500,000) to the public education department for pre-kindergarten programs, five hundred thousand dollars (\$500,000) to the children, youth and families department for home visiting programs, one million four hundred forty thousand dollars (\$1,440,000) to the commission on the status of women for the job skills program, seven hundred fifty thousand dollars (\$750,000) to the aging and long-term services department for the gold mentor program and two hundred fifty thousand dollars (\$250,000) to the public education department for the graduation reality and dual-role skills program.

The appropriations to the income support program of the human services department include five

million six hundred sixty-five thousand five hundred dollars (\$5,665,500) from the general fund and two million two hundred twenty-six thousand dollars (\$2,226,000) from other state funds for general assistance.

The general fund appropriations to the income support program of the human services department include two hundred eighteen thousand dollars (\$218,000) for the Navajo sovereign temporary assistance for needy families program.

The general fund appropriations to the income support program of the human services department include thirty-two thousand dollars (\$32,000) for the Zuni sovereign temporary assistance for needy families program.

~~[-The human services department shall provide the department of finance and administration and the legislative finance committee quarterly reports on the expenditures of the federal temporary assistance for needy families block grant and the state maintenance-of-effort expenditures.]~~ *LINE-ITEM VETO*

Performance measures:

(a) Outcome: Percent of temporary assistance for needy families clients

who receive a job 60%

(b) Outcome: Percent of temporary assistance for needy families

participants who retain a job three or more months 78%

(c) Outcome: Percent of parent recipients who meet temporary assistance

for needy families federally required work participation requirements 51%

(d) Outcome: Percent of temporary assistance for needy families two-parent recipients meeting federally required work participation requirements 60%

(e) Outcome: Percent of children eligible for food stamps participating in the program 72%

(f) Outcome: Percent of expedited food stamp cases meeting federally required measure of timeliness within seven days 98%

(g) Outcome: Number of New Mexico families receiving food stamps 98,000

(6) 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	5,676.6	2,336.9	13,110.7	21,124.2
(b) Contractual services	1,968.1	805.0	4,808.6	7,581.7
(c) Other	1,277.1	525.7	3,306.1	5,108.9

Authorized FTE: 408.00 Permanent

Performance measures:

(a) Outcome: Amount of child support collected, in millions \$105

(b) Outcome: Percent of current support owed that is collected 59%

(c) Outcome: Percent of cases with support orders 68%

(d) Outcome: Percent of children born out of wedlock with paternity

establishment in child support cases 72%

(7) Program support:

The purpose of program support is to provide overall leadership, direction and administrative support to each agency program and to assist the department in achieving its programmatic goals.

Appropriations:

(a)	Personal services and employee benefits	5,573.5	2,550.2	9,542.2	17,665.9
(b)	Contractual services	3,933.7	126.3	7,792.8	11,852.8
(c)	Other	4,870.2	855.9	9,546.4	15,272.5
(d)	Other financing uses	9.4	10.9	29.7	50.0

Authorized FTE: 258.00 Permanent

Performance measures:

(a) Outcome: Percent of federal grant reimbursements completed that meet the federal standards for timeliness 100%

(b) Outcome: Percent of invoices paid within thirty days of receipt of the invoice 100%

(c) Outcome: Number of office of inspector general claims over thirty-six months old 3,470

(d) Output: Percent of timely final decisions on administrative disqualification hearings 100%

(e) Output: Number of days for the chief financial officer to certify the accuracy of financial transactions after the close of an accounting cycle 45

(f) Output: Percent of investigations referred to the office of

inspector general completed within ninety days from the
date assigned 70%

Subtotal 4,428,076.9

WORKFORCE SOLUTIONS DEPARTMENT:

(1) Workforce transition services:

The purpose of the workforce transition services 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 2,818.8 761.0 725.9 10,982.9 15,288.6
- (b) Contractual services 88.2 3.0 31.0 380.4 502.6
- (c) Other 552.7 36.0 147.8 2,217.5 2,954.0
- (d) Other financing uses 904.7 904.7

Authorized FTE: 295.00 Permanent; 28.50 Term

The other state funds appropriation to the workforce transition services program of the workforce solutions department in the other financing uses category includes eight hundred twenty-four thousand seven hundred dollars (\$824,700) from the state unemployment trust fund; provided that, if the earnings from the investment of the state unemployment trust fund are less than the total appropriations from that fund, each appropriation from the fund shall be reduced proportionately.

Performance measures:

(a) Outcome: Percent of youth participants who are in employment or
enrolled in postsecondary education or advanced training in
the first quarter after the exit quarter 71%

(b) Outcome: Percent of dislocated workers receiving workforce
development services who have entered employment within one
quarter of leaving the program 84%

(c) Output: Percent of eligible unemployment insurance claims that will be issued a determination within twenty-one days from the date of claim 87%

(d) Output: Percent of adult Workforce Investment Act participants employed in the second and third quarter following the exit quarter 72%

(e) Output: Percent of Workforce Investment Act dislocated worker participants employed in the third quarter following the exit quarter 75%

(f) Outcome: Percent of adult participants receiving services through the public workforce system who are employed in the first quarter after the exit quarter 86%

(g) Output: Average unemployment insurance call center wait time to reach an agent, in minutes <5

(2) Labor relations division:

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	1,400.3	511.4	197.0	2,108.7
(b)	Contractual services		10.3	1.2	11.5
(c)	Other	920.6	51.8	972.4	
(d)	Other financing uses		750.8		750.8

Authorized FTE: 42.00 Permanent

The internal service funds/interagency transfers appropriation to the labor relations program of the workforce solutions department includes six hundred ninety-one thousand five hundred dollars (\$691,500) from fund balances in the workers' compensation administration fund.

Performance measures:

- (a) Outcome: Percent of wage claims investigated and resolved within one hundred twenty days 96%
- (b) Output: Number of targeted public works inspections completed 1,800
- (c) Efficiency: Number of backlogged human rights commission hearings pending each quarter 0
- (d) Efficiency: Percent of discrimination cases settled through alternative dispute resolution 78%

(3) Workforce technology division:

The purpose of the workforce technology program is to provide and maintain customer-focused, effective and innovative information technology services for the workforce solutions department and its service providers.

Appropriations:

- (a) Personal services and employee benefits 839.2 15.8 177.3 2,003.7 3,036.0
- (b) Contractual services 244.5 4.0 9.1 502.6 760.2
- (c) Other 285.0 5.5 14.9 702.4 1,007.8
- (d) Other financing uses 201.3 201.3

Authorized FTE: 41.00 Permanent; 1.00 Term

The other state funds appropriation to the workforce technology program of the workforce solutions department in the other financing uses category includes one hundred four thousand nine hundred dollars (\$104,900) from the state unemployment trust fund; provided that, if the earnings from the investment of the state unemployment trust fund are less than the total appropriations from that fund, each appropriation from the fund shall be reduced proportionately.

(4) Business services division:

The purpose of the business 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	241.4		1,768.8	2,010.2
(b)	Contractual services	39.6		243.5	283.1
(c)	Other	27.4	799.0	826.4	

Authorized FTE: 32.00 Permanent

Performance measures:

- (a) Outcome: Percent of employers sampled reporting customer satisfaction 84%
- (b) Output: Number of personal contacts made by field office personnel
with New Mexico businesses to inform them of available
services or provide actual services 20,000

(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	217.0	35.9	1,050.8	4,317.8	5,621.5
(b)	Contractual services	86.2	600.0	409.6	148.1	1,243.9
(c)	Other	485.5	3.8	333.1	10,779.2	11,601.6
(d)	Other financing uses			1,793.5		1,793.5

Authorized FTE: 89.00 Permanent; 2.00 Term

The general fund appropriation to program support of the workforce solutions department in the other category includes two hundred fifty thousand dollars (\$250,000) to be transferred to the individual development fund to carry out the provisions of the Individual Development Account Act.

The other state funds appropriation to program support of the workforce solutions department in the contractual services category includes six hundred thousand dollars (\$600,000) from fund balances in the employee security department fund for at-risk youth programs.

The other state funds appropriation to program support of the workforce solutions department in the other financing uses category includes one hundred sixty-four thousand one hundred dollars (\$164,100) from the state unemployment trust fund; provided that, if the earnings from the investment of the state unemployment trust fund are less than the total appropriations from that fund, each appropriation from the fund shall be reduced proportionately.

Subtotal 51,878.8

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	9,107.7	9,107.7
(b)	Contractual services	345.5	345.5
(c)	Other	1,428.6	1,428.6
(d)	Other financing uses	691.5	691.5

Authorized FTE: 143.00 Permanent

Performance measures:

- (a) Output: Number of first reports of injury processed 40,000
- (b) Outcome: Percent of formal claims resolved without trial 85%
- (c) Outcome: Rate of serious injuries and illnesses caused by workplace conditions per one hundred workers .650
- (d) Outcome: Percent of employers referred for investigation that are determined to be in compliance with insurance requirements

of the Workers' Compensation Act 65%

(2) Uninsured employers' fund:

Appropriations:

(a)	Contractual services		100.0		100.0
(b)	Other	1,069.1		1,069.1	
	Subtotal		12,742.4		

DIVISION OF VOCATIONAL REHABILITATION:

(1) Rehabilitation services:

The purpose of the rehabilitation services program is to promote opportunities for people with disabilities to become more independent and productive by empowering individuals with disabilities so that they may maximize their employment, economic self-sufficiency, independence and inclusion and integration into society.

Appropriations:

(a)	Personal services and						
	employee benefits	2,697.1	15.0	787.5	10,490.6	13,990.2	
(b)	Contractual services	125.0	5.0	47.0	651.6	828.6	
(c)	Other	1,732.6	33.0	557.0	14,383.6	16,706.2	

Authorized FTE: 190.00 Permanent; 26.00 Term

The internal service funds/interagency transfers appropriation to the rehabilitation services program of the division of vocational rehabilitation in the other category includes four hundred sixty-six thousand dollars (\$466,000) to match with federal funds to support and enhance deaf and hard-of-hearing rehabilitation services.

Any unexpended balances in the division of vocational rehabilitation remaining at the end of fiscal year 2010 from appropriations made from the general fund shall not revert.

Performance measures:

(a) Outcome: Number of persons achieving suitable employment for a

minimum of ninety days 1,850

(b) Outcome: Percent of persons achieving suitable employment outcomes

of all cases closed after receiving planned services 60%

(c) Outcome: Percent of persons achieving suitable employment outcomes

who are competitively employed or self-employed 97%

(d) Outcome: Percent of persons with significant disabilities achieving

suitable employment outcomes who are competitively employed

or self-employed, earning at least minimum wage 96%

(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) Other 1,335.8 250.0 1,585.8

Performance measures:

(a) Output: Number of independent living plans developed 550

(b) Output: Number of individuals served for independent living 800

(3) Disability determination:

The purpose of the disability determination program is to produce accurate and timely eligibility determinations to social security disability applicants so that they may receive benefits.

Appropriations:

(a) Personal services and

employee benefits 6,441.4 6,441.4

(b) Contractual services 257.7 257.7

(c) Other 5,683.6 5,683.6

Authorized FTE: 97.00 Permanent

Performance measures:

(a) Efficiency:	Number of days for completing an initial disability claim	80
(b) Quality:	Percent of disability determinations completed accurately	97%
Subtotal		45,493.5

GOVERNOR'S COMMISSION ON DISABILITY:

(1) Information and advocacy:

The purpose of the governor's commission on disability 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 about the factors 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	700.4	20.0	720.4
(b)	Contractual services	339.4		339.4
(c)	Other	129.2	30.0	159.2

Authorized FTE: 10.00 Permanent

The general fund appropriation to the information and advocacy program of the governor's commission on disability in the contractual services category includes two hundred fifty thousand dollars (\$250,000) for support service providers ~~[for the community outreach program for the deaf] in Bernalillo county.~~ *LINE-ITEM VETO*

Performance measures:

(a) Outcome:	Number of presentations and events in which agency	
	participates and contributes	45
(b) Output:	Number of meetings held to develop collaborative	
	partnerships with other state agencies and private	
	disability agencies to ensure that quality of life issues	
	for New Mexicans with disabilities are being addressed	125

Subtotal 1,219.0

DEVELOPMENTAL DISABILITIES PLANNING COUNCIL:

(1) Consumer services:

The purpose of the consumer services program is to provide training, information and referral for individuals with disabilities and their family members so that they can live more independent and self-directed lives.

Appropriations:

(a)	Personal services and			
	employee benefits	86.2		86.2
(b)	Contractual services		9.0	9.0
(c)	Other	146.9	50.0	196.9

Authorized FTE: 2.00 Permanent

Performance measures:

(a) Output: Number of client contacts to assist on health, housing, transportation, education, child care, medicaid services and other programs 3,500

(2) Developmental disabilities planning council:

The purpose of the developmental disabilities planning council program is to provide and produce opportunities for people with disabilities so that they may realize their dreams and potentials and become integrated members of society.

Appropriations:

(a)	Personal services and			
	employee benefits	317.4	199.4	516.8
(b)	Contractual services		36.5	124.8 161.3
(c)	Other	154.8	186.3	341.1

Authorized FTE: 6.50 Permanent; 1.00 Term

Performance measures:

(a) Output: Number of persons with developmental disabilities, their family members or guardians and others involved in services for persons with developmental disabilities served by the agency in the federally mandated areas 3,500

(b) Output: Number of monitoring site visits conducted 36

(3) 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 aging and long-term services department's brain injury services fund so that they may align service delivery with needs identified by the brain injury community.

Appropriations:

(a)	Personal services and employee benefits	64.7	64.7
(b)	Contractual services	26.8	26.8
(c)	Other	36.5	36.5

Authorized FTE: 1.00 Permanent

(4) Office of guardianship:

The purpose of the office of guardianship is to enter into, monitor and enforce guardianship contracts for income-eligible individuals and help to 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	316.8	316.8
(b)	Contractual services	3,096.2	3,096.2
(c)	Other	105.4	105.4

Authorized FTE: 5.50 Permanent

Performance measures:

- (a) Outcome: Percent of wards properly served with the least restrictive means, as evidenced by an annual technical compliance audit 80%

Subtotal 4,957.7

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 | 9,074.2 | 3,716.6 | 145.8 | 12,936.6 |
| (b) Contractual services | 4,479.4 | 58.6 | 61.5 | 4,599.5 |
| (c) Other | 4,797.8 | 1,714.1 | 49.7 | 6,561.6 |
| (d) Other financing uses | | 5,489.3 | | 5,489.3 |

Authorized FTE: 211.50 Permanent; 13.50 Term

The internal service funds/interagency transfers appropriation to the healthcare program of miners' hospital of New Mexico in the other financing uses category includes five million four hundred eighty-nine thousand three hundred dollars (\$5,489,300) from the miners' trust fund.

Performance measures:

- (a) Outcome: Percent of billed revenue collected 80%
- (b) Output: Number of patient days at the long-term care facility 11,000
- (c) Output: Number of specialty clinic visits 900
- (d) Output: Number of emergency room visits 5,250
- (e) Output: Number of patient days at the acute care facility 6,900

Subtotal 29,587.0

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	29,256.2	2,026.3	2,997.0	19,483.4
	53,762.9			

(b) Contractual services 28,216.6 17,031.3 13.7 9,786.9
55,048.5

(c) Other 22,064.4 8,600.3 17,835.7 45,748.8 94,249.2

(d) Other financing uses 600.0 600.0

Authorized FTE: 382.50 Permanent; 638.50 Term; 1.00 Temporary

The general fund appropriation to the public health program of the department of health in the contractual services category includes two hundred thousand dollars (\$200,000) for operational support of women's health services in Santa Fe county.

The other state funds appropriations to the public health program of the department of health include nine million one hundred fifteen thousand dollars (\$9,115,000) from the tobacco settlement program fund for smoking cessation and prevention programs, one million two hundred thousand dollars (\$1,200,000) from the tobacco settlement program fund for diabetes prevention and control services, four hundred seventy thousand dollars (\$470,000) from the tobacco settlement program fund for HIV/AIDS prevention, services and medicine and two hundred thousand dollars (\$200,000) from the tobacco settlement program fund for breast and cervical cancer screening.

Any unexpended balances in the public health program of the department of health in the contractual services category from appropriations made from the county-supported medicaid fund for the support of primary health care services related to the Rural Primary Health Care Act remaining at the end of fiscal year 2010 shall not revert.

Performance measures:

(a) Output: Percent of preschoolers fully immunized 82%

(b) Outcome: National ranking of New Mexico teen birth rate per one

thousand girls age fifteen to seventeen 48th

(c) Outcome: Percent of adults who use tobacco 19.2%

(d) Output: Number of visits to agency-funded school-based health
centers 43,500

(e) Output: Number of youth served at school-based health centers 20,000

(f) Explanatory: Number of packs of cigarettes sold per New Mexican 28

(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 3,427.2 759.7 222.3 6,497.5 10,906.7

(b) Contractual services 1,917.1 149.7 50.0 5,615.6 7,732.4

(c) Other 4,509.2 100.2 39.4 2,005.0 6,653.8

Authorized FTE: 58.00 Permanent; 155.00 Term

Performance measures:

(a) Output: Number of designated trauma centers in the state 9

(b) Output: Number of health emergency exercises conducted to assess
and improve local capability 85

(3) Laboratory services:

The purpose of the laboratory services program is to provide laboratory analysis and science expertise for policy for tax-supported public health, environmental 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	5,028.8	1,794.9	923.0	7,746.7
(b)	Contractual services	301.0	120.8		421.8
(c)	Other	1,208.9	582.8	817.0	2,608.7

Authorized FTE: 84.00 Permanent; 50.00 Term

Performance measures:

- (a) Outcome: Percent of blood alcohol tests from
driving-while-intoxicated cases analyzed and reported
within seven business days 90%

(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	49,349.3	63,089.7	560.2	112,999.2
(b)	Contractual services	4,782.4	6,717.1	72.8	11,572.3
(c)	Other	9,463.3	12,970.8	83.0	22,517.1

Authorized FTE: 2,327.00 Permanent; 27.00 Temporary

~~[The general fund appropriation to the facilities management program of the department of health includes sufficient funding for twenty-five additional full-time equivalent positions at the Los Lunas community program.]~~LINE-ITEM VETO

Performance measures:

- (a) Outcome: Number of substantiated cases of abuse, neglect and
exploitation per one hundred residents in agency-operated
long-term care programs confirmed by the division of health

improvement 0

(b) Output: Percent of clients at turquoise lodge without relapses at

three to six months post discharge 45%

(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	3,957.1	5,670.6	480.6	10,108.3
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(b) Contractual services	15,770.6	1,200.0	1,034.1	1,061.2
	19,065.9			

(c) Other	18,215.2	595.0	1,029.9	19,840.1
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(d) Other financing uses	69,134.8			69,134.8
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Authorized FTE: 72.00 Permanent; 80.00 Term; 1.00 Temporary

The general fund appropriation to the developmental disabilities support program of the department of health in the other financing uses category includes sixty-nine million one hundred thirty-four thousand eight hundred dollars (\$69,134,800) for medicaid waiver services in local communities: two million three hundred ninety-four thousand six hundred dollars (\$2,394,600) for medically fragile services and sixty-six million seven hundred forty thousand two hundred dollars (\$66,740,200) for services to the developmentally disabled which includes five million four hundred thousand dollars (\$5,400,000) resulting from the enhanced federal medical assistance percentage to provide services[~~to approximately two hundred sixteen (216) additional clients currently on the waiting list~~]. *LINE-ITEM VETO*

The general fund appropriation to the developmental disabilities support program of the department of health in the contractual services category includes fifty-five thousand dollars (\$55,000) for the special olympics.

The general fund appropriation to the developmental disabilities support program of the department of health in the contractual services category includes fifteen thousand dollars (\$15,000) for the Las Vegas special olympics.

Performance measures:

(a) Outcome: Percent of adults receiving developmental disabilities day

services who are engaged in community-integrated employment 40%

(b) Outcome: Percent of families who report an increased capacity to address their child's developmental needs as an outcome of receiving early intervention services 97%

(c) Efficiency: Percent of developmental disabilities waiver applicants who have a service plan in place within ninety days of income and clinical eligibility determination 98%

(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	4,274.5	848.5	4,303.4	1,178.5	10,604.9
(b) Contractual services	531.0	5.6	16.6	553.2	
(c) Other	522.9	1,783.0	942.3	479.7	3,727.9

Authorized FTE: 55.00 Permanent; 123.00 Term

Performance measures:

(a) Outcome: Number of developmental disabilities providers receiving an unannounced survey 125

(b) Output: Percent of required compliance surveys completed for adult residential care and adult daycare facilities 80%

(7) 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	8,193.0	370.0	1,124.6	5,189.6	14,877.2
(b)	Contractual services	784.5		30.0	133.0	947.5
(c)	Other	4,019.0	1.2	24.8		4,045.0

Authorized FTE: 154.00 Permanent; 3.00 Term; 1.00 Temporary

~~[The general fund appropriation to the department of health in the contractual services category in all programs is contingent on the department of health including performance measures in its outcome-based contracts to increase oversight and accountability.]~~

~~The general fund appropriations to the department of health in the contractual services category in all programs is contingent on the department of health presenting to the department of finance and administration and the legislative finance committee by July 1, 2009, on the planned contract reductions and how performance contracting was used in planning reductions to ensure the best use of contracts to meet positive health outcomes.]~~ *LINE-ITEM VETO*

Performance measures:

(a) Output: Number of patient encounters provided through telehealth

sites statewide 4,000

Subtotal 539,724.1

DEPARTMENT OF ENVIRONMENT:

(1) Environmental health:

The purpose of the environmental health program is to protect public health and the environment through specific programs that provide regulatory oversight over food service and food processing facilities, regulation of on-site treatment and disposal of liquid wastes, regulation of public swimming pools and baths, regulation of medical radiation and radiological technologist certification, application of the mosquito abatement regulation, oversight of waste isolation pilot plant transportation and education and

public outreach about radon in homes and public buildings.

Appropriations:

(a)	Personal services and					
	employee benefits	5,218.8		2,934.5	148.2	8,301.5
(b)	Contractual services	20.7		51.5	90.0	162.2

(c) Other 1,024.3 952.6 56.7 2,033.6

Authorized FTE: 111.00 Permanent; 25.00 Term

Performance measures:

(a) Outcome: Percent of high-risk food-related violations corrected within the timeframes noted on the inspection report issued to permitted commercial food establishments 100%

(b) Output: Percent of annual permitted commercial food establishment inspections completed 100%

(c) Output: Percent of new septic tanks inspections completed 85%

(d) Output: Percent of radiation-producing machine inspections completed within the timeframes identified in radiation control bureau policies 95%

(2) Water quality:

The purpose of the water quality program is to protect the quality of New Mexico's ground- and surface-water resources to ensure clean and safe water supplies are available now and in the future to support domestic, agricultural, economic and recreational activities and provide healthy habitat for fish, plants and wildlife and to ensure that hazardous waste generation, storage, treatment and disposal is conducted in a manner protective of public health and environmental quality.

Appropriations:

(a) Personal services and				
employee benefits	2,586.3	4,944.9	7,172.2	14,703.4
(b) Contractual services	120.6	1,630.2	2,798.4	4,549.2
(c) Other	322.1	932.2	955.2	2,209.5

Authorized FTE: 46.00 Permanent; 158.50 Term

Performance measures:

(a) Output: Percent of large quantity generators inspected 20%

(b) Efficiency: Percent of department of energy generator site audits for the waste isolation pilot project on which agency action will be taken within forty-five days 80%

(c) Outcome: Percent of permitted facilities where monitoring results demonstrate compliance with groundwater standards 75%

(d) Explanatory: Stream miles and acreage of lakes monitored annually to determine if surface water quality is impaired 1,500/10K

(3) Environmental protection:

The purpose of the environmental protection program is to prevent releases of petroleum products into the environment, ensure solid waste is handled and disposed without harming natural resources, ensure New Mexicans breathe healthy air and ensure every employee safe and healthful working conditions.

Appropriations:

(a) Personal services and employee benefits	2,365.9	8,451.0	3,166.3	13,983.2
(b) Contractual services	98.5	396.3	227.1	721.9
(c) Other	316.4	1,786.7	420.3	2,523.4

Authorized FTE: 71.00 Permanent; 132.00 Term

Performance measures:

(a) Outcome: Annual statewide greenhouse gas emissions, in million metric tons 50.9

~~[(b) Outcome: Number of days per year in which the air quality index exceeds one hundred, exclusive of natural events such as high winds and wildfires -8]~~

(c) Outcome: Percent of facilities taking corrective action to mitigate air quality violations discovered as a result of inspections 100%

(d) Outcome: Percent of serious worker health and safety violations corrected within the timeframes designated on issued citations from the consultation and compliance sections 96%

(e) Outcome: Percent of active solid waste facilities and infectious waste generators inspected that were found to be in substantial compliance with the New Mexico solid waste rules 75%

(f) Outcome: Percent of underground storage tank facilities in significant operational compliance with release prevention and release detection regulations of the petroleum storage tank regulations 90%

(4) Water and wastewater infrastructure development:

The purpose of the water and wastewater infrastructure development program is to provide leadership for an interagency effort to develop a water and wastewater infrastructure evaluation plan, a uniform application implementation plan and recommendations for efficient and effective use of water and wastewater loan funds and to ensure compliance with the Safe Drinking Water Act.

Appropriations:

(a)	Personal services and				
	employee benefits	398.1	2,105.7	3,648.1	6,151.9
(b)	Contractual services	14.1	2,707.5	615.5	3,337.1
(c)	Other	44.7	404.3	829.7	1,278.7

Authorized FTE: 30.00 Permanent; 59.50 Term

Performance measures:

(a) Outcome: Number of boil water advisories issued to consumers when a water system violates the bacteria (or total coliform) standard and the presence of e. coli or fecal coliform is

detected TBD

(b) Efficiency: Percent of public drinking water systems inspected within one week of confirmation of system problems that might acutely impact public health 100%

(c) Explanatory: Number of new projects funded from the clean water state revolving fund program and the rural infrastructure revolving loan program TBD

(d) Explanatory: Dollar amount of new projects funded from the clean water state revolving fund program and the rural infrastructure revolving loan program TBD

(5) Program support:

The purpose of program support is to provide overall leadership, administrative, legal and information management support to allow programs to operate in the most knowledgeable, efficient and cost-effective manner so the public can receive the information it needs to hold the department accountable.

Appropriations:

(a)	Personal services and				
	employee benefits	2,906.0	1,881.6	1,844.3	6,631.9
(b)	Contractual services	123.4	128.1	589.7	841.2
(c)	Other	448.3	226.4	407.7	1,082.4

Authorized FTE: 50.00 Permanent; 33.00 Term

Performance measures:

(a) Output: Percent of prior-year significant audit findings resolved 100%

(b) Output: Percent of enforcement actions brought within one year of inspection or documentation of violation 96%

(6) Special revenue funds:

Appropriations:

(a)	Personal services and employee benefits	546.1	546.1	
(b)	Contractual services	3,015.0		3,015.0
(c)	Other	10,104.1	10,104.1	
(d)	Other financing uses	28,859.5		28,859.5

Authorized FTE: 4.50 Permanent

Subtotal 111,035.8

OFFICE OF THE NATURAL RESOURCES TRUSTEE:

(1) Natural resource damage assessment and restoration:

The purpose of the natural resources trustee program is to restore or replace natural resources or resource services injured or lost due to releases of hazardous substances or oil into the environment.

Appropriations:

(a)	Personal services and employee benefits	362.0	362.0	
(b)	Contractual services	17.6		17.6
(c)	Other	43.3	43.3	

Authorized FTE: 3.80 Permanent

Subtotal 422.9

NEW MEXICO HEALTH POLICY COMMISSION:

(1) Health information and policy analysis:

The purpose of the New Mexico health policy commission is to provide relevant and current health-related data, health research, information and comprehensive analysis to consumers, state health agencies, the executive, the legislature and the private health sector so they can obtain or provide improved health access in New Mexico.

Appropriations:

(a) Personal services and
employee benefits 606.0 606.0

(b) Other 200.0 5.0 205.0

Authorized FTE: 14.00 Permanent

Performance measures:

(a) Outcome: Number of health-related bills analyzed during the
legislative session 175

Subtotal 811.0

VETERANS' SERVICES DEPARTMENT:

(1) Veterans' services:

The purpose of the veterans' service program is to carry out the mandates of the New Mexico state legislature and the governor to provide information and assistance to veterans and their eligible dependents to obtain benefits to which they are entitled to improve their quality of life.

Appropriations:

(a) Personal services and
employee benefits 1,854.9 132.0 1,986.9

(b) Contractual services 988.9 988.9

(c) Other 398.1 20.0 34.0 452.1

Authorized FTE: 38.00 Permanent; 2.00 Term

Performance measures:

(a) Output: Number of veterans served by veterans' services department
field officers 35,000

(b) Output: Number of referrals from veterans' services officers to
contract veterans organizations 19,000

(c) Output: Number of homeless veterans provided overnight shelter for

a period of two weeks or more 300

(d) Output: Compensation received by New Mexico veterans as a result of the department's contracts with veterans' organizations, in millions \$85

(e) Output: Number of property tax waiver and exemption certificates issued to New Mexico veterans 9,000

Subtotal 3,427.9

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, behavioral health and other services that will support their rehabilitation.

Appropriations:

(a) Personal services and employee benefits	26,953.1	1,613.3	1,822.3	30,388.7
(b) Contractual services	7,725.0			7,725.0
(c) Other	4,848.9		4,848.9	

Authorized FTE: 564.50 Permanent

Performance measures:

(a) Outcome: Percent of juvenile justice division facility clients age eighteen and older who enter adult corrections within two years after discharge from a juvenile justice facility 6%

(b) Outcome: Percent of clients recommitted to a children, youth and families department facility within two years of discharge from facilities 10%

(c) Outcome: Percent of incidents in juvenile justice service facilities requiring use of force resulting in injury 3%

(d) Output: Percent of possible education credits earned by clients in juvenile justice division facilities 47%

(e) Output: Percent of youth in a juvenile justice services facility who are within one hundred miles of their family and home community 60%

(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	29,414.6	700.9	17,210.3	47,325.8	
(b)	Contractual services	3,653.1		8,630.2	12,283.3	
(c)	Other	27,384.6	1,566.3	26.3	21,677.5	50,654.7
(d)	Other financing uses			240.0	240.0	

Authorized FTE: 840.00 Permanent

Performance measures:

(a) Outcome: Percent of children who are not the subject of substantiated maltreatment within six months of a prior determination of substantiated maltreatment 91.5%

(b) Outcome: Percent of children reunified with their natural families in less than twelve months of entry into care 69.9%

(c) Output: Percent of children who are not the subject of

substantiated maltreatment while in foster care 99.68%

(3) Early childhood services:

The purpose of the early childhood services program is to provide quality child care, 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	2,579.4	585.7	4,443.2	7,608.3
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(b) Contractual services	15,565.6		2,000.0	2,572.6
	20,138.2			

(c) Other	18,326.6	1,177.0	39,634.6	72,676.3	131,814.5
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Authorized FTE: 104.50 Permanent; 47.00 Term

The internal service funds/interagency transfers appropriations to the early childhood services program of the children, youth and families department include thirty-nine million six hundred nineteen thousand three hundred dollars (\$39,619,300) for childcare programs, one million five hundred thousand dollars (\$1,500,000) for the pre-kindergarten program and five hundred thousand dollars (\$500,000) for home visiting from the temporary assistance for needy families block grant to New Mexico.

Performance measures:

(a) Outcome: Percent of children receiving state subsidy in stars/aim

high programs level two through five or with national

accreditation 60%

(b) Output: Percent of family providers participating in the child- and

adult-care food program 92%

(c) Output: Number of first home visits with families participating in

the home evaluation process 600

(4) Youth and family services:

The purpose of the youth and family services program is to develop and provide needed quality prevention, intervention and after-care services to youth and families in their communities.

Appropriations:

(a)	Personal services and				
	employee benefits	22,173.3	920.2	263.0	23,356.5
(b)	Contractual services	27,223.5	892.4	4,023.5	4,121.0
		36,260.4			
(c)	Other	2,856.9	138.4	2,995.3	

Authorized FTE: 384.10 Permanent; 12.00 Term

The internal service funds/interagency transfers appropriations to the youth and family services program of the children, youth and families department include three million six hundred thousand dollars (\$3,600,000) for domestic violence programs from the temporary assistance for needy families block grant to New Mexico.

Performance measures:

- (a) Outcome: Percent of adult victims or survivors receiving domestic violence services who have an individualized safety plan 70%
- (b) Outcome: Percent of domestic violence offenders who complete a batterer's intervention program 70%
- (c) Outcome: Percent of clients who complete formal probation 90%
- (d) Output: Percent of clients re-adjudicated within two years of previous adjudication 5.8%

(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	8,307.0	3,790.5		12,097.5
(b)	Contractual services	1,145.9	20.0	600.2	1,766.1

(c) Other	2,609.6	113.0	1,575.3	4,297.9
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Authorized FTE: 175.00 Permanent; 4.00 Term

Performance measures:

(a) Outcome: Percent vacancy rate for child welfare workers 12%

(b) Outcome: Percent vacancy rate for youth care specialists 8%

Subtotal			393,801.1	
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TOTAL HEALTH, HOSPITALS AND HUMAN	1,298,328.3	279,544.5	279,931.6
3,851,706.0	5,709,510.4		

SERVICES

G. PUBLIC SAFETY

DEPARTMENT OF MILITARY AFFAIRS:

(1) National guard support:

The purpose of the national guard support program is to provide administrative, fiscal, personnel, facility construction and maintenance support to the New Mexico national guard military and civilian activities so they can maintain a high degree of readiness to respond to state and federal missions.

Appropriations:

(a) Personal services and				
employee benefits	2,477.7	150.0	3,992.3	6,620.0
(b) Contractual services	148.9		1,855.3	2,004.2
(c) Other	3,536.0	60.4	4,940.3	8,536.7

Authorized FTE: 31.00 Permanent; 89.00 Term

The general fund appropriation to the national guard support program of the department of military affairs in the other category includes seventy-five thousand dollars (\$75,000) for the employee support of guard and reserve program.

Performance measures:

(a) Outcome: Rate of attrition of the New Mexico army national guard 16%

(b) Outcome: Percent of strength of the New Mexico national guard 90%

(c) Output: Number of major environmental compliance findings from inspections 10

(2) Crisis response:

The purpose of the crisis response program is to provide resources and a highly trained and experienced force to protect the public and improve the quality of life for New Mexicans.

Appropriations:

(a)	Personal services and			
	employee benefits	979.3	1,177.1	2,156.4
(b)	Contractual services	173.7	455.0	628.7
(c)	Other	136.1	47.9	184.0

Authorized FTE: 1.00 Permanent; 42.00 Term

Performance measures:

(a) Outcome: Percent of cadets successfully graduating from the youth challenge academy 90%

(b) Output: Number of New Mexico youth challenge academy cadets who earn their high school equivalency annually 95

Subtotal 20,130.0

PAROLE BOARD:

(1) Adult parole:

The purpose of the adult parole program is to provide and establish parole conditions and guidelines for inmates and parolees so they may reintegrate back into the community as law-abiding citizens.

Appropriations:

(a)	Personal services and			
	employee benefits	341.9	341.9	
(b)	Contractual services	7.4	7.4	

(c) Other 136.3 136.3

Authorized FTE: 6.00 Permanent

Performance measures:

(a) Output: Number of informational meetings held with individuals, advocacy groups and local, state, federal or county governments 25

(b) Efficiency: Percent of revocation hearings held within thirty days of a parolee's return to the corrections department 95%

(c) Outcome: Percent of parole certificates issued within ten days of hearing or ten days of receiving relevant information needed 95%

Subtotal 485.6

JUVENILE PAROLE BOARD:

(1) Juvenile parole:

The purpose of the juvenile parole board is to provide fair and impartial hearings through reviews to incarcerated youth so they can mainstream into society as law-abiding citizens.

Appropriations:

(a) Personal services and employee benefits 202.7 202.7
(b) Contractual services 3.2 3.2
(c) Other 18.5 18.5

Authorized FTE: 3.00 Permanent

Subtotal 224.4

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	89,498.4	7,585.4	97,083.8
(b)	Contractual services	51,089.5		51,089.5
(c)	Other	91,918.1	7,193.0	99,111.1

Authorized FTE: 1,801.00 Permanent; 42.00 Term

Performance measures:

- (a) Outcome: Percent turnover of correctional officers 13%
- (b) Outcome: Percent of women offenders successfully released in accordance with their scheduled release dates 95%
- (c) Output: Graduation rate of correctional officer cadets from the corrections department training academy 90%
- (d) Outcome: Percent of male offenders successfully released in accordance with their scheduled release dates 90%
- (e) Efficiency: Daily cost per inmate, in dollars \$87
- (f) Output: Percent of inmates testing positive for drug use (including inmates refusing to be tested) in a random monthly drug test <2%
- (g) Output: Number of inmate-on-inmate assaults with serious injury 23
- (h) Output: Number of inmate-on-staff assaults with serious injury 6
- (i) Output: Number of escapes from a publicly run corrections department secure facility 0

(j) Output: Number of escapes from a privately run corrections department secure facility 0

(k) Outcome: Percent of standard healthcare requirements met by medical contract vendor 87%

(l) Outcome: Percent of eligible sex offenders within three years of release who are receiving treatment 65%

(2) Inmate programming:

The purpose of the inmate programming program is to provide motivated inmates with the opportunity to participate in appropriate programs and services so they have less propensity toward inmate violence while incarcerated and the opportunity to acquire living skills and links to community support systems that can assist them on release.

Appropriations:

(a)	Personal services and				
	employee benefits	8,304.9	120.1		8,425.0
(b)	Contractual services	518.6		98.9	617.5
(c)	Other	654.0	5.0	45.4	704.4

Authorized FTE: 145.50 Permanent; 2.00 Term

Performance measures:

(a) Outcome: Recidivism rate of success for offenders after release program by thirty-six months 35%

(b) Output: Percent of released inmates who were enrolled in the success for offenders after release program who are now gainfully employed 78%

(c) Output: Percent of eligible inmates who earn a general equivalency diploma 78%

(d) Output: Percent of participating inmates completing adult basic
education 32%

(3) Corrections industries:

The purpose of the corrections industries program is to provide training and work experience opportunities for inmates in order to instill a quality work ethic and to prepare them to perform effectively in an employment position and to reduce idle time of inmates while in prison.

Appropriations:

(a) Personal services and employee benefits	1,692.2	1,692.2
(b) Contractual services	20.7	20.7
(c) Other	2,925.0	2,925.0

Authorized FTE: 38.00 Permanent; 4.00 Term

Performance measures:

(a) Outcome: Profit and loss ratio break even
(b) Outcome: Percent of eligible inmates employed 11%

(4) Community offender management:

The purpose of the community offender management program is to provide programming and supervision to offenders on probation and parole, with emphasis on high-risk offenders, to better ensure the probability of them becoming law-abiding citizens, to protect the public from undue risk and to provide intermediate sanctions and post-incarceration support services as a cost-effective alternative to incarceration.

Appropriations:

(a) Personal services and employee benefits	18,702.0	940.0	19,642.0
(b) Contractual services	39.6		39.6
(c) Other	11,640.0	760.0	12,400.0

Authorized FTE: 392.00 Permanent

No more than one million dollars (\$1,000,000) of the general fund appropriations to the community offender management program of the corrections department shall be used for detention costs for parole violators.

Performance measures:

- (a) Outcome: Percent turnover of probation and parole officers 20%
- (b) Outcome: Percent of out-of-office contacts per month with offenders
on high and extreme supervision on standard caseloads 90%
- (c) Quality: Average standard caseload per probation and parole officer 92
- (d) Quality: Average intensive supervision program caseload per
probation and parole officer 20
- (e) Output: Percent of absconders apprehended 15%
- (f) Quality: Average number of offenders in intensive or high-risk
supervision 25

(5) Community corrections/vendor-run:

The purpose of the community corrections/vendor-run program is to provide selected offenders on probation and parole with residential and nonresidential service settings and to provide intermediate sanctions and post-incarceration support services as a cost-effective alternative to incarceration without undue risk to the public.

Appropriations:

- (a) Personal services and
employee benefits 769.0 769.0
- (b) Contractual services 9.4 9.4
- (c) Other 3,012.2 587.8 3,600.0

Authorized FTE: 17.00 Permanent

The appropriations for the community corrections/vendor-run program of the corrections department are appropriated to the community corrections grant fund.

Performance measures:

- (a) Output: Average community corrections program caseload per probation and parole officer 30
- (b) Output: Percent of male offenders who complete the residential treatment center program 75%
- (c) Output: Percent of female offenders who complete the residential treatment center program 75%
- (d) Output: Percent of female offenders who complete the halfway house program 75%

(6) Program support:

The purpose of program support is to provide quality administrative support and oversight to the department operating units to ensure a clean audit, effective budget, personnel management and cost-effective management information system services.

Appropriations:

- (a) Personal services and employee benefits 6,180.3 60.0 243.7 6,484.0
- (b) Contractual services 586.7 586.7
- (c) Other 1,816.2 20.0 1,836.2

Authorized FTE: 91.00 Permanent

Performance measures:

- (a) Outcome: Percent of all prisoners reincarcerated back into the corrections department within thirty-six months 47%
- (b) Outcome: Percent of sex offenders reincarcerated back into the corrections department within thirty-six months 40%

Subtotal 307,036.1

CRIME VICTIMS REPARATION COMMISSION:

(1) Victim compensation:

The purpose of the victim compensation program is to provide financial assistance and information to victims of violent crime in New Mexico so they can receive services to restore their lives.

Appropriations:

(a)	Personal services and employee benefits	947.1	947.1
(b)	Contractual services	286.7	286.7
(c)	Other	1,153.5 450.0	1,603.5

Authorized FTE: 17.00 Permanent

Performance measures:

(a) Output:	Number of formal regional trainings conducted annually	8
(b) Output:	Number of formal internal staff trainings conducted annually	6
(c) Efficiency:	Average number of days to process applications	119

(2) Federal grant administration:

The purpose of the federal grant administration program is to provide funding and training to nonprofit victim providers and public agencies so they can provide services to victims of crime.

Appropriations:

(a)	Personal services and employee benefits	267.2	267.2
(b)	Contractual services	28.0	28.0
(c)	Other	3,602.9	3,602.9
(d)	Other financing uses	900.0	900.0

Authorized FTE: 4.00 Term

Performance measures:

(a) Efficiency: Percent of sub-recipients who receive compliance monitoring
via desk audits 85%

(b) Efficiency: Percent of site visits conducted 40%

(c) Output: Number of training workshops conducted for sub-recipients 12

Subtotal 7,635.4

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	57,035.8	1,350.8	3,360.1	2,716.6
	64,463.3			

(b) Contractual services 1,133.2 191.4 39.8 98.7 1,463.1

(c) Other 11,510.8 4,041.9 636.6 697.0 16,886.3

Authorized FTE: 833.00 Permanent; 3.00 Term; 24.10 Temporary

Up to one million dollars (\$1,000,000) is appropriated from the appropriation contingency fund to the law enforcement program of the department of public safety for the purpose of purchasing gasoline or avoiding a reduction in force of law enforcement officers. The appropriation is contingent on certification by the agency to the department of finance and administration and the legislative finance committee that no other funds, including federal funds, are available in fiscal year 2010 for the purpose specified and the appropriation is necessary to avoid disruption in service and approval by the state board of finance.

Performance measures:

(a) Outcome: Number of fatal crashes per year 400

(b) Outcome: Number of driving-while-intoxicated arrests by personnel

commissioned by the department of public safety 3,400

(c) Outcome: Number of drug arrests by personnel commissioned by the

department of public safety 1,200

(d) Outcome: Number of driving-while-intoxicated crashes investigated by department of public safety commissioned personnel 250

(e) Output: Number of administrative citations issued to licensed liquor establishments for the illegal sales or service of alcohol to minors and intoxicated persons by the special investigation division 250

(f) Outcome: Number of criminal cases investigated by personnel commissioned by the department of public safety 15,000

(g) Outcome: Number of criminal citations or arrests for the illegal sales or service of alcohol to minors and intoxicated persons by the special investigation division 200

(h) Output: Percent of strength of personnel commissioned by the department of public safety 87%

(2) Motor transportation:

The purpose of the motor transportation program is to lead motor carrier safety and size and weight enforcement, enforce commercial motor vehicle laws and regulations and provide first-line defense against threats to homeland security from individuals using commercial motor vehicles as a means of terrorism.

Appropriations:

(a) Personal services and				
employee benefits	7,458.3	5,616.6	2,771.4	15,846.3
(b) Contractual services	367.0	59.4	629.9	1,056.3
(c) Other	2,504.0	1,569.0	855.7	4,928.7

Authorized FTE: 218.50 Permanent; 53.00 Term

The internal service funds/interagency transfers appropriations to the motor transportation program of the department of public safety include six million nine hundred forty-nine thousand nine hundred dollars (\$6,949,900) from the state road fund.

Any unexpended balances in the department of public safety remaining at the end of fiscal year 2010 made from appropriations from the state road fund shall revert to the state road fund.

Performance measures:

(a) Outcome: Number of narcotic seizures by the motor transportation

division 60

(b) Output: Number of special weight-distance tax operations conducted

by motor transportation division 5

(c) Output: Number of citations issued by motor transportation division

officers to commercial motor carrier vehicles subject to,

and not in compliance with, the requirements of the Weight

Distance Tax Act 500

(d) Outcome: Number of commercial motor vehicle safety inspections by

the motor transportation division 90,000

(3) Program support:

The purpose of program support is to provide quality protection for the citizens of New Mexico through the business of information technology, forensic science, criminal records and financial management and administrative support to the participants in the criminal justice community.

Appropriations:

(a) Personal services and

employee benefits 10,681.1 1,212.0 41.8 821.2 12,756.1

(b) Contractual services 253.9 111.6 20.5 228.3 614.3

(c) Other 4,152.8 873.6 17.0 7,903.6 12,947.0

Authorized FTE: 167.00 Permanent; 42.00 Term

Performance measures:

- (a) Output: Percent of operability for all mission-critical software applications residing on agency servers 99.9%
- (b) Outcome: Percent of prior-year audit findings resolved 100%
- (c) Explanatory: Number of unfilled forensic scientist vacancies within the deoxyribonucleic acid discipline 0
- (d) Explanatory: Number of unfilled forensic scientist vacancies in the chemistry unit 0
- (e) Explanatory: Number of unfilled forensic scientist vacancies in the latent prints unit 0
- (f) Output: Percent of forensic cases completed within thirty working days 85%

Subtotal 130,961.4

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	1,811.1	92.3	2,837.3	4,740.7
(b)	Contractual services	98.1	27.0	1,547.7	1,672.8
(c)	Other	1,423.3	10.0	111.0	35,459.7
					37,004.0

Authorized FTE: 22.00 Permanent; 56.00 Term

Performance measures:

(a) Outcome: Number of exercises conducted annually in compliance with

federal guidelines 29

(b) Outcome: Number of local emergency operation plans, including that

for the terrorism incident annex, current within three years 32

(c) Outcome: Number of program and administrative team compliance visits

conducted each year on all grants 37

Subtotal 43,417.5

TOTAL PUBLIC SAFETY	393,717.3	30,240.8	12,000.3	73,932.0
509,890.4				

H. TRANSPORTATION

DEPARTMENT OF TRANSPORTATION:

(1) Programs and infrastructure:

The purpose of the programs and infrastructure 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	25,347.1	3,095.0	28,442.1
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(b) Contractual services	46,227.5	201,548.0	247,775.5
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(c) Other	68,315.2	150,373.4	218,688.6
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Authorized FTE: 411.00 Permanent; 41.00 Term

The other state funds appropriations to the program and infrastructure program of the department of transportation include eleven million eight hundred eighty thousand eight hundred dollars (\$11,880,800) for a state construction program.

Performance measures:

(a) Quality: Ride quality index for new construction 4

(b) Explanatory: Annual number of riders on park and ride 225,000

- (c) Outcome: Percent of airport runways in good condition 75%
- (d) Output: Number of crashes in established safety corridors 800
- (e) Outcome: Total number of traffic fatalities 414
- (f) Explanatory: Percent of projects in production let as scheduled 75%
- (g) Outcome: Annual number of riders on the rail runner corridor, in
millions 1.5
- (h) Outcome: Number of passengers not wearing seatbelts in motor vehicle
fatalities 184
- (i) Outcome: Number of alcohol-related traffic fatalities 160

(2) Transportation and highway operations:

The purpose of the transportation and 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	104,811.0	4,181.0	108,992.0
(b)	Contractual services	45,943.9		45,943.9
(c)	Other	100,544.9	319.0	100,863.9

Authorized FTE: 1,972.00 Permanent; 47.70 Term

Performance measures:

- (a) Outcome: Percent of interstate lane miles rated good 97%
- (b) Output: Amount of litter picked up off department roads, in tons 16,000
- (c) Quality: Customer satisfaction levels at rest areas 98%
- (d) Outcome: Number of statewide pavement preservation lane miles 4,000

(e) Outcome: Percent of non-interstate lane miles rated good 86%

(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 the management of construction and maintenance projects.

Appropriations:

(a)	Personal services and employee benefits	26,986.9	26,986.9
(b)	Contractual services	6,345.2	6,345.2
(c)	Other	15,213.2	15,213.2
(d)	Other financing uses	6,949.9	6,949.9

Authorized FTE: 280.00 Permanent; 4.80 Term

Performance measures:

(a) Quality: Number of external audit findings 6

(b) Quality: Percent of prior-year audit findings resolved 100%

(c) Outcome: Vacancy rate in all programs 9%

(d) Output: Percent of information technology projects on-time and
on-budget 100%

(e) Output: Number of employee work days lost due to accidents 110

(f) Outcome: Number of employee injuries 100

Subtotal 806,201.2

TOTAL TRANSPORTATION 446,684.8 359,516.4 806,201.2

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 focused on leadership and support, productivity, building capacity, accountability, communication and fiscal responsibility.

Appropriations:

(a)	Personal services and				
	employee benefits	14,720.4	698.5	6,930.2	22,349.1
(b)	Contractual services	714.0	82.0	19,466.1	20,262.1
(c)	Other	562.0	397.5	3,373.6	4,333.1

Authorized FTE: 216.20 Permanent; 111.00 Term; 4.60 Temporary

Performance measures:

- (a) Outcome: Percent of No Child Left Behind Act adequate yearly progress designations accurately reported by August 1 100%
- (b) Outcome: Percent completion of the data warehouse project 75%
- (c) Outcome: Percent of teachers passing all strands of professional dossiers on the first submittal 85%
- (d) Outcome: Percent of bureaus in five core areas (data collection and reporting, assessment and accountability, special education, capital outlay, school budget and finance analysis) meeting the public education department's customer service standards 85%

Subtotal 46,944.3

APPRENTICESHIP ASSISTANCE:

Appropriations: 650.0 650.0

Subtotal 650.0

REGIONAL EDUCATION COOPERATIVES:

Appropriations:

(a)	Northwest:	133.3		1,593.0	1,726.3
(b)	Northeast:	133.3		2,415.4	2,548.7
(c)	Lea county:	133.3		3,900.0	4,033.3
(d)	Pecos valley:	133.3	1,321.5	1,371.8	2,826.6
(e)	Southwest:	133.3	300.0	4,500.0	4,933.3
(f)	Central:	133.3	2,000.0	2,000.0	4,133.3
(g)	High plains:	133.4	3,357.5	2,854.8	6,345.7
(h)	Clovis:	133.4	335.7	1,700.0	2,169.1
(i)	Ruidoso:	133.4	4,000.0	4,800.0	8,933.4
	Subtotal			37,649.7	

PUBLIC EDUCATION DEPARTMENT SPECIAL APPROPRIATIONS:

Appropriations:

(a)	Beginning teacher mentorship		1,491.5		1,491.5
(b)	Breakfast for elementary students	3,430.5		3,430.5	
(c)	After school enrichment	1,000.0			1,000.0
(d)	Family and Youth Resource Act	397.7		397.7	
(e)	Pre-kindergarten program	8,452.1		1,500.0	9,952.1
(f)	Graduation reality and dual-role skills program	550.0	250.0	800.0	

(g)	Truancy and drop out prevention	298.3	298.3
(h)	New Mexico cyber academy	994.4	994.4
(i)	Rural revitalization	100.0	100.0
(j)	Kindergarten-three plus	8,452.1	8,452.1
(k)	Advanced placement	1,750.0	1,750.0
(l)	Summer reading, math and science institutes	2,485.9	2,485.9
(m)	School improvement framework	994.4	994.4

The internal service funds/interagency transfers appropriation to the public education department

includes one million five hundred thousand dollars (\$1,500,000) for the pre-kindergarten program from the temporary assistance for needy families block grant to New Mexico.

The internal service funds/interagency transfers appropriation to the public education department includes two hundred fifty thousand dollars (\$250,000) for the graduation reality and dual-role skills program from the temporary assistance for needy families block grant to New Mexico.

The general fund appropriation to the public education department for the New Mexico cyber academy includes two hundred fifty thousand dollars (\$250,000) ~~to provide competitive grants not to exceed twenty five thousand dollars (\$25,000) to provide professional development for [middle school and high school] teachers and to purchase site licenses for web-based learning resources [for middle school and high school] students [in school districts with the highest percentage of public middle schools and high schools that are designated as Title I schools and that serve the highest percentage of public middle school and high school students who are not meeting the proficiency component required for calculating adequate yearly progress].~~ *LINE-ITEM VETO*

Any unexpended balances in the special appropriations to the public education department remaining at the end of fiscal year 2010 from appropriations made from the general fund shall revert to the general fund.

Subtotal 32,146.9

PUBLIC SCHOOL FACILITIES AUTHORITY:

The purpose of the public school facilities oversight program is to oversee public school facilities in all eighty-nine school districts to ensure correct and prudent planning, building and maintenance using state funds and to ensure adequacy of all facilities in accordance with educational programs approved by the public education department.

Appropriations:

(a)	Personal services and employee benefits	4,201.0	4,201.0
(b)	Contractual services	353.1	353.1
(c)	Other	1,624.5	1,624.5

Authorized FTE: 54.00 Permanent

The other state funds appropriation to the public school facilities authority in the other category includes one hundred fourteen thousand eight hundred dollars (\$114,800) to purchase vehicles.

Performance measures:

(a) Outcome: Percent of projects meeting all contingencies completed

within the specified period of awards 75%

(b) Efficiency: Percent compliance with prompt payment provisions of the

Retainage Act for all direct payments to vendors 90%

(c) Explanatory: Change in statewide public school facility condition index

measured at December 31 of prior calendar year compared

with prior year

Subtotal 6,178.6

TOTAL OTHER EDUCATION 48,243.3 18,671.3 1,750.0 54,904.9 123,569.5

J. HIGHER EDUCATION

On approval 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, with the exception of the policy development and institutional financial oversight program of the higher education department, 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.

The general fund appropriations for special project expansion and flexibility are to continue projects initiated by Chapter 34 of Laws 2005 and for other purposes.

Notwithstanding the provisions of Section 21-1-33 NMSA 1978 or the provisions of the higher

education department manual of financial reporting for public institutions in New Mexico, the institutional equipment renewal and replacement inventory bases used to calculate the formula funding request in

fiscal year 2010 for instruction and general purposes shall be used for instruction and general purposes in fiscal year 2011.

Notwithstanding the provisions of Section 21-1-33 NMSA 1978 or the provisions of the higher education department manual of financial reporting for public institutions in New Mexico, in fiscal year 2010, higher education institutions may, subject to the prior approval of the higher education department, budget and expend up to ten percent of building renewal and replacement funds appropriated in the General Appropriation Act of 2009 as part of the institution's instruction and general purposes appropriation for other purposes provided that the transfers will be used for instruction and general.

Notwithstanding the provisions of Section 21-1-33 NMSA 1978 or the provisions of the higher education department manual of financial reporting for public institutions in New Mexico, in fiscal year 2010, higher education institutions may, subject to the prior approval of the higher education department and the department of finance and administration~~[-and review by the legislative finance committee]~~, budget and expend amounts over ten percent and not more than seventy-five percent of building renewal and replacement funds appropriated in the General Appropriation Act of 2009 as part of the institution's instruction and general purposes appropriation for other purposes provided that the transfers will be used for instruction and general. *LINE-ITEM VETO*

Except as otherwise provided, any unexpended balances remaining at the end of fiscal year 2010 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 to ensure both the efficient use of state resources and progress in

implementing a statewide agenda.

Appropriations:

(a)	Personal services and					
	employee benefits	3,016.5	60.0	162.5	660.4	3,899.4
(b)	Contractual services	280.4			1,419.4	1,699.8
(c)	Other	6,273.0	5.0	4.0	3,168.4	9,450.4
(d)	Other financing uses	9,250.0			2,018.3	11,268.3

Authorized FTE: 34.50 Permanent; 19.50 Term

Any unexpended balances in the policy development and institutional financial oversight program remaining at the end of fiscal year 2010 from appropriations made from the general fund shall revert to the general fund.

Performance measures:

(a) Output: Percent of adult basic education students who set and attain the goal of acquiring the general educational development certificate 40%

(b) Efficiency: Percent of properly completed capital infrastructure draws released to the state board of finance within thirty days of receipt from the institutions 95%

(c) Output: Number of outreach services and events provided to secondary schools and students related to college readiness, college preparation curriculum and financial aid 4,500

(d) Efficiency: Percent of properly completed financial aid allocations and draw-downs processed within thirty days 90%

(2) Student financial aid:

The purpose of the student financial aid program is to provide access, affordability and opportunities for success in higher education to students and their families so that all New Mexicans can benefit from postsecondary education and training beyond high school.

Appropriations:

(a)	Other	10,947.3	3,371.2	200.0	14,518.5
(b)	Other financing uses	15,107.5	50,644.8	349.0	66,101.3

Performance measures:

(a) Output: Number of lottery success recipients enrolled in or graduated from college after the ninth semester 3,200

(b) Outcome: Percent of students meeting eligibility criteria for state loan programs who continue to be enrolled by the sixth semester 78%

(c) Outcome: Percent of students meeting eligibility criteria for work-study programs who continue to be enrolled by the sixth semester 75%

(d) Outcome: Percent of students meeting eligibility criteria for merit-based programs who continue to be enrolled by the sixth semester 68%

(e) Outcome: Percent of students meeting eligibility criteria for need-based programs who continue to be enrolled by the sixth semester 66%

(f) Output: Number of students receiving college affordability awards 1,500

Subtotal 106,937.7

HIGHER EDUCATION DEPARTMENT:

(1) Educational retirement board contribution:

Appropriations: 6,024.0 6,024.0

Subtotal 6,024.0

UNIVERSITY OF NEW MEXICO:

(1) Main campus:

The purpose of the instruction and general program is to provide education services designated to meet the intellectual, educational and quality of life goals associated with the ability to enter the work force, compete and advance in the new economy and contribute to social advancement through informed citizenship.

Appropriations:

(a) Instruction and general purposes 185,952.7 150,974.0 6,013.0 342,939.7

(b) Athletics 2,734.7 25,361.0 21.0 28,116.7

(c)	Educational television	1,251.0	3,323.0	1,100.0
		5,674.0		

(d)	Other	188,729.0	107,435.0	296,164.0
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Performance measures:

(a) Outcome: Number of first-time freshmen from New Mexico who are
Native American 210

(b) Outcome: Percent of full-time, degree-seeking, first-time freshmen
retained to second year 78%

(c) Outcome: Amount of external dollars for research and public service,
in millions \$120

(d) Output: Number of undergraduate transfer students from two-year
colleges 1,690

(e) Outcome: Percent of full-time, degree-seeking, first-time freshmen
completing an academic program within six years 46%

(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	9,799.7	6,741.0	889.0 17,429.7

(b)	Nurse expansion	35.1		35.1
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(c)	Other	1,286.0	238.0	1,524.0
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Performance measures:

(a) Outcome: Percent of new students taking nine or more credit hours

successful after three years 43%

(b) Outcome: Percent of graduates placed in jobs in New Mexico 60%

(c) Output: Number of students enrolled in the area vocational schools
program 400

(d) Outcome: Percent of first-time, full-time, degree-seeking students
enrolled in a given fall term who persist to the following
spring term 83%

(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	2,296.2	1,604.0	25.0	3,925.2
(b)	Other	621.0	420.0	1,041.0	

Performance measures:

(a) Outcome: Percent of new students taking nine or more credit hours
successful after three years 56%

(b) Outcome: Percent of graduates placed in jobs in New Mexico 45%

(c) Outcome: Percent of Asian graduates 4%

(d) Output: Number of students enrolled in the small business
development center program 280

(e) Outcome: Percent of first-time, full-time, degree-seeking students
enrolled in a given fall term who persist to the following

spring term 77%

(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	5,387.4	4,034.0	2,650.0	12,071.4
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(b) Other 1,517.0 204.0 1,721.0

Performance measures:

(a) Outcome: Percent of new students taking nine or more credit hours

successful after three years 62%

(b) Outcome: Percent of graduates placed in jobs in New Mexico 68%

(c) Output: Number of students enrolled in the adult basic education

program 950

(d) Outcome: Percent of first-time, full-time, degree-seeking students

enrolled in a given fall term who persist to the following

spring term 81%

(5) 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	2,412.9	2,708.0	405.0	5,525.9
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(b) Other 1,061.0 1,061.0

Performance measures:

(a) Outcome: Percent of new students taking nine or more credit hours
successful after three years 59%

(b) Outcome: Percent of graduates placed in jobs in New Mexico 66%

(c) Output: Number of students enrolled in the concurrent enrollment
program 400

(d) Outcome: Percent of first-time, full-time, degree-seeking students
enrolled in a given fall term who persist to the following
spring term 71%

(6) Research and public service projects:

Appropriations:

(a) Judicial selection 60.8 60.8

(b) Judicial education center 185.7 185.7

(c) Spanish resource center 81.2 81.2

(d) Southwest research center 1,429.7 1,429.7

(e) Substance abuse program 198.6 198.6

(f) Native American intervention 202.3 202.3

(g) Resource geographic
information system 102.1 102.1

(h) Natural heritage program 82.5 82.5

(i) Southwest Indian law
clinic 216.4 216.4

(j)	Bureau of business and economic research census and population analysis	473.4	473.4
(k)	New Mexico historical review	63.2	63.2
(l)	Ibero-American education consortium	133.7	133.7
(m)	Youth education recreation program	156.0	156.0
(n)	Advanced materials research	49.7	49.7
(o)	Manufacturing engineering program	501.2	501.2
(p)	Hispanic student center	121.4	121.4
(q)	Wildlife law education	134.9	134.9
(r)	Youth leadership development	79.2	79.2
(s)	Morrissey hall research	58.2	58.2
(t)	Africana studies faculty initiative	100.0	100.0
(u)	Disabled student services	233.9	233.9
(v)	Minority graduate recruitment and retention	167.5	167.5
(w)	Graduate research		

	development fund	82.1		82.1
(x)	Community-based education		626.6	626.6
(y)	Corrine Wolfe children's law center	269.4		269.4
(z)	Mock trials program	107.1		107.1
(aa)	Special projects expansion and flexibility	289.0		289.0
(bb)	Engaging Latino communities for education	96.7		96.7
(cc)	Pre-college minority student math and science	300.0		300.0
(dd)	Latin American student recruitment	164.7		164.7
(ee)	Saturday science and math academy	65.7		65.7
(ff)	Utton transboundary resources center	463.2		463.2
(gg)	Law college prep mentoring program	192.3		192.3
(hh)	UNM law library improvements		140.0	140.0
(ii)	Navajo language research and teaching	100.0		100.0
(jj)	Biomedical engineering	208.8		208.8

(kk)	Student athlete retention	237.5	237.5
(ll)	Department of media arts	173.5	173.5
(mm)	International education initiatives	266.0	266.0
(nn)	College mentoring program	135.9	135.9
(oo)	Institute for aerospace engineering	72.0	72.0
(pp)	Alfonso Ortiz center	41.0	41.0
(qq)	African American studies	30.0	30.0
(rr)	African American student services program	26.0	26.0
(ss)	Center for Latin American resource and outreach	39.0	39.0
(tt)	Morrisey hall and African American performing arts	64.0	64.0
(uu)	Land grant studies	84.2	84.2
(vv)	Latin American studies recruit, retain faculty and students	134.0	134.0
(ww)	Latin American, Iberian Institute and Latin American studies	33.3	33.3
(xx)	Arts laboratory	145.0	145.0

(7) Health sciences center:

The purpose of the instruction and general program is to provide education services designed to meet the intellectual, educational and quality of life goals associated with the ability to enter the work force,

compete and advance in the new economy and contribute to social advancement through informed citizenship.

Appropriations:

(a)	Instruction and general purposes	61,398.9	34,247.0	2,185.0	97,830.9
(b)	Office of medical investigator	4,167.8	2,164.0		6,331.8
(c)	Emergency medical services academy	908.0	525.0	1,433.0	
(d)	Children's psychiatric hospital	7,524.9	12,956.0		20,480.9
(e)	Hemophilia program		579.7		579.7
(f)	Carrie Tingley hospital		5,432.7	13,809.0	19,241.7
(g)	Out-of-county indigent fund		1,241.1	1,241.1	
(h)	Specialized perinatal care		612.4		612.4
(i)	Newborn intensive care		3,647.0	2,052.0	5,699.0
(j)	Pediatric oncology	996.1	420.0	1,416.1	
(k)	Young children's health center	637.8	1,931.0		2,568.8
(l)	Pediatric pulmonary center		206.1		206.1
(m)	Area health education centers		180.4	166.0	368.0
(n)	Grief intervention program		182.7		182.7

(o)	Pediatric dysmorphology	158.7			158.7
(p)	Locum tenens	730.1	1,704.0		2,434.1
(q)	Disaster medicine program	112.5			112.5
(r)	Poison control center	1,503.6	450.0	75.0	2,028.6
(s)	Fetal alcohol study	137.8		137.8	
(t)	Telemedicine	534.4	263.0	573.0	1,370.4
(u)	Nurse-midwifery program	353.8			353.8
(v)	Cancer center	2,955.4	5,254.0	8,432.0	16,641.4
(w)	Oncology	99.9		99.9	
(x)	Lung and tobacco-related illnesses	950.0		950.0	
(y)	Genomics, biocomputing and environmental health research	208.1	1,425.0		1,633.1
(z)	Los pasos program	8.4	53.0	61.4	
(aa)	Trauma specialty education	29.8	420.0		449.8
(bb)	Pediatrics specialty education	29.0	420.0	449.0	
(cc)	Native American health center	327.2		327.2	
(dd)	Donated dental services	25.0			25.0
(ee)	Rural physicians residencies	302.2			302.2
(ff)	Hepatitis community health outcomes	997.0		997.0	

(gg)	Dental residencies	98.9		98.9
(hh)	Nurse expansion	1,922.1		1,922.1
(ii)	Cooperative pharmacy program	457.0		457.0
(jj)	Integrative medicine program	311.2	289.0	600.2
(kk)	Nurse advice line	33.8		33.8
(ll)	Multidisciplinary evaluation clinic	49.3		49.3
(mm)	Other	279,429.0	73,198.0	352,627.0

The other state funds appropriations to the university of New Mexico health sciences center include five million eighty thousand dollars (\$5,080,000) from the tobacco settlement fund: nine hundred thousand dollars (\$900,000) for research and clinical care programs in lung and tobacco-related illnesses; nine hundred thirty thousand dollars (\$930,000) for instruction and general purposes; one million three hundred fifty thousand dollars (\$1,350,000) for research in genomics, biocomputing and environmental health; four hundred fifty thousand dollars (\$450,000) for the poison control center; four hundred thousand dollars (\$400,000) for the pediatric oncology program; one hundred fifty thousand dollars (\$150,000) for the telemedicine program; fifty thousand dollars (\$50,000) for the los pasos program; fifty thousand dollars (\$50,000) for area health education centers; four hundred thousand dollars (\$400,000) for specialty education in trauma; and four hundred thousand dollars (\$400,000) for specialty education in pediatrics. These funds may not be used for any other purpose.

Performance measures:

(a) Output: University of New Mexico hospital inpatient readmission rate 4.8%

(b) Output: Number of university of New Mexico cancer research and
treatment center clinical trials 230

(c) Output: Number of post-baccalaureate degrees awarded 305

(d) Outcome: External dollars for research and public service, in
millions \$255.5

(e) Outcome: Pass rates for step three of the United States medical
licensing exam on the first attempt 98%

Subtotal 1,269,506.1

NEW MEXICO STATE UNIVERSITY:

(1) Main campus:

The purpose of the instruction and general program is to provide education services designed to meet the intellectual, educational and quality of life goals associated with the ability to enter the work force, compete and advance in the new economy and contribute to social advancement through informed citizenship.

Appropriations:

(a)	Instruction and general purposes	124,432.2	78,439.0	8,139.0	211,010.2
(b)	Athletics	3,751.8	9,802.0	41.0	13,594.8
(c)	Educational television	1,161.3	954.0		2,115.3
(d)	Other	88,559.0	94,669.0	183,228.0	

Performance measures:

(a) Outcome: Percent of full-time, degree-seeking, first-time freshmen retained to second year 83%

(b) Outcome: External dollars for research and creative activity, in millions \$180.4

(c) Output: Number of teacher preparation programs available at New Mexico community college sites 5

(d) Outcome: Percent of full-time, degree-seeking, first-time freshmen completing an academic program within six years 51%

(e) Outcome: Number of undergraduate transfer students from two-year colleges 1,028

(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	7,196.4	3,308.0	624.0	11,128.4
(b)	Nurse expansion	29.5		29.5	
(c)	Other	666.0	2,355.0	3,021.0	

Performance measures:

(a) Outcome: Percent of new students taking nine or more credit hours successful after three years 50%

(b) Outcome: Percent of graduates placed in jobs in New Mexico 69%

(c) Output: Number of students enrolled in the small business development center program 800

(d) Outcome: Percent of first-time, full-time, degree-seeking students enrolled in a given fall term who persist to the following spring term 79%

(3) 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	4,380.3	3,415.0	793.0	8,588.3
(b)	Nurse expansion	118.2		118.2	
(c)	Other	1,380.0	2,599.0	3,979.0	

Performance measures:

(a) Outcome: Percent of new students taking nine or more credit hours

successful after three years 70%

(b) Outcome: Percent of graduates placed in jobs in New Mexico 85%

(c) Output: Number of students enrolled in the contract training program 450

(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	20,319.3	12,384.0	1,726.0	34,429.3
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(b) Nurse expansion	110.2		110.2	
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(c) Other	3,312.0	9,583.0	12,895.0	
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Performance measures:

(a) Outcome: Percent of new students taking nine or more credit hours

successful after three years 46%

(b) Outcome: Percent of graduates placed in jobs in New Mexico 77%

(c) Output: Number of students enrolled in the adult basic education

program 5,000

(d) Outcome: Percent of first-time, full-time, degree-seeking students

enrolled in a given fall term who persist to the following

spring term 82%

(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.

ppropriations:

(a) Instruction and general

purposes	3,314.4	1,214.0	121.0	4,649.4
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(b) Other 683.0 1,031.0 1,714.0

Performance measures:

(a) Outcome: Percent of new students taking nine or more credit hours

successful after three years 53%

(b) Outcome: Percent of graduates placed in jobs in New Mexico 82%

(c) Output: Number of students enrolled in the community services

program 550

(d) Outcome: Percent of first-time, full-time, degree-seeking students

enrolled in a given fall term who persist to the following

spring term 79%

(6) Department of agriculture:

Appropriations:	11,215.3	3,201.0	1,500.0	15,916.3
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(7) Research and public service projects:

Appropriations:

(a) Special projects expansion

and flexibility	304.0		304.0	
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(b) Agricultural experiment

station	15,195.0	4,150.0	9,000.0	28,345.0
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(c)	Cooperative extension				
	service	12,478.4	6,400.0	11,800.0	30,678.4
(d)	Water resource research	438.5	387.0	825.5	
(e)	Coordination of Mexico				
	programs	67.0		67.0	
(f)	Indian resources development		378.3		378.3
(g)	Waste management				
	education program	481.1		2,200.0	2,681.1
(h)	Campus security	59.7		59.7	
(i)	Carlsbad manufacturing				
	sector development program		392.7		392.7
(j)	Manufacturing sector				
	development program	381.6			381.6
(k)	Alliances for				
	underrepresented students	347.2	35.0		382.2
(l)	Arrowhead center for				
	business development	120.1		1,593.0	1,713.1
(m)	Viticulturist	207.6		207.6	
(n)	Aerospace engineering	407.9		407.9	
(o)	Nurse expansion	814.5		814.5	
(p)	New Mexico space consortium				
	grant		855.0	855.0	
(q)	Las Vegas schools agriculture				

	education program	91.0		91.0
(r)	Tribal extension program	238.2		238.2
(s)	Institute for international relations	175.9	35.0	210.9
(t)	Mental health nurse practitioner	415.0		415.0
(u)	College of agriculture leadership program	87.3		87.3
(v)	Family wellness program	28.2		28.2
(w)	Space consortium and outreach program	96.3		96.3
(x)	Alliance teaching and learning advancement	139.0		139.0
(y)	College assistance migrant program	277.2		277.2
(z)	Nursing scholarships	25.0		25.0
(aa)	Chile industry	236.1		236.1
(bb)	Science education enhancement teachers	35.1		35.1
(cc)	Speech and hearing program	100.0		100.0
	Subtotal		576,999.8	

NEW MEXICO HIGHLANDS UNIVERSITY:

(1) Main:

The purpose of the instruction and general program is to provide education services designed to meet the intellectual, educational and quality of life goals associated with the ability to enter the work force, compete and advance in the new economy and contribute to social advancement through informed citizenship.

Appropriations:

(a) Instruction and general

purposes	28,677.2	9,618.0	426.0	38,721.2
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(b) Athletics, wrestling and

rodeo	2,247.9	166.0	22.0	2,435.9
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(c) Other

12,979.0	9,149.0	22,128.0
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Performance measures:

(a) Outcome: Percent of full-time, degree-seeking, first-time freshmen

retained to second year 54%

(b) Outcome: Percent of graduating seniors indicating "satisfied" or

"very satisfied" with the university on student

satisfaction survey 90%

(c) Outcome: Percent of total funds generated by grants and contracts 16%

(d) Output: Number of undergraduate transfer students from two-year

colleges 425

(e) Output: Percent of full-time, degree-seeking, first-time freshmen

completing an academic program within six years 21%

(2) Research and public service projects:

Appropriations:

(a) Special projects expansion

	and flexibility	93.1		93.1
(b)	Upward bound	100.1		100.1
(c)	Advanced placement	281.1		281.1
(d)	Native American recruitment and retention	24.1		24.1
(e)	Diverse populations study	257.3		257.3
(f)	Spanish program	308.2		308.2
(g)	Forest and watershed institute	251.1		251.1
(h)	Bilingual education material	57.0		57.0
(i)	Social work outreach and clinical training	49.5		49.5
(j)	Medical school preparation	50.0		50.0
	Subtotal		64,756.6	

WESTERN NEW MEXICO UNIVERSITY:

(1) Main:

The purpose of the instruction and general program is to provide education services designed to meet the intellectual, educational and quality of life goals associated with the ability to enter the work force, compete and advance in the new economy and contribute to social advancement through informed citizenship.

Appropriations:

(a)	Instruction and general purposes	16,331.0	6,989.0	224.0	23,544.0
(b)	Athletics	2,091.8	156.0		2,247.8
(c)	Other	3,782.0	3,965.0		7,747.0

Performance measures:

- (a) Outcome: Percent of full-time, degree-seeking, first-time freshmen retained to second year 51%
- (b) Output: Number of graduates from the school of education 150
- (c) Outcome: External dollars to be used for programs to promote student success, in millions \$3
- (d) Output: Number of undergraduate transfer students from two-year colleges 185
- (e) Output: Percent of full-time, degree-seeking, first-time freshmen completing an academic program within six years 22.5%

(2) Research and public service projects:

Appropriations:

(a)	Child development center	392.3	664.0	1,056.3
(b)	Instructional television	90.2		90.2
(c)	Web-based teacher licensure	259.2		259.2
(d)	Nurse expansion	552.1		552.1
(e)	Criminal justice program	42.5		42.5
	Subtotal			35,539.1

EASTERN NEW MEXICO UNIVERSITY:

(1) Main campus:

The purpose of the instruction and general program is to provide education services designed to meet the intellectual, educational and quality of life goals associated with the ability to enter the work force, compete and advance in the new economy and contribute to social advancement through informed citizenship.

Appropriations:

(a)	Instruction and general purposes	26,607.7	11,244.0	3,234.0	41,085.7
(b)	Athletics	2,387.8	828.0	11.0	3,226.8
(c)	Educational television	1,187.5	1,511.0	630.0	3,328.5
(d)	Other	12,920.0	9,695.0	22,615.0	

Performance measures:

(a) Outcome: Percent of full-time, degree-seeking, first-time freshmen retained to second year 62%

(b) Outcome: External dollars supporting research and student success, in millions \$8

(c) Output: Number of undergraduate transfer students from two-year colleges 450

(d) Output: Percent of full-time, degree-seeking, first-time freshmen completing an academic program within six years 34.5%

(e) Outcome: Percent of graduating seniors who are "satisfied" or "very satisfied" with their educational experience 95%

(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	14,463.4	6,378.0	3,999.0	24,840.4
(b)	Distance education for high				

	school	37.5		37.5
(c)	Nurse expansion	73.9		73.9
(d)	Other	5,376.0	6,045.0	11,421.0

Performance measures:

(a) Outcome: Percent of new students taking nine or more credit hours

successful after three years 49%

(b) Outcome: Percent of graduates placed in jobs in New Mexico 65%

(c) Efficiency: Percent of programs having stable or increasing enrollments 60%

(d) Outcome: Percent of first-time, full-time, degree-seeking students

enrolled in a given fall term who persist to the following

spring term 76.9%

(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 1,745.2 1,659.0 236.0 3,640.2

(b) Adult basic education-

Ruidoso 89.4 53.0 142.4

(c) Other 603.0 471.0 1,074.0

Performance measures:

(a) Outcome: Percent of new students taking nine or more credit hours

successful after three years 54%

(b) Efficiency: Percent of programs having stable or increasing enrollments 75%

(c) Outcome: Percent of first-time, full-time, degree-seeking students

enrolled in a given fall term who persist to the following

spring term 64%

(4) Research and public service projects::

Appropriations:

(a) Special projects expansion

and flexibility 103.0 103.0

(b) Blackwater Draw site and

museum 99.0 11.0 110.0

(c) Social work 149.7 149.7

(d) Student success programs 77.0 77.0

(e) Airframe mechanics 49.1 49.1

(f) Aviation science technology 95.0 95.0

(g) Emergency medical services

management 95.0 95.0

(h) Nurse expansion 41.2 41.2

(i) Distance teacher education 175.0 175.0

(j) At-risk student tutoring 98.0 98.0

(k) Speech and hearing

rehabilitation outreach 54.0 54.0

(l) Science and math teacher

development 94.1 94.1

Subtotal 112,626.5

NEW MEXICO INSTITUTE OF MINING AND TECHNOLOGY:

(1) Main:

The purpose of the instruction and general program is to provide education services designed to meet the intellectual, educational and quality of life goals associated with the ability to enter the work force, compete and advance in the new economy and contribute to social advancement through informed citizenship.

Appropriations:

(a)	Instruction and general purposes	28,887.2	12,139.0	41,026.2
(b)	Athletics	247.1	8.0	255.1
(c)	Other	21,025.0	8,663.0	29,688.0

The general fund appropriation to the New Mexico institute of mining and technology for the bureau of mines includes one hundred thousand dollars (\$100,000) from federal Mineral Lands Leasing Act receipts.

Performance measures:

(a) Outcome: Percent of full-time, degree-seeking, first-time freshmen

retained to second year 76%

(b) Output: Number of students registered in master of science teaching

program 160

(c) Outcome: External dollars for research and creative activity, in

millions \$100

(d) Output: Number of undergraduate transfer students from two-year

colleges 40

(e) Output: Percent of full-time, degree-seeking, first-time freshmen

completing an academic program within six years 51%

(2) Research and public service projects:

Appropriations:

(a)	Minority engineering, math and science	150.0		150.0	
(b)	Special projects expansion and flexibility	50.0		50.0	
(c)	Bureau of mines	4,049.0	377.0		4,426.0
(d)	Petroleum recovery research center	2,292.9	3,570.0		5,862.9
(e)	Bureau of mines inspection		301.1		301.1
(f)	Energetic materials research center	842.6	6,825.0	40,845.0	48,512.6
(g)	Science and engineering fair		447.3		447.3
(h)	Institute for complex additive systems analysis	973.3	32.0	21,000.0	22,005.3
(i)	Cave and karst research	517.0			517.0
(j)	Geophysical research center	975.8	9,450.0		10,425.8
(k)	Homeland security center	699.9			699.9
(l)	Aquifer mapping	258.9		258.9	
(m)	Southeast New Mexico center for energy studies	187.2		187.2	
(n)	Train middle/high school students on supercomputers		28.6		28.6
(o)	Statewide teacher student				

	computer program	40.0		40.0
(p)	High school student summer			
	science program	50.0		50.0
(q)	Small business innovation			
	and research outreach program	150.0		150.0
Subtotal				165,081.9

NORTHERN NEW MEXICO COLLEGE:

(1) Main:

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	10,625.5	3,498.0	3,026.0	17,149.5
(b)	Athletics	239.9		239.9	
(c)	Other	3,536.0	2,633.0	6,169.0	

Performance measures:

(a) Outcome: Percent of new students taking nine or more credit hours

successful after three years 70%

(b) Outcome: Percent of graduates placed in jobs in New Mexico 70%

(c) Output: Number of students enrolled in the adult basic education

program 400

(d) Outcome: Percent of first-time, full-time, degree-seeking students

enrolled in a given fall term who persist to the following

spring term 81%

(2) Research and public service projects:

Appropriations:

(a)	Teacher education expansion	337.4		337.4
(b)	Northern pueblos institute	99.8		99.8
(c)	Faculty salary adjustments	120.0		120.0
(d)	Health science and nursing program	31.2		31.2
	Subtotal		24,146.8	

SANTA FE COMMUNITY COLLEGE:

(1) Main:

The purpose of the instruction and general program at New Mexico's community colleges is to provide credit and noncredit 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	8,496.8	21,509.0	1,246.0	31,251.8
(b)	Other	4,352.0	3,195.0	7,547.0	

Performance measures:

(a) Outcome: Percent of new students taking nine or more credit hours

successful after three years 53.5%

(b) Outcome: Percent of graduates placed in jobs in New Mexico 79%

(c) Output: Number of students enrolled in the contract training program 3,300

(d) Outcome: Percent of first-time, full-time, degree-seeking students

enrolled in a given fall term who persist to the following
spring term 79%

(2) Research and public service projects:

Appropriations:

(a) Small business development

centers	5,192.1	559.1	5,751.2
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(b) Nurse expansion	90.8	90.8
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Subtotal	44,640.8
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CENTRAL NEW MEXICO COMMUNITY COLLEGE:

(1) Main:

The purpose of the instruction and general program at New Mexico's community colleges is to provide credit and noncredit 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	48,224.3	66,278.0	3,719.0	118,221.3
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(b) Other	3,321.0	19,707.6	23,028.6
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Performance measures:

(a) Outcome: Percent of new students taking nine or more credit hours

successful after three years	50%
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(b) Outcome: Percent of graduates placed in jobs in New Mexico 82%

(c) Output: Number of students enrolled in distance education program 5,800

(d) Outcome: Percent of first-time, full-time, degree-seeking students

enrolled in a given fall term who persist to the following

spring term 81%

(2) Research and public service projects:

Appropriations:

(a) Tax help New Mexico	322.8	322.8
Subtotal	141,572.7	

LUNA COMMUNITY COLLEGE:

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	8,363.5	5,109.0	747.0	14,219.5
(b) Athletics	197.8	56.0	253.8	
(c) Special projects expansion and flexibility	125.0		125.0	
(d) Nurse expansion	35.4		35.4	
(e) Equine science and economic development programs	200.0		200.0	
(f) Other	1,696.0	1,691.0	3,387.0	

Performance measures:

- (a) Outcome: Percent of new students taking nine or more credit hours successful after three years 57%
- (b) Outcome: Percent of graduates placed in jobs in New Mexico 90%
- (c) Output: Number of students enrolled in the small business

development center program 400

(d) Outcome: Percent of first-time, full-time, degree-seeking students

enrolled in a given fall term who persist to the following

spring term 81%

Subtotal 18,220.7

MESALANDS COMMUNITY COLLEGE:

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	3,579.8	1,226.0	1,017.0	5,822.8
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(b) Athletics	72.8		72.8	
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(c) Special projects expansion

and flexibility	58.0		58.0	
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(d) Other	879.0	1,393.0	2,272.0	
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Performance measures:

(a) Outcome: Percent of new students taking nine or more credit hours

successful after three years 51.3%

(b) Outcome: Percent of graduates placed in jobs in New Mexico 69.5%

(c) Output: Number of students enrolled in the small business

development center program 49

(d) Outcome: Percent of first-time, full-time, degree-seeking students

enrolled in a given fall term who persist to the following

spring term 65%

Subtotal 8,225.6

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	7,177.3	12,798.0	1,039.0	21,014.3
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(b) Athletics	309.3		309.3	
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(c) Other	3,081.0	4,527.0	7,608.0	
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Performance measures:

(a) Outcome: Percent of new students taking nine or more credit hours

successful after three years 60%

(b) Outcome: Percent of graduates placed in jobs in New Mexico 72%

(c) Output: Number of students enrolled in distance education program 11,000

(d) Outcome: Percent of first-time, full-time, degree-seeking students

enrolled in a given fall term who persist to the following

spring term 73.5%

(2) Research and public service:

Appropriations:

(a) Oil and gas training

center 95.0	95.0
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(b)	Nurse expansion	162.0		162.0
(c)	Lea county distance education consortium	68.3		68.3
	Subtotal		29,256.9	

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	21,526.3	30,116.0	1,572.0	53,214.3
(b)	Other	8,302.0	10,648.0	18,950.0	

Performance measures:

- (a) Outcome: Percent of new students taking nine or more credit hours
successful after three years 63%
- (b) Outcome: Percent of graduates placed in jobs in New Mexico 62%
- (c) Output: Number of students enrolled in the service learning program 500
- (d) Outcome: Percent of first-time, full-time, degree-seeking students
enrolled in a given fall term who persist to the following
spring term 76%

(2) Research and public service projects:

Appropriations:

(a)	Dental hygiene program	203.8		203.8
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(b)	Indigent youth program	53.3		53.3
(c)	Nurse expansion	361.2		361.2
	Subtotal		72,782.6	

CLOVIS COMMUNITY COLLEGE:

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	9,644.5	3,338.0	664.0	13,646.5
(b)	Special projects expansion and flexibility	25.0		25.0	
(c)	Nurse expansion	70.5		70.5	
(d)	Other	3,827.0	5,863.0	9,690.0	

Performance measures:

- (a) Outcome: Percent of new students taking nine or more credit hours successful after three years 74%
- (b) Outcome: Percent of graduates placed in jobs in New Mexico 72%
- (c) Output: Number of students enrolled in the concurrent enrollment program 650
- (d) Outcome: Percent of first-time, full-time, degree-seeking students enrolled in a given fall term who persist to the following spring term 79%

Subtotal		23,432.0		
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NEW MEXICO MILITARY INSTITUTE:

The purpose of the New Mexico military institute program is to provide a college-preparatory instruction for students in a residential, military environment culminating in a high school diploma or associates degree.

Appropriations:

(a)	Instruction and general purposes	841.7	22,442.0	129.0	23,412.7
(b)	Athletics	315.2		315.2	
(c)	Knowles legislative scholarship program		912.8		912.8
(d)	Other	5,782.0		503.0	6,285.0

Performance measures:

- (a) Output: Percent of full-time-equivalent capacity enrolled each fall term 92%
- (b) Outcome: American college testing composite scores for graduating high school seniors 21.5
- (c) Quality: Number of faculty development events 75
- (d) Efficiency: Percent of cadets on scholarships or financial assistance 75%

Subtotal 30,925.7

NEW MEXICO SCHOOL FOR THE BLIND AND VISUALLY IMPAIRED:

The purpose of the New Mexico school for the blind and visually impaired program is to provide the training, support and resources necessary to prepare blind and visually-impaired children of New Mexico to participate fully in their families, communities, and work force and to lead independent, productive lives.

Appropriations:

(a)	Instruction and general purposes	325.1	12,126.0	528.0	12,979.1
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(b)	Early childhood center	400.0	400.0
(c)	Low vision clinic programs	20.0	20.0

Performance measures:

(a) Quality: Percent of parents' rating of overall quality of services
as good or excellent based on annual survey 91%

(b) Output: Number of students receiving direct services through a full
continuum of services 1,427

Subtotal 13,399.1

NEW MEXICO SCHOOL FOR THE DEAF:

The purpose of the New Mexico school for the deaf program 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 or hard-of-hearing.

Appropriations:

(a)	Instruction and general purposes	3,650.0	11,168.0	192.0	15,010.0
(b)	Statewide outreach services		267.0		267.0

Performance measures:

(a) Outcome: Percent of students in kindergarten through grade twelve
demonstrating academic improvement across curriculum domains 75%

(b) Outcome: Rate of transition to postsecondary education,
vocational-technical training schools, junior colleges,
work training or employment for graduates based on a
three-year rolling average 90%

(c) Outcome: Percent of parents satisfied with educational services from

New Mexico school for the deaf 97%

Subtotal 15,277.0

TOTAL HIGHER EDUCATION 853,201.9 1,372,094.0 166.5 533,889.2 2,759,351.6

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 2010.

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: 2,195,165.5 850.0 164,700.0 2,360,715.5

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 2009-2010 school year and then, upon verification of the number of units statewide for fiscal year 2010 but no later than January 31, 2010, the secretary of public education may adjust the program unit value.

~~[Money received by a school district or charter school pursuant to the federal American Recovery and Reinvestment Act shall not be expended until the secretary of public education has approved an expenditure plan submitted by the school district or charter school, provided that the expenditure plan shall: 1) be consistent with and supplement the school district's or charter school's educational plan for student success, 2) consider those educational programs of the school district or charter school that have not been fully funded during fiscal year 2009 or 2010, and 3) ensure that any additional personnel are temporary or contractual and will not require additional appropriations in future fiscal years. The secretary shall not approve a fiscal year 2009 budget adjustment request or a fiscal year 2010 operating budget unless the secretary finds that the budget adjustment or operating budget is consistent with the above requirements.]~~ *LINE-ITEM VETO*

The secretary of public education, in collaboration with the department of finance and administration, office of education accountability, shall ensure ~~all~~ teachers have been evaluated under the tiered licensure evaluation system and have the professional competencies of the appropriate level. The secretary of public education shall withhold from the public school distribution funding for the minimum salary of any teacher who has not been evaluated.

The secretary of public education, in collaboration with the department of finance and administration, office of education accountability, shall ensure ~~all~~ principals and assistant school principals have been evaluated under the highly objective uniform statewide standard of evaluation and have the professional competencies to serve as a principal or assistant principal. The secretary of public education shall withhold from the public school distribution funding for the minimum salary of any principal or assistant principal who has not been evaluated.

The general fund appropriation to the state equalization guarantee distribution includes sufficient funding to provide a three-quarter percent increase in the employer contribution to the educational retirement fund.

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 number of students in elementary physical education that will be used to calculate the number of elementary physical education program units.

For the 2009-2010 school year, the state equalization guarantee distribution includes sufficient funding for school districts to implement a new formula-based program. Those districts shall use current year membership in the calculation of program units for the new formula-based program.

The general fund appropriation to the state equalization guarantee distribution reflects the deduction of federal revenue pursuant to Paragraph (2) of Subsection C of Section 22-8-25 NMSA 1978 that includes payments commonly known as "impact aid funds" pursuant to 20 USCA 7701 et seq., and formerly known as "PL874 funds".

The general fund appropriation to the public school fund shall be reduced by the amounts transferred to the public school fund from the current school fund and from the federal Mineral Lands Leasing Act receipts otherwise unappropriated.

Any unexpended balances in the authorized distributions remaining at the end of fiscal year 2010 from appropriations made from the general fund shall revert to the general fund.

Performance measures:

- (a) Outcome: Annual percent of core academic subjects taught by highly qualified teachers, kindergarten through twelfth grade 100%
- (b) Outcome: Percent of fourth-grade students who achieve proficiency or above on standard-based assessments in reading 65%
- (c) Outcome: Percent of fourth-grade students who achieve proficiency or above on the standards-based assessments in mathematics 50%
- (d) Outcome: Percent of eighth-grade students who achieve proficiency or above on the standards-based assessments in reading 65%
- (e) Outcome: Percent of eighth-grade students who achieve proficiency or above on the standard-based assessments in mathematics 40%
- (f) Outcome: Current year's cohort graduation rate using four-year

cumulative method 60%

(g) Outcome: Percent of recent New Mexico high school graduates who take remedial courses in higher education at two-year and four-year schools 40%

(2) Transportation distribution:

Appropriations: 103,168.4 103,168.4

The general fund appropriation for the transportation distribution includes sufficient funding to provide a three-quarter percent increase in the employer contribution to the educational retirement fund.

(3) Supplemental distribution:

Appropriations:

(a) Out-of-state tuition 370.0 370.0

(b) Emergency supplemental 2,000.0 2,000.0

Any unexpended balances in the supplemental distribution of the public education department remaining at the end of fiscal year 2010 from appropriations made from the general fund shall revert to the general fund.

Subtotal 2,466,253.9

FEDERAL FLOW THROUGH:

Appropriations: 462,392.0 462,392.0

Subtotal 462,392.0

INSTRUCTIONAL MATERIALS:

(1) Instructional material fund:

Appropriations: 16,230.4 16,230.4

The appropriation to the instructional material fund is made from the federal Minerals Land Leasing Act (30 USCA 181, et seq.) receipts.

(2) Dual credit instructional materials:

Appropriations: 1,500.0 1,500.0

Subtotal 17,730.4

EDUCATIONAL TECHNOLOGY FUND:

Appropriations: 2,400.0 2,400.0

Subtotal 2,400.0

SCHOOLS IN NEED OF IMPROVEMENT FUND:

Appropriations: 2,500.0 2,500.0

Subtotal 2,500.0

INDIAN EDUCATION FUND:

Appropriations: 2,250.0 2,250.0

The general fund appropriation to the public education department for the Indian Education Act includes five hundred thousand dollars (\$500,000) for providing teaching support for teach for America in schools with a high proportion of Native American students.

The general fund appropriation to the public education department for the Indian Education Act includes five hundred thousand dollars (\$500,000) to provide a rural literacy initiative to support after-school and summer literacy block programs for students in kindergarten through eighth grade in schools with a high proportion of Native American students contingent on receipt of five hundred thousand dollars (\$500,000) in matching funds from other than state sources.

The general fund appropriation to the public education department for the Indian Education Act contains sufficient funding to conduct a statewide needs assessment to include asset mapping. [~~The public education department shall report the results of the study to the legislative education study committee no later than October 2009.~~] **LINE-ITEM VETO**

Subtotal 2,250.0

TOTAL PUBLIC SCHOOL SUPPORT 2,325,584.3 850.0 627,092.0 2,953,526.3

GRAND TOTAL FISCAL YEAR 2010

APPROPRIATIONS 5,473,491.9 2,711,522.5 1,218,207.5 5,554,979.6 14,958,201.5

Chapter 124 Section 5 Laws 2009

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 2009 and 2010. Unless otherwise indicated, any unexpended balances of the appropriations remaining at the end of fiscal year 2010 shall revert to the appropriate fund.

~~For a needs assessment program in Bernalillo county to ensure safety and well-being of wards of the state and their guardians and conservators.~~

~~(9) DEPARTMENT OF FINANCE AND~~

~~ADMINISTRATION: 60.0 60.0~~

~~For purchase of an ambulance in Mora county.]LINE-ITEM VETO~~

(10) DEPARTMENT OF FINANCE AND

ADMINISTRATION: 100.0 100.0

To allow for upgrades to animal euthanasia programs statewide.

(11) DEPARTMENT OF FINANCE AND

ADMINISTRATION: 250.0 250.0

For disbursement to the mortgage finance authority to carry out the responsibilities, duties and provisions of the regional housing law.

(12) DEPARTMENT OF FINANCE AND

ADMINISTRATION: 30.0 30.0

To the midregion council of governments for the criminal justice collaborative in Bernalillo county.

~~(13) DEPARTMENT OF FINANCE AND~~

~~ADMINISTRATION: 100.0 100.0~~

~~To furnish and equip the Mora courthouse.]LINE-ITEM VETO~~

(14) DEPARTMENT OF FINANCE AND

ADMINISTRATION: 500.0 500.0

To provide additional assistance with fiscal year 2009 state agency budget shortfalls contingent on review by the department of finance and administration and approval by the board of finance.

(15) GENERAL SERVICES DEPARTMENT: 790.3 790.3

To support aviation services operations.

(16) PUBLIC DEFENDER DEPARTMENT:

The period of time for expending the two hundred fifty thousand dollars (\$250,000) appropriated from the general fund contained in Subsection 25 of Section 5 of Chapter 109 of Laws 2006 as extended by Subsection 27 of Section 5 of Chapter 28 of Laws 2007 as extended by Subsection 36 of Section 5 of

Chapter 3 of Laws 2008 for litigation expenses related to drug cartel case defense is extended through fiscal year 2010.

(17) PUBLIC DEFENDER DEPARTMENT:

The period of time for expending the eight hundred seventy thousand dollars (\$870,000) appropriated from the general fund in Subsection 27 of Section 5 of Chapter 114 of Laws 2004 as extended by Subsection 27 of section 5 of Chapter 33 of Laws 2005 as extended by Subsection 24 of Section 5 of Chapter 109 of Laws 2006 as extended by Subsection 28 of Section 5 of Chapter 28 of Laws 2007 as extended by Subsection 34 of Section 5 of Chapter 3 of Laws 2008 for defense of the Santa Rosa prison riot cases is extended through fiscal year 2010.

(18) LIEUTENANT GOVERNOR: 50.0 50.0

For costs related to transition and other costs.

(19) DEPARTMENT OF INFORMATION

TECHNOLOGY: 3,000.0 3,000.0

For staff and operational costs of the New Mexico computing applications center.

(20) PUBLIC EMPLOYEES RETIREMENT ASSOCIATION:

The period of time for expending the one million seven hundred thousand dollars (\$1,700,000) contained in Subsection 39 of Section 5 of Chapter 3 of Laws 2008 for software upgrades is extended through fiscal year 2010.

(21) SECRETARY OF STATE: 1,000.0 1,000.0

For costs associated with the 2010 primary election.

(22) SECRETARY OF STATE: 37.2 706.0 743.2

To provide matching funding for a federal grant through the Help America Vote Act.

(23) TOURISM DEPARTMENT: 370.0 370.0

For the New Mexico bowl.

(24) TOURISM DEPARTMENT: 250.0 250.0

For the ecotourism initiative to promote a nature-based form of specialty travel that conserves the environment and improves the well-being of the local community.

(25) ECONOMIC DEVELOPMENT

DEPARTMENT: 100.0 100.0

For performance excellence training, assessment services and assistance to businesses using Baldrige criteria.

(26) ECONOMIC DEVELOPMENT

DEPARTMENT: 2,000.0 1,000.0 3,000.0

For the job training incentive program. The other state funds appropriation is from the employment security department fund.

(27) REGULATION AND LICENSING

DEPARTMENT: 50.0 50.0

For the pro rata state share of the nationwide loan originator licensing program.

(28) PUBLIC REGULATION COMMISSION: 50.0 50.0

For an information technology security assessment and correcting security deficiencies.

(29) PUBLIC REGULATION COMMISSION: 231.8 231.8

For rent, moving costs, furniture and data setup for staff at Marion hall.

(30) PUBLIC REGULATION COMMISSION:

The period of time for expending the eight hundred thousand dollars (\$800,000) appropriated from the general fund contained in Subsection 55 of Section 5 of Chapter 3 of Laws 2008 for rental expenses is extended through fiscal 2010.

(31) CULTURAL AFFAIRS DEPARTMENT: 100.0 100.0

For development of the Los Luceros master plan.

(32) CULTURAL AFFAIRS DEPARTMENT: 400.0 400.0

For the city of Santa Fe 400th anniversary and the state of New Mexico 100th anniversary.

(33) NEW MEXICO LIVESTOCK BOARD: 1,880.0 1,880.0

To restore bovine tuberculosis-free accredited status and repay the board of finance loan.

(34) DEPARTMENT OF GAME AND FISH: 800.0 800.0

To cover the additional costs associated with merchant fees.

(35) ENERGY, MINERALS AND NATURAL

RESOURCES DEPARTMENT: 250.0 250.0

To develop a park in the Pecos canyon.

(36) ENERGY, MINERALS AND NATURAL

RESOURCES DEPARTMENT: 250.0 250.0

For the renewable energy transmission authority.

(37) ENERGY, MINERALS AND NATURAL

RESOURCES DEPARTMENT: 200.0 200.0

For the outdoor classroom initiative.

(38) ENERGY, MINERALS AND NATURAL

RESOURCES DEPARTMENT: 30.0 120.0 150.0

To conduct site assessments of abandoned uranium mines.

(39) COMMISSIONER OF PUBLIC LANDS: 400.0 400.0

For asset inventory, forest health, and remediation projects for state trust lands.

(40) ORGANIC COMMODITY COMMISSION: 31.5 31.5

For computers and other equipment.

(41) INDIAN AFFAIRS DEPARTMENT: 50.0 50.0

For youth development programs at Tohatchi.

(42) INDIAN AFFAIRS DEPARTMENT: 20.0 20.0

For utilities at Jemez pueblo.

(43) AGING AND LONG-TERM SERVICES

DEPARTMENT:100.0 100.0

For expenses at various senior citizen centers in Rio Arriba county.

(44) HUMAN SERVICES DEPARTMENT:

The period of time for expending the four hundred two thousand five hundred dollars (\$402,500) appropriated from the general fund and the seven hundred twenty-eight thousand nine hundred dollars (\$728,900) in federal funds contained in Subsection 59 of Section 5 of Chapter 28 of Laws 2007 as extended by Subsection 72 of Section 5 of Chapter 3 of Laws 2008 for updates to information technology systems related to changes in the federal temporary assistance for needy families program is extended through fiscal year 2011.

(45) HUMAN SERVICES DEPARTMENT: 28,000.0 28,000.0

For administration, cash assistance and support services for caseload increases over fiscal year 2008 levels in the temporary assistance for needy families program, contingent on application and receipt of federal funds available through the American Recovery and Reinvestment Act.

(46) WORKFORCE SOLUTIONS DEPARTMENT: 3,500.0 3,500.0

For enhancements to the unemployment insurance claims and interactive voice response systems, contingent on receipt of federal funds available through the American Recovery and Reinvestment Act and the department providing an expenditure plan for review by the department of finance administration and legislative finance committee and approval by the information technology commission.

(47) WORKFORCE SOLUTIONS DEPARTMENT: 2,500.0 2,500.0

For facility upgrades to department buildings statewide, including upgrades necessary to bring buildings into compliance with the Americans with Disabilities Act, contingent on receipt of federal funds available through the American Recovery and Reinvestment Act and the department providing a project plan for review by department of finance administration, legislative finance committee, property control division of the general services department and project approval by board of finance.

(48) DEVELOPMENTAL DISABILITIES

PLANNING COUNCIL: 200.0 200.0

For legal services and guardianship.

(49) DEPARTMENT OF HEALTH: 15.0 15.0

For an autism summer camp in Bernalillo county.

(50) DEPARTMENT OF HEALTH: 50.0 50.0

For cancer patients in Chaves, Lincoln, Lea and Eddy counties.

~~[(51) DEPARTMENT OF ENVIRONMENT: 135.9 135.9~~

~~For clean up of the Terrero mine site to meet the state obligation.]LINE-ITEM VETO~~

(52) CORRECTIONS DEPARTMENT: 273.0 273.0

For building maintenance and improvements of the administrative service complex.

(53) CORRECTIONS DEPARTMENT: 75.0 75.0

To replace kitchen equipment.

(54) DEPARTMENT OF PUBLIC SAFETY: 110.0 110.0

For repayment to the city of Hobbs for infrastructure costs for the forensic laboratory.

(55) DEPARTMENT OF TRANSPORTATION:

The other state funds and federal funds appropriations to the transportation and highway operations program of the department of transportation pertaining to prior fiscal years may be extended through fiscal year 2010, but not to exceed fifty million dollars (\$50,000,000).

(56) DEPARTMENT OF TRANSPORTATION:

The other state funds and federal funds appropriations to the programs and infrastructure program of the department of transportation pertaining to prior fiscal years may be extended through fiscal year 2010, but not to exceed five hundred million dollars (\$500,000,000).

(57) PUBLIC EDUCATION DEPARTMENT: 1,000.0 3,000.0 4,000.0

For assessment and test development. Notwithstanding any restriction on the instructional materials fund, the appropriation to the public education department includes three million dollars (\$3,000,000) from instructional materials fund balances. The general fund appropriation is from the separate account of the appropriation contingency fund dedicated for the purpose of implementing and maintaining educational reforms created in Section 12 of Chapter 114 of Laws 2004.

(58) PUBLIC EDUCATION DEPARTMENT: 6,000.0 6,000.0

For emergency support to school districts experiencing shortfalls. All requirements for distribution of supplemental funds shall be in accordance with Section 22-8-30 NMSA 1978. The appropriation is from the separate account of the appropriation contingency fund dedicated for the purpose of implementing and maintaining educational reforms created in Section 12 of Chapter 114 of Laws 2004.

(59) PUBLIC EDUCATION DEPARTMENT: 4,000.0 4,000.0

For emergency distributions to school districts experiencing budget shortfalls. A distribution to a school district shall not exceed five hundred thousand dollars (\$500,000) and shall be made only if: 1) the school district submits an application to the public education department showing that, without the distribution, the school district will have to reduce the number of school district employees or cut education programs so that the quality of public education will be severely damaged, that the school district has used its resources in a prudent manner and that the school district has no other federal, state or local resources to prevent the damage; 2) the application is recommended in writing by the public education department; 3) the application and written recommendation of the department are reviewed by the department of finance and administration and the legislative finance committee; and 4) the application and the distribution are approved by the state board of finance. The appropriation is from the separate account of the appropriation contingency fund dedicated for the purpose of implementing and maintaining educational reforms created in Section 12 of Chapter 114 of Laws 2004.

(60) PUBLIC EDUCATION DEPARTMENT: 1,400.0 1,400.0

For hosting services for the student and teacher accountability reporting system and the operating budget management system. The appropriation is from the separate account of the appropriation contingency fund dedicated for the purpose of implementing and maintaining educational reforms created in Section 12 of Chapter 114 of Laws 2004.

(61) PUBLIC EDUCATION DEPARTMENT: 100.0 100.0

For the state high school basketball tournament.

(62) PUBLIC EDUCATION DEPARTMENT:

The period of time for expending the one million five hundred thousand dollars (\$1,500,000) appropriated from the general fund contained in Subsection 102 of Section 5 of Chapter 28 of Laws 2007 as extended by Subsection 97 of Section 5 of Chapter 3 of Laws 2008 for the eleventh grade exit examination shall not be used for its original purpose but is reappropriated for the eleventh grade exit examination and the electronic student management system. The appropriation is from the separate account of the appropriation contingency fund dedicated for the purpose of implementing and maintaining educational reforms created in Section 12 of Chapter 114 of Laws 2004.

(63) HIGHER EDUCATION DEPARTMENT: 200.0 200.0

To develop a statewide instructional leadership institute. The appropriation is from the separate account of the appropriation contingency fund dedicated for the purpose of implementing and maintaining educational reforms created in Section 12 of Chapter 114 of Laws 2004.

(64) HIGHER EDUCATION DEPARTMENT: 100.0 100.0

To provide resources to continue the square-foot verification and to maintain the condition management estimation technical database.

(65) HIGHER EDUCATION INSTITUTIONS:

Notwithstanding the provisions of Section 21-1-33 NMSA 1978 or the provisions of the higher education department manual of financial reporting for public institutions in New Mexico, in fiscal year 2009, higher education institutions may, subject to the prior approval of the higher education department~~[and review by the legislative finance committee]~~, budget and expend building renewal and replacement funds appropriated in the General Appropriation Act of 2008 as part of the institution's instruction and general purposes appropriation for other purposes provided that the transfers will be used for instruction and general. *LINE-ITEM VETO*

(66) UNIVERSITY OF NEW MEXICO: 75.0 75.0

To provide digital media training and outreach for youth in Albuquerque.

(67) UNIVERSITY OF NEW MEXICO: 75.0 75.0

For dental equipment at Carrie Tingley hospital.

(68) UNIVERSITY OF NEW MEXICO: 150.0 150.0

To the bureau of business and economic research for the census project.

(69) NEW MEXICO STATE UNIVERSITY: 350.0 350.0

To the New Mexico department of agriculture to provide matching funds for soil and water conservation district projects.

(70) NEW MEXICO INSTITUTE OF MINING

AND TECHNOLOGY: 50.0 50.0

For a summer science program.

(71) NORTHERN NEW MEXICO COLLEGE: 300.0 300.0

For the baccalaureate program.

(72) TECHNICAL-VOCATIONAL INSTITUTE: 20.0 20.0

For central New Mexico students and faculty to ride city of Albuquerque public transportation.

~~[(73) LUNA COMMUNITY COLLEGE: 175.0 175.0~~

~~To upgrade and equip the trades area.]LINE-ITEM VETO~~

(74) COMPUTER SYSTEMS ENHANCEMENT

FUND: 8,224.5 8,224.5

For transfer to the computer systems enhancement fund for system replacements or enhancements.

TOTAL SPECIAL APPROPRIATIONS 33,391.0 8,140.4 790.3 34,706.0 77,027.7

Chapter 124 Section 6 Laws 2009

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 2009 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 2009 for the purpose specified and approval by the department of finance and administration. Any unexpended balances remaining at the end of fiscal year 2009 shall revert to the appropriate fund. *LINE-ITEM VETO*

(1) ADMINISTRATIVE OFFICE

OF THE COURTS: 150.0 150.0

For contract attorney fees related to child abuse cases.

(2) ADMINISTRATIVE OFFICE

OF THE COURTS: 500.0 500.0

To cover shortfalls for jurors and interpreters.

(3) SUPREME COURT BUILDING

COMMISSION: 14.0 14.0

For the heating, ventilation and air conditioning maintenance agreement.

(4) SIXTH JUDICIAL DISTRICT COURT: 21.0 21.0

For prior year invoices for unemployment compensation premiums.

(5) ATTORNEY GENERAL: 300.0 300.0

To reimburse the U.S. department of health and human services for audit findings in the medicaid fraud program.

(6) GENERAL SERVICES DEPARTMENT: 200.0 200.0

To cover aircraft flights. The appropriation is from program support fund balances.

(7) GENERAL SERVICES DEPARTMENT: 193.0 193.0

To pay for the fiscal year 2007 audit.

(8) DEPARTMENT OF INFORMATION

TECHNOLOGY: 2,896.6 2,896.6

For payment to the federal government for overcharged information technology services based on an adverse decision against the state made in the court case of New Mexico department of information technology v. U.S. department of health and human services and Michael O'Leavitt in federal district court.

(9) SECRETARY OF STATE: 289.1 289.1

For maintenance and support services for voter registration election management system software used but not paid for in prior years.

(10) SECRETARY OF STATE: 99.3 99.3

For the 2008 general election.

(11) NEW MEXICO STATE FAIR: 400.0 400.0

To address revenue shortfalls and temporary labor costs.

(12) DEPARTMENT OF GAME AND FISH: 200.0 200.0

To cover the additional costs associated with merchant fees.

(13) HUMAN SERVICES DEPARTMENT: 8,660.6 8,660.6

For cash assistance and support services for caseload increases over fiscal year 2008 levels in the temporary assistance for needy families program, contingent on application for and receipt of federal funds available through the American Recovery and Reinvestment Act.

(14) HUMAN SERVICES DEPARTMENT: 2,832.5 2,832.5

For administration for caseload increases over fiscal year 2008 levels in the temporary assistance for needy families program, contingent on application for and receipt of federal funds available through the American Recovery and Reinvestment Act.

(15) HUMAN SERVICES DEPARTMENT: 653.5 1,018.3 1,671.8

To replace funds from other projects used to rebuild information technology security systems.

(16) WORKFORCE SOLUTIONS DEPARTMENT: 1,200.0 1,200.0

For shortfalls in the unemployment insurance program. The appropriation is from the employment security department fund.

(17) DEPARTMENT OF HEALTH: 4,000.0 4,000.0

For developmentally disabled medicaid waiver program costs and facilities management costs provided that not more than one million five hundred thousand dollars (\$1,500,000) of the total is used for facilities management program costs.

(18) DEPARTMENT OF HEALTH: 180.0 180.0

For full-time-equivalent positions at Fort Bayard medical center.

(19) DEPARTMENT OF HEALTH: 260.0 260.0

For full-time-equivalent positions related to developmental disabilities in Los Lunas.

(20) DEPARTMENT OF HEALTH: 1,900.0 1,900.0

For patient pharmaceuticals and facility operations.

(21) DEPARTMENT OF HEALTH: 4,000.0 4,000.0

To provide care to clients at Fort Bayard medical center.

(22) DEPARTMENT OF HEALTH: 4,000.0 4,000.0

To provide care to clients of the New Mexico behavioral health institute.

(23) CHILDREN, YOUTH AND FAMILIES

DEPARTMENT: 1,200.0 1,200.0

To cover shortfalls in care and support.

(24) DEPARTMENT OF PUBLIC SAFETY: 500.0 300.0 800.0

For spring recruit class.

TOTAL SUPPLEMENTAL AND DEFICIENCY

APPROPRIATIONS 21,363.5 1,700.0 393.0 12,511.4 35,967.9

Chapter 124 Section 7 Laws 2009

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 2009, 2010 and 2011. Unless otherwise indicated, any unexpended balances remaining at the end of fiscal year 2011 shall revert to the computer systems enhancement fund or other funds as indicated. For executive branch agencies, 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 ~~[information technology commission]~~ 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. *LINE-ITEM VETO*

(1) ADMINISTRATIVE OFFICE OF THE COURTS: 895.0 895.0

To provide judicial case management system support to all courts. The appropriation is from the supreme court automation fund contingent on enactment of House Bill 263 or similar legislation of the forty-ninth legislature.

(2) TAXATION AND REVENUE DEPARTMENT: 1,832.5 1,832.5

To upgrade the gentax bankruptcy module, for electronic content management services and equipment and to purchase external data to identify additional audit prospects.

(3) TAXATION AND REVENUE DEPARTMENT: 8,042.5 8,042.5

To replace the 30-year-old common business oriented language-based driver and vehicle systems. The appropriation is from motor vehicle division cash balances and revenues.

(4) DEPARTMENT OF INFORMATION TECHNOLOGY:

The period of time for expending the nine hundred thirty-five thousand dollars (\$935,000) appropriated from the general fund contained in Subsection 30 of Section 5 of Chapter 3 of Laws 2008 to develop a training model for financial transaction recording and reporting, including the payroll and human capital management modules of the statewide human resources, accounting and management reporting system, shall not be used for its original purpose but is reappropriated to the department of information technology for incremental license fees and to address critical issues with the statewide human resources, accounting and management reporting system. ~~[None of the appropriation shall be used unless legislative finance committee staff are granted access to the system similar to that available to the department of finance and administration budget division staff.]~~ *LINE-ITEM VETO*

(5) DEPARTMENT OF INFORMATION TECHNOLOGY:

The two hundred forty thousand dollars (\$240,000) appropriated from the general fund contained in Subsection 10 of Section 7 of Chapter 3 of Laws 2008 to allow the state treasurer to calculate daily interest on self-earning accounts, and to interface with the investment system shall not be used for its original purpose but is reappropriated to the department of information technology to configure and correctly implement the statewide human resources, accounting and management reporting system treasury module. ~~[None of the appropriation shall be used unless legislative finance committee staff are granted access to the system similar to that available to the department of finance and administration budget division staff.]~~ *LINE-ITEM VETO*

(6) SECRETARY OF STATE:

The one hundred seventy-six thousand five hundred dollars (\$176,500) appropriated from the general fund contained in Subsection 17 of Section 7 of Chapter 3 of Laws 2008 to enhance the secretary of state knowledgebase campaign reporting system shall not be used for its original purpose but is reappropriated for a campaign reporting system.

(7) PUBLIC REGULATION COMMISSION: 930.0 930.0

Notwithstanding any restrictions on the use of the proceeds, the appropriation is from assessments authorized by Section 59A-6-1.1 NMSA 1978 for an insurance division licensing and revenue accounting system, document management and content management system, and website, including a business process and gap analysis, system documentation and implementation, and a project manager.

(8) HUMAN SERVICES DEPARTMENT: 6,392.0 7,972.4 14,364.4

To continue replacing the income support division integrated services delivery system using a transfer system. The appropriation includes twelve term full-time-equivalent positions dedicated to the project. On implementation of the system, the term positions shall be made permanent, eliminating the need to contract for system support. The ~~general fund~~ appropriation is contingent on approval of an advanced planning document from the federal funding agency. *LINE-ITEM VETO*

(9) WORKFORCE SOLUTIONS DEPARTMENT:

The period of time for expending the three million five hundred thousand dollars (\$3,500,000) from the Job Creation and Worker Assistance Act of 2002 and Section 903 of the Social Security Act, as amended, also known as the federal Reed Act, and made available to the New Mexico workforce solutions department in Subsection 21 of Section 7 of Chapter 33 of Laws 2005 as extended by Subsection 18 of Section 7 of Chapter 109 of Laws 2006 as extended by Subsection 23 of Section 7 of Chapter 28 of Laws 2007 as extended by Subsection 28 of Section 7 of Chapter 3 of Laws 2008 to meet federal accounting and reporting requirements not addressed by the base component of the statewide human resources, accounting and management reporting system project is extended through fiscal year 2010 contingent on signing a memorandum of understanding with the department of information technology to address agency-related human resources and accounting system issues by August 1, 2009.

The period of time for expending the reappropriated twelve million five hundred thousand dollars

(\$12,500,000) in unexpended federal Reed Act funds contained in Subsection 13 of Section 7 of Chapter 76 of Laws 2003 as extended by Subsection 20 of Section 7 of Chapter 33 of Laws 2005 as extended by Subsection 19 of Section 7 of Chapter 109 of Laws 2006 as extended by Subsection 23 of Section 7 of Chapter 28 of Laws 2007 is extended through fiscal year 2010 to complete the implementation of the unemployment insurance tax system contingent on issuing a request for proposal by September 1, 2009, and two hundred forty thousand dollars (\$240,000) shall not be used for its original purpose, but is reappropriated to repay the board of finance loan to the workforce solutions department for critical needs in the unemployment insurance program.

(10) DEPARTMENT OF HEALTH: 400.0 400.0

To complete the laboratory information management system.

(11) CHILDREN, YOUTH AND FAMILIES

DEPARTMENT: 764.0 764.0

To begin updating the family automated client tracking system. The appropriation is from computer system enhancement fund balances.

TOTAL DATA PROCESSING APPROPRIATIONS 18,856.0 8,372.4
27,228.4

Chapter 124 Section 8 Laws 2009

Section 8. **ADDITIONAL FISCAL YEAR 2009 BUDGET ADJUSTMENT**
AUTHORITY.--During fiscal year 2009,

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 2008 and Chapter 2 of Laws 2009:

A. the administrative office of the courts may request budget increases up to fifty-one thousand dollars (\$51,000) from interpreter certification fees in the jury and witness fund and the special court services program may request budget increases up to one hundred nine thousand six hundred dollars (\$109,600) from water rights adjudication for covering shortfalls;

B. the twelfth judicial district court may request budget increases up to four thousand five hundred dollars (\$4,500) from internal services funds/interagency transfers for adult drug court;

C. the Bernalillo county metropolitan court may request budget increases up to twenty-three thousand dollars (\$23,000) from internal service funds/interagency transfers to transfer to the court facilities fund;

D. the second judicial district attorney may request budget increases up to two hundred ninety thousand dollars (\$290,000) from internal service funds/interagency transfers and other state funds;

E. the property tax program of the taxation and revenue department may request budget increases up to four hundred thousand dollars (\$400,000) from other state funds to cover a shortfall in personal services and employee benefits, advertising delinquent tax sales, and an unanticipated court settlement;

F. the medicaid fraud program of the attorney general may request budget increases up to two hundred twenty-nine thousand dollars (\$229,000) from other state funds for court reporting services, witness fees, transcription fees and supplies related to active cases in medicaid fraud;

G. the department of information technology may request budget increases up to four million dollars (\$4,000,000) from fund balances to transfer to the equipment replacement funds for telecommunication, information processing and human capital management;

H. the cultural affairs department may request budget increases up to four hundred seventy-nine thousand three hundred dollars (\$479,300) from internal service funds/interagency transfers and other state funds;

I. the department of game and fish ~~[may request budget increases up to four hundred seventy-nine thousand three hundred dollars (\$479,300) from internal service funds/interagency transfers and other state funds and]~~may request budget increases up to sixty thousand dollars (\$60,000) for operating transfers received from other agencies; *LINE-ITEM VETO*

J. the energy, minerals and natural resources department may request budget increases from internal service funds/interagency transfers for capital projects, the state parks program may request budget increases from internal service funds/interagency transfers for outdoor classroom projects and may request additional budget increases up to seven hundred fifty thousand dollars (\$750,000) from other state funds and internal service funds/interagency transfers for operational expenses, and the leadership and support program may request budget increases up to one hundred fifty thousand dollars (\$150,000) from internal service funds/interagency transfers for operational shortfalls;

K. the interstate stream compact compliance and water development program of the state engineer may request budget increases up to sixty-five thousand dollars (\$65,000) from the bureau of reclamation for operation and maintenance costs of the Vaughn pipeline;

L. the human services department may request budget increases up to seven hundred fifty thousand dollars (\$750,000) from internal service funds/interagency transfers to provide commodities storage and commodities distribution;

M. the medical assistance program of the human services department may request budget increases up to three million nine hundred thousand dollars (\$3,900,000) from internal service funds/interagency transfers for the costs associated with the developmentally disabled waiver at the department of health, the disabled and elderly waiver at the aging and long-term services department and for the family infant toddler program of the department of health, provided the human services department has reconciled actual expenditures and projected expenditures for the waiver programs with the department of health and the aging and long-term services department;

N. the department of health may request budget increases from fund balance for newborn screening, may request budget increases from fund balance for the Emergency Medical Services Fund Act; the developmental disabilities support

program of the department of health may request budget increases up to four million dollars (\$4,000,000) from internal service funds/interagency transfers for the developmental disabilities medicaid waiver program, and the public health program may request budget increases up to one million seven hundred fifty thousand dollars (\$1,750,000) from other state funds from formula rebate revenue for the women, infants and children program;

O. the health certification, licensing and oversight program of the department of health may request budget increases up to five hundred thousand dollars (\$500,000) from internal service funds/interagency transfers from the human services department for receivership;

P. the department of environment may request budget increases up to two hundred fifty thousand dollars (\$250,000) from revenues and interest accrued in the solid waste facility grant fund for issuing grants to establish or modify solid waste facilities or for contracting for solid waste services;

Q. the juvenile justice facilities program of the children, youth and families department may request budget increases up to one million six hundred thousand dollars (\$1,600,000) from other state funds from distributions from the land grant permanent and land income funds;

R. the program support program of the corrections department may request budget increases up to sixty-five thousand dollars (\$65,000) in the other category from other state funds earned from the social security administration;

S. the higher education department may request budget increases from internal service funds/interagency transfers from Wallace foundation grant revenue transferred from the department of finance and administration;

T. an agency [~~specified in paragraph (4) of this subsection~~]to which an appropriation for a capital outlay project has been made by an act of the first session of the forty-ninth legislature or a previous legislative session may, by agreement, transfer all or a portion of the appropriation to another agency [~~specified in paragraph (4) of this subsection~~]if the receiving agency is granted a budget adjustment for the transferred appropriation pursuant to Sections 6-3-23 through 6-3-25 NMSA 1978. The following provisions shall govern a budget adjustment request made pursuant to this subsection:
LINE-ITEM VETO

(1) a budget adjustment request shall only be approved pursuant to a certification from the transferring and receiving agencies and upon a finding by the department of finance and administration that:

(a) the receiving agency can more effectively or efficiently administer the appropriation, due to the receiving agency's regulatory or programmatic responsibilities or other subject matter expertise;

(b) the receiving agency has received other appropriations for the same purpose or project and placing the related appropriations with a single agency will result in administrative efficiencies; or

(c) substantive law requires the receiving agency to own, control, operate or maintain property that is the subject of the appropriation;

(2) a budget adjustment authorized by this subsection is in addition to other budget adjustments authorized by law and is not subject to the limitation of Subsection D of Section 10 of the General Appropriation Act of 2008 and Subsection B of Section 2 of Chapter 2 of Laws 2009, or any similar provision;

(3) once implemented, the budget adjustment shall be effective for and during the fiscal years in which the transferred appropriation may be expended[; and

~~(4) a budget adjustment may be requested pursuant to this subsection only if both the transferring agency and the receiving agency are among the following:~~

~~(a) the department of public safety;~~

~~(b) the corrections department;~~

~~(c) the local government division of the department of finance and administration;~~

~~(d) the property control division of the general services department; or~~

~~(e) the cultural affairs department].~~ *LINE-ITEM VETO*

Chapter 124 Section 9 Laws 2009

Section 9. CERTAIN FISCAL YEAR 2010 BUDGET ADJUSTMENTS AUTHORIZED.--

A. As used in this section and Section 8 of the General Appropriation Act of 2009:

(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 2010.

C. In addition to the specific category transfers authorized in Subsection F of this section and unless a conflicting category transfer is authorized in Subsection F of this section, all agencies, including legislative agencies, may request category transfers among personal services and employee benefits, contractual services and other.

D. An agency [~~specified in paragraph (4) of this subsection~~]to which an appropriation for a capital outlay project has been made by an act of the first session of the forty-ninth legislature or a previous legislative session may, by agreement, transfer all or a portion of the appropriation to another agency [~~specified in paragraph (4) of this subsection~~]if the receiving agency is granted a budget adjustment for the transferred appropriation pursuant to Sections 6-3-23 through 6-3-25 NMSA 1978. The following provisions shall govern a budget adjustment request made pursuant to this subsection:
LINE-ITEM VETO

(1) a budget adjustment request shall only be approved pursuant to a certification from the transferring and receiving agencies and upon a finding by the department of finance and administration that:

(a) the receiving agency can more effectively or efficiently administer the appropriation, due to the receiving agency's regulatory or programmatic responsibilities or other subject matter expertise;

(b) the receiving agency has received other appropriations for the same purpose or project and placing the related appropriations with a single agency will result in administrative efficiencies; or

(c) substantive law requires the receiving agency to own, control, operate or maintain property that is the subject of the appropriation;

(2) a budget adjustment authorized by this subsection is in addition to other budget adjustments authorized by law and is not subject to the limitation of Subsection E of this section or any similar provision;

(3) once implemented, the budget adjustment shall be effective for and during the fiscal years in which the transferred appropriation may be expended[; and

~~(4) a budget adjustment may be requested pursuant to this subsection only if both the transferring agency and the receiving agency are among the following:~~

~~(a) the children, youth and families department;~~

~~(b) the corrections department;~~

~~(c) the local government division of the department of finance and~~

~~administration;~~

~~(d) the property control division of the general services department;~~

~~(e) the cultural affairs department;~~

~~(f) the department of health;~~

~~(g) the state fair commission; or~~

~~(h) the public education department]. *LINE-ITEM VETO*~~

E. Unless a conflicting budget increase is authorized in Subsection F 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 2009. 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.

F. In addition to the budget authority otherwise provided in the General Appropriation Act of 2009, the following agencies may request specified budget adjustments:

(1) the New Mexico compilation commission may request budget increases from internal service funds/interagency transfers and other state funds for costs associated with subscriptions, publishing and marketing New Mexico statutes, supreme court opinions and other publications;

(2) the administrative office of the courts may request program transfers up to two percent between programs and may request budget increases up to sixty thousand dollars (\$60,000) from jury and witness fund interpreter certification fees;

(3) the second judicial district court may request budget increases up to three hundred thousand dollars (\$300,000) from other state funds and internal service funds/interagency transfers for pre-trial services;

(4) the fourth judicial district court may request budget increases from internal service funds/interagency transfers and other state funds from revenue derived from duplication fees;

(5) the eleventh judicial district court may request budget increases up to fifteen thousand dollars (\$15,000) from internal service funds/interagency transfers and other state funds for drug court programs;

(6) the twelfth judicial district court may request budget increases up to four thousand five hundred dollars (\$4,500) from internal service funds/interagency transfers for adult drug court;

(7) the Bernalillo county metropolitan court may request budget increases up to two hundred thousand dollars (\$200,000) from internal service funds/interagency transfers and other state funds for pre- and post-adjudication services;

(8) the first judicial district attorney may request budget increases from internal service funds/interagency transfers and other state funds for funds received from any political subdivision of the state or from Indian tribes and may request budget increases up to one hundred twenty-five thousand dollars (\$125,000) from internal service funds/interagency transfers to prosecute tax crimes statewide;

(9) the second judicial district attorney may request budget increases up to fifty thousand dollars (\$50,000) from other state funds for attorney bar dues and may request budget increases up to four hundred ten thousand dollars (\$410,000) from internal service funds/interagency transfers and other state funds for personal services and employee benefits and contractual services;

(10) the eleventh judicial district attorney-division I may request budget increases up to one hundred twenty-five thousand dollars (\$125,000) from internal service funds/interagency transfers and other state funds;

(11) the eleventh judicial district attorney-division II may request budget increases up to four hundred thousand dollars (\$400,000) from internal service funds/interagency transfers and other state funds received from any political subdivision of the state or from Indian tribes to assist in the prosecution of crimes within McKinley county;

(12) the thirteenth judicial district attorney may request budget increases from internal service funds/interagency transfers and other state funds for funds received from any political subdivision of the state or from Indian tribes;

(13) the administrative office of the district attorneys may request budget increases up to fifty thousand dollars (\$50,000) from other state funds for costs associated with the district attorneys training conference and may request budget increases up to two thousand dollars (\$2,000) from other state funds from miscellaneous revenue collected from nondistrict attorney employee registration fees to pay for conference-related expenses;

(14) the legal services program of the attorney general may request budget increases up to five hundred thousand dollars (\$500,000) from other state funds to provide consumer protection, education and alert programs, provided the revenue expended shall be solely from settlement funds that authorize consumer uses;

(15) the state investment council may request budget increases up to two million dollars (\$2,000,000) from other state funds for investment manager fees and custody fees, provided that this amount may be exceeded if the department of finance and administration approves a certified request from the state investment council that additional increases from other state funds are required for increased investment manager fees and custody fees and may request transfers to any other category except that only five hundred thousand dollars (\$500,000) of the money appropriated for investment manager fees in the contractual services category may be transferred;

(16) the public school insurance authority may request budget increases from internal service funds/interagency transfers, other state funds and fund balances for the program support, benefits and risk programs;

(17) the health care benefits administration program of the retiree health care authority may request budget increases from other state funds for the benefits program;

(18) the general services department may request budget increases from internal service funds/interagency transfers in an amount not to exceed fifteen percent of the appropriation for the employee group health benefits and risk management programs if it collects revenue in excess of appropriated levels;

(19) the educational retirement board may request budget increases from other state funds for investment manager fees, custody fees and investment-related legal fees, provided the department of finance and administration approves a certified request from the educational retirement board that additional increases from other state funds are required for increased investment manager fees, custody fees and investment-related legal fees, and may request category transfers, except that funds authorized for investment manager fees, custody services and investment-related legal fees within the contractual services category of the administrative services division of the educational retirement board shall not be transferred;

(20) the public defender department may request budget increases up to five hundred thousand dollars (\$500,000) from internal service funds/interagency transfers and other state funds;

(21) the department of information technology may request budget increases up to five million dollars (\$5,000,000) from fund balances for the telecommunication, information processing and human capital management equipment replacement funds;

(22) the public employees retirement association may request budget increases from other state funds for investment manager fees, custody fees and investment-related legal fees, provided that the department of finance and administration approves a certified request from the public employees retirement association that additional increases from other state funds are required for increased investment manager fees, custody fees and investment-related legal fees, and may request category transfers, except that funds authorized for investment manager fees, custody fees and investment-related legal fees within the contractual services category of the administrative division of the public employees retirement association shall not be transferred;

(23) the public employees retirement association may request budget increases from other state funds to meet emergencies or unexpected physical plant failures that might impact the health and safety of workers;

(24) the New Mexico magazine program of the tourism department may request budget increases up to two hundred thousand dollars (\$200,000) from other state funds from earnings on sales and the tourism development program may request budget increases up to thirty thousand dollars (\$30,000) from internal service funds/interagency transfers from earnings from route 66 commemorative license plate sales to implement a joint powers agreement among the tourism department, department of transportation and the taxation and revenue department;

(25) the public regulation commission may request budget increases for the office of the state fire marshal from the training academy use fee fund;

(26) the New Mexico medical board may request budget increases up to thirty thousand dollars (\$30,000) from other state funds for the administrative hearing process;

(27) the New Mexico state fair may request budget increases from unforeseen internal service funds/interagency transfers and other state funds;

(28) the preservation program of the cultural affairs department may request budget increases from internal service funds/interagency transfers and other state funds for archaeological services;

(29) the department of game and fish may request program transfers up to two hundred fifty thousand dollars (\$250,000) between programs, may request budget adjustments specific to capital projects and may request operating transfers received from other agencies in excess of the five percent budget increase limitation;

(30) the energy, minerals and natural resources department may request program transfers up to five hundred thousand dollars (\$500,000) between programs and may request budget increases from internal services funds/interagency transfers for capital projects, the oil and gas conservation program may request budget increases up to two hundred thousand dollars (\$200,000) from internal service funds/interagency transfers for operational expenses, may request budget transfers to and from other financing uses to transfer funds to the department of environment for the underground injection program, may request budget increases from internal services funds/interagency transfers from funds received from the department of environment for the water quality program, and may request budget increases from other state funds from the oil and gas reclamation fund to close abandoned wells, the healthy forests, state parks and renewable energy and energy efficiency programs may request 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 five hundred thousand dollars (\$500,000) from internal service funds/interagency transfers and other state funds for clean energy and energy conservation program projects, the state parks program may request budget increases up to five hundred thousand dollars (\$500,000) from other state funds and internal services funds/interagency transfers for operational expenses, maintenance and capital equipment replacements and may request budget increases from internal service funds/interagency transfers for outdoor classroom projects, the healthy forests program may request budget increases up to five hundred thousand dollars (\$500,000) from other state funds for costs associated with the inmate work camp program and conservation planting revolving fund and the leadership and support program may request budget increases up to one hundred fifty thousand dollars (\$150,000) from internal services funds/interagency transfers for operational expenses;

(31) the office of the state engineer may request budget increases up to eight hundred thousand dollars (\$800,000) from internal service funds/interagency transfers from the department of finance and administration for multi-stakeholder planning for implementation of the New Mexico portion of the Arizona Water Settlement Act of 2004, may request budget increases up to one hundred twenty thousand dollars (\$120,000) from internal service funds/interagency transfers from the Ute construction fund to continue with managing and participating in the Ute reservoir master plan development or other operational requirements at Ute reservoir, may request budget increases up to two million dollars (\$2,000,000) from internal service funds/interagency transfers from the attorney general to prepare for anticipated water litigation, may request budget increases up to one hundred thousand dollars (\$100,000) from other state funds from contractual services reimbursements for water modeling supply studies, may request budget increases up to two hundred thousand dollars (\$200,000)

from internal service funds/interagency transfers from the department of finance and administration for technical assistance either in engineering design services or assessments for acequias statewide and may request budget increases up to sixty-five thousand (\$65,000) from the bureau of reclamation for the operation and maintenance costs of the Vaughn pipeline;

(32) the commission on the status of women may request budget increases up to one hundred thousand dollars (\$100,000) from other state funds for the statutorily mandated recognition program for women and may request budget increases up to one hundred thousand dollars (\$100,000) from internal service funds/interagency transfers to support the governor's women's health council;

(33) the aging and long-term services department may request program transfers up to five hundred thousand dollars (\$500,000) from all programs to the adult protective services program, aging network program and the long-term services program, the long-term services program may request category transfers up to five hundred thousand dollars (\$500,000) to and from other financing uses to meet medicaid match requirements, and the long-term services program may request budget increases up to fifteen thousand dollars (\$15,000) from internal service funds/interagency transfers from the governor's commission on disability for the gap program;

(34) the human services department may request program transfers among the medical assistance program, the medicaid behavioral health program and the medicaid physical health managed care program;

(35) the division of vocational rehabilitation may request budget increases up to fifty thousand dollars (\$50,000) from other state funds to maintain services to clients;

(36) the developmental disabilities planning council program of the developmental disabilities planning council may request budget increases up to five hundred thousand dollars (\$500,000) from internal service funds/interagency transfers and may request budget increases from other state funds from revenue from the sale of training modules and materials in the brain injury advisory council program and the consumer services program;

(37) the miners' hospital of New Mexico may request budget increases from other state funds;

(38) the department of health may request program transfers from any program to the facilities management program if the cumulative effect of a requested program transfer, together with all program transfers previously requested and approved pursuant to this subsection, will not increase or decrease the total annual appropriation to a program from all funding sources by more than ten percent, may request category transfers up to three percent of the other financing uses category in

the developmental disabilities support program for developmental disabilities medicaid waiver program infrastructure, may request budget increases from other state funds 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 related to private insurer payments for services provided through the public health and family infant toddler programs;

(39) the department of environment may request program transfers up to five hundred thousand dollars (\$500,000) among programs, and may request budget increases from other state funds for responsible party payments, may request budget increases from other state funds up to one million one hundred fifty thousand dollars (\$1,150,000) from revenues and interest accrued in the solid waste facility grant fund for issuing grants to establish or modify solid waste facilities or for contracting for solid waste services, may request budget increases from other state funds from the corrective action fund to pay claims, may request budget increases from other state funds from the hazardous waste emergency fund, may request budget increases from internal service funds/interagency transfers from funds from the office of the natural resources trustee to be used for restoration of the Mountain View nitrate plume site, the water quality program may request budget increases up to seven hundred thousand dollars (\$700,000) from internal service funds/interagency transfers to prepare for potential litigation with Texas on water issues, and the water and wastewater infrastructure development program may request budget increases up to one hundred eighty thousand dollars (\$180,000) from other state funds for providing technical services related to the drinking water revolving loan fund, water and wastewater grant fund and local government planning fund programs;

(40) the office of the natural resources trustee may request budget increases up to five million dollars (\$5,000,000) from internal service funds/interagency transfers and other state funds for restoration projects and may request budget increases from other state funds for restoration projects equal to any fines for damages resulting from a settlement;

(41) the children, youth and families department may request program transfers between the juvenile justice facilities program and the youth and family services program up to two million dollars (\$2,000,000) for associated costs with program reorganization and the youth and family services program may request increases up to two hundred sixty-seven thousand dollars (\$267,000) from other state funds in excess of the five percent limitation from the juvenile continuum grant fund;

(42) the department of military affairs may request program transfers up to one hundred thousand dollars (\$100,000) between the national guard program and the crisis response program;

(43) the corrections department may request budget increases from other state funds and internal service funds/interagency transfers for costs associated with the inmate forestry work camp, may request budget increases from other state

funds from excess revenue and cash balances from probation and parole fees to be utilized for the probation and parole division, may request budget increases from other state funds from cash balances from the community corrections grant fund and may request budget increases from internal service funds/interagency transfers from the university of New Mexico and department of health to fund the hepatitis C drug treatment program;

(44) the crime victims' reparation commission may request budget increases from other state funds for victim reparation services;

(45) the department of transportation may request budget increases up to two hundred fifty thousand dollars (\$250,000) from other state funds for administrative costs as allowed in Subsection E of Section 2 of Chapter 3 of Laws 2007 first special session and may request budget increases up to three million dollars (\$3,000,000) for project costs for governor Richardson's infrastructure program II projects contingent on enactment of House Bill 734 or similar legislation of the first session of the forty-ninth legislature;

(46) the public school facilities authority may request budget increases for project management expenses pursuant to the Public School Capital Outlay Act; and

(47) the higher education department may request transfers to and from the other financing uses category.

G. 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 124 Section 10 Laws 2009

Section 10. APPROPRIATION REDUCTIONS.--

A. General fund appropriations set forth in Section 4 of the General Appropriation Act of 2009 are reduced by a total of one million two hundred sixteen thousand one hundred dollars (\$1,216,100) from the personal services and employee benefits and the other categories to reflect reduced public property insurance rates and public liability insurance rates.

B. General fund appropriations in Laws 2009, Chapter 1, Sections 3, 4, 5, 7 and 8 in the personal services and employee benefits category are reduced by a total of one hundred fourteen thousand five hundred dollars (\$114,500) to reflect a one percent decrease in that category and are further reduced by one hundred forty-six thousand dollars (\$146,000).

C. In order to effectuate the reductions made in Subsections A and B of this section, the state budget division of the department of finance and administration shall reduce the operating budget of each agency that receives general fund appropriations.

Chapter 124 Section 11 Laws 2009

~~[Section 11. **APPROPRIATION REDUCTION FOR CERTAIN SALARY DECREASES.--**~~

~~_____ A. The general fund appropriation to each program, agency and public postsecondary educational institution in Section 4 of the General Appropriation Act of 2009 is reduced by an amount equal to one and one-half percent of the salary and benefits paid from the general fund to each employee of that program, agency or educational institution who:~~

~~_____ (1) is a retired member under the Public Employees Retirement Act and has returned to work pursuant to Section 10-11-8 NMSA 1978 while continuing to receive a pension; or~~

~~_____ (2) is a retired member under the Educational Retirement Act and has returned to work pursuant to Section 22-11-25.1 NMSA 1978 while continuing to receive a pension.~~

~~_____ B. The state budget division of the department of finance and administration and the higher education department shall reduce the operating budget of each program, agency or educational institution for which the appropriation has been reduced pursuant to Subsection A of this section.~~

~~_____ C. Each program, agency or educational institution receiving a reduced appropriation pursuant to this section shall reduce the salary of each employee in an amount equal to the reduced appropriation attributable to that employee.] *LINE-ITEM VETO*~~

Chapter 124 Section 12 Laws 2009

Section 12. **FUND TRANSFERS.--**

A. Forty million dollars (\$40,000,000) is transferred from the general fund to the appropriation contingency fund during fiscal year 2010. A portion of the amount transferred represents a distribution from the permanent fund pursuant to Paragraph (1) of Subsection G of Section 7 of Article 12 of the constitution of New Mexico. The transferred amount shall be held in a separate account of the appropriation contingency fund and expended only on appropriation by the legislature and only for the purpose of implementing and maintaining educational reforms.

B. Twenty-five million dollars (\$25,000,000) is transferred from the general fund to the appropriation contingency fund during fiscal year 2010.

C. Twenty million dollars (\$20,000,000) is transferred from the general fund to the public school capital outlay fund during fiscal year 2010.

D. Fifteen million dollars (\$15,000,000) is transferred from the general fund to the college affordability endowment fund during fiscal year 2010.

E. Notwithstanding any restrictions on the use of the proceeds, two million three hundred thousand dollars (\$2,300,000) is transferred from the proceeds of the surcharge imposed in Section 59A-6-1.1 NMSA 1978 to the general fund during fiscal year 2009. Any unexpended balances from the proceeds of the surcharge imposed in Sections 59A-6-1.1 NMSA 1978 at the end of fiscal year 2009 shall revert to the general fund.

Chapter 124 Section 13 Laws 2009

Section 13. **TRANSFER AUTHORITY.**--If revenue and transfers to the general fund at the end of fiscal year 2010 are not sufficient to meet appropriations, the governor, with state board of finance approval, may transfer at the end of the year the amount necessary to meet the year's obligations from the unexpended balances remaining in the general fund operating reserve in a total not to exceed one hundred five million dollars (\$105,000,000).

Chapter 124 Section 14 Laws 2009

Section 14. **SEVERABILITY.**--If any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

H AFC/House Bills 2, 3, 4, 5 and 6, aa, w/cc, partial veto

Approved April 7, 2009

LAWS 2009, CHAPTER 125

AN ACT

RELATING TO CAPITAL EXPENDITURES; AUTHORIZING THE ISSUANCE OF SEVERANCE TAX BONDS; AUTHORIZING EXPENDITURES FROM CERTAIN FUNDS AND BALANCES; CLARIFYING CONDITIONS FOR THE ISSUANCE OF BONDS; ESTABLISHING CONDITIONS FOR THE EXPENDITURE OF SEVERANCE

TAX BOND PROCEEDS; ESTABLISHING CONDITIONS FOR THE REVERSION OF UNEXPENDED BALANCES; MAKING APPROPRIATIONS.

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

Chapter 125 Section 1 Laws 2009

Section 1. SEVERANCE TAX BONDS--AUTHORIZATIONS--APPROPRIATION OF PROCEEDS.--

A. The state board of finance may issue and sell severance tax bonds in compliance with the Severance Tax Bonding Act in an amount not to exceed the total of the amounts authorized for purposes specified in this act. The state board of finance shall schedule the issuance and sale of the bonds in the most expeditious and economical manner possible upon a finding by the board that the project has been developed sufficiently to justify the issuance and that the project can proceed to contract within a reasonable time. The state board of finance shall further take the appropriate steps necessary to comply with the Internal Revenue Code of 1986, as amended. Proceeds from the sale of the bonds are appropriated for the purposes specified in this act.

B. The agencies named in this act shall certify to the state board of finance when the money from the proceeds of the severance tax bonds authorized in this section is needed for the purposes specified in the applicable section of this act. If an agency has not certified the need for the issuance of the bonds for a particular project, including projects that have been reauthorized, by the end of fiscal year 2011, the authorization for that project is void.

C. Before an agency may certify for the issuance of severance tax bonds, the project must be developed sufficiently so that the agency reasonably expects to:

(1) incur within six months after the applicable bonds have been issued a substantial binding obligation to a third party to expend at least five percent of the bond proceeds for the project; and

(2) spend at least eighty-five percent of the bond proceeds within three years after the applicable bonds have been issued.

D. Except as otherwise specifically provided by law:

(1) the unexpended balance from the proceeds of severance tax bonds issued pursuant to this act for a project shall revert to the severance tax bonding fund no later than the following dates:

(a) for a project for which severance tax bonds were issued to match federal grants, six months after completion of the project;

(b) for a project for which severance tax bonds were issued to purchase vehicles, including emergency vehicles and other vehicles that require special equipment; heavy equipment; books; educational technology; or other equipment or furniture that is not related to a more inclusive construction or renovation project, at the end of the fiscal year two years following the fiscal year in which the severance tax bonds were issued for the purchase; and

(c) for any other project for which severance tax bonds were issued, within six months of completion of the project, but no later than the end of fiscal year 2013; and

(2) all remaining balances from the proceeds of severance tax bonds issued for a project pursuant to this act shall revert to the severance tax bonding fund three months after the latest reversion date specified for that type of project in Paragraph (1) of this subsection.

E. Except for appropriations to the capital program fund, money from severance tax bond proceeds provided pursuant to this act shall not be used to pay indirect project costs.

F. For the purpose of this section, "unexpended balance" means the remainder of an appropriation after reserving for unpaid costs and expenses covered by binding written obligations to third parties.

Chapter 125 Section 2 Laws 2009

Section 2. OTHER FUND APPROPRIATIONS--LIMITATIONS--REVERSIONS.--

A. Except as otherwise specifically provided by law:

(1) the unexpended balance of an appropriation made in this act from other state funds shall revert no later than the following dates:

(a) for a project for which an appropriation was made to match federal grants, six months after completion of the project;

(b) for a project for which an appropriation was made to purchase vehicles, including emergency vehicles and other vehicles that require special equipment; heavy equipment; books; educational technology; or other equipment or furniture that is not related to a more inclusive construction or renovation project, at the end of the fiscal year two years following the fiscal year in which the appropriation was made for the purchase; and

(c) for any other project for which an appropriation was made, within six months of completion of the project, but no later than the end of fiscal year 2013; and

(2) all remaining balances from an appropriation made in this act for a project shall revert three months after the latest reversion date specified for that type of project in Paragraph (1) of this subsection.

B. Except for appropriations to the capital program fund, money from appropriations made in this act shall not be used to pay indirect project costs.

C. Except as provided in Subsection E of this section, the balance of an appropriation made from the general fund shall revert in the time frame set forth in Subsection A of this section to the capital projects fund.

D. Except as provided in Subsection E of this section, the balance of an appropriation made from other state funds shall revert in the time frame set forth in Subsection A of this section to the originating fund.

E. 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 in the time frame set forth in Subsection A of this section to the tribal infrastructure project fund.

F. For the purpose of this section, "unexpended balance" means the remainder of an appropriation after reserving for unpaid costs and expenses covered by binding written obligations to third parties.

Chapter 125 Section 3 Laws 2009

Section 3. ADMINISTRATIVE OFFICE OF THE COURTS PROJECTS--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the administrative office of the courts that the need exists for the issuance of the bonds, the following amounts are appropriated to the administrative office of the courts for the following purposes:

1. two hundred thousand dollars (\$200,000) for assistive listening devices statewide; and

2. eight hundred thousand dollars (\$800,000) to furnish and equip magistrate facilities statewide.

Chapter 125 Section 4 Laws 2009

Section 4. AGING AND LONG-TERM SERVICES DEPARTMENT PROJECTS--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the aging and long-term services department that the need exists for the issuance of the bonds, the following amounts are appropriated to the aging and long-term services department for the following purposes:

1. twenty-one thousand six hundred dollars (\$21,600) to make improvements for building code compliance, including the purchase and installation of equipment, to the Armijo meal site center in Bernalillo county;

2. one million twenty-four thousand one hundred ten dollars (\$1,024,110) to make improvements for building code compliance, including the purchase and installation of equipment, to Albuquerque senior centers citywide in Bernalillo county;

3. three hundred seventy-eight thousand dollars (\$378,000) to purchase and equip vehicles for the transportation of hot meals at Albuquerque senior centers in Bernalillo county;

4. fifty thousand dollars (\$50,000) to purchase and equip handicapped-accessible vans for the Chaves countywide senior centers in Chaves county;

5. forty-two thousand dollars (\$42,000) to purchase and equip vehicles for the transportation of hot meals at Chaves countywide senior centers in Chaves county;

6. forty-two thousand dollars (\$42,000) to purchase and equip vehicles for the transportation of hot meals at Colfax countywide senior centers in Colfax county;

7. seventy-six thousand six hundred dollars (\$76,600) to make improvements for building code compliance, including the purchase and installation of equipment, to the Benavidez senior center in Dona Ana county;

8. eighty-four thousand dollars (\$84,000) to purchase and equip vehicles for the transportation of hot meals at Las Cruces citywide senior centers in Dona Ana county;

9. one hundred thousand dollars (\$100,000) to purchase and equip handicapped-accessible vans for the Las Cruces citywide senior centers in Dona Ana county;

10. two hundred fifty-eight thousand dollars (\$258,000) to make improvements for building code compliance, including the purchase and installation of equipment, to the Gila, Mimbres and Santa Clara senior centers in Grant county;

11. fifty thousand dollars (\$50,000) to purchase and equip handicapped-accessible vans for the Ena Mitchell senior center in Hidalgo county;

12. one hundred twenty thousand dollars (\$120,000) to make improvements for building code compliance, including the purchase and installation of equipment, to the Smith Lake chapter senior center on the Navajo Nation in McKinley county;

13. two hundred fifty thousand dollars (\$250,000) to purchase and equip handicapped-accessible vans for the Navajo Nation senior centers;
14. nine thousand dollars (\$9,000) to make improvements for building code compliance, including the purchase and installation of equipment, to the Pueblo of Isleta senior center in Bernalillo county;
15. fifty-six thousand four hundred fifty dollars (\$56,450) to make improvements for building code compliance, including the purchase and installation of equipment, to the Alamogordo senior center in Otero county;
16. fifty thousand dollars (\$50,000) to purchase and equip handicapped-accessible vans for the Tularosa senior center in Otero county;
17. one hundred eighty-seven thousand five hundred twenty dollars (\$187,520) to make improvements for building code compliance, including the purchase and installation of equipment, to the Espanola senior center in Rio Arriba county;
18. forty-two thousand dollars (\$42,000) to purchase and equip vehicles for the transportation of hot meals at the Pueblo of Santa Clara senior center in Rio Arriba county;
19. fifteen thousand one hundred fifty dollars (\$15,150) to make improvements for building code compliance, including the purchase and installation of equipment, to the Tierra Amarilla senior center in Rio Arriba county;
20. fifty thousand dollars (\$50,000) to purchase and equip handicapped-accessible vans for the Tierra Amarilla senior center in Rio Arriba county;
21. fifty thousand dollars (\$50,000) to purchase and equip handicapped-accessible vans for the Elida senior center in Roosevelt county;
22. one hundred twenty thousand dollars (\$120,000) to make improvements for building code compliance, including the purchase and installation of equipment, to the Bonnie Dallas senior center in San Juan county;
23. one hundred nine thousand eight hundred dollars (\$109,800) to make improvements for building code compliance, including the purchase and installation of equipment, to the Blanco senior center in San Juan county;
24. forty-two thousand dollars (\$42,000) to purchase and equip vehicles for the transportation of hot meals at Bloomfield senior center in San Juan county;
25. thirteen thousand dollars (\$13,000) to make improvements for building code compliance, including the purchase and installation of equipment, to the Huerfano chapter senior center on the Navajo Nation in San Juan county;

26. one thousand six hundred dollars (\$1,600) to make improvements for building code compliance, including the purchase and installation of equipment, to the Lake Valley chapter senior center on the Navajo Nation in San Juan county;

27. twelve thousand six hundred sixty dollars (\$12,660) to make improvements for building code compliance, including the purchase and installation of equipment, to the Upper Fruitland chapter senior center on the Navajo Nation in San Juan county;

28. one hundred thousand dollars (\$100,000) to purchase and equip vehicles for the transportation of hot meals at San Miguel countywide senior centers in San Miguel county;

29. forty-two thousand dollars (\$42,000) to purchase and equip vehicles for the transportation of hot meals at Bernalillo and Placitas senior centers in Sandoval county;

30. fifty thousand dollars (\$50,000) to purchase and equip handicapped-accessible vans for the Meadowlark senior center in Sandoval county;

31. one hundred thousand dollars (\$100,000) to make improvements for building code compliance, including the purchase and installation of equipment, to the Meadowlark senior center in Sandoval county;

32. forty-two thousand dollars (\$42,000) to purchase and equip vehicles for the transportation of hot meals at Sandoval countywide senior centers in Sandoval county;

33. twenty thousand dollars (\$20,000) to make improvements for building code compliance, including the purchase and installation of equipment, to the Bernalillo senior center in Sandoval county;

34. forty-two thousand dollars (\$42,000) to purchase and equip vehicles for the transportation of hot meals at the Pueblo of Cochiti senior center in Sandoval county;

35. twenty-two thousand two hundred fifty dollars (\$22,250) to make improvements for building code compliance, including the purchase and installation of equipment, to the Corrales senior center in Sandoval county;

36. fifty thousand dollars (\$50,000) to purchase and equip handicapped-accessible vans for the Pueblo of Santo Domingo senior center in Sandoval county;

37. eighty-four thousand dollars (\$84,000) to purchase and equip vehicles for the transportation of hot meals at Santa Fe citywide senior centers in Santa Fe county;

38. two hundred thousand dollars (\$200,000) to make improvements for building code compliance, including the purchase and installation of equipment, to the Mary Esther Gonzales senior center in Santa Fe county;

39. one hundred fifty thousand dollars (\$150,000) to make improvements for building code compliance, including the purchase and installation of equipment, to the Rio en Medio meal site center in Santa Fe county;

40. fifty thousand dollars (\$50,000) to purchase and equip handicapped-accessible vans for the Eldorado senior center in Santa Fe county;

41. fifty thousand dollars (\$50,000) to purchase and equip handicapped-accessible vans for the Santa Fe senior center in Santa Fe county;

42. forty-two thousand dollars (\$42,000) to purchase and equip vehicles for the transportation of hot meals at the Sierra joint office on aging in Sierra county;

43. one hundred fifty thousand dollars (\$150,000) to purchase and equip handicapped-accessible vans for the Socorro countywide senior centers in Socorro county;

44. forty-two thousand dollars (\$42,000) to purchase and equip vehicles for the transportation of hot meals at Taos countywide senior centers in Taos county;

45. forty-two thousand dollars (\$42,000) to purchase and equip vehicles for the transportation of hot meals at the Pueblo of Taos senior center in Taos county;

46. thirty-two thousand two hundred sixty dollars (\$32,260) to make improvements for building code compliance, including the purchase and installation of equipment, to senior centers in Torraine county;

47. forty-two thousand dollars (\$42,000) to purchase and equip vehicles for the transportation of hot meals at Clayton senior center in Union county;

48. one hundred fifty thousand dollars (\$150,000) to make improvements for building code compliance, including the purchase and installation of equipment, to the Fred Luna senior center in Valencia county; and

49. forty-two thousand dollars (\$42,000) to purchase and equip vehicles for the transportation of hot meals at Valencia countywide senior centers in Valencia county.

Chapter 125 Section 5 Laws 2009

Section 5. STATE ARMORY BOARD PROJECT--SEVERANCE TAX BONDS.-- Pursuant to the provisions of Section 1 of this act, upon certification by the state armory

board that the need exists for the issuance of the bonds, five hundred thousand dollars (\$500,000) is appropriated to the state armory board for renovation and repairs at armory facilities statewide.

Chapter 125 Section 6 Laws 2009

Section 6. BERNALILLO COUNTY METROPOLITAN COURT PROJECT--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the Bernalillo county metropolitan court that the need exists for the issuance of the bonds, one hundred sixty-two thousand dollars (\$162,000) is appropriated to the Bernalillo county metropolitan court to plan, design, construct and furnish classrooms for the driving while impaired and driver improvement schools in the metro shops in Albuquerque in Bernalillo county.

Chapter 125 Section 7 Laws 2009

Section 7. STATE BUILDING PROJECTS--CAPITAL PROGRAM FUND--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the property control division of the general services department that the need exists for the issuance of the bonds, the following amounts are appropriated to the capital program fund for the following purposes:

1. seven hundred fifty thousand dollars (\$750,000) to plan, design and construct a senior skills training center, including learning laboratories, classrooms and offices, at the commission for the blind in Albuquerque in Bernalillo county;

2. four hundred thousand dollars (\$400,000) to renovate and equip the youth diagnostic development center in accordance with the Missouri model and implementation of Cambiar New Mexico in Albuquerque in Bernalillo county;

3. three million five hundred thousand dollars (\$3,500,000) to purchase, install, equip and furnish the state laboratory services building in Albuquerque in Bernalillo county;

4. two hundred seven thousand three hundred dollars (\$207,300) for fire suppression at the Sequoyah adolescent treatment center in Albuquerque in Bernalillo county;

5. five hundred thousand dollars (\$500,000) for renovations and improvements to the TIWA building in Albuquerque in Bernalillo county;

6. eight hundred thousand dollars (\$800,000) to plan, design, construct and equip a county emergency response station to provide hazmat and other emergency response at the Santa Teresa port of entry and surrounding areas in Dona Ana county;

7. one million five hundred thousand dollars (\$1,500,000) to equip, furnish and landscape the site, including equipping a spur road, at the Lordsburg port of entry in Hidalgo county;

8. four hundred thousand dollars (\$400,000) to plan, design and construct improvements, including reconfiguring office layout, remodeling restrooms and replacing the heating, ventilation and air conditioning system, in the James Murray building in Hobbs in Lea county;

9. eight hundred forty thousand dollars (\$840,000) to plan and design a skilled-nursing Alzheimer's unit at the New Mexico state veterans' home in Truth or Consequences in Sierra county;

10. five hundred fifty thousand dollars (\$550,000) to purchase and install modular units and make other improvements at state police substations in Cuba in Sandoval county and Santa Rosa in Guadalupe county;

11. two hundred thousand dollars (\$200,000) to plan, design and construct renovations to the Harriet Sammons building in Farmington in San Juan county;

12. three hundred thirty thousand dollars (\$330,000) for asbestos abatement at the New Mexico behavioral health institute in Las Vegas in San Miguel county;

13. two million dollars (\$2,000,000) to plan, design, construct and provide upgrades of forensic security needs at the New Mexico behavioral health institute in Las Vegas in San Miguel county;

14. one hundred seventy-five thousand dollars (\$175,000) for repairs and improvements to the Louise Brown building, including site improvements, repaving and restriping the parking lot and replacing the property fence, in Bernalillo in Sandoval county;

15. four million dollars (\$4,000,000) to acquire land for and to plan and design a health and human services complex in Santa Fe in Santa Fe county;

16. five hundred thousand dollars (\$500,000) for a development plan, including needed facility renovations and improvements, for the infill and redevelopment of the south capitol campus complex in Santa Fe in Santa Fe county;

17. one million dollars (\$1,000,000) to plan, design and construct an addition and renovations to the north office for the homeland security and emergency management department center in Santa Fe in Santa Fe county, contingent on New Mexico receiving an emergency operations center federal grant;

18. one hundred thirty-two thousand seven hundred dollars (\$132,700) to replace boilers and chillers at the New Mexico state veterans' home in Truth or Consequences in Sierra county;

19. one hundred thirty-five thousand dollars (\$135,000) to construct a fire investigation center for use by the fire marshal division for evidence processing and storage at the New Mexico firefighters training academy in Socorro in Socorro county;

20. five million eight hundred thousand dollars (\$5,800,000) to renovate and replace mechanical system equipment, piping and infrastructure at the southern New Mexico correctional facility in Dona Ana county and the central New Mexico correctional facility in Valencia county;

21. one million dollars (\$1,000,000) for infrastructure and improvements at health facilities statewide;

22. two million seven hundred thousand dollars (\$2,700,000) for demolition, decommissioning and asbestos abatement of state buildings, including the Campbell, Woolston, Mecham and Old Huning buildings on the Los Lunas campus in Valencia county and the old dormitory at the New Mexico rehabilitation center in Roswell in Chaves county;

23. two million dollars (\$2,000,000) for repairs, renovations, deferred maintenance and infrastructure improvements at state buildings statewide;

24. one million three hundred thousand dollars (\$1,300,000) for improvements to workforce solutions department offices statewide, including roofs; heating, ventilation and air conditioning systems; deferred maintenance; and improvements to comply with the requirements of the Americans with Disabilities Act of 1990;

25. three hundred thousand dollars (\$300,000) to plan, design, construct and equip a parking area, including lighting and landscaping, for the Fred Luna building in Belen in Valencia county; and

26. three hundred thirty thousand dollars (\$330,000) for renovations and improvements to the therapeutic pool in the natatorium at the Los Lunas campus in Valencia county.

Chapter 125 Section 8 Laws 2009

Section 8. COURT OF APPEALS PROJECT--SEVERANCE TAX BONDS.-- Pursuant to the provisions of Section 1 of this act, upon certification by the court of appeals that the need exists for the issuance of the bonds, four hundred thousand dollars (\$400,000) is appropriated to the court of appeals to purchase and install

furniture, fixtures and equipment at the Pamela B. Minzner court of appeals law center in Albuquerque in Bernalillo county.

Chapter 125 Section 9 Laws 2009

Section 9. CULTURAL AFFAIRS DEPARTMENT PROJECTS--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the cultural affairs department that the need exists for the issuance of the bonds, the following amounts are appropriated to the cultural affairs department for the following purposes:

1. five hundred thousand dollars (\$500,000) to construct the educational facility at the New Mexico museum of natural history and science in Albuquerque in Bernalillo county;
2. five hundred sixty-three thousand dollars (\$563,000) to purchase and install exhibits at the Bosque Redondo memorial at Fort Sumner state monument in De Baca county;
3. one million eight hundred thousand dollars (\$1,800,000) to continue construction and completion of Tortugas hall and to purchase and install exhibits at the New Mexico farm and ranch heritage museum in Las Cruces in Dona Ana county;
4. five hundred thousand dollars (\$500,000) for infrastructure improvements at the New Mexico archaeology center in Santa Fe in Santa Fe county;
5. three hundred seventy-five thousand dollars (\$375,000) for furniture, fixtures and equipment for the New Mexico history museum in Santa Fe in Santa Fe county; and
6. one million dollars (\$1,000,000) for repairs and infrastructure improvements to state museums and monuments, including restoration of artifacts and artwork, statewide.

Chapter 125 Section 10 Laws 2009

Section 10. CUMBRES AND TOLTEC SCENIC RAILROAD COMMISSION PROJECT--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the Cumbres and Toltec scenic railroad commission that the need exists for the issuance of the bonds, one million dollars (\$1,000,000) is appropriated to the Cumbres and Toltec scenic railroad commission for track rehabilitation and improvements to the Cumbres and Toltec scenic railroad in Rio Arriba county.

Chapter 125 Section 11 Laws 2009

Section 11. SIXTH JUDICIAL DISTRICT COURT PROJECT--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the sixth judicial district court that the need exists for the issuance of the bonds, two hundred twenty thousand dollars (\$220,000) is appropriated to the sixth judicial district court to furnish and equip the sixth judicial district court in Grant county.

Chapter 125 Section 12 Laws 2009

Section 12. SEVENTH JUDICIAL DISTRICT COURT PROJECT--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the seventh judicial district court that the need exists for the issuance of the bonds, thirty thousand dollars (\$30,000) is appropriated to the seventh judicial district court to furnish and equip the seventh judicial district court in Sierra county.

Chapter 125 Section 13 Laws 2009

Section 13. EIGHTH JUDICIAL DISTRICT COURT PROJECT--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the eighth judicial district court that the need exists for the issuance of the bonds, one hundred seventy-five thousand dollars (\$175,000) is appropriated to the eighth judicial district court to furnish and equip the eighth judicial district court in Colfax county.

Chapter 125 Section 14 Laws 2009

Section 14. ELEVENTH JUDICIAL DISTRICT COURT PROJECT--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the eleventh judicial district court that the need exists for the issuance of the bonds, three hundred seventy-five thousand dollars (\$375,000) is appropriated to the eleventh judicial district court to furnish and equip the eleventh judicial district court in Aztec in San Juan county.

Chapter 125 Section 15 Laws 2009

Section 15. ECONOMIC DEVELOPMENT DEPARTMENT PROJECT--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the economic development department that the need exists for the issuance of the bonds, one million dollars (\$1,000,000) is appropriated to the economic development department for mainstreet infrastructure and renovation projects statewide.

Chapter 125 Section 16 Laws 2009

Section 16. PUBLIC EDUCATION DEPARTMENT PROJECTS--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the public education department that the need exists for the issuance of the bonds, the

following amounts are appropriated to the public education department for the following purposes:

1. two million dollars (\$2,000,000) for renovation of existing facilities and for construction of pre-kindergarten classrooms statewide; and
2. five million dollars (\$5,000,000) to purchase and equip school buses statewide.

Chapter 125 Section 17 Laws 2009

Section 17. ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT PROJECTS--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the energy, minerals and natural resources department that the need exists for the issuance of the bonds, the following amounts are appropriated to the energy, minerals and natural resources department for the following purposes:

1. five hundred thousand dollars (\$500,000) to purchase and equip fire trucks and crew carriers for forestry division district offices statewide; and
2. seven hundred fifty thousand dollars (\$750,000) to purchase and equip fire engines for local fire departments statewide.

Chapter 125 Section 18 Laws 2009

Section 18. STATE PARKS DIVISION OF THE ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT PROJECT--SEVERANCE TAX BONDS.-- Pursuant to the provisions of Section 1 of this act, upon certification by the state parks division of the energy, minerals and natural resources department that the need exists for the issuance of the bonds, one million dollars (\$1,000,000) is appropriated to the state parks division of the energy, minerals and natural resources department to construct, renovate, equip and furnish state parks, including parking lots and roads, statewide.

Chapter 125 Section 19 Laws 2009

Section 19. OFFICE OF THE STATE ENGINEER PROJECT--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the office of the state engineer that the need exists for the issuance of the bonds, one million five hundred thousand dollars (\$1,500,000) is appropriated to the office of the state engineer for construction and improvements to the Bloomfield dam in San Juan county.

Chapter 125 Section 20 Laws 2009

Section 20. DEPARTMENT OF ENVIRONMENT PROJECT--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the department of environment that the need exists for the issuance of the bonds, one million five hundred thousand dollars (\$1,500,000) is appropriated to the department of environment for projects that restore instream ecosystem function and watershed health to major river basins statewide.

Chapter 125 Section 21 Laws 2009

Section 21. STATE FAIR COMMISSION PROJECT--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the state fair commission that the need exists for the issuance of the bonds, five million dollars (\$5,000,000) is appropriated to the state fair commission for a facilities master plan and to plan, design, construct, equip and make improvements to facilities, grounds and infrastructure at the New Mexico state fairgrounds in Albuquerque in Bernalillo county.

Chapter 125 Section 22 Laws 2009

Section 22. DEPARTMENT OF FINANCE AND ADMINISTRATION PROJECTS--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the department of finance and administration that the need exists for the issuance of the bonds, the following amounts are appropriated to the department of finance and administration for the following purposes:

1. four million dollars (\$4,000,000) for infrastructure development, design and construction for a financial services economic development project in Bernalillo county pursuant to the Local Economic Development Act;

2. six million dollars (\$6,000,000) for infrastructure development, design and construction for a solar equipment economic development project in Bernalillo county pursuant to the Local Economic Development Act;

3. six million dollars (\$6,000,000) for infrastructure development, design and construction of a technical support center in Rio Rancho in Sandoval county pursuant to the Local Economic Development Act;

4. four million dollars (\$4,000,000) to plan, design and construct infrastructure improvements to colonias statewide;

5. one million dollars (\$1,000,000) to plan, design, construct and equip county fairgrounds and public rodeo facilities statewide;

6. four million five hundred thousand dollars (\$4,500,000) to provide grants to political subdivisions of the state for infrastructure improvements necessary to

attract new companies or expand existing businesses to achieve job growth pursuant to the Local Economic Development Act statewide; and

7. three million dollars (\$3,000,000) for design and construction for a solar equipment economic development project in Belen in Valencia county pursuant to the Local Economic Development Act.

Chapter 125 Section 23 Laws 2009

Section 23. DEPARTMENT OF GAME AND FISH PROJECTS--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the department of game and fish that the need exists for the issuance of the bonds, the following amounts are appropriated to the department of game and fish for the following purposes:

1. four million two hundred fifty thousand dollars (\$4,250,000) for construction and renovations to the Lake Roberts dam and spillway in Grant county; and

2. two hundred fifty thousand dollars (\$250,000) to improve habitat conditions, including signage for aquatic education, on the San Juan river in San Juan county.

Chapter 125 Section 24 Laws 2009

Section 24. GENERAL SERVICES DEPARTMENT PROJECT--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the general services department that the need exists for the issuance of the bonds, one hundred thousand dollars (\$100,000) is appropriated to the general services department to purchase and equip handicapped-accessible vans for use by state employees at state agencies statewide.

Chapter 125 Section 25 Laws 2009

Section 25. DEPARTMENT OF HEALTH PROJECT--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the department of health that the need exists for the issuance of the bonds, one hundred thousand dollars (\$100,000) is appropriated to the department of health to purchase and install health immunization equipment and information technology, including related equipment, furniture and infrastructure, for the statewide immunization information system.

Chapter 125 Section 26 Laws 2009

Section 26. INDIAN AFFAIRS DEPARTMENT PROJECT--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the Indian affairs department that the need exists for the issuance of the bonds, one million dollars (\$1,000,000) is appropriated to the Indian affairs department to plan, design and construct a regional wellness center for the Santa Fe Indian school in Santa Fe in Santa Fe county.

Chapter 125 Section 27 Laws 2009

Section 27. DEPARTMENT OF INFORMATION TECHNOLOGY PROJECTS--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the department of information technology that the need exists for the issuance of the bonds, the following amounts are appropriated to the department of information technology for the following purposes:

1. nine hundred thousand dollars (\$900,000) to purchase and install information technology hardware, software and fiber network equipment in the data center in the Simms building in Santa Fe in Santa Fe county;
2. two million one hundred thousand dollars (\$2,100,000) for equipment and software to upgrade and redesign the state's enterprise email system;
3. one million seven hundred thousand dollars (\$1,700,000) to design and equip a disaster recovery site for the statewide human resources, accounting and management reporting system, including hardware, software and network equipment;
4. eight hundred thousand dollars (\$800,000) for equipment upgrades to the core telecommunications network statewide;
5. nine hundred thousand dollars (\$900,000) for telephone system upgrades, including replacing private branch exchange switches, statewide; and
6. one million dollars (\$1,000,000) to plan, design, construct and convert analog microwave towers to a statewide digital microwave network.

Chapter 125 Section 28 Laws 2009

Section 28. DEPARTMENT OF PUBLIC SAFETY PROJECT--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the department of public safety that the need exists for the issuance of the bonds, two million dollars (\$2,000,000) is appropriated to the department of public safety to purchase and equip law enforcement vehicles statewide.

Chapter 125 Section 29 Laws 2009

Section 29. NEW MEXICO SCHOOL FOR THE BLIND AND VISUALLY IMPAIRED AND NEW MEXICO SCHOOL FOR THE DEAF PROJECTS--PUBLIC SCHOOL CAPITAL OUTLAY FUND--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the public school capital outlay council that the need exists for the issuance of the bonds, the following amounts are appropriated to the public school capital outlay fund for the following purposes:

1. two million three hundred thousand dollars (\$2,300,000) for fire suppression upgrades and other infrastructure improvements to address critical deficiencies at the New Mexico school for the blind and visually impaired in Alamogordo in Otero county; and

2. two million five hundred thousand dollars (\$2,500,000) for asbestos abatement, mold remediation and other renovations to address critical deficiencies at the New Mexico school for the deaf in Santa Fe in Santa Fe county.

Chapter 125 Section 30 Laws 2009

Section 30. SUPREME COURT BUILDING COMMISSION PROJECT--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the supreme court building commission that the need exists for the issuance of the bonds, seven hundred thousand dollars (\$700,000) is appropriated to the supreme court building commission for a fire suppression system at the supreme court building in Santa Fe in Santa Fe county.

Chapter 125 Section 31 Laws 2009

Section 31. TAXATION AND REVENUE DEPARTMENT PROJECT--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the taxation and revenue department that the need exists for the issuance of the bonds, two hundred thousand dollars (\$200,000) is appropriated to the taxation and revenue department to purchase and install remittance transport equipment in Santa Fe in Santa Fe county.

Chapter 125 Section 32 Laws 2009

Section 32. TRIBAL INFRASTRUCTURE PROJECTS--TRIBAL INFRASTRUCTURE PROJECT FUND--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the department of finance and administration that the need exists for the issuance of the bonds, five million dollars (\$5,000,000) is appropriated to the tribal infrastructure project fund for tribal infrastructure projects related to water, wastewater, electrical systems, communications, roads, health, emergency facilities and economic development statewide to carry out the provisions of the Tribal Infrastructure Act.

Chapter 125 Section 33 Laws 2009

Section 33. EASTERN NEW MEXICO UNIVERSITY PROJECT--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the board of regents of eastern New Mexico university that the need exists for the issuance of the bonds, four hundred thousand dollars (\$400,000) is appropriated to the board of regents of eastern New Mexico university for infrastructure and electric utility upgrades, including distribution, at eastern New Mexico university in Portales in Roosevelt county.

Chapter 125 Section 34 Laws 2009

Section 34. NEW MEXICO HIGHLANDS UNIVERSITY PROJECT--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the board of regents of New Mexico highlands university that the need exists for the issuance of the bonds, four hundred thousand dollars (\$400,000) is appropriated to the board of regents of New Mexico highlands university for infrastructure renovations and improvements at New Mexico highlands university in Las Vegas in San Miguel county.

Chapter 125 Section 35 Laws 2009

Section 35. NEW MEXICO MILITARY INSTITUTE PROJECT--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the board of regents of New Mexico military institute that the need exists for the issuance of the bonds, two million two hundred thousand dollars (\$2,200,000) is appropriated to the board of regents of New Mexico military institute for critical water supply infrastructure at New Mexico military institute in Roswell in Chaves county.

Chapter 125 Section 36 Laws 2009

Section 36. NEW MEXICO INSTITUTE OF MINING AND TECHNOLOGY PROJECT--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the board of regents of New Mexico institute of mining and technology that the need exists for the issuance of the bonds, four hundred thousand dollars (\$400,000) is appropriated to the board of regents of New Mexico institute of mining and technology for infrastructure renovations and improvements at the New Mexico institute of mining and technology in Socorro in Socorro county.

Chapter 125 Section 37 Laws 2009

Section 37. NEW MEXICO STATE UNIVERSITY PROJECT--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the board of regents of New Mexico state university that the need exists for the issuance of the bonds, five million five hundred thousand dollars (\$5,500,000) is appropriated to the

board of regents of New Mexico state university to plan, design, construct, equip and furnish the arts complex at New Mexico state university in Las Cruces in Dona Ana county.

Chapter 125 Section 38 Laws 2009

Section 38. UNIVERSITY OF NEW MEXICO PROJECTS--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the board of regents of the university of New Mexico that the need exists for the issuance of the bonds, the following amounts are appropriated to the board of regents of the university of New Mexico for the following purposes:

1. two million dollars (\$2,000,000) to construct and equip a nanotechnology and biotechnology center, including laboratories and offices, in the Centennial engineering center at the university of New Mexico in Albuquerque in Bernalillo county;
2. four million dollars (\$4,000,000) for a film and digital media center, including classrooms, studios, support space, a digital projection theater and faculty offices, at Mesa del Sol in Albuquerque in Bernalillo county; and
3. eight hundred thousand dollars (\$800,000) to complete construction of the early childhood care center at the Taos branch campus of the university of New Mexico in Taos county.

Chapter 125 Section 39 Laws 2009

Section 39. WESTERN NEW MEXICO UNIVERSITY PROJECTS--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the board of regents of western New Mexico university that the need exists for the issuance of the bonds, four hundred thousand dollars (\$400,000) is appropriated to the board of regents of western New Mexico university for infrastructure renovations and improvements at western New Mexico university in Silver City in Grant county.

Chapter 125 Section 40 Laws 2009

Section 40. WASTEWATER FACILITY CONSTRUCTION LOAN FUND PROJECTS--SEVERANCE TAX BONDS.--Pursuant to the provisions of Section 1 of this act, upon certification by the department of environment that the need exists for the issuance of the bonds, six hundred sixty thousand dollars (\$660,000) is appropriated to the wastewater facility construction loan fund for expenditure in fiscal year 2009 and subsequent fiscal years to carry out the provisions of the Wastewater Facility Construction Loan Act. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert.

Chapter 125 Section 41 Laws 2009

Section 41. EDUCATIONAL RETIREMENT BOARD BUILDING--EDUCATIONAL RETIREMENT FUND.--Two million five hundred thousand dollars (\$2,500,000) is appropriated from the educational retirement fund to the educational retirement board for expenditure in fiscal years 2009 through 2013, unless otherwise provided for in Section 2 of this act, to acquire land for and plan, design and construct a building or acquire and renovate an existing building for the educational retirement board in Santa Fe in Santa Fe county.

Chapter 125 Section 42 Laws 2009

Section 42. DEPARTMENT OF GAME AND FISH PROJECT-- APPROPRIATIONS FROM THE GAME AND FISH BOND RETIREMENT FUND AND THE GAME PROTECTION FUND.--The following amounts are appropriated from the following funds to the department of game and fish for expenditure in fiscal years 2009 through 2013, unless otherwise provided for in Section 2 of this act, to purchase aircraft for aerial surveys:

1. five hundred thousand dollars (\$500,000) from the game and fish bond retirement fund; and
2. two hundred thousand dollars (\$200,000) from the game protection fund.

Chapter 125 Section 43 Laws 2009

Section 43. DEPARTMENT OF GAME AND FISH PROJECT--APPROPRIATION FROM THE HABITAT MANAGEMENT FUND.--Two hundred fifty thousand dollars (\$250,000) is appropriated from the habitat management fund to the department of game and fish for expenditure in fiscal year 2009 and subsequent fiscal years for construction and renovations to the Lake Roberts dam and spillway in Grant county. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert.

Chapter 125 Section 44 Laws 2009

Section 44. MINERS' HOSPITAL PROJECT--APPROPRIATION FROM THE MINERS' TRUST FUND.--One million dollars (\$1,000,000) is appropriated from the miners' trust fund to the miners' hospital for expenditure in fiscal years 2009 through 2013, unless otherwise provided in Section 2 of this act, to purchase and install an automated pharmaceutical dispensing system at the miners' hospital in Raton in Colfax county.

Chapter 125 Section 45 Laws 2009

Section 45. DEPARTMENT OF TRANSPORTATION PROJECTS--
APPROPRIATIONS FROM THE STATE ROAD FUND.--The following amounts are appropriated from the state road fund to the department of transportation for expenditure in fiscal years 2009 through 2013, unless otherwise provided for in Section 2 of this act, for the following purposes:

1. fifty thousand dollars (\$50,000) to replace the roof of the hilltop building in district 3 in Albuquerque in Bernalillo county;

2. one hundred thousand dollars (\$100,000) for improvements and expansion of the administrative services facility in district 2, including electrical, mechanical and communications systems, in Roswell in Chaves county;

3. nine hundred fifty thousand dollars (\$950,000) to plan, design and construct the patrol facility in district 5 in Tierra Amarilla in Rio Arriba county; and

4. three hundred fifty thousand dollars (\$350,000) for purchase, installation and construction of salt storage facilities statewide.

Chapter 125 Section 46 Laws 2009

Section 46. PROJECT SCOPE--EXPENDITURES.--If an appropriation for a project authorized in this act is not sufficient to complete all the purposes specified, the appropriation may be expended for any portion of the purposes specified in the appropriation. Expenditures shall not be made for purposes other than those specified in the appropriation.

Chapter 125 Section 47 Laws 2009

Section 47. ART IN PUBLIC PLACES.--Pursuant to Section 13-4A-4 NMSA 1978 and where applicable, the appropriations authorized in this act include one percent for the art in public places fund.

HTRC/House Bill 154, w/o ec

Approved April 7, 2009

LAWS 2009, CHAPTER 126

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE; CREATING
THE NEW MEXICO RECOVERY AND REINVESTMENT FUND IN RESPONSE TO

THE FEDERAL AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009;
DECLARING AN EMERGENCY.

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

Chapter 126 Section 1 Laws 2009

Section 1. A new section of Chapter 6, Article 4 NMSA 1978 is enacted to read:

"NEW MEXICO RECOVERY AND REINVESTMENT FUND.--

A. The legislature finds that:

(1) the state is not eligible for an increase to the federal medical assistance percentage provided in Subsection (b) or (c) of Section 5001 of the federal American Recovery and Reinvestment Act of 2009 if any amounts attributable, directly or indirectly, to the increase are deposited or credited into any reserve or rainy day fund of the state;

(2) in order to ensure compliance with this requirement, it is desirable to set up a fund separate and apart from the state's general fund to capture unexpended fiscal year 2009 general fund appropriations attributable to an increase to the federal medical assistance percentage provided in Subsection (b) or (c) of Section 5001 of the federal American Recovery and Reinvestment Act of 2009;

(3) the separate fund will also enable the state to clearly account to the federal government regarding earnings and expenditures on unexpended fiscal year 2009 general fund appropriations attributable to an increase to the federal medical assistance percentage provided in Subsection (b) or (c) of Section 5001 of the federal American Recovery and Reinvestment Act of 2009; and

(4) in the period of time during which the fund will be available for expenditure, the fund will be used to stabilize the state's budget in the event of revenue shortfalls and to fund the state's share of the medicaid program, thereby preserving jobs and minimizing reductions in essential services, both of which are stated purposes of the federal American Recovery and Reinvestment Act of 2009.

B. The "New Mexico recovery and reinvestment fund" is created in the state treasury. The fund shall consist of money that is credited to the fund pursuant to Subsection C of this section, reversions to the fund of the unexpended balances of appropriations from the fund, appropriations made to the fund and investment income credited to the fund. Money in the fund shall not revert to any other state fund at the end of any fiscal year and shall not be expended for any purpose except as provided in this section. Income from investment of the fund shall be credited to the fund.

C. Notwithstanding the reversion provisions of general appropriation acts or other laws, at the end of fiscal year 2009, the unexpended balance of a general fund appropriation shall be credited to the New Mexico recovery and reinvestment fund if the secretary of finance and administration, in consultation with the director of the legislative finance committee, determines that the unexpended balance is attributable to an increase in the federal medical assistance percentage provided in Subsection (b) or (c) of Section 5001 of the federal American Recovery and Reinvestment Act of 2009.

D. If revenue and transfers to the general fund at the end of fiscal year 2009, 2010 or 2011 are not sufficient to meet general fund appropriations, the governor, with state board of finance approval, may transfer to the general fund from the unappropriated balance of the New Mexico recovery and reinvestment fund an amount up to the amount of the insufficiency.

E. Except as provided in Subsection D of this section, the New Mexico recovery and reinvestment fund may be appropriated by the legislature solely for medicaid expenses in fiscal year 2010, fiscal year 2011 and the first quarter of fiscal year 2012; provided that any balance of an appropriation from the fund not expended within the period provided in the appropriation shall revert to the fund.

F. The unexpended balance of the New Mexico recovery and reinvestment fund as of September 30, 2011 shall be returned to the federal government, unless federal law or regulation provides for a different disposition."

Chapter 126 Section 2 Laws 2009

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

H AFC/House Bill 920, aa, w/ec

Approved April 7, 2009

LAWS 2009, CHAPTER 127

AN ACT

RELATING TO THE RETIREMENT OF PUBLIC EMPLOYEES; PROVIDING A TEMPORARY INCREASE IN CERTAIN EMPLOYEE CONTRIBUTION RATES AND A CORRESPONDING TEMPORARY DECREASE IN THE EMPLOYER CONTRIBUTION RATES.

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

Chapter 127 Section 1 Laws 2009

Section 1. Section 10-11-26.5 NMSA 1978 (being Laws 1994, Chapter 128, Section 6) is amended to read:

"10-11-26.5. STATE GENERAL MEMBER COVERAGE PLAN 3--MEMBER CONTRIBUTION RATE.--A member under state general member coverage plan 3 shall contribute seven and forty-two hundredths percent of salary starting with the first full pay period that ends within the calendar month in which state general member coverage plan 3 becomes applicable to the member, except that, from July 1, 2009 through June 30, 2011, for members whose annual salary is greater than twenty thousand dollars (\$20,000), the member contribution rate shall be eight and ninety-two hundredths percent of salary."

Chapter 127 Section 2 Laws 2009

Section 2. Section 10-11-26.6 NMSA 1978 (being Laws 1994, Chapter 128, Section 7) is amended to read:

"10-11-26.6. STATE GENERAL MEMBER COVERAGE PLAN 3--STATE CONTRIBUTION RATE.--The state shall contribute sixteen and fifty-nine hundredths percent of the salary of each member covered by state general member coverage plan 3 starting with the first pay period that ends within the calendar month in which state general member coverage plan 3 becomes applicable to the member, except that, from July 1, 2009 through June 30, 2011, for members whose annual salary is greater than twenty thousand dollars (\$20,000), the state contribution rate shall be fifteen and nine hundredths percent of the salary of each member."

Chapter 127 Section 3 Laws 2009

Section 3. Section 10-11-31 NMSA 1978 (being Laws 1987, Chapter 253, Section 31, as amended) is amended to read:

"10-11-31. STATE POLICE MEMBER AND ADULT CORRECTIONAL OFFICER MEMBER COVERAGE PLAN 1--MEMBER CONTRIBUTION RATE.--A member under state police member and adult correctional officer member coverage plan 1 shall contribute seven and six-tenths percent of salary, except that, from July 1, 2009 through June 30, 2011, for members whose annual salary is greater than twenty thousand dollars (\$20,000), the member contribution rate shall be nine and one-tenth percent of salary."

Chapter 127 Section 4 Laws 2009

Section 4. Section 10-11-32 NMSA 1978 (being Laws 1987, Chapter 253, Section 32, as amended) is amended to read:

"10-11-32. STATE POLICE MEMBER AND ADULT CORRECTIONAL OFFICER MEMBER COVERAGE PLAN 1--STATE CONTRIBUTION RATE.--The state shall contribute twenty-five and one-tenth percent of the salary of each member under state police member and adult correctional officer member coverage plan 1, except that, from July 1, 2009 through June 30, 2011, for members whose annual salary is greater than twenty thousand dollars (\$20,000), the state contribution rate shall be twenty-three and six-tenths percent of the salary of each member."

Chapter 127 Section 5 Laws 2009

Section 5. Section 10-11-38.5 NMSA 1978 (being Laws 1994, Chapter 128, Section 13) is amended to read:

"10-11-38.5. STATE HAZARDOUS DUTY MEMBER COVERAGE PLAN 2--MEMBER CONTRIBUTION RATE.--A member under state hazardous duty member coverage plan 2 shall contribute four and seventy-eight hundredths percent of salary starting with the first full pay period that ends within the calendar month in which state hazardous duty member coverage plan 2 becomes applicable to the member, except that, from July 1, 2009 through June 30, 2011, for members whose annual salary is greater than twenty thousand dollars (\$20,000), the member contribution rate shall be six and twenty-eight hundredths percent of salary."

Chapter 127 Section 6 Laws 2009

Section 6. Section 10-11-38.6 NMSA 1978 (being Laws 1994, Chapter 128, Section 14) is amended to read:

"10-11-38.6. STATE HAZARDOUS DUTY MEMBER COVERAGE PLAN 2--STATE CONTRIBUTION RATE.--The state shall contribute twenty-five and seventy-two hundredths percent of the salary of each member covered by state hazardous duty member coverage plan 2 starting with the first pay period that ends within the calendar month in which state hazardous duty member coverage plan 2 becomes applicable to the member, except that, from July 1, 2009 through June 30, 2011, for members whose annual salary is greater than twenty thousand dollars (\$20,000), the state contribution rate shall be twenty-four and twenty-two hundredths percent of the salary of each member."

Chapter 127 Section 7 Laws 2009

Section 7. Section 10-12B-10 NMSA 1978 (being Laws 1992, Chapter 111, Section 10, as amended) is amended to read:

"10-12B-10. MEMBER CONTRIBUTIONS--TAX TREATMENT.--

A. Members, while in office, shall contribute to the member contribution fund pursuant to the following schedule:

(1) prior to July 1, 2005, five and one-half percent of salary;

(2) from July 1, 2005 through June 30, 2006, six and one-half percent of salary; and

(3) on and after July 1, 2006, seven and one-half percent of salary, except that, from July 1, 2009 through June 30, 2011, for members whose annual salary is greater than twenty thousand dollars (\$20,000), the member contribution rate shall be nine percent of salary.

B. Upon implementation, the state, acting as employer of members covered pursuant to the provisions of the Judicial Retirement Act, shall, solely for the purpose of compliance with Section 414(h) of the Internal Revenue Code of 1986, pick up for the purposes specified in that section member contributions required by this section for all annual salary earned by the member. Member contributions picked up pursuant to the provisions of this section shall be treated as employer contributions for purposes of determining income tax obligations under the Internal Revenue Code of 1986; however, such picked-up member contributions shall be included in the determination of the member's gross annual salary for all other purposes under federal and state laws. Member contributions picked up pursuant to the provisions of this section shall continue to be designated member contributions for all purposes of the Judicial Retirement Act and shall be considered as part of the member's annual salary for purposes of determining the amount of the member's contribution. The provisions of this section are mandatory, and the member shall have no option concerning the pickup or concerning the receipt of the contributed amounts directly instead of having the amounts paid by the employer to the retirement system. Implementation occurs upon authorization by the board. In no event may implementation occur other than at the beginning of a pay period applicable to the member."

Chapter 127 Section 8 Laws 2009

Section 8. Section 10-12B-11 NMSA 1978 (being Laws 1992, Chapter 111, Section 11, as amended) is amended to read:

"10-12B-11. EMPLOYER CONTRIBUTIONS.--

A. The member's court shall contribute the following amounts to the fund:

(1) prior to July 1, 2005, nine percent of salary for each member in office;

(2) from July 1, 2005 through June 30, 2006, ten and one-half percent of salary for each member in office; and

(3) on and after July 1, 2006, twelve percent of salary for each member in office, except that, from July 1, 2009 through June 30, 2011, for members

whose annual salary is greater than twenty thousand dollars (\$20,000), the member's court contribution rate shall be ten and one-half percent of salary for each member in office.

B. Thirty-eight dollars (\$38.00) from each civil case docket fee paid in the district court, twenty-five dollars (\$25.00) from each civil docket fee paid in metropolitan court and ten dollars (\$10.00) from each jury fee paid in metropolitan court shall be paid by the court clerk to the employer's accumulation fund."

Chapter 127 Section 9 Laws 2009

Section 9. Section 10-12C-10 NMSA 1978 (being Laws 1992, Chapter 118, Section 10, as amended) is amended to read:

"10-12C-10. MEMBER CONTRIBUTIONS--TAX TREATMENT.--

A. Members, while in office, shall contribute the following amounts to the member contribution fund:

(1) through June 30, 2006, six and one-half percent of salary; and

(2) on and after July 1, 2006, seven and one-half percent of salary, except that, from July 1, 2009 through June 30, 2011, for members whose annual salary is greater than twenty thousand dollars (\$20,000), the member contribution rate shall be nine percent of salary.

B. Upon implementation, the state, acting as employer of members covered pursuant to the provisions of the Magistrate Retirement Act, shall, solely for the purpose of compliance with Section 414(h) of the Internal Revenue Code of 1986, pick up for the purposes specified in that section member contributions required by this section for all annual salary earned by the member. Member contributions picked up pursuant to the provisions of this section shall be treated as employer contributions for purposes of determining income tax obligations under the Internal Revenue Code of 1986; however, such picked-up member contributions shall be included in the determination of the member's gross annual salary for all other purposes under federal and state laws. Member contributions picked up pursuant to the provisions of this section shall continue to be designated member contributions for all purposes of the Magistrate Retirement Act and shall be considered as part of the member's annual salary for purposes of determining the amount of the member's contribution. The provisions of this section are mandatory, and the member shall have no option concerning the pick up or concerning the receipt of the contributed amounts directly instead of having the amounts paid by the employer to the retirement system. Implementation occurs upon authorization by the board. In no event may implementation occur other than at the beginning of a pay period applicable to the member."

Chapter 127 Section 10 Laws 2009

Section 10. Section 10-12C-11 NMSA 1978 (being Laws 1992, Chapter 118, Section 11, as amended) is amended to read:

"10-12C-11. EMPLOYER CONTRIBUTIONS.--

A. The state, through the administrative office of the courts, shall contribute the following amounts to the fund:

(1) through June 30, 2006, ten percent of salary for each member in office; and

(2) on and after July 1, 2006, eleven percent of salary for each member in office, except that, from July 1, 2009 through June 30, 2011, for members whose annual salary is greater than twenty thousand dollars (\$20,000), the state contribution rate shall be nine and one-half percent of salary for each member in office.

B. Twenty-five dollars (\$25.00) from each civil case docket fee paid in magistrate court and ten dollars (\$10.00) from each civil jury fee paid in magistrate court shall be paid by the court clerk to the employer's accumulation fund."

Chapter 127 Section 11 Laws 2009

Section 11. Section 22-11-21 NMSA 1978 (being Laws 1967, Chapter 16, Section 144, as amended) is amended to read:

"22-11-21. CONTRIBUTIONS--MEMBERS--LOCAL ADMINISTRATIVE UNITS.--

A. Except as provided in Subsection C of this section, each member shall make contributions to the fund according to the following schedule:

(1) through June 30, 2005, an amount equal to seven and six-tenths percent of the member's annual salary;

(2) from July 1, 2005 through June 30, 2006, an amount equal to seven and six hundred seventy-five thousandths percent of the member's annual salary;

(3) from July 1, 2006 through June 30, 2007, an amount equal to seven and seventy-five hundredths percent of the member's annual salary;

(4) from July 1, 2007 through June 30, 2008, an amount equal to seven and eight hundred twenty-five thousandths percent of the member's annual salary; and

(5) on and after July 1, 2008, an amount equal to seven and nine-tenths percent of the member's annual salary, except that, from July 1, 2009 through June 30, 2011, for members whose annual salary is greater than twenty thousand dollars (\$20,000), the member contribution rate shall be nine and four-tenths percent of the member's annual salary.

B. Except as provided in Subsection C of this section, each local administrative unit shall make an annual contribution to the fund according to the following schedule:

(1) through June 30, 2005, a sum equal to eight and sixty-five hundredths percent of the annual salary of each member employed by the local administrative unit;

(2) from July 1, 2005 through June 30, 2006, a sum equal to nine and forty-hundredths percent of the annual salary of each member employed by the local administrative unit;

(3) from July 1, 2006 through June 30, 2007, a sum equal to ten and fifteen-hundredths percent of the annual salary of each member employed by the local administrative unit;

(4) from July 1, 2007 through June 30, 2008, a sum equal to ten and ninety-hundredths percent of the annual salary of each member employed by the local administrative unit;

(5) from July 1, 2008 through June 30, 2009, a sum equal to eleven and sixty-five hundredths percent of the annual salary of each member employed by the local administrative unit;

(6) from July 1, 2009 through June 30, 2010, a sum equal to ten and nine-tenths percent of the annual salary of each member employed by the local administrative unit except that, for members whose annual salary is twenty thousand dollars (\$20,000) or less, the local administrative unit shall contribute twelve and four-tenths percent of the member's annual salary;

(7) from July 1, 2010 through June 30, 2011, a sum equal to eleven and sixty-five hundredths percent of the annual salary of each member employed by the local administrative unit except that, for members whose annual salary is twenty thousand dollars (\$20,000) or less, the local administrative unit shall contribute thirteen and fifteen-hundredths percent of the member's annual salary; and

(8) on and after July 1, 2011, a sum equal to thirteen and nine-tenths percent of the annual salary of each member employed by the local administrative unit.

C. If, in a calendar year, the salary of a member, initially employed by a local administrative unit on or after July 1, 1996, equals the annual compensation limit set pursuant to Section 401(a)(17) of the Internal Revenue Code of 1986, as amended, then:

(1) for the remainder of that calendar year, no additional member contributions or local administrative unit contributions for that member shall be made pursuant to this section; provided that no member shall be denied service credit solely because contributions are not made by the member or on behalf of the member pursuant to the provisions of this subsection; and

(2) the amount of the annual compensation limit shall be divided into four equal portions and, for purposes of attributing contributory employment and crediting service credit, each portion shall be attributable to one of the four quarters of the calendar year."

Chapter 127 Section 12 Laws 2009

Section 12. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.

House Bill 854, aa

Approved April 7, 2009

LAWS 2009, CHAPTER 128

AN ACT

RELATING TO EXPENDITURE OF PUBLIC MONEY; REAUTHORIZING OR REAPPROPRIATING BALANCES, EXPANDING OR CHANGING PURPOSES, EXTENDING EXPENDITURE PERIODS, CHANGING AGENCIES AND ESTABLISHING CONDITIONS FOR THE REVERSION 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 128 Section 1 Laws 2009

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 128 Section 2 Laws 2009

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 D of this section, the balance of an appropriation made from the general fund shall revert pursuant to Subsection A of this section to the capital projects fund.

C. Except as provided in Subsection D of this section, the balance of an appropriation made from other state funds shall revert pursuant to Subsection A of this section to the originating fund.

D. 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.

E. 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 128 Section 3 Laws 2009

Section 3. FILM PRODUCTION EDUCATION AND TRAINING CENTER AND STUDIO--EXTEND TIME--CAPITAL PROJECTS FUND.--The time of expenditure for the department of finance and administration project in Subsection 3 of Section 31 of Chapter 126 of Laws 2004 to plan, design, construct, equip and furnish a film production education and training center and studio is extended through fiscal year 2011.

Chapter 128 Section 4 Laws 2009

Section 4. NORTH VALLEY DEMONSTRATION TRAIL CONSTRUCTION--CHANGE TO LOS DURANES COMMUNITY CENTER IMPROVEMENTS--EXTEND TIME--SEVERANCE TAX BONDS.--Fifty thousand dollars (\$50,000) of the unexpended balance of the appropriation to the local government division in Subsection 58 of Section 18 of Chapter 111 of Laws 2006 for a north valley demonstration trail along the Griegos drain on Montano road in Bernalillo county shall not be expended for the original purpose but is changed to plan, design, construct, equip and furnish improvements to Los Duranes community center in the north valley of Albuquerque in Bernalillo county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 5 Laws 2009

Section 5. ACEQUIA DE LOS PADILLAS IMPROVEMENTS--CHANGE TO BERNALILLO COUNTY SOUTH VALLEY ACEQUIA IMPROVEMENTS--GENERAL FUND.--The unexpended balance of the appropriation to the interstate stream commission in Subsection 1 of Section 25 of Chapter 2 of Laws 2007 to plan, design and construct improvements, including road culverts and irrigation turnouts, for acequia de los Padillas in the south valley of Bernalillo county shall not be expended for the original purpose but is changed to plan, design and construct improvements, including improvements to ditch banks, side slopes, turnouts, checks and structures, to community acequias in the south valley of Bernalillo county.

Chapter 128 Section 6 Laws 2009

Section 6. NEW MEXICO MUSEUM OF NATURAL HISTORY AND SCIENCE EDUCATIONAL COMPLEX--CHANGE TO BERNALILLO COUNTY VEGETABLE OIL FUEL FILLING STATION--CHANGE AGENCY--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the cultural affairs department in Subsection 1 of Section 30 of Chapter 347 of Laws 2005 for an educational complex at the New Mexico museum of natural history and science in Albuquerque in Bernalillo county shall not be expended for the original purpose but is appropriated to the local government division to construct, purchase, install and equip a vegetable oil fuel filling station in Bernalillo county, contingent on the local government enacting an ordinance pursuant to the Local Economic Development Act. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 7 Laws 2009

Section 7. BERNALILLO COUNTY WESTSIDE COMMUNITY CENTER MULTIPURPOSE ROOM--CHANGE TO WESTSIDE COMMUNITY CENTER IMPROVEMENTS--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 32 of Section 68 of Chapter 42 of Laws 2007 for a multipurpose room at the Westside community center in Bernalillo county shall not be expended for the original purpose but is changed to plan, design, construct, furnish and equip improvements at the Westside community center and site in Bernalillo county.

Chapter 128 Section 8 Laws 2009

Section 8. ALBUQUERQUE AMATEUR ATHLETIC WORLD HALL OF FAME MUSEUM DESIGN--CHANGE TO HOUSE DISTRICT 11 ROAD IMPROVEMENTS AND LANDSCAPING--CHANGE AGENCY--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 49 of Section 68 of Chapter 42 of Laws 2007 to plan and design the amateur athletic world hall of fame museum in Albuquerque in Bernalillo county shall not be expended for the original purpose but is appropriated to the department of transportation to plan, design and construct road improvements, including landscaping, in house district 11 in Bernalillo county.

Chapter 128 Section 9 Laws 2009

Section 9. LA PROMESA EARLY LEARNING CENTER CHARTER SCHOOL HEAD START CLASSROOM--CHANGE TO BUILDING RENOVATIONS--GENERAL FUND.--The unexpended balance of the appropriation to the public education department in Subsection 162 of Section 44 of Chapter 92 of Laws 2008 for a head start classroom at La Promesa early learning center charter school in the Albuquerque public school district in Bernalillo county shall not be expended for the original purpose but is

changed to renovate a building at La Promesa early learning center charter school in that school district.

Chapter 128 Section 10 Laws 2009

Section 10. RIO GRANDE NATURE CENTER FACILITY FOR FIELD TRIPS--CHANGE TO EDUCATION BUILDING--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the state parks division of the energy, minerals and natural resources department in Subsection 4 of Section 54 of Chapter 111 of Laws 2006 for a facility for overnight field trips at the Rio Grande nature center in the north valley of Albuquerque in Bernalillo county shall not be expended for the original purpose but is changed to plan, design, construct and equip an education building at the Rio Grande nature center state park in Bernalillo county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 11 Laws 2009

Section 11. RIO GRANDE NATURE CENTER MAINTENANCE FACILITY--CHANGE TO EDUCATION BUILDING--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the state parks division of the energy, minerals and natural resources department in Subsection 5 of Section 54 of Chapter 111 of Laws 2006 to upgrade the maintenance facility at the Rio Grande nature center in the north valley of Albuquerque in Bernalillo county shall not be expended for the original purpose but is changed to plan, design, construct and equip an education building at the Rio Grande nature center state park in Bernalillo county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 12 Laws 2009

Section 12. BERNALILLO COUNTY SOUTH VALLEY GROWERS' MARKET IMPROVEMENTS AND EQUIPMENT--CHANGE TO INFORMATION TECHNOLOGY AND EQUIPMENT--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 42 of Section 68 of Chapter 42 of Laws 2007 for improvements and equipment for the south valley growers' market in Bernalillo county shall not be expended for the original purpose but is changed to purchase and install equipment and information technology, including a storage shed, fencing, tables, chairs, portable canopies, water hoses, storage carts, a portable kiosk, a portable sound system, portable signs and banners, for the south valley growers' market in Bernalillo county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 13 Laws 2009

Section 13. SOUTH VALLEY ADULT DAYCARE VANS--CHANGE AGENCY--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the aging and long-term services department in Subsection 1 of Section 33 of Chapter

92 of Laws 2008 to purchase vans to serve south valley adults needing daycare in Bernalillo county shall not be expended by that agency but is appropriated to the department of transportation for that purpose. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 14 Laws 2009

Section 14. ALBUQUERQUE BARELAS AREA MEMORIAL PLAZA--CHANGE TO EIGHTH, BRIDGE AND COAL STREETS LANDSCAPE--CHANGE AGENCY--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 58 of Section 68 of Chapter 42 of Laws 2007 for a memorial plaza in the Barelvas area of Albuquerque in Bernalillo county shall not be expended for the original purpose but is appropriated to the department of transportation to plan, design and construct landscape improvements on Eighth street from Bridge to Coal avenue in Albuquerque in Bernalillo county.

Chapter 128 Section 15 Laws 2009

Section 15. RATON REGIONAL EMERGENCY DISPATCH CENTER CONSTRUCTION--CHANGE TO ANDERSON-ABRUZZO INTERNATIONAL BALLOON MUSEUM EXHIBITS--GENERAL FUND.--Ninety-eight thousand dollars (\$98,000) of the unexpended balance of the appropriation to the local government division in Subsection 264 of Section 68 of Chapter 42 of Laws 2007 to plan, design, construct, equip and furnish a regional emergency dispatch and operations center in Raton in Colfax county shall not be expended for the original purpose but is changed to plan, design, purchase, install, equip and furnish exhibits for the Anderson-Abruzzo international balloon museum in Albuquerque in Bernalillo county.

Chapter 128 Section 16 Laws 2009

Section 16. RED RIVER WASTEWATER TREATMENT PLANT AND SLUDGE DEWATERING SYSTEM IMPROVEMENTS--CHANGE TO ANDERSON-ABRUZZO INTERNATIONAL BALLOON MUSEUM EXHIBITS--CHANGE AGENCY--SEVERANCE TAX BONDS.--One hundred thousand dollars (\$100,000) of the unexpended balance of the appropriation to the department of environment in Subsection 61 of Section 15 of Chapter 92 of Laws 2008 for improvements to the wastewater treatment plant and sludge dewatering system in Red River in Taos county shall not be expended for the original purpose but is appropriated to the local government division to plan, design, purchase, install, equip and furnish exhibits for the Anderson-Abruzzo international balloon museum in Albuquerque in Bernalillo county.

Chapter 128 Section 17 Laws 2009

Section 17. ROY THEATER RENOVATE--CHANGE TO ANDERSON-ABRUZZO INTERNATIONAL BALLOON MUSEUM EXHIBITS--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection

14 of Section 23 of Chapter 42 of Laws 2007 to renovate the Roy theater in Roy in Harding county shall not be expended for the original purpose but is changed to plan, design, purchase, install, equip and furnish exhibits for the Anderson-Abruzzo international balloon museum in Albuquerque in Bernalillo county.

Chapter 128 Section 18 Laws 2009

Section 18. SPORTS AUTHORITY UNITED STATES AND SPANISH NATIONAL RUGBY TEAM SPORTS EVENT--CHANGE TO ALBUQUERQUE CITY COUNCIL DISTRICT 6 ASIAN-AMERICAN CULTURAL CENTER--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 395 of Section 45 of Chapter 347 of Laws 2005 for the sports authority to support the city of Albuquerque in hosting the United States and Spanish national rugby teams in a sports event in Albuquerque in Bernalillo county shall not be expended for the original purpose but is changed to plan, design and construct an Asian-American cultural center in city council district 6 in Albuquerque in Bernalillo county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 19 Laws 2009

Section 19. SANTA FE OPERA REHEARSAL HALL--CHANGE TO ASIAN-AMERICAN CULTURAL CENTER IN CITY COUNCIL DISTRICT 6--CHANGE AGENCY--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 83 of Section 18 of Chapter 111 of Laws 2006 for a center to assist immigrants in attaining citizenship and reauthorized in Laws 2008, Chapter 83, Section 365 to the cultural affairs department for a rehearsal hall on Santa Fe opera land shall not be expended for the original or reauthorized purpose but is appropriated to the local government division to plan, design and construct an Asian-American cultural center in city council district 6 in Albuquerque in Bernalillo county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 20 Laws 2009

Section 20. ALBUQUERQUE COMPUTER CLUBHOUSE--EXTEND TIME--GENERAL FUND.--The time of expenditure for the local government division project in Subsection 67 of Section 68 of Chapter 42 of Laws 2007 to equip and furnish the computer clubhouse in Albuquerque in Bernalillo county is extended through fiscal year 2011.

Chapter 128 Section 21 Laws 2009

Section 21. ELEPHANT BUTTE IRRIGATION DISTRICT TELEMETRIC WATER METERING--CHANGE TO ALBUQUERQUE DOWNTOWN PUBLIC FACILITIES LAND PURCHASE--CHANGE AGENCY--GENERAL FUND.--Five hundred fifty thousand dollars (\$550,000) of the unexpended balance of the appropriation to the office of the

state engineer in Subsection 5 of Section 20 of Chapter 2 of Laws 2007 to provide telemetric water metering for the Elephant Butte irrigation district in Sierra county shall not be expended for the original purpose but is appropriated to the department of finance and administration to purchase property in and around the downtown area for public facilities in Albuquerque in Bernalillo county.

Chapter 128 Section 22 Laws 2009

Section 22. GOVERNOR'S COMMISSION ON DISABILITY VEHICLES--EXTEND TIME--GENERAL FUND.--The time of expenditure for the appropriation to the governor's commission on disability in Laws 2007, Chapter 2, Section 23 for vehicles for the drivers' rehabilitation program for the disabled in Albuquerque in Bernalillo county is extended through fiscal year 2011.

Chapter 128 Section 23 Laws 2009

Section 23. EXPLORA SCIENCE CENTER AND CHILDREN'S MUSEUM--EXPAND TO INCLUDE AN ADDITION--EXTEND TIME--SEVERANCE TAX BONDS.--The local government division project in Subsection 42 of Section 117 of Chapter 126 of Laws 2004 to design, develop, construct, purchase and install exhibits, furniture, fixtures and equipment and to purchase vans, trucks, shade structures and window coverings for the Explora science center and children's museum in Albuquerque in Bernalillo county may also include planning, designing, constructing, equipping and furnishing an addition to that museum. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 24 Laws 2009

Section 24. EXPLORA SCIENCE CENTER AND CHILDREN'S MUSEUM--EXPAND PURPOSE--EXTEND TIME--CAPITAL PROJECTS FUND.--The unexpended balance of the appropriation to the local government division in Subsection 76 of Section 134 of Chapter 126 of Laws 2004 for exhibits, furniture, fixtures, equipment, vans, trucks, shade structures and window coverings for the Explora science center and children's museum in Albuquerque in Bernalillo county may include planning, designing, constructing, equipping and furnishing an addition to the facility. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 25 Laws 2009

Section 25. EXPLORA SCIENCE CENTER AND CHILDREN'S MUSEUM--EXPAND PURPOSE--EXTEND TIME--CAPITAL PROJECTS FUND.--The local government division project in Subsection 30 of Section 34 of Chapter 126 of Laws 2004 to design, develop, construct, purchase and install exhibits, furniture, fixtures and equipment and to purchase vans, trucks, shade structures and window coverings for the Explora science center and children's museum in Albuquerque in Bernalillo county may also include planning, designing, constructing, equipping and furnishing an addition to that facility. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 26 Laws 2009

Section 26. EXPLORA SCIENCE CENTER AND CHILDREN'S MUSEUM IMPROVEMENTS--EXTEND TIME--CAPITAL PROJECTS FUND.--The time of expenditure for the local government division project in Subsection 168 of Section 134 of Chapter 126 of Laws 2004 to design, develop, construct, purchase and install exhibits, furniture, fixtures and equipment and to purchase vans, trucks, shade structures and window coverings for the Explora science center and children's museum in Albuquerque in Bernalillo county is extended through fiscal year 2011.

Chapter 128 Section 27 Laws 2009

Section 27. EXPLORA SCIENCE CENTER AND CHILDREN'S MUSEUM--EXTEND TIME--CAPITAL PROJECTS FUND.--The time of expenditure for the local government division project in Subsection 34 of Section 134 of Chapter 126 of Laws 2004 for exhibits, furniture, fixtures and equipment and to purchase vans, trucks, shade structures and window coverings for the Explora science center and children's museum in Albuquerque in Bernalillo county is extended through fiscal year 2011.

Chapter 128 Section 28 Laws 2009

Section 28. EXPLORA SCIENCE CENTER AND CHILDREN'S MUSEUM IMPROVEMENTS--EXPAND PURPOSE--EXTEND TIME--CAPITAL PROJECTS FUND.--The local government division project in Subsection 62 of Section 34 of Chapter 126 of Laws 2004 for the design, development, fabrication, construction, purchase and installation of exhibits, furniture, fixtures and equipment at the Explora science center and children's museum in Albuquerque in Bernalillo county may include planning, designing, constructing, furnishing and equipping an addition to the facility. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 29 Laws 2009

Section 29. EXPLORA SCIENCE CENTER AND CHILDREN'S MUSEUM--EXPAND PURPOSE TO INCLUDE AN ADDITION--EXTEND TIME--SEVERANCE TAX BONDS.--The local government division project in Subsection 15 of Section 13 of Chapter 126 of Laws 2004 to design, develop, construct, purchase and install exhibits, furniture, fixtures and equipment and to purchase vans, trucks, shade structures and window coverings for the Explora science center and children's museum in Albuquerque in Bernalillo county may also include planning, designing, constructing, equipping and furnishing an addition to the facility. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 30 Laws 2009

Section 30. EXPLORA SCIENCE CENTER AND CHILDREN'S MUSEUM--EXTEND TIME--CAPITAL PROJECTS FUND.--The time of expenditure for the local government division project in Subsection 24 of Section 34 of Chapter 126 of Laws 2004 to design, develop, construct, purchase and install exhibits, furniture, fixtures and equipment and to purchase vans, trucks, shade structures and window coverings for the Explora science center and children's museum in Albuquerque in Bernalillo county is extended through fiscal year 2011.

Chapter 128 Section 31 Laws 2009

Section 31. ALBUQUERQUE EXPLORA SCIENCE CENTER AND CHILDREN'S MUSEUM CONSTRUCT AND EQUIP--EXTEND TIME--GENERAL FUND.--The time of expenditure for the local government division project in Subsection 79 of Section 68 of Chapter 42 of Laws 2007 to plan, design, construct, equip and furnish an addition to the building 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 2011.

Chapter 128 Section 32 Laws 2009

Section 32. EXPLORA SCIENCE CENTER EXHIBITS, FURNITURE AND FIXTURES--EXPAND PURPOSE--EXTEND TIME--SEVERANCE TAX BONDS.--The local government division project in Subsection 2 of Section 13 of Chapter 126 of Laws 2004 to design, develop, construct, purchase and install exhibits, furniture, fixtures and equipment and to purchase vans, trucks, shade structures and window coverings for the Explora science center and children's museum in Albuquerque in Bernalillo county may include planning, designing, constructing, equipping and furnishing an addition to the facility. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 33 Laws 2009

Section 33. NORTH VALLEY DEMONSTRATION TRAIL CONSTRUCTION--CHANGE TO GARFIELD PARK IMPROVEMENTS--EXTEND TIME--SEVERANCE TAX BONDS.--One hundred fifty thousand dollars (\$150,000) of the unexpended balance of the appropriation to the local government division in Subsection 58 of Section 18 of Chapter 111 of Laws 2006 for a north valley demonstration trail along the Griegos drain on Montano road in Bernalillo county shall not be expended for the original purpose but is changed to design and construct improvements to Garfield park in the north valley of Albuquerque in Bernalillo county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 34 Laws 2009

Section 34. HIGHLAND HIGH SCHOOL SOCCER FIELDS RENOVATION--CHANGE TO HILAND THEATER COMPLEX RENOVATION--CHANGE AGENCY--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to

the public education department in Subsection 166 of Section 39 of Chapter 111 of Laws 2006 to renovate the soccer fields, including replacing turf, lighting and bleachers, at Highland high school in the Albuquerque public school district in Bernalillo county shall not be expended for the original purpose but is appropriated to the local government division to plan, design, construct and equip renovations to the county-owned Hiland theater complex in Albuquerque in Bernalillo county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 35 Laws 2009

Section 35. ESPANOLA MILITARY ACADEMY BUILDING--CHANGE TO CONSTRUCT AND RENOVATE THE HILAND THEATER IN ALBUQUERQUE--CHANGE AGENCY--SEVERANCE TAX BONDS.--One hundred thousand dollars (\$100,000) of the unexpended balance of the appropriation to the public education department in Subsection 14 of Section 11 of Chapter 92 of Laws 2008 for a building for the Espanola military academy in the Espanola public school district in Rio Arriba county shall not be expended for the original purpose but is appropriated to the local government division to plan, design, construct and renovate the Hiland theater in Albuquerque in Bernalillo county.

Chapter 128 Section 36 Laws 2009

Section 36. ALBUQUERQUE HOMELESS ART ACTIVITIES PROGRAM EQUIPMENT AND FURNITURE--EXTEND TIME--GENERAL FUND.--The time of expenditure for the local government division project in Subsection 88 of Section 68 of Chapter 42 of Laws 2007 to purchase equipment and furniture for an art activities program serving the homeless in Albuquerque in Bernalillo county is extended through fiscal year 2011.

Chapter 128 Section 37 Laws 2009

Section 37. ALBUQUERQUE HOMELESS PROGRAMS VEHICLES--EXTEND TIME--GENERAL FUND.--The time of expenditure for the local government division project in Subsection 89 of Section 68 of Chapter 42 of Laws 2007 to purchase and equip vehicles for homeless programs in Albuquerque in Bernalillo county is extended through fiscal year 2011.

Chapter 128 Section 38 Laws 2009

Section 38. ALBUQUERQUE WESTSIDE MULTIPURPOSE CENTER--CHANGE TO INFORMATION TECHNOLOGY--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 156 of Section 68 of Chapter 42 of Laws 2007 to acquire land and construct a westside multipurpose center in Albuquerque in Bernalillo county shall not be expended for the original purpose but is changed to purchase and install city-owned information technology, including related

equipment, furniture and infrastructure, for an organization serving children and adults with developmental disabilities in Albuquerque.

Chapter 128 Section 39 Laws 2009

Section 39. ALBUQUERQUE JOHN MARSHALL HEALTH AND SOCIAL SERVICES EQUIPMENT--EXTEND TIME--GENERAL FUND.--The time of expenditure for the local government division project in Subsection 96 of Section 68 of Chapter 42 of Laws 2007 to plan, design, construct and equip facilities for a daycare program, including playground equipment, information technology and security systems, at the John Marshall health and social service center in Albuquerque in Bernalillo county is extended through fiscal year 2011.

Chapter 128 Section 40 Laws 2009

Section 40. BALLOON FIESTA LANDING SITE LAND--CHANGE TO LOS DURANES COMMUNITY CENTER IMPROVEMENTS--SEVERANCE TAX BONDS.-- Seventy-one thousand dollars (\$71,000) of the appropriation to the local government division in Subsection 5 of Section 21 of Chapter 92 of Laws 2008 to purchase land for a balloon fiesta landing site in Albuquerque in Bernalillo county shall not be expended for the original purpose but is changed to plan, design, construct, equip and furnish improvements to Los Duranes community center in the north valley of Albuquerque.

Chapter 128 Section 41 Laws 2009

Section 41. NORTH VALLEY DEMONSTRATION TRAIL--CHANGE TO LOS DURANES COMMUNITY CENTER IMPROVEMENTS--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 78 of Section 52 of Chapter 111 of Laws 2006 for the north valley demonstration trail in Bernalillo county shall not be expended for the original purpose but is changed to plan, design, construct, equip and furnish improvements to Los Duranes community center in the north valley of Albuquerque in Bernalillo county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 42 Laws 2009

Section 42. LOS DURANES PARK IMPROVEMENTS--EXTEND TIME--GENERAL FUND.--The time of expenditure for the local government division project in Subsection 108 of Section 68 of Chapter 42 of Laws 2007 to plan, design, construct and equip improvements at Los Duranes park in Albuquerque in Bernalillo county is extended through fiscal year 2011.

Chapter 128 Section 43 Laws 2009

Section 43. ALBUQUERQUE MUSEUM OF NATURAL HISTORY AND SCIENCE EXHIBITS--EXTEND TIME--CAPITAL PROJECTS FUND.--The time of expenditure for the cultural affairs department project in Subsection 3 of Section 127 of Chapter 126 of Laws 2004 to design, fabricate and construct exhibits at the museum of natural history and science in Albuquerque in Bernalillo county is extended through fiscal year 2011.

Chapter 128 Section 44 Laws 2009

Section 44. ALBUQUERQUE PUBLIC SCHOOL DISTRICT AND STATE LAND OFFICE LANDFILL REUSE AND RENEWABLE ENERGY PROJECT--CHANGE TO NATIONAL HISPANIC CULTURAL CENTER EDUCATION CENTER--CHANGE AGENCY--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the department of environment in Subsection 79 of Section 36 of Chapter 347 of Laws 2005 for the landfill reuse and renewable energy project on land owned by the state land office and the Albuquerque public school district in Albuquerque in Bernalillo county shall not be expended for the original purpose but is appropriated to the cultural affairs department to furnish, equip, landscape and improve the education center and campus at the national Hispanic cultural center in Albuquerque. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 45 Laws 2009

Section 45. FIRST TEE LEARNING CENTER EQUIPMENT--CHANGE TO NATIONAL HISPANIC CULTURAL CENTER EDUCATION CENTER AND CAMPUS IMPROVEMENTS--CHANGE AGENCY--EXTEND TIME--GENERAL FUND.--Twenty-five thousand dollars (\$25,000) of the unexpended balance of the appropriation to the local government division in Subsection 581 of Section 68 of Chapter 42 of Laws 2007 to purchase equipment for the First Tee learning center in Sandoval county shall not be expended for the original purpose but is appropriated to the cultural affairs department to furnish, equip, landscape and make improvements to the education center and campus at the national Hispanic cultural center in Albuquerque in Bernalillo county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 46 Laws 2009

Section 46. BALLOON FIESTA PARK UTILITIES EXTENSION--CHANGE TO MULTIGENERATIONAL CENTER IN THE NORTH DOMINGO BACA AREA OF ALBUQUERQUE--CHANGE AGENCY--EXTEND TIME--SEVERANCE TAX BONDS.--One hundred thousand dollars (\$100,000) of the unexpended balance of the appropriation to the department of environment in Subsection 2 of Section 9 of Chapter 126 of Laws 2004 to extend water, sewer and other utilities at the Balloon Fiesta park in Bernalillo county shall not be expended for the original purpose but is appropriated to the local government division to plan, design, construct and equip a multigenerational community center in the north Domingo Baca area of Albuquerque in Bernalillo county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 47 Laws 2009

Section 47. EQUIPMENT FOR ART AND THEATER ORGANIZATION IN ALBUQUERQUE--CHANGE TO PUBLIC ART--CHANGE AGENCY--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the cultural affairs department in Subsection 1 of Section 41 of Chapter 42 of Laws 2007 to purchase equipment for an art and theater organization in Albuquerque in Bernalillo county shall not be expended for the original purpose but is appropriated to the local government division to plan, design, construct and install a landmark work of public art in Albuquerque. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 48 Laws 2009

Section 48. VALENCIA COUNTY FAIRGROUNDS REPAIR AND RENOVATE--CHANGE TO ALBUQUERQUE PUBLIC ARTWORK--GENERAL FUND.--Twenty thousand dollars (\$20,000) of the unexpended balance of the appropriation to the local government division in Subsection 729 of Section 52 of Chapter 111 of Laws 2006 to renovate, repair and construct the Valencia county fairgrounds in Valencia county shall not be expended for the original purpose but is changed to plan, design, construct and install public artwork in Albuquerque in Bernalillo county.

Chapter 128 Section 49 Laws 2009

Section 49. MONTE VISTA ELEMENTARY SCHOOL LIBRARY BOOKS, FURNITURE AND EQUIPMENT PURCHASE--CHANGE TO ALBUQUERQUE PUBLIC ARTWORK--CHANGE AGENCY--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the public education department in Subsection 178 of Section 55 of Chapter 42 of Laws 2007 to purchase books, furniture and equipment for the library at Monte Vista elementary school in the Albuquerque public school district in Bernalillo county shall not be expended for the original purpose but is appropriated to the local government division to plan, design, construct and install public artwork in Albuquerque in Bernalillo county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 50 Laws 2009

Section 50. RATON REGIONAL EMERGENCY DISPATCH CENTER CONSTRUCTION--CHANGE TO FEASIBILITY STUDY FOR A ROUTE FROM ALBUQUERQUE SUNPORT TO THE RAIL RUNNER DEPOT--CHANGE AGENCY--GENERAL FUND.--One hundred thousand dollars (\$100,000) of the unexpended balance of the appropriation to the local government division in Subsection 264 of Section 68 of Chapter 42 of Laws 2007 to plan, design, construct, equip and furnish a regional emergency dispatch and operations center in Raton in Colfax county shall not be expended for the original purpose but is appropriated to the department of transportation to conduct a feasibility study for a direct route from the Albuquerque sunport to the rail runner depot in Albuquerque in Bernalillo county.

Chapter 128 Section 51 Laws 2009

Section 51. RODEY INFRASTRUCTURE--CHANGE TO RAIL RUNNER STUDY ON ROUTE FROM ALBUQUERQUE DEPOT TO SUNPORT--CHANGE AGENCY--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 305 of Section 52 of Chapter 111 of Laws 2006 for infrastructure improvements in Rodey in Dona Ana county shall not be expended for the original purpose but is appropriated to the department of transportation to conduct a feasibility study for a direct route from the Albuquerque sunport to the rail runner depot in Albuquerque in Bernalillo county.

Chapter 128 Section 52 Laws 2009

Section 52. MILAGRO INFRASTRUCTURE IMPROVEMENTS--CHANGE TO ALBUQUERQUE RAIL RUNNER SUNPORT ROUTE FEASIBILITY STUDY--CHANGE AGENCY--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 306 of Section 52 of Chapter 111 of Laws 2006 for infrastructure improvements in Milagro in Dona Ana county shall not be expended for the original purpose but is appropriated to the department of transportation to conduct a feasibility study for a direct route from the Albuquerque sunport to the rail runner depot in Albuquerque in Bernalillo county.

Chapter 128 Section 53 Laws 2009

Section 53. GRIEGOS DRAIN AND NORTH VALLEY TRAIL IMPROVEMENTS--CHANGE TO MONTANO BOULEVARD RAILROAD STATION AND PARKING FACILITIES--GENERAL FUND.--One hundred twelve thousand five hundred dollars (\$112,500) of the appropriation to the local government division in Subsection 185 of Section 68 of Chapter 42 of Laws 2007 for trail improvements adjacent to the Griegos drain and other north valley ditches shall not be expended for the original purpose but is changed for the mid-region council of governments to plan, design, construct and equip a railroad station and parking facilities at the railroad tracks and Montano boulevard NW in the north valley of Albuquerque in Bernalillo county.

Chapter 128 Section 54 Laws 2009

Section 54. ALBUQUERQUE JADE PARK PLAYGROUND UPGRADES--CHANGE TO AWNING FOR THE RAYMOND G. SANCHEZ CENTER--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 92 of Section 68 of Chapter 42 of Laws 2007 for upgrades and equipment at Jade park in Albuquerque in Bernalillo county shall not be expended for the original purpose but is changed to purchase and install an outdoor awning at the Raymond G. Sanchez center in Albuquerque. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 55 Laws 2009

Section 55. NORTH VALLEY DEMONSTRATION TRAIL CONSTRUCTION--CHANGE TO RIO GRANDE COMMUNITY FARM IMPROVEMENTS--EXTEND TIME--SEVERANCE TAX BONDS.--One hundred thousand dollars (\$100,000) of the unexpended balance of the appropriation to the local government division in Subsection 58 of Section 18 of Chapter 111 of Laws 2006 for a north valley demonstration trail along the Griegos drain on Montano road in Bernalillo county shall not be expended for the original purpose but is changed for Albuquerque's open space division to make improvements to the barn, irrigation and water storage and to purchase farm equipment and vehicles for the Rio Grande community farm in Albuquerque in Bernalillo county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 56 Laws 2009

Section 56. SENATE DISTRICT 17 LAMBDA RAIL FIBER OPTIC CABLE--CHANGE TO ALBUQUERQUE SOUTHEAST HEIGHTS EARLY CHILDHOOD DEVELOPMENT CENTER--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 175 of Section 68 of Chapter 42 of Laws 2007 for fiber optic cable from the Lambda rail to community centers and libraries in senate district 17 in Albuquerque in Bernalillo county shall not be expended for the original purpose but is changed to plan, purchase and construct a county early childhood development center in the southeast heights of Albuquerque.

Chapter 128 Section 57 Laws 2009

Section 57. SANTA FE WOMEN'S HEALTH FACILITY--CHANGE TO SILVER GARDENS RESIDENTIAL AFFORDABLE HOUSING PROJECT--GENERAL FUND.--Two hundred thousand dollars (\$200,000) of the unexpended balance of the appropriation to the local government division in Subsection 453 of Section 59 of Chapter 92 of Laws 2008 for a women's health facility in Santa Fe in Santa Fe county shall not be expended for the original purpose but is appropriated to the department of finance and administration for disbursement to the New Mexico mortgage finance authority to plan, design and construct the Silver Gardens residential affordable housing rental project and parking structure pursuant to the provisions of the Affordable Housing Act in Albuquerque in Bernalillo county.

Chapter 128 Section 58 Laws 2009

Section 58. OLD TOWN BOYS' AND GIRLS' CLUB--CHANGE TO SOUTH VALLEY BOYS' AND GIRLS' CLUB--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 125 of Section 68 of Chapter 42 of Laws 2007 for a facility for the boys' and girls' club in the old town area of Albuquerque in Bernalillo county shall not be expended for the original purpose but is changed to plan and design a boys' and girls' club in the south valley of Albuquerque.

Chapter 128 Section 59 Laws 2009

Section 59. HOLY GHOST SCHOOL EDUCATIONAL TECHNOLOGY--CHANGE TO ALBUQUERQUE HOMELESS VETERANS' TRANSITIONAL HOUSING FIRE ALARM SYSTEM--CHANGE AGENCY--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 172 of Section 68 of Chapter 42 of Laws 2007 for educational technology for Holy Ghost school in Albuquerque in Bernalillo county shall not be expended for the original purpose but is appropriated to the department of finance and administration to purchase and install a fire alarm system in a homeless veterans' transitional assistance housing facility in Albuquerque pursuant to the Affordable Housing Act. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 60 Laws 2009

Section 60. OUR LADY'S ASSUMPTION SCHOOL EDUCATIONAL TECHNOLOGY--CHANGE TO ALBUQUERQUE HOMELESS VETERANS' TRANSITIONAL HOUSING FIRE ALARM SYSTEM--CHANGE AGENCY--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 188 of Section 68 of Chapter 42 of Laws 2007 for educational technology for Our Lady's Assumption school in Albuquerque in Bernalillo county shall not be expended for the original purpose but is appropriated to the department of finance and administration to purchase and install a fire alarm system in a homeless veterans' transitional assistance housing facility in Albuquerque pursuant to the Affordable Housing Act. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 61 Laws 2009

Section 61. SANTA FE ECONOMIC DEVELOPMENT PROJECT--CHANGE TO ALBUQUERQUE WEST CENTRAL REDEVELOPMENT--EXTEND TIME--CAPITAL PROJECTS FUND.--The unexpended balance of the economic development department appropriation originally authorized in Subsection 3 of Section 31 of Chapter 429 of Laws 2003 and reauthorized in Laws 2004, Chapter 126, Section 89 to the local government division for an economic development project in Santa Fe in Santa Fe county shall not be expended for the original or reauthorized purpose but is changed to plan, design, construct, equip and purchase land for the west Central redevelopment in Albuquerque in Bernalillo county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 62 Laws 2009

Section 62. VIRDEN VILLAGE HALL IMPROVEMENTS--CHANGE TO ALBUQUERQUE YOUTH MULTIPURPOSE FACILITY--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 48 of Section 21 of Chapter 92 of Laws 2008 for improvements to the village

hall in Virden in Hidalgo county shall not be expended for the original purpose but is changed to plan, design, construct, purchase, install and equip a multipurpose facility for use by a youth development organization in Albuquerque in Bernalillo county.

Chapter 128 Section 63 Laws 2009

Section 63. DENTAL EQUIPMENT AND INFORMATION TECHNOLOGY IN HOUSE DISTRICT 13--CHANGE TO DENTAL EQUIPMENT AND INFORMATION TECHNOLOGY IN ALBUQUERQUE--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 38 of Section 59 of Chapter 92 of Laws 2008 for dental equipment and information technology in house district 13 in Albuquerque in Bernalillo county shall not be expended for the original purpose but is changed to purchase and install dental equipment and information technology, including related equipment, furniture and infrastructure, in Albuquerque in Bernalillo county.

Chapter 128 Section 64 Laws 2009

Section 64. CENTRAL AVENUE NOB HILL HIGHLAND AREA LIGHTING--CHANGE TO DR. MARTIN LUTHER KING, JR. AVENUE STREETScape PROJECT--EXTEND TIME--SEVERANCE TAX BONDS.--Two hundred thousand dollars (\$200,000) of the unexpended balance of the appropriation to the department of transportation in Subsection 8 of Section 22 of Chapter 111 of Laws 2006 for lighting along Central avenue in the Nob Hill highland area in Albuquerque in Bernalillo county shall not be expended for the original purpose but is changed to plan, design and construct streetscape improvements to Dr. Martin Luther King, Jr. avenue from interstate 25 to University boulevard in Albuquerque. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 65 Laws 2009

Section 65. NOB HILL HIGHLAND PEDESTRIAN LIGHTING--CHANGE TO DR. MARTIN LUTHER KING, JR. AVENUE STREETScape PROJECT--EXTEND TIME--CAPITAL PROJECTS FUND.--The unexpended balance of the appropriation to the department of transportation in Subsection 6 of Section 43 of Chapter 126 of Laws 2004 to purchase and install phase 1 of the Nob Hill highland pedestrian lighting in Albuquerque in Bernalillo county shall not be expended for the original purpose but is changed to plan, design and construct streetscape improvements to Dr. Martin Luther King, Jr. avenue from interstate 25 to University boulevard in Albuquerque. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 66 Laws 2009

Section 66. OAKLAND AVENUE AND GLENDALE STREET IMPROVEMENTS--CHANGE TO EUBANK BOULEVARD IMPROVEMENTS--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the

department of transportation in Subsection 64 of Section 20 of Chapter 347 of Laws 2005 for road improvements to Oakland avenue from Ventura street to Holbrook street and from Holbrook street to Eubank boulevard and to Glendale road from Holbrook street to Eubank boulevard in Albuquerque in Bernalillo county shall not be expended for the original purpose but is changed to plan, design and construct road improvements to Eubank boulevard from San Antonio drive to paseo del Norte in Albuquerque. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 67 Laws 2009

Section 67. OAKLAND AVENUE ROAD IMPROVEMENTS--CHANGE TO EUBANK BOULEVARD ROAD IMPROVEMENTS--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the department of transportation in Subsection 128 of Section 52 of Chapter 347 of Laws 2005 for road improvements, including paving, to Oakland avenue and for speed humps from Browning street to Lowell street in Albuquerque in Bernalillo county shall not be expended for the original purpose but is changed to plan, design and construct road improvements to Eubank boulevard from San Antonio drive to paseo del Norte in Albuquerque. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 68 Laws 2009

Section 68. OAKLAND AVENUE ROAD IMPROVEMENTS--CHANGE TO EUBANK BOULEVARD ROAD IMPROVEMENTS--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the department of transportation in Subsection 127 of Section 52 of Chapter 347 of Laws 2005 for road improvements to Oakland avenue and to Glendale road in Albuquerque in Bernalillo county shall not be expended for the original purpose but is changed to plan, design and construct road improvements to Eubank boulevard from San Antonio drive to paseo del Norte in Albuquerque. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 69 Laws 2009

Section 69. ALBUQUERQUE DANCE ORGANIZATION FACILITY RENOVATION--CHANGE TO HOUSE DISTRICT 11 ROAD IMPROVEMENTS AND LANDSCAPING--CHANGE AGENCY--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the local government division originally authorized in Subsection 68 of Section 68 of Chapter 42 of Laws 2007 and reauthorized in Laws 2008, Chapter 83, Section 37 for a facility for use by a dance organization serving low-income, disabled and incarcerated youth and adults in Albuquerque in Bernalillo county shall not be expended for the original purpose but is appropriated to the department of transportation to plan, design and construct road improvements, including landscaping, in house district 11 in Bernalillo county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 70 Laws 2009

Section 70. PUEBLOS OF LAGUNA AND SAN FELIPE INDEPENDENT LIVING CENTER FOR DISABLED NATIVE AMERICANS--CHANGE TO INDIAN PUEBLO CULTURAL CENTER NATIVE AMERICAN INDEPENDENT LIVING CENTER AND VEHICLE--CHANGE AGENCY--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the vocational rehabilitation division of the public education department originally authorized in Laws 2007, Chapter 42, Section 33 and reauthorized in Laws 2008, Chapter 83, Section 278 to plan, design, construct, equip and furnish an independent living center, including renovation and expansion, with sites in the Pueblo of Laguna and the Pueblo of San Felipe shall not be expended for the original or reauthorized purpose but is appropriated to the Indian affairs department to plan, design, construct, renovate, equip and furnish the Native American independent living center, including purchase of technology and a vehicle, at the Indian pueblo cultural center in Albuquerque in Bernalillo county.

Chapter 128 Section 71 Laws 2009

Section 71. NATIVE AMERICAN BEHAVIORAL HEALTH SERVICES FACILITIES STATEWIDE--CHANGE TO INDIAN PUEBLO CULTURAL CENTER INDEPENDENT LIVING FACILITIES--CHANGE AGENCY--SEVERANCE TAX BONDS.--One hundred fifty thousand dollars (\$150,000) of the unexpended balance of the appropriation to the local government division in Subsection 26 of Section 23 of Chapter 42 of Laws 2007 and reauthorized in Laws 2008, Chapter 83, Section 405 for improvements at Native American behavioral health services facilities statewide shall not be expended for the original or reauthorized purpose but is appropriated to the Indian affairs department to purchase land for and plan, design, construct, equip and renovate Native American independent living facilities for the Indian pueblo cultural center in Albuquerque in Bernalillo county.

Chapter 128 Section 72 Laws 2009

Section 72. INDIAN SCHOOL ROAD AND RAILROAD TRACKS QUIET CROSSING--CHANGE TO LOMAS BOULEVARD AND MOUNTAIN ROAD RAILROAD TRACKS QUIET CROSSING--GENERAL FUND.--The unexpended balance of the appropriation to the department of transportation in Subsection 46 of Section 75 of Chapter 42 of Laws 2007 for a quiet crossing at the railroad tracks and Indian School road for the mid-region council of governments in Albuquerque in Bernalillo county shall not be expended for the original purpose but is changed to plan, design and construct a quiet crossing at the railroad tracks at Lomas boulevard and Mountain road for the mid-region council of governments in Albuquerque.

Chapter 128 Section 73 Laws 2009

Section 73. LOMAS TRAMWAY LINEAR PARK IMPROVEMENTS--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the local government division project in Subsection 32 of Section 117 of Chapter 126 of Laws 2004 for phase

2 improvements of the Lomas boulevard and Tramway boulevard linear park in Albuquerque in Bernalillo county is extended through fiscal year 2011.

Chapter 128 Section 74 Laws 2009

Section 74. MANZANO HIGH SCHOOL ATHLETIC STORAGE BUILDING--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the public education department project in Subsection 19 of Section 118 of Chapter 126 of Laws 2004 for an athletic storage building at Manzano high school in the Albuquerque public school district in Bernalillo county is extended through fiscal year 2011.

Chapter 128 Section 75 Laws 2009

Section 75. RIO GRANDE VALLEY STATE PARK--EXPAND TO INCLUDE IMPROVEMENTS--GENERAL FUND.--The local government division project in Subsection 136 of Section 68 of Chapter 42 of Laws 2007 to plan and design the Rio Grande Valley state park and adjacent public property at Central avenue northwest and southwest of the Rio Grande in Albuquerque in Bernalillo county may include constructing open space improvements.

Chapter 128 Section 76 Laws 2009

Section 76. SANTA FE MUNICIPAL RECREATION COMPLEX RUGBY FIELD CONCESSION BUILDING--CHANGE TO SENATE DISTRICT 17 LIGHTING AND LANDSCAPING IMPROVEMENTS--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 665 of Section 68 of Chapter 42 of Laws 2007 for a concession building at the municipal recreation complex rugby fields on Caja del Rio road in Santa Fe in Santa Fe county shall not be expended for the original purpose but is changed to plan, design, purchase and install lighting, art and botanical, horticultural and other landscaping improvements in parks, streets, alleys and medians in senate district 17, including south San Pedro drive and Trumbull avenue, in Albuquerque in Bernalillo county.

Chapter 128 Section 77 Laws 2009

Section 77. STATE LABORATORY SERVICES BUILDING--EXTEND TIME--CAPITAL PROGRAM FUND.--The time of expenditure for the capital program fund project in Subsection 3 of Section 41 of Chapter 126 of Laws 2004 to plan, design, construct, equip and furnish the state laboratory services building in Albuquerque in Bernalillo county is extended through fiscal year 2011.

Chapter 128 Section 78 Laws 2009

Section 78. UNIVERSITY OF NEW MEXICO CARLISLE GYMNASIUM EQUIPMENT--EXTEND TIME--GENERAL FUND.--The time of expenditure for the

university of New Mexico project in Subsection 5 of Section 38 of Chapter 2 of Laws 2007 to purchase and install equipment at the Carlisle gymnasium at the university of New Mexico in Albuquerque in Bernalillo county is extended through fiscal year 2011.

Chapter 128 Section 79 Laws 2009

Section 79. UNIVERSITY OF NEW MEXICO GRADUATE STUDIES PHOTOGRAPHY EQUIPMENT--EXTEND TIME--GENERAL FUND.--The time of expenditure for the university of New Mexico project in Subsection 7 of Section 38 of Chapter 2 of Laws 2007 to purchase digital photography and editing equipment for the graduate studies building at the university of New Mexico in Albuquerque in Bernalillo county is extended through fiscal year 2011.

Chapter 128 Section 80 Laws 2009

Section 80. DEPARTMENT OF HEALTH BRAIN FUNCTION ASSESSMENT EQUIPMENT STATEWIDE--CHANGE TO INFORMATION TECHNOLOGY AND BRAIN FUNCTION ASSESSMENT EQUIPMENT--CHANGE AGENCY--GENERAL FUND.--The unexpended balance of the appropriation to the department of health in Laws 2008, Chapter 92, Section 53 to purchase and install brain function assessment equipment statewide shall not be expended for the original purpose but is appropriated to the board of regents of the university of New Mexico to purchase and install information technology and brain function assessment equipment, including related equipment, furniture and infrastructure, at the university of New Mexico in Albuquerque in Bernalillo county.

Chapter 128 Section 81 Laws 2009

Section 81. UNIVERSITY OF NEW MEXICO MANUFACTURING TRAINING AND TECHNOLOGY CENTER CLEAN ROOM--EXTEND TIME--GENERAL FUND.--The time of expenditure for the university of New Mexico project in Subsection 10 of Section 38 of Chapter 2 of Laws 2007 for constructing, purchasing and installing equipment for the manufacturing training and technology center clean room at the university of New Mexico in Albuquerque in Bernalillo county is extended through fiscal year 2011.

Chapter 128 Section 82 Laws 2009

Section 82. UNIVERSITY OF NEW MEXICO MANUFACTURING TRAINING AND TECHNOLOGY CENTER CLEAN ROOM--EXTEND TIME--GENERAL FUND.--The time of expenditure for the university of New Mexico project in Subsection 26 of Section 83 of Chapter 42 of Laws 2007 for constructing, purchasing and installing equipment for the manufacturing training and technology center clean room at the university of New Mexico in Albuquerque in Bernalillo county is extended through fiscal year 2011.

Chapter 128 Section 83 Laws 2009

Section 83. UNIVERSITY OF NEW MEXICO PHILOSOPHY DEPARTMENT RENOVATION AND REPAIR--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the university of New Mexico project originally authorized in Paragraph (6) of Subsection H of Section 120 of Chapter 126 of Laws 2004 and reauthorized in Laws 2005, Chapter 347, Section 203 to renovate and repair philosophy department facilities and purchase equipment, including information technology, at the main campus in Albuquerque in Bernalillo county is extended through fiscal year 2011.

Chapter 128 Section 84 Laws 2009

Section 84. GRANT COUNTY PUBLIC LIBRARY--CHANGE TO UNIVERSITY OF NEW MEXICO PIT SPORTS ARENA FACILITY--CHANGE AGENCY--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 363 of Section 52 of Chapter 111 of Laws 2006 for a public library in Grant county shall not be expended for the original purpose but is appropriated to the board of regents of the university of New Mexico to construct, improve, renovate, equip and furnish the Pit sports arena facility at the university of New Mexico in Albuquerque in Bernalillo county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 85 Laws 2009

Section 85. AZTEC HIGH SCHOOL DORMITORY FOR NAVAJO STUDENTS--CHANGE TO UNIVERSITY OF NEW MEXICO PIT SPORTS ARENA IMPROVEMENTS--CHANGE AGENCY--EXTEND TIME--GENERAL FUND.--Seven hundred thousand dollars (\$700,000) of the unexpended balance of the appropriation to the Indian affairs department in Subsection 94 of Section 50 of Chapter 111 of Laws 2006 to plan, design and construct a dormitory for Navajo students attending Aztec high school in San Juan county shall not be expended for the original purpose but is appropriated to the board of regents of the university of New Mexico to construct, improve, renovate, equip and furnish the Pit sports arena facility at the university of New Mexico in Albuquerque in Bernalillo county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 86 Laws 2009

Section 86. UNIVERSITY OF NEW MEXICO TAMARIND INSTITUTE--EXPAND PURPOSE--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the board of regents of the university of New Mexico in Subsection 6 of Section 31 of Chapter 42 of Laws 2007 to plan, design and construct a facility for the Tamarind institute at the university of New Mexico in Albuquerque in Bernalillo county may also be expended to renovate, furnish and equip that facility for the Tamarind institute.

Chapter 128 Section 87 Laws 2009

Section 87. UNIVERSITY OF NEW MEXICO TAMARIND INSTITUTE--EXPAND PURPOSE--GENERAL FUND.--The unexpended balance of the appropriation to the board of regents of the university of New Mexico in Subsection 12 of Section 38 of Chapter 2 of Laws 2007 to plan, design and construct a facility for the Tamarind institute at the university of New Mexico in Albuquerque in Bernalillo county may also be expended to renovate, furnish and equip that facility for the Tamarind institute.

Chapter 128 Section 88 Laws 2009

Section 88. UNIVERSITY OF NEW MEXICO TAMARIND INSTITUTE--EXPAND PURPOSE--GENERAL FUND.--The unexpended balance of the appropriation to the board of regents of the university of New Mexico in Subsection 35 of Section 83 of Chapter 42 of Laws 2007 to plan, design and construct a facility for the Tamarind institute at the university of New Mexico in Albuquerque in Bernalillo county may also be expended to renovate, furnish and equip that facility for the Tamarind institute.

Chapter 128 Section 89 Laws 2009

Section 89. UNIVERSITY OF NEW MEXICO WOMEN'S AND MEN'S BASKETBALL PROGRAM FACILITIES AND EQUIPMENT--EXTEND TIME--GENERAL FUND.--The time of expenditure for the university of New Mexico project in Subsection 38 of Section 83 of Chapter 42 of Laws 2007 to plan, design, purchase, acquire and construct weight training equipment and facilities for the women's basketball program and facilities and equipment to be used by both the women's and men's basketball programs at the university of New Mexico in Albuquerque in Bernalillo county is extended through fiscal year 2011.

Chapter 128 Section 90 Laws 2009

Section 90. TWENTY-FIRST CENTURY CHARTER SCHOOL PORTABLE BUILDING--CHANGE TO PURCHASE PROPERTY AND A FACILITY--GENERAL FUND.--The unexpended balance of the appropriation to the public education department in Subsection 9 of Section 55 of Chapter 42 of Laws 2007 to purchase a portable building for the Twenty-First Century charter school in the Albuquerque public school district in Bernalillo county shall not be expended for the original purpose but is changed to purchase property and a facility for the Twenty-First Century charter school for that school district.

Chapter 128 Section 91 Laws 2009

Section 91. A. MONTOYA ELEMENTARY SCHOOL EDUCATION TECHNOLOGY--EXTEND TIME--GENERAL FUND.--The time of expenditure for the public education department project in Subsection 10 of Section 55 of Chapter 42 of

Laws 2007 to purchase and install educational technology, including related equipment and furniture, at A. Montoya elementary school in the Albuquerque public school district in Bernalillo county is extended through fiscal year 2011.

Chapter 128 Section 92 Laws 2009

Section 92. FIRST TEE LEARNING CENTER EQUIPMENT--CHANGE TO ADOBE ACRES ELEMENTARY SCHOOL INFORMATION TECHNOLOGY--CHANGE AGENCY--EXTEND TIME--GENERAL FUND.--Twenty-five thousand dollars (\$25,000) of the unexpended balance of the appropriation to the local government division in Subsection 581 of Section 68 of Chapter 42 of Laws 2007 to purchase equipment for the First Tee learning center in Sandoval county shall not be expended for the original purpose but is appropriated to the public education department to purchase and install information technology, including related equipment, furniture and infrastructure, at Adobe Acres elementary school in the Albuquerque public school district in Bernalillo county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 93 Laws 2009

Section 93. EDUCATIONAL TECHNOLOGY DEFICIENCY CORRECTION--CHANGE TO INFORMATION TECHNOLOGY FOR SCHOOLS IN HOUSE DISTRICT 31 AND FOR ELDORADO AND LA CUEVA HIGH SCHOOLS IN THE ALBUQUERQUE PUBLIC SCHOOL DISTRICT--CHANGE AGENCY--EXTEND TIME--GENERAL FUND.-
-Two hundred fifty-five thousand dollars (\$255,000) of the unexpended balance of the appropriation to the educational technology deficiency correction fund in Laws 2007, Chapter 2, Section 17 to correct serious deficiencies in educational technology infrastructure pursuant to Section 22-15A-11 NMSA 1978 shall not be expended for the original purpose but is appropriated to the public education department to purchase and install information technology, including related equipment, furniture and infrastructure, at schools within house district 31 and at Eldorado and La Cueva high schools in the Albuquerque public school district in Bernalillo county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 94 Laws 2009

Section 94. EDUCATIONAL TECHNOLOGY DEFICIENCY CORRECTION--CHANGE TO INFORMATION TECHNOLOGY IN THE ALBUQUERQUE PUBLIC SCHOOL DISTRICT--CHANGE AGENCY--EXTEND TIME--GENERAL FUND.--Two hundred fifty-five thousand dollars (\$255,000) of the unexpended balance of the appropriation to the educational technology deficiency correction fund in Laws 2007, Chapter 2, Section 17 to correct serious deficiencies in educational technology infrastructure pursuant to Section 22-15A-11 NMSA 1978 shall not be expended for the original purpose but is appropriated to the public education department to purchase and install information technology, including related equipment, furniture and infrastructure, at the following schools in the Albuquerque public school district in Bernalillo county: Jackson middle school, Acoma elementary school, Chelwood elementary school, Collet

Park elementary school, McCollum elementary school, Onate elementary school and Southwest secondary learning center charter school. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 95 Laws 2009

Section 95. ALBUQUERQUE BARELAS MEMORIAL PLAZA IMPROVEMENTS--CHANGE TO AMY BIEHL CHARTER HIGH SCHOOL ENERGY EFFICIENCY IMPROVEMENTS--CHANGE AGENCY--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 28 of Section 59 of Chapter 92 of Laws 2008 for improvements to the Barelvas memorial plaza in Albuquerque in Bernalillo county shall not be expended for the original purpose but is appropriated to the public education department to design, purchase and install energy efficiency improvements at Amy Biehl charter high school in the Albuquerque public school district in Bernalillo county.

Chapter 128 Section 96 Laws 2009

Section 96. APACHE ELEMENTARY SCHOOL EDUCATIONAL TECHNOLOGY--EXTEND TIME--GENERAL FUND.--The time of expenditure for the public education department project in Subsection 6 of Section 16 of Chapter 2 of Laws 2007 to purchase and install educational technology, including related equipment and furniture, at Apache elementary school in the Albuquerque public school district in Bernalillo county is extended through fiscal year 2011.

Chapter 128 Section 97 Laws 2009

Section 97. UNIVERSITY OF NEW MEXICO HARWOOD MUSEUM OF ART RENOVATION--CHANGE TO ARROYO DEL OSO ELEMENTARY SCHOOL INFORMATION TECHNOLOGY PURCHASE AND INSTALLATION--CHANGE AGENCY--GENERAL FUND.--Seventy-five thousand dollars (\$75,000) of the unexpended balance of the appropriation to the board of regents of the university of New Mexico in Subsection 46 of Section 83 of Chapter 42 of Laws 2007 to plan, design and construct an expansion to the university of New Mexico Harwood museum in Taos in Taos county shall not be expended for the original purpose but is appropriated to the public education department to purchase and install information technology, including related equipment, furniture and infrastructure, for Arroyo del Oso elementary school in the Albuquerque public school district in Bernalillo county.

Chapter 128 Section 98 Laws 2009

Section 98. CIBOLA HIGH SCHOOL TENNIS COURTS--CHANGE TO INFORMATION TECHNOLOGY AND EQUIPMENT--GENERAL FUND.--The unexpended balance of the appropriation to the public education department in Subsection 56 of Section 55 of Chapter 42 of Laws 2007 for tennis courts at Cibola high school in the Albuquerque public school district in Bernalillo county shall not be

expended for the original purpose but is changed to purchase and install information technology, including related equipment, furniture and infrastructure, at Cibola high school in that school district.

Chapter 128 Section 99 Laws 2009

Section 99. NEW MEXICO HIGHLANDS UNIVERSITY INSTITUTE OF PUBLIC POLICY EQUIPMENT AND RENOVATION--CHANGE TO CIBOLA HIGH SCHOOL INFORMATION TECHNOLOGY AND EQUIPMENT--CHANGE AGENCY--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the board of regents of New Mexico highlands university in Paragraph (7) of Subsection C of Section 53 of Chapter 347 of Laws 2005 to purchase and install equipment and renovate facilities for the institute of public policy at New Mexico highlands university in Las Vegas in San Miguel county shall not be expended for the original purpose but is appropriated to the public education department to purchase and install information technology, including related equipment, furniture and infrastructure, at Cibola high school in the Albuquerque public school district in Bernalillo county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 100 Laws 2009

Section 100. EAST MOUNTAIN HIGH SCHOOL SCIENCE DEPARTMENT--EXTEND TIME--GENERAL FUND.--The time of expenditure for the public education department project in Subsection 72 of Section 55 of Chapter 42 of Laws 2007 to furnish and equip the science department at East Mountain high school in the Albuquerque public school district in Bernalillo county is extended through fiscal year 2011.

Chapter 128 Section 101 Laws 2009

Section 101. STATEWIDE MUSEUMS AND MONUMENTS VAN OF ENCHANTMENT--CHANGE TO EDMUND G. ROSS ELEMENTARY SCHOOL INFORMATION TECHNOLOGY--CHANGE AGENCY--SEVERANCE TAX BONDS.--Thirty thousand dollars (\$30,000) of the unexpended balance of the appropriation to the cultural affairs department in Subsection 11 of Section 7 of Chapter 92 of Laws 2008 to purchase and equip the van of enchantment for use by the museums and monuments statewide shall not be expended for the original purpose but is appropriated to the public education department to purchase and install information technology, including related equipment, furniture and infrastructure, at Edmund G. Ross elementary school in the Albuquerque public school district in Bernalillo county.

Chapter 128 Section 102 Laws 2009

Section 102. SANTA FE CAJA DEL RIO ROAD AND RECREATIONAL FIELD CONCESSION STAND--CHANGE TO EMERSON ELEMENTARY SCHOOL PATIO IMPROVEMENTS--CHANGE AGENCY--EXTEND TIME--CAPITAL PROJECTS

FUND.--The unexpended balance of the appropriation to the local government division originally authorized in Subsection 241 of Section 134 of Chapter 126 of Laws 2004 for a concession stand and improvements to Caja del Rio road and infrastructure at the Santa Fe recreational fields in Santa Fe county and reauthorized in Laws 2008, Chapter 83, Section 369 to extend the time of expenditure shall not be expended for the original purpose but is appropriated to the public education department to plan, design, construct, renovate, purchase, equip and furnish improvements, including landscaping and outdoor furniture, for the patio at Emerson elementary school in the Albuquerque public school district in Bernalillo county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 103 Laws 2009

Section 103. SANTA FE COUNTY MUNICIPAL OUTDOOR RECREATION COMPLEX CONCESSION BUILDING--CHANGE TO EMERSON ELEMENTARY SCHOOL PATIO IMPROVEMENTS--CHANGE AGENCY--EXTEND TIME--SEVERANCE TAX BONDS.--Twenty-five thousand dollars (\$25,000) of the unexpended balance of the appropriation to the local government division in Subsection 277 of Section 16 of Chapter 347 of Laws 2005 for a concession building at the municipal outdoor recreation complex at the rugby fields on Caja del Rio road in Santa Fe in Santa Fe county shall not be expended for the original purpose but is appropriated to the public education department to plan, design, construct, renovate, purchase, equip and furnish improvements, including landscaping and outdoor furniture, for the patio at Emerson elementary school in the Albuquerque public school district in Bernalillo county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 104 Laws 2009

Section 104. GOVERNOR BENT ELEMENTARY SCHOOL KINDERGARTEN ADDITION--CHANGE TO CAFETERIA--GENERAL FUND.--The unexpended balance of the appropriation to the public education department in Subsection 93 of Section 55 of Chapter 42 of Laws 2007 for a kindergarten addition at Governor Bent elementary school in the Albuquerque public school district in Bernalillo county shall not be expended for the original purpose but is changed to plan, design, construct, equip and improve the cafeteria at that school.

Chapter 128 Section 105 Laws 2009

Section 105. SANTA FE CAJA DEL RIO ROAD RUGBY FIELD CONCESSION BUILDING--CHANGE TO HAWTHORNE ELEMENTARY SCHOOL IMPROVEMENTS--CHANGE AGENCY--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 279 of Section 18 of Chapter 111 of Laws 2006 for a concession building at the rugby fields on Caja del Rio road in Santa Fe in Santa Fe county shall not be expended for the original purpose but is appropriated to the public education department to plan, design, construct, renovate, equip and furnish improvements, including landscaping and

drainage, at the kindergarten building at Hawthorne elementary school in the Albuquerque public school district in Bernalillo county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 106 Laws 2009

Section 106. FILM PRODUCTION PROP SHOP--CHANGE TO HIGHLAND HIGH SCHOOL LIBRARY BOOKS, FURNITURE AND INFORMATION TECHNOLOGY PURCHASES--CHANGE AGENCY--GENERAL FUND.--The unexpended balance of the appropriation to the tourism department in Subsection 2 of Section 29 of Chapter 2 of Laws 2007 for expenses related to the prop shop for film production shall not be expended for the original purpose but is appropriated to the public education department to purchase books and furniture and to purchase and install information technology, including related equipment, furniture and infrastructure, for the library at Highland high school in the Albuquerque public school district in Bernalillo county.

Chapter 128 Section 107 Laws 2009

Section 107. HIGHLAND HIGH SCHOOL TENNIS COURTS AND FACILITIES--CHANGE TO EQUIPMENT IMPROVEMENTS--CHANGE AGENCY--GENERAL FUND.--Seventy-five thousand dollars (\$75,000) of the unexpended balance of the appropriation to the public education department originally authorized in Subsection 125 of Section 52 of Chapter 111 of Laws 2006 and reauthorized and reappropriated to the local government division in Laws 2008, Chapter 83, Section 102 to plan, design, construct, equip, furnish and repair the tennis courts and facilities at the Highland high school tennis courts in Bernalillo county shall not be expended for the original or reauthorized purpose but is appropriated to the public education department to plan, design, purchase and install equipment, including security cameras, relocation of security monitors, a mobile computer lab and a marquee, at Highland high school in the Albuquerque public school district in Bernalillo county.

Chapter 128 Section 108 Laws 2009

Section 108. ALBUQUERQUE-BERNALILLO COUNTY WATER UTILITY AUTHORITY WATER AND WASTEWATER SYSTEM--CHANGE TO HIGHLAND HIGH SCHOOL GIRLS' BASKETBALL TEAM EQUIPMENT, LIBRARY BOOKS AND MEDIA--CHANGE AGENCY--GENERAL FUND.--Twenty-five thousand dollars (\$25,000) of the unexpended balance of the appropriation to the department of environment in Subsection 4 of Section 45 of Chapter 111 of Laws 2006 for a water and wastewater system for the Albuquerque-Bernalillo county water utility authority shall not be expended for the original purpose but is appropriated to the public education department to equip the girls' basketball team, purchase library books and upgrade media at Highland high school in the Albuquerque public school district in Bernalillo county.

Chapter 128 Section 109 Laws 2009

Section 109. HIGHLAND HIGH SCHOOL GYMNASIUM ACOUSTICS--CHANGE TO SPEAKER SYSTEM--EXTEND TIME--CAPITAL PROJECTS FUND.--The unexpended balance of the appropriation to the public education department in Subsection 84 of Section 37 of Chapter 126 of Laws 2004 for baffles or acoustic panels in the gymnasium at Highland high school in the Albuquerque public school district in Bernalillo county shall not be expended for the original purpose but is changed to purchase and install a speaker system, including microphones, in the gymnasium at Highland high school. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 110 Laws 2009

Section 110. HIGHLAND HIGH SCHOOL EXTERIOR PAINTING--CHANGE TO INFORMATION TECHNOLOGY AND LIBRARY BOOKS--GENERAL FUND.--The unexpended balance of the appropriation to the public education department in Subsection 111 of Section 55 of Chapter 42 of Laws 2007 to paint the exterior buildings at Highland high school in the Albuquerque public school district in Bernalillo county shall not be expended for the original purpose but is changed to purchase library books and to purchase and install information technology, including related equipment, furniture, infrastructure and a portable computer laboratory, at Highland high school in that school district.

Chapter 128 Section 111 Laws 2009

Section 111. HIGHLAND HIGH SCHOOL CAFETERIA IMPROVEMENTS--EXPAND PURPOSE TO INCLUDE STORAGE AREA--GENERAL FUND.--The public education department project in Subsection 117 of Section 44 of Chapter 92 of Laws 2008 for cafeteria improvements at Highland high school in the Albuquerque public school district in Bernalillo county may also include design and construction of a storage area and other improvements and equipment in the cafeteria, including a serving line entrance door and a sound system.

Chapter 128 Section 112 Laws 2009

Section 112. HIGHLAND HIGH SCHOOL PAINTING OF EXTERIOR TRIM--CHANGE TO VIDEO PRODUCTION ROOM TECHNOLOGY--GENERAL FUND.--The unexpended balance of the appropriation to the public education department in Subsection 105 of Section 39 of Chapter 111 of Laws 2006 to paint the exterior trim at Highland high school in the Albuquerque public school district in Bernalillo county shall not be expended for the original purpose but is changed to plan, design, install, equip and construct technological improvements in the video production room, including information technology and related equipment, furniture and infrastructure, at Highland high school in that school district.

Chapter 128 Section 113 Laws 2009

Section 113. HIGHLAND HIGH SCHOOL WINDOW REPLACEMENT--CHANGE TO IMPROVEMENTS FOR VIDEO PRODUCTION ROOM--GENERAL FUND.--The unexpended balance of the appropriation to the public education department in Subsection 126 of Section 44 of Chapter 92 of Laws 2008 to replace windows at Highland high school in the Albuquerque public school district in Bernalillo county shall not be expended for the original purpose but is changed to plan, design, install, equip and construct technological improvements in the video production room, including information technology and related equipment, furniture and infrastructure, at Highland high school in that school district.

Chapter 128 Section 114 Laws 2009

Section 114. JIMMY E. CARTER MIDDLE SCHOOL EDUCATIONAL TECHNOLOGY--EXTEND TIME--GENERAL FUND.--The time of expenditure for the public education department project in Subsection 127 of Section 55 of Chapter 42 of Laws 2007 to purchase and install educational technology, including related equipment and furniture, for Jimmy E. Carter middle school in the Albuquerque public school district in Bernalillo county is extended through fiscal year 2011.

Chapter 128 Section 115 Laws 2009

Section 115. JOHN ADAMS MIDDLE SCHOOL EDUCATIONAL TECHNOLOGY--EXTEND TIME--GENERAL FUND.--The time of expenditure for the public education department project in Subsection 128 of Section 55 of Chapter 42 of Laws 2007 to purchase and install educational technology, including related equipment and furniture, for John Adams middle school in the Albuquerque public school district in Bernalillo county is extended through fiscal year 2011.

Chapter 128 Section 116 Laws 2009

Section 116. KIRTLAND ELEMENTARY SCHOOL SHADE STRUCTURES--EXPAND PURPOSE--EXTEND TIME--CAPITAL PROJECTS FUND.--The public education department project in Subsection 88 of Section 37 of Chapter 126 of Laws 2004 for shade structures at Kirtland elementary school in the Albuquerque public school district in Bernalillo county may include planning, designing, constructing and equipping improvements to the school grounds, landscaping, irrigation and running track at Kirtland elementary school in that school district. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 117 Laws 2009

Section 117. KIRTLAND ELEMENTARY SCHOOL PLAYGROUND EQUIPMENT--CHANGE TO KIRTLAND ELEMENTARY SCHOOL IMPROVEMENTS--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the public education department in Subsection 135 of Section 55 of Chapter 42 of Laws 2007 for playground equipment at Kirtland elementary school in the Albuquerque public

school district in Bernalillo county shall not be expended for the original purpose but is changed to plan, design, construct and equip improvements, including the grounds, landscaping, irrigation and track, at Kirtland elementary school in that school district. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 118 Laws 2009

Section 118. ALBUQUERQUE JADE PARK UPGRADES--CHANGE TO LA CUEVA HIGH SCHOOL INFORMATION TECHNOLOGY, LOCKERS AND STORAGE UNIT--CHANGE AGENCY--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 23 of Section 26 of Chapter 2 of Laws 2007 for equipment and upgrades at Jade park in Albuquerque in Bernalillo county shall not be expended for the original purpose but is appropriated to the public education department to purchase and install storage units, lockers and information technology, including related equipment, furniture and infrastructure, at La Cueva high school in the Albuquerque public school district in Bernalillo county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 119 Laws 2009

Section 119. EDUCATIONAL TECHNOLOGY DEFICIENCY CORRECTION--CHANGE TO LA CUEVA HIGH SCHOOL INFORMATION TECHNOLOGY--CHANGE AGENCY--EXTEND TIME--GENERAL FUND.--One hundred sixty thousand dollars (\$160,000) of the unexpended balance of the appropriation to the educational technology deficiency correction fund in Laws 2007, Chapter 2, Section 17 to correct serious deficiencies in educational technology infrastructure pursuant to Section 22-15A-11 NMSA 1978 shall not be expended for the original purpose but is appropriated to the public education department to purchase and install information technology, including related equipment, furniture and infrastructure, at La Cueva high school in the Albuquerque public school district in Bernalillo county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 120 Laws 2009

Section 120. MANZANO CLUSTER SCHOOLS TELEVISION, FILM PRODUCTION AND BROADCAST EQUIPMENT--CHANGE TO LA MESA ELEMENTARY SCHOOL LIBRARY EQUIPMENT--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the public education department in Subsection 157 of Section 55 of Chapter 42 of Laws 2007 for television and film production and broadcast equipment for schools in the Manzano cluster in the Albuquerque public school district in Bernalillo county shall not be expended for the original purpose but is changed to purchase equipment, including books and shelves, for the library at La Mesa elementary school in that school district. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 121 Laws 2009

Section 121. SANTA FE COUNTY MUNICIPAL RECREATION COMPLEX CONCESSION BUILDING--CHANGE TO LA MESA ELEMENTARY SCHOOL LIBRARY BOOKS AND EQUIPMENT--CHANGE AGENCY--GENERAL FUND.--The unexpended balance of the local government division appropriation originally authorized in Subsection 8 of Section 26 of Chapter 2 of Laws 2007 and reauthorized in Laws 2008, Chapter 83, Section 370 for a concession building at the municipal recreation complex rugby fields on Caja del Rio road in Santa Fe county shall not be expended for the original or reauthorized purpose but is appropriated to the public education department to purchase books and equipment for the library at La Mesa elementary school in the Albuquerque public school district in Bernalillo county.

Chapter 128 Section 122 Laws 2009

Section 122. LAVALAND ELEMENTARY SCHOOL EDUCATIONAL TECHNOLOGY--EXTEND TIME--GENERAL FUND.--The time of expenditure for the public education department project in Subsection 144 of Section 55 of Chapter 42 of Laws 2007 to purchase and install educational technology, including related equipment and furniture, for Lavaland elementary school in the Albuquerque public school district in Bernalillo county is extended through fiscal year 2011.

Chapter 128 Section 123 Laws 2009

Section 123. LOS PADILLAS ELEMENTARY SCHOOL INFORMATION TECHNOLOGY--CHANGE TO LOS PADILLAS ELEMENTARY SCHOOL NATURE CENTER STUDY, EQUIPMENT AND INFRASTRUCTURE--GENERAL FUND.--The unexpended balance of the appropriation to the public education department in Subsection 178 of Section 44 of Chapter 92 of Laws 2008 to purchase and install information technology, including related equipment, furniture and infrastructure, at the nature center at Los Padillas elementary school in the Albuquerque public school district in Bernalillo county shall not be expended for the original purpose but is changed to conduct a study of the wetlands at the nature center and purchase and install equipment and infrastructure at Los Padillas elementary school in that school district.

Chapter 128 Section 124 Laws 2009

Section 124. MANZANO HIGH SCHOOL ATHLETIC STORAGE BUILDING--EXTEND TIME--CAPITAL PROJECTS FUND.--The time of expenditure for the public education department project in Subsection 100 of Section 37 of Chapter 126 of Laws 2004 for an athletic storage building at Manzano high school in the Albuquerque public school district in Bernalillo county is extended through fiscal year 2011.

Chapter 128 Section 125 Laws 2009

Section 125. SANTA FE RECREATIONAL FIELDS AND CAJA DEL RIO ROAD IMPROVEMENTS--CHANGE TO MANZANO MESA ELEMENTARY SCHOOL LIBRARY BOOKS AND EQUIPMENT--CHANGE AGENCY--SEVERANCE TAX

BONDS.--The unexpended balance of the local government division appropriation originally authorized in Subsection 605 of Section 22 of Chapter 429 of Laws 2003 for a concession stand and improvements to Caja del Rio road and infrastructure at the Santa Fe recreational fields in Santa Fe county and reauthorized in Laws 2008, Chapter 83, Section 368 to extend the time of expenditure shall not be expended for the original purpose but is appropriated to the public education department to purchase and install library books and related equipment at Manzano Mesa elementary school in the Albuquerque public school district in Bernalillo county.

Chapter 128 Section 126 Laws 2009

Section 126. MATHESON PARK ELEMENTARY SCHOOL PLAYGROUND EQUIPMENT--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the public education department project in Subsection 22 of Section 118 of Chapter 126 of Laws 2004 for playground equipment for Matheson Park elementary school in the Albuquerque public school district in Bernalillo county is extended through fiscal year 2011.

Chapter 128 Section 127 Laws 2009

Section 127. MCKINLEY MIDDLE SCHOOL EDUCATIONAL TECHNOLOGY--EXTEND TIME--GENERAL FUND.--The time of expenditure for the public education department project in Subsection 170 of Section 55 of Chapter 42 of Laws 2007 for educational technology at McKinley middle school in the Albuquerque public school district in Bernalillo county is extended through fiscal year 2011.

Chapter 128 Section 128 Laws 2009

Section 128. PIEDRAS MARCADAS PUEBLO RUINS VISITORS' CENTER--CHANGE TO NATIVE AMERICAN COMMUNITY ACADEMY CHARTER SCHOOL FACILITY--CHANGE AGENCY--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 16 of Section 18 of Chapter 111 of Laws 2006 to design and construct improvements, including site preparation and a visitors' center, at the Piedras Marcadas pueblo ruins in Albuquerque in Bernalillo county shall not be expended for the original purpose but is appropriated to the public education department to plan, design, construct and equip a facility for the Native American community academy charter school in the Albuquerque public school district in Bernalillo county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 129 Laws 2009

Section 129. SANTA FE COUNTY OPERA REHEARSAL HALL--CHANGE TO NEW FUTURES EDUCATION COMPLEX INFORMATION TECHNOLOGY--CHANGE AGENCY--GENERAL FUND.--One hundred thousand dollars (\$100,000) of the appropriation to the cultural affairs department in Subsection 10 of Section 41 of

Chapter 42 of Laws 2007 to construct an opera rehearsal hall on land donated by the Santa Fe opera in Santa Fe county shall not be expended for the original purpose but is appropriated to the public education department to purchase and install information technology, including related equipment, furniture and infrastructure, at the New Futures education complex in the Albuquerque public school district in Bernalillo county.

Chapter 128 Section 130 Laws 2009

Section 130. ROOSEVELT MIDDLE SCHOOL EDUCATIONAL TECHNOLOGY--EXTEND TIME--GENERAL FUND.--The time of expenditure for the public education department project in Subsection 217 of Section 55 of Chapter 42 of Laws 2007 to purchase and install educational technology, including related equipment and furniture, at Roosevelt middle school in the Albuquerque public school district in Bernalillo county is extended through fiscal year 2011.

Chapter 128 Section 131 Laws 2009

Section 131. STATE LAND OFFICE AND ALBUQUERQUE PUBLIC SCHOOL DISTRICT LANDFILL REUSE AND RENEWABLE ENERGY PROJECT--CHANGE TO SANDIA BASE ELEMENTARY SCHOOL BOOKS AND LITERACY RESOURCES PURCHASE--CHANGE AGENCY--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the department of environment in Subsection 59 of Section 12 of Chapter 347 of Laws 2005 for a landfill reuse and renewable energy project on land owned by the state land office and the Albuquerque public school district in Albuquerque in Bernalillo county shall not be expended for the original purpose but is appropriated to the public education department to purchase and install books and literacy resources for a core reading program at Sandia Base elementary school in the Albuquerque public school district in Bernalillo county.

Chapter 128 Section 132 Laws 2009

Section 132. ANDERSON-ABRUZZO INTERNATIONAL BALLOON MUSEUM EXHIBITS--CHANGE TO SANDIA HIGH SCHOOL BEHAVIORAL INTERVENTION FACILITY--CHANGE AGENCY--EXTEND TIME--SEVERANCE TAX BONDS.--Seventy thousand dollars (\$70,000) of the unexpended balance of the appropriation to the local government division in Subsection 15 of Section 18 of Chapter 111 of Laws 2006 for the Anderson-Abruzzo international balloon museum in Albuquerque in Bernalillo county shall not be expended for the original purpose but is appropriated to the public education department to plan, design, construct and equip a facility, including site improvements, for the behavioral intervention program at Sandia high school in the Albuquerque public school district in Bernalillo county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 133 Laws 2009

Section 133. EL PUEBLO HEALTH SERVICES RADIOGRAPHY SUITE--CHANGE TO SANDIA HIGH SCHOOL BEHAVIORAL INTERVENTION PROGRAM FACILITY AND SITE IMPROVEMENTS--CHANGE AGENCY--EXTEND TIME--GENERAL FUND.--Twenty-five thousand dollars (\$25,000) of the unexpended balance of the appropriation to the local government division in Subsection 567 of Section 52 of Chapter 111 of Laws 2006 for a radiography suite at El Pueblo health services in Bernalillo in Sandoval county shall not be expended for the original purpose but is appropriated to the public education department to plan, design, construct and equip a facility, including site improvements, for the behavioral intervention program at Sandia high school in the Albuquerque public school district in Bernalillo county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 134 Laws 2009

Section 134. SANTA FE MOUNTAIN CENTER--CHANGE TO SANDIA HIGH SCHOOL BEHAVIORAL INTERVENTION FACILITY AND SITE IMPROVEMENTS--CHANGE AGENCY--EXTEND TIME--GENERAL FUND.--Thirty-five thousand dollars (\$35,000) of the unexpended balance of the appropriation to the local government division in Subsection 604 of Section 52 of Chapter 111 of Laws 2006 for land and a county-owned building to house the Santa Fe mountain center in Santa Fe county shall not be expended for the original purpose but is appropriated to the public education department to plan, design, construct and equip a facility, including site improvements, for the behavioral intervention program at Sandia high school in the Albuquerque public school district in Bernalillo county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 135 Laws 2009

Section 135. ALBUQUERQUE NATIONAL ATOMIC MUSEUM ROAD--CHANGE TO SANDIA HIGH SCHOOL BEHAVIORAL INTERVENTION FACILITY--CHANGE AGENCY--EXTEND TIME--SEVERANCE TAX BONDS.--Fifty thousand dollars (\$50,000) of the unexpended balance of the appropriation to the local government division in Subsection 78 of Section 18 of Chapter 111 of Laws 2006 for a road and parking area for the national atomic museum in Albuquerque in Bernalillo county shall not be expended for the original purpose but is appropriated to the public education department to plan, design, construct and equip a facility, including site improvements, for the behavioral intervention program at Sandia high school in the Albuquerque public school district in Bernalillo county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 136 Laws 2009

Section 136. SANDIA HIGH SCHOOL LECTURE HALL IMPROVEMENTS--CHANGE TO SANDIA HIGH SCHOOL IMPROVEMENTS--GENERAL FUND.--The unexpended balance of the appropriation to the public education department in Subsection 224 of Section 55 of Chapter 42 of Laws 2007 for improvements to the

lecture hall at Sandia high school in the Albuquerque public school district in Bernalillo county shall not be expended for the original purpose but is changed to plan, design and construct improvements at Sandia high school in that school district.

Chapter 128 Section 137 Laws 2009

Section 137. SANTA FE COUNTY OPERA REHEARSAL HALL CONSTRUCTION--CHANGE TO SANDIA HIGH SCHOOL COMPUTER-AIDED DRAFTING INFORMATION TECHNOLOGY--CHANGE AGENCY--GENERAL FUND.--Seventy-five thousand dollars (\$75,000) of the unexpended balance of the appropriation to the cultural affairs department in Subsection 9 of Section 37 of Chapter 92 of Laws 2008 to construct an opera rehearsal hall in Santa Fe county shall not be expended for the original purpose but is appropriated to the public education department to purchase and install computer-aided drafting information technology, including related equipment, furniture and infrastructure, and to design, construct, renovate and furnish computer-aided drafting laboratories at Sandia high school in the Albuquerque public school district in Bernalillo county.

Chapter 128 Section 138 Laws 2009

Section 138. SANDIA HIGH SCHOOL LECTURE HALL AND TELECOMMUNICATION UPDATES--CHANGE TO SANDIA HIGH SCHOOL IMPROVEMENTS--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the public education department in Subsection 28 of Section 118 of Chapter 126 of Laws 2004 to refurbish the lecture hall and for telecommunication updates at Sandia high school in the Albuquerque public school district in Bernalillo county shall not be expended for the original purpose but is changed to plan, design and construct improvements at Sandia high school in that school district. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 139 Laws 2009

Section 139. NUESTROS VALORES CHARTER SCHOOL OUTDOOR CLASSROOM IMPROVEMENTS--CHANGE TO SOUTH VALLEY ACADEMY CHARTER SCHOOL SHADE STRUCTURES--GENERAL FUND.--The unexpended balance of the appropriation to the public education department in Subsection 193 of Section 55 of Chapter 42 of Laws 2007 for outdoor classroom improvements at Nuestros Valores charter school in the Albuquerque public school district in Bernalillo county shall not be expended for the original purpose but is changed to plan, design, construct, equip and install shade structures for the South Valley academy charter school for that school district.

Chapter 128 Section 140 Laws 2009

Section 140. SOUTHWEST SECONDARY LEARNING CENTER CHARTER SCHOOL BUILDING AND LAND--CHANGE TO INFORMATION TECHNOLOGY--

GENERAL FUND.--The unexpended balance of the appropriation to the public education department in Subsection 269 of Section 44 of Chapter 92 of Laws 2008 to purchase a building and land for the Southwest secondary learning center charter school in the Albuquerque public school district in Bernalillo county shall not be expended for the original purpose but is changed to purchase and install information technology, including related furniture, equipment and infrastructure, at that school.

Chapter 128 Section 141 Laws 2009

Section 141. SOUTHWEST SECONDARY LEARNING CENTER CHARTER SCHOOL BUILDING AND LAND--CHANGE TO INFORMATION TECHNOLOGY--GENERAL FUND.--The unexpended balance of the appropriation to the public education department in Subsection 270 of Section 44 of Chapter 92 of Laws 2008 to purchase a building and land for the Southwest secondary learning center charter school in the Albuquerque public school district in Bernalillo county shall not be expended for the original purpose but is changed to purchase and install information technology, including related furniture, equipment and infrastructure, at that school.

Chapter 128 Section 142 Laws 2009

Section 142. SANTA FE COUNTY MUNICIPAL OUTDOOR RECREATION COMPLEX CONCESSION BUILDING CONSTRUCTION--CHANGE TO TOMASITA ELEMENTARY SCHOOL LIBRARY IMPROVEMENTS--CHANGE AGENCY--EXTEND TIME--SEVERANCE TAX BONDS.--Fifty thousand dollars (\$50,000) of the unexpended balance of the appropriation to the local government division in Subsection 277 of Section 16 of Chapter 347 of Laws 2005 for a concession building at the municipal outdoor recreation complex at the rugby fields on Caja del Rio road in Santa Fe in Santa Fe county shall not be expended for the original purpose but is appropriated to the public education department to plan, design, construct, renovate, purchase, equip and furnish improvements to the library at Tomasita elementary school in the Albuquerque public school district in Bernalillo county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 143 Laws 2009

Section 143. NEW MEXICO STATE UNIVERSITY GOLF DRIVING RANGE RENOVATION--CHANGE TO WEST MESA HIGH SCHOOL INFORMATION TECHNOLOGY--CHANGE AGENCY--GENERAL FUND.--The unexpended balance of the appropriation to the board of regents of New Mexico state university in Subsection 6 of Section 67 of Chapter 92 of Laws 2008 to plan, design, construct and renovate the golf driving range at New Mexico state university in Las Cruces in Dona Ana county shall not be expended for the original purpose but is appropriated to the public education department to purchase and install information technology, including related equipment, furniture and infrastructure, at West Mesa high school in the Albuquerque public school district in Bernalillo county.

Chapter 128 Section 144 Laws 2009

Section 144. NEW MEXICO HIGHLANDS UNIVERSITY SPANISH LANGUAGE PROGRAM--CHANGE TO WHERRY ELEMENTARY SCHOOL IMPROVEMENTS--CHANGE AGENCY--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the board of regents of New Mexico highlands university in Paragraph (12) of Subsection B of Section 63 of Chapter 111 of Laws 2006 to support the Spanish language program at New Mexico highlands university in Las Vegas in San Miguel county shall not be expended for the original purpose but is appropriated to the public education department to plan, design, construct, renovate, install, furnish and equip the gymnasium and an artificial turf field at Wherry elementary school in the Albuquerque public school district in Bernalillo county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 145 Laws 2009

Section 145. LOS RANCHOS DE ALBUQUERQUE MAIN STREET PROJECT--EXTEND TIME--CAPITAL PROJECTS FUND.--The time of expenditure for the local government division project in Subsection 55 of Section 34 of Chapter 126 of Laws 2004 and reauthorized in Laws 2006, Chapter 107, Section 29 for improvements related to the main street project, including design, equipment and a trolley, in Los Ranchos de Albuquerque in Bernalillo county is extended through fiscal year 2011.

Chapter 128 Section 146 Laws 2009

Section 146. BALLOON FIESTA PARK UTILITIES EXTENSION--CHANGE TO LOS RANCHOS DE ALBUQUERQUE OPEN SPACE LANDS PURCHASE--CHANGE AGENCY--EXTEND TIME--SEVERANCE TAX BONDS.--One hundred thousand dollars (\$100,000) of the unexpended balance of the appropriation to the department of environment in Subsection 2 of Section 9 of Chapter 126 of Laws 2004 to extend water, sewer and other utilities at Balloon Fiesta park in Bernalillo county shall not be expended for the original purpose but is appropriated to the local government division to purchase open space lands in Los Ranchos de Albuquerque in Bernalillo county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 147 Laws 2009

Section 147. ELEPHANT BUTTE TELEMETRIC WATER METERING--CHANGE TO LOS RANCHOS DE ALBUQUERQUE TRAIN STOP LAND PURCHASE AND PARKING FACILITIES CONSTRUCTION--CHANGE AGENCY--GENERAL FUND.--One hundred thousand dollars (\$100,000) of the unexpended balance of the appropriation to the office of the state engineer in Subsection 5 of Section 20 of Chapter 2 of Laws 2007 to provide telemetric water metering for the Elephant Butte irrigation district in Sierra county shall not be expended for the original purpose but is appropriated to the local government division to purchase land for and to plan, design

and construct site improvements and parking facilities near Los Ranchos de Albuquerque train stop in Bernalillo county.

Chapter 128 Section 148 Laws 2009

Section 148. GRIEGOS DRAIN AND NORTH VALLEY TRAIL IMPROVEMENTS--CHANGE TO LOS RANCHOS JOURNAL CENTER PARKING LOT--GENERAL FUND.--One hundred twelve thousand five hundred dollars (\$112,500) of the appropriation to the local government division in Subsection 185 of Section 68 of Chapter 42 of Laws 2007 for trail improvements adjacent to the Griegos drain and other north valley ditches shall not be expended for the original purpose but is changed for the mid-region council of governments to improve and expand Los Ranchos journal center parking lot to serve the rail runner railroad station in Los Ranchos de Albuquerque in Bernalillo county.

Chapter 128 Section 149 Laws 2009

Section 149. ALBUQUERQUE UNSER MUSEUM--CHANGE TO LOS RANCHOS DE ALBUQUERQUE UNSER CHILDREN'S DISCOVERY CENTER AND RACING MUSEUM--GENERAL FUND.--The unexpended balance of the appropriation to the local government division originally authorized in Subsection 80 of Section 68 of Chapter 42 of Laws 2007 and reauthorized in Laws 2008, Chapter 83, Section 75 to plan, design, construct, equip and furnish the Unser museum in Albuquerque in Bernalillo county shall not be expended for the original or reauthorized purpose but is changed to purchase property for and plan, design, construct, acquire, furnish and equip an educational center and additional museum space at the Unser children's discovery center and racing museum in Los Ranchos de Albuquerque in Bernalillo county.

Chapter 128 Section 150 Laws 2009

Section 150. TIJERAS PHASE 3 WATER SYSTEM IMPROVEMENTS--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the department of environment project in Subsection 1 of Section 113 of Chapter 126 of Laws 2004 to plan, design and construct phase 3 water system improvements in Tijeras in Bernalillo county is extended through fiscal year 2011.

Chapter 128 Section 151 Laws 2009

Section 151. TIJERAS WATER SYSTEM IMPROVEMENTS--EXTEND TIME--CAPITAL PROJECTS FUND.--The time of expenditure for the department of environment project in Subsection 1 of Section 132 of Chapter 126 of Laws 2004 to plan, design and construct phase 3 water system improvements in Tijeras in Bernalillo county is extended through fiscal year 2011.

Chapter 128 Section 152 Laws 2009

Section 152. CHAVES COUNTY 1956 LITTLE LEAGUE WORLD CHAMPIONS MEMORIAL--EXPAND PURPOSE--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 58 of Section 26 of Chapter 2 of Laws 2007 for a memorial, including a statue, to honor the 1956 little league world champions in Chaves county may include improvements to the little league fields, including a sound system, in Chaves county.

Chapter 128 Section 153 Laws 2009

Section 153. EASTERN NEW MEXICO UNIVERSITY FLIGHT TEST CENTER IN ROSWELL--CHANGE TO ADDITION AND BUILDING AT THE DUNKEN VOLUNTEER FIRE DEPARTMENT IN CHAVES COUNTY--CHANGE AGENCY--EXTEND TIME--SEVERANCE TAX BONDS.--One hundred thousand dollars (\$100,000) of the unexpended balance of the appropriation to the board of regents of eastern New Mexico university in Paragraph (2) of Subsection A of Section 24 of Chapter 111 of Laws 2006 for the national flight test center at the Roswell branch campus of eastern New Mexico university in Chaves county shall not be expended for the original purpose but is appropriated to the local government division to plan, design, construct, furnish and equip an addition or building, including water system improvements and installation of a fuel dispensing system and a heliport, at the Dunken volunteer fire department in Chaves county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 154 Laws 2009

Section 154. DUNKEN VOLUNTEER FIRE DEPARTMENT IMPROVEMENTS--EXPAND PURPOSE--EXTEND TIME--GENERAL FUND.--The local government division project originally authorized in Subsection 167 of Section 52 of Chapter 111 of Laws 2006 and reauthorized in Laws 2007, Chapter 341, Section 351 for improvements, including the water system and pipelines and constructing and equipping additional buildings, at the Dunken volunteer fire department in Chaves county may also be expended to plan, design, construct, furnish and equip an addition, including installation of a fuel dispensing system and a heliport, at the Dunken volunteer fire department in Chaves county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 155 Laws 2009

Section 155. DUNKEN VOLUNTEER FIRE DEPARTMENT WATER WELL, PLUMBING AND ADDITION--EXPAND PURPOSE--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 404 of Section 45 of Chapter 347 of Laws 2005 to drill a water well, install plumbing and construct an addition for the Dunken volunteer fire department in Chaves county may also be expended to plan, design, construct, furnish and equip an addition or building, including water system improvements and installation of a fuel dispensing

system and a heliport, at the Dunken volunteer fire department in Chaves county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 156 Laws 2009

Section 156. DUNKEN VOLUNTEER FIRE DEPARTMENT IMPROVEMENTS, WATER WELL AND WATER LINES--EXPAND PURPOSE--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 222 of Section 68 of Chapter 42 of Laws 2007 for improvements and expansions, including a water well and water lines, for the Dunken volunteer fire department in Chaves county may also be expended to plan, design, construct, furnish and equip an addition or building, including installation of a fuel dispensing system and a heliport, at the Dunken volunteer fire department in Chaves county.

Chapter 128 Section 157 Laws 2009

Section 157. DUNKEN FIRE STATION RENOVATIONS--EXPAND PURPOSE--GENERAL FUND.--The local government division project in Subsection 135 of Section 59 of Chapter 92 of Laws 2008 for renovations to the Dunken fire station and site, including an addition, in Chaves county may include water system improvements and installation of a fuel dispensing system and a heliport at that fire station.

Chapter 128 Section 158 Laws 2009

Section 158. GREENFIELD MUTUAL DOMESTIC WATER CONSUMERS COOPERATIVE IMPROVEMENTS--EXTEND TIME--GENERAL FUND.--The time of expenditure for the department of environment project in Subsection 15 of Section 59 of Chapter 42 of Laws 2007 for improvements to a water system, including purchasing and installing fire hydrants and related equipment, for the Greenfield mutual domestic water consumers cooperative in Chaves county is extended through fiscal year 2011.

Chapter 128 Section 159 Laws 2009

Section 159. EASTERN NEW MEXICO UNIVERSITY FLIGHT TEST CENTER IN ROSWELL--CHANGE TO PENASCO VOLUNTEER FIRE DEPARTMENT SUBSTATION--CHANGE AGENCY--EXTEND TIME--SEVERANCE TAX BONDS.--One hundred thousand dollars (\$100,000) of the unexpended balance of the appropriation to the board of regents of eastern New Mexico university in Paragraph (2) of Subsection A of Section 24 of Chapter 111 of Laws 2006 for the national flight test center at the Roswell branch campus of eastern New Mexico university in Chaves county shall not be expended for the original purpose but is appropriated to the local government division to plan, design, construct, improve, furnish and equip a building and addition for a substation for the Penasco volunteer fire department in Chaves county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 160 Laws 2009

Section 160. EASTERN NEW MEXICO UNIVERSITY FLIGHT TEST CENTER IN ROSWELL--CHANGE TO RIO FELIX VOLUNTEER FIRE DEPARTMENT ADDITION--CHANGE AGENCY--EXTEND TIME--SEVERANCE TAX BONDS.--One hundred thousand dollars (\$100,000) of the unexpended balance of the appropriation to the board of regents of eastern New Mexico university in Paragraph (2) of Subsection A of Section 24 of Chapter 111 of Laws 2006 for a flight test center at the Roswell branch campus of eastern New Mexico university in Chaves county shall not be expended for the original purpose but is appropriated to the local government division to plan, design, construct and renovate water system improvements and a building addition, including a water storage tank, fire hydrant and a well, for the Rio Felix volunteer fire department in Chaves county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 161 Laws 2009

Section 161. EDUCATIONAL TECHNOLOGY DEFICIENCY CORRECTION--CHANGE TO INFORMATION TECHNOLOGY IN SCHOOL DISTRICTS IN CHAVES COUNTY--CHANGE AGENCY--EXTEND TIME--GENERAL FUND.--One hundred eighty thousand dollars (\$180,000) of the unexpended balance of the appropriation to the educational technology deficiency correction fund in Laws 2007, Chapter 2, Section 17 to correct serious deficiencies in educational technology infrastructure pursuant to Section 22-15A-11 NMSA 1978 shall not be expended for the original purpose but is appropriated to the public education department to purchase and install information technology, including related equipment, furniture and infrastructure, to be divided equally among the Roswell independent school district, the Dexter consolidated school district, the Hagerman municipal school district and the Lake Arthur municipal school district in Chaves county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 162 Laws 2009

Section 162. LAKE ARTHUR BASEBALL FIELD IMPROVE--EXPAND PURPOSE--GENERAL FUND.--The local government division project in Subsection 62 of Section 26 of Chapter 2 of Laws 2007 to plan, design and construct improvements to the baseball field in Lake Arthur in Chaves county may include installing and equipping the baseball field and concession area at that facility.

Chapter 128 Section 163 Laws 2009

Section 163. LAKE ARTHUR FIRE AND POLICE DEPARTMENT BUILDING--CHANGE TO POLICE DEPARTMENT BUILDING--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 57 of Section 16 of Chapter 347 of Laws 2005 for a building for the fire and police departments in Lake Arthur in Chaves county shall not be expended for the original purpose but is changed to plan, design, construct, renovate, equip and furnish

the police department building in Lake Arthur. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 164 Laws 2009

Section 164. LAKE ARTHUR POLICE STATION AND COURTHOUSE--CHANGE TO PREFABRICATED COURTHOUSE BUILDING AND PARKING LOT--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 95 of Section 18 of Chapter 111 of Laws 2006 for a police station and courthouse, including a parking lot, in Lake Arthur in Chaves county shall not be expended for the original purpose but is changed to plan, design, purchase, construct, furnish and equip a prefabricated building for a courthouse, including a parking lot, in Lake Arthur. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 165 Laws 2009

Section 165. LAKE ARTHUR POLICE STATION, COURTHOUSE AND PARKING LOT--CHANGE TO PREFABRICATED COURTHOUSE BUILDING AND PARKING LOT--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 64 of Section 26 of Chapter 2 of Laws 2007 for a police station and courthouse, including a parking lot, in Lake Arthur in Chaves county shall not be expended for the original purpose but is changed to plan, design, purchase, construct, furnish and equip a prefabricated building for a courthouse, including a parking lot, in Lake Arthur.

Chapter 128 Section 166 Laws 2009

Section 166. LAKE ARTHUR PARKS IMPROVEMENTS--CHANGE TO LAKE ARTHUR PUBLIC WORKS VEHICLES PURCHASE AND EQUIP--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 226 of Section 68 of Chapter 42 of Laws 2007 for improvements to parks in Lake Arthur in Chaves county shall not be expended for the original purpose but is changed to purchase and equip public works vehicles, including utility maintenance carts, for Lake Arthur.

Chapter 128 Section 167 Laws 2009

Section 167. ROSWELL BRANCH CAMPUS OF EASTERN NEW MEXICO UNIVERSITY FLIGHT TEST CENTER INFORMATION TECHNOLOGY--CHANGE TO AVIATION MAINTENANCE TECHNOLOGY CENTER FIBER OPTICS SYSTEM--GENERAL FUND.--The unexpended balance of the appropriation to the board of regents of eastern New Mexico university in Subsection 5 of Section 77 of Chapter 42 of Laws 2007 for information technology at the national flight test center at the Roswell branch campus in Chaves county shall not be expended for the original purpose but is changed to design, purchase, equip and install a fiber optics system at the aviation

maintenance technology center at the Roswell branch campus of eastern New Mexico university.

Chapter 128 Section 168 Laws 2009

Section 168. EASTERN NEW MEXICO UNIVERSITY FLIGHT TEST CENTER IN ROSWELL--CHANGE TO INFORMATION TECHNOLOGY--EXTEND TIME--SEVERANCE TAX BONDS.--Three hundred thousand dollars (\$300,000) of the unexpended balance of the appropriation to the board of regents of eastern New Mexico university in Paragraph (2) of Subsection A of Section 24 of Chapter 111 of Laws 2006 for the national flight test center at the Roswell branch campus of eastern New Mexico university in Chaves county shall not be expended for the original purpose but is changed to purchase and install information technology, including related equipment, furniture and infrastructure, at the Roswell branch campus of eastern New Mexico university. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 169 Laws 2009

Section 169. ROSWELL BRANCH NATIONAL FLIGHT TEST CENTER AT EASTERN NEW MEXICO UNIVERSITY--CHANGE TO INFORMATION TECHNOLOGY--GENERAL FUND.--The unexpended balance of the appropriation to the board of regents of eastern New Mexico university in Subsection 1 of Section 63 of Chapter 92 of Laws 2008 for the national flight test center at the Roswell branch campus of eastern New Mexico university in Chaves county shall not be expended for the original purpose but is changed to purchase and install information technology, including related equipment, furniture and infrastructure, at that campus.

Chapter 128 Section 170 Laws 2009

Section 170. EASTERN NEW MEXICO UNIVERSITY NATIONAL FLIGHT TEST CENTER--CHANGE TO UNIVERSITY CENTER INFORMATION TECHNOLOGY--GENERAL FUND.--The unexpended balance of the appropriation to the board of regents at eastern New Mexico university in Subsection 4 of Section 77 of Chapter 42 of Laws 2007 for the national flight test center at the Roswell branch campus of eastern New Mexico university in Chaves county shall not be expended for the original purpose but is changed to design, purchase and install information technology, including related equipment, furniture and infrastructure, in the university center at the Roswell branch campus.

Chapter 128 Section 171 Laws 2009

Section 171. ROSWELL HIGH SCHOOL OUTDOOR SIGN--EXPAND PURPOSE--GENERAL FUND.--The public education department project in Subsection 341 of Section 44 of Chapter 92 of Laws 2008 to plan, design, purchase and install an outdoor sign at Roswell high school in the Roswell independent school district in Chaves county may include indoor and two-sided signs.

Chapter 128 Section 172 Laws 2009

Section 172. ROSWELL HIGH SCHOOL SECURITY FENCING--CHANGE TO SURFACE AREA IMPROVEMENTS--GENERAL FUND.--The unexpended balance of the appropriation to the public education department in Subsection 88 of Section 16 of Chapter 2 of Laws 2007 for security fencing at Roswell high school in the Roswell independent school district in Chaves county shall not be expended for the original purpose but is changed to plan, design and construct surface area improvements, including asphalt, around the gymnasium and field house at Roswell high school in that school district.

Chapter 128 Section 173 Laws 2009

Section 173. ROSWELL NORTH SPRING RIVER CHANNEL IMPROVEMENTS--EXTEND TIME--CAPITAL PROJECTS FUND.--The time of expenditure for the office of the state engineer project in Subsection 4 of Section 26 of Chapter 126 of Laws 2004 to improve the north Spring river channel in Roswell in Chaves county is extended through fiscal year 2011.

Chapter 128 Section 174 Laws 2009

Section 174. ROSWELL NORTH SPRING RIVER CHANNEL IMPROVEMENTS--EXTEND TIME--CAPITAL PROJECTS FUND.--The time of expenditure for the office of the state engineer project in Subsection 5 of Section 26 of Chapter 126 of Laws 2004 to improve the north Spring river channel in Roswell in Chaves county is extended through fiscal year 2011.

Chapter 128 Section 175 Laws 2009

Section 175. GODDARD HIGH SCHOOL BAND TRAILER--CHANGE TO BAND STORAGE ROOM IMPROVEMENTS--GENERAL FUND.--The unexpended balance of the appropriation to the public education department in Subsection 296 of Section 55 of Chapter 42 of Laws 2007 for a trailer for the band at Goddard high school in the Roswell independent school district in Chaves county shall not be expended for the original purpose but is changed to plan, design, construct, furnish, equip, purchase and improve the band storage room at Goddard high school.

Chapter 128 Section 176 Laws 2009

Section 176. MONTE DEL SOL CHARTER SCHOOL PLAYGROUND EQUIPMENT--CHANGE TO GODDARD HIGH SCHOOL BASEBALL FIELD--EXTEND TIME--CAPITAL PROJECTS FUND.--The unexpended balance of the appropriation to the public education department in Subsection 188 of Section 37 of Chapter 126 of Laws 2004 for playground equipment at Monte del Sol charter 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 and renovate the baseball field, including the purchase and installation of an outdoor two-sided electronic sign, at Goddard high school in the Roswell independent school district in Chaves county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 177 Laws 2009

Section 177. EDUCATIONAL TECHNOLOGY DEFICIENCY CORRECTION--CHANGE TO GODDARD HIGH SCHOOL BASEBALL FIELD IMPROVEMENTS--CHANGE AGENCY--EXTEND TIME--GENERAL FUND.--Two hundred fifty-five thousand dollars (\$255,000) of the unexpended balance of the appropriation to the educational technology deficiency correction fund in Laws 2007, Chapter 2, Section 17 to correct serious deficiencies in educational technology infrastructure pursuant to Section 22-15A-11 NMSA 1978 shall not be expended for the original purpose but is appropriated to the public education department to plan, design, construct, equip and improve the baseball field, including the purchase and installation of lights, locker rooms, gates and ticket booths, at Goddard high school in the Roswell independent school district in Chaves county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 178 Laws 2009

Section 178. GODDARD HIGH SCHOOL ELECTRONIC SIGN--CHANGE TO IMPROVEMENTS--GENERAL FUND.--The unexpended balance of the appropriation to the public education department in Subsection 331 of Section 44 of Chapter 92 of Laws 2008 for an outdoor electronic digital sign at Goddard high school in the Roswell independent school district in Chaves county shall not be expended for the original purpose but is changed to plan, design, construct, renovate, purchase and install improvements, including an outdoor electronic two-sided sign and upgrades to the baseball field, at that school.

Chapter 128 Section 179 Laws 2009

Section 179. EDUCATIONAL TECHNOLOGY DEFICIENCY CORRECTION--CHANGE TO ROSWELL INDEPENDENT SCHOOL DISTRICT INFORMATION TECHNOLOGY--CHANGE AGENCY--EXTEND TIME--GENERAL FUND.--Two hundred fifty-five thousand dollars (\$255,000) of the unexpended balance of the appropriation to the educational technology deficiency correction fund in Laws 2007, Chapter 2, Section 17 to correct serious deficiencies in educational technology infrastructure pursuant to Section 22-15A-11 NMSA 1978 shall not be expended for the original purpose but is appropriated to the public education department to purchase and install information technology, including related equipment, furniture and infrastructure, at schools in the Roswell independent school district in Chaves county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 180 Laws 2009

Section 180. CIBOLA COUNTY HOSPITAL EXPANSION--CHANGE TO A MEDICAL OFFICE BUILDING--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 245 of Section 68 of Chapter 42 of Laws 2007 for an expansion to the county hospital in Cibola county shall not be expended for the original purpose but is changed to plan, design and construct a medical office building for the county hospital facility in Cibola county.

Chapter 128 Section 181 Laws 2009

Section 181. CIBOLA COUNTY HOSPITAL EXPANSION--CHANGE TO MEDICAL OFFICE BUILDING--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 73 of Section 26 of Chapter 2 of Laws 2007 for an expansion to the county hospital in Cibola county shall not be expended for the original purpose but is changed to plan, design and construct a medical office building for the county hospital facility in Cibola county.

Chapter 128 Section 182 Laws 2009

Section 182. CIBOLA COUNTY HOSPITAL--CHANGE TO CIBOLA COUNTY MEDICAL OFFICE BUILDING CONSTRUCT--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 244 of Section 68 of Chapter 42 of Laws 2007 to plan, design, construct, improve and equip the Cibola county hospital in Cibola county shall not be expended for the original purpose but is changed to plan, design, construct, improve and equip a medical office building for the county hospital facility in Cibola county.

Chapter 128 Section 183 Laws 2009

Section 183. SKY CITY CENTER AND HA'AK'U MUSEUM TRIBAL OUTDOOR MARKET PLACE VENDOR SPACES--CHANGE TO ACOMA SKY CITY VETERANS' MEMORIAL--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the Indian affairs department in Subsection 6 of Section 43 of Chapter 347 of Laws 2005 for vendor spaces at the Sky city center and Ha'ak'u museum tribal outdoor marketplace in the Pueblo of Acoma in Cibola county shall not be expended for the original purpose but is changed to plan, design and construct a veterans' memorial at Sky city in the Pueblo of Acoma in Cibola county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 184 Laws 2009

Section 184. GRANTS SWIMMING POOL--CHANGE TO PARK IMPROVEMENTS--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division originally authorized in Subsection WWWWWWW of Section 15 of Chapter 23 of Laws 2000 (2nd S.S.) and reauthorized in Laws 2005, Chapter 347, Section 222 and again in Laws 2006, Chapter 107, Section 47 for a swimming pool in Grants in Cibola county shall not be expended

for the original or reauthorized purposes but is changed to plan, design, construct and equip improvements to parks in Grants. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 185 Laws 2009

Section 185. GRANTS SWIMMING POOL--CHANGE TO PARK IMPROVEMENTS--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 364 of Section 22 of Chapter 110 of Laws 2002 and reauthorized in Laws 2006, Chapter 107, Section 43 to construct or renovate a swimming pool in Grants in Cibola county shall not be expended for the original or reauthorized purpose but is changed to plan, design, construct and equip improvements to parks in Grants. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 186 Laws 2009

Section 186. GRANTS SWIMMING POOL--CHANGE TO PARKS--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 69 of Section 16 of Chapter 347 of Laws 2005 for a swimming pool in Grants in Cibola county shall not be expended for the original purpose but is changed to plan, design and construct improvements to parks in Grants. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 187 Laws 2009

Section 187. GRANTS SWIMMING POOL--CHANGE TO PARKS IMPROVEMENTS--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 91 of Section 45 of Chapter 347 of Laws 2005 to plan, design and construct a swimming pool in Grants in Cibola county shall not be expended for the original purpose but is changed to plan, design and construct improvements to parks in Grants. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 188 Laws 2009

Section 188. ELEPHANT BUTTE IRRIGATION DISTRICT TELEMETRIC WATER METERING--CHANGE TO GRANTS PUBLIC LIBRARY IMPROVEMENTS--CHANGE AGENCY--GENERAL FUND.--Two hundred thousand dollars (\$200,000) of the unexpended balance of the appropriation to the office of the state engineer in Subsection 5 of Section 20 of Chapter 2 of Laws 2007 to provide telemetric water metering for the Elephant Butte irrigation district in Sierra county shall not be expended for the original purpose but is appropriated to the local government division to plan, design, construct, purchase and equip improvements to the public library in Grants in Cibola county.

Chapter 128 Section 189 Laws 2009

Section 189. PUEBLO OF LAGUNA WATER SYSTEM AND SOUTHWEST WATER LOOP STUDY--CHANGE TO SOUTHWEST ROAD LOOP STUDY--CHANGE AGENCY--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the Indian affairs department in Subsection 3 of Section 19 of Chapter 92 of Laws 2008 for improvements to the water system and to conduct a southwest water loop study at the Pueblo of Laguna in Cibola county shall not be expended for the original purpose but is appropriated to the department of transportation to conduct a southwest road loop study at the Pueblo of Laguna.

Chapter 128 Section 190 Laws 2009

Section 190. RAMAH CHAPTER PINE HILL SCHOOL DORMITORY KITCHEN--CHANGE TO ADMINISTRATIVE TECHNOLOGY CENTER--CHANGE AGENCY--GENERAL FUND.--The unexpended balance of the appropriation to the Indian affairs department in Subsection 4 of Section 24 of Chapter 2 of Laws 2007 for a kitchen at the Pine Hill school dormitory in the Ramah chapter of the Navajo Nation in Cibola county shall not be expended for the original purpose but is appropriated to the local government division to plan, design, construct, purchase and equip an administrative technology center at the Pine Hill school in Cibola county.

Chapter 128 Section 191 Laws 2009

Section 191. COLFAX COUNTY COURTHOUSE IMPROVEMENTS--EXPAND PURPOSE--GENERAL FUND.--The local government division project in Subsection 256 of Section 68 of Chapter 42 of Laws 2007 to plan, design, construct and equip improvements to the courthouse in Colfax county may include furnishings and improvements for the judicial complex in Colfax county.

Chapter 128 Section 192 Laws 2009

Section 192. COLFAX COUNTY FAIRGROUNDS IMPROVEMENTS--CHANGE TO COLFAX COUNTY JUDICIAL CENTER--SEVERANCE TAX BONDS.--The unexpended balance of the public education department appropriation originally authorized in Subsection 198 of Section 23 of Chapter 110 of Laws 2002 for the South Valley charter high school of which twenty-five thousand dollars (\$25,000) was reauthorized and reappropriated to the local government division in Laws 2003, Chapter 429, Section 166 and again in Laws 2007, Chapter 341, Section 93 for improvements to the fairgrounds in Colfax county shall not be expended for the original or reauthorized purposes but is changed to plan, design, construct, equip and furnish the judicial center in Colfax county.

Chapter 128 Section 193 Laws 2009

Section 193. COLFAX COUNTY DETENTION CENTER RENOVATE--CHANGE TO COLFAX COUNTY JUDICIAL CENTER--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 257 of Section 68 of Chapter 42 of Laws 2007 to renovate the detention center in Colfax county shall not be expended for the original purpose but is changed to plan, design, construct, equip and furnish the judicial center in Colfax county.

Chapter 128 Section 194 Laws 2009

Section 194. COLFAX COUNTY RODEO ARENA IMPROVEMENTS--CHANGE TO JUDICIAL CENTER--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 258 of Section 68 of Chapter 42 of Laws 2007 for improvements to the rodeo arena in Colfax county shall not be expended for the original purpose but is changed to plan, design, construct, equip and furnish a judicial center in Colfax county.

Chapter 128 Section 195 Laws 2009

Section 195. EAGLE NEST PROPERTY PURCHASE--CHANGE TO A PARK IN EAGLE NEST--EXTEND TIME--CAPITAL PROJECTS FUND.--The unexpended balance of the appropriation to the local government division in Subsection 144 of Section 34 of Chapter 126 of Laws 2004 to purchase property adjacent to the village offices in Eagle Nest in Colfax county shall not be expended for the original purpose but is changed to acquire environmental clearances and to plan, design, construct and equip a park in Eagle Nest. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 196 Laws 2009

Section 196. TAOS STATE ROAD 64 RECONSTRUCTION--CHANGE TO SPRINGER COMMUNITY CENTER RENOVATION--CHANGE AGENCY--EXTEND TIME--GENERAL FUND.--One hundred thousand dollars (\$100,000) of the unexpended balance of the appropriation to the department of transportation in Subsection 100 of Section 52 of Chapter 347 of Laws 2005 to reconstruct state road 64 in Taos in Taos county shall not be expended for the original purpose but is appropriated to the local government division to plan, design, construct, renovate and equip a community center in Springer in Colfax county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 197 Laws 2009

Section 197. CURRY COUNTY CRIMINAL JUSTICE COMPLEX PURCHASE--CHANGE TO CLOVIS CRIMINAL JUSTICE COMPLEX DEVELOPMENT--EXTEND TIME--GENERAL FUND.--One hundred fifty thousand dollars (\$150,000) of the unexpended balance of the appropriation to the local government division in Subsection 241 of Section 52 of Chapter 111 of Laws 2006 for purchasing a building and parking lot

for future development of a criminal justice complex in Clovis in Curry county shall not be expended for the original purpose but is changed to plan and design the development of a criminal justice complex in Clovis in Curry county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 198 Laws 2009

Section 198. CURRY COUNTY CRIMINAL JUSTICE COMPLEX PURCHASE--CHANGE TO CURRY COUNTY COURTHOUSE RENOVATIONS--EXTEND TIME--GENERAL FUND.--One hundred fifty thousand dollars (\$150,000) of the unexpended balance of the appropriation to the local government division in Subsection 241 of Section 52 of Chapter 111 of Laws 2006 for purchasing a building and parking lot for future development of a criminal justice complex in Clovis in Curry county shall not be expended for the original purpose but is changed to plan, design, construct, equip and furnish improvements and renovations to the Curry county courthouse. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 199 Laws 2009

Section 199. GRADY AMBULANCE--CHANGE TO FIRE TRUCK--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 94 of Section 26 of Chapter 2 of Laws 2007 to purchase and equip ambulances for Grady in Curry county shall not be expended for the original purpose but is changed to purchase and equip a fire truck for Grady.

Chapter 128 Section 200 Laws 2009

Section 200. LA CASA HEALTH CENTER PARKING LOT RESURFACE--CHANGE TO DE BACA COUNTY CLERK'S OFFICE INFORMATION TECHNOLOGY PURCHASE--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 472 of Section 45 of Chapter 347 of Laws 2005 to resurface the parking lot at La Casa health center in Portales in Roosevelt county shall not be expended for the original purpose but is changed to purchase and install information technology, including related equipment, furniture and infrastructure, at the De Baca county clerk's office in Fort Sumner in De Baca county.

Chapter 128 Section 201 Laws 2009

Section 201. BERINO MUTUAL DOMESTIC WATER CONSUMERS AND MUTUAL SEWAGE WORKS ASSOCIATION WATER WELL AND PUMP HOUSE--CHANGE TO WATER RIGHTS LEASE AND TANK SITE ACQUISITION--GENERAL FUND.--The unexpended balance of the appropriation to the department of environment in Subsection 21 of Section 48 of Chapter 92 of Laws 2008 to purchase land and plan, design, construct and equip a water well and pump house for the Berino mutual domestic water consumers and mutual sewage works association in Dona Ana county shall not be expended for the original purpose but is changed to plan, design and

construct water system improvements, including water rights lease, transfer and tank site acquisition, for the Berino mutual domestic water consumers and mutual sewage works association in Dona Ana county.

Chapter 128 Section 202 Laws 2009

Section 202. DONA ANA COUNTY TELLBROOK ARROYO IMPROVEMENTS--CHANGE TO BUTTERFIELD SHERIFF'S SUBSTATION BUILDING--CHANGE AGENCY--GENERAL FUND.--The unexpended balance of the appropriation to the office of the state engineer in Subsection 4 of Section 47 of Chapter 92 of Laws 2008 for bank stabilization and erosion control improvements to the Tellbrook arroyo in Dona Ana county shall not be expended for the original purpose but is appropriated to the local government division to plan, design, equip, purchase and install a portable building for a sheriff's substation, including site improvements, in Butterfield in Dona Ana county.

Chapter 128 Section 203 Laws 2009

Section 203. CHAPARRAL FLOOD CONTROL STRUCTURE--CHANGE TO BUTTERFIELD SHERIFF'S SUBSTATION--CHANGE AGENCY--GENERAL FUND.--The unexpended balance of the appropriation to the office of the state engineer in Subsection 5 of Section 47 of Chapter 92 of Laws 2008 to construct a flood control structure in Chaparral in Dona Ana county shall not be expended for the original purpose but is appropriated to the local government division to plan, design, equip, purchase and install a portable building for a sheriff's substation, including site improvements, in Butterfield in Dona Ana county.

Chapter 128 Section 204 Laws 2009

Section 204. DONA ANA COUNTY BRAHMAN DAM CONSTRUCTION--CHANGE TO DONA ANA COUNTY EAST MESA STREET AND DRAINAGE IMPROVEMENTS--CHANGE AGENCY--GENERAL FUND.--The unexpended balance of the appropriation to the office of the state engineer in Subsection 2 of Section 47 of Chapter 92 of Laws 2008 to plan, design, acquire land for and construct the Brahman earthen flood control dam east of Las Cruces in Dona Ana county shall not be expended for the original purpose but is appropriated to the department of transportation to purchase land for, plan, design and construct road and street improvements, including drainage ponds and channels, for the east mesa area in Dona Ana county.

Chapter 128 Section 205 Laws 2009

Section 205. ANGOSTURA ROAD PROJECT--CHANGE TO DONA ANA COUNTY FLOOD CONTROL STRUCTURE--CHANGE AGENCY--GENERAL FUND.--Seventy-five thousand dollars (\$75,000) of the appropriation to the department of transportation in Subsection 125 of Section 75 of Chapter 42 of Laws 2007 for the Angostura road project, including right-of-way acquisition and drainage improvements,

in Rodey in Dona Ana county shall not be expended for the original purpose but is appropriated to the office of the state engineer to purchase land for and plan, design and construct a flood control structure near the intersection of Armstrong and El Camino in Dona Ana county.

Chapter 128 Section 206 Laws 2009

Section 206. CHAPARRAL LA CLINICA DE FAMILIA FACILITY--CHANGE TO ELECTRONIC RECORDS SYSTEM AND EQUIPMENT THROUGHOUT DONA ANA COUNTY--GENERAL FUND.--The unexpended balance of the appropriation to the local government division originally authorized in Subsection 142 of Section 45 of Chapter 347 of Laws 2005 and reauthorized in Laws 2006, Chapter 107, Section 55 to equip and furnish the new la clinica de familia facility in Chaparral in Dona Ana county shall not be expended for the original or reauthorized purpose but is changed to purchase and install an electronic records system and related technology and other dental equipment for la clinica de familia facilities throughout Dona Ana county.

Chapter 128 Section 207 Laws 2009

Section 207. SAN MIGUEL LA CLINICA DE FAMILIA FACILITY PARKING LOT--CHANGE TO ELECTRONIC RECORDS SYSTEM--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 125 of Section 26 of Chapter 2 of Laws 2007 for a parking lot for la clinica de familia facility in San Miguel in Dona Ana county shall not be expended for the original purpose but is changed to purchase and install an electronic records system, related technology and other dental equipment at la clinica de familia facilities throughout Dona Ana county.

Chapter 128 Section 208 Laws 2009

Section 208. SAN PABLO MUTUAL DOMESTIC WATER CONSUMERS ASSOCIATION BUILDING--EXPAND PURPOSE--GENERAL FUND.--The department of environment project in Subsection 33 of Section 48 of Chapter 92 of Laws 2008 to plan and purchase land for a building for the San Pablo mutual domestic water consumers association in Dona Ana county may include planning, designing and constructing a building.

Chapter 128 Section 209 Laws 2009

Section 209. VISTA MONTANA ROAD DEVELOPMENT--EXTEND TIME--CAPITAL PROJECTS FUND.--The time of expenditure for the department of transportation project in Subsection 46 of Section 43 of Chapter 126 of Laws 2004 for acquiring right of way, project development, design and construction on Vista Montana road in Dona Ana county is extended through fiscal year 2011.

Chapter 128 Section 210 Laws 2009

Section 210. ANTHONY SHERIFF'S SUBSTATION--CHANGE TO LIBRARY CONSTRUCTION--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 203 of Section 59 of Chapter 92 of Laws 2008 for a sheriff's substation in Anthony in Dona Ana county shall not be expended for the original purpose but is changed to purchase, design and construct the Anthony valley library, including infrastructure, in Dona Ana county.

Chapter 128 Section 211 Laws 2009

Section 211. CHAMBERINO MULTIPURPOSE CENTER--CHANGE TO MULTIPURPOSE SPORTS COMPLEX--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 152 of Section 18 of Chapter 111 of Laws 2006 for a multipurpose center in Chamberino in Dona Ana county shall not be expended for the original purpose but is changed to purchase land for and to plan, design, construct, equip and furnish a multipurpose sports complex facility in Chamberino. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 212 Laws 2009

Section 212. CHAMBERINO COMMUNITY CENTER--CHANGE TO MULTIPURPOSE SPORTS COMPLEX FACILITY--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 113 of Section 26 of Chapter 2 of Laws 2007 for a community center in Chamberino in Dona Ana county shall not be expended for the original purpose but is changed to purchase land for and to plan, design, construct, equip and furnish a multipurpose sports complex facility in Chamberino.

Chapter 128 Section 213 Laws 2009

Section 213. CHAMBERINO COMMUNITY CENTER--CHANGE TO MULTIPURPOSE SPORTS COMPLEX--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 306 of Section 68 of Chapter 42 of Laws 2007 for a community center in Chamberino in Dona Ana county shall not be expended for the original purpose but is changed to purchase land for and to plan, design, construct, equip and furnish a multipurpose sports complex facility in Chamberino. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 214 Laws 2009

Section 214. DONA ANA COUNTY LIQUID WASTE DISPOSAL SYSTEM--CHANGE TO GADSDEN INDEPENDENT SCHOOL DISTRICT INFORMATION

TECHNOLOGY--CHANGE AGENCY--GENERAL FUND.--The unexpended balance of the appropriation to the public education department originally authorized in Subsection 94 of Section 16 of Chapter 2 of Laws 2007 and reauthorized and reappropriated to the department of environment in Subsection NN of Section 99 of Chapter 42 of Laws 2007 to improve and upgrade substandard liquid waste disposal systems serving indigent persons in the colonias in Dona Ana county shall not be expended for the original or reauthorized purpose but is appropriated to the public education department to purchase and install information technology, including related equipment, furniture and infrastructure, for the Gadsden independent school district in Dona Ana county.

Chapter 128 Section 215 Laws 2009

Section 215. ANTHONY-BERINO BUSINESS PARK CONSTRUCT--CHANGE TO GADSDEN INDEPENDENT SCHOOL DISTRICT INFORMATION TECHNOLOGY PURCHASE--CHANGE AGENCY--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 147 of Section 18 of Chapter 111 of Laws 2006 to plan, design and construct the Anthony-Berino business park in Anthony in Dona Ana county shall not be expended for the original purpose but is appropriated to the public education department to purchase and install information technology, including related equipment, furniture and infrastructure, in the Gadsden independent school district in Dona Ana county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 216 Laws 2009

Section 216. GADSDEN MIDDLE SCHOOL HEALTH CLINIC OFFICE EQUIPMENT--CHANGE TO LA UNION MULTIPURPOSE CENTER RENOVATION AND EQUIPMENT--CHANGE AGENCY--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the public education department in Subsection 357 of Section 44 of Chapter 92 of Laws 2008 for office equipment for the Gadsden middle school health clinic in the Gadsden independent school district in Anthony in Dona Ana county shall not be expended for the original purpose but is appropriated to the local government division to plan, design, construct, renovate and equip the multipurpose center in La Union in Dona Ana county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 217 Laws 2009

Section 217. SUNLAND PARK REGIONAL LANDFILL FEASIBILITY STUDY--CHANGE TO RENOVATING AND EQUIPPING LA UNION MULTIPURPOSE CENTER--CHANGE AGENCY--GENERAL FUND.--The unexpended balance of the appropriation to the department of environment in Subsection 47 of Section 59 of Chapter 42 of Laws 2007 for a feasibility study for a regional landfill in Sunland Park in Dona Ana county shall not be expended for the original purpose but is appropriated to the local government division to renovate and equip the multipurpose center in La Union in Dona Ana county.

Chapter 128 Section 218 Laws 2009

Section 218. MESQUITE NEW MEXICO HIGHWAY 478 SIDEWALK--CHANGE TO RENOVATING AND EQUIPPING LA UNION MULTIPURPOSE CENTER--CHANGE AGENCY--GENERAL FUND.--The unexpended balance of the appropriation to the department of transportation in Subsection 118 of Section 75 of Chapter 42 of Laws 2007 for a sidewalk on the east side of New Mexico highway 478 in Mesquite in Dona Ana county shall not be expended for the original purpose but is appropriated to the local government division to renovate and equip the multipurpose center in La Union in Dona Ana county.

Chapter 128 Section 219 Laws 2009

Section 219. DONA ANA COUNTY LIQUID WASTE DISPOSAL SYSTEM--CHANGE TO LA UNION MULTIPURPOSE CENTER RENOVATION--CHANGE AGENCY--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the local government division originally authorized in Subsection 100 of Section 26 of Chapter 2 of Laws 2007 and reauthorized and reappropriated to the department of environment in Subsection OO of Section 99 of Chapter 42 of Laws 2007 to improve and upgrade substandard liquid waste disposal systems serving indigent persons in the colonias in Dona Ana county shall not be expended for the original or reauthorized purpose but is appropriated to the local government division to plan, design and equip renovations to the multipurpose center in La Union in Dona Ana county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 220 Laws 2009

Section 220. INTERSTATE COMPACT WATER, WATER RIGHTS AND STORAGE RIGHTS COMPLIANCE FOR ENDANGERED SPECIES--CHANGE TO LAS CRUCES TRANSITIONAL LIVING FACILITY FOR YOUTH--CHANGE AGENCY--GENERAL FUND.--Two hundred fifty thousand dollars (\$250,000) of the unexpended balance of the appropriation to the office of the state engineer in Subsection 10 of Section 58 of Chapter 42 of Laws 2007 for the acquisition of water, water rights and storage rights for compliance with interstate compacts and court decrees for the benefit of endangered species shall not be expended for the original purpose but is appropriated to the local government division to plan, design, construct, equip and furnish a transitional living facility for youth in Las Cruces in Dona Ana county.

Chapter 128 Section 221 Laws 2009

Section 221. LAS CRUCES VETERANS' AND MILITARY TECHNOLOGY MUSEUM--EXPAND PURPOSE TO INCLUDE LAND AND CONSTRUCTION--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division authorized in Subsection 10 of Section 23 of Chapter 42 of Laws 2007 and reauthorized to the cultural affairs department in Laws 2008, Chapter 83, Section 196 to design a veterans' and military technology museum east of interstate 25

in Las Cruces in Dona Ana county may also be expended to purchase land and plan and construct that facility.

Chapter 128 Section 222 Laws 2009

Section 222. NEW MEXICO STATE UNIVERSITY BASEBALL FIELD SCOREBOARD--CHANGE TO ATHLETIC FACILITIES IMPROVEMENTS--GENERAL FUND.--The unexpended balance of the appropriation to the board of regents of New Mexico state university in Subsection 8 of Section 36 of Chapter 2 of Laws 2007 for a baseball field scoreboard at New Mexico state university in Las Cruces in Dona Ana county shall not be expended for the original purpose but is changed to furnish, equip, renovate and improve athletic facilities at New Mexico state university in Las Cruces.

Chapter 128 Section 223 Laws 2009

Section 223. NEW MEXICO STATE UNIVERSITY ATHLETIC DEPARTMENT VOLLEYBALL LOCKER ROOM--CHANGE TO NEW MEXICO STATE UNIVERSITY ATHLETIC FACILITIES RENOVATIONS AND EQUIPMENT--EXTEND TIME--CAPITAL PROJECTS FUND.--The unexpended balance of the appropriation to the board of regents of New Mexico state university in Paragraph (5) of Subsection E of Section 137 of Chapter 126 of Laws 2004 for improvements and equipment for a volleyball locker room for the athletic department at New Mexico state university in Las Cruces in Dona Ana county shall not be expended for the original purpose but is changed to equip, furnish and renovate athletic facilities at New Mexico state university in Las Cruces. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 224 Laws 2009

Section 224. NEW MEXICO STATE UNIVERSITY PAN AMERICAN CENTER CARDIOVASCULAR EQUIPMENT--CHANGE TO NEW MEXICO STATE UNIVERSITY ATHLETIC FACILITIES RENOVATIONS AND EQUIPMENT--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the board of regents of New Mexico state university in Subsection 18 of Section 81 of Chapter 42 of Laws 2007 to purchase and install cardiovascular equipment at the Pan American center at New Mexico state university in Las Cruces in Dona Ana county shall not be expended for the original purpose but is changed to equip, furnish and renovate athletic facilities at New Mexico state university in Las Cruces. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 225 Laws 2009

Section 225. SOUTHEAST HEIGHTS BUSINESS INCUBATOR--CHANGE TO NEW MEXICO DEPARTMENT OF AGRICULTURE VEHICLES AND INFORMATION TECHNOLOGY EQUIPMENT PURCHASE--CHANGE AGENCY--SEVERANCE TAX BONDS.--Seventy-five thousand dollars (\$75,000) of the unexpended balance of the appropriation to the department of transportation originally authorized in Subsection 12

of Section 26 of Chapter 42 of Laws 2007 and reauthorized and reappropriated to the local government division in Subsection C of Section 4 of Chapter 334 of Laws 2007 for a business incubator in the southeast heights area of Bernalillo 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 purchase vehicles and to purchase and install information technology, including related equipment, furniture and infrastructure, for the New Mexico department of agriculture at New Mexico state university in Las Cruces in Dona Ana county.

Chapter 128 Section 226 Laws 2009

Section 226. DONA ANA COUNTY MOBILE DENTAL CLINIC--CHANGE TO NEW MEXICO STATE UNIVERSITY FOOTBALL ATHLETIC FACILITIES--CHANGE AGENCY--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 194 of Section 59 of Chapter 92 of Laws 2008 to acquire a mobile dental clinic in Dona Ana county shall not be expended for the original purpose but is appropriated to the board of regents of New Mexico state university to plan, design, equip, construct, renovate and furnish football athletic facilities at New Mexico state university in Las Cruces in Dona Ana county.

Chapter 128 Section 227 Laws 2009

Section 227. HIGHLAND HIGH SCHOOL TENNIS COURTS AND FACILITIES--CHANGE TO NEW MEXICO STATE UNIVERSITY FOOTBALL PROGRAM TECHNOLOGY AND EQUIPMENT--CHANGE AGENCY--GENERAL FUND.--Twenty-five thousand dollars (\$25,000) of the unexpended balance of the appropriation to the public education department originally authorized in Subsection 125 of Section 52 of Chapter 111 of Laws 2006 and reauthorized and reappropriated to the local government division in Laws 2008, Chapter 83, Section 102 to plan, design, construct, equip, furnish and repair the tennis courts and facilities at the Highland high school tennis courts in Bernalillo 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 purchase and install technology and equipment for training and facilities that support student athletes participating in university football sports events at New Mexico state university in Las Cruces in Dona Ana county.

Chapter 128 Section 228 Laws 2009

Section 228. ALBUQUERQUE LASSETTER PARK PLAYGROUND EQUIPMENT--CHANGE TO NEW MEXICO STATE UNIVERSITY TECHNOLOGY AND EQUIPMENT--CHANGE AGENCY--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 102 of Section 68 of Chapter 42 of Laws 2007 for playground equipment at Lassetter park in Albuquerque in Bernalillo county shall not be expended for the original purpose but is appropriated to the board of regents of New Mexico state university to purchase and install technology and equipment training and facilities that support student athletes

participating in university football sports events at New Mexico state university in Las Cruces in Dona Ana county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 229 Laws 2009

Section 229. ELEPHANT BUTTE IRRIGATION DISTRICT TELEMETRIC WATER METERING--CHANGE TO NEW MEXICO STATE UNIVERSITY LOCKER ROOMS IMPROVEMENTS--CHANGE AGENCY--GENERAL FUND.--One hundred fifty thousand dollars (\$150,000) of the unexpended balance of the appropriation to the office of the state engineer in Subsection 5 of Section 20 of Chapter 2 of Laws 2007 to provide telemetric water metering for the Elephant Butte irrigation district in Sierra county shall not be expended for the original purpose but is appropriated to the board of regents of New Mexico state university to plan, design and construct improvements to the locker rooms at New Mexico state university in Las Cruces in Dona Ana county.

Chapter 128 Section 230 Laws 2009

Section 230. AGUA FRIA CHILDREN'S ZONE BUILDINGS--CHANGE TO NEW MEXICO STATE UNIVERSITY WOMEN'S SOCCER STADIUM--CHANGE AGENCY--EXTEND TIME--GENERAL FUND.--Five hundred thousand dollars (\$500,000) of the unexpended balance of the appropriation to the local government division in Subsection 607 of Section 52 of Chapter 111 of Laws 2006 for buildings for the Agua Fria children's zone project in Santa Fe county shall not be expended for the original purpose but is appropriated to the board of regents of New Mexico state university to plan, design, construct, equip, furnish and improve the women's soccer stadium in Las Cruces in Dona Ana county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 231 Laws 2009

Section 231. ROSWELL UFO MUSEUM IMPROVEMENTS--CHANGE TO NEW MEXICO STATE UNIVERSITY WOMEN'S SOCCER STADIUM IMPROVEMENTS--CHANGE AGENCY--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 105 of Section 18 of Chapter 111 of Laws 2006 to improve the UFO museum in Roswell in Chaves county shall not be expended for the original purpose but is appropriated to the board of regents of New Mexico state university to plan, design, construct, equip, furnish and improve the women's soccer stadium at New Mexico state university in Las Cruces in Dona Ana county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 232 Laws 2009

Section 232. RASAAF CIRCLE IMPROVEMENTS--CHANGE LOCATION--EXTEND TIME--SEVERANCE TAX BONDS.--The location of the department of transportation project in Subsection 53 of Section 22 of Chapter 111 of Laws 2006 to

plan, design, survey and construct, including curb, gutter and drainage, Rasaaf circle in Las Cruces in Dona Ana county is changed to Rasaaf circle in Mesilla in Dona Ana county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 233 Laws 2009

Section 233. TRES SENDAS ROAD DRAINAGE--CHANGE TO RASAAF CIRCLE CURB AND GUTTER PROJECT--GENERAL FUND.--The unexpended balance of the appropriation to the department of transportation in Subsection 106 of Section 75 of Chapter 42 of Laws 2007 to plan, design and construct drainage improvements, including right-of-way acquisition, on Tres Sendas road in Dona Ana county shall not be expended for the original purpose but is changed to plan, design and construct curb and gutter improvements on Rasaaf circle in Mesilla in Dona Ana county.

Chapter 128 Section 234 Laws 2009

Section 234. RASAAF HILLS CURB AND GUTTERS--CLARIFY LOCATION--GENERAL FUND.--The location of the department of transportation project in Subsection 105 of Section 75 of Chapter 42 of Laws 2007 to plan, design, survey and construct a curb and gutter project in the Rasaaf hills area of Dona Ana county is changed to Rasaaf circle in Mesilla in Dona Ana county.

Chapter 128 Section 235 Laws 2009

Section 235. PLACITAS ROAD AND SIDEWALK IMPROVEMENTS--EXPAND PURPOSE--GENERAL FUND.--The department of transportation project in Subsection 121 of Section 75 of Chapter 42 of Laws 2007 for the road and sidewalk improvements project in Placitas in Dona Ana county may include other road and sidewalk improvements in Placitas.

Chapter 128 Section 236 Laws 2009

Section 236. CHAPARRAL HIGH SCHOOL WEIGHTS PURCHASE--CHANGE TO SAN MIGUEL COMMUNITY CENTER FACILITY PURCHASE--CHANGE AGENCY--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the public education department in Subsection 10 of Section 11 of Chapter 92 of Laws 2008 to purchase and install weights in Chaparral high school in the Gadsden independent school district in Dona Ana county shall not be expended for the original purpose but is appropriated to the local government division to purchase San Miguel elementary school in the Gadsden independent school district for a community center in San Miguel in Dona Ana county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 237 Laws 2009

Section 237. LAS CRUCES VETERANS' TRANSITIONAL HOUSING COMPLEX--CHANGE TO SAN MIGUEL COMMUNITY CENTER FACILITY PURCHASE--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 35 of Section 21 of Chapter 92 of Laws 2008 for a veterans' transitional housing complex in Las Cruces in Dona Ana county shall not be expended for the original purpose but is changed to purchase San Miguel elementary school in the Gadsden independent school district for a community center in San Miguel in Dona Ana county.

Chapter 128 Section 238 Laws 2009

Section 238. ANTHONY WATER AND SANITATION DISTRICT BOXING FACILITY--CHANGE TO SAN MIGUEL COMMUNITY CENTER FACILITY PURCHASE--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 186 of Section 59 of Chapter 92 of Laws 2008 for a boxing facility in the Anthony water and sanitation district in Dona Ana county shall not be expended for the original purpose but is changed to purchase San Miguel elementary school in the Gadsden independent school district for a community center in San Miguel in Dona Ana county.

Chapter 128 Section 239 Laws 2009

Section 239. DONA ANA COUNTY SAN MIGUEL PARK IMPROVEMENTS AND DRAINAGE--CHANGE TO SAN MIGUEL MULTIPURPOSE COMPLEX AND CENTER CONSTRUCTION--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 32 of Section 21 of Chapter 92 of Laws 2008 to plan, design and construct improvements, including drainage, to San Miguel park in Dona Ana county shall not be expended for the original purpose but is changed to acquire property, including land and buildings, and equip, construct and improve a multipurpose complex and center in San Miguel in Dona Ana county.

Chapter 128 Section 240 Laws 2009

Section 240. DONA ANA COUNTY SWIMMING POOL FEASIBILITY STUDY--CHANGE TO SAN MIGUEL MULTIPURPOSE COMPLEX IMPROVEMENTS--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 281 of Section 52 of Chapter 111 of Laws 2006 for a feasibility study to construct a swimming pool in southern Dona Ana county shall not be expended for the original purpose but is changed to acquire property for and construct and equip improvements, including land and buildings, to a multipurpose complex in San Miguel in Dona Ana county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 241 Laws 2009

Section 241. DONA ANA COUNTY SWIMMING POOL FEASIBILITY STUDY--CHANGE TO SAN MIGUEL MULTIPURPOSE COMPLEX AND CENTER--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 109 of Section 26 of Chapter 2 of Laws 2007 for a feasibility study to construct a swimming pool in southern Dona Ana county shall not be expended for the original purpose but is changed to acquire property for and construct and equip improvements, including land and buildings, to a multipurpose complex and center in San Miguel in Dona Ana county.

Chapter 128 Section 242 Laws 2009

Section 242. SAN MIGUEL MASTER PLAN--CHANGE TO MULTIPURPOSE COMPLEX AND CENTER--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 234 of Section 59 of Chapter 92 of Laws 2008 for a master plan, including landscaping, drainage, lighting and sidewalks, for San Miguel in Dona Ana county shall not be expended for the original purpose but is changed to acquire property for and construct and equip improvements, including land and buildings, to a multipurpose complex and center in San Miguel in Dona Ana county.

Chapter 128 Section 243 Laws 2009

Section 243. SAN MIGUEL MULTIPURPOSE SPORTS COMPLEX--CHANGE TO MULTIPURPOSE COMPLEX AND CENTER--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 235 of Section 59 of Chapter 92 of Laws 2008 for a multipurpose sports complex in San Miguel in Dona Ana county shall not be expended for the original purpose but is changed to acquire property for and construct and equip improvements, including land and buildings, to a multipurpose complex and center in San Miguel in Dona Ana county.

Chapter 128 Section 244 Laws 2009

Section 244. SAN MIGUEL SPORTS COMPLEX CONSTRUCTION--CHANGE TO SAN MIGUEL MULTIPURPOSE CENTER PURCHASE AND IMPROVEMENTS--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 352 of Section 68 of Chapter 42 of Laws 2007 to plan, design, construct and equip a multipurpose sports complex, including a building and swimming pool, in San Miguel in Dona Ana county shall not be expended for the original purpose but is changed to acquire property for, including land and buildings, and equip, construct and improve a multipurpose center in San Miguel in Dona Ana county.

Chapter 128 Section 245 Laws 2009

Section 245. SANTA TERESA INTERNATIONAL PORT OF ENTRY OFFICE FACILITY--EXTEND TIME--CAPITAL PROJECTS FUND.--The time of expenditure for

the general services department project in Subsection 2 of Section 36 of Chapter 126 of Laws 2004 for the property control division to plan, design, construct and equip an office facility at the international port of entry at Santa Teresa in Dona Ana county is extended through fiscal year 2011.

Chapter 128 Section 246 Laws 2009

Section 246. SANTA TERESA PORT OF ENTRY PLATFORM STATIC SCALE--CHANGE AGENCY--CAPITAL PROJECTS FUND.--The unexpended balance of the appropriation to the department of public safety originally authorized in Subsection 1 of Section 52 of Chapter 110 of Laws 2002 and reauthorized in Laws 2003, Chapter 429, Section 138 and again in Laws 2007, Chapter 341, Section 112 to complete phase 2 construction and equip and install a platform static scale at the Santa Teresa port of entry in Dona Ana county and to design, construct, equip and furnish a building for the border authority at the Santa Teresa border crossing in Dona Ana county is appropriated to the capital program fund for that purpose.

Chapter 128 Section 247 Laws 2009

Section 247. CARLSBAD REHABILITATION CENTER--CHANGE TO DRUG REHABILITATION PROGRAM LAND PURCHASE AND BUILDING--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 321 of Section 52 of Chapter 111 of Laws 2006 for a county rehabilitation center in Carlsbad in Eddy county shall not be expended for the original purpose but is changed to purchase land for and plan, design, construct, remodel, equip and furnish renovations to a building for a drug rehabilitation program in Eddy county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 248 Laws 2009

Section 248. CARLSBAD DRUG REHABILITATION FACILITY--CHANGE TO EDDY COUNTY DRUG REHABILITATION FACILITY--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 370 of Section 68 of Chapter 42 of Laws 2007 for a drug rehabilitation facility in Carlsbad in Eddy county shall not be expended for the original purpose but is changed to purchase land for, plan, design, construct, purchase, remodel, renovate, equip and furnish a building for a drug rehabilitation facility in Eddy county.

Chapter 128 Section 249 Laws 2009

Section 249. LEGACY REGIONAL SUBSTANCE ABUSE TREATMENT CENTER--CHANGE TO DRUG REHABILITATION PROGRAM FACILITY--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 41 of Section 21 of Chapter 92 of Laws 2008 for the Legacy regional substance abuse treatment center in Eddy county shall not be expended for the original purpose but is changed to purchase land for and plan, design,

construct, purchase, renovate, equip and furnish a building for a drug rehabilitation program in Eddy county.

Chapter 128 Section 250 Laws 2009

Section 250. EDDY COUNTY REGIONAL REHABILITATION CENTER--CHANGE TO DRUG REHABILITATION PROGRAM BUILDING--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 12 of Section 23 of Chapter 42 of Laws 2007 to acquire land for, plan, design and construct a regional rehabilitation center in Eddy county shall not be expended for the original purpose but is changed to acquire land for, plan, design, construct, purchase, renovate, equip and furnish a building for a drug rehabilitation program in Eddy county.

Chapter 128 Section 251 Laws 2009

Section 251. EDDY COUNTY REHABILITATION FACILITY--CHANGE TO DRUG REHABILITATION PROGRAM BUILDING--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 319 of Section 52 of Chapter 111 of Laws 2006 for a juvenile transitional housing facility in Carlsbad and reauthorized in Laws 2007, Chapter 341, Section 128 for a rehabilitation facility in Eddy county shall not be expended for the original or reauthorized purpose but is changed to purchase land for, plan, design, construct, purchase, renovate, equip and furnish a building for a drug rehabilitation program in Eddy county.

Chapter 128 Section 252 Laws 2009

Section 252. HOPE COMMUNITY DITCH ASSOCIATION WELLS AND PIPELINE--CHANGE TO BACKHOE PURCHASE--EXTEND TIME--CAPITAL PROJECTS FUND.--The unexpended balance of the appropriation to the office of the state engineer in Subsection 7 of Section 26 of Chapter 126 of Laws 2004 to drill wells and construct pipelines for the Hope community ditch association in Eddy county shall not be expended for the original purpose but is changed to purchase a backhoe, including accessories, for that ditch association. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 253 Laws 2009

Section 253. ARTESIA HORSE COUNCIL ARENA BLEACHERS--CHANGE TO IMPROVEMENTS--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 359 of Section 68 of Chapter 42 of Laws 2007 for bleachers for the Artesia horse council arena in Eddy county shall not be expended for the original purpose but is changed to plan, design, purchase material for and construct improvements to the Artesia horse council arena.

Chapter 128 Section 254 Laws 2009

Section 254. ARTESIA VOCATIONAL TRAINING CENTER DIGITAL MEDIA CENTER EXPANSION--CHANGE TO CLASSROOM FOR WORK FORCE DEVELOPMENT--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 367 of Section 68 of Chapter 42 of Laws 2007 for an expansion to the digital media center, including equipment, for the Artesia vocational training center in Artesia in Eddy county shall not be expended for the original purpose but is changed to plan, design, purchase, construct and expand a general purpose classroom for work force development for that training center. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 255 Laws 2009

Section 255. FIFTH JUDICIAL DISTRICT COURT INFORMATION TECHNOLOGY--EXTEND TIME--GENERAL FUND.--The time of expenditure for the fifth judicial district court project in Subsection 1 of Section 10 of Chapter 2 of Laws 2007 to purchase information technology and furniture for the district court in Carlsbad in Eddy county is extended through fiscal year 2011.

Chapter 128 Section 256 Laws 2009

Section 256. FIFTH JUDICIAL DISTRICT COURT EQUIPMENT, FURNISHINGS AND INFORMATION TECHNOLOGY--EXTEND TIME--GENERAL FUND.--The time of expenditure for the fifth judicial district court project in Subsection 1 of Section 48 of Chapter 42 of Laws 2007 to purchase equipment, furnishings and information technology for the fifth judicial district court in Carlsbad in Eddy county is extended through fiscal year 2011.

Chapter 128 Section 257 Laws 2009

Section 257. CARLSBAD MUSEUM AND FINE ARTS CENTER EQUIPMENT AND IMPROVEMENTS--EXPAND PURPOSE--EXTEND TIME--GENERAL FUND.--The local government division project in Subsection 158 of Section 45 of Chapter 347 of Laws 2005 to purchase equipment for and improve exhibit and storage areas at the Carlsbad museum and fine arts center in Carlsbad in Eddy county may include planning, designing, constructing, renovating and furnishing storage areas and installing exterior lighting. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 258 Laws 2009

Section 258. CARLSBAD MUSEUM AND FINE ARTS CENTER ATRIUM--CHANGE TO RENOVATIONS AND IMPROVEMENTS--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 315 of Section 52 of Chapter 111 of Laws 2006 to renovate the atrium at

the Carlsbad museum and fine arts center in Carlsbad in Eddy county shall not be expended for the original purpose but is changed to plan, design, construct, furnish and equip improvements, including the purchase of display cases and shelving, at the Carlsbad museum and fine arts center in Carlsbad. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 259 Laws 2009

Section 259. CARLSBAD SOLID WASTE TRANSFER STATION--EXPAND PURPOSE--GENERAL FUND.--The department of environment project in Subsection 55 of Section 59 of Chapter 42 of Laws 2007 to plan, design and construct a solid waste transfer station in Carlsbad in Eddy county may also include landscaping and improving new and existing solid waste convenience stations in Carlsbad.

Chapter 128 Section 260 Laws 2009

Section 260. CARLSBAD SOLID WASTE TRANSFER STATION--EXPAND PURPOSE--SEVERANCE TAX BONDS.--The department of environment project in Subsection 21 of Section 15 of Chapter 92 of Laws 2008 to plan, design and construct a solid waste transfer station may include landscaping and improving new and existing solid waste transfer convenience stations in Carlsbad in Eddy county.

Chapter 128 Section 261 Laws 2009

Section 261. EDDY COUNTY AND CARLSBAD TRANSFER STATION--CHANGE TO VEHICLES AND ROLL-OFF CONTAINERS--GENERAL FUND.--The unexpended balance of the appropriation to the department of environment in Subsection 58 of Section 59 of Chapter 42 of Laws 2007 for a solid waste transfer station for use by Carlsbad and Eddy county in Carlsbad in Eddy county shall not be expended for the original purpose but is changed to purchase and equip vehicles and roll-off containers for the solid waste transfer stations in Carlsbad.

Chapter 128 Section 262 Laws 2009

Section 262. PECOS RIVER VILLAGE CONFERENCE CENTER RENOVATIONS--EXPAND PURPOSE--GENERAL FUND.--The local government division project in Subsection 379 of Section 68 of Chapter 42 of Laws 2007 to renovate the Pecos River village conference center in Carlsbad in Eddy county may also include planning, designing, constructing, improving, equipping and furnishing that conference center.

Chapter 128 Section 263 Laws 2009

Section 263. LOVING MUNICIPAL SCHOOL DISTRICT BUILDING TRADES CLASS HOUSE--EXPAND PURPOSE--GENERAL FUND.--The public education

department project in Subsection 369 of Section 44 of Chapter 92 of Laws 2008 for the building trades class to plan, design, construct and furnish a house in the Loving municipal school district in Eddy county may include the purchase of land.

Chapter 128 Section 264 Laws 2009

Section 264. GRANT COUNTY HEALTH FACILITY--EXPAND PURPOSE--EXTEND TIME--GENERAL FUND.--The department of health project originally authorized in Subsection 2 of Section 49 of Chapter 111 of Laws 2006 and reauthorized and reappropriated to the local government division in Paragraph (1) of Subsection B of Section 95 of Chapter 42 of Laws 2007 to acquire land for and plan, design and construct a county health facility in Grant county may include purchasing, remodeling, renovating and equipping primary medical and dental facilities in Grant county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 265 Laws 2009

Section 265. BAYARD PUBLIC SAFETY RADIO TOWER IMPROVEMENTS--CHANGE TO PUBLIC SAFETY EQUIPMENT AND INFORMATION TECHNOLOGY--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 393 of Section 68 of Chapter 42 of Laws 2007 for improvements to the public safety radio tower in Bayard in Grant county shall not be expended for the original purpose but is changed to purchase and install public safety equipment and information technology, including related equipment, furniture and infrastructure, in Bayard.

Chapter 128 Section 266 Laws 2009

Section 266. COBRE CONSOLIDATED SCHOOL DISTRICT TENNIS COURTS--CHANGE TO ALL-WEATHER TRACK FACILITY--GENERAL FUND.--The unexpended balance of the appropriation to the public education department in Subsection 106 of Section 16 of Chapter 2 of Laws 2007 for improvements to the tennis courts for the Cobre consolidated school district in Grant county shall not be expended for the original purpose but is changed to plan, design, install and construct an all-weather track facility in that school district.

Chapter 128 Section 267 Laws 2009

Section 267. EL CAMINO REAL HERITAGE CENTER--CHANGE TO TRACK FACILITY AT COBRE CONSOLIDATED SCHOOL DISTRICT--CHANGE AGENCY--GENERAL FUND.--The unexpended balance of the appropriation to the cultural affairs department in Subsection 17 of Section 41 of Chapter 42 of Laws 2007 for improvements to El Camino Real international heritage center in Socorro in Socorro county shall not be expended for the original purpose but is appropriated to the public education department to plan, design, construct and install an all-weather track facility at Cobre consolidated school district in Grant county.

Chapter 128 Section 268 Laws 2009

Section 268. FORT BAYARD ECONOMIC DEVELOPMENT CENTER--CHANGE TO FORT BAYARD STRUCTURES RENOVATIONS--CHANGE AGENCY--CAPITAL PROGRAM FUND.--The unexpended balance of the appropriation to the capital program fund in Subsection 4 of Section 38 of Chapter 42 of Laws 2007 for an economic development center at Fort Bayard in Grant county shall not be expended for the original purpose but is appropriated to the local government division to plan, design, construct and renovate structures at Fort Bayard in Grant county.

Chapter 128 Section 269 Laws 2009

Section 269. HURLEY MUNICIPAL BUILDINGS IMPROVEMENTS--EXPAND PURPOSE--EXTEND TIME--SEVERANCE TAX BONDS.--The local government division project in Subsection 107 of Section 16 of Chapter 347 of Laws 2005 to plan, design and construct improvements and an addition to the municipal buildings in Hurley in Grant county may include planning, designing, constructing and renovating a building for the city hall in Hurley. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 270 Laws 2009

Section 270. HURLEY MUNICIPAL BUILDINGS IMPROVEMENTS--EXPAND PURPOSE--EXTEND TIME--GENERAL FUND.--The local government division project in Subsection 177 of Section 45 of Chapter 347 of Laws 2005 to plan, design and construct improvements and an addition to the municipal buildings in Hurley in Grant county may include planning, designing, constructing and renovating a building for the city hall in Hurley. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 271 Laws 2009

Section 271. SOCORRO TECHNOLOGY LABORATORY--CHANGE TO SANTA CLARA PUBLIC SAFETY BUILDING--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 214 of Section 26 of Chapter 2 of Laws 2007 for improvements to the technology laboratory in Socorro shall not be expended for the original purpose but is changed to construct a public safety building in Santa Clara in Grant county.

Chapter 128 Section 272 Laws 2009

Section 272. GRANT COUNTY INDUSTRIAL PARK--CHANGE TO SILVER CITY CIVIC CENTER--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 179 of Section 18 of Chapter 111 of Laws 2006 for an industrial park in Grant county shall not be expended for the original purpose but is changed to plan, design, construct, acquire and equip a civic center in Silver City in Grant county and to repay a New Mexico

finance authority loan to acquire and construct a civic center. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 273 Laws 2009

Section 273. SILVER CITY CIVIC CENTER--EXPAND PURPOSE--GENERAL FUND.--The local government division project originally authorized in Subsection 441 of Section 68 of Chapter 42 of Laws 2007 and reauthorized in Subsection L of Section 5 of Chapter 334 of Laws 2007 to plan, design, construct and equip a civic center in Silver City in Grant county may include purchasing and renovating a civic center in Silver City and paying a loan to the New Mexico finance authority for that project.

Chapter 128 Section 274 Laws 2009

Section 274. SILVER CITY CIVIC CENTER--EXPAND PURPOSE--GENERAL FUND.--The local government division project in Subsection 404 of Section 68 of Chapter 42 of Laws 2007 to plan, design, construct and equip a civic center in Silver City in Grant county may include purchasing and renovating a civic center and paying a loan to the New Mexico finance authority for this project.

Chapter 128 Section 275 Laws 2009

Section 275. GRANT COUNTY INDUSTRIAL PARK CONSTRUCT--CHANGE TO GRANT COUNTY CIVIC CENTER RENOVATE AND LOAN PAYOFF--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 362 of Section 52 of Chapter 111 of Laws 2006 to plan, design and construct an industrial park in Grant county shall not be expended for the original purpose but is changed to plan, design, construct, renovate, purchase and equip a civic center and pay off a loan to the New Mexico finance authority for this project in Silver City in Grant county.

Chapter 128 Section 276 Laws 2009

Section 276. SILVER CITY STREETS IMPROVEMENTS--CHANGE TO MEMORY LANE CEMETERY IMPROVEMENTS--CHANGE AGENCY--GENERAL FUND.--The unexpended balance of the appropriation to the department of transportation in Subsection 87 of Section 61 of Chapter 92 of Laws 2008 for street improvements on Twelfth, Silver and Swan streets in Silver City in Grant county shall not be expended for the original purpose but is appropriated to the local government division to plan, design, construct, expand, equip and furnish improvements to the Memory Lane cemetery in Silver City.

Chapter 128 Section 277 Laws 2009

Section 277. WESTERN NEW MEXICO UNIVERSITY FOOTBALL FIELD LIGHTING--CHANGE TO TENNIS COURT LIGHTING--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the board of regents of western New Mexico university in Paragraph (4) of Subsection M of Section 53 of Chapter 347 of Laws 2005 for lighting for the football field at western New Mexico university in Silver City in Grant county shall not be expended for the original purpose but is changed to plan, design, purchase and install lighting for the tennis courts at that university. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 278 Laws 2009

Section 278. WAGON MOUND MUNICIPAL OFFICES IMPROVEMENTS--CHANGE TO ANTON CHICO FIRE TRUCK PURCHASE--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 485 of Section 68 of Chapter 42 of Laws 2007 for improvements to the municipal offices in Wagon Mound in Mora county shall not be expended for the original purpose but is changed to purchase and equip a truck for the fire department in Anton Chico in Guadalupe county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 279 Laws 2009

Section 279. EDUCATIONAL TECHNOLOGY DEFICIENCY CORRECTION--CHANGE TO EUNICE PUBLIC SCHOOL DISTRICT ACTIVITY BUS--CHANGE AGENCY--EXTEND TIME--GENERAL FUND.--One hundred thousand dollars (\$100,000) of the unexpended balance of the appropriation to the educational technology deficiency correction fund in Laws 2007, Chapter 2, Section 17 to correct serious deficiencies in educational technology infrastructure pursuant to Section 22-15A-11 NMSA 1978 shall not be expended for the original purpose but is appropriated to the public education department to purchase, paint and equip an activity bus for the Eunice public school district in Lea county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 280 Laws 2009

Section 280. FIFTH JUDICIAL DISTRICT COURT EQUIPMENT, FURNISHINGS AND INFORMATION TECHNOLOGY--EXTEND TIME--GENERAL FUND.--The time of expenditure for the fifth judicial district court project in Subsection 2 of Section 48 of Chapter 42 of Laws 2007 to purchase equipment, furnishings and information technology for the fifth judicial district court in Lovington in Lea county is extended through fiscal year 2011.

Chapter 128 Section 281 Laws 2009

Section 281. FIFTH JUDICIAL DISTRICT COURT EQUIPMENT, FURNISHINGS AND INFORMATION TECHNOLOGY--EXTEND TIME--GENERAL FUND.--The time of

expenditure for the fifth judicial district court project in Subsection 2 of Section 10 of Chapter 2 of Laws 2007 to purchase equipment, furnishings and information technology for the fifth judicial district court in Lovington in Lea county is extended through fiscal year 2011.

Chapter 128 Section 282 Laws 2009

Section 282. LOVINGTON YOUTH CENTER--EXPAND PURPOSE TO INCLUDE EXTERIOR IMPROVEMENTS--EXTEND TIME--CAPITAL PROJECTS FUND.--The local government division project in Subsection 176 of Section 134 of Chapter 126 of Laws 2004 to replace the flooring, roof and heating and air conditioning units in the youth center in Lovington in Lea county may also include repairing, remodeling and renovating the interior and exterior of the youth center. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 283 Laws 2009

Section 283. TATUM MULTIPURPOSE CENTER--CHANGE TO TOWN HALL--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 436 of Section 68 of Chapter 42 of Laws 2007 for a multipurpose center in Tatum in Lea county shall not be expended for the original purpose but is changed to plan, design, construct, repair, improve, furnish and equip the town hall in Tatum.

Chapter 128 Section 284 Laws 2009

Section 284. FORT STANTON BUILDINGS RENOVATION AND RESTORATION--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the general services department project in Laws 2004, Chapter 126, Section 18 for renovating and restoring existing buildings and public restrooms at Fort Stanton in Lincoln county is extended through fiscal year 2011.

Chapter 128 Section 285 Laws 2009

Section 285. LINCOLN COUNTY DETENTION CENTER NONVIOLENT INMATE FACILITY--CHANGE TO RENOVATION OF OLD DETENTION CENTER--EXTEND TIME--CAPITAL PROJECTS FUND.--The unexpended balance of the appropriation to the local government division in Subsection 253 of Section 34 of Chapter 126 of Laws 2004 for a facility for nonviolent inmates at the detention center in Lincoln county shall not be expended for the original purpose but is changed to plan, design, construct, renovate, furnish and equip the old detention center, including the demolition of the old jail cell, in Lincoln county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 286 Laws 2009

Section 286. GREENTREE SOLID WASTE TRANSFER STATION--CHANGE TO CORONA PUBLIC SCHOOL DISTRICT EDUCATIONAL FACILITY--CHANGE AGENCY--GENERAL FUND.--The unexpended balance of the appropriation to the board of regents of eastern New Mexico university in Subsection 6 of Section 32 of Chapter 2 of Laws 2007 and reauthorized to the department of environment in Subsection GG of Section 99 of Chapter 42 of Laws 2007 for the Greentree solid waste transfer station and administration buildings in Lincoln county shall not be expended for the original or reauthorized purpose but is appropriated to the public education department to plan, design, construct, equip and furnish an educational facility in the Corona public school district in Lincoln county.

Chapter 128 Section 287 Laws 2009

Section 287. STATEWIDE ARCHERY RANGES--CHANGE TO CORONA PUBLIC SCHOOL DISTRICT EDUCATION FACILITIES--CHANGE AGENCY--GAME PROTECTION FUND.--Forty-eight thousand dollars (\$48,000) of the appropriation to the department of game and fish in Subsection 8 of Section 59 of Chapter 347 of Laws 2005 for statewide archery ranges shall not be expended for the original purpose but is appropriated to the public education department to plan, design, construct, equip and furnish education facilities in the Corona public school district in Lincoln county.

Chapter 128 Section 288 Laws 2009

Section 288. SIERRA MIDDLE SCHOOL SPRINKLER SYSTEM INSTALL--CHANGE TO CORONA PUBLIC SCHOOL DISTRICT EDUCATIONAL FACILITY--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the public education department in Subsection 235 of Section 39 of Chapter 111 of Laws 2006 for a sprinkler system at Sierra middle school in the Roswell independent school district in Chaves county shall not be expended for the original purpose but is changed to plan, design, construct, equip and furnish an educational facility in the Corona public school district in Lincoln county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 289 Laws 2009

Section 289. FORT STANTON BUILDINGS IMPROVE--EXTEND TIME--CAPITAL PROJECTS FUND.--The time of expenditure for the capital program fund project in Subsection 2 of Section 125 of Chapter 126 of Laws 2004 for stabilization, repair and improvement of buildings and purchase of equipment at Fort Stanton in Lincoln county is extended through fiscal year 2011.

Chapter 128 Section 290 Laws 2009

Section 290. FORT STANTON STABILIZATION AND REPAIRS--EXTEND TIME--CAPITAL PROGRAM FUND.--The time of expenditure for the capital program fund project in Paragraph (4) of Subsection B of Section 44 of Chapter 126 of Laws

2004 for stabilization and repair of buildings at Fort Stanton in Lincoln county is extended through fiscal year 2011.

Chapter 128 Section 291 Laws 2009

Section 291. LOS ALAMOS COUNTY ROAD 501 IMPROVEMENTS--CHANGE TO WEST JEMEZ BYPASS--GENERAL FUND.--The unexpended balance of the appropriation to the department of transportation in Subsection 141 of Section 75 of Chapter 42 of Laws 2007 for improvements to county road 501 in Los Alamos county shall not be expended for the original purpose but is changed to plan, design and construct improvements to the west Jemez bypass in Los Alamos county.

Chapter 128 Section 292 Laws 2009

Section 292. LUNA COUNTY PUBLIC SAFETY BUILDING--CHANGE TO LANDFILL--CHANGE AGENCY--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 148 of Section 26 of Chapter 2 of Laws 2007 for a city-county public safety building in Luna county shall not be expended for the original purpose but is appropriated to the department of environment to plan, design, construct and equip a landfill in Luna county.

Chapter 128 Section 293 Laws 2009

Section 293. LUNA COUNTY PUBLIC SAFETY BUILDING--CHANGE TO LANDFILL--CHANGE AGENCY--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 453 of Section 68 of Chapter 42 of Laws 2007 for a city-county public safety building in Luna county shall not be expended for the original purpose but is appropriated to the department of environment to plan, design, construct and equip a landfill in Luna county.

Chapter 128 Section 294 Laws 2009

Section 294. GALLUP MEAT PROCESSING PLANT--CHANGE TO MCKINLEY COUNTY--GENERAL FUND.--The economic development department project in Laws 2007, Chapter 2, Section 15 to acquire land for, plan, design and construct a meat processing plant, including site improvements, for the Ramah chapter of the Navajo Nation in Gallup in McKinley county shall be expended for that purpose in McKinley county for the Ramah chapter.

Chapter 128 Section 295 Laws 2009

Section 295. CHICHILTAH CHAPTER FIRE STATION--CHANGE TO MCKINLEY COUNTY ROAD 6 IMPROVEMENTS--CHANGE AGENCY--EXTEND TIME--SEVERANCE TAX BONDS.--Ninety-eight thousand five hundred dollars (\$98,500) of the unexpended balance of the appropriation to the Indian affairs

department originally authorized in Subsection 21 of Section 16 of Chapter 111 of Laws 2006 and reauthorized in Laws 2007, Chapter 341, Section 163 for a fire station for the Chichiltah chapter of the Navajo Nation in McKinley county shall not be expended for the original or reauthorized purpose but is appropriated to the department of transportation to plan, design and construct improvements, including chip sealing, to county road 6 in McKinley county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 296 Laws 2009

Section 296. BAAHAALI CHAPTER HOUSE IMPROVEMENTS--EXTEND TIME--CAPITAL PROJECTS FUND.--The time of expenditure for the Indian affairs department project in Subsection 29 of Section 131 of Chapter 126 of Laws 2004 to repair the building, heating and plumbing systems at the chapter house in the Baahaali chapter in McKinley county is extended through fiscal year 2011.

Chapter 128 Section 297 Laws 2009

Section 297. BAAHAALI CHAPTER PARKING LOT IMPROVEMENTS--EXTEND TIME--CAPITAL PROJECTS FUND.--The time of expenditure for the Indian affairs department project in Subsection 7 of Section 33 of Chapter 126 of Laws 2004 for parking lot improvements at the Baahaali chapter in McKinley county is extended through fiscal year 2011.

Chapter 128 Section 298 Laws 2009

Section 298. BAAHAALI CHAPTER HOUSING COMPOUND AND REGIONAL VETERANS CENTER--CHANGE TO VEHICLES--GENERAL FUND.--The unexpended balance of the Indian affairs department project in Subsection 17 of Section 55 of Chapter 92 of Laws 2008 for a housing compound and veterans center on the Baahaali-Pinehaven development site of the Baahaali chapter shall not be expended for the original purpose but is changed to purchase and equip vehicles for the Baahaali chapter in McKinley county.

Chapter 128 Section 299 Laws 2009

Section 299. MCKINLEY COUNTY ROAD GRADER--CHANGE TO VEHICLES FOR BAAHAALI CHAPTER--CHANGE AGENCY--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 298 of Section 59 of Chapter 92 of Laws 2008 for a road grader for McKinley county shall not be expended for the original purpose but is appropriated to the Indian affairs department to purchase and equip vehicles for the Baahaali chapter in McKinley county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 300 Laws 2009

Section 300. CHICHILTAH CHAPTER FIRE STATION--CHANGE TO CHAPTER HOUSE IMPROVEMENTS--SEVERANCE TAX BONDS.--Fifty thousand dollars (\$50,000) of the unexpended balance of the appropriation to the Indian affairs department originally authorized in Subsection 21 of Section 16 of Chapter 111 of Laws 2006 and reauthorized in Laws 2007, Chapter 341, Section 163 for a fire station in the Chichiltah chapter of the Navajo Nation in McKinley county shall not be expended for the original or reauthorized purpose but is changed to repair and improve the building, heating and plumbing systems at the chapter house in the Chichiltah chapter.

Chapter 128 Section 301 Laws 2009

Section 301. CHICHILTAH CHAPTER SENIOR CENTER IMPROVEMENTS--CHANGE TO CONSTRUCTION--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the aging and long-term services department in Subsection 13 of Section 4 of Chapter 42 of Laws 2007 for improvements and equipment for the senior center in the Chichiltah chapter of the Navajo Nation in McKinley county shall not be expended for the original purpose but is changed to plan, design, construct, equip and furnish that senior center in that chapter.

Chapter 128 Section 302 Laws 2009

Section 302. CHICHILTAH CHAPTER HOUSE IMPROVEMENTS AND EQUIPMENT--CHANGE TO SENIOR CENTER IMPROVEMENTS--CHANGE AGENCY--EXTEND TIME--CAPITAL PROJECTS FUND.--The unexpended balance of the appropriation to the Indian affairs department in Subsection 24 of Section 131 of Chapter 126 of Laws 2004 for improvements and equipment for the chapter house at the Chichiltah chapter of the Navajo Nation in McKinley county shall not be expended for the original purpose but is appropriated to the aging and long-term services department to plan, design and construct kitchen improvements, equipment and furnishings at the senior center at that chapter. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 303 Laws 2009

Section 303. CROWNPOINT AGENCY SUB-OFFICE BUILDING PROJECT--EXTEND TIME--CAPITAL PROJECTS FUND.--The time of expenditure for the Indian affairs department project in Subsection 27 of Section 33 of Chapter 126 of Laws 2004 for infrastructure development of the Crownpoint agency sub-office building project of the Navajo Nation department of Navajo veterans' affairs in McKinley county is extended through fiscal year 2011.

Chapter 128 Section 304 Laws 2009

Section 304. CROWNPOINT CHAPTER NAVAJO VETERANS' AFFAIRS OFFICE BUILDING--EXTEND TIME--CAPITAL PROJECTS FUND.--The time of expenditure for the Indian affairs department project in Subsection 14 of Section 33 of

Chapter 126 of Laws 2004 to plan, design and construct infrastructure for an office building for the department of Navajo veterans' affairs at the Crownpoint chapter of the Navajo Nation in McKinley county is extended through fiscal year 2011.

Chapter 128 Section 305 Laws 2009

Section 305. CHURCH ROCK CHAPTER POWERLINE EXTENSIONS--CHANGE TO GALLUP EAST SIDE FIRE STATION--CHANGE AGENCY--GENERAL FUND.--The unexpended balance of the appropriation to the Indian affairs department in Subsection 26 of Section 55 of Chapter 92 of Laws 2008 to plan, design and construct powerline extensions in the Church Rock chapter of the Navajo Nation in McKinley county shall not be expended for the original purpose but is appropriated to the local government division to plan, design, construct, expand, equip and furnish the Gallup east side fire station in McKinley county.

Chapter 128 Section 306 Laws 2009

Section 306. GALLUP FIRE TRAINING TOWER--EXPAND PURPOSE--EXTEND TIME--CAPITAL PROJECTS FUND.--The local government division project in Subsection 232 of Section 134 of Chapter 126 of Laws 2004 for constructing a fire training tower in Gallup in McKinley county may also include improvements to the tower facility and site and the purchase of equipment. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 307 Laws 2009

Section 307. LITTLE WATER CHAPTER WATER AND WASTEWATER SYSTEM--CHANGE TO HEAD START FACILITY--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the Indian affairs department in Subsection 11 of Section 15 of Chapter 347 of Laws 2005 for a water and wastewater system in the Little Water chapter of the Navajo Nation in McKinley county shall not be expended for the original purpose but is changed to plan, design, construct, purchase, install, equip and furnish a head start facility in that chapter. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 308 Laws 2009

Section 308. PUEBLO PINTADO CHAPTER POWERLINE EXTENSION--EXTEND TIME--CAPITAL PROJECTS FUND.--The time of expenditure for the Indian affairs department project in Subsection 22 of Section 33 of Chapter 126 of Laws 2004 for the phase 4 powerline extension in the Pueblo Pintado chapter of the Navajo Nation in McKinley county is extended through fiscal year 2011.

Chapter 128 Section 309 Laws 2009

Section 309. RED ROCK CHAPTER COMMUNITY CENTER--CHANGE TO MOTOR GRADER PURCHASE--GENERAL FUND.--The unexpended balance of the appropriation to the Indian affairs department in Subsection 74 of Section 43 of Chapter 347 of Laws 2005 for construction of a community center at the Red Rock chapter of the Navajo Nation in McKinley county shall not be expended for the original purpose but is changed to purchase a motor grader for the Red Rock chapter.

Chapter 128 Section 310 Laws 2009

Section 310. RED ROCK CHAPTER FIRE STATION CONSTRUCTION--CHANGE TO MOTOR GRADER PURCHASE--GENERAL FUND.--The unexpended balance of the appropriation to the Indian affairs department in Subsection 54 of Section 50 of Chapter 111 of Laws 2006 for construction of a fire station at the Red Rock chapter of the Navajo Nation in McKinley county shall not be expended for the original purpose but is changed to purchase a motor grader for the Red Rock chapter.

Chapter 128 Section 311 Laws 2009

Section 311. TOHATCHI CHAPTER POWERLINE EXTENSION--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the Indian affairs department project in Subsection 18 of Section 115 of Chapter 126 of Laws 2004 for a powerline extension project in the Tohatchi chapter of the Navajo Nation in McKinley county is extended through fiscal year 2011.

Chapter 128 Section 312 Laws 2009

Section 312. TOHATCHI CHAPTER NAKAI PARK REPAIRS--CHANGE TO SKATEBOARD PARK AND IMPROVEMENTS--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 154 of Section 26 of Chapter 2 of Laws 2007 to repair and renovate Nakai park in the Tohatchi chapter of the Navajo Nation in McKinley county shall not be expended for the original purpose but is appropriated to the Indian affairs department to plan, design, construct, renovate and equip a skateboard park, volleyball park, picnic area, playground area and trails, including landscaping improvements, in that chapter.

Chapter 128 Section 313 Laws 2009

Section 313. TSAYATOH CHAPTER HOUSE RENOVATIONS--EXPAND PURPOSE TO INCLUDE CONSTRUCTION--EXTEND TIME--GENERAL FUND.--The Indian affairs department project in Subsection 75 of Section 43 of Chapter 347 of Laws 2005 to plan and design renovations for the Tsayatoh chapter house of the Navajo Nation in McKinley county may also include construction. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 314 Laws 2009

Section 314. TSAYATOH CHAPTER HOUSE REPAIRS AND HEATING AND PLUMBING SYSTEMS--CHANGE TO TSAYATOH CHAPTER HOUSE RENOVATIONS--EXTEND TIME--CAPITAL PROJECTS FUND.--The unexpended balance of the appropriation to the Indian affairs department in Subsection 28 of Section 131 of Chapter 126 of Laws 2004 to repair the building, heating and plumbing systems at the chapter house in the Tsayatoh chapter of the Navajo Nation in McKinley county shall not be expended for the original purpose but is changed to plan, design and construct renovations to that chapter house. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 315 Laws 2009

Section 315. TSAYATOH CHAPTER MULTIPURPOSE BUILDING CONSTRUCTION--CHANGE TO IMPROVING EXISTING BUILDING AND CONSTRUCTING AN ADDITION--EXTEND TIME--CAPITAL PROJECTS FUND.--The unexpended balance of the appropriation to the Indian affairs department in Subsection 19 of Section 33 of Chapter 126 of Laws 2004 to plan, design and construct a multipurpose building in the Tsayatoh chapter of the Navajo Nation in McKinley county shall not be expended for the original purpose but is changed to plan, design and construct improvements and an addition and equip and furnish a computer and resource room at the existing multipurpose building in that chapter. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 316 Laws 2009

Section 316. TWIN LAKES CHAPTER GOVERNMENTAL OFFICE COMPLEX--EXTEND TIME--CAPITAL PROJECTS FUND.--The time of expenditure for the Indian affairs department project in Subsection 16 of Section 33 of Chapter 126 of Laws 2004 for a governmental office complex in the Twin Lakes chapter of the Navajo Nation in McKinley county is extended through fiscal year 2011.

Chapter 128 Section 317 Laws 2009

Section 317. WHITE HORSE LAKE CHAPTER WATER LINE--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the Indian affairs department project in Subsection 34 of Section 115 of Chapter 126 of Laws 2004 to plan, design and construct a water line for the White Horse Lake chapter of the Navajo Nation in McKinley county is extended through fiscal year 2011.

Chapter 128 Section 318 Laws 2009

Section 318. WHITE HORSE LAKE CHAPTER WATER LINE--EXTEND TIME--CAPITAL PROJECTS FUND.--The time of expenditure for the Indian affairs department project in Subsection 42 of Section 131 of Chapter 126 of Laws 2004 to plan, design and construct a water line in the White Horse Lake chapter of the Navajo Nation in McKinley county is extended through fiscal year 2011.

Chapter 128 Section 319 Laws 2009

Section 319. PUEBLO OF ZUNI ARTS AND VISITORS CENTER CONSTRUCTION--CHANGE TO VISITORS CENTER BUILDING PURCHASE--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the Indian affairs department in Subsection 50 of Section 50 of Chapter 111 of Laws 2006 to construct an arts and visitors center at the Pueblo of Zuni in McKinley county shall not be expended for the original purpose but is changed to purchase a building for a visitors center and make site improvements at the Pueblo of Zuni in McKinley county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 320 Laws 2009

Section 320. PUEBLO OF ZUNI VISITORS CENTER CONSTRUCTION--CHANGE TO RENOVATION AND SITE IMPROVEMENTS--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the Indian affairs department originally authorized in Subsection 46 of Section 20 of Chapter 110 of Laws 2002 to construct a visitors center at the Pueblo of Zuni in McKinley county and reauthorized in Laws 2007, Chapter 341, Section 193 to extend the time shall not be expended for the original or reauthorized purpose but is changed to renovate a visitors center, including site improvements, at the Pueblo of Zuni.

Chapter 128 Section 321 Laws 2009

Section 321. ZUNI PUEBLO ARTS AND VISITORS CENTER--CHANGE TO ZUNI PUEBLO VISITORS CENTER BUILDING PURCHASE--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the Indian affairs department in Subsection 14 of Section 16 of Chapter 111 of Laws 2006 to plan, design and construct an arts and visitors center at the Pueblo of Zuni in McKinley county shall not be expended for the original purpose but is changed to purchase a building for a visitors center at the Pueblo of Zuni in McKinley county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 322 Laws 2009

Section 322. EL LLANO DE LA PRESA COMMUNITY DITCH IMPROVEMENTS--CHANGE TO ACEQUIA DEL LADO NORTE DE GOLONDRINAS ASSOCIATION IMPROVEMENTS--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the interstate stream commission in Subsection 22 of Section 35 of Chapter 347 of Laws 2005 for improvements to El Llano de la Presa community ditch in San Miguel county shall not be expended for the original purpose but is changed to plan, design and construct improvements for the acequia del Lado Norte de Golondrinas association in Mora county. The time of expenditure is extended through fiscal year 2011.

Section 355. CLOUDCROFT HIGH SCHOOL BLEACHERS--CHANGE TO LIFT STATION FOR SEPTIC SYSTEM--GENERAL FUND.--The unexpended balance of the appropriation to the public education department in Subsection 382 of Section 55 of Chapter 42 of Laws 2007 for bleachers at Cloudcroft high school in the Cloudcroft municipal school district in Otero county shall not be expended for the original purpose but is changed to plan, design, purchase, construct, install and equip a lift station for the septic system at that high school.

Chapter 128 Section 356 Laws 2009

Section 356. CLOUDCROFT MIDDLE SCHOOL MOTORIZED TELESCOPE BLEACHERS--CHANGE TO HIGH SCHOOL WEIGHT ROOM AREA ROOF CONSTRUCTION AND INSTALLATION--GENERAL FUND.--The unexpended balance of the appropriation to the public education department in Subsection 385 of Section 55 of Chapter 42 of Laws 2007 to purchase and install motorized telescope bleachers, including the removal of existing bleachers, for Cloudcroft middle school in the Cloudcroft municipal school district in Otero county shall not be expended for the original purpose but is changed to plan, design, construct and install a roof for the weight room area of Cloudcroft high school in that school district.

Chapter 128 Section 357 Laws 2009

Section 357. CLOUDCROFT HIGH SCHOOL BOILER--CHANGE TO CLOUDCROFT MUNICIPAL SCHOOL DISTRICT PLAYGROUND EQUIPMENT AND FENCING--GENERAL FUND.--The unexpended balance of the appropriation to the public education department in Subsection 388 of Section 44 of Chapter 92 of Laws 2008 for a boiler for the heating system at Cloudcroft high school in the Cloudcroft municipal school district in Otero county shall not be expended for the original purpose but is changed to prepare the site for and plan, design, construct, purchase and install playground equipment and fencing for schools and track facilities in that school district.

Chapter 128 Section 358 Laws 2009

Section 358. TULAROSA COMMUNITY DITCH AND WATER DEVELOPMENT PROJECT--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the office of the state engineer project in Laws 2004, Chapter 126, Section 8 to plan and acquire environmental clearances and an engineering design for the Tularosa community ditch and village of Tularosa water development project in Otero county is extended through fiscal year 2011.

Chapter 128 Section 359 Laws 2009

Section 359. TULAROSA MUNICIPAL SCHOOL DISTRICT FOOTBALL FIELD ARTIFICIAL TURF--CHANGE TO TULAROSA HIGH SCHOOL GROUNDS IMPROVEMENTS--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the public education department in Subsection 13 of Section 11 of

Chapter 92 of Laws 2008 for artificial turf on the football field in the Tularosa municipal school district in Otero county shall not be expended for the original purpose but is changed to plan, design, purchase and install improvements to the grounds at Tularosa high school in that school district.

Chapter 128 Section 360 Laws 2009

Section 360. TULAROSA MUNICIPAL SCHOOL DISTRICT FOOTBALL FIELDS ARTIFICIAL TURF--CHANGE TO TULAROSA HIGH SCHOOL GROUNDS IMPROVEMENTS--GENERAL FUND.--The unexpended balance of the appropriation to the public education department in Subsection 116 of Section 16 of Chapter 2 of Laws 2007 for artificial turf for the football fields in the Tularosa municipal school district in Otero county shall not be expended for the original purpose but is changed to plan, design, construct, purchase and install improvements to the grounds at Tularosa high school in that school district.

Chapter 128 Section 361 Laws 2009

Section 361. TULAROSA MUNICIPAL SCHOOL DISTRICT IMPROVEMENTS AND FIELD TURF--CHANGE TO TULAROSA HIGH SCHOOL GROUNDS IMPROVEMENTS--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the public education department in Subsection 303 of Section 48 of Chapter 347 of Laws 2005 for improvements, including new field turf, for the Tularosa municipal school district in Otero county shall not be expended for the original purpose but is changed to plan, design, construct, purchase and install improvements to the grounds at Tularosa high school in that school district. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 362 Laws 2009

Section 362. TULAROSA LIBRARY CHILDREN'S LEARNING CENTER--CHANGE TO POLICE AND FIRE DEPARTMENT VEHICLES, EQUIPMENT AND FURNISHINGS--GENERAL FUND.--One hundred thousand dollars (\$100,000) of the appropriation to the local government division originally authorized in Subsection 164 of Section 26 of Chapter 2 of Laws 2007 for a children's learning center at the library in Tularosa in Otero county, and not reauthorized in Subsection X of Section 99 of Chapter 42 of Laws 2007 or in Laws 2008, Chapter 83, Section 291, shall not be used for the original purpose but is changed to purchase and equip vehicles for the police department and to purchase and install equipment and furnishings for the fire department in Tularosa.

Chapter 128 Section 363 Laws 2009

Section 363. ARCH HURLEY CONSERVANCY DISTRICT EQUIPMENT--EXTEND TIME--GENERAL FUND.--The time of expenditure for the local government division project in Subsection 167 of Section 26 of Chapter 2 of Laws 2007 to purchase,

repair, upgrade and install equipment for the Arch Hurley conservancy district in Quay county is extended through fiscal year 2011.

Chapter 128 Section 364 Laws 2009

Section 364. QUAY COUNTY AGRICULTURAL EDUCATION CENTER IMPROVEMENTS AND LOAN PAYOFF--CHANGE TO COUNTY EXTENSION OFFICES, FAIR BARN AND RODEO GROUNDS RENOVATION--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 219 of Section 18 of Chapter 111 of Laws 2006 for improvements to the agricultural education center in Quay county and reauthorized in Laws 2008, Chapter 83, Section 293 to include purchasing, renovating and paying an existing loan to the New Mexico finance authority shall not be expended for the original or reauthorized purpose but is changed to repair, renovate and furnish county extension offices, a fair barn and rodeo grounds in Quay county.

Chapter 128 Section 365 Laws 2009

Section 365. QUAY COUNTY ROAD EQUIPMENT AND ROCK CRUSHER--EXTEND TIME--GENERAL FUND.--The time of expenditure for the local government division project in Subsection 507 of Section 68 of Chapter 42 of Laws 2007 to purchase road equipment and install a rock crusher for Quay county is extended through fiscal year 2011.

Chapter 128 Section 366 Laws 2009

Section 366. PUEBLO OF LAGUNA WATER AND WASTEWATER PROJECT--CHANGE TO MESALANDS COMMUNITY COLLEGE WIND RESEARCH AND TRAINING CENTER--CHANGE AGENCY--EXTEND TIME--CAPITAL PROJECTS FUND.--The unexpended balance of the appropriation to the department of environment in Subsection 13 of Section 29 of Chapter 126 of Laws 2004 for water and wastewater projects in the Pueblo of Laguna in Cibola county shall not be expended for the original purpose but is appropriated to the higher education department to plan, design, construct, equip and furnish the North American wind research and training center, including infrastructure and site preparation, at Mesalands community college in Tucumcari in Quay county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 367 Laws 2009

Section 367. AZTEC HIGH SCHOOL DORMITORY--CHANGE TO TUCUMCARI DOWNTOWN INFRASTRUCTURE--CHANGE AGENCY--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the public education department in Subsection 15 of Section 11 of Chapter 92 of Laws 2008 for a dormitory at Aztec high school in the Aztec municipal school district in San Juan county shall not be expended for the original purpose but is appropriated to the economic development department to

plan, design and construct improvements and redevelopment of downtown infrastructure for economic development in Tukumcari in Quay county.

Chapter 128 Section 368 Laws 2009

Section 368. STRATEGIC WATER RESERVE ENDANGERED SPECIES ACT OF 1973 COMPLIANCE--CHANGE TO TUCUMCARI DOWNTOWN INFRASTRUCTURE IMPROVEMENTS--CHANGE AGENCY--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the office of the state engineer in Subsection 18 of Section 42 of Chapter 111 of Laws 2006 to acquire water, water rights and storage rights to comply with the Endangered Species Act of 1973 for the strategic water reserve statewide shall not be expended for the original purpose but is appropriated to the economic development department to plan, design and construct improvements and redevelopment of downtown infrastructure for economic development in Tukumcari in Quay county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 369 Laws 2009

Section 369. CEBOLLA MUTUAL DOMESTIC WATER CONSUMERS AND SEWAGE WORKS ASSOCIATION RINCON BLANCO COMMUNITY CENTER--CHANGE TO NON-POTABLE WATER SYSTEM, SANITARY FACILITIES AND WASTEWATER SYSTEM--GENERAL FUND.--The unexpended balance of the appropriation to the department of environment in Subsection 81 of Section 48 of Chapter 92 of Laws 2008 to install a water system to the Rincon Blanco community center for the Cebolla mutual domestic water consumers and sewage works association in Rio Arriba county shall not be expended for the original purpose but is changed to plan, design and construct a potable and non-potable water system, sanitary facilities and wastewater system at the Rincon Blanco community center for the Cebolla mutual domestic water consumers and sewage works association in Rio Arriba county.

Chapter 128 Section 370 Laws 2009

Section 370. TAOS BOYS' AND GIRLS' CLUB FACILITY--CHANGE TO ABIQUIU MUTUAL DOMESTIC WATER CONSUMERS ASSOCIATION AND MUTUAL SEWAGE WORKS ASSOCIATION COMMUNITY WATER SYSTEM--CHANGE AGENCY--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 667 of Section 52 of Chapter 111 of Laws 2006 to construct a facility for the boys' and girls' club in Taos in Taos county shall not be expended for the original purpose but is appropriated to the department of environment to plan, design, construct, renovate and equip a community water system for the Abiquiu mutual domestic water consumers association and mutual sewage works association in Rio Arriba county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 371 Laws 2009

Section 371. CHAMA MULTIPURPOSE FACILITY CONSTRUCTION--CHANGE TO IMPROVEMENTS--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 356 of Section 59 of Chapter 92 of Laws 2008 to plan, design, construct, equip and furnish a multipurpose facility in Chama in Rio Arriba county shall not be expended for the original purpose but is changed to make improvements to the existing multipurpose facility.

Chapter 128 Section 372 Laws 2009

Section 372. CHAMA MULTIPURPOSE FACILITY CONSTRUCTION--CHANGE TO IMPROVEMENTS--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 223 of Section 18 of Chapter 111 of Laws 2006 to plan, design and construct a multipurpose facility in Chama in Rio Arriba county shall not be expended for the original purpose but is changed to make improvements to the existing multipurpose facility.

Chapter 128 Section 373 Laws 2009

Section 373. CHAMA WATER LINE EXTENSIONS AND WELL--CHANGE TO WASTEWATER SYSTEM IMPROVEMENTS--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the department of environment in Subsection 113 of Section 45 of Chapter 111 of Laws 2006 for water line extensions and a well in Chama in Rio Arriba county shall not be expended for the original purpose but is changed to plan, design and construct wastewater system improvements in Chama. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 374 Laws 2009

Section 374. PASEO DE ONATE AND NEW MEXICO HIGHWAY 30 LAND ACQUISITION AND REALIGNMENT--CHANGE TO ESPANOLA ENTRANCE GATEWAYS--CHANGE AGENCY--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the department of transportation in Subsection 70 of Section 52 of Chapter 347 of Laws 2005 to plan and acquire land for the realignment of paseo de Onate and New Mexico highway 30 in Espanola in Rio Arriba county shall not be expended for the original purpose but is appropriated to the local government division to design and construct gateways to entrances in Espanola. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 375 Laws 2009

Section 375. TAOS ALEXANDER GUSDORF PARK AND SOCCER COMPLEX--CHANGE TO PLAZA DE ESPANOLA CONSTRUCT--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 690 of Section 52 of Chapter 111 of Laws 2006 for the Alexander Gusdorf park and soccer complex in Taos in Taos county shall not be expended for the original purpose but is changed to plan, design, construct, improve and equip the plaza de

Espanola in Rio Arriba county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 376 Laws 2009

Section 376. ESPANOLA WATER SYSTEM IMPROVE--CHANGE TO WATER AND WASTEWATER SYSTEM IMPROVEMENTS--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the department of environment in Subsection 51 of Section 15 of Chapter 92 of Laws 2008 to plan, design and construct water system improvements to comply with the Safe Drinking Water Act of 1974 in Espanola in Rio Arriba county shall not be expended for the original purpose but is changed to plan, design, construct and equip water and wastewater system improvements in Espanola.

Chapter 128 Section 377 Laws 2009

Section 377. CARINOS CHARTER SCHOOL--EXPAND PURPOSE--GENERAL FUND.--The public education department project in Subsection 396 of Section 44 of Chapter 92 of Laws 2008 to equip the kitchen and playground and to purchase and install portables at Carinos charter school in the Espanola public school district in Rio Arriba county may include planning, designing, constructing, equipping, furnishing and related site improvements at that school.

Chapter 128 Section 378 Laws 2009

Section 378. PUEBLO OF SANTA CLARA INFRASTRUCTURE PROJECTS--EXPAND PURPOSE--EXTEND TIME--SEVERANCE TAX BONDS.--The Indian affairs department project in Subsection 20 of Section 15 of Chapter 347 of Laws 2005 to plan, design and complete infrastructure projects in the Pueblo of Santa Clara in Rio Arriba county may include construction. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 379 Laws 2009

Section 379. PUEBLO OF SANTA CLARA IRRIGATION SYSTEM--EXPAND PURPOSE--GENERAL FUND.--The Indian affairs department project in Subsection 90 of Section 66 of Chapter 42 of Laws 2007 to plan and design an irrigation system at the Pueblo of Santa Clara in Rio Arriba county may include construction of that system.

Chapter 128 Section 380 Laws 2009

Section 380. TRUCHAS COMMUNITY CENTER AND FIRE STATION LAND PURCHASE--CHANGE TO FURNISH AND EQUIP TRUCHAS COMMUNITY CENTER--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 465 of Section 45 of Chapter 347 of Laws 2005 to

purchase land for a community center and fire station in Truchas in Rio Arriba county shall not be expended for the original purpose but is changed to furnish and equip the community center in Truchas.

Chapter 128 Section 381 Laws 2009

Section 381. VELARDE DRY FIRE HYDRANTS--CHANGE TO FIRE TRUCK PURCHASE--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 240 of Section 45 of Chapter 347 of Laws 2005 for dry fire hydrants in Velarde in Rio Arriba county shall not be expended for the original purpose but is changed to purchase and equip a fire truck for the Velarde valley fire department in Rio Arriba county.

Chapter 128 Section 382 Laws 2009

Section 382. EASTERN NEW MEXICO UNIVERSITY AGRICULTURAL FACILITY--EXPAND PURPOSE--GENERAL FUND.--The eastern New Mexico university project in Subsection 8 of Section 77 of Chapter 42 of Laws 2007 to plan, design and construct an agricultural facility at eastern New Mexico university in Portales in Roosevelt county may include renovations.

Chapter 128 Section 383 Laws 2009

Section 383. EASTERN NEW MEXICO UNIVERSITY SPEECH AND HEARING REHABILITATION OUTREACH CENTER EQUIPMENT--EXTEND TIME--GENERAL FUND.--The time of expenditure for the eastern New Mexico university project in Subsection 15 of Section 77 of Chapter 42 of Laws 2007 for equipment for the speech and hearing rehabilitation outreach center at eastern New Mexico university in Portales in Roosevelt county is extended through fiscal year 2011.

Chapter 128 Section 384 Laws 2009

Section 384. PORTALES FIRE DEPARTMENT STATION--CHANGE TO SWIMMING POOL--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 371 of Section 59 of Chapter 92 of Laws 2008 for the main station for the Portales fire department in Roosevelt county shall not be expended for the original purpose but is changed to improve and expand the swimming pool and facilities in Portales.

Chapter 128 Section 385 Laws 2009

Section 385. AZTEC HIGH SCHOOL HONORS DORMITORY--CHANGE TO NORTH STAR DOMESTIC WATER CONSUMERS AND MUTUAL SEWAGE WORKS COOPERATIVE WATER SYSTEM IMPROVEMENTS--CHANGE AGENCY--GENERAL FUND.--Fifty thousand dollars (\$50,000) of the unexpended balance of the

appropriation to the Indian affairs department in Subsection 91 of Section 66 of Chapter 42 of Laws 2007 for an honors dormitory for Navajo students attending Aztec high school in Aztec in San Juan county shall not be expended for the original purpose but is appropriated to the department of environment to plan, design and construct water system improvements for the North Star domestic water consumers and mutual sewage works cooperative in Aztec in San Juan county.

Chapter 128 Section 386 Laws 2009

Section 386. AZTEC HIGH SCHOOL HONORS DORMITORY--CHANGE TO NEW MEXICO STATE UNIVERSITY FARMINGTON AGRICULTURAL SCIENCE CENTER GREENHOUSE--CHANGE AGENCY--GENERAL FUND.--One hundred thousand dollars (\$100,000) of the unexpended balance of the appropriation to the Indian affairs department in Subsection 91 of Section 66 of Chapter 42 of Laws 2007 for an honors dormitory for Navajo students attending Aztec high school in Aztec in San Juan county shall not be expended for the original purpose but is appropriated to the board of regents of New Mexico state university to plan, design, construct, equip and renovate a greenhouse at the Farmington branch campus agricultural science center of New Mexico state university in San Juan county.

Chapter 128 Section 387 Laws 2009

Section 387. HUERFANO CHAPTER ADOBE OVERHEAD POWERLINE EXTENSION PROJECT--EXTEND TIME--CAPITAL PROJECTS FUND.--The time of expenditure for the Indian affairs department project in Subsection 40 of Section 33 of Chapter 126 of Laws 2004 for phase 3 for the Adobe overhead powerline extension project in the Huerfano chapter of the Navajo Nation in San Juan county is extended through fiscal year 2011.

Chapter 128 Section 388 Laws 2009

Section 388. SAN JUAN COUNTY LEE ACRES WATER LINE--CHANGE TO KIRTLAND AREA WASTEWATER SYSTEM--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the department of environment in Subsection 51 of Section 13 of Chapter 111 of Laws 2006 for a water line for the Lee Acres water users association in San Juan county shall not be expended for the original purpose but is changed to plan, design and construct a wastewater system in the Kirtland area in San Juan county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 389 Laws 2009

Section 389. LITTLE WATER CHAPTER WAREHOUSE--CHANGE TO HEAD START FACILITY--GENERAL FUND.--The unexpended balance of the appropriation to the Indian affairs department in Subsection 62 of Section 55 of Chapter 92 of Laws 2008 for the warehouse at the Little Water chapter of the Navajo Nation in San Juan

county shall not be expended for the original purpose but is changed to plan, design, construct, purchase, install, equip and furnish a head start facility for that chapter.

Chapter 128 Section 390 Laws 2009

Section 390. NASCHITTI CHAPTER BLUE ROCK AREA POWERLINE EXTENSION RIGHT OF WAY--EXTEND TIME--CAPITAL PROJECTS FUND.--The time of expenditure for the Indian affairs department project in Subsection 36 of Section 33 of Chapter 126 of Laws 2004 for an archaeological and environmental study to acquire a right of way to extend a powerline in the Blue Rock area in the Naschitti chapter of the Navajo Nation in San Juan county is extended through fiscal year 2011.

Chapter 128 Section 391 Laws 2009

Section 391. SANOSTEE CHAPTER BACKHOE--CHANGE TO VEHICLE AND HEAVY EQUIPMENT--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the Indian affairs department in Subsection 102 of Section 66 of Chapter 42 of Laws 2007 for a backhoe for the Sanostee chapter of the Navajo Nation in San Juan county shall not be expended for the original purpose but is changed to purchase and equip vehicles and heavy equipment for that chapter. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 392 Laws 2009

Section 392. DINE COLLEGE NORTH CAMPUS PARKING LOT--CHANGE TO SOUTH CAMPUS LIBRARY--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the Indian affairs department in Subsection 95 of Section 50 of Chapter 111 of Laws 2006 for the north campus parking lot at Dine college in Shiprock in San Juan county shall not be expended for the original purpose but is changed to plan, design and construct a library at the south campus of Dine college in Shiprock. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 393 Laws 2009

Section 393. SANOSTEE CHAPTER FEASIBILITY STUDY--CHANGE TO HOME FOR WOMEN AND CHILDREN IN SHIPROCK--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the Indian affairs department in Subsection 20 of Section 115 of Chapter 126 of Laws 2004 for a feasibility study for a new chapter house for the Sanostee chapter of the Navajo Nation in San Juan county shall not be expended for the original purpose but is changed to make site improvements and to construct, equip and furnish the home for women and children in Shiprock in San Juan county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 394 Laws 2009

Section 394. UNITED STATES HIGHWAY 491 LIGHTING--CHANGE TO SHIPROCK HOME FOR WOMEN AND CHILDREN--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the department of transportation in Subsection 40 of Section 15 of Chapter 126 of Laws 2004 for streetlights or luminarias on United States highway 491 in San Juan county shall not be expended for the original purpose but is appropriated to the Indian affairs department to make site improvements and to construct, equip and furnish the home for women and children in Shiprock in San Juan county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 395 Laws 2009

Section 395. COYOTE CANYON CHAPTER PRESCHOOL BUILDING--CHANGE TO SHIPROCK HOME FOR WOMEN AND CHILDREN--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the Indian affairs department originally authorized in Subsection 43 of Section 20 of Chapter 110 of Laws 2002 and reauthorized in Laws 2006, Chapter 107, Section 101 to plan and design a preschool building in the Coyote Canyon chapter of the Navajo Nation in McKinley county shall not be expended for the original or reauthorized purpose but is changed to make site improvements and to construct, equip and furnish the home for women and children in Shiprock in San Juan county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 396 Laws 2009

Section 396. AZTEC HIGH SCHOOL DORMITORY FOR NAVAJO STUDENTS--CHANGE TO SHIPROCK HOME FOR WOMEN AND CHILDREN--EXTEND TIME--GENERAL FUND.--Two hundred fifty thousand dollars (\$250,000) of the unexpended balance of the appropriation to the Indian affairs department in Subsection 94 of Section 50 of Chapter 111 of Laws 2006 to plan, design and construct a dormitory for Navajo students attending Aztec high school in San Juan county shall not be expended for the original purpose but is changed to make site improvements and to construct, equip and furnish the home for women and children in Shiprock in San Juan county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 397 Laws 2009

Section 397. SHIPROCK DOMESTIC VIOLENCE SHELTER TRANSITIONAL HOUSING--CHANGE TO SHIPROCK HOME FOR WOMEN AND CHILDREN--GENERAL FUND.--The unexpended balance of the appropriation to the Indian affairs department in Subsection 105 of Section 66 of Chapter 42 of Laws 2007 for a twenty-unit transitional housing facility for a domestic violence shelter in Shiprock in San Juan county shall not be expended for the original purpose but is changed to make site improvements and to construct, equip and furnish the home for women and children in Shiprock in San Juan county.

Chapter 128 Section 398 Laws 2009

Section 398. TSE'DAA'KAAN CHAPTER POWERLINES--EXPAND PURPOSE--EXTEND TIME--SEVERANCE TAX BONDS.--The Indian affairs department project in Subsection 22 of Section 115 of Chapter 126 of Laws 2004 for construction of power lines in the Tse'Daa'Kaan chapter of the Navajo Nation in San Juan county may include house wiring in that chapter. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 399 Laws 2009

Section 399. VALLEY ELEMENTARY SCHOOL AND VALLEY MIDDLE SCHOOL MUSIC PROGRAMS EQUIPMENT PURCHASE--ACEQUIA MADRE DEL CERRITO IMPROVEMENTS--CHANGE AGENCY--EXTEND TIME--GENERAL FUND.-The unexpended balance of the appropriation to the public education department in Subsection 412 of Section 55 of Chapter 42 of Laws 2007 to purchase equipment for the music programs at Valley elementary school and Valley middle school in the west Las Vegas public school district in San Miguel county shall not be expended for the original purpose but is appropriated to the interstate stream commission to plan, design and construct improvements to the acequia Madre del Cerrito in El Cerrito in San Miguel county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 400 Laws 2009

Section 400. LEDOUX DITCH IMPROVEMENTS--CHANGE TO EL ANCON ACEQUIA IMPROVEMENTS--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the interstate stream commission in Subsection 12 of Section 43 of Chapter 111 of Laws 2006 for improvements to the Ledoux ditch in Mora county shall not be expended for the original purpose but is changed to plan, design and construct improvements to El Ancon acequia in San Miguel county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 401 Laws 2009

Section 401. ACEQUIA DEL ANCON Y AGUA CALIENTE IMPROVEMENTS--CHANGE TO EL ANCON ACEQUIA IMPROVEMENTS--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the interstate stream commission in Subsection 34 of Section 43 of Chapter 111 of Laws 2006 for improvements to the acequia del Ancon y Agua Caliente in San Miguel county shall not be expended for the original purpose but is changed to plan, design and construct improvements to El Ancon acequia in San Miguel county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 402 Laws 2009

Section 402. SAN JOSE EMERGENCY WELL--LAS TUSAS MUTUAL DOMESTIC WATER CONSUMERS ASSOCIATION FACILITIES AND INFRASTRUCTURE IMPROVEMENTS--GENERAL FUND.--The unexpended balance of the appropriation to the department of environment in Subsection 142 of Section 59 of Chapter 42 of Laws 2007 for an emergency well in San Jose in San Miguel county shall not be expended for the original purpose but is changed to plan, design and construct facilities and infrastructure improvements for Las Tusas mutual domestic water consumers association in San Miguel county.

Chapter 128 Section 403 Laws 2009

Section 403. ACEQUIA DE LA SIERRA DE HOLMAN DIVERSION STRUCTURES--CHANGE TO LAS TUSAS MUTUAL DOMESTIC WATER CONSUMERS ASSOCIATION FACILITIES AND INFRASTRUCTURE IMPROVEMENTS--CHANGE AGENCY--GENERAL FUND.--The unexpended balance of the appropriation to the interstate stream commission in Subsection 20 of Section 67 of Chapter 42 of Laws 2007 to rebuild the diversion structures for the acequia de la Sierra de Holman in Mora county shall not be expended for the original purpose but is appropriated to the department of environment to plan, design and construct improvements to facilities and infrastructure for Las Tusas mutual domestic water consumers association in San Miguel county.

Chapter 128 Section 404 Laws 2009

Section 404. SAN JUAN COMMUNITY CENTER RENOVATIONS--CHANGE TO SAN MIGUEL COUNTY DETENTION CENTER SEWER SYSTEM--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 577 of Section 68 of Chapter 42 of Laws 2007 to upgrade the San Juan community center in San Miguel county shall not be expended for the original purpose but is changed to make improvements to the sewer system at the San Miguel county detention center.

Chapter 128 Section 405 Laws 2009

Section 405. RATON MENTAL HEALTH AND SUBSTANCE ABUSE FACILITY EQUIPMENT--CHANGE TO SAN MIGUEL COUNTY ROAD C-50-C AND DITCH IMPROVEMENTS--CHANGE AGENCY--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 89 of Section 26 of Chapter 2 of Laws 2007 to purchase and install equipment, including commercial stove, lighting and safety equipment, for a mental health and substance abuse facility in Raton in Colfax county shall not be expended for the original purpose but is appropriated to the department of transportation to plan, design and construct road and ditch improvements to county road C-50-C in Trujillo in San Miguel county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 406 Laws 2009

Section 406. SAN JUAN AND LA ISLA DITCH IMPROVEMENTS--CHANGE TO SAN MIGUEL COUNTY PUBLIC WORKS SOLID WASTE BALER--CHANGE AGENCY--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the interstate stream commission in Subsection 1 of Section 12 of Chapter 111 of Laws 2006 for improvements to the San Jose ditch and La Isla ditch in Mora county shall not be expended for the original purpose but is appropriated to the department of environment to design, construct, purchase and install a solid waste baler at the county public works facility in San Miguel county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 407 Laws 2009

Section 407. TALPA COMMUNITY CENTER IMPROVEMENTS--CHANGE TO SAN MIGUEL COUNTY PUBLIC WORKS SOLID WASTE BALER--CHANGE AGENCY--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 297 of Section 18 of Chapter 111 of Laws 2006 for improvements to the Talpa community center in Taos county shall not be expended for the original purpose but is appropriated to the department of environment to design, construct, purchase and install a solid waste baler at the county public works facility in San Miguel county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 408 Laws 2009

Section 408. TAOS STATE ROAD 64 RECONSTRUCT--CHANGE TO SAN MIGUEL COUNTY PUBLIC WORKS SOLID WASTE BALER--CHANGE AGENCY--EXTEND TIME--GENERAL FUND.--One hundred thousand dollars (\$100,000) of the unexpended balance of the appropriation to the department of transportation in Subsection 100 of Section 52 of Chapter 347 of Laws 2005 to plan, design and reconstruct state road 64 in Taos in Taos county shall not be expended for the original purpose but is appropriated to the department of environment to design, construct, purchase and install a solid waste baler at the county public works facility in San Miguel county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 409 Laws 2009

Section 409. NEW MEXICO HIGHLANDS UNIVERSITY MULTIUSE FACILITY PURCHASE--CHANGE TO SAN MIGUEL COUNTY SOLID WASTE BALER PURCHASE--CHANGE AGENCY--GENERAL FUND.--The unexpended balance of the appropriation to the board of regents at New Mexico highlands university in Subsection 4 of Section 78 of Chapter 42 of Laws 2007 for a multiuse facility for New Mexico highlands university in Las Vegas in San Miguel county shall not be expended for the original purpose but is appropriated to the department of environment to plan, design, construct, purchase and install a solid waste baler at the county public works facility in San Miguel county.

Chapter 128 Section 410 Laws 2009

Section 410. LAS VEGAS DOWNTOWN REVITALIZATION PROJECT--CHANGE TO POLICE STATION ROOF REPLACEMENT PROJECT--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division authorized in Subsection 1 of Section 10 of Chapter 429 of Laws 2003 and reauthorized in Laws 2004, Chapter 126, Section 88 and again in Laws 2007, Chapter 341, Section 266 for the downtown revitalization project in Las Vegas in San Miguel county, including land and property acquisition, shall not be expended for the original or reauthorized purposes but is changed to plan, design, construct, remodel and replace the roof on the police station in Las Vegas in San Miguel county.

Chapter 128 Section 411 Laws 2009

Section 411. LAS VEGAS RIFLE PISTOL RANGE--CHANGE TO EARLY CHILDHOOD CENTER AT LUNA COMMUNITY COLLEGE--CHANGE AGENCY--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 44 of Section 117 of Chapter 126 of Laws 2004 for the rifle pistol range in Las Vegas in San Miguel county shall not be expended for the original purpose but is appropriated to the higher education department to purchase, install, equip and renovate the playground at the early childhood center at Luna community college in Las Vegas in San Miguel county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 412 Laws 2009

Section 412. ACEQUIA DEL ALTO AL NORTE DIVERSION DAM IMPROVE--CHANGE TO SAN MIGUEL COUNTY COURTHOUSE JURY BOX--CHANGE AGENCY--GENERAL FUND.--The unexpended balance of the appropriation to the interstate stream commission in Subsection 18 of Section 67 of Chapter 42 of Laws 2007 for improvements to the acequia del Alto al Norte in Mora county shall not be expended for the original purpose but is appropriated to the local government division to design and construct a jury box at the San Miguel county courthouse in Las Vegas.

Chapter 128 Section 413 Laws 2009

Section 413. ACEQUIA DE LA SIERRA DE HOLMAN IMPROVEMENTS--CHANGE TO SAN MIGUEL COUNTY COURTHOUSE JURY BOX--CHANGE AGENCY--GENERAL FUND.--The unexpended balance of the appropriation to the interstate stream commission in Subsection 21 of Section 67 of Chapter 42 of Laws 2007 for improvements, including purchase and installation of ditch lining, to the acequia de la Sierra de Holman in Mora county shall not be expended for the original purpose but is appropriated to the local government division to design and construct a jury box at the San Miguel county courthouse in Las Vegas in San Miguel county.

Chapter 128 Section 414 Laws 2009

Section 414. PECOS BASEBALL FIELDS AND INFRASTRUCTURE--CHANGE TO BACKHOE AND EQUIPMENT--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 479 of Section 45 of Chapter 347 of Laws 2005 for baseball fields and related infrastructure in Pecos in San Miguel county shall not be expended for the original purpose but is changed to purchase a backhoe and equipment for Pecos.

Chapter 128 Section 415 Laws 2009

Section 415. PECOS ARROYOS IMPROVEMENTS--CHANGE TO PURCHASE A BACKHOE AND EQUIPMENT--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 255 of Section 45 of Chapter 347 of Laws 2005 for improvements to the arroyos in Pecos in San Miguel county shall not be expended for the original purpose but is changed to purchase a backhoe and equipment in Pecos.

Chapter 128 Section 416 Laws 2009

Section 416. PECOS SENIOR CENTER--CHANGE TO PECOS BACKHOE--CHANGE AGENCY--GENERAL FUND.--The unexpended balance of the appropriation to the aging and long-term services department in Subsection 38 of Section 33 of Chapter 92 of Laws 2008 to plan, design, construct, equip and furnish the Pecos senior center in San Miguel county shall not be expended for the original purpose but is appropriated to the local government division to purchase a backhoe for Pecos in San Miguel county.

Chapter 128 Section 417 Laws 2009

Section 417. PECOS WATER RIGHTS--EQUIPMENT AND VEHICLES--CHANGE AGENCY--GENERAL FUND.--The unexpended balance of the appropriation to the office of the state engineer in Subsection 4 of Section 20 of Chapter 2 of Laws 2007 for water rights in Pecos in San Miguel county shall not be expended for the original purpose but is appropriated to the local government division of the department of finance and administration to purchase equipment and vehicles in Pecos.

Chapter 128 Section 418 Laws 2009

Section 418. SAN JOSE MUTUAL DOMESTIC WATER CONSUMERS ASSOCIATION DITCH IMPROVEMENTS--CHANGE TO WEST PECOS ACEQUIA STRUCTURES IMPROVEMENTS--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the interstate stream commission in Subsection 21 of Section 35 of Chapter 347 of Laws 2005 for improvements to the San Jose ditch for the San Jose mutual domestic water consumers association in San

Miguel county shall not be expended for the original purpose but is changed to demolish, plan, design, construct and repair acequia structures for the west Pecos acequia association in San Miguel county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 419 Laws 2009

Section 419. ACEQUIA DE LA CONCEPCION IMPROVEMENTS--WEST PECOS ACEQUIA STRUCTURES IMPROVEMENTS--GENERAL FUND.--The unexpended balance of the appropriation to the interstate stream commission in Subsection 48 of Section 67 of Chapter 42 of Laws 2007 for improvements to the acequia de la Concepcion in San Miguel county shall not be expended for the original purpose but is changed to demolish, plan, design, construct and repair acequia structures for the west Pecos acequia association in San Miguel county.

Chapter 128 Section 420 Laws 2009

Section 420. SAN JOSE ROAD AND DRAINAGE IMPROVEMENTS--CHANGE TO SAN MIGUEL COUNTY DITCH AND ACEQUIA IMPROVEMENTS--CHANGE AGENCY--GENERAL FUND.--The unexpended balance of the appropriation to the department of transportation in Subsection 132 of Section 61 of Chapter 92 of Laws 2008 for road and drainage improvements in San Jose in San Miguel county shall not be expended for the original purpose but is appropriated to the interstate stream commission to plan, design and construct improvements, including gates and a diversion system, for the San Miguel community ditch and acequia in Ribera in San Miguel county.

Chapter 128 Section 421 Laws 2009

Section 421. ACEQUIA DE LAS COLONIAS IMPROVEMENTS--CHANGE TO VILLANUEVA SOUTHSIDE ACEQUIA IMPROVEMENTS--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the interstate stream commission in Subsection 9 of Section 43 of Chapter 111 of Laws 2006 for improvements to the acequia de las Colonias in Mora county shall not be expended for the original purpose but is changed to plan, design and construct improvements to the southside acequia in Villanueva in San Miguel county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 422 Laws 2009

Section 422. SAN GERONIMO COMMUNITY CENTER IMPROVEMENTS--CHANGE TO WEST LAS VEGAS PUBLIC SCHOOL DISTRICT BUSES, SHOP EQUIPMENT AND INFORMATION TECHNOLOGY--CHANGE AGENCY--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 254 of Section 45 of Chapter 347 of Laws 2005 for improvements to the community center in San Geronimo in San Miguel county shall not

be expended for the original purpose but is appropriated to the public education department to purchase and install buses, shop equipment and information technology, including related equipment, furniture and infrastructure, for the west Las Vegas public school district in San Miguel county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 423 Laws 2009

Section 423. WEST LAS VEGAS PUBLIC SCHOOL DISTRICT PORTABLE MODULAR BUILDING--CHANGE TO INFORMATION TECHNOLOGY--GENERAL FUND.--Twenty-five thousand dollars (\$25,000) of the unexpended balance of the appropriation to the public education department in Subsection 411 of Section 44 of Chapter 92 of Laws 2008 for a portable modular building for the west Las Vegas public school district in San Miguel county shall not be expended for the original purpose but is changed to purchase and install information technology, including related equipment, furniture and infrastructure, for that school district.

Chapter 128 Section 424 Laws 2009

Section 424. SANDOVAL COUNTY HUMANE EDUCATION AND TRAINING CENTER--REAUTHORIZED TO SAN MIGUEL COUNTY ROADS--CHANGE TO ORIGINAL PURPOSE--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 181 of Section 26 of Chapter 2 of Laws 2007 and reauthorized in Subsection D of Section 3 of Chapter 334 of Laws 2007 for improvements to roads in San Miguel county shall be expended for the original purpose to plan, design, construct and equip a humane education and training center for disabled students and at-risk teens in Sandoval county.

Chapter 128 Section 425 Laws 2009

Section 425. NATIVE AMERICAN BEHAVIORAL HEALTH SERVICES FACILITIES STATEWIDE--CHANGE TO PUEBLO OF COCHITI COMMUNITY AND HEALTH CLINIC--CHANGE AGENCY--SEVERANCE TAX BONDS.--One hundred twenty-five thousand dollars (\$125,000) of the unexpended balance of the appropriation to the local government division originally authorized in Subsection 26 of Section 23 of Chapter 42 of Laws 2007 and reauthorized in Laws 2008, Chapter 83, Section 405 for improvements at Native American behavioral health services facilities statewide shall not be expended for the original or reauthorized purpose but is appropriated to the Indian affairs department to plan, design, renovate and equip the community and health clinic at the Pueblo of Cochiti in Sandoval county.

Chapter 128 Section 426 Laws 2009

Section 426. CORRALES RECORD CENTER--CHANGE TO CORRALES FARMLAND PRESERVATION EASEMENTS--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 407 of

Section 59 of Chapter 92 of Laws 2008 for a record center in Corrales in Sandoval county shall not be expended for the original purpose but is changed to purchase farmland preservation easements in Corrales.

Chapter 128 Section 427 Laws 2009

Section 427. CORRALES NEW MEXICO HIGHWAY 528 AND NORTHERN BOULEVARD INTERSECTION AND TRAFFIC SIGNAL--EXPAND PURPOSE--EXTEND TIME--GENERAL FUND.--Two hundred twenty-five thousand dollars (\$225,000) of the appropriation to the department of transportation in Subsection 90 of Section 52 of Chapter 347 of Laws 2005 for a lighted intersection and traffic signal at New Mexico highway 528 and Northern boulevard in Corrales and Rio Rancho in Sandoval county may include planning, designing, property and right-of-way acquisition, traffic signal work, subgrade preparation, paving and striping of the roadway. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 428 Laws 2009

Section 428. CORRALES NEW MEXICO HIGHWAY 528 AND NORTHERN BOULEVARD TRAFFIC SIGNAL--EXPAND PURPOSE--GENERAL FUND.--The department of transportation project in Subsection 194 of Section 75 of Chapter 42 of Laws 2007 for a traffic signal at the intersection of New Mexico highway 528 and Northern boulevard in Corrales in Sandoval county may include planning, designing, property and right-of-way acquisition, traffic signal work, subgrade preparation, paving and striping of the roadway.

Chapter 128 Section 429 Laws 2009

Section 429. CORRALES NEW MEXICO HIGHWAY 528 AND NORTHERN BOULEVARD INTERSECTION ACCESS AND IMPROVEMENTS--EXPAND PURPOSE--EXTEND TIME--CAPITAL PROJECTS FUND.--The department of transportation project in Subsection 40 of Section 138 of Chapter 126 of Laws 2004 for access from the intersection of New Mexico highway 528 and Northern boulevard to the Corrales boundary and creating a four-way signalized intersection, including property acquisition, traffic signal work, subgrade preparation, paving, striping of roadway and engineering, in Corrales in Sandoval county may include a lighted four-way signalized intersection. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 430 Laws 2009

Section 430. CORRALES RECORDS CENTER CONSTRUCTION--EXPAND PURPOSE--EXTEND TIME--SEVERANCE TAX BONDS.--The local government division project in Subsection 261 of Section 18 of Chapter 111 of Laws 2006 to plan, design, construct and equip a records center for Corrales in Sandoval county may include remodeling. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 431 Laws 2009

Section 431. LOMA LARGA ROAD CONSTRUCTION--CHANGE TO CORRALES ROAD IMPROVEMENTS AND LAND PURCHASE--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the department of transportation in Subsection 24 of Section 24 of Chapter 92 of Laws 2008 to plan, design and construct Loma Larga road in Corrales in Sandoval county shall not be expended for the original purpose but is changed to plan, design and construct road and drainage improvements and to purchase land for roads in Corrales in Sandoval county.

Chapter 128 Section 432 Laws 2009

Section 432. PLACITAS LIBRARY--EXTEND TIME--GENERAL FUND.--The time of expenditure for the local government division project in Subsection 605 of Section 68 of Chapter 42 of Laws 2007 to furnish and equip the county-owned community library and multiuse center in Placitas in Sandoval county is extended through fiscal year 2011.

Chapter 128 Section 433 Laws 2009

Section 433. RIO RANCHO BOYS' AND GIRLS' CLUB--EXTEND TIME--GENERAL FUND.--The time of expenditure for the local government division project in Subsection 269 of Section 45 of Chapter 347 of Laws 2005 for the expansion of the boys' and girls' club in Rio Rancho in Sandoval county is extended through fiscal year 2011.

Chapter 128 Section 434 Laws 2009

Section 434. RIO RANCHO NEW MEXICO MUSEUM OF MILITARY HISTORY--EXPAND PURPOSE--GENERAL FUND.--The local government division project in Subsection 412 of Section 59 of Chapter 92 of Laws 2008 to plan, design and construct a restoration and storage facility expansion for the New Mexico museum of military history in Rio Rancho in Sandoval county may also include purchasing, constructing and equipping displays and exhibits on military history for that museum.

Chapter 128 Section 435 Laws 2009

Section 435. RIO RANCHO HIGH SCHOOL POLE VAULT MATS--CHANGE TO RIO RANCHO PUBLIC SCHOOL DISTRICT EQUIPMENT--GENERAL FUND.--The unexpended balance of the appropriation to the public education department in Subsection 143 of Section 16 of Chapter 2 of Laws 2007 to purchase pole vault mats for Rio Rancho high school in the Rio Rancho public school district in Sandoval county shall not be expended for the original purpose but is changed to purchase equipment, including a soccer goal, weight equipment, parts and signs for basketball scoreboards and golf equipment, for the Rio Rancho public school district in Sandoval county.

Chapter 128 Section 436 Laws 2009

Section 436. RIO RANCHO HIGH SCHOOL POLE VAULT MATS--CHANGE TO RIO RANCHO PUBLIC SCHOOL DISTRICT EQUIPMENT--GENERAL FUND.--The unexpended balance of the appropriation to the public education department in Subsection 421 of Section 55 of Chapter 42 of Laws 2007 to purchase pole vault mats for Rio Rancho high school in the Rio Rancho public school district in Sandoval county shall not be expended for the original purpose but is changed to purchase equipment, including a soccer goal, weight equipment, parts and signs for basketball scoreboards and golf equipment, for the Rio Rancho public school district in Sandoval county.

Chapter 128 Section 437 Laws 2009

Section 437. RIO RANCHO NEW MEXICO MILITARY HISTORY MUSEUM--CHANGE TO SUE CLEVELAND HIGH SCHOOL CAPITAL EXPENDITURES--CHANGE AGENCY--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 263 of Section 18 of Chapter 111 of Laws 2006 for a New Mexico military history museum in Rio Rancho in Sandoval county shall not be expended for the original purpose but is appropriated to the public education department for furniture, fixtures, equipment and other capital expenditures related to the opening of Sue Cleveland high school in the Rio Rancho public school district in Sandoval county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 438 Laws 2009

Section 438. RIO RANCHO NEW MEXICO MILITARY HISTORY MUSEUM--CHANGE TO SUE CLEVELAND HIGH SCHOOL CAPITAL EXPENDITURES--CHANGE AGENCY--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 188 of Section 26 of Chapter 2 of Laws 2007 for a New Mexico military history museum in Rio Rancho in Sandoval county shall not be expended for the original purpose but is appropriated to the public education department for furniture, fixtures, equipment and other capital expenditures related to the opening of Sue Cleveland high school in the Rio Rancho public school district in Sandoval county.

Chapter 128 Section 439 Laws 2009

Section 439. RIO RANCHO LEARNING CENTER FOR HIGHER EDUCATION INSTITUTIONS--CHANGE TO SUE CLEVELAND HIGH SCHOOL CAPITAL EXPENDITURES--CHANGE AGENCY--EXTEND TIME--CAPITAL PROJECTS FUND.-
-The unexpended balance of the appropriation to the local government division in Subsection 328 of Section 34 of Chapter 126 of Laws 2004 for a learning center for collaboration between higher education institutions in Rio Rancho in Sandoval county shall not be expended for the original purpose but is appropriated to the public education department for furniture, fixtures, equipment and other capital expenditures

related to the opening of Sue Cleveland high school in the Rio Rancho public school district in Sandoval county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 440 Laws 2009

Section 440. RIO RANCHO ROAD AND SIDEWALK IMPROVEMENTS--CHANGE TO SUE CLEVELAND HIGH SCHOOL CAPITAL EXPENDITURES--CHANGE AGENCY--GENERAL FUND.--The unexpended balance of the appropriation to the department of transportation in Subsection 198 of Section 75 of Chapter 42 of Laws 2007 for curbing and sidewalk improvements in Rio Rancho in Sandoval county shall not be expended for the original purpose but is appropriated to the public education department for furniture, fixtures, equipment and other capital expenditures related to the opening of Sue Cleveland high school in the Rio Rancho public school district in Sandoval county.

Chapter 128 Section 441 Laws 2009

Section 441. NATIVE AMERICAN BEHAVIORAL HEALTH SERVICES FACILITIES STATEWIDE--CHANGE TO PUEBLO OF SANTO DOMINGO HEALTH CENTER--CHANGE AGENCY--SEVERANCE TAX BONDS.--One hundred thousand dollars (\$100,000) of the unexpended balance of the appropriation to the local government division originally authorized in Subsection 26 of Section 23 of Chapter 42 of Laws 2007 and reauthorized in Laws 2008, Chapter 83, Section 405 for improvements at Native American behavioral health services facilities statewide shall not be expended for the original or reauthorized purpose but is appropriated to the Indian affairs department to plan, design, construct, renovate and equip the elderly, wellness and nutritional health program center at the Pueblo of Santo Domingo in Sandoval county.

Chapter 128 Section 442 Laws 2009

Section 442. PUEBLO OF ZIA CHILDHOOD DEVELOPMENT CENTER--EXPAND PURPOSE--EXTEND TIME--GENERAL FUND.--The Indian affairs department project in Subsection 113 of Section 50 of Chapter 111 of Laws 2006 for a childhood development center for the early childhood education programs for the Pueblo of Zia and five Sandoval Indian pueblos head start programs in Sandoval county may include renovation. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 443 Laws 2009

Section 443. CANONCITO AND ELDORADO WATER SYSTEM AND WATER RIGHTS--CHANGE TO CANONCITO AT APACHE CANYON MUTUAL DOMESTIC WATER CONSUMERS ASSOCIATION WATER SYSTEM--GENERAL FUND.--The unexpended balance of the appropriation to the department of environment in Subsection 164 of Section 59 of Chapter 42 of Laws 2007 for a water system in the

Canoncito and Eldorado areas, including the purchase of water rights, in Santa Fe county shall not be expended for the original purpose but is changed to plan, design, construct and equip improvements to the water system for the Canoncito at Apache Canyon mutual domestic water consumers association in Santa Fe county.

Chapter 128 Section 444 Laws 2009

Section 444. SANTA FE COUNTY HOMELESS SHELTER--EXPAND PURPOSE TO INCLUDE PURCHASING--GENERAL FUND.--The local government division project in Subsection 625 of Section 68 of Chapter 42 of Laws 2007 to plan, design and construct a homeless shelter facility for use by Santa Fe and northern New Mexico in Santa Fe county may also include purchasing a facility.

Chapter 128 Section 445 Laws 2009

Section 445. SANTA FE COUNTY FAIRGROUNDS COVERED ARENA--CHANGE TO FAIRGROUNDS IMPROVEMENTS--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 622 of Section 68 of Chapter 42 of Laws 2007 for a covered arena at the fairgrounds in Santa Fe county shall not be expended for the original purpose but is changed to acquire land for, plan, design, construct, purchase, equip, furnish, install and make site and infrastructure improvements to the fairgrounds in Santa Fe county.

Chapter 128 Section 446 Laws 2009

Section 446. SANTA FE COUNTY JUVENILE AND ADULT DETENTION FACILITIES IMPROVE--EXPAND PURPOSE--GENERAL FUND.--The local government division project in Subsection 422 of Section 59 of Chapter 92 of Laws 2008 to plan, design, construct and improve the juvenile and adult detention facilities in Santa Fe county may include purchasing, equipping, furnishing, installing and making site and infrastructure improvements at those facilities.

Chapter 128 Section 447 Laws 2009

Section 447. SANTA FE COUNTY ROAD 67J MATERIALS FOR PAVING--CHANGE TO SANTA FE COUNTY LA BARBARIA ROAD IMPROVEMENTS--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the department of transportation in Subsection 31 of Section 119 of Chapter 126 of Laws 2004 for Santa Fe county road 67J paving materials shall not be expended for the original purpose but is changed to purchase materials and construct improvements to La Barbaria road in Santa Fe county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 448 Laws 2009

Section 448. SANTA FE COUNTY MULTIPURPOSE CENTER SERVING DEVELOPMENTALLY DISABLED--EXTEND TIME--GENERAL FUND.--The time of expenditure for the local government division project in Subsection 620 of Section 68 of Chapter 42 of Laws 2007 to equip and furnish a multipurpose center for use by an organization serving the developmentally disabled in Santa Fe county is extended through fiscal year 2011.

Chapter 128 Section 449 Laws 2009

Section 449. SANTA FE COUNTY SENIOR CENTER PROJECT--CHANGE TO SANTA FE COUNTY PUBLIC HOUSING PROJECT--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 165 of Section 16 of Chapter 347 of Laws 2005 for a senior housing project in Santa Fe county shall not be expended for the original purpose but is changed to acquire land for, plan, design, construct, equip, furnish, purchase, install and make infrastructure improvements to a public housing project in Santa Fe county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 450 Laws 2009

Section 450. SANTA FE COUNTY SENIOR HOUSING PROJECT--CHANGE TO SANTA FE COUNTY PUBLIC HOUSING PROJECT--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 284 of Section 45 of Chapter 347 of Laws 2005 for a senior housing project in Santa Fe county shall not be expended for the original purpose but is changed to acquire land for, plan, design, construct, equip, furnish, purchase, install and make infrastructure improvements to a public housing project in Santa Fe county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 451 Laws 2009

Section 451. SANTA FE COUNTY SENIOR HOUSING PROJECT--CHANGE TO PUBLIC HOUSING PROJECT--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 482 of Section 45 of Chapter 347 of Laws 2005 to acquire land for, plan, design, construct, equip and furnish a senior housing project in Santa Fe county shall not be expended for the original purpose but is changed to acquire land for, plan, design, construct, equip, furnish, purchase, install and make infrastructure improvements to a public housing project in Santa Fe county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 452 Laws 2009

Section 452. SANTA FE COUNTY PUBLIC HOUSING SITES--EXPAND PURPOSE--GENERAL FUND.--The local government division project in Subsection 426 of Section 59 of Chapter 92 of Laws 2008 to plan, design, construct and equip

improvements to public housing sites in Santa Fe county may also include installing, furnishing, purchasing and making infrastructure improvements to public housing sites in Santa Fe county.

Chapter 128 Section 453 Laws 2009

Section 453. VISTA GRANDE PUBLIC LIBRARY EXPANSION--CHANGE TO INFRASTRUCTURE IMPROVEMENTS--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 429 of Section 59 of Chapter 92 of Laws 2008 to construct, equip and furnish an expansion of the Vista Grande public library in Santa Fe county shall not be expended for the original purpose but is changed to plan, design, construct, equip, furnish, purchase, install and make infrastructure improvements to the Vista Grande public library in Santa Fe county.

Chapter 128 Section 454 Laws 2009

Section 454. WEST CAPITOL COMPLEX PROPERTY ACQUISITION--EXTEND TIME--PUBLIC BUILDINGS REPAIR FUND.--The time of expenditure for the general services department project authorized in Paragraph (2) of Subsection A of Section 6 of Chapter 64 of Laws 2007 for the acquisition of property within the west capitol complex owned by the United States general services administration and the United States forest service is extended through fiscal year 2011.

Chapter 128 Section 455 Laws 2009

Section 455. WEST CAPITOL COMPLEX PROPERTY ACQUISITION--EXTEND TIME--PROPERTY CONTROL RESERVE FUND.--The time of expenditure for the general services department project authorized in Paragraph (1) of Subsection A of Section 6 of Chapter 64 of Laws 2007 for the acquisition of property within the west capitol complex owned by the United States general services administration and the United States forest service is extended through fiscal year 2011.

Chapter 128 Section 456 Laws 2009

Section 456. EDGEWOOD REGIONAL ANIMAL SHELTER--CHANGE TO EDGEWOOD ANIMAL SHELTER--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 433 of Section 59 of Chapter 92 of Laws 2008 for a regional animal shelter in Edgewood in Santa Fe county shall not be expended for the original purpose but is changed to plan, design and construct an animal shelter in Edgewood in Santa Fe county.

Chapter 128 Section 457 Laws 2009

Section 457. LA CIENEGA COMMUNITY CENTER AND PARK MODULAR BUILDING--CHANGE TO CONSTRUCTION--SEVERANCE TAX BONDS.--The

unexpended balance of the appropriation to the local government division originally authorized in Subsection 333 of Section 22 of Chapter 429 of Laws 2003 for a community park in La Cienega in Santa Fe county and reauthorized in Laws 2007, Chapter 341, Section 279 to include site improvements and a modular building shall not be expended for the original or reauthorized purpose but is changed to acquire land for and plan, design, construct, purchase, equip, furnish, install and make site and infrastructure improvements for La Cienega community center and park in Santa Fe county.

Chapter 128 Section 458 Laws 2009

Section 458. SAN MIGUEL COUNTY ROAD IMPROVEMENTS--CHANGE TO LA CIENEGA COMMUNITY CENTER AND PARK--GENERAL FUND.--The unexpended balance of the appropriation to the local government division originally authorized in Subsection 198 of Section 26 of Chapter 2 of Laws 2007 and reauthorized to the department of transportation in Subsection E of Section 3 of Chapter 334 of Laws 2007 for improvements to roads in San Miguel county shall not be expended for the original or reauthorized purpose but is appropriated to the local government division to acquire land for and plan, design, construct, purchase, equip, furnish, install and make site and infrastructure improvements for La Cienega community center and park, including installation of a modular building and construction of a facility, in Santa Fe county.

Chapter 128 Section 459 Laws 2009

Section 459. LA CIENEGA COMMUNITY PARK AND COMMUNITY CENTER--EXPAND PURPOSE--SEVERANCE TAX BONDS.--The local government division project originally authorized in Subsection 273 of Section 18 of Chapter 111 of Laws 2006 to construct, equip and acquire land for La Cienega community park in Santa Fe county and reauthorized in Laws 2007, Chapter 341, Section 278 to include site improvements and planning, design, purchase, installation, equipping and furnishing of a modular building for La Cienega community center in Santa Fe county may include infrastructure improvements and planning, design and construction of a building for that community center.

Chapter 128 Section 460 Laws 2009

Section 460. LA CIENEGA COMMUNITY CENTER LAND AND MODULAR BUILDING--CHANGE TO COMMUNITY CENTER AND PARK IMPROVEMENTS--GENERAL FUND.--The unexpended balance of the appropriation to the local government division originally authorized in Subsection 283 of Section 45 of Chapter 347 of Laws 2005 for a community park in La Cienega in Santa Fe county and reauthorized in Laws 2006, Chapter 107, Section 151 and again in Laws 2007, Chapter 341, Section 280 to include site improvements and a modular building shall not be expended for the original or reauthorized purposes but is changed to acquire land for and plan, design, construct, purchase, equip, furnish, install and make site and

infrastructure improvements to La Cienega community center and park in Santa Fe county.

Chapter 128 Section 461 Laws 2009

Section 461. LA CIENEGA COMMUNITY CENTER LAND PURCHASE--EXPAND PURPOSE--GENERAL FUND.--The local government division project in Subsection 637 of Section 68 of Chapter 42 of Laws 2007 to purchase land for a community center in La Cienega in Santa Fe county may include planning, designing, constructing, equipping and furnishing a building for La Cienega community center, including site improvements, infrastructure improvements and purchase and installation of a modular building, and improvements to La Cienega community park in Santa Fe county.

Chapter 128 Section 462 Laws 2009

Section 462. LA PUEBLA PLAYGROUND AND PICNIC AREAS EQUIPMENT--EXTEND TIME--GENERAL FUND.--The time of expenditure for the local government division project in Subsection 199 of Section 26 of Chapter 2 of Laws 2007 to purchase, plan, design, construct and install equipment for playground and picnic areas in La Puebla in Santa Fe county is extended through fiscal year 2011.

Chapter 128 Section 463 Laws 2009

Section 463. MADRID OSCAR HUBER MEMORIAL BALLPARK IMPROVEMENTS--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the local government division project in Subsection 115 of Section 13 of Chapter 126 of Laws 2004 to plan, design and construct improvements, including restoring the grandstand and retaining walls, to the Oscar Huber memorial ballpark in Madrid in Santa Fe county is extended through fiscal year 2011.

Chapter 128 Section 464 Laws 2009

Section 464. BARELA COMPOUND COMMUNITY CENTER IMPROVEMENTS--CHANGE TO NAMBE PUBLIC PARK AND COMMUNITY CENTER IMPROVEMENTS--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 625 of Section 52 of Chapter 111 of Laws 2006 to improve the Barela compound community center in Chimayo in Santa Fe county shall not be expended for the original purpose but is changed to acquire land for, plan, design, construct, purchase, equip, furnish and make site and infrastructure improvements to the tennis and basketball courts and a walking track for Nambe public park and community center in Nambe in Santa Fe county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 465 Laws 2009

Section 465. NAMBE HEAD START TENNIS AND BASKETBALL COURTS AND WALKING TRACK--CHANGE TO NAMBE PUBLIC PARK AND COMMUNITY CENTER COURTS AND TRACK--EXTEND TIME--SEVERANCE TAX BONDS AND CAPITAL PROJECTS FUND.--The unexpended balance of the appropriations to the public education department originally authorized in Subsection 220 of Section 23 and Subsections 12 and 28 of Section 38 of Chapter 429 of Laws 2003 and reauthorized in Laws 2005, Chapter 347, Section 159 for land purchase and improvements to tennis and basketball courts and a walking track for the Nambe head start program in the Pojoaque Valley public school district in Santa Fe county and further reauthorized to the local government division in Laws 2006, Chapter 107, Section 147 and even further reauthorized in Laws 2008, Chapter 83, Section 378 shall not be expended for the original or reauthorized purposes but is changed to acquire land for and plan, design, construct, purchase, equip, furnish, install and make site and infrastructure improvements to the tennis and basketball courts and a walking track for a Nambe public park and community center in Nambe in Santa Fe county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 466 Laws 2009

Section 466. NATIVE AMERICAN BEHAVIORAL HEALTH SERVICES FACILITIES STATEWIDE--CHANGE TO PUEBLO OF POJOAQUE WELLNESS CENTER--CHANGE AGENCY--SEVERANCE TAX BONDS.--One hundred fifty thousand dollars (\$150,000) of the unexpended balance of the appropriation to the local government division originally authorized in Subsection 26 of Section 23 of Chapter 42 of Laws 2007 and reauthorized in Laws 2008, Chapter 83, Section 405 for improvements at Native American behavioral health services facilities statewide shall not be expended for the original or reauthorized purpose but is appropriated to the Indian affairs department to plan, design, construct and equip the wellness center at the Pueblo of Pojoaque in Santa Fe county.

Chapter 128 Section 467 Laws 2009

Section 467. ROSWELL ALIEN APEX RESORT THEME PARK PLAN--CHANGE TO PUEBLO OF POJOAQUE WELLNESS CENTER--CHANGE AGENCY-- GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 229 of Section 68 of Chapter 42 of Laws 2007 to plan and design the Alien Apex resort theme park in Roswell in Chaves county shall not be expended for the original purpose but is appropriated to the Indian affairs department to make landscaping improvements and to plan, design, construct, equip, install, renovate and expand the Pojoaque wellness center in the Pueblo of Pojoaque in Santa Fe county.

Chapter 128 Section 468 Laws 2009

Section 468. POJOAQUE VALLEY SENIOR AND COMMUNITY CENTER--CHANGE TO POJOAQUE VALLEY PUBLIC SCHOOL DISTRICT GYMNASIUM AND CONDITIONING ROOM--CHANGE AGENCY--EXTEND TIME--GENERAL FUND.--The

unexpended balance of the appropriation to the aging and long-term services department in Subsection 37 of Section 26 of Chapter 111 of Laws 2006 for a senior and community center in the Pojoaque valley area in Santa Fe county shall not be expended for the original purpose but is appropriated to the public education department to repair and construct improvements to the gymnasium, including a conditioning room, at the Jacona campus of the Pojoaque Valley public school district in Santa Fe county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 469 Laws 2009

Section 469. PUEBLO OF SAN ILDEFONSO AFFORDABLE HOUSING INFRASTRUCTURE--CHANGE TO PUEBLO OF SAN ILDEFONSO INFRASTRUCTURE--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the Indian affairs department in Subsection 27 of Section 19 of Chapter 92 of Laws 2008 to plan, design and construct infrastructure for affordable housing, pursuant to the provisions of the Affordable Housing Act, at 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 infrastructure at the Pueblo of San Ildefonso in Santa Fe county.

Chapter 128 Section 470 Laws 2009

Section 470. NATIVE AMERICAN BEHAVIORAL HEALTH SERVICES FACILITIES STATEWIDE--CHANGE TO PUEBLO OF SAN ILDEFONSO WELLNESS CENTER--CHANGE AGENCY--SEVERANCE TAX BONDS.--One hundred thousand dollars (\$100,000) of the unexpended balance of the appropriation to the local government division originally authorized in Subsection 26 of Section 23 of Chapter 42 of Laws 2007 and reauthorized in Laws 2008, Chapter 83, Section 405 for improvements at Native American behavioral health services facilities statewide shall not be expended for the original or reauthorized purpose but is appropriated to the Indian affairs department to plan, design, construct and equip a wellness center at the Pueblo of San Ildefonso in Santa Fe county.

Chapter 128 Section 471 Laws 2009

Section 471. RIBERA BRIDGE CONSTRUCTION--CHANGE TO ACADEMY FOR TECHNOLOGY AND THE CLASSICS CHARTER SCHOOL EQUIPMENT PURCHASE--CHANGE AGENCY--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the department of transportation in Subsection 106 of Section 20 of Chapter 347 of Laws 2005 to plan, design and construct a bridge in Ribera in San Miguel county shall not be expended for the original purpose but is appropriated to the public education department to purchase equipment for the academy for technology and the classics charter school in the Santa Fe public school district in Santa Fe county.

Chapter 128 Section 472 Laws 2009

Section 472. ST. VINCENT REGIONAL MEDICAL CENTER EKG NETWORK EXTENSION EQUIPMENT--CHANGE TO CHRISTUS ST. VINCENT REGIONAL MEDICAL CENTER MEDICAL AND HEALTH RECORDS SYSTEM INFORMATION TECHNOLOGY--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 674 of Section 68 of Chapter 42 of Laws 2007 for equipment and furnishings for the EKG network extension at St. Vincent medical center in Santa Fe in Santa Fe county shall not be expended for the original purpose but is changed to purchase and install information technology, including related equipment, furniture and infrastructure, for the medical and health records system at Christus St. Vincent regional medical center in Santa Fe. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 473 Laws 2009

Section 473. CHRISTUS ST. VINCENT REGIONAL MEDICAL CENTER DIGITAL MAMMOGRAPHY AND DIAGNOSTIC EQUIPMENT--CHANGE TO INFORMATION TECHNOLOGY--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 675 of Section 68 of Chapter 42 of Laws 2007 for digital mammography and diagnostic equipment at St. Vincent medical center in Santa Fe in Santa Fe county shall not be expended for the original purpose but is changed to purchase and install information technology, including related equipment, furniture and infrastructure, for the medical and health records system at Christus St. Vincent regional medical center in Santa Fe.

Chapter 128 Section 474 Laws 2009

Section 474. LAS VEGAS CITY PUBLIC SCHOOL DISTRICT FENCING AND SCOREBOARD--CHANGE TO VEHICLE FOR SCHOOL TRANSPORTATION BUREAU--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the public education department originally authorized in Subsection 171 of Section 23 of Chapter 110 of Laws 2002 for fencing and a scoreboard for the west Las Vegas public school district and reauthorized in Laws 2004, Chapter 126, Section 101 to the Las Vegas city public school district for that purpose shall not be expended for the original or reauthorized purpose but is changed to purchase a vehicle for the school transportation bureau of the public education department in Santa Fe in Santa Fe county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 475 Laws 2009

Section 475. LAS VEGAS CITY PUBLIC SCHOOL DISTRICT EDUCATIONAL TECHNOLOGY--CHANGE TO VEHICLE PURCHASE--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the public education department in Subsection 126 of Section 16 of Chapter 2 of Laws 2007 for educational technology for the Las Vegas city public school district in San Miguel county shall not be expended for the original purpose but is changed to purchase and equip vehicles for the

school transportation bureau of the public education department in Santa Fe in Santa Fe county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 476 Laws 2009

Section 476. PUBLIC EMPLOYEES RETIREMENT ASSOCIATION OFFICE BUILDING--EXPAND PURPOSE--INCOME FUND.--The public employees retirement association project in Laws 2008, Chapter 92, Section 74 to complete construction of the public employees retirement association office building in Santa Fe in Santa Fe county may also include equipping and furnishing the new building and relocating the existing public employees retirement association office building in Santa Fe.

Chapter 128 Section 477 Laws 2009

Section 477. PUEBLO OF NAMBE DAY SCHOOL IMPROVEMENTS--CHANGE TO SANTA FE FOUR HUNDREDTH ANNIVERSARY EQUIPMENT--CHANGE AGENCY--GENERAL FUND.--The unexpended balance of the appropriation to the Indian affairs department in Subsection 83 of Section 55 of Chapter 92 of Laws 2008 for improvements to the day school at the Pueblo of Nambe in Santa Fe county shall not be expended for the original purpose but is appropriated to the local government division to purchase equipment for the four hundredth anniversary of Santa Fe in Santa Fe county.

Chapter 128 Section 478 Laws 2009

Section 478. MORA VETERANS OF FOREIGN WARS ADDITION--CHANGE TO SANTA FE FOUR HUNDREDTH ANNIVERSARY EQUIPMENT--CHANGE AGENCY--GENERAL FUND.--Seventy-five thousand dollars (\$75,000) of the unexpended balance of the appropriation to the veterans' services department in Subsection 2 of Section 85 of Chapter 42 of Laws 2007 for an addition to the veterans of foreign wars building in Mora in Mora county shall not be expended for the original purpose but is appropriated to the local government division to purchase equipment for the four hundredth anniversary of Santa Fe in Santa Fe county.

Chapter 128 Section 479 Laws 2009

Section 479. GALLUP VISITOR INFORMATION CENTER--CHANGE TO SANTA FE CIVIC HOUSING AUTHORITY MULTIPURPOSE COMMUNITY CENTER--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 424 of Section 52 of Chapter 111 of Laws 2006 to furnish the visitor information center in Gallup in McKinley county shall not be expended for the original purpose but is changed to plan, design and construct a multipurpose community center for the Santa Fe civic housing authority pursuant to the provisions of the Affordable Housing Act in Santa Fe in Santa Fe county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 480 Laws 2009

Section 480. SANTA FE MOUNTAIN CENTER CONSTRUCTION--CHANGE TO SANTA FE CIVIC HOUSING AUTHORITY MULTIPURPOSE COMMUNITY CENTER CONSTRUCTION--EXTEND TIME--GENERAL FUND.--Two hundred thirty-five thousand dollars (\$235,000) of the unexpended balance of the appropriation to the local government division in Subsection 604 of Section 52 of Chapter 111 of Laws 2006 to acquire land for, plan, design and construct a county-owned building that will house the Santa Fe mountain center in Santa Fe county shall not be expended for the original purpose but is changed to plan, design and construct a multipurpose community center for the Santa Fe civic housing authority pursuant to the provisions of the Affordable Housing Act in Santa Fe in Santa Fe county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 481 Laws 2009

Section 481. DESERT SAGE AFFORDABLE HOUSING PROJECT--CHANGE TO SANTA FE DESERT SAGE AFFORDABLE HOUSING PROJECT--CHANGE AGENCY--GENERAL FUND.--Two hundred thousand dollars (\$200,000) of the appropriation to the department of finance and administration in Subsection 4 of Section 50 of Chapter 92 of Laws 2008 for the Desert Sage housing project in Santa Fe in Santa Fe county shall not be expended for the original purpose but is appropriated to the local government division to plan, design and construct housing and infrastructure using green building technologies for the Desert Sage project in Santa Fe in Santa Fe county pursuant to the Affordable Housing Act.

Chapter 128 Section 482 Laws 2009

Section 482. MANUEL LUJAN BUILDING SECURITY SYSTEM--CHANGE TO MOTOR VEHICLE DIVISION FIELD OFFICE AND INTERIOR UPGRADES--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the capital program fund in Subsection 12 of Section 5 of Chapter 92 of Laws 2008 to upgrade the security system, including the parking lot and interior, at the Manuel Lujan building in Santa Fe in Santa Fe county shall not be expended for the original purpose but is changed to be expended for the following purposes:

A. to complete construction of and to furnish and equip the motor vehicle division field office in Santa Fe; and

B. any balance not expended in Subsection A of this section may be expended to plan, design, purchase and install a heating, ventilation and air conditioning system and make interior upgrades at the Manuel Lujan building in Santa Fe in Santa Fe county.

Chapter 128 Section 483 Laws 2009

Section 483. SANTA FE POLICE SUBSTATION--CHANGE TO SANTA FE POLICE MAIN FACILITY IMPROVEMENTS--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 82 of Section 21 of Chapter 92 of Laws 2008 to construct a police substation in Santa Fe in Santa Fe county shall not be expended for the original purpose but is changed to plan, design and construct improvements to the main Santa Fe police facility in Santa Fe county.

Chapter 128 Section 484 Laws 2009

Section 484. SANTA FE PASEO DE LA CONQUISTADORA PARK--CHANGE TO RAILYARD PARK IMPROVEMENTS--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 290 of Section 45 of Chapter 347 of Laws 2005 for a multipurpose park on paseo de la Conquistadora in Santa Fe in Santa Fe county shall not be expended for the original purpose but is changed to plan, design and construct vendor space, surfacing and other improvements at the Railyard park in Santa Fe. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 485 Laws 2009

Section 485. SANTA FE INDOOR ARTS MARKET FACILITY--CHANGE TO IMPROVEMENTS AT SANTA FE RAILYARD PARK--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 661 of Section 68 of Chapter 42 of Laws 2007 for an indoor arts market facility in Santa Fe in Santa Fe county shall not be expended for the original purpose but is changed to plan, design and construct vendor space, surfacing and other improvements to the Santa Fe railyard park in that city.

Chapter 128 Section 486 Laws 2009

Section 486. LAS CRUCES REVITALIZATION MASTER PLAN--CHANGE TO SANTA FE COUNTY TRANSITIONAL LIVING FACILITY AND OFFICES--CHANGE AGENCY--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the economic development department in Subsection 1 of Section 7 of Chapter 126 of Laws 2004 to develop a revitalization master plan for Las Cruces in Dona Ana county shall not be expended for the original purpose but is appropriated to the local government division for disbursement to the New Mexico mortgage finance authority to plan, design, construct, renovate, equip and furnish a transitional living facility and offices for homeless teens pursuant to the Affordable Housing Act in Santa Fe in Santa Fe county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 487 Laws 2009

Section 487. RAINSVILLE COMMUNITY CENTER IMPROVEMENTS--CHANGE TO ACADEMY FOR TECHNOLOGY AND THE CLASSICS CHARTER SCHOOL

EQUIPMENT PURCHASE--CHANGE AGENCY--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 252 of Section 16 of Chapter 347 of Laws 2005 for improvements to comply with the Americans with Disabilities Act of 1990 at the Rainsville community center in Mora county shall not be expended for the original purpose but is appropriated to the public education department to purchase equipment for the academy for technology and the classics charter school in the Santa Fe public school district in Santa Fe county.

Chapter 128 Section 488 Laws 2009

Section 488. JUNIOR WRESTLING PROGRAM EQUIPMENT AT SANTA FE HIGH SCHOOL--CHANGE TO STORAGE FACILITY--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the public education department in Subsection 369 of Section 39 of Chapter 111 of Laws 2006 for equipment for the junior wrestling program at Santa Fe high 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 and construct a storage facility for that program at that school. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 489 Laws 2009

Section 489. STANLEY FIRE DEPARTMENT WATER SYSTEM--EXTEND TIME--GENERAL FUND.--The time of expenditure for the department of environment project in Subsection 179 of Section 59 of Chapter 42 of Laws 2007 to plan, design, construct and equip a water system, including a storage tank, for the Stanley fire department in Santa Fe county is extended through fiscal year 2011.

Chapter 128 Section 490 Laws 2009

Section 490. EASEMENT PROPERTY FOR SOCORRO COUNTY ROAD B-127--CHANGE TO ROAD DEPARTMENT VEHICLES--CHANGE AGENCY--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the department of transportation in Subsection 53 of Section 15 of Chapter 126 of Laws 2004 for acquiring easement property for county road B-127 in Socorro county shall not be expended for the original purpose but is appropriated to the local government division to purchase vehicles and equipment for the road department in Socorro county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 491 Laws 2009

Section 491. SAN ACACIA MUTUAL DOMESTIC WATER CONSUMERS ASSOCIATION WATER WELL--CHANGE TO WATER SYSTEM IMPROVEMENTS--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the department of environment in Subsection 175 of Section 45 of Chapter 111 of Laws 2006 for a water well for the San Acacia mutual domestic water consumers association in San Acacia in Socorro county shall not be expended for the original purpose but is

changed to plan, design and construct water system improvements for that water association. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 492 Laws 2009

Section 492. AFFORDABLE HOUSING ACT PROJECTS--EXPAND LANGUAGE FOR DEPOSITS INTO THE NEW MEXICO HOUSING TRUST FUND--SEVERANCE TAX BONDS.--The department of finance and administration project in Subsection 3 of Section 17 of Chapter 92 of Laws 2008 for disbursement to the New Mexico mortgage finance authority for infrastructure, land, building and financing projects statewide pursuant to the Affordable Housing Act may be expended provided that all payments and repayments received by the New Mexico mortgage finance authority shall be deposited in the New Mexico housing trust fund for additional projects pursuant to the Affordable Housing Act.

Chapter 128 Section 493 Laws 2009

Section 493. MONTE DEL SOL CHARTER SCHOOL FACILITIES--CHANGE TO VEHICLES FOR THE COMMUNITY OUTREACH PROGRAM FOR THE DEAF--CHANGE AGENCY--EXTEND TIME--CAPITAL PROJECTS FUND.--The unexpended balance of the appropriation to the public education department in Subsection 146 of Section 136 of Chapter 126 of Laws 2004 for facilities for the Monte del Sol charter school in the Santa Fe public school district in Santa Fe county shall not be expended for the original purpose but is appropriated to the governor's commission on disability to purchase and equip vehicles for the community outreach program for the deaf. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 494 Laws 2009

Section 494. CORRECTIONAL FACILITIES WATER SYSTEMS STATEWIDE--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the public buildings repair fund project originally authorized in Paragraph (9) of Subsection B of Section 25 of Chapter 429 of Laws 2003 and reauthorized in Laws 2005, Chapter 347, Section 180 and again in Laws 2008, Chapter 83, Section 404 for improvements to the water and wastewater systems at correctional facilities statewide is extended through fiscal year 2011.

Chapter 128 Section 495 Laws 2009

Section 495. STATEWIDE HUMAN RESOURCES, ACCOUNTING AND MANAGEMENT REPORTING PROJECT--EXTEND TIME--SHORT-TERM SEVERANCE TAX BONDS.--The time of expenditure for the department of finance and administration project in Laws 2004, Chapter 126, Section 151 for the statewide human resources, accounting and management reporting project is extended through fiscal year 2011.

Chapter 128 Section 496 Laws 2009

Section 496. NATIVE AMERICAN BEHAVIORAL HEALTH SERVICES FACILITIES STATEWIDE--CHANGE TO HOME MODIFICATIONS FOR NATIVE AMERICAN INDEPENDENT LIVING--CHANGE AGENCY--SEVERANCE TAX BONDS.--One hundred fifty-five thousand dollars (\$155,000) of the unexpended balance of the appropriation to the local government division originally authorized in Subsection 26 of Section 23 of Chapter 42 of Laws 2007 and reauthorized in Laws 2008, Chapter 83, Section 405 for improvements at Native American behavioral health services facilities statewide shall not be expended for the original or reauthorized purpose but is appropriated to the Indian affairs department for home modifications for Native American independent living statewide.

Chapter 128 Section 497 Laws 2009

Section 497. J. PAUL TAYLOR JUVENILE DETENTION CENTER RENOVATIONS--CHANGE TO RENOVATIONS FOR CENTERS STATEWIDE TO IMPLEMENT CAMBIAR NEW MEXICO AND FURNISHING AND EQUIPPING THE J. PAUL TAYLOR CENTER--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation in Subsection 5 of Section 5 of Chapter 92 of Laws 2008 for renovating the J. Paul Taylor and other juvenile detention facilities statewide shall not be expended for the original purpose but is changed to the following amounts and purposes:

A. five hundred thousand dollars (\$500,000) for master planning, design and renovations to juvenile detention centers statewide to implement Cambiar New Mexico; and

B. the unexpended balance of the appropriation not appropriated in Subsection A of this section to furnish, equip and renovate the J. Paul Taylor juvenile detention center to implement Cambiar New Mexico in Las Cruces in Dona Ana county.

Chapter 128 Section 498 Laws 2009

Section 498. PECOS RIVER COMPACT SETTLEMENT--EXTEND TIME-- APPROPRIATION CONTINGENCY FUND.--The time of expenditure for the interstate stream commission project originally authorized in Subsection B of Section 78 of Chapter 111 of Laws 2006 and reauthorized in Laws 2007, Chapter 341, Section 313 and again in Laws 2008, Chapter 83, Section 401 to purchase land and water rights within the interstate stream commission's existing pricing guidelines and for the development of augmentation well fields and pipelines and related professional services is extended through fiscal year 2011.

Chapter 128 Section 499 Laws 2009

Section 499. PRE-KINDERGARTEN CLASSROOM RENOVATIONS STATEWIDE--CHANGE AGENCY--SEVERANCE TAX BONDS.--The unexpended balance of the department of finance and administration project in Subsection 1 of Section 18 of Chapter 42 of Laws 2007 to plan, design, construct, purchase and renovate pre-kindergarten classrooms, including portables, statewide is appropriated to the children, youth and families department for that purpose.

Chapter 128 Section 500 Laws 2009

Section 500. STATE BUILDINGS EMERGENCY REPAIRS--EXPAND PURPOSE--CAPITAL PROGRAM FUND.--The capital program fund project in Subsection 12 of Section 38 of Chapter 42 of Laws 2007 for emergency repairs to state buildings statewide may include statewide repairs and renovations.

Chapter 128 Section 501 Laws 2009

Section 501. ACEQUIA DE EL VALLE ASSOCIATION FLOOD GATE REPAIRS--CHANGE TO ACEQUIA AGUILAR DE EL VALLE IMPROVEMENTS--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the interstate stream commission appropriation originally authorized in Subsection 11 of Section 13 of Chapter 429 of Laws 2003 and reauthorized in Laws 2008, Chapter 83, Section 408 for repairing the flood gate for the acequia de El Valle association in Taos county shall not be expended for the original purpose but is changed to plan, design and construct improvements to the acequia Aguilar de El Valle in Taos county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 502 Laws 2009

Section 502. LA ACEQUIA DE LA CIENEGA IMPROVEMENTS--CHANGE TO ACEQUIA LA VENITA DE TEODORO ROMERO IMPROVEMENTS--GENERAL FUND.--The unexpended balance of the appropriation to the interstate stream commission in Subsection 68 of Section 67 of Chapter 42 of Laws 2007 for improvements to la acequia de La Cienega in Santa Fe county shall not be expended for the original purpose but is changed to plan, design and construct improvements to acequia la Venita de Teodoro Romero in Taos county.

Chapter 128 Section 503 Laws 2009

Section 503. WEST LAS VEGAS PUBLIC SCHOOL DISTRICT PORTABLE MODULAR BUILDING--CHANGE TO ACEQUIA MADRE DEL RIO GRANDE PIPING--CHANGE AGENCY--GENERAL FUND.--Ten thousand dollars (\$10,000) of the unexpended balance of the appropriation to the public education department in Subsection 411 of Section 44 of Chapter 92 of Laws 2008 for a portable modular building for the west Las Vegas public school district in San Miguel county shall not be expended for the original purpose but is appropriated to the interstate stream

commission to plan, design and construct piping for the acequia Madre del Rio Grande in Taos county.

Chapter 128 Section 504 Laws 2009

Section 504. MORA COUNTY RECREATIONAL PARK--CHANGE TO CERRO REGIONAL MUTUAL DOMESTIC WATER CONSUMERS AND SEWAGE WORKS ASSOCIATION WATER SYSTEM IMPROVEMENTS--CHANGE AGENCY--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the local government division originally authorized in Subsection 218 of Section 45 of Chapter 347 of Laws 2005 and reauthorized in Laws 2006, Chapter 107, Section 109 to plan and design the Mora recreational park in Mora county shall not be expended for the original or reauthorized purpose but is appropriated to the department of environment to plan, design and construct water system improvements, including water meters, valves and reconnection, for the Cerro regional mutual domestic water consumers and sewage works association in Taos county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 505 Laws 2009

Section 505. LATIR VOLUNTEER FIRE STATION--CHANGE TO FIRE PUMPER VEHICLE--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 705 of Section 68 of Chapter 42 of Laws 2007 for a fire station and community center for the Latir volunteer fire department in Taos county shall not be expended for the original purpose but is changed to purchase and equip a fire pumper vehicle for that fire department.

Chapter 128 Section 506 Laws 2009

Section 506. LATIR VOLUNTEER FIRE STATION--EXTEND TIME--CAPITAL PROJECTS FUND.--The time of expenditure for the local government division project in Subsection 374 of Section 34 of Chapter 126 of Laws 2004 to plan, design and construct the Latir volunteer fire station in Taos county is extended through fiscal year 2011.

Chapter 128 Section 507 Laws 2009

Section 507. RODARTE BUILDINGS IMPROVEMENTS--CHANGE TO RODARTE WATER SYSTEM--CHANGE AGENCY--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 215 of Section 26 of Chapter 2 of Laws 2007 for site and facility improvements to buildings in Rodarte in Taos county shall not be expended for the original purpose but is appropriated to the department of environment to plan, design and construct a water system for the Rodarte mutual domestic water consumers association in Taos county.

Chapter 128 Section 508 Laws 2009

Section 508. TALPA MEDICAL CENTER--CHANGE TO TALPA COMMUNITY CENTER--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 506 of Section 45 of Chapter 347 of Laws 2005 for a medical center in Talpa in Taos county shall not be expended for the original purpose but is changed to plan, design, construct, equip and furnish the Talpa community center, parking lot and playground in Taos county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 509 Laws 2009

Section 509. SAN MIGUEL COUNTY ROAD B-31-A IMPROVEMENTS--CHANGE TO TALPA IRRIGATION RESERVOIR AND ACEQUIA IMPROVEMENTS--CHANGE AGENCY--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the department of transportation in Subsection 102 of Section 20 of Chapter 347 of Laws 2005 for improvements to county road B-31-A in San Miguel county shall not be expended for the original purpose but is appropriated to the interstate stream commission to plan, design and construct improvements to the Talpa irrigation reservoir and the acequia del Monte del Rio Chiquito in Taos county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 510 Laws 2009

Section 510. SAN MIGUEL COUNTY ROAD B-29 IMPROVEMENTS--CHANGE TO TALPA IRRIGATION RESERVOIR AND ACEQUIA IMPROVEMENTS--CHANGE AGENCY--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the department of transportation in Subsection 109 of Section 20 of Chapter 347 of Laws 2005 for improvements to county road B-29 in Villanueva in San Miguel county shall not be expended for the original purpose but is appropriated to the interstate stream commission to plan, design and construct improvements to the Talpa irrigation reservoir and the acequia del Monte del Rio Chiquito in Taos county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 511 Laws 2009

Section 511. TAOS COUNTY ACEQUIA IMPROVEMENTS--CHANGE TO TALPA IRRIGATION RESERVOIR IMPROVEMENTS--GENERAL FUND.--The unexpended balance of the appropriation to the interstate stream commission in Subsection 87 of Section 67 of Chapter 42 of Laws 2007 for improvements to acequias for the Taos county acequia association shall not be expended for the original purpose but is changed to plan, design and construct improvements to the Talpa irrigation reservoir for the acequia Monte del Rio Chiquito in Taos county.

Chapter 128 Section 512 Laws 2009

Section 512. TALPA, RANCHOS DE TAOS AND POT CREEK VOLUNTEER FIRE DEPARTMENT FACILITY AND EQUIPMENT--EXTEND TIME--CAPITAL PROJECTS FUND.--The time of expenditure for the local government division project in Subsection 371 of Section 34 of Chapter 126 of Laws 2004 to plan, design and construct a facility and to purchase firefighting equipment for the Talpa, Ranchos de Taos and Pot Creek volunteer fire department in Taos county is extended through fiscal year 2011.

Chapter 128 Section 513 Laws 2009

Section 513. LAS TRAMPAS ADMINISTRATIVE SERVICE BUILDING--CHANGE TO TAOS COUNTY ROAD DEPARTMENT PUBLIC WORKS SUBSTATION--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 666 of Section 52 of Chapter 111 of Laws 2006 for an administrative services building for Las Trampas land grant in Taos county shall not be expended for the original purpose but is changed to plan, design, construct, equip and furnish a public works substation for the road department in Taos county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 514 Laws 2009

Section 514. LOS CORDOVAS COMMUNITY CENTER IMPROVEMENTS--CHANGE TO TAOS COUNTY ROAD EQUIPMENT PURCHASE--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 473 of Section 59 of Chapter 92 of Laws 2008 for improvements to Los Cordovas community center in Taos county shall not be expended for the original purpose but is changed to purchase road equipment for Taos county.

Chapter 128 Section 515 Laws 2009

Section 515. TAOS COUNTY ANIMAL SHELTER--CHANGE TO TAOS SHERIFF'S DEPARTMENT ANIMAL CONTROL VEHICLE--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 216 of Section 26 of Chapter 2 of Laws 2007 for an animal shelter in Taos county shall not be expended for the original purpose but is changed to purchase and equip an animal control vehicle for the sheriff's department in Taos county.

Chapter 128 Section 516 Laws 2009

Section 516. TAOS COUNTY ANIMAL SHELTER--CHANGE TO SHERIFF'S DEPARTMENT ANIMAL CONTROL VEHICLE PURCHASE--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 676 of Section 52 of Chapter 111 of Laws 2006 for an animal shelter in Taos county shall not be expended for the original purpose but is changed to purchase and equip an animal control vehicle for the sheriff's department in Taos county.

Chapter 128 Section 517 Laws 2009

Section 517. PUEBLO OF TAOS BUFFALO PASTURE WETLANDS ECOLOGICAL BASELINE STUDY--CHANGE TO TAOS COUNTY VETERANS' CEMETERY IMPROVEMENTS--CHANGE AGENCY--GENERAL FUND.--The unexpended balance of the appropriation to the Indian affairs department in Subsection 151 of Section 66 of Chapter 42 of Laws 2007 to conduct an ecological baseline study of the buffalo pasture wetlands, including water resources, geology and hydrology, at the Pueblo of Taos in Taos county shall not be expended for the original purpose but is appropriated to the local government division to plan, design and construct improvements, including drainage and paving, to the veterans' cemetery in Taos county.

Chapter 128 Section 518 Laws 2009

Section 518. RED RIVER WASTEWATER TREATMENT PLANT AND SLUDGE DEWATERING SYSTEM IMPROVEMENTS--CHANGE TO TAOS COUNTY VETERANS' CEMETERY--CHANGE AGENCY--SEVERANCE TAX BONDS.--Twenty-seven thousand dollars (\$27,000) of the unexpended balance of the appropriation to the department of environment in Subsection 61 of Section 15 of Chapter 92 of Laws 2008 for improvements to the wastewater treatment plant and sludge dewatering system in Red River in Taos county shall not be expended for the original purpose but is appropriated to the local government division to plan, design and construct improvements, including drainage and paving, to the veterans' cemetery in Taos county.

Chapter 128 Section 519 Laws 2009

Section 519. TAOS COUNTY-OWNED AFFORDABLE HOUSING--CHANGE TO EQUIPMENT--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 663 of Section 52 of Chapter 111 of Laws 2006 for county-owned affordable housing in Taos county shall not be expended for the original purpose but is changed to purchase and install equipment for county-owned affordable housing in Taos county.

Chapter 128 Section 520 Laws 2009

Section 520. BUDGET HOST MOTEL PURCHASE FOR TAOS TRANSITIONAL HOUSING FACILITY--CHANGE TO TAOS MEN'S HOMELESS AND TRANSITIONAL HOUSING CENTER--GENERAL FUND.--The unexpended balance of the appropriation to the department of finance and administration in Subsection 10 of Section 50 of Chapter 92 of Laws 2008 to purchase the Budget Host motel for a transitional housing facility shall not be expended for the original purpose but is changed to make improvements to driveway parking, fencing and landscaping at the Taos men's homeless and transitional housing center at Salazar and Herdner roads in Taos county, pursuant to the Affordable Housing Act.

Chapter 128 Section 521 Laws 2009

Section 521. PUEBLO OF PICURIS MULTIPURPOSE BUILDING RENOVATIONS--CHANGE TO CHAMISAL FIRE STATION IMPROVEMENTS--CHANGE AGENCY--GENERAL FUND.--One hundred thousand dollars (\$100,000) of the unexpended balance of the Indian affairs department appropriation originally authorized in Subsection 150 of Section 66 of Chapter 42 of Laws 2007 to repair and renovate the multipurpose building at the Pueblo of Picuris in Taos county, and not reauthorized and reappropriated to the state board of finance in Laws 2008, Chapter 83, Section 419 to repay an emergency loan for that project, shall not be expended for the original purpose but is appropriated to the local government division to plan, design and construct improvements to the fire station in Chamisal in Taos county.

Chapter 128 Section 522 Laws 2009

Section 522. LLANO COMMUNITY CENTER RENOVATION--CHANGE TO ROAD IMPROVEMENTS AND MATERIALS--CHANGE AGENCY--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 320 of Section 45 of Chapter 347 of Laws 2005 for renovations to the Llano community center in Taos county shall not be expended for the original purpose but is appropriated to the department of transportation to purchase road materials and improve roads in the Llano San Juan community area in Taos county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 523 Laws 2009

Section 523. RODARTE COMMUNITY CENTER RENOVATION--CHANGE TO PENASCO COMMUNITY CENTER RENOVATION--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 710 of Section 68 of Chapter 42 of Laws 2007 to renovate and remodel the community center in Rodarte in Taos county shall not be expended for the original purpose but is changed to plan, design, construct, equip and furnish renovations to the community center in Penasco in Taos county.

Chapter 128 Section 524 Laws 2009

Section 524. NEW MEXICO HIGHWAY 64 IMPROVEMENTS--CHANGE TO PURCHASING AND EQUIPPING AN AMBULANCE IN QUESTA--CHANGE AGENCY--GENERAL FUND.--The unexpended balance of the appropriation to the department of transportation in Subsection 182 of Section 52 of Chapter 347 of Laws 2005 for improvements to New Mexico highway 64 north in Taos county shall not be expended for the original purpose but is appropriated to the local government division to purchase and equip an ambulance in Questa in Taos county.

Chapter 128 Section 525 Laws 2009

Section 525. OJO CALIENTE AMBULANCE--CHANGE TO PURCHASING AND EQUIPPING AN AMBULANCE IN QUESTA--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 720 of Section 68 of Chapter 42 of Laws 2007 to purchase, repair and equip an ambulance in Ojo Caliente in Taos county shall not be expended for the original purpose but is changed to purchase and equip an ambulance in Questa in Taos county.

Chapter 128 Section 526 Laws 2009

Section 526. CHIMAYO CRIME PREVENTION ORGANIZATION FACILITY LAND, PREFABRICATED BUILDING AND INFRASTRUCTURE--CHANGE TO QUESTA WATER AND WASTEWATER SYSTEM IMPROVEMENTS--CHANGE AGENCY--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 242 of Section 45 of Chapter 347 of Laws 2005 to plan, design and acquire land and a prefabricated building, including infrastructure, for the crime prevention organization facility in Chimayo in Rio Arriba county shall not be expended for the original purpose but is appropriated to the department of environment to plan, design and construct water and wastewater system improvements in Questa in Taos county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 527 Laws 2009

Section 527. BALLOON FIESTA PARKWAY LIGHTING--CHANGE TO QUESTA WATER AND WASTEWATER SYSTEM IMPROVEMENTS--CHANGE AGENCY--GENERAL FUND.--The unexpended balance of the appropriation to the department of transportation in Subsection 35 of Section 75 of Chapter 42 of Laws 2007 for lighting along the parkway from the interstate 25 frontage road to the entrance of the Balloon Fiesta park in Albuquerque in Bernalillo 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 water and wastewater system in Questa in Taos county.

Chapter 128 Section 528 Laws 2009

Section 528. LA CIENEGA ELEMENTARY SCHOOL IMPROVEMENTS--CHANGE TO LA CIENEGA SCHOOL DAYCARE--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the public education department in Subsection 124 of Section 8 of Chapter 111 of Laws 2006 for improvements to La Cienega elementary school in the Questa independent school district in Taos county shall not be expended for the original purpose but is changed to plan, design, construct, furnish, equip and restore La Cienega school daycare in that school district. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 529 Laws 2009

Section 529. INTERSTATE COMPACT WATER, WATER RIGHTS AND STORAGE COMPLIANCE FOR ENDANGERED SPECIES--CHANGE TO RED RIVER VALLEY CHARTER SCHOOL BUILDINGS--CHANGE AGENCY--GENERAL FUND.-- Two hundred fifty thousand dollars (\$250,000) of the unexpended balance of the appropriation to the office of the state engineer in Subsection 10 of Section 58 of Chapter 42 of Laws 2007 for water, water rights and storage rights for interstate compact compliance for the benefit of threatened or endangered species shall not be expended for the original purpose but is appropriated to the public education department to plan, design, construct, purchase and equip buildings for Red River Valley charter school in the Questa independent school district in Taos county.

Chapter 128 Section 530 Laws 2009

Section 530. RED RIVER TRANSFER STATION--CHANGE TO FIRE STATION LOAN REPAYMENT--CHANGE AGENCY--GENERAL FUND.--The unexpended balance of the appropriation to the department of environment for the project in Subsection 112 of Section 36 of Chapter 347 of Laws 2005 for a solid waste transfer station in Red River in Taos county shall not be expended for the original purpose but is appropriated to the local government division to repay a state board of finance loan for the fire station in Red River.

Chapter 128 Section 531 Laws 2009

Section 531. RED RIVER BIOSOLIDS HANDLING FACILITY--CHANGE TO FIRE STATION LOAN REPAYMENT--CHANGE AGENCY--GENERAL FUND.--The unexpended balance of the appropriation to the department of environment in Subsection 190 of Section 59 of Chapter 42 of Laws 2007 for a biosolids handling facility in Red River in Taos county shall not be expended for the original purpose but is appropriated to the local government division to repay a state board of finance loan for the fire station in Red River.

Chapter 128 Section 532 Laws 2009

Section 532. RED RIVER ROAD GRADER--CHANGE TO FIRE STATION LOAN REPAYMENT--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 481 of Section 59 of Chapter 92 of Laws 2008 for a road grader for Red River in Taos county shall not be expended for the original purpose but is changed to repay a state board of finance loan for the fire station in Red River.

Chapter 128 Section 533 Laws 2009

Section 533. RED RIVER EDUCATIONAL BUILDING--CHANGE TO RENOVATION PROJECT--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 727 of Section 68 of Chapter 42 of Laws 2007 to purchase land for, plan, design and construct an

educational building in Red River in Taos county shall not be expended for the original purpose but is changed to plan, design, construct and equip a renovation project in Red River.

Chapter 128 Section 534 Laws 2009

Section 534. HACIENDA DE LOS MARTINEZ AND TAOS MORADA HISTORICAL SITE IMPROVEMENTS--CHANGE TO TAOS COMMUNITY CENTER FOR THE ARTS--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 325 of Section 45 of Chapter 347 of Laws 2005 for improvements to the hacienda de los Martinez and Taos morada historical sites in Taos in Taos county shall not be expended for the original purpose but is changed to plan, design and construct improvements to the Taos community center for the arts. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 535 Laws 2009

Section 535. TAOS COUNTY YOUTHBUILD FACILITY CONSTRUCTION--CHANGE TO ADMINISTRATIVE JUDICIAL COMPLEX--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 732 of Section 68 of Chapter 42 of Laws 2007 for a youthbuild facility in Taos in Taos county shall not be expended for the original purpose but is changed to plan, design, construct, equip and furnish the administrative judicial complex in Taos county.

Chapter 128 Section 536 Laws 2009

Section 536. TAOS GENERAL SERVICES DEPARTMENT BATHROOMS--CHANGE TO TAOS COUNTY PARKS AND RECREATION DEPARTMENT BATHROOMS--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 731 of Section 68 of Chapter 42 of Laws 2007 for reconstruction of bathrooms, including related equipment, at the Taos general services department in Taos in Taos county shall not be expended for the original purpose but is changed to plan, design and reconstruct bathrooms, including purchase and installation of related equipment, for the Taos county parks and recreation department in Taos.

Chapter 128 Section 537 Laws 2009

Section 537. TAOS SKI VALLEY MUNICIPAL COMPLEX--CHANGE TO WATER SYSTEM IMPROVEMENTS--CHANGE AGENCY--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division originally authorized in Subsection BBBBBB of Section 15 of Chapter 23 of Laws 2000 (2nd S.S.) and reauthorized in Laws 2004, Chapter 126, Section 91 and again in Laws 2005, Chapter 347, Section 174 and again in Laws 2006, Chapter 107, Section 166 for constructing a municipal complex in Taos Ski Valley in Taos county shall not be

expended for the original or reauthorized purposes but is appropriated to the department of environment to plan, design and construct water system improvements in Taos Ski Valley. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 538 Laws 2009

Section 538. TAOS SKI VALLEY PUBLIC SAFETY BUILDING--EXPAND TO INCLUDE WATER SYSTEM IMPROVEMENTS--CHANGE AGENCY--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 738 of Section 68 of Chapter 42 of Laws 2007 for a public safety building in Taos Ski Valley in Taos county is appropriated to the department of environment and may also be expended to plan, design and construct water system improvements in Taos Ski Valley.

Chapter 128 Section 539 Laws 2009

Section 539. MANZANO LAND GRANT PARK--EXTEND TIME--GENERAL FUND.--The time of expenditure for the local government division project in Subsection 222 of Section 26 of Chapter 2 of Laws 2007 to plan, design, construct, equip and furnish a park in the Manzano land grant in Torrance county is extended through fiscal year 2011.

Chapter 128 Section 540 Laws 2009

Section 540. MCINTOSH SENIOR CENTER EXPANSION--CHANGE TO IMPROVING SENIOR CENTERS COUNTYWIDE IN TORRANCE COUNTY--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the aging and long-term services department in Subsection 31 of Section 3 of Chapter 347 of Laws 2005 to expand the senior center in McIntosh in Torrance county shall not be expended for the original purpose but is changed to plan, design and construct improvements and equip senior centers countywide in Torrance county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 541 Laws 2009

Section 541. GALISTEO COMMUNITY PARK--CHANGE TO DWI MEMORIAL PARK IN MORIARTY--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 194 of Section 26 of Chapter 2 of Laws 2007 for renovations and equipment at Galisteo community park in Santa Fe county shall not be expended for the original purpose but is changed to plan, design and construct the DWI memorial park, including acquisition of property for a parking area, in Moriarty in Torrance county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 542 Laws 2009

Section 542. MOUNTAINAIR SEWER AND WATER SYSTEM UPGRADES--EXTEND TIME--CAPITAL PROJECTS FUND.--The time of expenditure for the department of environment project in Subsection 90 of Section 29 of Chapter 126 of Laws 2004 to repair and upgrade the sewer and water systems in Mountainair in Torrance county is extended through fiscal year 2011.

Chapter 128 Section 543 Laws 2009

Section 543. CLAYTON LANDFILL CONSTRUCTION--EXPAND PURPOSE--EXTEND TIME--SEVERANCE TAX BONDS.--The department of environment project in Subsection 56 of Section 12 of Chapter 347 of Laws 2005 to plan, design, construct and equip a landfill, including land acquisition and improvements, in Clayton in Union county may include closure of the old landfill, including engineering, design and construction of the final cover. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 544 Laws 2009

Section 544. CLAYTON WATER TOWER--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the department of environment project in Subsection 34 of Section 9 of Chapter 126 of Laws 2004 to repair and renovate the water tower in Clayton in Union county is extended through fiscal year 2011.

Chapter 128 Section 545 Laws 2009

Section 545. NORTHEASTERN SOIL AND WATER CONSERVATION DISTRICT BUILDING--EXPAND PURPOSE TO INCLUDE LAND--GENERAL FUND.--The New Mexico state university project in Subsection 23 of Section 67 of Chapter 92 of Laws 2008 to plan, design, purchase and construct a building for the Northeastern soil and water conservation district in Clayton in Union county may include the purchase of land or property.

Chapter 128 Section 546 Laws 2009

Section 546. DES MOINES HANDICAPPED-ACCESSIBLE VEHICLES--CHANGE TO MAINTENANCE SHOP RENOVATE--EXTEND TIME--GENERAL FUND.-
-The unexpended balance of the appropriation to the local government division in Subsection 505 of Section 59 of Chapter 92 of Laws 2008 to purchase handicapped-accessible vehicles for Des Moines in Union county shall not be expended for the original purpose but is changed to plan, design, construct, furnish, purchase and renovate a maintenance shop in Des Moines. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 547 Laws 2009

Section 547. DES MOINES MUNICIPAL SCHOOL DISTRICT INDUSTRIAL ARTS EQUIPMENT--EXTEND TIME--GENERAL FUND.--The public education department project in Subsection 448 of Section 55 of Chapter 42 of Laws 2007 for equipment for the industrial arts classes in the Des Moines municipal school district in Union county is extended through fiscal year 2011.

Chapter 128 Section 548 Laws 2009

Section 548. DES MOINES HIGH SCHOOL BLEACHERS--CHANGE TO LOCAL MATCH FOR ROOF REPLACEMENTS IN THE DES MOINES MUNICIPAL SCHOOL DISTRICT--VOIDING LAWS 2008, CHAPTER 83, SECTION 429 AND SUBSECTION I OF SECTION 99 OF CHAPTER 42 OF LAWS 2007--GENERAL FUND.--The appropriation of one hundred thousand dollars (\$100,000) to the public education department in Subsection 153 of Section 16 of Chapter 2 of Laws 2007 to purchase, install and construct bleachers at Des Moines high school in the Des Moines municipal school district in Union county shall not be expended for the original purpose but shall be used to repay the local match advance from the public school capital outlay fund for roof replacements at that school district. Subsection I of Section 99 of Chapter 42 of Laws 2007 and Laws 2008, Chapter 83, Section 429 are void.

Chapter 128 Section 549 Laws 2009

Section 549. BELEN BOOSTER STATION PUMPS AND EQUIPMENT--CHANGE TO VALENCIA COUNTY QUIET ZONES--CHANGE AGENCY--EXTEND TIME--GENERAL FUND.--One hundred sixty thousand dollars (\$160,000) of the appropriation to the department of environment in Subsection 197 of Section 59 of Chapter 42 of Laws 2007 for pumps and equipment for the booster station in Belen in Valencia county shall not be expended for the original purpose but is appropriated to the department of transportation to plan, design and construct railroad crossing quiet zones, including signage and deterrent improvements, on Valentin, Molina, Mesa, Lopez and Don Felipe roads in Valencia county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 550 Laws 2009

Section 550. BOSQUE FARMS RECREATION COMPLEX SHADE STRUCTURE--CHANGE TO BOSQUE FARMS LIBRARY--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 521 of Section 59 of Chapter 92 of Laws 2008 for a shade structure at the recreation complex in Bosque Farms in Valencia county shall not be expended for the original purpose but is changed to plan, design, construct, renovate, equip and furnish improvements to the library in Bosque Farms.

Chapter 128 Section 551 Laws 2009

Section 551. VALENCIA COUNTY FAIRGROUNDS REPAIR AND RENOVATE--CHANGE TO BOSQUE FARMS POLICE UNITS--GENERAL FUND.--Thirty thousand dollars (\$30,000) of the unexpended balance of the appropriation to the local government division in Subsection 729 of Section 52 of Chapter 111 of Laws 2006 to renovate, repair and construct the Valencia county fairgrounds in Valencia county shall not be expended for the original purpose but is changed to purchase and equip police units in Bosque Farms in Valencia county.

Chapter 128 Section 552 Laws 2009

Section 552. ESPANOLA MILITARY ACADEMY BUILDING--CHANGE TO IMPROVEMENTS AT NORTHERN NEW MEXICO STATE SCHOOL FINE ARTS CENTER IN ESPANOLA--CHANGE AGENCY--SEVERANCE TAX BONDS.--One hundred seventy-five thousand dollars (\$175,000) of the unexpended balance of the appropriation to the public education department in Subsection 14 of Section 11 of Chapter 92 of Laws 2008 for a building for the Espanola military academy in the Espanola public school district in Rio Arriba county shall not be expended for the original purpose but is appropriated to the board of regents of northern New Mexico state school to replace the sound and light system and remodel classrooms at the fine arts center at northern New Mexico state school in Espanola in Rio Arriba county.

Chapter 128 Section 553 Laws 2009

Section 553. ESPANOLA MILITARY ACADEMY IMPROVEMENTS--CHANGE TO IMPROVEMENTS AT NORTHERN NEW MEXICO STATE SCHOOL FINE ARTS CENTER IN ESPANOLA--CHANGE AGENCY--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the public education department in Subsection 152 of Section 48 of Chapter 347 of Laws 2005 for improvements to the Espanola military academy in the Espanola public school district in Rio Arriba county shall not be expended for the original purpose but is appropriated to the board of regents of northern New Mexico state school to replace the sound and light system and remodel classrooms at the fine arts center at northern New Mexico state school in Espanola in Rio Arriba county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 554 Laws 2009

Section 554. ESPANOLA MILITARY ACADEMY INFORMATION TECHNOLOGY--CHANGE TO IMPROVEMENTS AT NORTHERN NEW MEXICO STATE SCHOOL FINE ARTS CENTER IN ESPANOLA--CHANGE AGENCY--GENERAL FUND.--Thirty-nine thousand dollars (\$39,000) of the unexpended balance of the appropriation to the public education department in Subsection 397 of Section 44 of Chapter 92 of Laws 2008 for information technology at the Espanola military academy in the Espanola public school district in Rio Arriba county shall not be expended for the original purpose but is appropriated to the board of regents of northern New Mexico state school to replace the sound and light system and remodel

classrooms at the fine arts center at northern New Mexico state school in Espanola in Rio Arriba county.

Chapter 128 Section 555 Laws 2009

Section 555. ESPANOLA MILITARY ACADEMY IMPROVEMENTS--CHANGE TO IMPROVEMENTS AT NORTHERN NEW MEXICO STATE SCHOOL FINE ARTS CENTER IN ESPANOLA--CHANGE AGENCY--EXTEND TIME--GENERAL FUND.-- The unexpended balance of the appropriation to the public education department in Subsection 319 of Section 39 of Chapter 111 of Laws 2006 and reauthorized in Laws 2008, Chapter 83, Section 313 for improvements to the Espanola military academy in the Espanola public school district in Rio Arriba county shall not be expended for the original or reauthorized purpose but is appropriated to the board of regents of northern New Mexico state school to replace the sound and light system and remodel classrooms at the fine arts center at northern New Mexico state school in Espanola in Rio Arriba county. The time of expenditure is extended through fiscal year 2011.

Chapter 128 Section 556 Laws 2009

Section 556. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

SFC/Senate Bill 443, w/ec

Approved April 7, 2009

LAWS 2009, CHAPTER 129

AN ACT

RELATING TO STATE VEHICLES; AMENDING SECTIONS OF THE NMSA 1978 TO PERMIT INDIVIDUALS ENROLLED IN THE STATE'S ADAPTIVE DRIVING PROGRAM TO USE STATE VEHICLES FOR TRAINING PURPOSES.

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

Chapter 129 Section 1 Laws 2009

Section 1. Section 15-8-6 NMSA 1978 (being Laws 1994, Chapter 119, Section 6, as amended) is amended to read:

"15-8-6. STATE VEHICLES--USE--MARKINGS--STATE GOVERNMENT PLATES.--

A. The division shall adopt rules governing the use of vehicles used by state agencies or by other persons pursuant to Subsection G of this section, including driver requirements and responsibilities, under what circumstances someone can be assigned a state vehicle on a permanent or semi-permanent basis and when custody of a state vehicle can be vested in another state agency.

B. The division may determine that it is impractical to retain custody of certain state vehicles, and it may provide that custody reside in another state agency in the following cases:

(1) the state vehicle is used for emergency or law enforcement purposes; or

(2) the state vehicle is a department of transportation, energy, minerals and natural resources department or department of game and fish passenger vehicle, truck or tractor or heavy road equipment.

C. Except as provided in Subsections E and F of this section, all state vehicles shall be marked as state vehicles. Each side of the vehicle shall be marked, in letters not less than two inches in height, with the following designation of ownership: "State of New Mexico,..... Department" or "State of New Mexico Department of" and naming the department using the vehicle.

D. Except as provided in Subsections E and F of this section, all state vehicles shall have specially designed government registration plates.

E. Only state vehicles used for legitimate undercover law enforcement purposes are exempt from the requirements of Subsections C and D of this section. All other state vehicles owned or in the custody of state agencies that have law enforcement functions shall be marked and have state government registration plates.

F. A state agency may seek custody of state vehicles as an exception to Subsection B of this section or an exemption to the provisions of Subsection C of this section by making a written request to the director, specifying the reasons for the proposed custody or exemption. The director may approve the custody or exemption, in writing, indicating the duration and any conditions of the custody or exemption.

G. The division shall adopt rules permitting individuals enrolled in the state's adaptive driving program to use special-use state vehicles for evaluation and training purposes in that program."

Chapter 129 Section 2 Laws 2009

Section 2. Section 41-4-3 NMSA 1978 (being Laws 1976, Chapter 58, Section 3, as amended) is amended to read:

"41-4-3. DEFINITIONS.--As used in the Tort Claims Act:

A. "board" means the risk management advisory board;

B. "governmental entity" means the state or any local public body as defined in Subsections C and H of this section;

C. "local public body" means all political subdivisions of the state and their agencies, instrumentalities and institutions and all water and natural gas associations organized pursuant to Chapter 3, Article 28 NMSA 1978;

D. "law enforcement officer" means a full-time salaried public employee of a governmental entity whose principal duties under law are to hold in custody any person accused of a criminal offense, to maintain public order or to make arrests for crimes, or members of the national guard when called to active duty by the governor;

E. "maintenance" does not include:

(1) conduct involved in the issuance of a permit, driver's license or other official authorization to use the roads or highways of the state in a particular manner; or

(2) an activity or event relating to a public building or public housing project that was not foreseeable;

F. "public employee" means an officer, employee or servant of a governmental entity, excluding independent contractors except for individuals defined in Paragraphs (7), (8), (10), (14) and (17) of this subsection, or of a corporation organized pursuant to the Educational Assistance Act, the Small Business Investment Act or the Mortgage Finance Authority Act or a licensed health care provider, who has no medical liability insurance, providing voluntary services as defined in Paragraph (16) of this subsection and including:

(1) elected or appointed officials;

(2) law enforcement officers;

(3) persons acting on behalf or in service of a governmental entity in any official capacity, whether with or without compensation;

(4) licensed foster parents providing care for children in the custody of the human services department, corrections department or department of health, but not including foster parents certified by a licensed child placement agency;

(5) members of state or local selection panels established pursuant to the Adult Community Corrections Act;

(6) members of state or local selection panels established pursuant to the Juvenile Community Corrections Act;

(7) licensed medical, psychological or dental arts practitioners providing services to the corrections department pursuant to contract;

(8) members of the board of directors of the New Mexico medical insurance pool;

(9) individuals who are members of medical review boards, committees or panels established by the educational retirement board or the retirement board of the public employees retirement association;

(10) licensed medical, psychological or dental arts practitioners providing services to the children, youth and families department pursuant to contract;

(11) members of the board of directors of the New Mexico educational assistance foundation;

(12) members of the board of directors of the New Mexico student loan guarantee corporation;

(13) members of the New Mexico mortgage finance authority;

(14) volunteers, employees and board members of court-appointed special advocate programs;

(15) members of the board of directors of the small business investment corporation;

(16) health care providers licensed in New Mexico who render voluntary health care services without compensation in accordance with rules promulgated by the secretary of health. The rules shall include requirements for the types of locations at which the services are rendered, the allowed scope of practice and measures to ensure quality of care; and

(17) an individual while participating in the state's adaptive driving program and only while using a special-use state vehicle for evaluation and training purposes in that program;

G. "scope of duty" means performing any duties that a public employee is requested, required or authorized to perform by the governmental entity, regardless of the time and place of performance; and

H. "state" or "state agency" means the state of New Mexico or any of its branches, agencies, departments, boards, instrumentalities or institutions."

House Bill 499, aa

Approved April 7, 2009

LAWS 2009, CHAPTER 130

AN ACT

RELATING TO INSTITUTIONAL FUNDS; ENACTING THE UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT; ESTABLISHING GUIDELINES FOR THE INVESTMENT AND EXPENDITURE OF ENDOWMENT FUNDS; REPEALING THE UNIFORM MANAGEMENT OF INSTITUTIONAL FUNDS ACT.

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

Chapter 130 Section 1 Laws 2009

Section 1. SHORT TITLE.--This act may be cited as the "Uniform Prudent Management of Institutional Funds Act".

Chapter 130 Section 2 Laws 2009

Section 2. DEFINITIONS.--As used in the Uniform Prudent Management of Institutional Funds Act:

A. "charitable purpose" means the relief of poverty, advancement of education or religion, promotion of health, promotion of a governmental purpose or any other purpose the achievement of which is beneficial to the community;

B. "endowment fund" means an institutional fund or part thereof that, pursuant to the terms of a gift instrument, is not wholly expendable by the institution on a current basis. "Endowment fund" does not include assets that an institution designates as an endowment fund for its own use;

C. "gift instrument" means a record or records, including an institutional solicitation, pursuant to which property is granted to, transferred to or held by an institution as an institutional fund;

D. "institution" means:

(1) a person, other than an individual, organized and operated exclusively for charitable purposes;

(2) a government or governmental subdivision, agency or instrumentality, to the extent that it holds funds exclusively for a charitable purpose; or

(3) a trust that had both charitable and noncharitable interests, after all noncharitable interests have terminated;

E. "institutional fund" means a fund held by an institution exclusively for charitable purposes. "Institutional fund" does not include:

(1) program-related assets;

(2) a fund held for an institution by a trustee that is not an institution;

(3) a fund in which a beneficiary that is not an institution has an interest, other than an interest that could arise upon violation or failure of the purposes of the fund;

(4) a fund established pursuant to the provisions of Article 8, Section 10 of the constitution of New Mexico; or

(5) a fund established pursuant to the provisions of Article 12, Section 2 of the constitution of New Mexico;

F. "person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency or instrumentality or any other legal or commercial entity;

G. "program-related asset" means an asset held by an institution primarily to accomplish a charitable purpose of the institution and not primarily for investment; and

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.

Chapter 130 Section 3 Laws 2009

Section 3. STANDARD OF CONDUCT IN MANAGING AND INVESTING AN INSTITUTIONAL FUND.--

A. Subject to the intent of a donor expressed in a gift instrument, an institution, in managing and investing an institutional fund, shall consider the charitable purposes of the institution and the purposes of the institutional fund.

B. In addition to complying with the duty of loyalty imposed by law other than the Uniform Prudent Management of Institutional Funds Act, each person responsible for managing and investing an institutional fund shall manage and invest the fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

C. In managing and investing an institutional fund, an institution:

(1) may incur only costs that are appropriate and reasonable in relation to the assets, the purposes of the institution and the skills available to the institution; and

(2) shall make a reasonable effort to verify facts relevant to the management and investment of the fund.

D. An institution may pool two or more institutional funds for purposes of management and investment.

E. Except as otherwise provided by a gift instrument, the following rules apply:

(1) in managing and investing an institutional fund, the following factors, if relevant, shall be considered:

(a) general economic conditions;

(b) the possible effect of inflation or deflation;

(c) the expected tax consequences, if any, of investment decisions or strategies;

(d) the role that each investment or course of action plays within the overall investment portfolio of the fund;

(e) the expected total return from income and the appreciation of investments;

(f) other resources of the institution;

(g) the needs of the institution and the fund to make distributions and to preserve capital; and

(h) an asset's special relationship or special value, if any, to the charitable purposes of the institution;

(2) management and investment decisions about an individual asset shall be made not in isolation but rather in the context of the institutional fund's portfolio of investments as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the fund and to the institution;

(3) except as otherwise provided by law other than the Uniform Prudent Management of Institutional Funds Act, an institution may invest in any kind of property or type of investment consistent with this section;

(4) an institution shall diversify the investments of an institutional fund unless the institution reasonably determines that, because of special circumstances, the purposes of the fund are better served without diversification;

(5) within a reasonable time after receiving property, an institution shall make and carry out decisions concerning the retention or disposition of the property or to rebalance a portfolio, in order to bring the institutional fund into compliance with the purposes, terms and distribution requirements of the institution as necessary to meet other circumstances of the institution and the requirements of the Uniform Prudent Management of Institutional Funds Act; and

(6) a person that has special skills or expertise, or is selected in reliance upon the person's representation that the person has special skills or expertise, has a duty to use those skills or that expertise in managing and investing institutional funds.

Chapter 130 Section 4 Laws 2009

Section 4. APPROPRIATION FOR EXPENDITURE OR ACCUMULATION OF AN ENDOWMENT FUND--RULES OF CONSTRUCTION.--

A. Subject to the intent of a donor expressed in the gift instrument, an institution may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines is prudent for the uses, benefits, purposes and duration for which the endowment fund is established. Unless stated otherwise in the gift instrument, the assets in an endowment fund are donor-restricted assets until appropriated for expenditure by the institution. In making a determination to appropriate or accumulate, the institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and shall consider, if relevant, the following factors:

- (1) the duration and preservation of the endowment fund;
- (2) the purposes of the institution and the endowment fund;
- (3) general economic conditions;

- (4) the possible effect of inflation or deflation;
- (5) the expected total return from income and the appreciation of investments;
- (6) other resources of the institution; and
- (7) the investment policy of the institution.

B. To limit the authority to appropriate for expenditure or accumulate pursuant to Subsection A of this section, a gift instrument shall specifically state the limitation.

C. Terms in a gift instrument designating a gift as an endowment, or a direction or authorization in the gift instrument to use only "income", "interest", "dividends" or "rents, issues or profits", or "to preserve the principal intact", or words of similar import:

(1) create an endowment fund of permanent duration unless other language in the gift instrument limits the duration or purpose of the fund; and

(2) do not otherwise limit the authority to appropriate for expenditure or accumulate pursuant to Subsection A of this section.

Chapter 130 Section 5 Laws 2009

Section 5. DELEGATION OF MANAGEMENT AND INVESTMENT FUNCTIONS.--

A. Subject to any specific limitation set forth in a gift instrument or in any law other than the Uniform Prudent Management of Institutional Funds Act, an institution may delegate to an external agent the management and investment of an institutional fund to the extent that an institution could prudently delegate under the circumstances. An institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, in:

- (1) selecting an agent;
- (2) establishing the scope and terms of the delegation, consistent with the purposes of the institution and the institutional fund; and
- (3) periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the scope and terms of the delegation.

B. In performing a delegated function, an agent owes a duty to the institution to exercise reasonable care to comply with the scope and terms of the delegation.

C. An institution that complies with Subsection A of this section is not liable for the decisions or actions of an agent to which the function was delegated.

D. By accepting delegation of a management or investment function from an institution that is subject to the laws of this state, an agent submits to the jurisdiction of the courts of this state in all proceedings arising from or related to the delegation or the performance of the delegated function.

E. An institution may delegate management and investment functions to its committees, officers or employees as authorized by law of this state other than the Uniform Prudent Management of Institutional Funds Act.

Chapter 130 Section 6 Laws 2009

Section 6. RELEASE OR MODIFICATION OF RESTRICTIONS ON MANAGEMENT, INVESTMENT OR PURPOSE.--

A. If the donor consents in a record, an institution may release or modify, in whole or in part, a restriction contained in a gift instrument on the management, investment or purpose of an institutional fund. A release or modification may not allow a fund to be used for a purpose other than a charitable purpose of the institution.

B. The court, upon application of an institution, may modify a restriction contained in a gift instrument regarding the management or investment of an institutional fund if the restriction has become impracticable or wasteful, if the restriction impairs the management or investment of the fund, or if, because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund. The institution shall notify the attorney general of the application, and the attorney general shall be given an opportunity to be heard. To the extent practicable, any modification shall be made in accordance with the donor's probable intention.

C. If a particular charitable purpose or a restriction contained in a gift instrument on the use of an institutional fund becomes unlawful, impracticable, impossible to achieve or wasteful, the court, upon application of an institution, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the charitable purposes expressed in the gift instrument. The institution shall notify the attorney general of the application, and the attorney general shall be given an opportunity to be heard.

D. If an institution determines that a restriction contained in a gift instrument on the management, investment or purpose of an institutional fund is unlawful, impracticable, impossible to achieve or wasteful, the institution, sixty days

after notification to the attorney general, may release or modify the restriction, in whole or part, if:

(1) the institutional fund subject to the restriction has a total value of less than twenty-five thousand dollars (\$25,000);

(2) more than twenty years have elapsed since the fund was established; and

(3) the institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument.

Chapter 130 Section 7 Laws 2009

Section 7. REVIEWING COMPLIANCE.--Compliance with the Uniform Prudent Management of Institutional Funds Act is determined in light of the facts and circumstances existing at the time a decision is made or action is taken and not by hindsight.

Chapter 130 Section 8 Laws 2009

Section 8. APPLICATION TO EXISTING INSTITUTIONAL FUNDS.--The Uniform Prudent Management of Institutional Funds Act applies to institutional funds existing on or established after July 1, 2009. As applied to institutional funds existing on July 1, 2009, the Uniform Prudent Management of Institutional Funds Act governs only decisions made or actions taken on or after July 1, 2009. Decisions made and actions taken before July 1, 2009 are governed by the Uniform Management of Institutional Funds Act as if that act had not been repealed.

Chapter 130 Section 9 Laws 2009

Section 9. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.--The Uniform Prudent Management of Institutional Funds 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 of that act, 15 U.S.C. Section 7001(a), or authorize electronic delivery of any of the notices described in Section 103 of that act, 15 U.S.C. Section 7003(b).

Chapter 130 Section 10 Laws 2009

Section 10. UNIFORMITY OF APPLICATION AND CONSTRUCTION.--In applying and construing the Uniform Prudent Management of Institutional Funds 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 130 Section 11 Laws 2009

Section 11. REPEAL.--Sections 46-9-1 through 46-9-12 NMSA 1978 (being Laws 1997, Chapter 199, Sections 1 through 12) are repealed.

Chapter 130 Section 12 Laws 2009

Section 12. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.

House Bill 454, aa

Approved April 7, 2009

LAWS 2009, CHAPTER 131

AN ACT

RELATING TO LAND GRANTS; AUTHORIZING LAND GRANTS TO PROVIDE FOR EARLY OR ABSENTEE VOTING; PROVIDING FOR ELECTION PROCEDURES.

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

Chapter 131 Section 1 Laws 2009

Section 1. Section 49-1-5 NMSA 1978 (being Laws 1907, Chapter 42, Section 5, as amended) is amended to read:

"49-1-5. ELECTION OF MEMBERS OF BOARD OF TRUSTEES--VOTERS' QUALIFICATIONS--REGISTRATION.--

A. Elections for the board of trustees shall be held on the first Monday in April or on a day designated in the bylaws, either every two or every four years as specified in the bylaws of the land grant-merced.

B. All qualified voting members of the land grant-merced are qualified to vote and may vote for trustees as specified in the land grant-merced bylaws.

C. The registration of qualified voting members shall be conducted in the manner prescribed in the land grant-merced bylaws. The secretary of the board of trustees shall maintain the registration books. Registration shall be closed beginning fifteen days before an election and reopened on the Monday following the election.

D. The registration books compiled before each election shall be used at that election. No person shall vote at the election unless duly registered in the books, and no ballot of any unregistered person shall be counted or canvassed.

E. A candidate for the board of trustees shall file a declaration of candidacy with the secretary of the board of trustees. The period when declarations of candidacy may be filed shall begin on the day the proclamation calling the election is published and shall remain open for at least ten days.

F. Whenever an election is to be called or is required by law, the board of trustees shall by resolution issue a public proclamation calling the election. The proclamation shall specify:

- (1) the date on which the election will be held;
- (2) the purpose for which the election is called;
- (3) if positions on the board of trustees are to be filled, the date and time by which declarations of candidacy are to be filed;
- (4) if a question is to be voted upon, the text of that question;
- (5) the location of each polling place in the land grant-merced;
- (6) the hours that each polling place will be open; and
- (7) the date and time of the closing of the registration books.

G. Not less than thirty days nor more than forty-five days before the date of the election, the board of trustees shall publish in Spanish and English the proclamation in a local newspaper of general circulation available within the boundaries of the land grant-merced and post the proclamation in at least five public places within the land grant-merced.

H. The board of trustees shall appoint one election judge and at least two election clerks for each polling place. The election judge shall also be present for the canvass of the vote. No person shall be qualified for appointment or service as an election clerk or judge who is a spouse, parent, child, brother or sister of any candidate to be voted for at the election.

I. The board of trustees shall provide in the bylaws for the forms and procedures by which the land grant-merced elections are conducted. If the board of trustees chooses to provide for early or absentee voting, it shall specify in its bylaws the procedures by which early or absentee voting shall be conducted."

Chapter 131 Section 2 Laws 2009

Section 2. Section 49-4-7 NMSA 1978 (being Laws 2007, Chapter 145, Section 6) is amended to read:

"49-4-7. ELECTION OF MEMBERS OF BOARD OF TRUSTEES--VOTERS' QUALIFICATIONS--REGISTRATION.--

A. Elections for the board of trustees shall be held on the first Monday in April or on a day designated in the bylaws, either every two or every four years as specified in the bylaws of the land grant-merced.

B. All qualified voting members of the land grant-merced are qualified to vote and may vote for trustees as specified in the land grant-merced bylaws.

C. The registration of qualified voting members shall be conducted in the manner prescribed in the land grant-merced bylaws. The secretary of the board of trustees shall maintain the registration books. Registration shall be closed beginning fifteen days before an election and reopened on the Monday following the election.

D. The registration books compiled before each election shall be used at that election. A person shall not vote at the election unless duly registered in the books, and a ballot of any unregistered person shall not be counted or canvassed.

E. A candidate for the board of trustees shall file a declaration of candidacy with the secretary of the board of trustees. The period when declarations of candidacy may be filed shall begin on the day the proclamation calling the election is published and shall remain open for at least ten days.

F. Whenever an election is to be called or is required by law, the board of trustees shall by resolution issue a public proclamation calling the election. The proclamation shall specify:

- (1) the date on which the election will be held;
- (2) the purpose for which the election is called;
- (3) if positions on the board of trustees are to be filled, the date and time by which declarations of candidacy are to be filed;
- (4) if a question is to be voted upon, the text of that question;
- (5) the location of each polling place in the land grant-merced;
- (6) the hours that each polling place will be open; and
- (7) the date and time of the closing of the registration books.

G. Not less than thirty days nor more than forty-five days before the date of the election, the board of trustees shall publish in Spanish and English the proclamation in a local newspaper of general circulation available within the boundaries of the land grant-merced and post the proclamation in at least five public places within the land grant-merced.

H. The board of trustees shall appoint one election judge and at least two election clerks for each polling place. The election judge shall also be present for the canvass of the vote. No person shall be qualified for appointment or service as an election clerk or judge who is a spouse, parent, child, brother or sister of any candidate to be voted for at the election.

I. The board of trustees shall provide in the bylaws for the forms and procedures by which the land grant-merced elections are conducted. If the board of trustees chooses to provide for early or absentee voting, it shall specify in its bylaws the procedures by which early or absentee voting shall be conducted."

House Bill 458, aa

Approved April 7, 2009

LAWS 2009, CHAPTER 132

AN ACT

RELATING TO PUBLIC SCHOOL FACILITIES; AMENDING AND ENACTING CERTAIN SECTIONS OF THE PUBLIC SCHOOL LEASE PURCHASE ACT; DELETING A PURPOSE FOR WHICH SCHOOL DISTRICT GENERAL OBLIGATION BONDS MAY BE ISSUED.

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

Chapter 132 Section 1 Laws 2009

Section 1. Section 22-18-1 NMSA 1978 (being Laws 1967, Chapter 16, Section 228, as amended) is amended to read:

"22-18-1. GENERAL OBLIGATION BONDS--AUTHORITY TO ISSUE.--

A. After consideration of the priorities for the school district's capital needs as shown by the facility assessment database maintained by the public school facilities authority and subject to the provisions of Article 9, Section 11 of the constitution of New Mexico and Sections 6-15-1 and 6-15-2 NMSA 1978, a school district may issue general obligation bonds for the purpose of:

- buildings;
- (1) erecting, remodeling, making additions to and furnishing school buildings;
 - (2) purchasing or improving school grounds;
 - (3) purchasing computer software and hardware for student use in public schools;
 - (4) providing matching funds for capital outlay projects funded pursuant to the Public School Capital Outlay Act; or
 - (5) any combination of these purposes.

B. The bonds shall be fully negotiable and constitute negotiable instruments within the meaning and for all purposes of the Uniform Commercial Code."

Chapter 132 Section 2 Laws 2009

Section 2. Section 22-26A-1 NMSA 1978 (being Laws 2007, Chapter 173, Section 1) is amended to read:

"22-26A-1. SHORT TITLE.--Chapter 22, Article 26A NMSA 1978 may be cited as the "Public School Lease Purchase Act"."

Chapter 132 Section 3 Laws 2009

Section 3. Section 22-26A-4 NMSA 1978 (being Laws 2007, Chapter 173, Section 4) is amended to read:

"22-26A-4. NOTICE OF PROPOSED LEASE PURCHASE ARRANGEMENT--APPROVAL OF DEPARTMENT.--

A. When a local school board determines, pursuant to Subsection B of Section 22-26A-6 NMSA 1978, that a lease purchase arrangement is in the best interest of the school district, the board shall forward to the department a copy of the proposed lease purchase arrangement and the source of funds that the local school board has identified to make payments due under the lease purchase arrangement.

B. A local school board shall not enter into a lease purchase arrangement without the approval of the department."

Chapter 132 Section 4 Laws 2009

Section 4. Section 22-26A-5 NMSA 1978 (being Laws 2007, Chapter 173, Section 5) is amended to read:

"22-26A-5. LEASE PURCHASE ARRANGEMENTS--TERMS.--Lease purchase arrangements:

A. may have payments payable annually or more frequently as determined by the local school board;

B. may be subject to prepayment at the option of the local school board at such time or times and upon such terms and conditions with or without the payment of such premium or premiums as determined by the local school board;

C. may have a final payment date not exceeding thirty years after the date of execution;

D. may be acquired or executed at a public or negotiated sale;

E. may be entered into between the local school board and the owner of the building or other real property who may be a trustee or other person that issues or sells certificates of participation or other interests in the payments to be made under the lease purchase arrangement, the proceeds of which may be used to acquire the building or other real property;

F. shall specify the principal and interest component of each payment made under the lease purchase arrangement; provided that the net effective interest rate shall not exceed the maximum permitted by the Public Securities Act;

G. shall provide that, if the school district makes capital improvements to the building or other real property, there shall be no change in the lease payments or final payment without a written amendment approved by the department;

H. shall provide that, if state or school district funds, above those required for lease payments, are used to construct or acquire improvements, the cost of the improvements shall constitute a lien on the real estate in favor of the school district and then, if the lease purchase arrangement is terminated prior to the final payment and the release of the security interest or the transfer of title at the option of the school district:

(1) the school district may foreclose on the real estate lien; or

(2) the current market value of the building or other real property at the time of termination, as determined by an independent appraisal certified by the taxation and revenue department, in excess of the outstanding principal due under the lease purchase arrangement shall be paid to the school district;

I. shall provide that there is no legal obligation for the school district to continue the lease purchase arrangement from year to year or to purchase the building or other real property;

J. shall provide that the lease purchase arrangement shall be terminated if sufficient money is not available to meet any current lease payment;

K. shall provide that, with the prior approval of the lessor, which shall not be unreasonably withheld, the lease purchase arrangement is assignable without cost to the school district, if the lessee is a charter school, to a locally chartered or state-chartered charter school or to the state or one of its institutions, instrumentalities or other political subdivisions. The assignee shall acquire all rights and benefits of its predecessor in interest under the terms and conditions of the lease purchase arrangement; and

L. shall provide that amendments to the lease purchase arrangement, except amendments that would improve the building or other real property without additional financial obligations to the school district, shall be approved by the department."

Chapter 132 Section 5 Laws 2009

Section 5. A new section of the Public School Lease Purchase Act, Section 22-26A-5.1 NMSA 1978, is enacted to read:

"22-26A-5.1. TRANSFER OR ASSIGNMENT OF LEASE PURCHASE ARRANGEMENT--DESIGNATION AS PUBLIC PROPERTY.--

A. A holder of a lease purchase arrangement, including any public entity holding a lease purchase arrangement, may secure financing by issuing certificates of participation or otherwise assigning or transferring all or a portion of the lease purchase arrangement.

B. A building or other real property subject to a lease purchase arrangement that has been entered into and approved pursuant to the Public School Lease Purchase Act shall be considered to be a public property."

Chapter 132 Section 6 Laws 2009

Section 6. Section 22-26A-6 NMSA 1978 (being Laws 2007, Chapter 173, Section 6) is amended to read:

"22-26A-6. AUTHORIZING LEASE PURCHASE ARRANGEMENTS--RESOLUTION.--

A. If a local school board proposes to acquire a building or other real property through a lease purchase arrangement, it shall comply with the requirements of this section and the provisions of the Open Meetings Act.

B. At a regular meeting or at a special meeting called for the purpose of considering the acquisition of a building or other real property through a lease purchase arrangement, a local school board shall:

(1) make a determination of the necessity for acquiring the building or other real property through a lease purchase arrangement;

(2) determine the estimated cost of the buildings or other real property needed;

(3) review a summary of the terms of the proposed lease purchase arrangement;

(4) identify the source of funds for the lease purchase payments;

(5) if obtaining all or part of the funds needed requires or anticipates the imposition of a property tax, determine the estimated rate of the tax and what, if any, the percentage increase in property taxes will be for real property owners in the school district; and

(6) if the board determines that the lease purchase arrangement is in the best interest of the school district, forward a copy of the arrangement to the department pursuant to Section 22-26A-4 NMSA 1978.

C. After receiving department approval of the lease purchase arrangement, the local school board may adopt a final resolution approving the lease purchase of the building or other real property.

D. If the local school board finds that obtaining all or part of the funds needed for the lease purchase arrangement requires the imposition of a property tax, the board may also adopt a resolution to be presented to the voters pursuant to Section 22-26A-8 NMSA 1978, provided that:

(1) if a charter school that is located within the school district has notified the local school board that the charter school has been approved to enter into a lease purchase arrangement and has identified revenue from the proposed tax as a source of needed funds, the local school board:

(a) shall include the tax revenue needed by the charter school in the resolution if the charter school is a locally chartered or state-chartered charter school whose charter has been renewed at least once; and

(b) may, in its discretion, include the tax revenue needed by the charter school in the resolution if the charter school is a locally chartered charter school prior to its first renewal term; and

(2) if the tax revenue for a charter school is included in the resolution and, if the tax is approved in an election pursuant to Sections 22-26A-8 through 22-26A-12 NMSA 1978, the local school board shall distribute an amount of the tax revenue, as established in its resolution, to the charter school to be used in the lease purchase arrangement.

E. The local school board shall not adopt a resolution for or approve a lease purchase arrangement for a term that exceeds thirty years."

Chapter 132 Section 7 Laws 2009

Section 7. Section 22-26A-7 NMSA 1978 (being Laws 2007, Chapter 173, Section 7) is amended to read:

"22-26A-7. PAYMENTS UNDER LEASE PURCHASE ARRANGEMENTS.--A school district may apply any legally available funds to acquire or improve buildings or other real property subject to a lease purchase arrangement or to the payments due under a lease purchase arrangement, including any combination of:

- A. money from the school district's general fund;
- B. investment income actually received from investments;
- C. proceeds from taxes imposed pursuant to the Public School Capital Improvements Act or the Public School Buildings Act;
- D. loans, grants or lease payments received from the public school capital outlay council pursuant to the Public School Capital Outlay Act;
- E. state distributions to the school district pursuant to the Public School Improvements Act;
- F. fees or assessments received by the school district;
- G. proceeds from the sale of real property and rental income received from the rental or leasing of school district property;
- H. 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";
- I. revenues from the tax authorized pursuant to Sections 22-26A-8 through 22-26A-12 NMSA 1978, if proposed by the local school board and approved by the voters; and
- J. legislative appropriations."

Chapter 132 Section 8 Laws 2009

Section 8. Section 22-26A-8 NMSA 1978 (being Laws 2007, Chapter 173, Section 8) is amended to read:

"22-26A-8. AUTHORIZATION FOR LOCAL SCHOOL BOARD TO SUBMIT QUESTION OF LEASE PURCHASE TAX.--A local school board may adopt a resolution to submit to the qualified electors of the school district the question of whether a property tax at a rate not to exceed the rate specified in the resolution should be imposed upon the net taxable value of property allocated to the school district under the Property Tax Code for the purpose of making payments under lease purchase arrangements. The resolution shall:

A. specify the maximum rate of the proposed tax, which shall not exceed ten dollars (\$10.00) on each one thousand dollars (\$1,000) of net taxable value of property allocated to the school district under the Property Tax Code;

B. specify the date an election will be held to submit the question of imposition of the tax to the qualified electors of the district; and

C. limit the imposition of the proposed tax to no more than thirty property tax years."

Chapter 132 Section 9 Laws 2009

Section 9. Section 22-26A-10 NMSA 1978 (being Laws 2007, Chapter 173, Section 10) is amended to read:

"22-26A-10. CONDUCT OF ELECTION--NOTICE--BALLOT.--

A. An election on the question of imposing a tax under Sections 22-26A-8 through 22-26A-12 NMSA 1978 may be held in conjunction with a regular school district election or may be conducted as or held in conjunction with a special school district election, but the election shall be held prior to July 1 of the property tax year in which the tax is proposed to be imposed. Conduct of the election shall be as prescribed in the School Election Law for regular and special school district elections.

B. The resolution required to be published as notice of the election under Section 1-22-4 or 1-22-5 NMSA 1978 shall include as the question to be submitted to the voters whether a property tax at a rate not to exceed the rate specified in the authorizing resolution should be imposed for the specified number of property tax years not exceeding thirty years upon the net taxable value of all property allocated to the school district for payments due under lease purchase arrangements.

C. The ballot shall include the information specified in Subsection B of this section and shall present the voter the choice of voting "for the lease purchase tax" or "against the lease purchase tax".

Chapter 132 Section 10 Laws 2009

Section 10. Section 22-26A-12 NMSA 1978 (being Laws 2007, Chapter 173, Section 12) is amended to read:

"22-26A-12. IMPOSITION OF TAX--LIMITATIONS.--If as a result of an election held in accordance with Sections 22-26A-8 through 22-26A-11 NMSA 1978 a majority of the qualified electors voting on the question votes in favor of the imposition of the tax, the tax rate shall be certified, unless the local school board directs that the tax levy not be made for the year, by the department of finance and administration at the rate specified in the authorizing resolution or at a lower rate directed by the local school board and the tax shall be imposed at the rate certified in accordance with the provisions of the Property Tax Code. The revenue produced by the tax shall be expended only for payments due under lease purchase arrangements, as specified in the authorizing resolution."

Chapter 132 Section 11 Laws 2009

Section 11. Section 22-26A-15 NMSA 1978 (being Laws 2007, Chapter 173, Section 15) is amended to read:

"22-26A-15. AGREEMENT OF THE STATE.--The state does hereby pledge to and agree with the holders of any lease purchase arrangement, certificates of participation or other partial interest in a lease purchase arrangement entered into under the Public School Lease Purchase Act that the state will not limit or alter the rights vested in school districts to fulfill the terms of any lease purchase arrangement or related sublease arrangement or in any way impair the rights and remedies of the holders of lease purchase arrangements, certificates of participation or other partial interests in lease purchase arrangements until the payments due thereon, and all costs and expenses in connection with any action or proceedings by or on behalf of those holders, are fully met and discharged. School districts are authorized to include this pledge and agreement of the state in any lease purchase arrangement or related sublease arrangement."

Chapter 132 Section 12 Laws 2009

Section 12. Section 22-26A-16 NMSA 1978 (being Laws 2007, Chapter 173, Section 16) is amended to read:

"22-26A-16. LEGAL INVESTMENTS FOR PUBLIC OFFICERS AND FIDUCIARIES.--Lease purchase arrangements entered into under the authority of the Public School Lease Purchase Act, including certificates of participation and other

partial interests in such lease purchase arrangements, shall be legal investments in which all insurance companies, banks and savings and loan associations organized under the laws of the state, public officers and public bodies and all administrators, guardians, executors, trustees and other fiduciaries may properly and legally invest funds."

Chapter 132 Section 13 Laws 2009

Section 13. Section 22-26A-17 NMSA 1978 (being Laws 2007, Chapter 173, Section 17) is amended to read:

"22-26A-17. TAX EXEMPTION.--The state covenants with the original holder and all subsequent holders and transferees of lease purchase arrangements entered into by the local school boards, in consideration of the acceptance of and payment for the lease purchase arrangements entered into pursuant to the Public School Lease Purchase Act, that lease purchase arrangements, certificates of participation and other partial interests in lease purchase arrangements and the interest income from the lease purchase arrangements, certificates of participation and other partial interests shall at all times be free from taxation by the state, except for estate or gift taxes and taxes on transfers."

Chapter 132 Section 14 Laws 2009

Section 14. Section 22-26A-19 NMSA 1978 (being Laws 2007, Chapter 173, Section 19) is amended to read:

"22-26A-19. LEASE PURCHASE ARRANGEMENTS FOR CHARTER SCHOOLS.--A locally chartered or state-chartered charter school may enter into a lease purchase arrangement pursuant to the Public School Lease Purchase Act, provided that a governing body of a charter school shall not adopt a resolution pursuant to Subsection D of Section 22-26A-6 NMSA 1978 and shall not propose a tax or conduct an election pursuant to Sections 22-26A-8 through 22-26A-12 NMSA 1978, but nothing in this section prevents a charter school from receiving revenue from a tax proposed by the local school board for the district in which the charter school is located and approved by the voters."

House Bill 466, aa

Approved April 7, 2009

LAWS 2009, CHAPTER 133

AN ACT

RELATING TO COURTS; PROVIDING NO RIGHT TO A JURY TRIAL IN
MAGISTRATE COURT FOR PENALTY ASSESSMENT MISDEMEANORS OR FOR
OFFENSES THAT DO NOT PRESCRIBE INCARCERATION AS A PENALTY;
DECLARING AN EMERGENCY.

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

Chapter 133 Section 1 Laws 2009

Section 1. Section 35-8-1 NMSA 1978 (being Laws 1968, Chapter 62, Section 108, as amended) is amended to read:

"35-8-1. MAGISTRATE JURY--RIGHT TO TRIAL BY JURY.--Except for contempt of the magistrate court, penalty assessment misdemeanors or offenses that do not prescribe incarceration as a penalty, the right to trial by jury exists in all actions in the magistrate court that are within magistrate trial jurisdiction."

Chapter 133 Section 2 Laws 2009

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

House Bill 484, w/ec

Approved April 7, 2009

LAWS 2009, CHAPTER 134

AN ACT

RELATING TO SCHOOL LIBRARY MATERIALS; PROVIDING FOR DISTRIBUTION
OF SCHOOL LIBRARY MATERIALS TO GOVERNMENTALLY CONTROLLED
SCHOOLS.

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

Chapter 134 Section 1 Laws 2009

Section 1. Section 22-15C-2 NMSA 1978 (being Laws 2003, Chapter 149, Section 2, as amended) is amended to read:

"22-15C-2. DEFINITIONS.--As used in the School Library Material Act:

A. "additional student" means a student in the certified forty-day membership of the current year for a school district or state institution above the number certified in the forty-day membership of the prior year for the school district or state institution;

B. "bureau" means the instructional material bureau of the department;

C. "bureau of Indian education" means the bureau of Indian education of the United States department of the interior;

D. "fund" means the school library material fund;

E. "governmentally controlled school" means a bureau of Indian education school that is governmentally owned and controlled, is located in New Mexico, provides instruction for first through twelfth grades and is not sectarian or denominational;

F. "library material processing" means cataloging of school library material, including in electronic format, according to nationally accepted standards, and the application of bar code labels and call-number classification labels to the material;

G. "membership" means the total enrollment of qualified students on the fortieth day of the school year entitled to the free use of school library material pursuant to the School Library Material Act;

H. "qualified student" means a public school or governmentally controlled school student who:

(1) has not graduated from high school;

(2) is regularly enrolled in one-half or more of the minimum course requirements approved by the department for public school students or by the bureau of Indian education for students enrolled in a governmentally controlled school; and

(3) in terms of age:

(a) is at least five years of age prior to 12:01 a.m. on September 1 of the school year; or

(b) is at least three years of age at any time during the school year and is receiving special education services pursuant to regulation of the department;

I. "school library material" means books and other educational media, including online reference and periodical databases, that are made available in a school library to students for circulation and use in the library; and

J. "school district" includes state-chartered charter schools."

Chapter 134 Section 2 Laws 2009

Section 2. Section 22-15C-3 NMSA 1978 (being Laws 2003, Chapter 149, Section 3) is amended to read:

"22-15C-3. SCHOOL LIBRARY MATERIAL FUND--CREATION.--The "school library material fund" is created in the state treasury. The purpose of the fund is to provide an account from which the department may distribute money to school districts, state institutions and governmentally controlled schools to pay for the cost of purchasing school library material. The cost of purchasing school library material may include shipping and handling charges for the delivery of school library material. The fund shall consist of appropriations, gifts, grants, donations and bequests. Money in the fund is appropriated to the department to pay for the cost of purchasing school library material. Disbursements from the fund shall be by warrant of the secretary of finance and administration upon vouchers signed by the secretary or the secretary's designated representative. Money in the fund shall not revert to the general fund at the end of a fiscal year."

Chapter 134 Section 3 Laws 2009

Section 3. Section 22-15C-4 NMSA 1978 (being Laws 2003, Chapter 149, Section 4) is amended to read:

"22-15C-4. ADMINISTRATION OF THE SCHOOL LIBRARY MATERIAL FUND--BUREAU--DUTIES.--Subject to the policies and rules of the department, the bureau shall:

- A. administer the provisions of the School Library Material Act;
- B. enforce rules for the handling, safekeeping and distribution of school library material and money from the fund;
- C. enforce inventory and accounting procedures to be followed by school districts, state institutions and governmentally controlled schools; and
- D. withdraw or withhold the privilege of participating in the free use of school library material in case of noncompliance with the provisions of the School Library Material Act or rules adopted pursuant to that act."

Chapter 134 Section 4 Laws 2009

Section 4. Section 22-15C-5 NMSA 1978 (being Laws 2003, Chapter 149, Section 5) is amended to read:

"22-15C-5. STUDENTS ELIGIBLE--DISTRIBUTION.--

A. A qualified student or person eligible to become a qualified student attending a public school, a state institution or a governmentally controlled school in a grade from the first through the twelfth grade of instruction is entitled to the free use of school library material. A student enrolled in an early childhood education program as defined in Section 22-13-3 NMSA 1978 is also entitled to the free use of school library material.

B. A school district, a state institution or a governmentally controlled school shall purchase school library material as an agent for the benefit of students entitled to the free use of school library material.

C. A school district, a state institution or a governmentally controlled school receiving school library material pursuant to the School Library Material Act is responsible for circulation of the school library material for use by eligible students and for the safekeeping of the school library material."

Chapter 134 Section 5 Laws 2009

Section 5. Section 22-15C-6 NMSA 1978 (being Laws 2003, Chapter 149, Section 6, as amended) is amended to read:

"22-15C-6. DISTRIBUTION OF MONEY FOR SCHOOL LIBRARY MATERIAL.--

A. On or before July 1 of each year, the department shall allocate from the fund at least ninety percent of the estimated entitlement for each school district, state institution or governmentally controlled school as determined from the estimated forty-day membership for the next school year to each school district, state institution and governmentally controlled school. The entitlement of a school district, a state institution or a governmentally controlled school is the portion of the total amount of the annual appropriation less a deduction for a reasonable reserve for emergency expenses that its forty-day membership bears to the forty-day membership of the entire state. Additional students shall be counted as six students for the purpose of the allocation.

B. On or before January 15 of each year, the department shall recompute each entitlement using the forty-day membership for that year and shall allocate the balance of the annual appropriation adjusting for any over- or under-estimation made in the first allocation.

C. The department shall establish procedures to distribute funds directly to school districts, state institutions and governmentally controlled schools.

D. A school district, a state institution or a governmentally controlled school that has funds remaining for the purchase of school library material at the end of a fiscal year shall retain those funds for expenditure in subsequent years."

Chapter 134 Section 6 Laws 2009

Section 6. Section 22-15C-7 NMSA 1978 (being Laws 2003, Chapter 149, Section 7) is amended to read:

"22-15C-7. SALE OR LOSS OR RETURN OF SCHOOL LIBRARY MATERIAL.--

A. With the approval of the bureau, school library material acquired by a school district, a state institution or a governmentally controlled school pursuant to the School Library Material Act may be sold at a price determined by officials of the school district, state institution or governmentally controlled school. The selling price shall not exceed the cost of school library material to the state.

B. A school district, a state institution or a governmentally controlled school may hold a parent, guardian or student responsible for loss, damage or destruction of school library material while the school library material is in the possession of a student. A school district or a governmentally controlled school may withhold the grades, diploma and transcripts of a student responsible for damage or loss of school library material until the parent, guardian or student has paid for the damage or loss. When a parent, guardian or student is unable to pay for the damage or loss, the school district shall work with the parent, guardian or student to develop an alternative program in lieu of payment. Where a parent or guardian is determined to be indigent according to guidelines established by the department, the school district shall bear the cost.

C. A school district, a state institution or a governmentally controlled school that has funds remaining for the purchase of school library material at the end of a fiscal year shall retain the funds for expenditure in subsequent years."

Chapter 134 Section 7 Laws 2009

Section 7. Section 22-15C-8 NMSA 1978 (being Laws 2003, Chapter 149, Section 8) is amended to read:

"22-15C-8. RECORD OF SCHOOL LIBRARY MATERIAL.--A school district, a state institution or a governmentally controlled school shall keep an accurate record of school library material that includes a cost record. A school district, a state institution or a governmentally controlled school shall comply with record-keeping procedures prescribed by the bureau."

Chapter 134 Section 8 Laws 2009

Section 8. Section 22-15C-9 NMSA 1978 (being Laws 2003, Chapter 149, Section 9) is amended to read:

"22-15C-9. ANNUAL REPORT.--Annually, at a time specified by the department, each local school district, state institution or governmentally controlled school acquiring school library material pursuant to the School Library Material Act shall file a report with the department."

Chapter 134 Section 9 Laws 2009

Section 9. Section 22-15C-10 NMSA 1978 (being Laws 2003, Chapter 149, Section 10) is amended to read:

"22-15C-10. REPORTS--BUDGETS.--

A. Annually, the department shall submit a budget for the next fiscal year to the department of finance and administration showing expenditures for school library material to be paid from the fund, including reasonable shipping and handling charges and library material processing expenses.

B. Upon request, the department shall make reports to the public education commission concerning the administration and execution of the School Library Material Act."

House Bill 508

Approved April 7, 2009

LAWS 2009, CHAPTER 135

AN ACT

RELATING TO THE JUDICIAL STANDARDS COMMISSION; ADDING A MUNICIPAL JUDGE AND ANOTHER PUBLIC MEMBER TO THE JUDICIAL STANDARDS COMMISSION.

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

Chapter 135 Section 1 Laws 2009

Section 1. Section 34-10-1 NMSA 1978 (being Laws 1968, Chapter 48, Section 1, as amended) is amended to read:

"34-10-1. JUDICIAL STANDARDS COMMISSION--SELECTION--TERMS.--The judicial standards commission consists of thirteen positions:

A. positions 1 through 5, position 10 and position 12, each of which shall be filled by a person who is a qualified elector of this state, who is not a justice, judge, municipal judge or magistrate of any court and who is not licensed to practice law in this state. The governor shall fill each of these positions by appointment of qualified persons. Following initial terms specified in this subsection, these positions shall be filled in the same manner by qualified persons who serve for five years or less, in such manner that at least one term expires on June 30 each year, and so that not more than four of the seven positions are occupied by persons from the same political party. The initial terms for positions 1 through 5 begin on July 1, 1968. The initial term for position 10 begins on July 1, 1999 and the initial term for position 12 begins on July 1, 2011. The terms expire as follows:

- (1) position 1 on June 30, 1969;
- (2) position 2 on June 30, 1970;
- (3) position 3 on June 30, 1971;
- (4) position 4 on June 30, 1972;
- (5) position 5 on June 30, 1973;
- (6) position 10 on June 30, 2004; and
- (7) position 12 on June 30, 2016;

B. positions 6 and 7, each of which shall be filled by a person who is licensed to practice law in this state. These positions shall be filled by appointment of qualified persons by majority vote of all members of the board of commissioners of the state bar of New Mexico, but no member of the board of commissioners shall be appointed. Following initial terms specified in this subsection, these positions shall be filled in the same manner by qualified persons who serve for four years or less, in such manner that one of the terms expires on June 30 of each even-numbered year. Initial terms begin on July 1, 1968 and expire as follows:

- (1) position 6 on June 30, 1970; and
- (2) position 7 on June 30, 1972; and

C. positions 8 and 9, each of which shall be filled by a person who is a justice of the supreme court or a judge of the court of appeals or district court, position 11, which shall be filled by a person who is a magistrate court judge, and position 13, which shall be filled by a person who is a municipal judge. These positions shall be filled by appointment of qualified persons by the supreme court. Following initial terms specified in this subsection, these positions shall be filled in the same manner by qualified persons who serve for four years or less, in such manner that at least one of

the terms expires on June 30 of each odd-numbered year. The initial terms for positions 8 and 9 begin on July 1, 1968. The initial term for position 11 begins on July 1, 1999. The initial term for position 13 begins July 1, 2011. The terms expire as follows:

- (1) position 8 on June 30, 1971;
- (2) position 9 on June 30, 1973;
- (3) position 11 on June 30, 2003; and
- (4) position 13 on June 30, 2013."

Chapter 135 Section 2 Laws 2009

Section 2. EFFECTIVE DATE.--The provisions of this act shall become effective upon certification by the secretary of state that the constitution of New Mexico has been amended as proposed by a joint resolution of the first session of the forty-ninth legislature entitled "A JOINT RESOLUTION PROPOSING AN AMENDMENT TO ARTICLE 6, SECTION 32 OF THE CONSTITUTION OF NEW MEXICO TO PROVIDE FOR A MUNICIPAL JUDGE TO SIT ON THE JUDICIAL STANDARDS COMMISSION AND TO PROVIDE FOR AN ADDITIONAL PUBLIC MEMBER".

House Bill 529

Approved April 7, 2009

LAWS 2009, CHAPTER 136

AN ACT

RELATING TO SPECIAL DISTRICTS; ENACTING THE INFRASTRUCTURE DEVELOPMENT ZONE ACT; PROVIDING FOR THE CREATION OF INFRASTRUCTURE DEVELOPMENT ZONES AND ELECTED BOARDS; PROVIDING POWERS AND DUTIES; AUTHORIZING INFRASTRUCTURE DEVELOPMENT ZONES TO PROVIDE SERVICES PURSUANT TO AN APPROVED SERVICE PLAN; AUTHORIZING BOARDS TO ISSUE BONDS AND TO ENTER INTO OTHER DEBT OBLIGATIONS; AUTHORIZING BOARDS TO LEVY PROPERTY TAXES AND ASSESSMENTS, FEES, TOLLS AND OTHER CHARGES.

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

Chapter 136 Section 1 Laws 2009

Section 1. SHORT TITLE.--This act may be cited as the "Infrastructure Development Zone Act".

Chapter 136 Section 2 Laws 2009

Section 2. DEFINITIONS.--As used in the Infrastructure Development Zone Act:

A. "approving authority" means the governing body required by Section 9 or 13 of the Infrastructure Development Zone Act to designate an election official to conduct the organization election and exercise other duties pursuant to that 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;

(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.

Chapter 136 Section 3 Laws 2009

Section 3. ORGANIZATION OF INFRASTRUCTURE DEVELOPMENT ZONE-- SUBMISSION OF SERVICE PLAN.--

A. An infrastructure development zone may be entirely within or entirely without, or partly within and partly without, one or more municipalities or counties, and an infrastructure development zone may consist of noncontiguous tracts or parcels of property within three miles of each other.

B. Persons proposing the organization of an infrastructure development zone shall submit a petition, a service plan and any required processing fee sufficient to defray the costs of the applicable county or municipality to:

(1) the governing body of each municipality within which lies any area within the proposed infrastructure development zone; and

(2) the governing body of each county in which lies any area within the proposed infrastructure development zone that is not within a municipality.

C. The petition shall be signed by not less than thirty percent or four hundred of the taxpaying electors of the proposed infrastructure development zone, whichever number is smaller. The petition shall set forth:

- (1) the name of the proposed infrastructure development zone;
- (2) a statement as to whether the proposed infrastructure development zone lies wholly or partly within another county, municipality or other infrastructure development zone;
- (3) a description of the boundaries of the proposed infrastructure development zone or the territory to be included therein, with such certainty as to enable a property owner to determine whether or not the property owner's property is within the proposed infrastructure development zone;
- (4) a request for the organization of the infrastructure development zone; and
- (5) a request for the submission to the eligible electors of the proposed infrastructure development zone at the organization election of any questions permitted to be submitted at the organization election pursuant to Section 10 of the Infrastructure Development Zone Act.

D. The service plan shall contain the following:

- (1) a description of the proposed services;
- (2) a financial plan showing how the proposed services are to be financed, including the proposed operating revenue derived from property taxes for the first budget year of the proposed infrastructure development zone;
- (3) a schedule of the proposed indebtedness for the proposed infrastructure development zone indicating the year or years in which the debt is scheduled to be issued;
- (4) a preliminary engineering or architectural survey showing how the proposed services are to be provided;
- (5) a map of the proposed infrastructure development zone boundaries and an estimate of the population and valuation for assessment of the proposed infrastructure development zone;
- (6) a general description of the facilities to be constructed and the standards of the construction, including a statement of how the facility and service standards of the proposed infrastructure development zone are compatible with the facility and service standards of any county or municipality within the zoning jurisdiction

of which all or any portion of the proposed infrastructure development zone is to be located;

(7) a general description of the estimated cost of acquiring land, engineering services, legal services, administrative services, initial proposed indebtedness and estimated proposed maximum interest rates and discounts, and other major expenses related to the organization and initial operation of the proposed infrastructure development zone;

(8) a description of any arrangement or proposed agreement with any political subdivision for the performance of any services between the proposed infrastructure development zone and the other political subdivision, including, if the form contract to be used is available, a copy of the contract;

(9) a proposed maximum mill levy that will be assessed by the infrastructure development zone and that, upon approval by the governing body, shall be the limitation on the mill levy that may be assessed for all purposes, including operating expenses and debt service on bonds issued pursuant to Section 28 of the Infrastructure Development Zone Act; and

(10) such additional information as the governing body may require by resolution on which to base its findings pursuant to Section 7 of the Infrastructure Development Zone Act.

Chapter 136 Section 4 Laws 2009

Section 4. PUBLIC HEARING REQUIRED.--

A. After receiving a petition and a service plan, the governing body shall set a date within ninety days for a public hearing on the petition and service plan of the proposed infrastructure development zone. The governing body, at the petitioners' expense, shall provide written notice of the date, time and location of the hearing to the petitioners, each resident or property owner of record within the boundaries of the proposed infrastructure development zone and the governing body of any existing county, municipality, school district or other political subdivision that has levied an ad valorem tax within the next preceding tax year and that has boundaries within a radius of three miles of the proposed infrastructure development zone boundaries, which governmental units shall be interested parties for the purposes of Subsection C of this section. Notice shall also be given to any person who has requested that notice be given for any petition filed pursuant to the Infrastructure Development Zone Act. The governing body shall make publication of the date, time, location and purpose of the hearing, the first of which shall be at least twenty days prior to the hearing date. The notice shall also include:

(1) a general description of the land contained within the boundaries of the proposed infrastructure development zone;

(2) information outlining methods and procedures for excluding territory from the proposed infrastructure development zone; and

(3) places, including web sites, where interested persons may obtain a copy of the petition and the service plan.

B. Not more than thirty days nor less than twenty days prior to the hearing held pursuant to this section, the petitioners for the organization of the proposed infrastructure development zone shall send notification by certified mail of the hearing to the property owners within the proposed infrastructure development zone as listed on the records of the county clerk on the date requested unless the petitioners represent one hundred percent of the property owners. The notification shall indicate that it is a notice of a hearing for the organization of an infrastructure development zone and shall indicate the date, time, location and purpose of the hearing, a general description of the type of services that are included in the service plan, the maximum mill levy, if any, or stating that there is no maximum that may be imposed by the proposed infrastructure development zone, and procedures for the filing of a request for exclusion pursuant to Section 6 of the Infrastructure Development Zone Act. The mailing of the notification by certified mail to all addresses within the proposed infrastructure development zone shall constitute a good-faith effort to comply with this subsection, and failure to notify all property owners by certified mail shall not provide grounds for a challenge to the hearing being held.

C. The hearing held by the governing body shall be open to the public, and a record of the proceedings shall be made at the expense of the petitioners. All interested parties shall be afforded an opportunity to be heard under such rules of procedure as may be established by the governing body. Any testimony or evidence that in the discretion of the governing body is relevant to the organization of the proposed infrastructure development zone shall be considered.

Chapter 136 Section 5 Laws 2009

Section 5. OBJECTING PETITION--PLAN TO BE DISAPPROVED.--No service plan shall be approved if a petition objects to the service plan and is signed by the owners of taxable real and personal property, consisting of more than fifty percent of the total assessed value of all taxable real and personal property to be included in the proposed infrastructure development zone, is filed with the governing body no later than ten days prior to the hearing pursuant to Section 4 of the Infrastructure Development Zone Act, unless the property has been excluded by the governing body under Section 6 of that act.

Chapter 136 Section 6 Laws 2009

Section 6. REQUEST FOR EXCLUSION.--

A. The governing body may exclude territory from a proposed infrastructure development zone prior to approval of the service plan. Any person owning property in the proposed infrastructure development zone who requests that the person's property be excluded from the infrastructure development zone prior to approval of the service plan shall submit the request to the governing body no later than ten days prior to the hearing held pursuant to Section 4 of the Infrastructure Development Zone Act. The petitioners who submitted the service plan shall have the burden of proving that the exclusion of the property is not in the best interests of the proposed infrastructure development zone. Any request for exclusion shall be acted upon before final action of the governing body pursuant to Section 7 of the Infrastructure Development Zone Act.

B. The governing board shall exclude property located within any home rule municipality in respect to which a request for exclusion has been filed by the municipality.

Chapter 136 Section 7 Laws 2009

Section 7. ACTION ON PETITION AND SERVICE PLAN--CRITERIA.--

A. Within sixty days of a hearing held pursuant to Section 4 of the Infrastructure Development Zone Act, the governing body shall disapprove the service plan, approve the service plan as submitted or conditionally approve the service plan subject to the submission of additional information relating to or modifying the proposed service plan.

B. The governing body shall disapprove the service plan unless evidence, satisfactory to the governing body, is presented that:

(1) the required number of taxpaying electors of the proposed infrastructure development zone have signed the petition;

(2) there is sufficient existing or projected need for organized service in the area to be serviced by the proposed infrastructure development zone;

(3) the existing service in the area to be served by the proposed infrastructure development zone is inadequate for present or projected needs;

(4) the proposed infrastructure development zone will be capable of providing economical and sufficient service to the area within its proposed boundaries;

(5) the area to be included in the proposed infrastructure development zone has, or will have, the financial ability to discharge the proposed indebtedness on a reasonable basis; and

(6) the proposed infrastructure development within the infrastructure development zone is in compliance with any applicable comprehensive master plan adopted pursuant to Section 3-19-9 NMSA 1978.

C. The governing body may disapprove the service plan if evidence, satisfactory to the governing body, and at the discretion of the governing body, is not presented that:

(1) adequate service is not, or will not be, available to the area through the municipality, county or other existing political subdivisions, including existing infrastructure development zones, within a reasonable time and on a comparable basis;

(2) the facility and service standards of the proposed infrastructure development zone are compatible with the facility and service standards of each county or municipality within which the proposed infrastructure development zone is to be located;

(3) the proposal is in compliance with any existing municipal, county, regional or state long-range water quality management plan for the area; or

(4) the creation of the proposed infrastructure development zone will be in the best interests of the area proposed to be served.

D. The governing body may conditionally approve the service plan of a proposed infrastructure development zone upon satisfactory evidence that it does not comply with one or more of the criteria enumerated in Subsection C of this section. Final approval shall be contingent upon modification of the service plan to include such changes or additional information as shall be specifically stated in the findings of the governing body.

E. The findings of the governing body shall be based solely upon the service plan and evidence presented at the hearing by the petitioners and any interested party.

Chapter 136 Section 8 Laws 2009

Section 8. APPROVAL OF SERVICE PLAN--PETITION GRANTED--ELECTION SCHEDULED.--

A. If the service plan is approved as submitted, the governing body shall issue a resolution of approval to the petitioners. If the service plan is disapproved, the specific detailed reasons for the disapproval shall be set forth in writing. If the service plan is conditionally approved, the changes or modifications to be made in, or additional information relating to, the service plan, together with the reasons for the changes, modifications or additional information, shall also be set forth in writing, and the proceeding shall be continued until the changes, modifications or additional information

are incorporated in the service plan. Upon the incorporation of the changes, modifications or additional information in the service plan of the proposed infrastructure development zone, the governing body shall issue a resolution of approval to the petitioners.

B. Upon the approval of the service plan by each governing body to which the service plan and petition were submitted, the petition shall be granted and the approving authority shall designate an election official to take the oath required of precinct board members and conduct an organization election pursuant to Sections 10 and 20 of the Infrastructure Development Zone Act, provided that no organization election shall be held if all of the eligible electors were petitioners and if there are no competing candidates for director positions.

C. Any interested party aggrieved by the decision of the governing body may appeal to the district court pursuant to Section 39-3-1.1 NMSA 1978.

Chapter 136 Section 9 Laws 2009

Section 9. DESIGNATION OF APPROVING AUTHORITY.--

A. The approving authority shall be:

(1) for an infrastructure development zone located entirely within one county and outside a municipality, the governing body of that county;

(2) for an infrastructure development zone located entirely within a municipality, the governing body of that municipality;

(3) except as provided in Subsection B of this section, for an infrastructure development zone that is not described in Paragraph (1) or (2) of this subsection and of which the majority of its acreage lies outside a municipality, the governing body of the county containing the most acreage outside of a municipality; or

(4) except as provided in Subsection B of this section, for an infrastructure development zone that is not described in Paragraph (1) or (2) of this subsection and of which the majority of its acreage lies within a municipality, the governing body of that municipality.

B. For an infrastructure development zone that is not described in Paragraph (1) or (2) of Subsection A of this section, in lieu of the approving authority designated pursuant to Paragraph (3) or (4) of that subsection, all of the governing bodies that approved the petition and service plan of the infrastructure development zone may jointly designate a governing body, in the zoning jurisdiction of which lies any portion of the infrastructure development zone, as the approving authority.

Chapter 136 Section 10 Laws 2009

Section 10. ORGANIZATION ELECTION.--

A. The election official designated by the approving authority shall conduct the organization election pursuant to this section and Section 20 of the Infrastructure Development Zone Act.

B. At the election, the eligible electors shall vote for or against the organization of the proposed infrastructure development zone, shall vote for five eligible electors of the infrastructure development zone who shall be the initial directors of the board of the infrastructure development zone, if organized and shall vote for or against general obligation bonds or other general obligations if the petition filed pursuant to Section 3 of the Infrastructure Development Zone Act requests that the questions be submitted at the organization election.

C. If the majority of the votes cast at the election are in favor of the organization, the approving authority shall, by resolution, declare the infrastructure development zone organized and give the infrastructure development zone the corporate name designated in the petition, by which it shall thereafter be known in all proceedings, and designate the first board elected. Thereupon the infrastructure development zone shall be a quasi-municipal corporation and a political subdivision of the state with all the powers thereof.

D. The resolution declaring the infrastructure development zone organized shall be deemed final and shall finally and conclusively establish the regular organization of the infrastructure development zone against all persons. No appeal or other remedy shall challenge the resolution except in an action by the attorney general within thirty days after the resolution is passed, and the organization of the infrastructure development zone shall not be directly or collaterally questioned in any suit, action or proceeding except as expressly authorized in this subsection.

Chapter 136 Section 11 Laws 2009

Section 11. FILING RESOLUTION AND SERVICE PLAN.--Within thirty days after the effective date of the resolution declaring that an infrastructure development zone has been organized, the original petitioners shall file the resolution, the approved service plan and a map of the infrastructure development zone with the county clerk in each of the counties in which the infrastructure development zone is located and with the local government division of the department of finance and administration. Thereafter, the infrastructure development zone shall maintain a current, accurate map of its boundaries and shall file the map with each county clerk on or before January 1 of each year.

Chapter 136 Section 12 Laws 2009

Section 12. SERVICE AREA OF INFRASTRUCTURE DEVELOPMENT ZONES--
-OVERLAPPING DISTRICTS.--

A. Except as provided in Subsection B of this section, no infrastructure development zone may be organized wholly or partly within an existing special district or infrastructure development zone that provides the same service; provided that nothing in this subsection shall prevent an infrastructure development zone that provides different services from organizing wholly or partly within an existing special district or infrastructure development zone.

B. An overlapping district may be authorized to provide the same service as the existing special district or infrastructure development zone that the overlapping district overlaps or will overlap if:

(1) where the service plan of the overlapping district is subject to approval by a governing body, the governing body having jurisdiction over the overlapping territory approves by resolution the inclusion of the service as part of the service plan of the overlapping district;

(2) the improvements or facilities to be financed, established or operated by the overlapping district for the provision of the same service as the existing special district or infrastructure development zone do not duplicate or interfere with any other improvements or facilities already constructed or planned to be constructed within the portion of the existing special district or infrastructure development zone that the overlapping district overlaps or will overlap; and

(3) the board of directors of any special district or infrastructure development zone authorized to provide a service within the boundaries of the overlapping area consents to the overlapping district providing the same service.

C. As used in this section:

(1) "overlapping district" means a new or existing special district or infrastructure development zone located wholly or partly within an existing special district or infrastructure development zone; and

(2) "special district" means any single or multipurpose district organized or that may be organized as a local public body of this state for the purpose of constructing and furnishing any urban-oriented service that another political subdivision of the state is authorized to perform.

Chapter 136 Section 13 Laws 2009

Section 13. APPROVAL BY AN ANNEXING MUNICIPALITY.--

A. If an infrastructure development zone that was not originally approved by the governing body of a municipality becomes wholly contained within the boundaries of a municipality by annexation, the board may petition the governing body of the municipality to accept a designation as the approving authority for the

infrastructure development zone. The municipality may accept the designation through the adoption of a resolution of approval by the governing body of the municipality.

B. Upon the adoption of the resolution by the governing body of a municipality pursuant to Subsection A of this section, all powers and authorities vested in the approving authority pursuant to the Infrastructure Development Zone Act shall be transferred to the governing body of the municipality, which shall constitute the approving authority for the infrastructure development zone for all purposes under that act.

Chapter 136 Section 14 Laws 2009

Section 14. SERVICE PLAN--COMPLIANCE--MODIFICATION--ENFORCEMENT.--

A. Upon the organization of an infrastructure development zone, the facilities, services and financial arrangements of the infrastructure development zone shall conform so far as practicable to the approved service plan.

B. After the organization of an infrastructure development zone, material modifications of the service plan as originally approved may be made by the board only by petition to and approval by each governing body that approved the original service plan or that became an approving authority under Section 13 of the Infrastructure Development Zone Act in substantially the same manner as is provided for the approval of an original service plan; but the processing fee for the modification procedure shall not exceed the reasonable and actual cost incurred by the governing body. The approval of modifications shall be required only with regard to changes of a basic or essential nature, including:

(1) an addition to the types of services provided by the infrastructure development zone;

(2) a decrease in the level of services;

(3) a decrease in the financial ability of the infrastructure development zone to discharge the existing or proposed indebtedness; or

(4) a decrease in the existing or projected need for organized service in the area.

C. Approval for a modification is not required for changes necessary only for the execution of the original service plan or for changes in the boundary of the infrastructure development zone; except that the inclusion of property that is located in a county or a municipality with no other territory within the infrastructure development zone may constitute a material modification of the service plan or the statement of purposes of the infrastructure development zone. In the event that an infrastructure

development zone changes its boundaries to include territory located in a county or a municipality with no other territory within the infrastructure development zone, the board shall notify the governing body of the county or municipality of the inclusion. The governing body may review the inclusion and, if it determines that the inclusion constitutes a material modification, may require the board to file a modification of its service plan in accordance with the provisions of this section.

D. No action may be brought to enjoin the construction of any facility, the issuance of bonds or other financial obligations, the levy of taxes, the imposition of rates, fees, tolls and charges or any other proposed activity of the infrastructure development zone unless the action is commenced within forty-five days after the board has published notice of its intention to undertake the activity. The notice shall describe the activity proposed to be undertaken by the infrastructure development zone and shall provide that any action to enjoin the activity as a material departure from the service plan shall be brought within forty-five days from publication of the notice. The notice shall be published one time in a newspaper of general circulation in the infrastructure development zone. On or before the date of publication of the notice, the board shall also mail the notice to each approving authority.

Chapter 136 Section 15 Laws 2009

Section 15. INCLUSION OF TERRITORY--PROCEDURE.--

A. Additional territory may be added to an infrastructure development zone without an election pursuant to the following provisions:

(1) the boundaries of an infrastructure development zone may be altered by the inclusion of additional real property by the fee owners of one hundred percent of any real property capable of being served with facilities of the infrastructure development zone filing with the board a petition in writing requesting that the property be included in the infrastructure development zone. The petition shall include a legal description of the property, shall state that assent to the inclusion of the property in the infrastructure development zone is given by the fee owners thereof and shall be acknowledged by the fee owners in the same manner as required for conveyance of land;

(2) the board shall hear the petition at a public meeting after publication of notice of the filing of the petition, the place, time and date of the meeting, the names and addresses of the petitioners and notice that all persons interested shall appear at the time and place and show cause in writing why the petition should not be granted. There shall be no withdrawal from a petition after publication of notice by the board without the consent of the board. The failure of any municipality or county that may be able to provide service to the real property described in the petition, or of any person in the existing infrastructure development zone to file a written objection, shall be taken as an assent to the inclusion of the area described in the notice;

(3) the board shall grant or deny the petition, in whole or in part, with or without conditions, and the action of the board shall be final and conclusive, except as provided in Paragraph (4) of this subsection. If a municipality or county has filed a written objection to the inclusion, the board shall not grant the petition as to any of the real property to which adequate service is, or will be, available from the municipality or county within a reasonable time and on a comparable basis. If a petition is granted as to all or any of the real property, the board shall make an order to that effect and file the order with the county clerk of each county in which any part of the infrastructure development zone is located, and the property shall thereafter be included in the infrastructure development zone; and

(4) a municipality or county that has filed a written objection to the inclusion and that can provide adequate service to the real property described in the petition within a reasonable time and on a comparable basis may bring an action in the district court for the county in which the land proposed to be included is located, commenced within thirty days after entry of the order of the board, to determine whether the action of the board granting the inclusion was arbitrary, capricious or unreasonable.

B. In addition to the procedures specified in Subsection A of this section, additional territory may also be added to an infrastructure development zone pursuant to the following provisions:

(1) either:

(a) not less than twenty percent or two hundred, whichever number is smaller, of the taxpaying electors of an area that contains twenty-five thousand or more square feet of land may file a petition with the board in writing requesting that the area be included within the infrastructure development zone; except that no single tract of property constituting more than fifty percent of the total area to be included may be included in any infrastructure development zone without the consent of the owner thereof. The petition shall set forth a legal and a general description of the area to be included and shall be acknowledged in the same manner as required for conveyance of land; or

(b) the board may adopt a resolution proposing the inclusion of a specifically described area; but no single tract or parcel of property constituting more than fifty percent of the total area to be included may be included in an infrastructure development zone without the consent of the owner thereof;

(2) nothing in this subsection shall permit the inclusion in an infrastructure development zone of any property if a petition that objects to the inclusion and that is signed by the owners of taxable real and personal property, which property equals more than fifty percent of the total assessed value of all taxable real and personal property to be included, is filed with the board no later than ten days prior to the public meeting held under Paragraph (3) of this subsection;

(3) upon the filing of a petition or the adoption of a resolution pursuant to Paragraph (1) of this subsection, the board shall hear the petition or resolution at a public meeting after publication of notice of the filing of the petition or adoption of the resolution, the place, time and date of the meeting, the names and addresses of the petitioners, if applicable, the description of the area proposed for inclusion and notice that all persons interested and any municipality or county that may be able to provide service to the real property therein described shall appear at the time and place stated and show cause in writing why the petition should not be granted or the resolution not finally adopted. There shall be no withdrawal from a petition after publication of notice by the board without the consent of the board. The failure of any person in the existing infrastructure development zone to file a written objection shall be taken as an assent on that person's part to the inclusion of the area described in the notice;

(4) after a hearing pursuant to Paragraph (3) of this subsection, the board shall grant or deny the petition or finally adopt the resolution, in whole or in part, with or without conditions, and, subject to an election conducted pursuant to Paragraph (6) of this subsection, the action of the board shall be final and conclusive, except as provided in Paragraph (5) of this subsection. If a municipality or county has filed a written objection to the inclusion, the board shall not grant the petition or finally adopt the resolution as to any of the real property to which adequate service is, or will be, available from the municipality or county within a reasonable time and on a comparable basis;

(5) a municipality or county that has filed a written objection to the inclusion and that can provide adequate service to the real property described in the petition within a reasonable time and on a comparable basis may bring an action in the district court for the county in which the area proposed to be included is located, commenced within thirty days after entry of the order of the board, to determine whether the action of the board granting the inclusion was arbitrary, capricious or unreasonable;

(6) upon final action by a board pursuant to Paragraph (4) of this subsection or affirmation by a district court pursuant to Paragraph (5) of this subsection, an election shall be held within the area sought to be included. The secretary shall give published notice of the time and place of the election and of the question to be submitted, together with a summary of any conditions attached to the proposed inclusion. The ballot shall be prepared by the board and shall substantially contain the following words:

"Shall the following described area become a part of the infrastructure development zone upon the following conditions, if any?

(Insert description of area)

(Insert accurate summary of conditions)

For inclusion

Against inclusion"

(7) if the majority of the votes cast at the election are in favor of inclusion, the election official shall enter an order including any conditions so prescribed and making the area a part of the infrastructure development zone. The validity of the inclusion shall not be questioned directly or indirectly in any suit, action or proceeding; and

(8) nothing in this subsection shall permit the inclusion in an infrastructure development zone of any property that could not be included in the infrastructure development zone at the time of its organization without the written consent of the owners thereof, unless the owners of the property consent in writing to the inclusion of the property in the infrastructure development zone in a petition filed pursuant to this section or unless the property is no longer excludable pursuant to the provisions of Paragraph (4) of this subsection.

C. Nothing in this section shall be construed to permit the inclusion in an infrastructure development zone of any real property located in a municipality or a county outside a municipality unless the governing body of the municipality or county has adopted a resolution authorizing the inclusion or waives its right to require the resolution in its sole discretion. Any resolution of approval so adopted or waiver so given shall be appended to any petition filed pursuant to Paragraph (1) of Subsection A of this section or Subparagraph (a) of Paragraph (1) of Subsection B of this section.

D. Not more than thirty days nor less than twenty days prior to a meeting of the board held pursuant to Paragraph (2) of Subsection A of this section or Paragraph (3) of Subsection B of this section, the secretary shall send notification by certified mail of the meeting to the property owners within the area proposed to be included within the infrastructure development zone as listed on the records of the county clerk on the date requested. The notification shall indicate that it is a notice of a meeting for consideration of the inclusion of real property within an infrastructure development zone and shall indicate the date, time, location and purpose of the meeting, a reference to the services of the infrastructure development zone as described in the service plan, the maximum mill levy, if any, or stating that there is no maximum that may be imposed if the proposed area is included within the infrastructure development zone, and procedures for the filing of a petition for exclusion pursuant to Paragraph (4) of Subsection B of this section. Except as provided in this subsection, the mailing of the notification by certified mail to all addresses within the area proposed to be included within the infrastructure development zone shall constitute a good-faith effort to comply with this section, and failure to notify all electors by certified mail shall not provide grounds for a challenge to the meeting being held.

Chapter 136 Section 16 Laws 2009

Section 16. EFFECT OF INCLUSION ORDER.--The following shall be applicable to any proceeding for inclusion accomplished pursuant to Section 15 of the Infrastructure Development Zone Act:

A. nothing in Section 15 of the Infrastructure Development Zone Act shall affect the validity of any area or property included or excluded from an infrastructure development zone by virtue of prior laws;

B. after the date of its inclusion in an infrastructure development zone, the property shall be subject to all of the taxes and charges imposed by the infrastructure development zone and shall be liable for its proportionate share of existing bonded indebtedness of the infrastructure development zone; but it shall not be liable for any taxes or charges levied or assessed prior to its inclusion in the infrastructure development zone nor shall its entry into the infrastructure development zone be made subject to or contingent upon the payment or assumption of any tax, rate, fee, toll or charge other than the taxes, rates, fees, tolls and charges that are uniformly made, assessed or levied for the entire infrastructure development zone, without the prior consent of the fee owners or approval of the electors of the area to be included;

C. in the infrastructure development zone, the included property shall be liable for its proportionate share of annual operation and maintenance charges and the cost of services of the infrastructure development zone and taxes, rates, fees, tolls or charges shall be certified and levied or assessed therefor; provided that nothing in this section shall prevent an agreement between a board and the owners of property sought to be included in an infrastructure development zone with respect to the fees, charges, terms and conditions on which the property may be included;

D. the change of boundaries of the infrastructure development zone shall not impair nor affect its organization nor shall it affect, impair or discharge any contract, obligation, lien or charge on which it might be liable or chargeable had the change of boundaries not been made;

E. the order of any inclusion of territory accomplished pursuant to Section 15 of the Infrastructure Development Zone Act shall be filed in accordance with the provisions of Section 11 of that act; and

F. the infrastructure development zone's facility and service standards that are applied within the included area shall be compatible with the facility and service standards of adjacent municipalities.

Chapter 136 Section 17 Laws 2009

Section 17. EXCLUSION OF TERRITORY.--

A. The boundaries of an infrastructure development zone may be altered by the exclusion of real property by the fee owners of one hundred percent of any real

property situate in the infrastructure development zone filing with the board a petition requesting that the real property of the fee owners be excluded and taken from the infrastructure development zone. The petition shall set forth a legal description of the property, shall state that assent to the exclusion of the property from the infrastructure development zone is given by the fee owners thereof and shall be acknowledged by the fee owners in the same manner as required for conveyance of land.

B. The board shall hear the petition at a public meeting after publication of notice of the filing of the petition, the place, time and date of the meeting, the names and addresses of the petitioners, a general description of the area proposed for exclusion and notice that all persons interested shall appear at the designated time and place and show cause in writing why the petition should not be granted. There shall be no withdrawal from a petition after publication of notice by the board without the consent of the board. The failure of any person in the existing infrastructure development zone to file a written objection shall be taken as an assent on that person's part to the exclusion of the area described in the notice.

C. The board shall take into consideration and make a finding regarding all of the following factors when determining whether to grant or deny the petition or any portion thereof:

(1) the best interests of all of the following:

(a) the property to be excluded;

(b) the infrastructure development zone from which the exclusion is proposed; and

(c) the municipalities and counties in which the infrastructure development zone is located;

(2) the relative cost and benefit to the property to be excluded from the provision of the infrastructure development zone's services;

(3) the ability of the infrastructure development zone to provide economical and sufficient services to both the property to be excluded and all of the properties within the infrastructure development zone's boundaries;

(4) the effect of denying the petition on employment and other economic conditions in the infrastructure development zone and surrounding area;

(5) the economic impact on the region and on the infrastructure development zone, surrounding area and state as a whole if the petition is denied or the resolution is finally adopted;

(6) whether an economically feasible alternative service may be available; and

(7) the additional cost to be levied on other property within the infrastructure development zone if the exclusion is granted.

D. If the board, after considering all of the factors set forth in Subsection C of this section, determines that the property described in the petition or some portion thereof should be excluded from the infrastructure development zone, it shall order that the petition be granted, in whole or in part; provided that:

(1) if the property to be excluded from the infrastructure development zone will be served by a proposed infrastructure development zone that is not yet organized, the board shall not order that the petition be granted until the proposed infrastructure development zone has been organized pursuant to the Infrastructure Development Zone Act, and notwithstanding any other provision of that act to the contrary, the property to be excluded may be included within the boundaries of the proposed infrastructure development zone; and

(2) the order of exclusion shall recite in the findings a description of any bonded indebtedness in existence immediately preceding the effective date of the order for which the excluded property is liable and the date that the bonded indebtedness is then scheduled to be retired; provided that a failure of the order for exclusion to recite the existence and scheduled retirement date of the indebtedness, when due to error or omission by the infrastructure development zone, shall not constitute grounds for correction of the omission of a levy on the excluded property from the assessment roll.

E. If the board, after considering all of the factors set forth in Subsection C of this section, determines that the property described in the petition should not be excluded from the infrastructure development zone, it shall order that the petition be denied, provided that:

(1) any petition that is denied may be appealed to the approving authority for review of the board's decision. The appeal shall be taken no later than thirty days after the decision;

(2) upon appeal, the approving authority shall consider the factors set forth in Subsection C of this section and shall make a determination as to whether to exclude the properties mentioned in the petition or resolution based on the record developed at the hearing before the board;

(3) the decision of the approving authority may be appealed, within thirty days of the approving authority's decision, to the district court for the county in which the proposed excluded area is located; and

(4) upon appeal, the court shall review the record developed at the hearing before the board and, after considering all of the factors set forth in Subsection C of this section, shall make a determination whether to exclude the properties mentioned in the petition or resolution.

Chapter 136 Section 18 Laws 2009

Section 18. EFFECT OF EXCLUSION ORDER.--

A. Territory excluded from an infrastructure development zone pursuant to the provisions of Section 17 of the Infrastructure Development Zone Act shall not be subject to any property tax levied by the board for the operating costs of the infrastructure development zone. For the purpose of retiring the infrastructure development zone's outstanding indebtedness and the interest thereon existing at the effective date of the exclusion order, the infrastructure development zone shall remain intact, and the excluded territory shall be obligated to the same extent as all other property within the infrastructure development zone but only for that proportion of the outstanding indebtedness and the interest thereon existing immediately prior to the effective date of the exclusion order. The board shall levy annually a property tax on all the excluded and remaining property sufficient, together with other funds and revenues of the infrastructure development zone, to pay the outstanding indebtedness and the interest thereon. The board may also establish, maintain, enforce and, from time to time, modify the service charges, tap fees and other rates, fees, tolls and charges, upon residents or users in the area of the infrastructure development zone as it existed prior to the exclusion as may in the discretion of the board be necessary to supplement the proceeds of the tax assessments in the payment of the outstanding indebtedness and the interest thereon. In no event shall excluded territory of an infrastructure development zone become obligated for the payment of any bonded indebtedness created after the date of the court's exclusion order.

B. The change of boundaries of the infrastructure development zone shall not impair nor affect its organization, nor shall it affect, impair or discharge any contract, obligation, lien or charge on which it might be liable or chargeable had the change of boundaries not been made.

Chapter 136 Section 19 Laws 2009

Section 19. DISSOLUTION.--

A. The infrastructure development zone shall be dissolved by a resolution of the board upon a determination that each of the following conditions exist:

(1) all improvements owned by the infrastructure development zone have been, or provision has been made for all improvements to be, conveyed to the municipality or county in which the infrastructure development zone, or the applicable part thereof, is located;

(2) either the infrastructure development zone has no outstanding bond obligations or the municipality or county has assumed all of the outstanding bond obligations of the infrastructure development zone; and

(3) all obligations of the infrastructure development zone pursuant to any development agreement with the municipality or county have been satisfied.

B. All property in the infrastructure development zone that is subject to the lien of taxes or special assessments shall remain subject to the lien for the payment of general obligation bonds and special assessment bonds, notwithstanding dissolution of the infrastructure development zone. The infrastructure development zone shall not be dissolved if any revenue bonds of the infrastructure development zone remain outstanding unless an amount of money sufficient, together with investment income thereon, to make all payments due on the revenue bonds either at maturity or prior redemption has been deposited with a trustee or escrow agent and pledged to the payment and redemption of the bonds. The infrastructure development zone may continue to operate after dissolution only as needed to collect money and make payments on any outstanding bonds.

Chapter 136 Section 20 Laws 2009

Section 20. ELECTIONS.--

A. Except as provided otherwise in the Infrastructure Development Zone Act, the provisions of the Election Code shall govern all elections conducted pursuant to the Infrastructure Development Zone Act.

B. At an election for the organization of a new infrastructure development zone, the approving authority shall also order the submission of the proposition of issuing general obligation bonds or creating other general obligation indebtedness if the petition filed pursuant to Section 3 of the Infrastructure Development Zone Act requests that the questions be submitted at the organization election.

C. After an infrastructure development zone is organized and the first board is elected, the board shall govern the conduct of all subsequent regular and special elections of the infrastructure development zone and shall render all interpretations and make all decisions as to controversies or other matters arising in the conduct of the elections.

D. Special elections may be conducted by the board after publication and notice no less than thirty days prior to the date of the election. The notice shall be mailed to all eligible electors and shall state:

(1) the date, time and place of the special election;

(2) a summary of the question or questions to be voted upon; and

(3) how an eligible elector may obtain a copy of the resolution of the board in which the special election was approved.

E. All powers and authority granted to the board by this section for the conduct of regular or special elections may be exercised in the absence of the board by the secretary or by an assistant secretary appointed by the board. The person named by the board who is responsible for the conducting of the election shall be the designated election official.

F. Not less than seventy-five days nor more than ninety days before a regular infrastructure development zone election, the designated election official shall provide notice by publication of a call for nominations for the election. The call shall state the director offices to be voted upon at the election, where a self-nomination and acceptance form may be obtained, the deadline for submitting the self-nomination and acceptance form to the designated election official and information on obtaining an absentee ballot.

G. Not less than sixty-seven days before the date of the regular infrastructure development zone election, any person who desires to be a candidate for the office of a director shall file a self-nomination and acceptance form or letter signed by the candidate and by an eligible elector as a witness to the signature of the candidate.

H. On the date of signing the self-nomination and acceptance form or letter, a candidate for director shall be an eligible elector of the infrastructure development zone.

I. The self-nomination and acceptance form or letter shall state the name of the infrastructure development zone in which the election will be held, the director office sought by the candidate, the term of office sought if more than one length of a director's term is to be voted upon at the election, the date of the election and the full name of the candidate as it is to appear on the ballot. Unless physically unable, all candidates and witnesses shall sign their own signature and shall print their names, their respective residence addresses, including the street number and name, the city or town, the county, telephone number and the date of signature on the self-nomination and acceptance form or letter.

J. The self-nomination and acceptance form or letter shall be filed with the designated election official or, if none has been designated, the presiding officer or the secretary of the board.

K. No person shall be permitted to vote in any election unless that person is an eligible elector.

Chapter 136 Section 21 Laws 2009

Section 21. DIRECTORS--TERMS--ORGANIZATION OF BOARD.--

A. Of the initial board members, two directors shall serve until they or their successors are elected and qualified at the next regular election occurring in any year following that in which the infrastructure development zone was organized, and three shall serve until they or their successors are elected and qualified at the second regular election after organization. At its first meeting, the directors shall draw lots to determine the initial terms.

B. The basic term of office for directors, after the original terms provided in Subsection A of this section, shall be four years.

C. At its first meeting, the board shall elect one of its members as chair of the board and president of the infrastructure development zone, one of its members as a treasurer of the board and of the infrastructure development zone and a secretary who may be a member of the board. The secretary and the treasurer may be one person, but, if that is the case, the position shall be filled by a member of the board.

D. The secretary shall keep a record of all the board's proceedings, minutes of all meetings, certificates, contracts, bonds given by employees and all corporate acts, which shall be open to inspection of all eligible electors, as well as to all other interested parties.

E. The treasurer shall keep strict and accurate accounts of all money received by and disbursed for and on behalf of the infrastructure development zone in permanent records. The provisions of the Audit Act shall apply to all financial affairs of the infrastructure development zone.

F. Each director may receive as compensation for the director's service a sum not to exceed one hundred dollars (\$100) per meeting attended or one thousand six hundred dollars (\$1,600) per year.

G. The board shall meet regularly at a time and in a place to be designated by the board. Special meetings may be held as often as the needs of the infrastructure development zone require, upon notice to each director. All official business of the board shall be conducted only during regular or special meetings at which a quorum is present, and all meetings shall be open to the public and comply with the Open Meetings Act.

H. The office of the infrastructure development zone shall be at some fixed place to be determined by the board. All public records of the infrastructure development zone shall be subject to the Inspection of Public Records Act.

I. Any vacancy on the board shall be filled by appointment by the remaining directors, the appointee to serve until the next regular election, at which time the vacancy shall be filled by election for any remaining unexpired portion of the term. If,

within sixty days of the occurrence of any vacancy, the board fails, neglects or refuses to appoint a director from the pool of any duly qualified, willing candidates, the approving authority shall appoint a director to fill the vacancy; provided that, if there are no duly elected directors and if the failure to appoint a new board will result in the interruption of services that are being provided by the infrastructure development zone, then the approving authority shall appoint all directors from the pool of duly qualified, willing candidates.

J. Any director elected to the board of an infrastructure development zone who has actually held office for at least six months may be recalled from office by the eligible electors of the infrastructure development zone. A petition signed by the lesser of three hundred eligible electors or forty percent of the eligible electors demanding the recall of any director named in the petition shall be filed with the board and the election shall be governed by the provisions of Section 20 of the Infrastructure Development Zone Act.

Chapter 136 Section 22 Laws 2009

Section 22. GENERAL POWERS.--Except as limited by the service plan of the infrastructure development zone, the board has the following powers:

- A. to have perpetual existence;
- B. to have and use a corporate seal;
- C. to sue and be sued and to be a party to suits, actions and proceedings;
- D. pursuant to the Procurement Code, to enter into contracts and agreements affecting the affairs of the infrastructure development zone, except as otherwise provided in the Infrastructure Development Zone Act;
- E. to borrow money and incur indebtedness and evidence the same by certificates, notes or debentures, and to issue bonds, including revenue bonds, in accordance with the provisions of Sections 28, 29 and 30 of the Infrastructure Development Zone Act, and to invest money of the infrastructure development zone in accordance with law;
- F. to acquire, dispose of and encumber real and personal property, including rights and interests in property, leases and easements necessary to the functions or the operation of the infrastructure development zone; provided that the board shall not pay more than fair market value and reasonable settlement costs for any interest in real property and shall not pay for any interest in real property that must otherwise be dedicated for public use or the infrastructure development zone's use in accordance with any governmental ordinance, rule or law;

G. to refund any bonded indebtedness as provided in the Infrastructure Development Zone Act;

H. to have the management, control and supervision of all the business and affairs of the infrastructure development zone and all construction, installation, operation and maintenance of infrastructure development zone improvements;

I. to appoint, hire and retain agents, employees, engineers, managers, attorneys and consultants;

J. to fix and from time to time to increase or decrease fees, rates, tolls, penalties or charges for services, programs or facilities furnished by the infrastructure development zone. The board may pledge the revenue for the payment of any indebtedness of the infrastructure development zone. Until paid, all the fees, rates, tolls, penalties or charges shall constitute a perpetual lien on and against the property served, and any lien may be foreclosed in the same manner as provided by the laws for the foreclosure of mechanics' liens. Notwithstanding any other provision to the contrary, the board may waive or amortize all or part of the tap fees and connection fees or extend the time period for paying all or part of the fees for property within the infrastructure development zone in order to facilitate the construction, ownership and operation of affordable housing on the property. However, the board shall have the authority to condition the waiver, amortization or extension upon the recordation against the property of a deed restriction, lien or other lawful instrument requiring the payment of the fees in the event that the property's use as affordable housing is discontinued;

K. to furnish services and facilities without the boundaries of the infrastructure development zone and to establish fees, rates, tolls, penalties or charges for the services and facilities;

L. to accept, on behalf of the infrastructure development zone, real or personal property for the use of the infrastructure development zone and to accept gifts and conveyances made to the infrastructure development zone upon the terms or conditions as the board may approve;

M. to adopt, amend and enforce bylaws and rules not in conflict with the constitution and laws of this state for carrying on the business, objects and affairs of the board and of the infrastructure development zone;

N. to have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted to infrastructure development zones by the Infrastructure Development Zone Act. The specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of the Infrastructure Development Zone Act;

O. to authorize the use of electronic records or signatures and adopt rules, standards, policies and procedures for use of electronic records or signatures;

P. to enter into contracts with public utilities, cooperative electric associations and municipalities for the purpose of furnishing street-lighting service;

Q. to erect and maintain, in providing safety protection services, traffic and safety controls and devices on streets and highways and at railroad crossings, and to enter into agreements with each county in which an infrastructure development zone is located or with adjoining counties, the department of transportation or railroad companies for the erection of the safety controls and devices and for the construction of underpasses or overpasses at railroad crossings;

R. to finance line extension charges for new telephone construction for the purpose of furnishing telephone service exclusively in infrastructure development zones that have no property zoned or valued for assessment as residential;

S. to establish, maintain and operate a system to transport the public by bus, rail or any other means of conveyance, or any combination thereof;

T. to furnish security services for any area within the infrastructure development zone. This power may be exercised only after the infrastructure development zone has provided written notification to, consulted with and obtained the written consent of all local law enforcement agencies having jurisdiction within the area. Any local law enforcement agency having jurisdiction within the area may subsequently withdraw its consent after consultation with and providing written notice of the withdrawal to the board;

U. to furnish covenant enforcement and design review services within the infrastructure development zone only if the revenues used to furnish the services are derived from the area in which the service is furnished; and

V. to provide activities in support of business recruitment, management and development within the infrastructure development zone.

Chapter 136 Section 23 Laws 2009

Section 23. PARK AND RECREATIONAL SERVICES--ADDITIONAL POWERS--LIMITATIONS.--In addition to the powers specified in Section 22 of the Infrastructure Development Zone Act, if within the scope of the service plan, the board has the following powers for and on behalf of the infrastructure development zone:

A. to operate a system of television relay and translator facilities and to use, acquire, equip and maintain land, buildings and other recreational facilities therefor; and

B. to use the power granted in Section 22 of the Infrastructure Development Zone Act for the establishment of recreational facilities, including leases, easements and other interests in land for the preservation or conservation of sites,

scenes, open space and vistas of recreational, scientific, historic, aesthetic or other public interest. As used in this subsection, "interests in land" means any rights and interests in land less than the full fee interest, including future interests, easements, covenants and contractual rights. Every interest in land, held pursuant to this subsection, when recorded shall be deemed to run with the land to which it pertains for the benefit of the park and recreation services of the infrastructure development zone and may be protected and enforced by the infrastructure development zone in any court of general jurisdiction by any proceeding known at law or in equity.

Chapter 136 Section 24 Laws 2009

Section 24. SANITATION, WATER AND SANITATION OR WATER SERVICES--
ADDITIONAL POWERS.--In addition to the powers specified in Section 22 of the Infrastructure Development Zone Act, the board, if within the scope of the service plan, has the following powers relating to sanitation, water and sanitation and water services for and on behalf of the infrastructure development zone:

A. with the consent of the approving authority, to compel the owner of premises located within the boundaries of the infrastructure development zone, whenever necessary for the protection of public health, to connect the owner's premises, in accordance with the state codes, to the sewer, water and sewer, or water lines, as applicable, of the infrastructure development zone within twenty days after written notice is sent by registered mail, if the sewer or water line is within four hundred feet of the premises. If the connection is not begun within twenty days, the board may thereafter connect the premises to the sewer, water and sewer, or water system, as applicable, of the infrastructure development zone and shall have a perpetual lien on and against the premises for the cost of making the connection. The lien may be foreclosed in the same manner as provided by the laws of this state for the foreclosure of mechanics' liens; provided that nothing in this subsection shall be construed as authorizing the board of an infrastructure development zone to compel any connection with the sewer, water and sewer, or water lines, as applicable, of the infrastructure development zone, by any owner of premises located outside of the infrastructure development zone who utilizes private or nongovernmental persons, services, systems or facilities;

B. to divide the infrastructure development zone into areas according to the water or sanitation services furnished or to be furnished therein. The board has the power to fix different rates, fees, tolls or charges and different rates of levy for tax purposes against all of the taxable property within the several areas of the infrastructure development zone according to the services and facilities furnished or to be furnished therein within a reasonable time;

C. if the board divides an infrastructure development zone into areas according to the facilities and services furnished or to be furnished, to determine the amount of money necessary to be raised by taxation within each area, taking into consideration other sources of revenue within the area, and to fix a levy that, when

levied upon every dollar of the valuation for assessment of taxable property within the area of the infrastructure development zone, will supply funds for the payments of the costs of acquiring, operating and maintaining the services or facilities furnished in the area and will pay promptly, when due, the principal or interest on bonds or other obligations issued and its pro rata share of the general operating expenses of the infrastructure development zone;

D. to establish, construct, operate and maintain works and facilities across or along any public street or highway, and in, upon or over any vacant public lands and across any stream of water or watercourse. The governing body of a county in which any public streets or highways are situated, which are to be cut into or excavated in the construction or maintenance of any of the facilities, has authority to adopt by resolution the rules as it deems necessary in regard to the excavations and may require the payment of reasonable fees by the infrastructure development zone as may be fixed by the governing body to ensure proper restoration of the streets or highways;

E. to assess reasonable penalties for delinquency in the payment of rates, fees, tolls or charges or for any violations of the rules of the infrastructure development zone together with interest on delinquencies from any date due at not more than one percent per month or fraction thereof; to shut off or discontinue water or sanitation service for the delinquencies and delinquencies in the payment of taxes or for any violation of the rules of the infrastructure development zone; and to provide for the connection with and the disconnection from the facilities of the infrastructure development zone;

F. to acquire water rights and construct and operate lines and facilities within and without the infrastructure development zone;

G. to fix and from time to time to increase or decrease tap fees. The board may pledge the revenue for the payment of any indebtedness of the infrastructure development zone; and

H. to assess availability of service or facilities charges subject to the following provisions:

(1) no fee, rate, toll or charge for connection to or use of services or facilities of the infrastructure development zone shall be considered an availability of service or facilities charge;

(2) any availability of service or facilities charges shall be made only when a notice, stating that the availability of service or facilities charges are being considered and stating the date, time and place of the meeting at which they are to be considered, has been mailed by first-class United States mail, postage prepaid, to each taxpaying elector of the infrastructure development zone at the taxpaying elector's last-known address, as disclosed by the tax records of the county within which the infrastructure development zone is located;

(3) availability of service or facilities charges shall be assessed solely for the purpose of paying principal of and interest on any outstanding indebtedness or bonds of the infrastructure development zone and shall not be used to pay any operation or maintenance expenses of, nor capital improvements within or for, the infrastructure development zone;

(4) availability of service or facilities charges shall be assessed only where water, sewer or both water and sewer lines are installed and ready for connection within one hundred feet of any property line of the residential lot or residential lot equivalent to be assessed, but to one or both of which line or lines the particular lot or lot equivalent to be assessed is not connected; and

(5) availability of service or facilities charges shall be a percentage, not to exceed fifty percent, of the fees, rates, tolls or charges for use of services or facilities of the infrastructure development zone, said percentage to be determined by the board. If the fees, rates, tolls or charges for the use of services or facilities vary dependent upon quantities of usage, the availability of service or facilities charges shall be a percentage, determined by the board, not to exceed fifty percent, of the average usage derived by dividing the total usage quantity for the infrastructure development zone for the last preceding fiscal year by the total number of users in the infrastructure development zone. In addition, the aggregate amount of revenue budgeted and expected to be derived from availability of service or facilities charges shall not exceed the total amount of principal of and interest on the outstanding indebtedness or bonds of the infrastructure development zone for the service currently budgeted for and to mature or accrue during the annual period within which the availability of service or facilities charges are payable, less the amount budgeted and expected to be produced during the period by the mill levy allocable to the service then being budgeted for and levied and assessed by the infrastructure development zone.

Chapter 136 Section 25 Laws 2009

Section 25. SUBDISTRICTS.--

A. The board may divide the infrastructure development zone into one or more areas consistent with the services to be furnished therein. However, any facility operated by the infrastructure development zone within the area may be used by any resident of the infrastructure development zone for the same fee charged to persons residing within the area. Whenever the board divides the infrastructure development zone into one or more areas pursuant to this section, the board shall provide notification of the action to each governing body with zoning jurisdiction over territory included in the infrastructure development zone. Each governing body that is entitled to the notification may elect, within thirty days after the notification, to treat the action as a material modification of the infrastructure development zone service plan in accordance with Section 14 of the Infrastructure Development Zone Act.

B. Any area created pursuant to this section shall be a subdistrict of the infrastructure development zone. A subdistrict shall be an independent political subdivision, shall act pursuant to the provisions of the Infrastructure Development Zone Act and shall possess all of the rights, privileges and immunities of the infrastructure development zone. The subdistrict shall be subject to the service plan of the infrastructure development zone.

C. The board of the infrastructure development zone shall constitute ex officio the board of directors of the subdistrict. The presiding officer of the board shall be ex officio the presiding officer of the subdistrict, the secretary of the board shall be ex officio the secretary of the subdistrict and the treasurer of the board shall be ex officio the treasurer of the subdistrict. The debt of the subdistrict shall be treated separately from the debt of the infrastructure development zone and shall not be treated as debt of the infrastructure development zone; provided that the total debt of the infrastructure development zone and all subdistricts shall not exceed any debt limits specified in the service plan of the infrastructure development zone.

D. The board shall make any determination specified in Subsection A of this section by resolution adopted at a regular or special meeting of the board after publication of notice of the purpose of the public meeting and the place, time and date of the meeting.

E. No resolution dividing the infrastructure development zone into one or more subdistricts shall be adopted by the board if a petition objecting to the division is signed by the owners of taxable real and personal property, consisting of more than fifty percent of the total valuation for assessment of all taxable real and personal property within the proposed subdistrict boundaries, and is filed with the board no later than five days prior to the public meeting; provided, however, that the board may change the geographical boundaries of the subdistrict at the public meeting.

F. If taxes are to be levied or debt is to be created within a subdistrict of the infrastructure development zone, the board shall submit a ballot issue approving the taxes or debt to the eligible electors within the subdistrict at a regular infrastructure development zone election or at a special election.

Chapter 136 Section 26 Laws 2009

Section 26. REVENUES.--The projects to be constructed or acquired as shown in the service plan may be financed from the following sources of revenue:

A. proceeds received from the sale of bonds of the infrastructure development zone;

B. money of the municipality or county contributed to the infrastructure development zone;

- C. annual property taxes or special assessments;
- D. state or federal grants or contributions;
- E. private contributions;
- F. user, landowner and other fees, tolls and charges;
- G. proceeds of loans or advances; and
- H. any other money available to the infrastructure development zone by

law.

Chapter 136 Section 27 Laws 2009

Section 27. STATE CAPITAL OUTLAY PROJECTS PROHIBITED.--An infrastructure development zone shall not request nor receive state funding for a capital outlay project; provided that this prohibition does not apply to buildings or facilities that may be located within an infrastructure development zone but that are owned by the state or one of its agencies, institutions or other political subdivisions or that are financed through the Statewide Economic Development Finance Act.

Chapter 136 Section 28 Laws 2009

Section 28. GENERAL OBLIGATION BONDS--TAX LEVY--EXCEPTION.--

A. At any time after the organization of the infrastructure development zone, the board may order and call a general obligation bond election to submit to the eligible electors the question of authorizing the infrastructure development zone to issue general obligation bonds of the infrastructure development zone to provide money for any services consistent with the service plan. If included in the petition filed pursuant to Section 3 of the Infrastructure Development Zone Act, the question of authorizing general obligations bonds may also be held in conjunction with the organization election.

B. If general obligation bonds are approved at an election, the board may issue and sell general obligation bonds of the infrastructure development zone.

C. Bonds may be sold in a public offering or in a negotiated sale.

D. After the bonds are issued, the board shall enter in its minutes a record of the bonds sold and their numbers and dates and shall annually levy and cause a property tax to be collected, at the same time and in the same manner as other property taxes are levied and collected on all taxable property in the infrastructure development zone, sufficient, together with any money from the sources described in Section 26 of the Infrastructure Development Zone Act to pay debt service on the bonds when due.

Money derived from the levy of property taxes that are pledged to pay the debt service on the bonds shall be kept separately from other funds of the infrastructure development zone. Property tax revenues not pledged to pay debt service on bonds may be used to pay other costs of the infrastructure development zone, including costs of organization, administration, operation and maintenance, services or enhanced services. An infrastructure development zone's levy of property taxes shall constitute a lien on all taxable property within the infrastructure development zone, including all leased property or improvements to leased land, which shall be subject to foreclosure in the same manner as other property tax liens under the laws of this state. The lien shall include delinquencies and interest thereon at a rate not to exceed ten percent per year, the actual costs of foreclosure and any other costs of the infrastructure development zone resulting from the delinquency. The proceeds of any foreclosure sale shall be deposited in the special bond fund for payment of any obligations secured thereby.

E. Subject to the election requirements of this section, an infrastructure development zone may issue general obligation bonds at such times and in such amounts as the infrastructure development zone deems appropriate to carry out a project or projects in phases.

F. Pursuant to this section, the infrastructure development zone may issue and sell refunding bonds to refund general obligation bonds of the infrastructure development zone authorized by the Infrastructure Development Zone Act. No election is required in connection with the issuance and sale of refunding bonds. Refunding bonds issued pursuant to this section shall have a final maturity date no later than the final maturity date of the bonds being refunded.

Chapter 136 Section 29 Laws 2009

Section 29. SPECIAL ASSESSMENT--BONDS--IMPOSITION.--

A. At any time after the organization of the infrastructure development zone, the board may from time to time order that a hearing be held to determine whether a special assessment should be imposed and special assessment bonds issued to provide money for any services consistent with the service plan. The question of imposing a special assessment may be considered at the hearing on infrastructure development zone organization upon notice that both issues will be heard at that time, which notice shall include the information required in Subsection B of this section.

B. Notice of hearing shall be provided by publication of a notice at least thirty days in advance of the hearing itself. The notice shall include the following:

(1) a description of the method by which the amount of the proposed special assessment will be determined for each class of property to which the levy is proposed to apply, in sufficient detail to enable the owner of the affected parcel to determine the amount of the special assessment;

(2) a description of the project to be financed with special assessment bonds or revenues; and

(3) a statement that any person affected by the proposed special assessment may object in writing or in person at the hearing.

C. After a hearing on the proposed special assessment and the issuance of special assessment bonds, the board shall, based upon the evidence presented at the hearing, issue a decision as to whether to impose a special assessment and, if so, the method of assessment for each class of property and the project to be financed thereby. The decision shall also respond to each objection to the assessment raised at the hearing.

D. Special assessment bonds may be sold in a public offering or in a negotiated sale.

E. After the bonds are issued, the board shall enter in its minutes a record of the bonds sold and their numbers and dates, and shall annually impose and cause a special assessment to be collected, at the same time and in the same manner as property taxes are levied and collected on all property within the infrastructure development zone that may be subject to the assessment, including all leased property or improvements to leased land, sufficient, together with any other money lawfully available to pay debt service on the bonds when due, except to the extent that the board has provided for other imposition, collection and foreclosure procedures in connection with special assessments. Money derived from the imposition of the special assessment when collected that is pledged to pay the debt service on the bonds shall be kept separately from other funds of the infrastructure development zone. Special assessment revenues not pledged to pay debt service on bonds may be used to pay other costs of the infrastructure development zone, including costs of organization, administration, operation and maintenance, service or enhanced services.

F. The board shall specify conditions under which the obligation to pay special assessments may be prepaid and permanently satisfied.

G. Special assessments against privately owned residential property shall be subject to the following provisions:

(1) the maximum amount of special assessment that may be imposed shall not be increased over time by an amount exceeding two percent per year, except that the amount of special assessment actually imposed may be increased by up to ten percent as a result of the delinquency or default by the owner of any other parcel within the infrastructure development zone;

(2) the special assessment shall be imposed for a specified time period, after which no further special assessment shall be imposed and collected, except that special assessments imposed solely to finance the cost of ongoing

infrastructure development zone services, maintenance or operations or enhanced services may be levied while such services, maintenance or operations or enhanced services are continuing; and

(3) nothing in this subsection shall preclude the establishment of different categories of residential property or changing the amount of the special assessments for a parcel whose size or use is changed. A change in the amount of a special assessment imposed upon a parcel due to a change in its size or use shall not require voter approval if the method for changing the amount of special assessment was approved in the election approving the special assessment in sufficient detail to enable the owner of the affected parcel to determine how the change in size or use of the parcel would affect the amount of the special assessment.

H. An infrastructure development zone's imposition of a special assessment shall constitute a lien on the property within the infrastructure development zone subject to the special assessment, including property acquired by the state or its political subdivisions after imposition of the special assessment, which shall be effective during the period in which the special assessment is imposed and shall have priority co-equal to the lien of property taxes. A special assessment shall be subject to foreclosure by the infrastructure development zone at any time after six months following written notice of delinquency to the owner of the real property to which the delinquency applies. The lien shall include delinquencies, penalties and interest thereon at a rate not to exceed the maximum legal rate of interest per year and penalties otherwise applicable for delinquent property taxes, the infrastructure development zone's actual costs of foreclosure and any other costs of the infrastructure development zone resulting from the delinquency. All rights of redemption applicable to property sold in connection with property tax foreclosures pursuant to the laws of this state shall apply to property sold following foreclosure of a special assessment lien. The portion of proceeds of any foreclosure sale necessary to discharge the lien for the special assessment shall be deposited in the special bond fund for payment of any obligations secured thereby.

I. No holder of special assessment bonds issued pursuant to the Infrastructure Development Zone Act may compel any exercise of the taxing power of the infrastructure development zone, municipality or county to pay the bonds or the interest on the bonds. Special assessment bonds issued pursuant to that act are not a debt of the infrastructure development zone, municipality or county, nor is the payment of special assessment bonds enforceable out of any money other than the revenue pledged to the payment of the bonds.

J. Subject to the requirements of this section, an infrastructure development zone may issue special assessment bonds at such times and in such amounts as the board deems appropriate to carry out a project or projects in phases.

K. Pursuant to this section, the board may issue and sell refunding bonds to refund any special assessment bonds of the infrastructure development zone authorized by the Infrastructure Development Zone Act. Refunding bonds issued

pursuant to this section shall have a final maturity date no later than the final maturity date of the bonds being refunded.

Chapter 136 Section 30 Laws 2009

Section 30. REVENUE BONDS--FEES AND CHARGES.--

A. At any time after the organization of the infrastructure development zone, the board may hold a hearing on the question of authorizing the board to issue one or more series of revenue bonds of the infrastructure development zone to provide money for any public infrastructure purposes consistent with the service plan.

B. If revenue bonds are approved by resolution, the board may issue and sell revenue bonds of the infrastructure development zone.

C. The revenue bonds may be sold in a public offering or in a negotiated sale; however, if the bonds are to be sold in a public offering, no revenue bonds may be issued by the infrastructure development zone unless the revenue bonds receive one of the four highest investment grade ratings by a nationally recognized bond rating agency.

D. The board may pledge to the payment of its revenue bonds any revenues of the infrastructure development zone or revenues to be collected by the municipality or county in trust for the infrastructure development zone and returned to the infrastructure development zone.

E. The infrastructure development zone shall prescribe fees and charges, and shall revise them when necessary, to generate revenue sufficient, together with any money from the sources described in Section 26 of the Infrastructure Development Zone Act, to pay when due the principal and interest of all revenue bonds for the payment of which revenue has been pledged. The establishment or revision of any rates, fees and charges shall be identified and noticed concurrently with the annual budget process of the infrastructure development zone pursuant to Section 32 of the Infrastructure Development Zone Act.

F. If, in the resolution of the board, the revenues to be pledged are limited to certain types of revenues, only those types of revenues may be pledged and only those revenues shall be maintained.

G. No holder of revenue bonds issued pursuant to the Infrastructure Development Zone Act may compel any exercise of the taxing power of the infrastructure development zone, municipality or county to pay the bonds or the interest on the bonds. Revenue bonds issued pursuant to that act are not a debt of the infrastructure development zone, municipality or county, nor is the payment of revenue bonds enforceable out of any money other than the revenue pledged to the payment of the bonds.

H. Subject to the requirements of this section, an infrastructure development zone may issue revenue bonds at such times and in such amounts as the board deems appropriate to carry out a project in phases.

I. Pursuant to this section, the infrastructure development zone may issue and sell refunding bonds to refund revenue bonds of the infrastructure development zone authorized by the Infrastructure Development Zone Act. Refunding bonds issued pursuant to this section shall have a final maturity date no later than the final maturity date of the bonds being refunded.

Chapter 136 Section 31 Laws 2009

Section 31. TERM OF BONDS.--For any bonds issued in connection with Section 28, 29 or 30 of the Infrastructure Development Zone Act, the board shall prescribe the denominations of the bonds, the principal amount of each issue and the form of the bonds and shall establish the maturities, which shall not exceed thirty years, interest payment dates and interest rates, whether fixed or variable, not exceeding the maximum rate stated in the notice of the election or the resolution of the board. The bonds may be sold by competitive bid or negotiated sale for public or private offering at, below or above par. The proceeds of the bonds shall be deposited with the treasurer, or with a trustee or agent designated by the board, to the credit of the infrastructure development zone to be withdrawn for the purposes provided by the Infrastructure Development Zone Act. Pending that use, the proceeds may be invested as determined by the board. The bonds shall be made payable as to both principal and interest solely from revenues of the infrastructure development zone, and shall specify the revenues pledged for such purposes, and shall contain such other terms, conditions, covenants and agreements as the board deems proper. The bonds may be payable from any combination of taxes, assessments or other revenues collected or received pursuant to the Infrastructure Development Zone Act.

Chapter 136 Section 32 Laws 2009

Section 32. PETITION FOR TAX REDUCTION--ANNUAL FINANCIAL ESTIMATE--BUDGET--CERTIFICATION TO LOCAL GOVERNMENT DIVISION.--

A. Upon presentation to the board of a petition signed by the owners of a majority of the property in the infrastructure development zone, the board shall adopt a resolution to reduce or eliminate the portion of a tax or special assessment, beginning the next fiscal year, required for one or more services specified in the petition. Signatures on a petition to reduce or eliminate a tax or special assessment shall be valid for a period of sixty days.

B. When levying a property tax or imposing a special assessment, the board shall make annual statements and estimates of the operation and maintenance expenses of the infrastructure development zone, the costs of services to be financed by the taxes or special assessment and the amount of all other expenditures for

services proposed to be paid from the taxes or special assessment and of the amount to be raised to pay general obligation bonds of the infrastructure development zone or special assessment bonds, all of which shall be provided for by the levy and collection of property taxes on the net taxable value of the real property in the infrastructure development zone or by the imposition and collection of special assessments. The board shall file the annual statements and estimates with the county clerk for each county in the infrastructure development zone. The board shall publish a notice of the filing of the estimate, shall hold hearings on the portions of the estimate not relating to debt service on general obligation bonds or special assessment bonds and shall adopt a budget. The board, on or before the date set by law for certifying the annual budget of the municipality or county, shall fix, levy and assess the amounts to be raised by property taxes or special assessments of the infrastructure development zone and shall cause certified copies of the order to be delivered to the local government division of the department of finance and administration. All statutes relating to the levy and collection of property taxes, including the collection of delinquent taxes and sale of property for nonpayment of taxes, apply to infrastructure development zone property taxes and to special assessments, except to the extent that the board has provided for other imposition, collection and foreclosure procedures in connection with special assessments.

Chapter 136 Section 33 Laws 2009

Section 33. BONDS NOT OBLIGATION OF STATE.--Except as otherwise provided in the Infrastructure Development Zone Act, all bonds or other obligations issued pursuant to that act are payable solely from the revenues of the infrastructure development zone that may be pledged to the payment of such obligations, and the bonds or other obligations shall not create an obligation, debt or liability of the state or any other of its political subdivisions. No breach of any pledge, obligation or agreement of an infrastructure development zone shall impose a pecuniary liability or a charge upon the general credit or taxing power of the state or any other of its political subdivisions.

Chapter 136 Section 34 Laws 2009

Section 34. EXEMPTION FROM COMMUNITY SERVICE DISTRICT ACT AND SPECIAL DISTRICT PROCEDURES ACT.--Infrastructure development zones and the provisions of the Infrastructure Development Zone Act are exempt from the provisions of the Community Service District Act and the Special District Procedures Act.

Chapter 136 Section 35 Laws 2009

Section 35. CUMULATIVE AUTHORITY.--The Infrastructure Development Zone Act shall be deemed to provide an additional and alternative method for the doing of things authorized by that act, and shall be regarded as supplemental and additional to powers conferred by other laws and shall not be regarded as in derogation of any powers now existing; provided that the issuance of bonds under the provisions of the

Infrastructure Development Zone Act need not comply with the requirements of any other law applicable to the issuance of bonds.

Chapter 136 Section 36 Laws 2009

Section 36. LIBERAL INTERPRETATION.--The Infrastructure Development Zone Act, being necessary for the welfare of the state and its inhabitants, shall be liberally construed to effect the purposes of that act.

HTRC/House Bill 552, aa, w/cc

Approved April 7, 2009

LAWS 2009, CHAPTER 137

AN ACT

RELATING TO PUBLIC EMPLOYEES RETIREMENT; AMENDING THE PUBLIC EMPLOYEES RETIREMENT ACT TO EXCLUDE FROM MEMBERSHIP CERTAIN PARTICIPANTS IN A SENIOR EMPLOYMENT TRAINEE PROGRAM.

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

Chapter 137 Section 1 Laws 2009

Section 1. Section 10-11-3 NMSA 1978 (being Laws 1987, Chapter 253, Section 3, as amended) is amended to read:

"10-11-3. MEMBERSHIP--REQUIREMENTS--EXCLUSIONS--

TERMINATION.--

A. Except as may be provided for in the Volunteer Firefighters Retirement Act, the Judicial Retirement Act, the Magistrate Retirement Act, the Educational Retirement Act and the provisions of Sections 29-4-1 through 29-4-11 NMSA 1978 governing the state police pension fund, each employee and elected official of every affiliated public employer shall be a member of the association, unless excluded from membership in accordance with Subsection B of this section.

B. The following employees and elected officials are excluded from membership in the association:

(1) elected officials who file with the association a written application for exemption from membership within twenty-four months of taking office;

(2) elected officials who file with the association a written application for exemption from membership within twenty-four months of the date the elected official's public employer becomes an affiliated public employer;

(3) employees designated by the affiliated public employer as seasonal or student employees or as trainee participants of the federally funded and state-funded senior employment trainee program, administered by the aging and long-term services department;

(4) employees who file with the association a written application for exemption from membership within thirty days of the date the employee's public employer becomes an affiliated public employer;

(5) employees of an affiliated public employer that is making contributions to a private retirement program on behalf of the employee as part of a compensation arrangement who file with the association a written application for exemption within thirty days of employment, unless the employee has previously retired under the provisions of the Public Employees Retirement Act;

(6) employees of an affiliated public employer who have retired under and are receiving a pension pursuant to the provisions of the Educational Retirement Act; and

(7) retired members who return to work pursuant to Section 10-11-8 NMSA 1978 and are exempted from membership by the provisions of that section.

C. Employees designated as seasonal and student employees shall be notified in writing by their affiliated public employer of the designation and the consequences of the designation with respect to membership, service credit and benefits. A copy of the notification shall be filed with the association within thirty days of the date of employment.

D. An exemption from membership by an elected official shall expire at the end of the term of office for which filed.

E. Employees and elected officials who have exempted themselves from membership may subsequently withdraw the exemption by filing a membership application. Membership shall commence the first day of the first pay period following the date the application is filed.

F. The membership of an employee or elected official shall cease if the employee terminates employment with an affiliated public employer or the elected

official leaves office and the employee or elected official requests and receives a refund of member contributions."

House Bill 601

Approved April 7, 2009

LAWS 2009, CHAPTER 138

AN ACT

RELATING TO PUBLIC FACILITIES; PROVIDING FOR CUMULATIVE UTILITY AND CONSERVATION-RELATED COST SAVINGS FOR USE IN GUARANTEED UTILITY SAVINGS CONTRACTS PURSUANT TO THE PUBLIC FACILITY ENERGY EFFICIENCY AND WATER CONSERVATION ACT; EXTENDING THE MAXIMUM TERM FOR CONTRACTS PURSUANT TO THE PUBLIC FACILITY ENERGY EFFICIENCY AND WATER CONSERVATION ACT; CLARIFYING TYPES OF RENEWABLE ENERGY SYSTEMS AND SOURCES OF FUNDING AUTHORIZED BY THE PUBLIC FACILITY ENERGY EFFICIENCY AND WATER CONSERVATION ACT; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2001.

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

Chapter 138 Section 1 Laws 2009

Section 1. Section 6-23-2 NMSA 1978 (being Laws 1993, Chapter 231, Section 2, as amended) is amended to read:

"6-23-2. DEFINITIONS.--As used in the Public Facility Energy Efficiency and Water Conservation Act:

A. "conservation-related cost savings" means cost savings, other than utility cost savings, in the operating budget of a governmental unit that are a direct result of energy or water conservation measures implemented pursuant to a guaranteed utility savings contract;

B. "energy conservation measure" means a training program or a modification to a facility, including buildings, systems or vehicles, that is designed to reduce energy consumption or conservation-related operating costs and may include:

(1) insulation of the building structure or systems within the building;

(2) storm windows or doors, caulking or weatherstripping, multiglazed windows or doors, heat absorbing or heat reflective glazed and coated window or door systems, additional glazing, reductions in glass area or other window and door system modifications that reduce energy consumption;

(3) automated or computerized energy control systems;

(4) heating, ventilating or air conditioning system modifications or replacements;

(5) replacement or modification of lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to the applicable state or local building code or nationally accepted standards for the lighting system after the proposed modifications are made;

(6) energy recovery systems;

(7) solar energy generating or heating and cooling systems or other renewable energy systems;

(8) cogeneration or combined heat and power systems that produce steam, chilled water or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings;

(9) energy conservation measures that provide long-term operating cost reductions;

(10) maintenance and operation management systems that provide long-term operating cost reductions;

(11) traffic control systems; or

(12) alternative fuel options or accessories for vehicles;

C. "governmental unit" means an agency, political subdivision, institution or instrumentality of the state, including two- and four-year institutions of higher education, a municipality, a county or a school district;

D. "guaranteed utility savings contract" means a contract for the evaluation and recommendation of energy or water conservation measures and for the implementation of one or more of those measures, and which contract provides that all payments, except obligations on termination of the contract before its expiration, are to be made over time and the savings are guaranteed to the extent necessary to make the payments for the conservation measures;

E. "qualified provider" means a person experienced in the design, implementation and installation of energy or water conservation measures and who meets the experience qualifications developed by the energy, minerals and natural resources department for energy conservation measures or the office of the state engineer for water conservation measures;

F. "utility cost savings" means the amounts saved by a governmental unit in the purchase of energy or water that are a direct result of energy or water conservation measures implemented pursuant to a guaranteed utility savings contract; and

G. "water conservation measures" means a training program, change in maintenance practices or facility or landscape alteration designed to reduce water consumption or conservation-related operating costs."

Chapter 138 Section 2 Laws 2009

Section 2. Section 6-23-3 NMSA 1978 (being Laws 1993, Chapter 231, Section 3, as amended) is amended to read:

"6-23-3. GUARANTEED UTILITY SAVINGS CONTRACTS AUTHORIZED--
ENERGY OR WATER SAVINGS GUARANTEE REQUIRED.--

A. A governmental unit may enter into a guaranteed utility savings contract with a qualified provider to reduce energy, water or conservation-related operating costs if, after review of the utility efficiency proposal from the qualified provider, the governmental unit finds that:

(1) the amount the governmental unit would spend on the energy or water conservation measures recommended in the proposal is not likely to exceed the cumulative amount of utility cost savings and conservation-related cost savings of all energy or water conservation measures in the proposal over twenty-five years or over a period not to exceed the expected useful life of the most durable measure in the proposal, whichever period of time is less, from the date of installation if the recommendations in the proposal were followed. The normal periodic repair and replacement of components of an energy or water conservation measure that are required after the measure is installed or completed shall not be considered in the amount a governmental unit would spend on the energy or water conservation measure for purposes of this paragraph; and

(2) the qualified provider can provide a written guarantee that the utility cost savings and conservation-related cost savings will meet or exceed the costs of the conservation measures.

B. A guaranteed utility savings contract shall include:

(1) a written guarantee from the qualified provider that annual utility cost savings and conservation-related cost savings shall meet or exceed the cost of the conservation measures; and

(2) a requirement that the qualified provider maintain a direct financial relationship with the governmental unit, irrespective of the source of financing for the energy or water conservation measures to be implemented.

C. A guaranteed utility savings contract may extend beyond the fiscal year in which it becomes effective and may provide for payments over a period of time not to exceed twenty-five years or the expected useful life of the most durable energy or water conservation measure in the contract, whichever period of time is less; provided, however, only utility cost savings, conservation-related cost savings and special funds authorized pursuant to the Public Facility Energy Efficiency and Water Conservation Act or other law shall be pledged for the payments.

D. A governmental unit may enter into an installment payment contract or lease-purchase agreement for the purchase and installation of energy or water conservation measures pursuant to a guaranteed utility savings contract, but only in accordance with the provisions of the Public Facility Energy Efficiency and Water Conservation Act and Section 13-1-150 NMSA 1978.

E. A governmental unit may enter into a guaranteed utility savings contract pursuant to Section 13-1-129 NMSA 1978 in accordance with the provisions of the Public Facility Energy Efficiency and Water Conservation Act."

Chapter 138 Section 3 Laws 2009

Section 3. Section 6-23-6.1 NMSA 1978 (being Laws 1997, Chapter 42, Section 7, as amended) is amended to read:

"6-23-6.1. REPORTING AND RETENTION OF UTILITY COST SAVINGS FOR STATE AGENCIES.--

A. A state agency entering into a guaranteed utility savings contract with a qualified provider shall, no later than thirty days after the close of the fiscal year, furnish the energy, minerals and natural resources department a consumption and savings report, in a format established jointly by that department and the department of finance and administration, that estimates any cost savings resulting from the implementation of the guaranteed utility savings contract during the fiscal year. The report shall include:

(1) the name or description of each facility or major utility system covered by the report;

(2) utility account numbers;

(3) a record of monthly consumption of water or energy by fuel type; and

(4) a record of monthly per-unit cost of water or energy by fuel type.

B. If the consumption and savings report for a state agency shows a utility cost savings or conservation-related cost savings at the end of the fiscal year that resulted from implementation of a guaranteed utility savings contract and causes an unexpended and unencumbered balance in the agency's utility line item, and if the utility cost savings or conservation-related cost savings has not been pledged for payments pursuant to the guaranteed utility savings contract, the dollar amount of the utility cost savings or conservation-related cost savings shall be carried over as a reserved designated fund balance to the subsequent fiscal year.

C. Beginning the year after the energy or water conservation measures are implemented, and until any alternative financing for a guaranteed utility savings contract is repaid, or for a period of no more than twenty-five years, whichever is less, all utility budgets and appropriations for the state agency shall be based on:

(1) the energy or water consumption levels, or both, before the energy or water conservation measures were implemented;

(2) the same allowance for escalation or decrease of utility costs given state agencies that did not participate in a guaranteed utility savings contract; and

(3) any adjustments for acquisitions, expansions, sale or disposition of state agency facilities.

D. At the end of the repayment period for the guaranteed utility savings contract, or twenty-five years, whichever is less, new budgets or appropriations for utilities shall again be based upon actual utility consumption.

E. Upon carryover of the dollar amount of utility cost savings or conservation-related cost savings as a reserved designated fund balance to the subsequent fiscal year, state agencies may submit a budget adjustment request to use those funds for the following purposes:

(1) up to one hundred percent of the funds may be used for additional energy or water conservation measures or for payment of guaranteed utility savings contracts; and

(2) after encumbrances for additional energy or water conservation measures or for payment of guaranteed utility savings contracts have been made, up to fifty percent of the remaining funds may be used for purposes consistent with the duties and responsibilities assigned to the state agency, while the remaining funds shall revert to the appropriate fund.

F. For the purposes of this section, "state agency" means an agency, institution or instrumentality of the state of New Mexico. "State agency" does not include a municipality, county or school district."

Chapter 138 Section 4 Laws 2009

Section 4. Section 6-23-10 NMSA 1978 (being Laws 1993, Chapter 231, Section 10, as amended) is amended to read:

"6-23-10. STATE INSTITUTIONS AND BUILDINGS--USE OF CERTAIN REVENUES AUTHORIZED.--Resulting utility cost savings and conservation-related cost savings, income from lands granted for the use of certain institutions and public buildings and deposited in income funds for such institutions and buildings pursuant to Section 19-1-17 NMSA 1978 or special funds of institutions may be appropriated and pledged for payments pursuant to a guaranteed utility savings contract or related lease-purchase agreement or installment payment contract pursuant to the Public Facility Energy Efficiency and Water Conservation Act. Money appropriated for that purpose shall be deposited in a special fund or account of the institution or fund and that revenue and no other revenue shall be pledged for payments pursuant to the Public Facility Energy Efficiency and Water Conservation Act."

Chapter 138 Section 5 Laws 2009

Section 5. Section 13-1-150 NMSA 1978 (being Laws 1984, Chapter 65, Section 123, as amended by Laws 2001, Chapter 247, Section 11 and by Laws 2001, Chapter 270, Section 1) 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; and

(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."

Chapter 138 Section 6 Laws 2009

Section 6. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.

HBIC/House Bill 603

Approved April 7, 2009

LAWS 2009, CHAPTER 139

AN ACT

RELATING TO LIQUOR CONTROL; CLARIFYING THAT VINEYARDS AND WINERY GROUNDS ARE INCLUDED AS PART OF LICENSED PREMISES.

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

Chapter 139 Section 1 Laws 2009

Section 1. Section 60-3A-3 NMSA 1978 (being Laws 1981, Chapter 39, Section 3, as amended) is amended to read:

"60-3A-3. DEFINITIONS.--As used in the Liquor Control Act:

A. "alcoholic beverages" means distilled or rectified spirits, potable alcohol, brandy, whiskey, rum, gin and aromatic bitters bearing the federal internal revenue strip stamps or any similar alcoholic beverage, including blended or fermented beverages, dilutions or mixtures of one or more of the foregoing containing more than one-half percent alcohol, but excluding medicinal bitters;

B. "beer" means an alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt and hops or other cereals in water, and includes porter, beer, ale and stout;

C. "brewer" means a person who owns or operates a business for the manufacture of beer;

D. "club" means:

(1) any nonprofit group, including an auxiliary or subsidiary group, organized and operated under the laws of this state, with a membership of not less than fifty members who pay membership dues at the rate of not less than five dollars (\$5.00) per year and who, under the constitution and bylaws of the club, have all voting rights and full membership privileges, and which group is the owner, lessee or occupant of premises used exclusively for club purposes and which group the director finds:

(a) is operated solely for recreation, social, patriotic, political, benevolent or athletic purposes; and

(b) has been granted an exemption by the United States from the payment of the federal income tax as a club under the provisions of Section 501(a) of the Internal Revenue Code of 1986, as amended, or, if the applicant has not operated as a club for a sufficient time to be eligible for the income tax exemption, it must execute and file with the director a sworn letter of intent declaring that it will, in good faith, apply for an income tax exemption as soon as it is eligible; or

(2) an airline passenger membership club operated by an air common carrier that maintains or operates a clubroom at an international airport terminal. As used in this paragraph, "air common carrier" means a person engaged in regularly scheduled air transportation between fixed termini under a certificate of public convenience and necessity issued by the federal aviation administration;

E. "commission" means the secretary of public safety when the term is used in reference to the enforcement and investigatory provisions of the Liquor Control Act and means the superintendent of regulation and licensing when the term is used in reference to the licensing provisions of the Liquor Control Act;

F. "department" means the special investigations division of the department of public safety when the term is used in reference to the enforcement and investigatory provisions of the Liquor Control Act and means the director of the alcohol and gaming division of the regulation and licensing department when the term is used in reference to the licensing provisions of the Liquor Control Act;

G. "director" means the director of the special investigations division of the department of public safety when the term is used in reference to the enforcement and investigatory provisions of the Liquor Control Act and means the director of the alcohol and gaming division of the regulation and licensing department when the term is used in reference to the licensing provisions of the Liquor Control Act;

H. "dispenser" means a person licensed under the provisions of the Liquor Control Act selling, offering for sale or having in the person's possession with the intent to sell alcoholic beverages both by the drink for consumption on the licensed premises and in unbroken packages for consumption and not for resale off the licensed premises;

I. "distiller" means a person engaged in manufacturing spirituous liquors;

J. "golf course" means a tract of land and facilities used for playing golf and other recreational activities that includes tees, fairways, greens, hazards, putting greens, driving ranges, recreational facilities, patios, pro shops, cart paths and public and private roads that are located within the tract of land;

K. "governing body" means the board of county commissioners of a county or the city council or city commissioners of a municipality;

L. "hotel" means an establishment or complex having a resident of New Mexico as a proprietor or manager and where, in consideration of payment, meals and lodging are regularly furnished to the general public. The establishment or complex must maintain for the use of its guests a minimum of twenty-five sleeping rooms;

M. "licensed premises" means the contiguous areas or areas connected by indoor passageways of a structure and the outside dining, recreation and lounge areas of the structure and the grounds and vineyards of a structure that is a winery that are under the direct control of the licensee and from which the licensee is authorized to sell, serve or allow the consumption of alcoholic beverages under the provisions of its license; provided that in the case of a restaurant, including a restaurant that has operated continuously in two separate structures since July 1, 1987 and that is located in a local option district that has voted to disapprove the transfer of liquor licenses into that local option district, hotel, golf course or racetrack, "licensed premises" includes all public and private rooms, facilities and areas in which alcoholic beverages are sold or served in the customary operating procedures of the restaurant, hotel, golf course or racetrack;

N. "local option district" means a county that has voted to approve the sale, serving or public consumption of alcoholic beverages, or an incorporated municipality that falls within a county that has voted to approve the sale, serving or public consumption of alcoholic beverages, or an incorporated municipality of over five thousand population that has independently voted to approve the sale, serving or public consumption of alcoholic beverages under the terms of the Liquor Control Act or any former act;

O. "manufacturer" means a distiller, rectifier, brewer or winer;

P. "minor" means a person under twenty-one years of age;

Q. "package" means an immediate container of alcoholic beverages that is filled or packed by a manufacturer or wine bottler for sale by the manufacturer or wine bottler to wholesalers;

R. "person" means an individual, corporation, firm, partnership, copartnership, association or other legal entity;

S. "rectifier" means a person who blends, mixes or distills alcohol with other liquids or substances for the purpose of making an alcoholic beverage for the purpose of sale other than to the consumer by the drink, and includes all bottlers of spirituous liquors;

T. "restaurant" means an establishment having a New Mexico resident as a proprietor or manager that is held out to the public as a place where meals are prepared and served primarily for on-premises consumption to the general public in consideration of payment and that has a dining room, a kitchen and the employees necessary for preparing, cooking and serving meals; provided that "restaurant" does not include establishments as defined in rules promulgated by the director serving only hamburgers, sandwiches, salads and other fast foods;

U. "retailer" means a person licensed under the provisions of the Liquor Control Act selling, offering for sale or having in the person's possession with the intent to sell alcoholic beverages in unbroken packages for consumption and not for resale off the licensed premises;

V. "spirituous liquors" means alcoholic beverages as defined in Subsection A of this section except fermented beverages such as wine, beer and ale;

W. "wholesaler" means a person whose place of business is located in New Mexico and who sells, offers for sale or possesses for the purpose of sale any alcoholic beverages for resale by the purchaser;

X. "wine" includes the words "fruit juices" and means alcoholic beverages obtained by the fermentation of the natural sugar contained in fruit or other agricultural

products, with or without the addition of sugar or other products, that do not contain less than one-half percent nor more than twenty-one percent alcohol by volume;

Y. "wine bottler" means a New Mexico wholesaler who is licensed to sell wine at wholesale for resale only and who buys wine in bulk and bottles it for wholesale resale;

Z. "winegrower" means a person who owns or operates a business for the manufacture of wine;

AA. "winer" means a winegrower; and

BB. "winery" means a facility in which a winegrower manufactures and stores wine."

Chapter 139 Section 2 Laws 2009

Section 2. Section 60-6A-31 NMSA 1978 (being Laws 1993, Chapter 68, Section 37, as amended) is amended to read:

"60-6A-31. STATE FAIR--GOLF COURSES--ALCOHOLIC BEVERAGE SALES RESTRICTIONS.--Sales, service, delivery or consumption of alcoholic beverages shall be permitted on the grounds of the state fair, on the grounds of golf courses and on the grounds and in the vineyards of a winery only on the licensed premises in controlled access areas of the state fair, golf courses and wineries, the designation of which has been negotiated as part of the license application or renewal process."

House Bill 612

Approved April 7, 2009

LAWS 2009, CHAPTER 140

AN ACT

RELATING TO AUDIT REPORTS OF THE STATE AUDITOR; REQUIRING AUDIT REPORTS TO BE MADE PUBLIC AFTER FIVE DAYS OF COMPLETION OR EARLIER IF THE AGENCY WAIVES THE FIVE-DAY PERIOD.

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

Chapter 140 Section 1 Laws 2009

Section 1. Section 12-6-5 NMSA 1978 (being Laws 1969, Chapter 68, Section 5, as amended) is amended to read:

"12-6-5. REPORTS OF AUDITS.--

A. The state auditor shall cause a complete written report to be made of each annual or special audit and examination made. Each report shall set out in detail, in a separate section, any violation of law or good accounting practices found by the audit or examination. Each report of a state agency shall include a list of individual deposit accounts and investment accounts held by each state agency audited. A copy of the report shall be sent to the agency audited or examined; five days later, or earlier if the agency waives the five-day period, the report shall become a public record, at which time copies shall be sent to:

(1) the secretary of finance and administration; and

(2) the legislative finance committee.

B. The state auditor shall send a copy of reports of state agencies to the department of finance and administration.

C. Within thirty days after receipt of the report, the agency audited may notify the state auditor of any errors in the report. If the state auditor is satisfied from data or documents at hand, or by an additional investigation, that the report is erroneous, the state auditor shall correct the report and furnish copies of the corrected report to all parties receiving the original report."

House Bill 652

Approved April 7, 2009

LAWS 2009, CHAPTER 141

AN ACT

RELATING TO HEALTH CARE; ENACTING THE UNLICENSED HEALTH CARE PRACTICE ACT; PROVIDING PENALTIES.

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

Chapter 141 Section 1 Laws 2009

Section 1. SHORT TITLE.--This act may be cited as the "Unlicensed Health Care Practice Act".

Chapter 141 Section 2 Laws 2009

Section 2. DEFINITIONS.--As used in the Unlicensed Health Care Practice Act:

A. "complementary and alternative health care practitioner" means an individual who provides complementary and alternative health care services;

B. "complementary and alternative health care service" means the broad domain of complementary and alternative healing methods and treatments including:

- (1) anthroposophy;
- (2) aromatherapy;
- (3) ayurveda;
- (4) culturally traditional healing practices, including practices by a curandera, sobadora, partera, medica and arbolaira, and healing traditions, including plant medicines and foods, prayer, ceremony and song;
- (5) detoxification practices and therapies;
- (6) energetic healing;
- (7) folk practices;
- (8) Gerson therapy and colostrum therapy;
- (9) healing practices utilizing food, dietary supplements, nutrients and the physical forces of heat, cold, water, touch and light;
- (10) healing touch;
- (11) herbology or herbalism;
- (12) homeopathy;
- (13) meditation;
- (14) mind-body healing practices;
- (15) naturopathy;
- (16) nondiagnostic iridology;
- (17) noninvasive instrumentalities;

(18) polarity therapy; and

(19) holistic kinesiology and other muscle testing techniques;

C. "controlled substance" means a drug or substance listed in Schedules I through V of the Controlled Substances Act or rules adopted pursuant to that act;

D. "conventional medical diagnosis" means a medical term that is commonly used and understood in conventional western medicine;

E. "dangerous drug" means a drug that is required by an applicable federal or state law or rule to be dispensed pursuant to a prescription; that is restricted to use by licensed practitioners; or that is required by federal law to be labeled with any of the following statements prior to being dispensed or delivered:

(1) "Caution: federal law prohibits dispensing without prescription.";

(2) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian."; or

(3) "Rx only";

F. "department" means the regulation and licensing department;

G. "health care practitioner" means an individual who provides health care services;

H. "health care service" means any service relating to the physical and mental health and wellness of an individual; and

I. "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 and includes 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.

Chapter 141 Section 3 Laws 2009

Section 3. LICENSING EXEMPTION.--A complementary and alternative health care practitioner who is not licensed, certified or registered in New Mexico as a health care practitioner shall not be in violation of any licensing law relating to health care services pursuant to Chapter 61 NMSA 1978 unless that individual:

A. engages in any activity prohibited in Section 4 of the Unlicensed Health Care Practice Act; or

B. fails to fulfill the duties set forth in Section 5 of the Unlicensed Health Care Practice Act.

Chapter 141 Section 4 Laws 2009

Section 4. PROHIBITED ACTS.--A complementary and alternative health care practitioner shall not:

- A. perform surgery on an individual;
- B. set fractures on an individual;
- C. administer x-ray radiation to an individual;
- D. prescribe or dispense dangerous drugs or controlled substances to an individual;
- E. directly manipulate the joints or spine of an individual;
- F. physically invade the body except for the use of non-prescription topical creams, oils, salves, ointments, tinctures or any other preparations that may penetrate the skin without causing harm;
- G. make a recommendation to discontinue current medical treatment prescribed by a licensed health care practitioner;
- H. make a specific conventional medical diagnosis;
- I. have sexual contact with a current patient or former patient within one year of rendering service;
- J. falsely advertise or provide false information in documents described in Subsection A of Section 5 of the Unlicensed Health Care Practice Act;
- K. illegally use dangerous drugs or controlled substances;
- L. reveal confidential information of a patient without the patient's written consent;
- M. engage in fee splitting or kickbacks for referrals;
- N. refer to the practitioner's self as a licensed doctor or physician or other occupational title pursuant to Chapter 61 NMSA 1978; or
- O. perform massage therapy on an individual pursuant to the Massage Therapy Practice Act.

Chapter 141 Section 5 Laws 2009

Section 5. COMPLEMENTARY AND ALTERNATIVE HEALTH CARE PRACTITIONER--DUTIES.--Except for persons providing health care services pursuant to Section 61-6-17 NMSA 1978 or to employees or persons acting pursuant to the direction of licensed health care facilities or licensed health care providers while working within the scope of their employment or direction, a complementary and alternative health care practitioner shall:

A. provide to a patient prior to rendering services a patient information document, either in writing in plain language that the patient understands or, if the patient cannot read, orally in a language the patient understands, containing the following:

(1) the complementary and alternative health care practitioner's name, title and business address and telephone number;

(2) a statement that the complementary and alternative health care practitioner is not a health care practitioner licensed by the state of New Mexico;

(3) a statement that the treatment to be provided by the complementary and alternative health care practitioner is complementary or alternative to health care services provided by health care practitioners licensed by the state of New Mexico;

(4) the nature and expected results of the complementary and alternative health care services to be provided;

(5) the complementary and alternative health care practitioner's degrees, education, training, experience or other qualifications regarding the complementary and alternative health care services to be provided;

(6) the complementary and alternative health care practitioner's fees per unit of service and method of billing for such fees and a statement that the patient has a right to reasonable notice of changes in complementary and alternative health care services or charges for complementary and alternative health care services;

(7) a notice that the patient has a right to complete and current information concerning the complementary and alternative health care practitioner's assessment and recommended complementary and alternative health care services that are to be provided, including the expected duration of the complementary and alternative health care services to be provided and the patient's right to be allowed access to the patient's records and written information from the patient's records;

(8) a statement that patient records and transactions with the complementary and alternative health care practitioner are confidential unless the

release of these records is authorized in writing by the patient or otherwise provided by law;

(9) a statement that the patient has a right to coordinated transfer when there will be a change in the provider of complementary and alternative health care services; and

(10) the name, address and telephone number of the department and notice that a patient may file complaints with the department; and

B. obtain a written acknowledgment from a patient, or if the patient cannot write an oral acknowledgment witnessed by a third party, stating that the patient has been provided with a copy of the information document. The patient shall be provided with a copy of the written acknowledgment, which shall be maintained for three years by the complementary and alternative health care practitioner providing the complementary and alternative health care service.

Chapter 141 Section 6 Laws 2009

Section 6. APPLICABILITY.--The following individuals shall not provide complementary and alternative health care services pursuant to the Unlicensed Health Care Practice Act:

A. former health care practitioners whose license, certification or registration has been revoked or suspended by any health care board and not reinstated;

B. individuals convicted of a felony for a crime against a person who have not satisfied the terms of the person's sentence as provided by law;

C. individuals convicted of a felony related to health care who have not satisfied the terms of the person's sentence as provided by law; and

D. individuals who have been deemed mentally incompetent by a court of law.

Chapter 141 Section 7 Laws 2009

Section 7. DISCIPLINARY ACTIONS.--If the department determines that a complementary and alternative health care practitioner practicing pursuant to the Unlicensed Health Care Practice Act may have violated a provision of that act, it may take one or more of the following actions pursuant to the Uniform Licensing Act against the complementary and alternative health care practitioner if that practitioner is found to have violated a provision of the Unlicensed Health Care Practice Act:

A. provide written notice to the complementary and alternative health care practitioner requesting the practitioner to correct the activity that is a violation of the Unlicensed Health Care Practice Act; this action shall be the first option if the offense is a violation of the disclosure requirements of the Unlicensed Health Care Practice Act;

B. issue a cease and desist order against the complementary and alternative health care practitioner pertaining to the provision of complementary and alternative health care services that are not in compliance with the provisions of the Unlicensed Health Care Practitioner Act; or

C. impose a civil penalty in an amount not to exceed ten thousand dollars (\$10,000) for each violation.

Chapter 141 Section 8 Laws 2009

Section 8. DUTIES OF THE SUPERINTENDENT.--The superintendent of regulation and licensing is expressly authorized to promulgate rules as necessary to implement the provisions of the Unlicensed Health Care Practice Act.

Chapter 141 Section 9 Laws 2009

Section 9. SEVERABILITY.--If any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

Chapter 141 Section 10 Laws 2009

Section 10. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.

HHGAC/House Bill 664, aa

Approved April 7, 2009

LAWS 2009, CHAPTER 142

AN ACT

RELATING TO JUDGMENTS; REPEALING THE UNIFORM FOREIGN MONEY-JUDGMENTS RECOGNITION ACT; ENACTING THE UNIFORM FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT.

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

Chapter 142 Section 1 Laws 2009

Section 1. SHORT TITLE.--This act may be cited as the "Uniform Foreign-Country Money Judgments Recognition Act".

Chapter 142 Section 2 Laws 2009

Section 2. DEFINITIONS.--As used in the Uniform Foreign-Country Money Judgments Recognition Act:

A. "foreign country" means a government other than:

(1) the United States;

(2) a state, district, commonwealth, territory or insular possession of the United States; or

(3) any other government with regard to which the decision in this state as to whether to recognize the judgments of that government's court is initially subject to determination under the full faith and credit clause of the United States constitution;

B. "foreign-country judgment" means a judgment of a court of a foreign country; and

C. "foreign court" means a court of a foreign country.

Chapter 142 Section 3 Laws 2009

Section 3. APPLICATION.--

A. Except as otherwise provided in Subsection B of this section, the Uniform Foreign-Country Money Judgments Recognition Act applies to a foreign-country judgment to the extent that the foreign-country judgment:

(1) grants or denies recovery of a sum of money; and

(2) under the law of the foreign country where rendered, is final, conclusive and enforceable.

B. The Uniform Foreign-Country Money Judgments Recognition Act does not apply to a foreign-country judgment, even if the foreign-country judgment grants or denies recovery of a sum of money, to the extent that the foreign-country judgment is:

(1) a judgment for taxes;

(2) a fine or other penalty; or

(3) a judgment for divorce, support or maintenance, or other judgment rendered in connection with domestic relations.

C. The party seeking recognition of a foreign-country judgment has the burden of establishing that the Uniform Foreign-Country Money Judgments Recognition Act applies to the foreign-country judgment.

Chapter 142 Section 4 Laws 2009

Section 4. STANDARDS FOR RECOGNITION OF FOREIGN-COUNTRY JUDGMENT.--

A. Except as otherwise provided in Subsections B and C of this section, a court of this state shall recognize a foreign-country judgment to which the Uniform Foreign-Country Money Judgments Recognition Act applies.

B. A court of this state shall not recognize a foreign-country judgment if:

(1) the foreign-country judgment was rendered under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law;

(2) the foreign court did not have personal jurisdiction over the defendant; or

(3) the foreign court did not have jurisdiction over the subject matter.

C. A court of this state need not recognize a foreign-country judgment if:

(1) the defendant in the proceeding in the foreign court did not receive notice of the proceeding in sufficient time to enable the defendant to defend;

(2) the foreign-country judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case;

(3) the foreign-country judgment or the cause of action on which the foreign-country judgment is based is repugnant to the public policy of this state or of the United States;

(4) the foreign-country judgment conflicts with another final and conclusive judgment;

(5) the proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in that foreign court;

(6) in the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action;

(7) the foreign-country judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the foreign-country judgment; or

(8) the specific proceeding in the foreign court leading to the foreign-country judgment was not compatible with the requirements of due process of law.

D. The party resisting recognition of the foreign-country judgment has the burden of establishing that one of the grounds for nonrecognition stated in Subsection B or C of this section exists.

Chapter 142 Section 5 Laws 2009

Section 5. PERSONAL JURISDICTION.--

A. A foreign-country judgment shall not be refused recognition for lack of personal jurisdiction if:

(1) the defendant was served with process personally in the foreign country;

(2) the defendant voluntarily appeared in the proceeding, other than for the purpose of protecting property seized or threatened with seizure in the proceeding or of contesting the jurisdiction of the court over the defendant;

(3) the defendant, before the commencement of the proceeding, had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved;

(4) the defendant was domiciled in the foreign country when the proceeding was instituted or was a corporation or other form of business organization that had its principal place of business in, or was organized under the laws of, the foreign country;

(5) the defendant had a business office in the foreign country and the proceeding in the foreign court involved a cause of action arising out of business done by the defendant through that office in the foreign country; or

(6) the defendant operated a motor vehicle or airplane in the foreign country and the proceeding involved a cause of action arising out of that operation.

B. The list of bases for personal jurisdiction in Subsection A of this section is not exclusive, and the courts of this state may recognize bases of personal jurisdiction other than those listed in Subsection A of this section as sufficient to support a foreign-country judgment.

Chapter 142 Section 6 Laws 2009

Section 6. PROCEDURE FOR RECOGNITION OF FOREIGN-COUNTRY JUDGMENT.--

A. If recognition of a foreign-country judgment is sought as an original matter, the issue of recognition shall be raised by filing an action seeking recognition of the foreign-country judgment.

B. If recognition of a foreign-country judgment is sought in a pending action, the issue of recognition may be raised by counterclaim, cross-claim or affirmative defense.

Chapter 142 Section 7 Laws 2009

Section 7. EFFECT OF RECOGNITION OF FOREIGN-COUNTRY JUDGMENT.-
-If the court in a proceeding pursuant to Section 6 of the Uniform Foreign-Country Money Judgments Recognition Act finds that the foreign-country judgment is entitled to recognition under that act, then, to the extent that the foreign-country judgment grants or denies recovery of a sum of money, the foreign-country judgment is:

A. conclusive between the parties to the same extent as the judgment of a sister state entitled to full faith and credit in this state would be conclusive; and

B. enforceable in the same manner and to the same extent as a judgment rendered in this state.

Chapter 142 Section 8 Laws 2009

Section 8. STAY OF PROCEEDINGS PENDING APPEAL OF FOREIGN-COUNTRY JUDGMENT.--If a party establishes that an appeal from a foreign-country judgment is pending or will be taken, the court may stay any proceedings with regard to the foreign-country judgment until the appeal is concluded, the time for appeal expires or the party appealing has had sufficient time to prosecute the appeal and has failed to do so.

Chapter 142 Section 9 Laws 2009

Section 9. STATUTE OF LIMITATIONS.--An action to recognize a foreign-country judgment shall be commenced within the earlier of the time during which the foreign-country judgment is effective in the foreign country or fifteen years from the date that the foreign-country judgment became effective in the foreign country.

Chapter 142 Section 10 Laws 2009

Section 10. SAVING CLAUSE.--The Uniform Foreign-Country Money Judgments Recognition Act does not prevent the recognition under principles of comity or otherwise of a foreign-country judgment not within the scope of that act.

Chapter 142 Section 11 Laws 2009

Section 11. UNIFORMITY OF INTERPRETATION.--In applying and construing the Uniform Foreign-Country Money Judgments Recognition 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 142 Section 12 Laws 2009

Section 12. REPEAL.--Sections 39-4B-1 through 39-4B-9 NMSA 1978 (being Laws 1991, Chapter 180, Sections 1 through 9) are repealed.

Chapter 142 Section 13 Laws 2009

Section 13. APPLICABILITY.--

A. Actions commenced before July 1, 2009 in which the issue of the recognition of a foreign country judgment is raised are governed by the Uniform Money-Judgments Recognition Act as if that act had not been repealed.

B. The Uniform Foreign-Country Money Judgments Recognition Act applies to all actions commenced on or after July 1, 2009 in which the issue of recognition of a foreign-country judgment is raised.

Chapter 142 Section 14 Laws 2009

Section 14. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.

House Bill 690

Approved April 7, 2009

LAWS 2009, CHAPTER 143

AN ACT

RELATING TO HEALTH CARE; DIRECTING THE HUMAN SERVICES DEPARTMENT TO APPLY FOR A WAIVER OR STATE PLAN AMENDMENT TO IMPLEMENT THE MEDICAL HOME PROGRAM; DIRECTING THE SUPERINTENDENT OF INSURANCE TO CONVENE AN INSURANCE TASK FORCE TO EXPLORE INCENTIVES FOR A MEDICAL HOME-BASED MANAGED CARE MODEL.

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

Chapter 143 Section 1 Laws 2009

Section 1. A new section of the Public Assistance Act is enacted to read:

"MEDICAID, STATE CHILDREN'S HEALTH INSURANCE PROGRAM AND STATE COVERAGE INITIATIVE PROGRAM MEDICAL HOME WAIVER--
RULEMAKING--APPLICATION FOR WAIVER OR STATE PLAN AMENDMENT.--

A. Subject to the availability of state funds and consistent with the federal Social Security Act, the department shall work with its contractors that administer the state's approved waiver programs to promote and, if practicable, develop a program called the "medical home program". The "medical home" is an integrated care management model that emphasizes primary medical care that is continuous, comprehensive, coordinated, accessible, compassionate and culturally appropriate. Care within the medical home includes primary care, preventive care and care management services and uses quality improvement techniques and information technology for clinical decision support. Components of the medical home model may include:

(1) assignment of recipients to a primary care provider, clinic or practice that will serve as a medical home;

(2) promotion of the health commons model of service delivery, whereby the medical home tracks recipients' primary care, specialty, behavioral health, dental health and social services needs as much as practicable;

(3) health education, health promotion, peer support and other services that may integrate with health care services to promote overall health;

(4) health risk or functional needs assessments for recipients;

(5) a method for reporting on the effectiveness of the medical home model and its effect upon recipients' utilization of health care services and the associated cost of utilization of those services;

(6) mechanisms to reduce inappropriate emergency department utilization by recipients;

(7) financial incentives for the provision of after-hours primary care;

(8) mechanisms that ensure a robust system of care coordination for assessing, planning, coordinating and monitoring recipients with complex, chronic or high-cost health care or social support needs, including attendant care and other services needed to remain in the community;

(9) implementation of a comprehensive, community-based initiative to educate recipients about effective use of the health care delivery system, including the use of community health workers or promotoras;

(10) strategies to prevent or delay institutionalization of recipients through the effective utilization of home- and community-based support services;

(11) a primary care provider for each recipient, who advocates for and provides ongoing support, oversight and guidance to implement an integrated, coherent, cross-disciplinary plan for ongoing health care developed in partnership with the recipient and including all other health care providers furnishing care to the recipient;

(12) implementation of evidence-based medicine and clinical decision support tools to guide decision-making at the point-of-care based upon recipient-specific factors;

(13) use of comparative effectiveness to make a cost-benefit analysis of health care practices;

(14) use of health information technology, including remote supervision, recipient monitoring and recipient registries, to monitor and track the health status of recipients;

(15) development and use of safe and secure health information technology to promote convenient recipient access to personal health information, health services and web sites with tools for patient self-management;

(16) implementation of training programs for personnel involved in the coordination of care for recipients;

(17) implementation of equitable financial incentive and compensation systems for primary care providers and other staff engaged in care management and the medical home model; and

(18) any other components that the secretary determines will improve a recipient's health outcome and that are cost-effective.

B. For the purposes of this section, "primary care provider" means a medical doctor or physician assistant licensed under the Medical Practice Act to practice medicine in New Mexico or a certified nurse practitioner as defined in the Nursing Practice Act who provides first contact and continuous care for individuals under the physician's care and who has the staff and resources to manage the comprehensive and coordinated health care of each individual under the primary care provider's care."

House Bill 710, aa

Approved April 7, 2009

LAWS 2009, CHAPTER 144

AN ACT

RELATING TO MUNICIPALITIES; AMENDING CERTAIN PROVISIONS OF THE SMALL CITIES ASSISTANCE FUND TO PROVIDE DIRECT POPULATION DATA TO THE TAXATION AND REVENUE DEPARTMENT TO DETERMINE DISTRIBUTIONS FROM THE FUND.

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

Chapter 144 Section 1 Laws 2009

Section 1. Section 3-37A-3 NMSA 1978 (being Laws 1979, Chapter 284, Section 3, as amended) is amended to read:

"3-37A-3. SMALL CITIES ASSISTANCE FUND--DISTRIBUTION.--

A. The "small cities assistance fund" is created within the state treasury.

B. On or before January 31, 2004 and on or before January 31 of each subsequent year, the bureau of business and economic research located at the university of New Mexico shall certify to the taxation and revenue department the population of each municipality in the state.

C. On or before the last day of February of 2004 and of each subsequent year, the taxation and revenue department shall compute the amount to be distributed to each qualifying municipality as follows:

(1) the department first shall compute a distribution share for each qualifying municipality. The distribution share shall be an amount equal to the product of the qualifying municipality's population multiplied by the difference between the statewide per capita average and the municipal per capita average less the local tax effort of the qualifying municipality;

(2) in 2004 and subsequent years, the balance in the small cities assistance fund in February immediately after the distribution to the fund pursuant to Section 7-1-6.2 NMSA 1978 for the preceding January will be divided by the number of qualifying municipalities. The quotient will be rounded down to the nearest dollar and may be cited as the "target amount";

(3) if the target amount determined in Paragraph (2) of this subsection is less than or equal to the minimum amount, the target amount is the amount to be distributed to each qualifying municipality; and

(4) if the target amount exceeds the minimum amount, the amount to be distributed to all qualifying municipalities whose distribution share equals or is less than the minimum amount shall equal the minimum amount. The sum to be distributed to such municipalities shall be subtracted from the amount in the fund. The target amount then shall be increased by dividing the balance remaining in the fund by the number of remaining qualifying municipalities. The amount to be distributed to each remaining qualifying municipality shall equal the lesser of the municipality's distribution share or the increased target amount. If the distribution share of one or more of these remaining qualifying municipalities is less than the increased target amount, the balance of the fund is to be further reduced by the amount necessary to provide for a distribution to those municipalities of their distribution shares. The target amount is to be increased again by dividing the recomputed fund balance by the number of qualifying municipalities not yet provided for. Successive iterations of the process to increase the target amount shall occur until no remaining municipality's distribution share is less than the increased target amount.

D. The state treasurer shall distribute from the small cities assistance fund on or before March 1, 2004 and March 1 of each subsequent year to each qualifying municipality the amount certified by the taxation and revenue department for each qualifying municipality for the year.

E. Funds distributed in accordance with this section shall be placed in the general fund of the qualifying municipalities receiving distributions."

House Bill 718

Approved April 7, 2009

LAWS 2009, CHAPTER 145

AN ACT

RELATING TO STATE BUILDINGS; AUTHORIZING THE PROPERTY CONTROL DIVISION OF THE GENERAL SERVICES DEPARTMENT TO ENTER INTO CONTRACTS FOR THE ACQUISITION OF A HEALTH AND HUMAN SERVICES OFFICE BUILDING; AUTHORIZING THE DIVISION TO ENTER INTO A LEASE PURCHASE AGREEMENT FOR THE BUILDING AND A SUBLEASE WITH THE HUMAN SERVICES DEPARTMENT AND THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT FOR THE OCCUPANCY OF THE BUILDING; AUTHORIZING THE ISSUANCE OF REVENUE BONDS BY THE NEW MEXICO FINANCE AUTHORITY; MAKING AN APPROPRIATION.

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

Chapter 145 Section 1 Laws 2009

Section 1. HEALTH AND HUMAN SERVICES OFFICE BUILDING.--

A. Subject to the provisions of this section, the property control division of the general services department, after consulting with the human services department and the children, youth and families department and on behalf of those departments, shall:

(1) enter into agreements necessary for the land acquisition, if necessary, and the planning, designing, constructing, equipping and furnishing of a new health and human services office building in the county or municipality of Santa Fe that will serve as the first phase of the health and human services office complex and be occupied by the human services department and the children, youth and families department, provided that, in entering into the agreements, the division shall consider state and private land acquisition options, including potential trades of land; and

(2) enter into a lease purchase agreement with the owner of the building for the leasing of the building by the property control division with an option to purchase for a price that is reduced according to the payments made pursuant to the agreement; provided that the lease purchase agreement shall:

(a) specify the principal, interest and maintenance component of each payment made, provided further that: 1) the initial principal shall not exceed eighty million dollars (\$80,000,000); and 2) the net effective interest rate shall not exceed the maximum permitted by the Public Securities Act;

(b) provide that there is no legal obligation for the property control division to continue the lease from year to year or to purchase the building;

(c) provide that the lease shall be terminated if sufficient appropriations are not available to meet the current lease payments;

(d) provide that the lease payments include a maintenance component that shall escalate annually and, over the length of the agreement, approximate the amount that will be needed for the maintenance and repair of the building; and

(e) provide that if the building is purchased, title to the building shall be issued in the name of the property control division.

B. The property control division shall enter into such financing arrangements as are necessary to construct, occupy and acquire the building by the most cost-effective method and, if the division determines that the issuance of lease purchase revenue bonds by the New Mexico finance authority pursuant to Section 6-21-6.14 NMSA 1978 is the most cost-effective financing arrangement, the New Mexico finance authority is authorized to:

(1) issue bonds, in an amount not to exceed eighty million dollars (\$80,000,000), pursuant to that section;

(2) include a maintenance component as part of the lease payments received; and

(3) use a portion of the net proceeds from the sale of the bonds for debt service payments that are due before sufficient lease payments have been deposited into the debt service fund.

C. No contract or financing arrangement entered into pursuant to Subsection A or B of this section shall be effective until approved by the attorney general for legal sufficiency.

D. Neither a request for proposals shall be issued pursuant to Subsection A or B of this section nor a contract entered into pursuant to those subsections without prior review by the capitol buildings planning commission to ensure that:

(1) the request for proposals or the contract is the most cost-effective method for acquiring the building; and

(2) the building and its proposed use are within the scope of the commission's master plan.

E. The property control division shall enter into subleases with the human services department and the children, youth and families department for the lease of office space within the building, provided that the payments made under the subleases shall equal the payments due by the property control division under the lease purchase agreement. The property control division may also sublease available space within the building to any state agency if:

(1) the space subject to an existing sublease has been reduced by agreement between the property control division and the existing sublessee;

(2) the previous sublease for the available space has been terminated due to the failure of the sublessee to obtain appropriations or otherwise receive the money necessary for making the lease payments; or

(3) the previous sublessee of the available space has been relocated by an act of the legislature.

F. Notwithstanding any provision restricting budget adjustments, upon the certification by the director of the property control division that the building is completed and suitable for occupancy, the secretary of finance and administration may transfer between and among the categories and programs of the current operating budget of each agency that will occupy the building any unexpended or unencumbered appropriation for lease payments or building maintenance. The transferred appropriations shall be expended by the property control division for lease payments due pursuant to the lease purchase agreement.

G. During the term of the lease purchase agreement, each sublessee shall include, in its annual budget request, the amount due under its sublease during the next fiscal year, and the sublessee and the property control division shall use their best efforts to secure the appropriation.

Chapter 145 Section 2 Laws 2009

Section 2. A new section of the New Mexico Finance Authority Act, Section 6-21-6.14 NMSA 1978, is enacted to read:

"6-21-6.14. LEASE PURCHASE REVENUE BONDS--LEASE PURCHASE AGREEMENTS.--

A. If specifically authorized by law, the authority may issue and sell lease purchase revenue bonds in compliance with the New Mexico Finance Authority Act and enter into a lease purchase agreement pursuant to the provisions of this section.

B. Lease purchase revenue bonds may be issued at times and on terms established by the authority and shall be paid exclusively from a debt service fund created pursuant to this section. The net proceeds from the sale of lease purchase

revenue bonds are appropriated to the authority for the purpose of acquiring by construction or purchase the buildings, land or infrastructure specified in the authorizing law; provided that, if authorized by law, the net proceeds may also be used for debt service payments due before sufficient lease payments have been deposited into the applicable debt service fund.

C. All lease purchase revenue bonds issued by the authority shall be obligations of the authority payable solely from the separate debt service fund created for those bonds. The bonds shall not create an obligation, debt or liability of the state and no breach of any pledge, obligation or agreement of the authority shall impose a pecuniary liability or charge upon the general credit or taxing power of the state or any political subdivision of the state.

D. The authority may purchase lease purchase revenue bonds with money in the public project revolving fund pursuant to the provisions of Section 6-21-6 NMSA 1978.

E. A debt service fund shall be created in the authority for each authorized issuance of lease purchase revenue bonds. Each fund shall consist of transfers to the fund, legislative appropriations, lease payments made by the property control division of the general services department or other lessee pursuant to the authorized lease purchase agreement and money earned from investment of the fund. Balances remaining in a fund at the end of a fiscal year shall not revert. Money in each fund is appropriated to the authority for:

(1) the payment of principal, interest, premiums and expenses on the specific lease purchase revenue bonds that are issued pursuant to the bond authorization; and

(2) if authorized by law, required maintenance and repairs of the building, land or infrastructure if the authority determines that money in the fund is sufficient to meet the requirements of Paragraph (1) of this subsection plus any required reserve.

F. Upon the certification of the authority that all debt service on a specific issuance of lease purchase revenue bonds has been paid in full, any remaining balance of the debt service fund created for those bonds shall be transferred to the general fund.

G. The authority may enter into an agreement with the property control division of the general services department or other agency specified by law for the lease purchase of the building acquired with the lease purchase revenue bond proceeds. The agreement shall provide the lessee with an option to purchase for a price that is reduced according to the lease payments made and shall also provide that:

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

(2) the lease shall be terminated if sufficient appropriations are not available to meet the current lease payments;

(3) if authorized by the legislature, the lease payments include a maintenance component that may escalate annually and, over the length of the agreement, approximate the amount that will be needed for the maintenance and repair of the building; and

(4) if the lessee is the property control division of the general services department or an agency under the jurisdiction of the property control division, the title to the building shall be issued in the name of the property control division if the building is purchased.

H. The provisions of this section apply to state buildings specifically authorized by law to be acquired pursuant to this section through lease purchase agreements with the authority. Nothing in this section limits or otherwise affects the power that the authority has under other laws to incur debt, acquire and dispose of property or enter into agreements."

Chapter 145 Section 3 Laws 2009

Section 3. TEMPORARY PROVISION--RATIFICATION AND APPROVAL.--In lieu of the ratification and approval otherwise required by Section 15-3-35 NMSA 1978, the legislature ratifies and approves a lease purchase agreement entered into in compliance with Section 1 of this act for the lease and option to purchase of a building by the property control division of the general services department.

House Bill 728, aa

Approved April 7, 2009

LAWS 2009, CHAPTER 146

AN ACT

RELATING TO INFORMATION TECHNOLOGY; DELETING REFERENCE TO THE NON-EXISTENT INFORMATION SYSTEMS COUNCIL; AMENDING THE DUTIES OF THE SECRETARY OF INFORMATION TECHNOLOGY; REQUIRING COMPLIANCE WITH FEDERAL GUIDELINES FOR RATE-SETTING; REVISING THE MEMBERSHIP OF THE INFORMATION TECHNOLOGY COMMISSION; PROHIBITING LOBBYISTS FROM SERVING ON THE INFORMATION TECHNOLOGY COMMISSION; ADDING AN INFORMATION TECHNOLOGY COMMISSION MEMBER TO THE PROJECT CERTIFICATION PROCESS; PROVIDING FOR PAYMENT BY AGENCIES TO THE DEPARTMENT OF INFORMATION TECHNOLOGY; CHANGING THE DUE DATE

FOR THE EQUIPMENT REPLACEMENT PLANS; CLARIFYING TELECOMMUNICATIONS DUTIES OF THE DEPARTMENT OF INFORMATION TECHNOLOGY; RECOMPILING SECTIONS RELATING TO THE COMMUNICATIONS DIVISION AND THE TELECOMMUNICATIONS BUREAU AS PART OF THE DEPARTMENT OF INFORMATION TECHNOLOGY ACT.

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

Chapter 146 Section 1 Laws 2009

Section 1. Section 9-17-6 NMSA 1978 (being Laws 1983, Chapter 301, Section 6, as amended) is amended to read:

"9-17-6. GENERAL SERVICES DEPARTMENT--ADMINISTRATIVELY ATTACHED AGENCY.--The personnel board and office are administratively attached to the general services department, as provided in Section 10-9-11 NMSA 1978."

Chapter 146 Section 2 Laws 2009

Section 2. Section 9-27-6 NMSA 1978 (being Laws 2007, Chapter 290, Section 6) 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; 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 146 Section 3 Laws 2009

Section 3. Section 9-27-7 NMSA 1978 (being Laws 2007, Chapter 290, Section 7) is amended to read:

"9-27-7. INFORMATION TECHNOLOGY RATE COMMITTEE--MEMBERSHIP--DUTIES.--

A. The "information technology rate committee" is created. The committee consists of seven members as follows:

(1) five members appointed by the governor from executive agencies that use information technology services and pay rates to an internal service fund;

(2) the secretary of finance and administration, who shall serve as chair of the committee; and

(3) the secretary of information technology.

B. The information technology rate committee shall:

(1) review the rate and fee schedule proposed by the secretary;

(2) ensure that the rate and fee schedule complies with the federal office of management and budget circular A-87 or its successor directive;

(3) consider for approval an equitable rate and fee schedule based on cost recovery for state agencies that use information technology services and pay rates to an internal service fund, with priority service to public safety agencies;

(4) present the committee's proposed rate and fee schedule by June 1 of each year to the office of the governor, the department of finance and administration and the legislative finance committee; and

(5) by July 15 of each year, implement a rate and fee schedule based on the committee's recommendations; provided, however, that a reduction in rates or fees by the department shall not require the committee's approval if the reduction is based on cost recovery and if the committee is notified timely."

Chapter 146 Section 4 Laws 2009

Section 4. Section 9-27-9 NMSA 1978 (being Laws 2007, Chapter 290, Section 9) is amended to read:

"9-27-9. INFORMATION TECHNOLOGY COMMISSION--CREATION--POWERS AND DUTIES.--

A. The "information technology commission" is created. The commission consists of fifteen voting members as follows:

(1) four members appointed by the governor, who are not from the higher education department or the public education department;

(2) one staff member with telecommunications regulatory experience appointed by the chair of the public regulation commission;

(3) two members representing education, one appointed by the secretary of higher education and one appointed by the secretary of public education;

(4) two members appointed by the governor to represent local government, one appointment to be selected by the governor from a list of three names provided by the New Mexico association of counties and one appointment to be selected by the governor from a list of three names provided by the New Mexico municipal league;

(5) two members appointed at-large by the governor;

(6) two members appointed by the governor to represent local telecommunications service providers; and

(7) two members from the national laboratories appointed by the respective laboratory director.

B. Additionally, the following nonvoting members may serve on the commission:

(1) two members from the judicial information systems council appointed by the chair of that council;

(2) one staff member from the legislative council service and one staff member from the legislative finance committee, appointed by their respective directors; and

(3) the secretary as chief information officer.

C. No appointee or designee of the commission from a state agency shall be less than the deputy head of the agency.

D. A registered lobbyist under the Lobbyist Regulation Act shall not serve on the commission while registered as a lobbyist or for one year after terminating work as a lobbyist in compliance with the termination requirements of the Lobbyist Regulation Act.

E. The commission shall appoint a voting member to represent the commission on the department's committee or other body that certifies information technology projects.

F. The members of the commission who are not supported by public money, or their designees, may receive per diem and mileage pursuant to the Per Diem and Mileage Act, but shall receive no other compensation, perquisite or allowance.

G. The commission shall elect a chair and vice chair from the active voting membership of the commission for two-year terms.

H. The department shall provide staff to the commission.

I. The commission shall meet at least quarterly to review and approve:

(1) the development and implementation of the state information technology strategic plan;

(2) critical information technology initiatives for the state;

(3) identification of information technology needs of state agencies;

(4) strategies for identifying information technology projects that affect multiple agencies;

(5) the state information architecture and the state information technology strategic plan for updates and compliance by executive agencies;

(6) proposed rules by the secretary; and

(7) guidelines for mediation of disputes between an executive agency and the secretary as chief information officer."

Chapter 146 Section 5 Laws 2009

Section 5. Section 9-27-11 NMSA 1978 (being Laws 2008, Chapter 84, Section 2) 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, the information technology commission 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."

Chapter 146 Section 6 Laws 2009

Section 6. A new section of the Department of Information Technology Act is enacted to read:

"HUMAN RESOURCES--ACCOUNTING AND MANAGEMENT REPORTING.--
The department shall:

A. enter into a memorandum of understanding with the department of finance and administration for the joint design, development, acquisition and

implementation of the statewide human resources, accounting and management reporting system or its successor system;

B. include a per employee assessment per agency that is sufficient to provide for the support, operation, maintenance, software upgrade or equipment replacement of the statewide human resources, accounting and management reporting system or its successor system; and

C. ensure that an amount equal to at least the annual depreciation and amortization be deposited in a separately identifiable account for software upgrades and equipment replacement."

Chapter 146 Section 7 Laws 2009

Section 7. Section 15-5-2 NMSA 1978 (being Laws 1978, Chapter 124, Section 12, as amended) is recompiled in Chapter 9, Article 27 NMSA 1978 and is amended to read:

"15-5-2. CENTRAL TELEPHONE 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 telephone system. The budget for the central telephone system shall be approved as part of the total operating budget of the department."

Chapter 146 Section 8 Laws 2009

Section 8. Section 15-5-5 NMSA 1978 (being Laws 1963, Chapter 181, Section 5, as amended) is recompiled in Chapter 9, Article 27 NMSA 1978 and is amended to read:

"15-5-5. APPROPRIATION.--All income to the central telephone services fund is appropriated to carry out the purposes of Sections 15-5-1 through 15-5-6 NMSA 1978 or their successor recompiled sections. Payments from the central telephone services fund shall be made on vouchers signed by the secretary or the secretary's designee."

Chapter 146 Section 9 Laws 2009

Section 9. Section 15-5-6 NMSA 1978 (being Laws 1963, Chapter 181, Section 6, as amended) is recompiled in Chapter 9, Article 27 NMSA 1978 and is amended to read:

"15-5-6. 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 telephone system. 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 telephone system, 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 telephone system, 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 146 Section 10 Laws 2009

Section 10. TEMPORARY PROVISION--RECOMPILATION INSTRUCTIONS.-- Sections 15-2-1 through 15-2-8 and 15-5-1, 15-5-3 and 15-5-4 NMSA 1978 (being Laws 1977, Chapter 247, Sections 23 and 24, Laws 1997, Chapter 263, Section 1, Laws 1970, Chapter 71, Section 1, Laws 1966, Chapter 32, Section 3, Laws 1971, Chapter 115, Section 2, Laws 1975, Chapter 214, Section 4 and Laws 1963, Chapter 181, Sections 1, 3 and 4, as amended) are recompiled as part of Chapter 9, Article 27 NMSA 1978.

Chapter 146 Section 11 Laws 2009

Section 11. REPEAL.--Section 15-5-7 NMSA 1978 (being Laws 2007, Chapter 288, Section 1) is repealed.

House Bill 729, aa

Approved April 7, 2009

LAWS 2009, CHAPTER 147

AN ACT

RELATING TO TAXATION; EXTENDING THE LIFE OF CERTAIN INVESTMENT CREDIT PROVISIONS; EXTENDING THE PERIOD FOR APPLICATION OF CERTAIN PROVISIONS FOR APPORTIONMENT OF BUSINESS INCOME FOR CORPORATE INCOME TAX PURPOSES BY TAXPAYERS WHOSE PRINCIPAL BUSINESS ACTIVITY IS MANUFACTURING.

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

Chapter 147 Section 1 Laws 2009

Section 1. Section 7-4-10 NMSA 1978 (being Laws 1993, Chapter 153, Section 1, as amended) is amended to read:

"7-4-10. APPORTIONMENT OF BUSINESS INCOME.--

A. Except as provided in Subsection B of this section, all business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor and the denominator of which is three.

B. For taxable years beginning prior to January 1, 2020, a taxpayer whose principal business activity is manufacturing may elect to have business income apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus twice the sales factor and the denominator of which is four. To elect the method of apportionment provided by this subsection, the taxpayer shall notify the department of the election, in writing, no later than the date on which the taxpayer files the return for the first taxable year to which the election will apply. The election will apply to that taxable year and to each taxable year thereafter until the taxpayer notifies the department, in writing, that the election is terminated, except that the taxpayer shall not terminate the election until the method of apportioning business income provided by this subsection has been used by the taxpayer for at least three consecutive taxable years, including a total of at least thirty-six calendar months. Notwithstanding any provisions of this subsection to the contrary, the taxpayer shall use the method of apportionment provided by Subsection A of this section for the taxable year unless:

(1) the taxpayer's corporate income tax liability for the taxable year, computed by the same method of apportionment used in the preceding taxable year, exceeds the corporate income tax liability for the taxpayer's immediately preceding taxable year; or

(2) the sum of the taxpayer's payroll factor and property factor for the taxable year exceeds the sum of the taxpayer's payroll factor and property factor for the taxpayer's base year. For purposes of this paragraph, "base year" means the taxpayer's first taxable year beginning on or after January 1, 1991.

C. For purposes of this section, "manufacturing" means combining or processing components or materials to increase their value for sale in the ordinary course of business, but does not include:

(1) construction;

(2) farming;

(3) power generation, except for electricity generation at a facility other than one for which both location approval and a certificate of convenience and

necessity are required prior to commencing construction or operation of the facility, pursuant to the Public Utility Act; or

(4) processing natural resources, including hydrocarbons."

Chapter 147 Section 2 Laws 2009

Section 2. Section 7-9A-7 NMSA 1978 (being Laws 1979, Chapter 347, Section 7, as amended by Laws 2001, Chapter 57, Section 3 and by Laws 2001, Chapter 337, Section 3) is amended to read:

"7-9A-7. VALUE OF QUALIFIED EQUIPMENT.--

A. Prior to July 1, 2020, the value of qualified equipment shall be the adjusted basis established for the equipment under the applicable provisions of the Internal Revenue Code of 1986.

B. After June 30, 2020, the value of qualified equipment shall be the purchase price of the equipment unless the equipment is introduced into New Mexico and has been owned for more than one year prior to its introduction into New Mexico by the taxpayer applying for the credit, in which case the value shall be the reasonable value of the equipment at the time of its introduction into New Mexico; provided that no taxpayer shall for any taxable year claim a value of qualified equipment greater than two million dollars (\$2,000,000)."

Chapter 147 Section 3 Laws 2009

Section 3. Section 7-9A-7.1 NMSA 1978 (being Laws 1983, Chapter 206, Section 6, as amended) is amended to read:

"7-9A-7.1. EMPLOYMENT REQUIREMENTS.--

A. Prior to July 1, 2020, to be eligible to claim a credit pursuant to the Investment Credit Act, the taxpayer shall employ the equivalent of one full-time employee who has not been counted to meet this employment requirement for any prior claim in addition to the number of full-time employees employed on the day one year prior to the day on which the taxpayer applies for the credit for every:

(1) five hundred thousand dollars (\$500,000), or portion of that amount, in value of qualified equipment claimed by the taxpayer in a taxable year in the same claim, up to a value of thirty million dollars (\$30,000,000); and

(2) one million dollars (\$1,000,000), or portion of that amount, in value of qualified equipment over thirty million dollars (\$30,000,000) claimed by the taxpayer in a taxable year in the same claim.

B. After June 30, 2020, for every one hundred thousand dollars (\$100,000) in value of qualified equipment claimed by a taxpayer in a taxable year, the taxpayer shall employ the equivalent of one full-time employee in addition to the number of full-time employees employed on the day one year prior to the day on which the taxpayer applies for credit.

C. The department may require evidence showing compliance with this section. The department may find that an additional employee meets the requirements of this section, although employed earlier than one year prior to the day on which the taxpayer applies for the credit, if the employee was only being trained prior to that date or the employee's employment was necessitated by the use of the qualified equipment."

House Bill 75

Approved April 7, 2009

LAWS 2009, CHAPTER 148

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 148 Section 1 Laws 2009

Section 1. AUTHORIZATION OF PROJECTS.--Pursuant to the provisions of Section 6-21-6 NMSA 1978, the legislature authorizes the New Mexico finance authority to make loans from the public project revolving fund to the following qualified entities for the following public projects on terms and conditions established by the authority:

1. to the Pueblo of Ohkay Owingeh in Rio Arriba county for equipment, building, infrastructure, refinancing, water, wastewater, water rights, solid waste and road and land projects;
2. to the Santa Fe solid waste management agency in Santa Fe county for equipment, infrastructure, refinancing and solid waste projects;
3. to the Albuquerque public school district in Bernalillo county for building, equipment and infrastructure projects;

4. to the rio metro regional transit district in Bernalillo, Torrance, Sandoval and Valencia counties for railroad infrastructure and building projects;

5. to the northern New Mexico regional transit district in Santa Fe, Rio Arriba and Taos counties for railroad infrastructure projects;

6. to the New Mexico renewable energy transmission authority for land acquisition and building, equipment, infrastructure and refinance projects;

7. to the board of regents of New Mexico state university in Dona Ana county for building, road, equipment and infrastructure projects;

8. to the Estancia Moriarty Willard gas cooperative in Torrance county for land acquisition, building, infrastructure and equipment projects;

9. to the city of Rio Rancho in Sandoval county for equipment, building, infrastructure, general obligation and special assessment district projects;

10. to the Mescalero Apache housing authority in Otero county for building, infrastructure, equipment, land and refinancing projects;

11. to the Angel Fire public improvement district in Colfax county for land acquisition and equipment, infrastructure, water, wastewater, solid waste and building projects;

12. to the city of Aztec in San Juan county for land acquisition, equipment, building, water, wastewater, refinance, solid waste and infrastructure projects;

13. to the city of Bloomfield in San Juan county for land acquisition and equipment, building, water, wastewater, refinance, solid waste, road and infrastructure projects;

14. to the state fair commission in Bernalillo county for building, equipment, infrastructure and refinancing projects;

15. to the city of Las Vegas in San Miguel county for land acquisition and building, equipment, infrastructure, water rights, refinance and road projects;

16. to the Navajo Nation in San Juan and McKinley counties for building, equipment, infrastructure and refinance projects;

17. to the northwest New Mexico council of governments in Santa Fe county for building, equipment, infrastructure and refinance projects;

18. to the northwest New Mexico regional solid waste authority in Cibola county for building, equipment, infrastructure and refinance projects;

19. to the board of regents of San Juan college in San Juan county for building, equipment, infrastructure and refinance projects;

20. to San Miguel county for building, equipment, infrastructure, water, wastewater, refinancing and road projects in San Miguel county;

21. to the city of Santa Rosa in Guadalupe county for building, equipment, infrastructure, water, wastewater and refinance projects;

22. to Taos county for land acquisition and building, equipment, infrastructure, road, water, wastewater, solid waste and refinance projects in Taos county;

23. to the village of Taos Ski Valley in Taos county for water, wastewater, building, solid waste, equipment, infrastructure, road and refinance projects;

24. to the town of Bernalillo in Sandoval county for land acquisition and equipment, building, infrastructure, water, wastewater and refinance projects;

25. to the Claunch Pinto soil and water conservation district in Torrance county for equipment, building and infrastructure projects;

26. to the Cuba independent school district in Sandoval county for equipment, building and infrastructure projects;

27. to the Gallup-McKinley county school district in McKinley county for equipment, building and infrastructure projects;

28. to the Jemez Valley public school district in Sandoval county for equipment, infrastructure and building projects;

29. to Los Alamos county for land acquisition and equipment, building, infrastructure, refinance, water, wastewater and solid waste projects in Los Alamos county;

30. to the village of Milan in Cibola county for equipment, building, infrastructure, water and wastewater projects;

31. to the Rio Rancho public school district in Sandoval county for equipment, building and infrastructure projects;

32. to Sandoval county for land acquisition and equipment, building, refinance, infrastructure, water, wastewater and solid waste projects in Sandoval county;

33. to the board of regents at New Mexico state university in Dona Ana county for land acquisition and refinancing, infrastructure, building and equipment projects for Arrowhead center;

34. to the city of Alamogordo in Otero county for land acquisition and refinancing, infrastructure, building and equipment projects;

35. to the Alto Lakes water and sanitation district in Lincoln county for land acquisition and refinancing, infrastructure, building and equipment projects;

36. to the Pueblo of Cochiti in Sandoval county for land acquisition and refinancing, water, wastewater, infrastructure, building and equipment projects;

37. to De Baca county for land acquisition and refinancing, infrastructure, building and equipment projects in De Baca county;

38. to the board of regents at New Mexico highlands university in San Miguel and Santa Fe counties for land acquisition and equipment, building, infrastructure, refinance and purchase projects;

39. to Canones mutual domestic water consumers association in Rio Arriba county for equipment, building, water, wastewater, infrastructure and refinance projects;

40. to the town of Clayton in Union county for equipment, building, infrastructure, water, wastewater, solid waste and refinance projects;

41. to the Farmington municipal school district in San Juan county for building, equipment and infrastructure projects;

42. to Harding county for building, equipment, water, wastewater, road, infrastructure and refinance projects in Harding county;

43. to the village of Mosquero in Harding county for equipment, building, infrastructure, road, water, wastewater and refinance projects;

44. to the Navajo agricultural products industry in McKinley and San Juan counties for equipment, building, infrastructure and refinance projects;

45. to the north central New Mexico economic development district for equipment, building, infrastructure and refinance projects;

46. to the village of Pecos in San Miguel county for equipment, building, infrastructure, road, water, wastewater and refinance projects;

47. to the Pueblo of Pojoaque in Santa Fe county for equipment, building, infrastructure, water, wastewater, road and refinance projects;

48. to the city of Raton in Colfax county for equipment, building, refinance, infrastructure, water, wastewater and road projects;

49. to Union county for equipment, building, infrastructure, water, wastewater, road and refinance projects in Union county;

50. to the village of Roy in Harding county for building, equipment, infrastructure, water, wastewater, road and refinance projects;

51. to the village of Questa in Taos county for equipment, building, infrastructure, water and wastewater projects;

52. to the town of Red River in Taos county for land acquisition and equipment, building and infrastructure projects;

53. to Cibola county for land acquisition and equipment, building, infrastructure, water, wastewater, solid waste and refinance projects in Cibola county;

54. to the city of Albuquerque in Bernalillo county for land acquisition and equipment, building, public improvement district, infrastructure, water, wastewater, solid waste and refinance projects;

55. to the city of Santa Fe in Santa Fe county for land acquisition and equipment, building, public improvement district, infrastructure, water, wastewater, solid waste and refinance projects;

56. to Roosevelt county for building, equipment, water, wastewater and refinance projects in Roosevelt county;

57. to the city of Portales in Roosevelt county for equipment, building, infrastructure, road, water, wastewater and refinance projects;

58. to Chaves county for equipment, building, land acquisition, water, wastewater and refinance projects in Chaves county;

59. to the city of Eunice in Lea county for equipment, building, water, wastewater, solid waste, infrastructure, refinance and land acquisition projects;

60. to the north central regional transit district in Santa Fe, Rio Arriba and Taos counties for equipment, building, land acquisition, refinance and infrastructure projects;

61. to the eastern Sandoval county arroyo flood control authority for equipment, building, land acquisition, refinance and infrastructure projects in Sandoval county;

62. to the university of New Mexico medical group in Bernalillo and Sandoval counties for building, equipment, land acquisition, refinance and infrastructure projects;

63. to the village of Folsom in Union county for equipment, building, infrastructure, land acquisition and refinance projects;

64. to the town of Edgewood in Santa Fe county for equipment, building, infrastructure, water, wastewater, solid waste, land acquisition and refinance projects;

65. to Socorro county for equipment, building, refinance, water and wastewater projects in Socorro county;

66. to the city of Socorro in Socorro county for equipment, building, refinance, water and wastewater projects;

67. to Valencia county for equipment, building, refinance, water and wastewater projects in Valencia county;

68. to the city of Roswell in Chaves county for equipment, building, infrastructure, water, wastewater, solid waste, land acquisition and refinance projects;

69. to the governing board of Santa Fe community college in Santa Fe county for equipment, building, land acquisition, infrastructure and refinance projects;

70. to the Carrizozo municipal school district in Lincoln county for equipment, infrastructure, building and refinance projects;

71. to the mid-region council of governments in Bernalillo county for infrastructure, equipment and rail spur projects;

72. to the city of Clovis in Curry county for equipment, building, infrastructure, water, wastewater and refinance projects;

73. to Eddy county for equipment, building, infrastructure, water, wastewater and refinance projects in Eddy county;

74. to Guadalupe county for equipment, building, infrastructure, water, wastewater and refinance projects in Guadalupe county;

75. to the village of Ruidoso in Lincoln county for equipment, building, infrastructure, water, wastewater and refinance projects;

76. to the city of Ruidoso Downs in Lincoln county for equipment, building, infrastructure, water, wastewater and refinance projects;

77. to the board of regents of the university of New Mexico in Bernalillo and Taos counties for equipment, building, infrastructure, land acquisition and refinance projects;

78. to the Lordsburg municipal schools in Hidalgo county for equipment, land acquisition, building, infrastructure and refinance projects;

79. to Hatch Valley public schools in Dona Ana county for equipment, land acquisition, building, infrastructure and refinance projects;

80. to the Hagerman municipal school district in Chaves county for equipment, land acquisition, building, infrastructure and refinance projects;

81. to the Dexter consolidated school district in Chaves county for equipment, land acquisition, building, infrastructure and refinance projects;

82. to the Truth or Consequences municipal schools in Sierra county for equipment, land acquisition, building, infrastructure and refinance projects;

83. to the governing board of Luna community college in San Miguel county for equipment, land acquisition, building, infrastructure and refinance projects;

84. to the southern Sandoval county arroyo flood control authority in Sandoval county for equipment, land acquisition, building, infrastructure and refinance projects;

85. to the city of Truth or Consequences in Sierra county for equipment, land acquisition, building, infrastructure and refinance projects;

86. to the village of Angel Fire in Colfax county for equipment, land acquisition, building, infrastructure, special assessment district and refinance projects;

87. to the Hobbs homestead estates public improvement district for equipment, land acquisition, building, infrastructure and refinance projects;

88. to the board of regents of the New Mexico school for the blind and visually impaired in Otero county for equipment, building, infrastructure, land acquisition and refinance projects;

89. to the Albuquerque Bernalillo county water utility authority in Bernalillo county for equipment, building, infrastructure, water, wastewater and refinance projects;

90. to Mora county for land acquisition projects in Mora county;

91. to the board of regents of the New Mexico institute of mining and technology for equipment, building, land acquisition, infrastructure and refinance projects in Bernalillo and Socorro counties;

92. to the board of regents of the New Mexico institute of mining and technology for equipment, building, land acquisition, infrastructure and refinance projects for Research Park corporation in Bernalillo and Socorro counties;

93. to the department of transportation for road and infrastructure projects throughout New Mexico;

94. to the Nor-Lea hospital district in Lea county for building, equipment, land acquisition, infrastructure and refinance projects; and

95. to the New Mexico spaceport authority in Dona Ana, Sierra and Otero counties for land acquisition, equipment, building, infrastructure, refinancing, water, wastewater, water rights, solid waste and road projects.

Chapter 148 Section 2 Laws 2009

Section 2. AUTHORIZATION OF CHARTER SCHOOL PROJECTS.--

A. The New Mexico finance authority shall adopt rules governing the terms and conditions of loans made from the public project revolving fund. The rules shall provide criteria for determining charter school eligibility for funding, shall require that the public education department certify that a charter school is approved for funding through the public project revolving fund and shall require that the charter school meet accountability standards. The rules shall be approved by the New Mexico finance authority oversight committee.

B. Pursuant to the provisions of Section 6-21-6 NMSA 1978, and subject to Subsection A of this section, the legislature authorizes the New Mexico finance authority to make loans from the public project revolving fund to the following qualified charter school entities for the following public projects:

1. to the Southwest Secondary Learning Centers in Bernalillo county for building, land and facilities acquisition and equipment projects;

2. to the East Mountain High charter school in Bernalillo county for building, land and facilities acquisition and equipment projects;

3. to the Cottonwood Valley charter school in Socorro county for building, land and facilities acquisition and equipment projects;

4. to the Twenty-first Century Public Academy in Bernalillo county for building, land and facilities acquisition and equipment projects;

5. to the South Valley Academy in Bernalillo county for building, land and facilities acquisition and equipment projects;

6. to the Monte del Sol charter school in Santa Fe county for building, land and facilities acquisition and equipment projects;

7. to the Robert F. Kennedy charter school in Bernalillo county for building, land and facilities acquisition and equipment projects;

8. to the New Mexico school for the arts in Santa Fe county for land acquisition and equipment, building, infrastructure and purchase projects; and

9. to the Montessori of the Rio Grande charter school in Bernalillo county for building, land and facilities acquisition and equipment projects.

Chapter 148 Section 3 Laws 2009

Section 3. VOIDING OF AUTHORIZATION.--If a qualified entity listed in Section 1 or 2 of this act has not certified to the New Mexico finance authority by the end of fiscal year 2012 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 or 2 of this act to make a loan from the public project revolving fund to that qualified entity for that public project is void.

Chapter 148 Section 4 Laws 2009

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

House Bill 76, aa, w/ec

Approved April 7, 2009

LAWS 2009, CHAPTER 149

AN ACT

RELATING TO GAMING; ENACTING A SECTION OF THE GAMING CONTROL ACT TO PROVIDE PROCEDURES FOR THE ATTACHMENT AND ENFORCEMENT OF LIENS ON CERTAIN GAMING MACHINE PAYOUTS WON BY A PERSON OWING A DEBT TO OR COLLECTED BY THE HUMAN SERVICES DEPARTMENT.

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

Chapter 149 Section 1 Laws 2009

Section 1. A new section of the Gaming Control Act is enacted to read:

"LIEN ON WINNINGS FOR DEBT OWED TO OR COLLECTED BY HUMAN SERVICES DEPARTMENT--PROCEDURE.--

A. By operation of law, a lien attaches to a payout of one thousand two hundred dollars (\$1,200) or more from a gaming machine of a racetrack gaming operator licensee when won by a person owing a debt to or collected by the human services department acting as the state's child support enforcement agency pursuant to Title IV-D of the federal Social Security Act.

B. The human services department shall periodically provide the board with a verified list of names, social security numbers and the last known addresses of obligors owing a debt to or collected pursuant to Section 1 Subsection A by the department.

C. In order to enforce the lien, the board shall by rule adopt procedures applicable to racetrack gaming operator licensees when a payout occurs. The board shall provide a racetrack gaming operator licensee with an electronic system to search by the names and social security numbers of persons currently owing a debt subject to or collected by the human services department. Prior to the payment of a payout, the licensee shall make a good-faith effort to check the name of the winner against the list of names and social security numbers provided by the human services department to the board.

D. If the winner is a person owing a debt to or collected by the human services department, the racetrack gaming operator licensee shall retain the payout and promptly notify the department and the board on a form approved by the department. The human services department shall establish by rule an administrative process for support obligors to contest the obligation prior to release of the funds by the licensee to the department. The human services department shall, within seven working days of receipt of notice of the payout, provide the racetrack gaming operator licensee with written notice of its intent to enforce the administrative lien and of the amount claimed. After receiving the notice of intent, the racetrack gaming operator licensee shall retain the amount claimed in a suspense account and remit the balance to the payout winner. Upon final disposition of the administrative procedure, the human services department shall immediately notify the racetrack gaming operator licensee in writing of the amount

to be tendered to the department and release the lien for any funds to be distributed to the payout winner.

E. The board shall by rule adopt lien attachment and enforcement procedures applicable to other gaming operator licensees when a gaming machine payout equals one thousand two hundred dollars (\$1,200) or more.

F. Neither the board nor any gaming operator shall be liable to the human services department or to the person on whose behalf the department is collecting the debt if the licensee fails, in good faith, to match a winner's name to a name on the list provided pursuant to Subsection B of this section."

Chapter 149 Section 2 Laws 2009

Section 2. TEMPORARY PROVISION--MORATORIUM ON SANCTIONS.--Until July 1, 2010, the gaming control board shall not impose any regulatory sanction or other penalty upon a gaming operator licensee for a violation of Section 1 of this 2009 act.

Chapter 149 Section 3 Laws 2009

Section 3. REPEAL.--Section 60-2E-61 NMSA 1978 (being Laws 1997, Chapter 190, Section 63, as amended) is repealed.

Chapter 149 Section 4 Laws 2009

Section 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.

House Bill 763, aa

Approved April 7, 2009

LAWS 2009, CHAPTER 150

AN ACT

RELATING TO ELECTIONS; UPDATING PROVISIONS IN THE ELECTION CODE TO COMPORT WITH THE USE OF PAPER BALLOTS; REMOVING REFERENCES TO EMERGENCY PAPER BALLOTS FROM THE ELECTION CODE; PROVIDING FOR THE HANDLING OF PAPER BALLOTS; AMENDING, REPEALING AND RECOMPILING SECTIONS OF THE NMSA 1978.

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

Chapter 150 Section 1 Laws 2009

Section 1. Section 1-1-6 NMSA 1978 (being Laws 1977, Chapter 222, Section 1, as amended) is amended to read:

"1-1-6. RECHECK AND RECOUNT.--As used in the Election Code:

A. "recheck" pertains to electronic vote tabulating systems and means a verification procedure whereby a printout of the electronic record of votes cast in an election is made from each electronic memory device in the electronic vote tabulating system and the results are compared with the results shown on the official returns; and

B. "recount" pertains to all paper ballots, including absentee ballots, provisional paper ballots, optical scan paper ballots and any other paper ballot and means a verification procedure whereby the voters' selections for an office are retallied and the results compared with the results shown on the official returns."

Chapter 150 Section 2 Laws 2009

Section 2. Section 1-2-12 NMSA 1978 (being Laws 1969, Chapter 240, Section 32, as amended) is amended to read:

"1-2-12. PRECINCT BOARD--NUMBER FOR EACH PRECINCT--MULTIPARTISAN.--

A. When absentee ballots are counted, the precinct board shall consist of:

(1) a presiding judge;

(2) one election judge from each of the major political parties;

(3) one clerk from each of the major political parties; and

(4) if a major party has no registered, qualified elector who is able to fill the position as election judge or election clerk, a registered, qualified elector from another major party, chosen by the county clerk to fill the vacant position.

B. For primary, general and special federal elections, the precinct board shall consist of:

(1) a presiding judge;

(2) two election judges who shall be of different major political parties; and

(3) one election clerk who shall be of a different political party than the presiding judge.

C. For all other elections, the precinct board shall consist of:

- (1) a presiding judge;
- (2) one election judge; and
- (3) one election clerk.

D. If the county clerk determines that additional election clerks are needed in a precinct, the clerk may appoint such additional election clerks as the clerk deems necessary; provided, however, that such appointments for partisan elections shall be made in the manner that provides for representation from all major political parties.

E. In addition to the members of the precinct board provided for in this section, the county clerk may appoint an additional election clerk for the purpose of making changes in the certificate of registration of any voter who has voted in that election at the polling place."

Chapter 150 Section 3 Laws 2009

Section 3. Section 1-2-23 NMSA 1978 (being Laws 1969, Chapter 240, Section 42, as amended) is amended to read:

"1-2-23. CHALLENGERS--PERMITTED ACTIVITIES.--

A. A challenger or alternate challenger, upon presentation of the written appointment to the precinct board, shall be permitted to be present from the time the precinct board convenes at the polling place until the completion of the counting and tallying of the ballots after the polls close.

B. A challenger or alternate challenger, for the purpose of interposing challenges, may:

(1) inspect the registration book or precinct voter list for the purpose of determining whether the challenger or alternate challenger desires to interpose a challenge;

(2) inspect the poll books, registration book or signature rosters to determine whether entries are being made in accordance with the Election Code;

(3) examine each voting machine before the polls are opened to compare the number on the metal seal and the numbers on the counters with the

numbers on the key envelope and to see that the voting machine is ready for voting at the opening of the polls; and

(4) make in any polling place and preserve for future reference written memoranda of any action or omission on the part of any member of the precinct board."

Chapter 150 Section 4 Laws 2009

Section 4. Section 1-6-7 NMSA 1978 (being Laws 1969, Chapter 240, Section 133, as amended) is amended to read:

"1-6-7. FORM OF ABSENTEE BALLOT.--As soon as candidates and questions to be voted upon have been determined for each election, the county clerk shall procure a supply of suitable absentee ballots. The absentee ballots shall be numbered and shall be, as nearly as possible, in the same form as prescribed by the secretary of state for paper ballots. However, to reduce weight and bulk for transport of absentee ballots, the size and weight of the paper for envelopes, ballots and instructions shall be reduced as much as possible. Absentee ballots shall be printed at least forty-five days prior to the date of a primary election and forty-nine days prior to the date of a general election. Absentee ballots for any other election shall be printed at least thirty-five days prior to the date of the election."

Chapter 150 Section 5 Laws 2009

Section 5. Section 1-6-15 NMSA 1978 (being Laws 1977, Chapter 222, Section 13, as amended) is amended to read:

"1-6-15. CANVASS--RECOUNT OR RECHECK--DISPOSITION.--If voting machines are not used to register absentee ballots, the absentee ballots shall be canvassed, recounted and disposed of in the manner provided by the Election Code for the canvassing, recounting and disposition of paper ballots. If voting machines are used to register absentee ballots, the ballots shall be canvassed and rechecked in the manner provided by the Election Code for the canvassing and recheck of ballots cast on a voting machine; provided, in the event of a contest, voting machines used to register absentee ballots shall not be rechecked but the absentee ballots shall be recounted in the manner provided by the Election Code for the recounting of paper ballots. As used in this section, "voting machines" means electronic voting machines as provided in the Election Code."

Chapter 150 Section 6 Laws 2009

Section 6. Section 1-6-16.1 NMSA 1978 (being Laws 1989, Chapter 368, Section 1, as amended) is amended to read:

"1-6-16.1. ABSENTEE BALLOT--CONDUCT OF ELECTION--WHEN NOT
TIMELY RECEIVED--EMERGENCY PROCEDURE FOR VOTING AND COUNTING.--

A. A voter who applies for an absentee ballot but has not received the absentee ballot by mail as of the date of the election may go to the voter's assigned polling place and, after executing an affidavit of nonreceipt of absentee ballot, shall be permitted to vote on a replacement absentee paper ballot.

B. The completed ballot shall be placed in an official inner envelope substantially as prescribed by Section 1-6-8 NMSA 1978 and sealed. The official inner envelope shall then be placed in an official envelope substantially as prescribed for a transmittal envelope or mailing envelope in Section 1-6-8 NMSA 1978. This envelope shall contain a form on its back that identifies the voter by name and signature roster number and a printed statement to the effect that the voter made application for an absentee ballot but had not received it as of the date of the election and is permitted to vote by replacement absentee paper ballot.

C. The presiding judge shall put all replacement absentee ballots in a special envelope provided for that purpose by the county clerk, seal it and return it to the county clerk along with the machine tally sheets. The sealed envelope shall not be put in the locked ballot box.

D. Upon receipt of the envelope containing replacement absentee ballots, the county clerk, no later than forty-eight hours after the close of the election, shall remove the transmittal envelopes and, without removing or opening the inner envelopes, determine that:

(1) the voter did in fact make application for an absentee ballot; and

(2) no absentee ballot was received by the county clerk from the voter by 7:00 p.m. on election day.

E. Upon making that determination, the county clerk shall remove the inner envelope without opening it, retain the transmittal envelope with the other election returns and place the inner unopened envelope in a secure container to be transmitted to the county canvassing board to be tallied and included in the canvass of that county for the appropriate precinct.

F. The secretary of state shall prescribe and furnish the necessary envelopes for purposes of this section and shall adopt rules deemed necessary to preserve the secrecy of the replacement absentee paper ballots."

Chapter 150 Section 7 Laws 2009

Section 7. Section 1-8-36.1 NMSA 1978 (being Laws 1981, Chapter 156, Section 1, as amended) is amended to read:

"1-8-36.1. PRIMARY ELECTION LAW--WRITE-IN CANDIDATES.--

A. Write-in candidates are permitted in the primary election only for the offices of United States representative, members of the legislature, district judges, district attorneys, public regulation commission, public education commission, magistrates and any office voted upon by all voters of the state.

B. A person may be a write-in candidate only for nomination by the major political party with which the person is affiliated as shown by the certificate of registration, and such person shall have the qualifications to be a candidate in the primary election for the political party for which the person is a write-in candidate.

C. A person desiring to be a write-in candidate for one of the offices listed in Subsection A of this section in the primary election shall file with the proper filing officer a declaration of intent to be a write-in candidate. Such declaration of intent shall be filed before 5:00 p.m. on the second Tuesday in March.

D. A write-in vote shall be counted and canvassed only if:

(1) the name written in is the name of a declared write-in candidate and shows two initials and last name; first name, middle initial or name and last name; first and last name; or the full name as it appears on the declaration of intent to be a write-in candidate and misspellings of the above combinations that can be reasonably determined by a majority of the members of the precinct board to identify a declared write-in candidate; and

(2) the name is written on the proper line provided on the ballot for write-in votes for the office for which the candidate has filed a declaration of intent and the voter has followed the directions for casting a vote for the write-in candidate.

E. At the time of filing the declaration of intent to be a write-in candidate, the write-in candidate shall be considered a candidate for all purposes and provisions relating to candidates in the Election Code, including the obligations to report pursuant to the Campaign Reporting Act, except that the write-in candidate's name shall not be printed on the ballot.

F. No unopposed write-in candidate shall have the write-in candidate's nomination certified unless the write-in candidate receives at least the number of write-in votes in the primary election as the write-in candidate would need signatures on a nominating petition pursuant to the requirements set out in Section 1-8-33 NMSA 1978.

G. A write-in vote shall be cast by writing in the name and following the directions for casting a vote for the write-in candidate. As used in this section, "write-in" does not include the imprinting of any name by rubber stamp or similar device or the use of preprinted stickers or labels."

Chapter 150 Section 8 Laws 2009

Section 8. Section 1-10-1 NMSA 1978 (being Laws 1977, Chapter 222, Section 24, as amended) is amended to read:

"1-10-1. BALLOT.--As used in the Election Code:

A. "ballot" means a system for arranging and designating for the voter the names of candidates, constitutional amendments and other questions to be voted on and for the marking, casting or otherwise recording of such votes, and the term includes absentee ballots, provisional paper ballots and all other paper ballots; and

B. "provisional paper ballot" means the paper ballot used pursuant to Section 1-12-7.1, 1-12-8 or 1-12-25.2 NMSA 1978."

Chapter 150 Section 9 Laws 2009

Section 9. Section 1-10-5 NMSA 1978 (being Laws 1977, Chapter 222, Section 28) is amended to read:

"1-10-5. BALLOTS--PRINTING.--Ballots shall be printed and in the hands of the county clerk at least forty days before the election."

Chapter 150 Section 10 Laws 2009

Section 10. Section 1-12-44 NMSA 1978 (being Laws 1977, Chapter 222, Section 47, as amended) is recompiled in Chapter 1, Article 10 NMSA 1978 and is amended to read:

"PAPER BALLOTS--GENERAL REQUIREMENTS.--Paper ballots shall:

- A. be numbered consecutively;
- B. be uniform in size;
- C. be printed on good quality white paper;
- D. be printed in plain black type;
- E. have the precinct numbers printed on each paper ballot; and
- F. be in the form prescribed by the secretary of state."

Chapter 150 Section 11 Laws 2009

Section 11. Section 1-12-47 NMSA 1978 (being Laws 1977, Chapter 222, Section 50) is recompiled in Chapter 1, Article 10 NMSA 1978 and is amended to read:

"PAPER BALLOTS--WRITE-IN CANDIDATES.--When a write-in candidate has been certified pursuant to the Election Code, a space for entering the name of the write-in candidate shall be clearly designated by the use of the heading "Write-in Candidate" after the listing of other candidates for that office."

Chapter 150 Section 12 Laws 2009

Section 12. Section 1-12-49 NMSA 1978 (being Laws 1977, Chapter 222, Section 52) is recompiled in Chapter 1, Article 10 NMSA 1978 and is amended to read:

"PAPER BALLOTS--ELECTION SUPPLIES.--The secretary of state shall provide for the procurement of paper ballot election supplies."

Chapter 150 Section 13 Laws 2009

Section 13. Section 1-10-8.1 NMSA 1978 (being Laws 1981, Chapter 166, Section 1, as amended) is amended to read:

"1-10-8.1. GENERAL ELECTION--PARTY POSITION ON BALLOT.--

A. The order of preference for position on the ballots of the candidates of political parties in the general election shall be determined by lot at the time and in the manner prescribed by the secretary of state.

B. When electronic vote recording and tabulating machines or electronic vote tabulating machines are used, the offices and candidates shall be printed on the ballot in a vertical position with the order of preference being from top to bottom.

C. When paper ballots are used in a general election, such ballots shall be printed and bound so that the ballots for each precinct shall reflect the actual positioning of parties as they appear on all ballots in that precinct.

D. The secretary of state shall prescribe procedures and publish instructions to carry out the provisions of this section."

Chapter 150 Section 14 Laws 2009

Section 14. Section 1-10-11 NMSA 1978 (being Laws 1969, Chapter 240, Section 210, as amended) is amended to read:

"1-10-11. SAMPLE BALLOTS--PENALTY.--The county clerk shall provide at least four sample ballots for use in each precinct. Two of the sample ballots shall be displayed for public inspection on the outside of the polling place and two on the inside.

The sample ballots shall be displayed throughout election day. It is a petty misdemeanor for any person to deface, alter, remove or in any way destroy the sample ballots displayed for public inspection at the polling place during the hours the election is being conducted."

Chapter 150 Section 15 Laws 2009

Section 15. Section 1-12-19.1 NMSA 1978 (being Laws 1981, Chapter 156, Section 2, as amended) is amended to read:

"1-12-19.1. GENERAL ELECTIONS--SPECIAL ELECTIONS--WRITE-IN CANDIDATES.--

A. A person desiring to be a write-in candidate in a special election for United States representative or a statewide special election shall file with the proper filing officer a declaration of intent to be a write-in candidate. The declaration of intent shall be filed between 9:00 a.m. and 5:00 p.m. on the sixty-third day immediately preceding the election. A person desiring to be a write-in candidate in a general election shall file the declaration of intent between 9:00 a.m. and 5:00 p.m. on the day after the primary election.

B. The form of the declaration of intent shall be prescribed by the secretary of state and shall contain a sworn statement by the candidate that the candidate is qualified to be a candidate for and to hold the office for which the candidate is filing.

C. At the time of filing the declaration of intent to be a write-in candidate, the write-in candidate shall be considered a candidate for all purposes and provisions relating to candidates in the Election Code, including the obligation to report under the Campaign Reporting Act, except that the candidate shall not be entitled to have the candidate's name printed on the ballot.

D. The secretary of state shall, not less than forty days before the general election, certify the names of the declared write-in candidates to the county clerks of every county affected by such candidacy.

E. No person shall be a write-in candidate in the general election who was a candidate in the primary election immediately prior to the general election.

F. A vote for a write-in candidate shall be counted and canvassed only if:

(1) the name written in is the name of a declared write-in candidate and shows two initials and last name; first name, middle initial or name and last name; first and last name; or the full name as it appears on the declaration of intent to be a write-in candidate and misspellings of the above combinations that can be reasonably

determined by a majority of the members of the precinct board to identify a declared write-in candidate; and

(2) the name is written in the proper office on the proper line provided on the ballot for write-in votes for the office for which the candidate has filed a declaration of intent and the voter has followed the directions for casting a vote for the write-in candidate.

G. No unopposed write-in candidate shall have an election certified unless the candidate receives at least the number of write-in votes as the candidate would need signatures on a nominating petition pursuant to the requirements in Section 1-8-33 NMSA 1978.

H. A write-in vote shall be cast by writing in the name. As used in this section, "write-in" does not include the imprinting of any name by rubber stamp or similar device or the use of preprinted stickers or labels."

Chapter 150 Section 16 Laws 2009

Section 16. Section 1-12-25.1 NMSA 1978 (being Laws 1991, Chapter 105, Section 30) is amended to read:

"1-12-25.1. PROCEDURES FOR VOTING ON ELECTRONIC VOTE TABULATOR SYSTEMS.--A voter using an electronic vote tabulator system to vote shall:

- A. receive a ballot issued by the precinct board;
- B. take the ballot to a voting booth and, with the writing utensil provided, mark it in accordance with the instructions for that ballot type; and
- C. feed the ballot into the electronic vote tabulator to record the vote."

Chapter 150 Section 17 Laws 2009

Section 17. Section 1-12-31 NMSA 1978 (being Laws 1969, Chapter 240, Section 291, as amended) is amended to read:

"1-12-31. CONDUCT OF ELECTION--DISPOSITION OF BALLOT BOXES AND OTHER ELECTION MATERIALS.--

A. The following election returns and materials shall not be placed in the ballot box and shall be returned immediately to the county clerk along with the locked box:

- (1) one ballot box key in an envelope addressed to the county clerk;

- (2) one signature roster;
- (3) one tally sheet;
- (4) the registration binder;
- (5) all unused election supplies not destroyed pursuant to the Election Code; and
- (6) a machine cartridge for any electronic vote tabulator.

B. The election judge of the party different from that of the presiding judge shall place the other ballot box key in the envelope addressed to the district court and immediately mail it to the district court."

Chapter 150 Section 18 Laws 2009

Section 18. Section 1-12-37.1 NMSA 1978 (being Laws 2002, Chapter 51, Section 1) is amended to read:

"1-12-37.1. BALLOTS--REMEDY FOR USE OF INCORRECT BALLOTS.--

A. As used in this section, "incorrect ballot" means an election ballot that fails to list the correct candidate for an office.

B. If an incorrect ballot is discovered after eligible voters have used the incorrect ballot to cast their votes, the precinct board shall:

(1) lock and seal the voting machine on which the incorrect ballot appears to prevent further voting on that machine, at which time that machine shall be considered disabled;

(2) preserve a record of the voters who voted using the incorrect ballot by marking the vote number shown on the public counter of the voting machine on both the copy of the voter list marked for the secretary of state and the signature roster; and

(3) attach a note to the voter list marked for the secretary of state and the signature roster giving the number of the last voter who voted using the incorrect ballot.

C. The precinct board shall notify the county clerk and the secretary of state of the incorrect ballot and of the precinct board's compliance with the provisions of this section no later than one hour after the polls close.

D. The votes recorded on the voting machine that was locked and sealed pursuant to Subsection B of this section shall be tallied with the votes from valid ballots from the precinct, except that the votes for incorrect candidates shall not be tallied. Written notice of this procedure and a statement of the number of voters who voted using the incorrect ballot shall be sent to the secretary of state and the county clerk after the signature roster is properly certified.

E. If a candidate contests the election results and the court finds that the number of eligible voters who relied on incorrect ballots is great enough to affect the outcome of that candidate's race, the court may order the county clerk to send ballots for that candidate's race to those voters who voted using an incorrect ballot.

F. The ballots prescribed in Subsection E of this section shall list the names of the candidates and office for the race in question, be in a form substantially similar to absentee ballots as prescribed by the secretary of state and:

(1) indicate the number of voters that are eligible to vote in the court-ordered vote;

(2) give the reason the voter is being asked to vote;

(3) indicate that the voter must return the ballot within fourteen days of receiving it;

(4) be mailed to the voter by certified mail, return receipt requested; and

(5) be mailed with a prepaid return envelope addressed to the county clerk of the county within which the voter's precinct lies.

G. Returned ballots shall be opened, counted and tallied by the county clerk in the presence of the district court judge or the district court judge's representative and the results added to the candidates' respective vote totals and reported to the court and the secretary of state. Ballots not received by the county clerk within eighteen days of the county clerk's mailing shall not be counted."

Chapter 150 Section 19 Laws 2009

Section 19. Section 1-12-43 NMSA 1978 (being Laws 1977, Chapter 222, Section 46) is amended to read:

"1-12-43. EMERGENCY SITUATIONS.--

A. If any electronic vote tabulator becomes disabled while being used to the extent that any voter is unable to cast a vote for all the candidates or questions of the voter's choice and have such vote recorded by the electronic vote tabulator, it shall

be repaired, if possible, or another electronic vote tabulator shall be promptly substituted.

B. The board of county commissioners shall appropriate funds for servicing, repairing and substituting electronic vote tabulators that become disabled.

C. If a disabled electronic vote tabulator cannot be repaired in a reasonable length of time and if there are no other electric vote tabulators available for substitution, the presiding judge shall order marked ballots to be collected and securely preserved until they may be tabulated pursuant to rules promulgated by the secretary of state.

D. A voter shall not be denied the opportunity to mark a ballot for later tabulation due to the lack of a functioning electronic vote tabulator.

E. The county clerk shall provide additional ballots if needed and when requested by the precinct board."

Chapter 150 Section 20 Laws 2009

Section 20. Section 1-12-51 NMSA 1978 (being Laws 1977, Chapter 222, Section 54) is amended to read:

"1-12-51. PAPER BALLOTS--UNAUTHORIZED RECEIPT OR DELIVERY OF PAPER BALLOT.--Except for absentee ballots and unless otherwise provided by law, a voter shall not receive a paper ballot from any person other than from a member of the precinct board of the polling place where the voter is authorized to vote or at an alternate early voting location. No person other than a member of the precinct board or officer authorized by law shall deliver a paper ballot to any voter."

Chapter 150 Section 21 Laws 2009

Section 21. Section 1-12-55 NMSA 1978 (being Laws 1977, Chapter 222, Section 58, as amended) is amended to read:

"1-12-55. PAPER BALLOTS--MARKING.--All marks on the paper ballot shall be made only with the recommended or provided marking device."

Chapter 150 Section 22 Laws 2009

Section 22. Section 1-12-57 NMSA 1978 (being Laws 1977, Chapter 222, Section 60) is amended to read:

"1-12-57. PAPER BALLOTS--PROCEDURE AFTER MARKING.--After marking and preparing a paper ballot in a polling place or alternate voting location, the voter:

A. shall not show it to any person in such a way as to reveal its contents;
and

B. shall feed the paper ballot into the electronic vote tabulator."

Chapter 150 Section 23 Laws 2009

Section 23. Section 1-12-58 NMSA 1978 (being Laws 1977, Chapter 222, Section 61) is amended to read:

"1-12-58. PAPER BALLOTS--DELIVERY OF TWO OR MORE BALLOTS.--Every voter who knowingly attempts to vote on two or more paper ballots is guilty of a fourth degree felony."

Chapter 150 Section 24 Laws 2009

Section 24. Section 1-12-59 NMSA 1978 (being Laws 1977, Chapter 222, Section 62) is amended to read:

"1-12-59. VIEWING MARKED PAPER BALLOT.--No person shall solicit the voter to show the voter's marked paper ballot."

Chapter 150 Section 25 Laws 2009

Section 25. Section 1-12-61 NMSA 1978 (being Laws 1977, Chapter 222, Section 64) is amended to read:

"1-12-61. REMOVAL OF PAPER BALLOTS FROM POLLING PLACE.--No person shall remove any paper ballot from any polling place unless authorized by law."

Chapter 150 Section 26 Laws 2009

Section 26. Section 1-12-62 NMSA 1978 (being Laws 1977, Chapter 222, Section 65, as amended) is amended to read:

"1-12-62. PAPER BALLOTS--SPOILED OR DEFACED.--

A. A voter who accidentally spoils or erroneously prepares the voter's paper ballot may return the spoiled or erroneously prepared paper ballot to the presiding judge and receive a new paper ballot.

B. The presiding judge in delivering the new paper ballot shall announce the name of the voter and the number of the new paper ballot in an audible tone.

C. Upon the announcement of the presiding judge, the election clerks shall make a record in the signature roster and checklist of registered voters that the voter received a replacement ballot.

D. The voter shall mark the spoiled or erroneously prepared paper ballot with the word "SPOILED" and shall place it in a separate envelope marked "SPOILED BALLOTS", which shall be returned to the county clerk."

Chapter 150 Section 27 Laws 2009

Section 27. Section 1-12-63 NMSA 1978 (being Laws 1977, Chapter 222, Section 66) is amended to read:

"1-12-63. ELECTION JUDGES--UNUSED PAPER BALLOTS.--Immediately upon the time of the closing of the polls, the election judges and presiding judge, in the presence of those lawfully permitted to be present, shall publicly destroy all unused paper ballots."

Chapter 150 Section 28 Laws 2009

Section 28. Section 1-12-65 NMSA 1978 (being Laws 1977, Chapter 222, Section 68, as amended) is amended to read:

"1-12-65. EMERGENCY SITUATIONS--PAPER BALLOTS--COUNTING AND TALLYING PROCEDURES.--

A. The presiding judge and the election judges, assisted by the election clerks, shall count and tally the paper ballots that were not tabulated by the electronic vote tabulator and certify the results of the election on the form on the tally sheet setting opposite the name of each candidate in figures the total number of votes cast for the candidate, and they shall set forth in the spaces provided therefor the total number of votes cast for and against each constitutional amendment and other questions. Paper ballots not marked as required by the Election Code shall not be counted. The precinct board shall sign the tally sheet certificate.

B. The counting and tallying of paper ballots in emergency situations shall be in accordance with procedures prescribed by the secretary of state."

Chapter 150 Section 29 Laws 2009

Section 29. Section 1-12-66 NMSA 1978 (being Laws 1977, Chapter 222, Section 69, as amended) is amended to read:

"1-12-66. PAPER BALLOTS--SIGNATURE ROSTERS, CHECKLIST OF VOTERS AND TALLY SHEETS--DISPOSITION.--

A. After the counting and tallying of paper ballots are completed and after all certificates have been executed, the presiding judge and the two election judges shall place the checklist of voters and one copy of the tally sheet in the stamped, addressed envelope provided for that purpose and an election judge shall immediately mail it to the secretary of state.

B. The signature roster and the original tally sheet shall be returned to the county clerk. The signature roster and the tally sheet shall not be placed in the ballot box.

C. Signature rosters, checklists of registered voters and tally sheets in the custody of the county clerk and the secretary of state may be destroyed three years after the election to which they apply."

Chapter 150 Section 30 Laws 2009

Section 30. Section 1-12-67 NMSA 1978 (being Laws 1977, Chapter 222, Section 70, as amended) is amended to read:

"1-12-67. PAPER BALLOTS TO BE PLACED IN BALLOT BOX.--After the paper ballots are tallied, the precinct board shall place the bundles of counted paper ballots in the ballot box and the ballot box shall be closed and locked."

Chapter 150 Section 31 Laws 2009

Section 31. Section 1-12-68 NMSA 1978 (being Laws 1977, Chapter 222, Section 71, as amended) is amended to read:

"1-12-68. PAPER BALLOTS--COUNTY CANVASS--WHEN RECOUNT IS REQUIRED.--

A. If it appears that defective returns cannot be corrected without a recount of the paper ballots, the county canvassing board shall immediately notify the district court in writing.

B. The district court shall fix a time and place, which shall be not more than one week after receipt of notice from the county canvassing board, for a recount of the paper ballots from the precinct.

C. The county clerk shall immediately notify the county chairs of the political parties that participated in the election of the time and place of the recount.

D. At the time and place set by the district court, the ballot box shall be opened in the presence of the district judge or some person designated by the district judge to act for the district court, the precinct board, the county canvassing board and other persons desiring to be present.

E. The precinct board shall then recount the paper ballots and make a new tally sheet certificate in duplicate to conform to the facts.

F. After the recount is completed, the precinct board shall replace in the ballot box the paper ballots and other items taken therefrom and shall lock and return the ballot box and one key to the county clerk. The other key shall be returned to the district court or its representative.

G. After being properly corrected, the signature roster and tally sheets shall be disposed of as in the first instance: one each to the county clerk and one each to the secretary of state."

Chapter 150 Section 32 Laws 2009

Section 32. Section 1-14-14 NMSA 1978 (being Laws 1969, Chapter 240, Section 343, as amended) is amended to read:

"1-14-14. RECOUNTS--RECHECKS--APPLICATION.--

A. Whenever any candidate for any office for which the state canvassing board or county canvassing board issues a certificate of nomination or election believes that any error or fraud has been committed by any precinct board in counting or tallying the ballots, in the verification of the votes cast on the voting machines or in the certifying of the results of any election whereby the results of the election in the precinct have not been correctly determined, declared or certified, the candidate, within six days after completion of the canvass by the proper canvassing board, may have a recount of the ballots, or a recheck of the votes shown on the voting machines, that were cast in the precinct.

B. In the case of any office for which the state canvassing board issues a certificate of nomination or election, application for recount or recheck shall be filed with the secretary of state.

C. In the case of any office for which the county canvassing board issues a certificate of nomination or election, application for recount or recheck shall be filed with the district judge for the county in which the applicant resides."

Chapter 150 Section 33 Laws 2009

Section 33. Section 1-16-12 NMSA 1978 (being Laws 1969, Chapter 240, Section 385, as amended) is amended to read:

"1-16-12. STATE CONSTITUTIONAL AMENDMENTS--GENERAL ELECTIONS.-
-At all general elections at which any proposed constitutional amendment or question is submitted to the voters, the proposed constitutional amendment or question shall be printed on the ballot for the election of officers."

Chapter 150 Section 34 Laws 2009

Section 34. Section 1-20-9 NMSA 1978 (being Laws 1969, Chapter 240, Section 433, as amended) is amended to read:

"1-20-9. FALSIFYING ELECTION DOCUMENTS.--Falsifying election documents consists of performing any of the following acts willfully and with knowledge and intent to deceive or mislead any voter, precinct board, canvassing board or other election official:

A. printing, causing to be printed, distributing or displaying false or misleading instructions pertaining to voting or the conduct of the election;

B. printing, causing to be printed, distributing or displaying any official ballot, sample ballot, facsimile diagram or pretended ballot that includes the name of any person not entitled by law to be on the ballot, or omits the name of any person entitled by law to be on the ballot, or otherwise contains false or misleading information or headings;

C. defacing, altering, forging, making false entries in or changing in any way a certificate of nomination, registration record or election return required by or prepared and issued pursuant to the Election Code;

D. suppressing any certificate of nomination, registration record or election return required by or prepared and issued pursuant to the Election Code;

E. preparing or submitting any false certificate of nomination, registration record or election return; or

F. knowingly falsifying any information on a nominating petition.

Whoever falsifies election documents is guilty of a fourth degree felony."

Chapter 150 Section 35 Laws 2009

Section 35. Section 1-22-10 NMSA 1978 (being Laws 1985, Chapter 168, Section 12, as amended) is amended to read:

"1-22-10. BALLOTS.--

A. The proper filing officer shall determine whether a candidate filing a declaration of candidacy is a registered qualified elector of the state residing within the school district. If the candidate is so qualified and no withdrawal of candidacy has been filed as provided in the School Election Law, the proper filing officer shall place the candidate's name on the ballot for the position specified in the declaration of candidacy.

A declaration of candidacy shall not be amended after it has been filed with the proper filing officer.

B. Ballots for the school district election shall be prepared by the proper filing officer and printed by the thirtieth day preceding the election. The cost of printing the ballots shall be paid by the school district. The proper filing officer shall furnish printed ballots to the county clerk of each county in which the school district is situated. The printed ballot shall contain the name of each person who is a candidate and the position on the board for which the person is a candidate. The ballot shall also contain all questions to be submitted to the voters of the district as certified to the proper filing officer by the board.

C. Paper ballots shall be printed in a form in substantial compliance with the provisions of Section 1-12-44 NMSA 1978 and in compliance with the provisions of the federal Voting Rights Act of 1965, as amended.

D. A school district election shall be a nonpartisan election, and the names of all candidates shall be listed on the ballot without party or slate designation. The order in which the names of candidates are listed on the ballot shall be determined by lot.

E. Whenever two or more members of the board are to be elected for terms of the same length of time, the positions shall be numerically designated on the ballot as "position one", "position two" and such additional consecutively numbered positions as are necessary, but only one member shall be elected for each position.

F. Space shall be provided on each ballot for a voter to write in the name of one candidate for each position to be filled when a declaration of intent to be a write-in candidate has been filed.

G. Voting machines shall be used for the recording of votes cast in a school district election; provided that paper ballots may be hand counted in lieu of using a voting machine to tabulate ballots for:

(1) school districts of less than five hundred average daily membership; or

(2) school district elections in which only one candidate has filed a declaration of candidacy for each position to be filled at the election, no declared write-ins have filed for any position and there are no questions or bond issues on the ballot and notwithstanding any other provision in the Election Code."

Chapter 150 Section 36 Laws 2009

Section 36. Section 1-22-18 NMSA 1978 (being Laws 1985, Chapter 168, Section 20) is amended to read:

"1-22-18. WRITE-IN CANDIDATES.--

A. Write-in candidates for the office of board member shall be permitted in school district elections.

B. A person may be a write-in candidate only if the person has the qualifications to be a candidate for membership on the board in the school district election as provided in the School Election Law.

C. A person desiring to be a write-in candidate for the office of board member shall file with the proper filing officer a declaration of intent to be a write-in candidate. The declaration shall be filed before 5:00 p.m. on the thirty-fifth day preceding the date of the election.

D. A write-in vote shall be counted and canvassed only if:

(1) the name written in is the name of a declared write-in candidate and shows two initials and last name; first name, middle initial or name and last name; first and last name; or the full name as it appears on the declaration of intent to be a write-in candidate and if misspellings of those combinations can be reasonably determined by a majority of the members of the precinct board to identify a declared write-in candidate; and

(2) the name is written on the proper line provided on the ballot for write-in votes for the office and position for which the candidate has declared intent and the voter has followed the directions for voting for the write-in candidate.

E. At the time of filing the declaration of intent to be a write-in candidate, the write-in candidate shall be considered a candidate for all purposes and provisions relating to candidates in the School Election Law except that the write-in candidate's name shall not be printed on the ballot.

F. A write-in vote shall be cast by writing in the name. As used in this section, "write-in" does not include the imprinting of any name by rubber stamp or similar device or the use of a preprinted sticker or label."

Chapter 150 Section 37 Laws 2009

Section 37. REPEAL.--Sections 1-12-24, 1-12-45 through 1-12-46, 1-12-48, 1-12-50, 1-12-52 through 1-12-54, 1-12-56, 1-12-60, 1-12-64 and 1-16-12 NMSA 1978 (being Laws 1969, Chapter 240, Section 278, Laws 1977, Chapter 222, Section 48, Laws 1991, Chapter 105, Section 35, Laws 1977, Chapter 222, Sections 49, 51, 53, 55 through 57, 59, 63 and 67 and Laws 1969, Chapter 240, Section 385, as amended) are repealed.

HJC/House Bill 833

Approved April 7, 2009

LAWS 2009, CHAPTER 151

AN ACT

RELATING TO MONEY, INSTRUMENTS AND USURY; PROHIBITING A PREPAYMENT PENALTY FOR MORTGAGES OR OTHER PAYMENTS ON PURCHASE OF A MOBILE HOME.

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

Chapter 151 Section 1 Laws 2009

Section 1. Section 56-8-30 NMSA 1978 (being Laws 1980, Chapter 64, Section 9) is amended to read:

"56-8-30. NO PREPAYMENT PENALTY ON HOME LOANS.--No provision in a home loan or a loan for a mobile home, the evidence of indebtedness of a home loan, a real estate contract or an obligation secured by a real estate mortgage or other purchase contract requiring a penalty or premium for prepayment of an installment payment or prepayment of the balance of the indebtedness is enforceable."

House Bill 862

Approved April 7, 2009

LAWS 2009, CHAPTER 152

AN ACT

RELATING TO PUBLIC MONEY; REQUIRING INFORMATION CONCERNING THIRD-PARTY MARKETERS TO BE DISCLOSED BEFORE MAKING CERTAIN INVESTMENTS.

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

Chapter 152 Section 1 Laws 2009

Section 1. A new section of Chapter 6, Article 8 NMSA 1978 is enacted to read:

"DISCLOSURE OF THIRD-PARTY MARKETERS--PENALTY.--

A. Neither the state investment council nor the state investment officer shall make any investment, other than investments in publicly traded equities or publicly traded fixed-income securities, unless the recipient of the investment discloses the identity of any third-party marketer who rendered services on behalf of the recipient in obtaining the investment and also discloses the amount of any fee, commission or retainer paid to the third-party marketer for the services rendered.

B. Information disclosed pursuant to Subsection A of this section shall be included in the monthly reports of the state investment officer and the annual reports of the state investment council.

C. Any person who knowingly withholds information required by Subsection A of this section is guilty of a fourth degree felony and shall be punished by a fine of not more than twenty thousand dollars (\$20,000) or by imprisonment for a definite term not to exceed eighteen months or both.

D. As used in this section, "third-party marketer" means a person who, on behalf of an investment fund manager or other person seeking an investment of public money and under a written or implied agreement, receives a fee, commission or retainer for such services from the person seeking an investment of public money."

Chapter 152 Section 2 Laws 2009

Section 2. A new section of the Public Employees Retirement Act is enacted to read:

"DISCLOSURE OF THIRD-PARTY MARKETERS--PENALTY.--

A. The retirement board shall not make any investment, other than investments in publicly traded equities or publicly traded fixed-income securities, unless the recipient of the investment discloses the identity of any third-party marketer who rendered services on behalf of the recipient in obtaining the investment and also discloses the amount of any fee, commission or retainer paid to the third-party marketer for the services rendered.

B. Information disclosed pursuant to Subsection A of this section shall be included in the quarterly performance reports of the retirement board.

C. Any person who knowingly withholds information required by Subsection A of this section is guilty of a fourth degree felony and shall be punished by a fine of not more than twenty thousand dollars (\$20,000) or by imprisonment for a definite term not to exceed eighteen months or both.

D. As used in this section, "third-party marketer" means a person who, on behalf of an investment fund manager or other person seeking an investment from the fund and under a written or implied agreement, receives a fee, commission or retainer for such services from the person seeking an investment from the fund."

Chapter 152 Section 3 Laws 2009

Section 3. A new section of the Educational Retirement Act is enacted to read:

"DISCLOSURE OF THIRD-PARTY MARKETERS--PENALTY.--

A. The board shall not make any investment, other than investments in publicly traded equities or publicly traded fixed-income securities, unless the recipient of the investment discloses the identity of any third-party marketer who rendered services on behalf of the recipient in obtaining the investment and also discloses the amount of any fee, commission or retainer paid to the third-party marketer for the services rendered.

B. Information disclosed pursuant to Subsection A of this section shall be included in the quarterly performance reports of the board.

C. Any person who knowingly withholds information required by Subsection A of this section is guilty of a fourth degree felony and shall be punished by a fine of not more than twenty thousand dollars (\$20,000) or by imprisonment for a definite term not to exceed eighteen months or both.

D. As used in this section, "third-party marketer" means a person who, on behalf of an investment fund manager or other person seeking an investment from the fund and under a written or implied agreement, receives a fee, commission or retainer for such services from the person seeking an investment from the fund."

House Bill 876, aa

Approved April 7, 2009

LAWS 2009, CHAPTER 153

AN ACT

RELATING TO INTERGOVERNMENTAL AGREEMENTS; EXPANDING THE DEFINITION OF "PUBLIC AGENCY" IN THE JOINT POWERS AGREEMENTS ACT TO INCLUDE ANY OTHER STATE.

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

Chapter 153 Section 1 Laws 2009

Section 1. Section 11-1-2 NMSA 1978 (being Laws 1961, Chapter 135, Section 2, as amended) is amended to read:

"11-1-2. DEFINITIONS.--As used in the Joint Powers Agreements Act:

A. "public agency" means the federal government or a federal department, agency or instrumentality; this state, another state or a state department, agency or instrumentality; an Indian nation, tribe or pueblo; a subdivision of an Indian nation, tribe or pueblo that has authority pursuant to the law of that Indian nation, tribe or pueblo to enter into joint powers agreements directly with the state; a county, municipality, public corporation or public district of this state or another state; a New Mexico educational institution specified in Article 12, Section 11 of the constitution of New Mexico; and a New Mexico school district;

B. "agreement" means a written contractual agreement entered into between two or more public agencies subject to a constitutional or legislative restriction imposed upon any of the contracting public agencies, but the Joint Powers Agreements Act does not authorize an interstate water supply agreement or limit the powers of an interstate water compact commission, the interstate stream commission or the state engineer, and it does not limit the powers of a state agency or political subdivision to enter into agreements with the interstate stream commission or the state engineer;

C. "bonds" means revenue bonds;

D. "bondholder" means a person who is the bearer of an outstanding bond or the owner of bonds that are at the time registered to other than the bearer;

E. "indenture" means the instrument providing the terms and conditions for the issuance of the bonds and may be a resolution, order, agreement or other instrument; and

F. "instrumentality" means a public corporate entity created by state law but that is not subject to the general laws of the state and is not a state agency or department."

HEC/House Bill 894

Approved April 7, 2009

LAWS 2009, CHAPTER 154

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
PROVIDING FOR THE ALLOCATION OF QUALIFIED SCHOOL CONSTRUCTION
BONDS AS AUTHORIZED IN THE FEDERAL AMERICAN RECOVERY AND
REINVESTMENT ACT OF 2009; AUTHORIZING QUALIFIED SCHOOL
CONSTRUCTION BONDS AND BUILD AMERICA BONDS TO BE SOLD AT A PUBLIC
OR PRIVATE SALE; DECLARING AN EMERGENCY.

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

Chapter 154 Section 1 Laws 2009

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

"SHORT TITLE.--Sections 1 through 4 of this act may be cited as the "Qualified School Construction Bonds Act"."

Chapter 154 Section 2 Laws 2009

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

"DEFINITIONS.--As used in the Qualified School Construction Bonds Act:

A. "allocation" means New Mexico's allocation of the national qualified school construction bond limitation pursuant to Section 1521 of the federal American Recovery and Reinvestment Act of 2009;

B. "council" means the public school capital outlay council;

C. "eligible taxpayer" means an entity that qualifies as an eligible taxpayer under the Internal Revenue Code of 1986, as amended, and may include a bank, insurance company or corporation actively engaged in the business of lending money;

D. "qualified school construction bond" means a bond issued by the state or a school district that meets all of the requirements of Section 3 of the Qualified School Construction Bonds Act and the requirements for a qualified school construction bond pursuant to Section 1521 of the federal American Recovery and Reinvestment Act of 2009; and

E. "qualifying school" means a public school, a New Mexico state educational institution providing education or training below the post-secondary level or a program within such a public school or educational institution and which school, institution or program meets the requirements of Section 1521 of the federal American Recovery and Reinvestment Act of 2009."

Chapter 154 Section 3 Laws 2009

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

"QUALIFIED SCHOOL CONSTRUCTION BONDS--DESIGNATION--TERMS--
SALE.--

A. The state or a school district that has been authorized to issue bonds may designate all or any part of the bonds as qualified school construction bonds if:

(1) one hundred percent of the available project proceeds from the issuance of the bonds are to be used for the construction, rehabilitation or repair of a qualifying school facility or for the acquisition of land on which such a facility is to be constructed with part of the proceeds;

(2) the bonds are issued by the state or a school district within the jurisdiction in which the qualifying school is located; and

(3) the issuer designates the bonds as qualified school construction bonds.

B. Notwithstanding any law requiring bonds to be sold at a public sale, qualified school construction bonds may be sold at a public or private sale to eligible taxpayers.

C. In addition to any other requirement of law applicable to the term of the bonds, qualified school construction bonds shall not be issued for a term longer than the term fixed pursuant to the Internal Revenue Code of 1986, as amended, and applicable state law."

Chapter 154 Section 4 Laws 2009

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

"ALLOCATION.--

A. The aggregate face amount of all qualified school construction bonds issued in a calendar year shall not exceed the allocation for that year.

B. Except for the portion of the allocation required by Section 1521 of the federal American Recovery and Reinvestment Act of 2009 to be made to particular school districts, the council is designated the state education agency responsible for ensuring compliance with the limitation of Subsection A of this section.

C. If the state or a school district desires to designate bonds as qualified school construction bonds, it shall, by July 1 of the calendar year in which the bonds are to be issued, submit an application for reservation of an allocation to the council. The application shall include evidence that the requirements of Paragraphs (1), (2) and (3) of

Subsection A of Section 3 of the Qualified School Construction Bonds Act have been satisfied; provided, however, that any school district to which a direct allocation is made pursuant to Section 1521 of the federal American Recovery and Reinvestment Act of 2009 shall be exempt from the application requirement to the extent that the amount of qualified school construction bonds to be issued by that district does not exceed the direct allocation.

D. If, for a calendar year, the allocation for that year exceeds the amount of qualified school construction bonds designated and issued in that year, the excess shall be carried forward and included in the allocation for the subsequent year.

E. In the event that the face amount of all proposed qualified school construction bonds for a calendar year exceeds the allocation remaining after deducting the direct allocations made to particular school districts pursuant to Section 1521 of the federal American Recovery and Reinvestment Act of 2009, the council shall ratably apportion the remaining allocation among the state and school districts that have timely filed valid applications for that year; provided, however, that the apportionment shall not reduce the direct allocation to any particular school district pursuant to Section 1521 of the federal American Recovery and Reinvestment Act of 2009."

Chapter 154 Section 5 Laws 2009

Section 5. Section 6-15-5 NMSA 1978 (being Laws 1929, Chapter 201, Section 3, as amended) is amended to read:

"6-15-5. SALE OF BONDS.--

A. Before any bonds issued by a municipal corporation are offered for public sale, the corporate authorities issuing the bonds shall designate the maximum net effective interest rate the bonds shall bear, which shall not exceed the maximum permitted by the Public Securities Act. Except as provided in Subsection B or C of this section and in Sections 6-18-6, 6-18-7 and 6-21-9 NMSA 1978, all the bonds shall be offered and sold at public sale pursuant to this section.

B. Bonds maturing in less than thirty days may be sold at private sale to the state of New Mexico at the price and upon such terms and conditions as a municipal corporation and the state of New Mexico may determine.

C. Notwithstanding any law requiring bonds to be sold at a public sale, the following bonds may be sold at a public or private sale:

(1) bonds designated as build America bonds pursuant to Section 1531 of the federal American Recovery and Reinvestment Act of 2009; and

(2) qualified school construction bonds issued pursuant to the Qualified School Construction Bonds Act and Section 1521 of the federal American Recovery and Reinvestment Act of 2009.

D. A notice calling for bids for the purchase of the bonds shall be published once at least one week prior to the date of the sale in a newspaper having local circulation. The notice shall specify a place and designate a day and hour subsequent to the date of the publication when bids shall be received and publicly opened for the purchase of the bonds. The notice shall specify the maximum net effective interest rate permitted for the bonds and the maximum discount if a discount is allowed by the governing body and shall require bidders to submit a bid specifying the lowest rate of interest and any premium or discount if allowed by the governing body at, above or below par at which the bidder will purchase the bonds. The bonds shall be sold to the responsible bidder making the best bid determined by the municipal corporation as set forth in the notice, subject to the right of the governing body to reject any and all bids and readvertise. All bids shall be sealed or sent by facsimile or other electronic transmission to the municipal corporation as set forth in the notice. Except for the bid of the state of New Mexico or the United States, if one is received, all bids shall be accompanied by a deposit of not less than two percent of the principal amount of the bonds, either in the form of a financial security bond or in cash or by cashier's or treasurer's check of, or by certified check drawn on, a solvent commercial bank or trust company in the United States, which deposit shall be returned if the bid is not accepted. The financial surety bond or the long-term debt obligations of the issuer or person guarantying the obligations of the issuer of the financial surety bond shall be rated in one of the top two rating categories of a nationally recognized rating agency, without regard to any modification of the rating, and the financial surety bond must be issued by an insurance company licensed to issue such a bond in New Mexico. If the successful bidder does not complete the purchase of the bonds within thirty days following the acceptance of the bidder's bid or within ten days after the bonds are made ready and are offered by the municipal corporation for delivery, whichever is later, the amount of the bidder's deposit shall be forfeited to the municipal corporation issuing the bonds, and, in that event, the governing body may accept the bid of the bidder making the next best bid. If all bids are rejected, the governing body may readvertise the bonds for sale in the same manner as for the original advertisement or sell the bonds at private sale to the state of New Mexico or the United States. If there are two or more equal bids and the bids are the best bids received, the governing body shall determine which bid shall be accepted.

E. Except as provided in this section, bonds to be issued by a municipal corporation for various purposes may be sold and issued as a single combined issue even though they may have been authorized by separate votes at an election or elections. Bonds authorized by any city, town or village for the construction or purchase of a system for supplying water, a sanitary sewer system or a storm sewer system may be combined with each other and sold and issued as a single issue but may not be combined with bonds to be issued for any other purpose that may be subject to the debt limitation of Article 9, Section 13 of the constitution of New Mexico."

Chapter 154 Section 6 Laws 2009

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

HTRC/House Bill 928, w/ec

Approved April 7, 2009

LAWS 2009, CHAPTER 155

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
PROVIDING AN EXEMPTION TO THE PROCUREMENT CODE FOR CERTAIN
COUNTY CONTRACTS WITH NONPROFIT ORGANIZATIONS.

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

Chapter 155 Section 1 Laws 2009

Section 1. Section 4-38-13.1 NMSA 1978 (being Laws 1984, Chapter 43, Section 1, as amended) is amended to read:

"4-38-13.1. COUNTY EQUIPMENT AND PROPERTY--PERMITTED USES.--

A. Notwithstanding any other provision of law, the board of county commissioners of any county except a class A county may contract for the use of county equipment or property for the benefit of community ditch associations, mutual domestic water associations or other public entities providing services to significant groups of county residents, which services could legally be provided by a governmental entity. In granting this permission, the board shall specifically describe the equipment or property to be used and the entity on whose behalf it will be used.

B. A board of county commissioners may contract for the use of county buildings for the benefit of nonprofit organizations demonstrating a consistent history of service to sick and indigent persons in the county, which service could legally be expected to be provided by a governmental entity, at rates these organizations can be reasonably expected to pay while maintaining their full service commitment to their respective constituencies. These contracts shall set forth the respective value of services being provided to county residents and the relative value of the use of property provided by the county. A contract entered into pursuant to this subsection is exempt from the Procurement Code pursuant to Section 13-1-98.2 NMSA 1978."

Chapter 155 Section 2 Laws 2009

Section 2. Section 13-1-98.2 NMSA 1978 (being Laws 2003, Chapter 187, Section 1) is amended to read:

"13-1-98.2. ADDITIONAL EXEMPTIONS FROM THE PROCUREMENT CODE.--
The provisions of the Procurement Code do not apply to contracts entered into by a local public body with a person, firm, organization, corporation, association or state educational institution named in Article 12, Section 11 of the constitution of New Mexico for:

A. the operation and maintenance of a hospital pursuant to Chapter 3, Article 44 NMSA 1978;

B. the lease or operation of a county hospital pursuant to the Hospital Funding Act;

C. the operation and maintenance of a hospital pursuant to the Special Hospital District Act; or

D. the use of county buildings pursuant to Section 4-38-13.1 NMSA 1978."

HHGAC/House Bill 929

Approved April 7, 2009

LAWS 2009, CHAPTER 156

AN ACT

RELATING TO THE MOTOR VEHICLE CODE; AMENDING THE RENEWAL OF A VEHICLE REGISTRATION BY ALTERNATIVE MEANS; PROVIDING FOR A DISCOUNT; CLARIFYING THE REVERSION STATUS OF CERTAIN FUNDS; MAKING APPROPRIATIONS.

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

Chapter 156 Section 1 Laws 2009

Section 1. Section 66-2-7.2 NMSA 1978 (being Laws 2005, Chapter 20, Section 2) is amended to read:

"66-2-7.2. ROYALTIES--COMMERCIAL USERS OF MOTOR VEHICLE-RELATED DATABASES--DISTRIBUTION TO MOTOR VEHICLE SUSPENSE FUND.-- The department shall remit royalties and other consideration paid by commercial users of databases of motor vehicle-related records of the department pursuant to Subsection C of Section 14-3-15.1 NMSA 1978 to the motor vehicle suspense fund to be distributed in accordance with Section 66-6-23 NMSA 1978 and Subsection F of Section 66-6-13 NMSA 1978. Royalties and other consideration paid to the department pursuant to this section are appropriated to the department for expenditure in fiscal year 2010 and subsequent fiscal years pursuant to this section. Unexpended and unencumbered balances of the amounts received pursuant to Subsection C of Section 14-3-15.1 NMSA 1978 shall not revert to the general fund at the end of any fiscal year."

Chapter 156 Section 2 Laws 2009

Section 2. Section 66-2-16 NMSA 1978 (being Laws 1978, Chapter 35, Section 20, as amended) is amended to read:

"66-2-16. ADMINISTRATIVE FEES--COLLECTION--REMITTANCE--PAYMENT--OPTIONAL FEES--APPROPRIATION.--

A. The department and its agents shall collect an administrative fee to defray the department's costs of operation and of rendering service to the public. The fee shall be two dollars (\$2.00) for each transaction performed by an agent or the department and shall be collected in addition to all other fees and taxes imposed.

B. All sums collected by an agent or the department as administrative fees shall be remitted as provided in Section 66-2-15 NMSA 1978.

C. Administrative fees remitted by department employees shall be deposited by the state treasurer into the motor vehicle suspense fund and distributed in accordance with Section 66-6-23 NMSA 1978.

D. Notwithstanding the provisions of Subsections A through C of this section, a class A county with a population exceeding three hundred thousand or municipality with a population exceeding three hundred thousand within a class A county designated as an agent pursuant to Section 66-2-14.1 NMSA 1978 shall not be paid the fee provided in Subparagraph (b) of Paragraph (1) of Subsection A of Section 66-6-23 NMSA 1978.

E. The secretary is authorized to establish by rule fees to cover the expense of providing additional services for the convenience of the motoring public. Any service established for which a fee is adopted pursuant to this subsection shall be optional, with the fee not being charged to any person not taking advantage of the service. Amounts collected pursuant to this subsection are appropriated to the department for the purpose of defraying the expense of providing the service and for the purposes set forth in Subsection F of Section 66-6-13 NMSA 1978. At the end of a fiscal

year the unexpended and unencumbered balances of the fees collected pursuant to this subsection shall not revert to the general fund but shall be expended by the department in fiscal year 2010 and subsequent fiscal years.

F. The secretary shall review, at the end of each fiscal year, the aggregate total of motor vehicle transactions performed by each municipality, county or fee agent operating a motor vehicle field office, and identify each office exceeding ten thousand aggregate transactions per year."

Chapter 156 Section 3 Laws 2009

Section 3. Section 66-5-44 NMSA 1978 (being Laws 1978, Chapter 35, Section 266, as amended) is amended to read:

"66-5-44. LICENSES AND PERMITS--DURATION AND FEE--
APPROPRIATION.--

A. There shall be paid to the department a fee of ten dollars (\$10.00) for each driver's license or duplicate driver's license, except that for a driver's license issued for an eight-year period, a fee of twenty dollars (\$20.00) shall be paid to the department. Each license shall be for a term provided for in Section 66-5-21 NMSA 1978.

B. For each permit and instruction permit, there shall be paid to the department a fee of two dollars (\$2.00). The term for each permit shall be as provided in Sections 66-5-8 and 66-5-9 NMSA 1978.

C. Except for fees charged pursuant to Subsection E of this section, the director with the approval of the governor may increase the amount of the fees provided for in this section by an amount not to exceed three dollars (\$3.00) for the purpose of implementing an enhanced driver's license system; provided that for a driver's license issued for an eight-year period, the amount of the fees shall be twice the amount charged for other driver's licenses. The additional amounts collected pursuant to this subsection are appropriated to the department to defray the expense of the new system of licensing and for use as set forth in Subsection F of Section 66-6-13 NMSA 1978. Unexpended or unencumbered balances remaining from fees collected pursuant to the provisions of this subsection at the end of any fiscal year shall not revert to the general fund but shall be expended by the department in fiscal year 2010 and subsequent fiscal years.

D. There shall be paid to the department a driver safety fee of three dollars (\$3.00) for each driver's license or duplicate driver's license, except that for a driver's license issued for an eight-year period, a fee of six dollars (\$6.00) shall be paid to the department. The fee shall be distributed to each school district for the purpose of providing defensive driving instruction through the state equalization guarantee distribution made annually pursuant to the general appropriation act.

E. The department may charge a fee of no more than fifteen dollars (\$15.00) to a person who holds a driver's license from another state and is applying for a New Mexico driver's license for the first time. The fee is appropriated to the department to defray the expense of determining whether the driver has been convicted of driving a motor vehicle while under the influence of intoxicating liquor or drugs, or equivalent crime, and determining if the person qualifies for a driver's license in this state. The fee provided in this subsection is not subject to the increase provided for in Subsection C of this section."

Chapter 156 Section 4 Laws 2009

Section 4. Section 66-5-408 NMSA 1978 (being Laws 1978, Chapter 35, Section 335, as amended) is amended to read:

"66-5-408. FEES.--

A. Upon application for an identification card with a four-year term, there shall be paid to the department a fee of five dollars (\$5.00). Upon application for an identification card with an eight-year term, there shall be paid to the department a fee of ten dollars (\$10.00). A fee shall not be charged to an applicant for an identification card if the applicant is at least seventy-five years of age.

B. The department with the approval of the governor may increase the amount of the identification card fee by an amount not to exceed three dollars (\$3.00) for the purpose of implementing an enhanced licensing system; provided that for an identification card issued for an eight-year period, the amount of the fee shall be twice the amount charged for other identification cards. The additional amounts collected pursuant to this subsection are appropriated to the department to defray the expense of the new system of licensing and for use as set forth in the provisions of Subsection F of Section 66-6-13 NMSA 1978. Unexpended and unencumbered balances from fees collected pursuant to the provisions of this subsection at the end of any fiscal year shall not revert to the general fund but shall be expended by the department in fiscal year 2010 and subsequent fiscal years."

Chapter 156 Section 5 Laws 2009

Section 5. Section 66-6-6.1 NMSA 1978 (being Laws 2001, Chapter 282, Section 1) is amended to read:

"66-6-6.1. ADDITIONAL REGISTRATION FEE.--For registration of vehicles subject to the registration fees imposed by Sections 66-6-2 and 66-6-4 NMSA 1978, there is imposed an additional fee of two dollars (\$2.00) for each twelve-month period for which a vehicle with a gross vehicle weight under twenty-six thousand pounds is registered. Amounts collected pursuant to this section are appropriated to the department and may be expended in fiscal year 2010 and subsequent fiscal years for the purposes of enforcing the provisions of the Mandatory Financial Responsibility Act

and for creating and maintaining a multilanguage noncommercial driver's license testing program. After those purposes are met, the balance of the registration fees collected pursuant to this section shall be used by the department to defray the costs of operating the motor vehicle division and for the purposes set forth in the provisions of Subsection F of Section 66-6-13 NMSA 1978. At the end of a fiscal year, unexpended and unencumbered balances of the amounts collected pursuant to this section shall not revert to the general fund."

Chapter 156 Section 6 Laws 2009

Section 6. Section 66-6-13 NMSA 1978 (being Laws 1978, Chapter 35, Section 348, as amended) is amended to read:

"66-6-13. REDUCED FEES FOR PORTION OF YEAR--FEE INCENTIVE FOR REGISTRATION BY ALTERNATIVE MEANS--TEMPORARY PERMITS--DRIVE-OUT PERMIT--FEE.--

A. Upon a showing satisfactory to the division that a vehicle has not been operated on the highways of this state:

(1) prior to April 1 of the year in which registration is sought, the registration fee shall be three-fourths of the annual fee;

(2) prior to July 1 of the year in which registration is sought, the registration fee shall be one-half of the annual fee; and

(3) prior to October 1 of the year in which registration is sought, the registration fee shall be one-fourth of the annual fee.

B. Upon a showing satisfactory to the division that a nonresident who is the owner of a foreign vehicle is engaged in seasonal agricultural employment in the state, the division may issue a permit valid for thirty days upon payment of a temporary permit fee of one-tenth of the annual registration fee. This fee shall be in lieu of all other fees or taxes on the vehicle.

C. Upon a showing satisfactory to the division that an unlicensed vehicle has been purchased by a nonresident for transportation out of the state, the division may issue a two-day drive-out permit for a fee of five dollars (\$5.00).

D. The provisions of Subsection A of this section shall not apply to house trailers, and the registration fees for house trailers shall be as provided in Sections 66-6-3 and 66-6-10 NMSA 1978 regardless of date of registration.

E. After the initial registration of a vehicle, if an owner of a vehicle renews the registration of the vehicle by internet or telephone, the registration fees shall be

reduced by five percent. The secretary may establish by rule requirements for or limitations on renewal of registration by internet or telephone."

F. No later than January 31 of each year, the secretary shall determine the amount of the total reduction in registration fees that resulted from renewals by internet or telephone in the previous calendar year. The secretary may request approval from the department of finance and administration to transfer an amount no greater than that total reduction in registration fees determined by the secretary, by March 1 of each year to the motor vehicle suspense fund from the balances in the department's nonreverting other state funds. The amount transferred is appropriated to the department for the purpose of distributing an amount of no more than the reduction in registration fees, as determined by the secretary, to the state road fund, municipalities and counties pursuant to Section 66-6-23.1 NMSA 1978."

Chapter 156 Section 7 Laws 2009

Section 7. Section 66-6-23 NMSA 1978 (being Laws 1978, Chapter 35, Section 358, as amended) is amended to read:

"66-6-23. DISPOSITION OF FEES.--

A. After the necessary disbursements for refunds and other purposes have been made, the money remaining in the motor vehicle suspense fund, except for remittances received within the previous two months that are unidentified as to source or disposition, shall be distributed as follows:

(1) to each municipality, county or fee agent operating a motor vehicle field office:

(a) an amount equal to six dollars (\$6.00) per driver's license and five dollars (\$5.00) per identification card or motor vehicle or motorboat registration or title transaction performed; and

(b) for each such agent determined by the secretary pursuant to Section 66-2-16 NMSA 1978 to have performed ten thousand or more transactions in the preceding fiscal year, other than a class A county with a population exceeding three hundred thousand or a municipality with a population exceeding three hundred thousand that has been designated as an agent pursuant to Section 66-2-14.1 NMSA 1978, an amount equal to one dollar (\$1.00) in addition to the amount distributed pursuant to Subparagraph (a) of this paragraph for each driver's license, identification card, motor vehicle registration, motorboat registration or title transaction performed;

(2) to each municipality or county, other than a class A county with a population exceeding three hundred thousand or a municipality with a population exceeding three hundred thousand that has been designated as an agent pursuant to Section 66-2-14.1 NMSA 1978, operating a motor vehicle field office, an amount equal

to one dollar fifty cents (\$1.50) for each administrative service fee remitted by that county or municipality to the department pursuant to the provisions of Subsection A of Section 66-2-16 NMSA 1978;

(3) to the state road fund:

(a) an amount equal to the fees collected pursuant to Sections 66-7-413 and 66-7-413.4 NMSA 1978;

(b) an amount equal to the fee collected pursuant to Section 66-3-417 NMSA 1978;

(c) the remainder of each driver's license fee collected by the department employees from an applicant to whom a license is granted after deducting from the driver's license fee the amount of the distribution authorized in Paragraph (1) of this subsection with respect to that collected driver's license fee; and

(d) an amount equal to fifty percent of the fees collected pursuant to Section 66-6-19 NMSA 1978;

(4) to the local governments road fund, the amount of the fees collected pursuant to Subsection B of Section 66-5-33.1 NMSA 1978 and the remainder of the fees collected pursuant to Subsection A of Section 66-5-408 NMSA 1978;

(5) to the department:

(a) any amounts reimbursed to the department pursuant to Subsection C of Section 66-2-14.1 NMSA 1978;

(b) an amount equal to two dollars (\$2.00) of each motorcycle registration fee collected pursuant to Section 66-6-1 NMSA 1978;

(c) an amount equal to the fees provided for in Subsection D of Section 66-2-7 NMSA 1978, Subsection E of Section 66-2-16 NMSA 1978, Subsections K and L of Section 66-3-6 NMSA 1978 other than the administrative fee, Subsection C of Section 66-5-44 NMSA 1978 and Subsection B of Section 66-5-408 NMSA 1978;

(d) the amounts due to the department for the manufacture and issuance of a special registration plate collected pursuant to the section of law authorizing the issuance of the specialty plate;

(e) an amount equal to the registration fees collected pursuant to Section 66-6-6.1 NMSA 1978 for the purposes of enforcing the provisions of the Mandatory Financial Responsibility Act and for creating and maintaining a multilanguage noncommercial driver's license testing program; and after those purposes

are met, the balance of the registration fees shall be distributed to the department to defray the costs of operating the motor vehicle division;

(f) an amount equal to fifty cents (\$.50) for each administrative fee remitted to the department by a county or municipality operating a motor vehicle field office pursuant to Subsection A of Section 66-2-16 NMSA 1978;

(g) an amount equal to one dollar twenty-five cents (\$1.25) for each administrative fee collected by the department or any of its agents other than a county or municipality operating a motor vehicle field office pursuant to Subsection A of Section 66-2-16 NMSA 1978; and

(h) an amount equal to the royalties or other consideration paid by commercial users of databases of motor vehicle-related records of the department pursuant to Subsection C of Section 14-3-15.1 NMSA 1978 for the purpose of defraying the costs of maintaining databases of motor vehicle-related records of the department; and after that purpose is met, the balance of the royalties and other consideration shall be distributed to the department to defray the costs of operating the motor vehicle division or for use pursuant to Subsection F of Section 66-6-13 NMSA 1978;

(6) to each New Mexico institution of higher education, an amount equal to that part of the fees distributed pursuant to Paragraph (2) of Subsection D of Section 66-3-416 NMSA 1978 proportionate to the number of special registration plates issued in the name of the institution to all such special registration plates issued in the name of all institutions;

(7) to the armed forces veterans license fund, the amount to be distributed pursuant to Paragraph (2) of Subsection E of Section 66-3-419 NMSA 1978;

(8) to the children's trust fund, the amount to be distributed pursuant to Paragraph (2) of Subsection D of Section 66-3-420 NMSA 1978;

(9) to the department of transportation, an amount equal to the fees collected pursuant to Section 66-5-35 NMSA 1978;

(10) to the state equalization guarantee distribution made annually pursuant to the general appropriation act, an amount equal to one hundred percent of the driver safety fee collected pursuant to Subsection D of Section 66-5-44 NMSA 1978;

(11) to the motorcycle training fund, two dollars (\$2.00) of each motorcycle registration fee collected pursuant to Section 66-6-1 NMSA 1978;

(12) to the recycling and illegal dumping fund:

(a) fifty cents (\$.50) of the tire recycling fee collected pursuant to the provisions of Section 66-6-1 NMSA 1978;

(b) fifty cents (\$.50) of each of the tire recycling fees collected pursuant to the provisions of Sections 66-6-2 and 66-6-4 NMSA 1978; and

(c) twenty-five cents (\$.25) of each of the tire recycling fees collected pursuant to Sections 66-6-5 and 66-6-8 NMSA 1978;

(13) to the highway infrastructure fund:

(a) fifty cents (\$.50) of the tire recycling fee collected pursuant to the provisions of Section 66-6-1 NMSA 1978;

(b) one dollar (\$1.00) of each of the tire recycling fees collected pursuant to the provisions of Sections 66-6-2 and 66-6-4 NMSA 1978; and

(c) twenty-five cents (\$.25) of each of the tire recycling fees collected pursuant to Sections 66-6-5 and 66-6-8 NMSA 1978;

(14) to each county, an amount equal to fifty percent of the fees collected pursuant to Section 66-6-19 NMSA 1978 multiplied by a fraction, the numerator of which is the total mileage of public roads maintained by the county and the denominator of which is the total mileage of public roads maintained by all counties in the state;

(15) to the litter control and beautification fund, an amount equal to the fees collected pursuant to Section 66-6-6.2 NMSA 1978;

(16) to the local government division of the department of finance and administration, an amount equal to the fees collected pursuant to Section 66-3-424.3 NMSA 1978 for distribution to each county to support animal control spaying and neutering programs in an amount proportionate to the number of residents of that county who have purchased pet care special registration plates pursuant to Section 66-3-424.3 NMSA 1978; and

(17) to the Cumbres and Toltec scenic railroad commission, twenty-five dollars (\$25.00) collected pursuant to the Cumbres and Toltec scenic railroad special registration plate.

B. The balance, exclusive of unidentified remittances, shall be distributed in accordance with Section 66-6-23.1 NMSA 1978.

C. If any of the paragraphs, subsections or sections referred to in Subsection A of this section are recompiled or otherwise redesignated without a corresponding change to Subsection A of this section, the reference in Subsection A of

this section shall be construed to be the recompiled or redesignated paragraph, subsection or section."

Chapter 156 Section 8 Laws 2009

Section 8. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.

House Bill 12, aa

Approved April 7, 2009

LAWS 2009, CHAPTER 157

AN ACT

RELATING TO JURIES; REQUIRING UPDATES OF JURY DATABASES TO OCCUR EVERY SIX MONTHS RATHER THAN EVERY MONTH.

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

Chapter 157 Section 1 Laws 2009

Section 1. Section 38-5-3 NMSA 1978 (being Laws 1991, Chapter 71, Section 2, as amended) is amended to read:

"38-5-3. SOURCE FOR JUROR SELECTION.--

A. Each county clerk shall make available to the secretary of state a database of registered voters of the clerk's county. The secretary of state shall preserve and make available to the department of information technology, by electronic media, a database of New Mexico registered voters, by county, which shall be updated every six months. The director of the motor vehicle division of the taxation and revenue department shall make available by electronic media to the department of information technology a database of driver's license holders in each county, which shall be updated every six months. The secretary of taxation and revenue shall make available to the department of information technology, by electronic media, a database of New Mexico personal income tax filers by county, which shall be updated every six months. The updates shall occur in June and December.

B. The department of information technology shall program the merger of the registered voter, driver's license and personal income tax filer databases from each county to form a master jury database and write a computer program so that a random

selection of jurors can be made. A discrimination shall not be exercised except for the elimination of persons who are not eligible for jury service. The administrative office of the courts shall provide specifications for the merging of the registered voter, driver's license and personal income tax filer databases. The merged database information shall be the database that produces the random jury list for the selection of petit or grand jurors for the state courts.

C. The court shall, by order, designate the number of potential jurors to be selected and the date on which the jurors are to report for empaneling. Within fifteen days after receipt of a copy of the order, the administrative office of the courts shall provide the random jury list to the court. The department of information technology shall print the random jury list and jury summons mailer forms within ten days after receiving the request from the administrative office of the courts. Upon issuance of the order, the department of information technology shall draw from the most current registered voter, driver's license and personal income tax filer databases to create the random jury list.

D. The department of information technology may transfer the master jury database to a court that has compatible equipment to accept such a transfer. The court accepting the master jury database shall transfer the information to a programmed computer used for the random selection of petit or grand jurors."

House Bill 153

Approved April 7, 2009

LAWS 2009, CHAPTER 158

AN ACT

RELATING TO PUBLIC EMPLOYEES RETIREMENT; REQUIRING THE PUBLIC EMPLOYEES RETIREMENT ASSOCIATION TO PROVIDE NOTICE TO MEMBERS WHEN THEY MEET MINIMUM REQUIREMENTS FOR NORMAL RETIREMENT AND WHEN REQUIREMENTS OR BENEFITS ARE CHANGED.

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

Chapter 158 Section 1 Laws 2009

Section 1. A new section of the Public Employees Retirement Act is enacted to read:

"NOTICE OF ELIGIBILITY AND CHANGES IN BENEFITS.--The association shall give written notice, to the member's last known address of record, to a member when:

A. the member meets the minimum age and service requirements for normal retirement pursuant to the coverage plan applicable to the member; or

B. when a change has been made, by law or rule, to a retirement requirement that applied to the member prior to the change or to the amount of normal retirement pension for which the member would have been eligible prior to the change."

Chapter 158 Section 2 Laws 2009

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.

House Bill 156

Approved April 7, 2009

LAWS 2009, CHAPTER 159

AN ACT

RELATING TO GUARDIANSHIP; AMENDING SECTIONS OF THE NMSA 1978 REGARDING RESPONSIBILITIES OF A GUARDIAN OF A PROTECTED PERSON.

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

Chapter 159 Section 1 Laws 2009

Section 1. Section 24-7A-1 NMSA 1978 (being Laws 1995, Chapter 182, Section 1, as amended) is amended to read:

"24-7A-1. DEFINITIONS.--As used in the Uniform Health-Care Decisions Act:

A. "advance health-care directive" means an individual instruction or a power of attorney for health care made, in either case, while the individual has capacity;

B. "agent" means an individual designated in a power of attorney for health care to make a health-care decision for the individual granting the power;

C. "capacity" means an individual's ability to understand and appreciate the nature and consequences of proposed health care, including its significant benefits, risks and alternatives to proposed health care and to make and communicate an informed health-care decision. A determination of lack of capacity shall be made only according to the provisions of Section 24-7A-11 NMSA 1978;

D. "emancipated minor" means an individual between the ages of sixteen and eighteen who has been married, who is on active duty in the armed forces or who has been declared by court order to be emancipated;

E. "guardian" means a judicially appointed guardian or conservator having authority to make a health-care decision for an individual;

F. "health care" means any care, treatment, service or procedure to maintain, diagnose or otherwise affect an individual's physical or mental condition;

G. "health-care decision" means a decision made by an individual or the individual's agent, guardian or surrogate, regarding the individual's health care, including:

(1) selection and discharge of health-care providers and institutions;

(2) approval or disapproval of diagnostic tests, surgical procedures, programs of medication and orders not to resuscitate;

(3) directions relating to life-sustaining treatment, including withholding or withdrawing life-sustaining treatment and the termination of life support; and

(4) directions to provide, withhold or withdraw artificial nutrition and hydration and all other forms of health care;

H. "health-care institution" means an institution, facility or agency licensed, certified or otherwise authorized or permitted by law to provide health care in the ordinary course of business;

I. "health-care provider" means an individual licensed, certified or otherwise authorized or permitted by law to provide health care in the ordinary course of business or practice of a profession;

J. "individual instruction" means an individual's direction concerning a health-care decision for the individual made while the individual has capacity;

K. "life-sustaining treatment" means any medical treatment or procedure without which the individual is likely to die within a relatively short time, as determined to a reasonable degree of medical certainty by the primary physician;

L. "person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency or instrumentality or any other legal or commercial entity;

M. "physician" means an individual authorized to practice medicine or osteopathy;

N. "power of attorney for health care" means the designation of an agent to make health-care decisions for the individual granting the power, made while the individual has capacity;

O. "primary physician" means a physician designated by an individual or the individual's agent, guardian or surrogate to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes the responsibility;

P. "principal" means an adult or emancipated minor who, while having capacity, has made a power of attorney for health care by which the adult or emancipated minor delegates the right to make health-care decisions for the adult or emancipated minor to an agent;

Q. "protected person" means an adult or emancipated minor for whom a guardian has been appointed;

R. "qualified health-care professional" means a health-care provider who is a physician, physician assistant, nurse practitioner, nurse, psychologist or social worker;

S. "reasonably available" means readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the patient's health-care needs;

T. "state" means a state of the United States, the District of Columbia, the commonwealth of Puerto Rico or a territory or insular possession subject to the jurisdiction of the United States;

U. "supervising health-care provider" means the primary physician or, if there is no primary physician or the primary physician is not reasonably available, the health-care provider who has undertaken primary responsibility for an individual's health care; and

V. "surrogate" means an individual, other than a patient's agent or guardian, authorized under the Uniform Health-Care Decisions Act to make a health-care decision for the patient."

Chapter 159 Section 2 Laws 2009

Section 2. Section 24-7A-6 NMSA 1978 (being Laws 1995, Chapter 182, Section 6) is amended to read:

"24-7A-6. DECISIONS BY GUARDIAN.--

A. A guardian shall comply with the protected person's individual instructions made while the protected person had capacity and shall not disregard the protected person's preferences contained in an advance health-care directive unless the appointing court expressly so authorizes after notice to the agent, if any, and the protected person. The court may disregard such preferences if it finds by clear and convincing evidence that the preferences do not accurately reflect the free choice of the protected person at the time of making the individual instructions or that the protected person revoked the individual instructions while the protected person had capacity pursuant to Subsection B of Section 24-7A-3 NMSA 1978. This provision does not affect the court's ability to grant relief pursuant to a petition as provided in Section 24-7A-14 NMSA 1978.

B. A health-care decision of an agent appointed by a person having capacity takes precedence over that of a guardian, unless the appointing court expressly directs otherwise after notice to the agent and the protected person.

C. Subject to the provisions of Subsections A and B of this section, a health-care decision made by a guardian for the protected person is effective without judicial approval, if the appointing court has expressly authorized the guardian to make health-care decisions for the protected person, in accordance with the provisions of Section 45-5-312 NMSA 1978, after notice to the protected person and any agent."

Chapter 159 Section 3 Laws 2009

Section 3. Section 24-7A-17 NMSA 1978 (being Laws 1995, Chapter 182, Section 17) is amended to read:

"24-7A-17. SHORT TITLE.--Chapter 24, Article 7A NMSA 1978 may be cited as the "Uniform Health-Care Decisions Act"."

Chapter 159 Section 4 Laws 2009

Section 4. Section 24-7B-1 NMSA 1978 (being Laws 2006, Chapter 7, Section 1) is amended to read:

"24-7B-1. SHORT TITLE.--Chapter 24, Article 7B NMSA 1978 may be cited as the "Mental Health Care Treatment Decisions Act"."

Chapter 159 Section 5 Laws 2009

Section 5. Section 24-7B-3 NMSA 1978 (being Laws 2006, Chapter 7, Section 3) is amended to read:

"24-7B-3. DEFINITIONS.--As used in the Mental Health Care Treatment Decisions Act:

A. "advance directive for mental health treatment" means an individual instruction or power of attorney for mental health treatment made pursuant to the Mental Health Care Treatment Decisions Act;

B. "agent" means an individual designated in a power of attorney for mental health treatment to make a mental health treatment decision for the individual granting the power;

C. "capacity" means an individual's ability to understand and appreciate the nature and consequences of proposed mental health treatment, including significant benefits and risks and alternatives to the proposed mental health treatment, and to make and communicate an informed mental health treatment decision. A written determination or certification of lack of capacity shall be made only according to the provisions of the Mental Health Care Treatment Decisions Act;

D. "emancipated minor" means an individual between the ages of sixteen and eighteen who has been married, who is on active duty in the armed forces or who has been declared by court order to be emancipated;

E. "guardian" means a judicially appointed guardian having authority to make a mental health decision for an individual;

F. "individual instruction" means an individual's direction concerning a mental health treatment decision for the individual, made while the individual has capacity, which is to be implemented when the individual has been determined to lack capacity;

G. "mental health treatment" means services provided for the prevention of, amelioration of symptoms of or recovery from mental illness or emotional disturbance, including electroconvulsive treatment, treatment with medication, counseling, rehabilitation services or evaluation for admission to a facility for care or treatment of persons with mental illness, if required;

H. "mental health treatment decision" means a decision made by an individual or the individual's agent or guardian regarding the individual's mental health treatment, including:

(1) selection and discharge of health care or mental health treatment providers and institutions;

(2) approval or disapproval of diagnostic tests, programs of medication and mental health treatment; and

(3) directions relating to mental health treatment;

I. "mental health treatment facility" means an institution, facility or agency licensed, certified or otherwise authorized or permitted by law to provide mental health treatment in the ordinary course of business;

J. "mental health treatment provider" or "health care provider" means an individual licensed, certified or otherwise authorized or permitted by law to provide diagnosis or mental health treatment in the ordinary course of business or practice of a profession;

K. "mental illness" means a substantial disorder of a person's emotional process, thoughts or cognition that grossly impairs judgment, behavior or capacity to recognize reality, but "mental illness" does not mean a developmental disability;

L. "power of attorney for mental health treatment" means the designation of an agent to make mental health treatment decisions for the individual granting the power, made while the individual has capacity;

M. "primary health care professional" means a qualified health care professional designated by an individual or the individual's agent or guardian to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated qualified health care professional is not reasonably available, a qualified health care professional who undertakes that responsibility;

N. "principal" means an adult or emancipated minor who, while having capacity, has made a power of attorney for mental health treatment by which the adult or emancipated minor delegates the right to make mental health treatment decisions for that adult or emancipated minor to an agent;

O. "protected person" means an adult or emancipated minor for whom a guardian has been appointed;

P. "qualified health care professional" means a licensed health care provider who is a physician, physician assistant, nurse practitioner, nurse or psychologist;

Q. "reasonably available" means able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the patient's mental health treatment needs; and

R. "supervising health care provider" means the primary qualified health care professional or, if the primary qualified health care professional is not reasonably available, the health care provider who has undertaken primary responsibility for an individual's health care."

Chapter 159 Section 6 Laws 2009

Section 6. Section 24-7B-8 NMSA 1978 (being Laws 2006, Chapter 7, Section 8) is amended to read:

"24-7B-8. DECISIONS BY GUARDIAN.--

A. A guardian shall comply with the protected person's individual instructions made while the protected person had capacity and may not disregard the protected person's preferences contained in an advance directive for mental health treatment unless the appointing court expressly so authorizes after notice to the agent, if any, and the protected person. The court may disregard such preferences if it finds by clear and convincing evidence that the preferences do not accurately reflect the free choice of the protected person at the time of making the individual instructions or that the protected person revoked the individual instructions while the protected person had capacity pursuant to Subsection B of Section 24-7A-3 NMSA 1978.

B. A mental health treatment decision of an agent appointed by an individual having capacity takes precedence over that of a guardian, unless the appointing court expressly directs otherwise after notice to the agent and the protected person.

C. Subject to the provisions of Subsections A and B of this section, a mental health treatment decision made by a guardian for the protected person is effective without judicial approval, if the appointing court has expressly authorized the guardian to make mental health treatment decisions for the protected person, in accordance with the provisions of Sections 43-1-15 or 45-5-312 NMSA 1978, after notice to the protected person and any agent."

Chapter 159 Section 7 Laws 2009

Section 7. Section 28-16B-1 NMSA 1978 (being Laws 2003, Chapter 280, Section 1) is amended to read:

"28-16B-1. SHORT TITLE.--Chapter 28, Article 16B NMSA 1978 may be cited as the "Office of Guardianship Act"."

Chapter 159 Section 8 Laws 2009

Section 8. Section 28-16B-3 NMSA 1978 (being Laws 2003, Chapter 280, Section 3) is amended to read:

"28-16B-3. OFFICE--POWERS AND DUTIES.--

A. The office of guardianship may:

(1) promulgate rules in accordance with the State Rules Act to carry out the provisions of the Office of Guardianship Act; and

(2) enter into agreements with other state or federal agencies to provide guardianship services and to provide or receive payment for such services.

B. The office of guardianship shall:

(1) contract for the provision of probate guardianship services to income-eligible incapacitated persons, including temporary guardianship as provided in Section 45-5-310 NMSA 1978;

(2) provide for the recruitment and training of persons interested and willing to serve as mental health treatment guardians;

(3) provide training and information to interested persons on the duties and responsibilities of guardians, including alternatives to guardianship and mental health treatment guardianship;

(4) establish procedures for the investigation and resolution of complaints against contractors;

(5) contract for attorneys to petition the district court for guardianship of persons believed to be incapacitated or to seek amendment or termination of existing guardianship orders if the needs or situation of protected persons have changed; provided that the selection of persons to be served under such contracts shall be made by the office based on selection criteria established by rule; and

(6) serve as an interested person as defined in Subsection I of Section 45-5-101 NMSA 1978."

Chapter 159 Section 9 Laws 2009

Section 9. Section 28-16B-4 NMSA 1978 (being Laws 2003, Chapter 280, Section 4) is amended to read:

"28-16B-4. CONTRACT MONITORING AND ENFORCEMENT.--

A. The office of guardianship shall monitor and enforce all guardianship contracts. In carrying out this duty, the office may:

(1) have access to case records, copies of court filings and reports, financial records and other records maintained by contractors related to contract services provided unless specifically sequestered by the court;

(2) petition the court of jurisdiction for access to records that have been sequestered;

(3) arrange visits with protected persons who are served by contract guardians; and

(4) pursue legal and other remedies against contractors for noncompliance with contract provisions.

B. The office shall protect and maintain the confidentiality of all client-specific information and records obtained to the same extent as required for the contractor and to any extent otherwise required by state or federal law."

Chapter 159 Section 10 Laws 2009

Section 10. Section 28-16B-5 NMSA 1978 (being Laws 2003, Chapter 280, Section 5) is amended to read:

"28-16B-5. CONTRACTS.--A contract for guardianship services shall include:

A. a requirement that contractors and their staff meet nationally recognized standards for guardianship services;

B. a requirement for adoption and compliance with a code of ethics for guardians;

C. the maximum caseload for guardians;

D. the fee schedule for services provided;

E. assurance that the civil rights of protected persons served by the contractor shall be met, including the right to be served in the most integrated setting appropriate to the needs of the protected person;

F. provisions for access by the office of guardianship to records, protected persons and contractor staff as needed to monitor and enforce contract compliance and for quality assurance purposes; and

G. minimum financial accounting and reporting requirements."

Chapter 159 Section 11 Laws 2009

Section 11. Section 28-16B-6 NMSA 1978 (being Laws 2003, Chapter 280, Section 6) is amended to read:

"28-16B-6. RESOLUTION OF COMPLAINTS.--

A. The office of guardianship shall establish by rule for the filing, investigation and resolution of complaints about guardianship services provided by contractors.

B. The office shall acknowledge receipt of the complaint, notify all parties involved and initiate an investigation within fifteen working days of the filing of the complaint.

C. A determination shall be made and a decision rendered on the complaint within sixty working days unless mutually agreed upon by all parties or unless a shorter time is required to protect the protected person.

D. The office may refer complaints to other agencies for investigation or prosecution, as appropriate.

E. Complaints against the office or a staff member of the office shall be investigated by the human services department."

Chapter 159 Section 12 Laws 2009

Section 12. Section 38-1-12 NMSA 1978 (being Laws 1935, Chapter 60, Section 10, as amended) is amended to read:

"38-1-12. SERVICE AGAINST INCAPACITATED.--Whenever there is a guardian of the estate or a guardian of the person of an incapacitated person, duly appointed by a court of competent jurisdiction of this state, every process against the incapacitated person shall be served upon either of the guardians in the manner as may be provided by law for service of process, including service by publication. Service of process so made shall be considered as proper service upon the protected person. In all other cases, process shall be served upon the protected person in the same manner as upon competent or sane persons."

Chapter 159 Section 13 Laws 2009

Section 13. Section 38-4-16 NMSA 1978 (being Laws 1925, Chapter 22, Section 6, as amended) is amended to read:

"38-4-16. COMPROMISE BY GUARDIAN AD LITEM.--The guardian ad litem so appearing in any action or proceeding for and on behalf of an incapacitated person shall have power to compromise the same and to agree to the judgment to be entered in the action or proceeding for or against the protected person, subject to the approval of the court in which the suit is pending."

Chapter 159 Section 14 Laws 2009

Section 14. Section 43-1-11 NMSA 1978 (being Laws 1977, Chapter 279, Section 10, as amended) is amended to read:

"43-1-11. COMMITMENT OF ADULTS FOR THIRTY-DAY PERIOD.--

A. Every adult client involuntarily admitted to an evaluation facility pursuant to Section 43-1-10 NMSA 1978 has the right to a hearing within seven days of admission unless waived after consultation with counsel. If a physician or evaluation facility decides to seek commitment of the client for evaluation and treatment, a petition shall be filed with the court within five days of admission requesting the commitment. The petition shall include a description of the specific behavior or symptoms of the client that evidence a likelihood of serious harm to the client or others and shall include an initial screening report by the evaluating physician individually or with the assistance of a mental health professional or, if a physician is not available, by a mental health professional acceptable to the court. The petition shall list the prospective witnesses for commitment and a summary of the matters to which they will testify. Copies of the petition shall be served on the client, the client's guardian, and treatment guardian if one has been appointed, and the client's attorney.

B. At the hearing, the client shall be represented by counsel and shall have the right to present evidence on the client's behalf, including testimony by an independent mental health professional of the client's own choosing, to cross-examine witnesses and to be present at the hearing. The presence of the client may be waived upon a showing to the court that the client knowingly and voluntarily waives the right to be present. A complete record of all proceedings shall be made.

C. A court-appointed guardian for an adult involved in an involuntary commitment proceeding shall have automatic standing to appear at all stages of the proceeding and shall be allowed to testify by telephone or through affidavit if circumstances make live testimony too burdensome.

D. The court shall include in its findings the guardian's opinion regarding the need for involuntary treatment or a statement detailing the efforts made to ascertain the guardian's opinion.

E. Upon completion of the hearing, the court may order a commitment for evaluation and treatment not to exceed thirty days if the court finds by clear and convincing evidence that:

(1) as a result of a mental disorder, the client presents a likelihood of serious harm to the client's own self or others;

(2) the client needs and is likely to benefit from the proposed treatment; and

(3) the proposed commitment is consistent with the treatment needs of the client and with the least drastic means principle.

F. Once the court has made the findings set forth in Subsection E of this section, the court shall hear further evidence as to whether the client is capable of informed consent. If the court determines that the client is incapable of informed consent, the court shall appoint for the client a treatment guardian who shall have only those powers enumerated in Section 43-1-15 NMSA 1978.

G. An interested person who reasonably believes that an adult is suffering from a mental disorder and presents a likelihood of serious harm to the adult's own self or others, but does not require emergency care, may request the district attorney to investigate and determine whether reasonable grounds exist to commit the adult for a thirty-day period of evaluation and treatment. The applicant may present to the district attorney any medical reports or other evidence immediately available to the applicant, but shall not be required to obtain a medical report or other particular evidence in order to make a petition. The district attorney shall act on the petition within seventy-two hours. If the district attorney determines that reasonable grounds exist to commit the adult, the district attorney may petition the court for a hearing. The court may issue a summons to the proposed client to appear at the time designated for a hearing, which shall be not less than five days from the date the petition is served. If the proposed client is summoned and fails to appear at the proposed time and upon a finding of the court that the proposed client has failed to appear, or appears without having been evaluated, the court may order the proposed client to be detained for evaluation as provided for in Subsection C of Section 43-1-10 NMSA 1978.

H. Any hearing provided for pursuant to Subsection G of this section shall be conducted in conformance with the requirements of Subsection B of this section."

Chapter 159 Section 15 Laws 2009

Section 15. Section 43-1-12 NMSA 1978 (being Laws 1977, Chapter 279, Section 11, as amended) is amended to read:

"43-1-12. EXTENDED COMMITMENT OF ADULTS.--

A. A physician or evaluation facility may file a petition for extended commitment within twenty-one days after the beginning of the thirty-day commitment. The petition shall explain the necessity for extended commitment, specify the treatment that has been provided during the evaluation and include an individual treatment plan for the proposed commitment period. The petition shall list the prospective witnesses for commitment and a summary of the matters to which they will testify. Copies of the petition shall be served on the client, the client's guardian, and treatment guardian if one has been appointed, and the client's attorney.

B. A hearing shall be held upon the petition prior to the expiration of the thirty-day commitment period, at which the client shall have all rights granted to the client under Section 43-1-11 NMSA 1978 and in addition shall have a right to a trial by a six-person jury, if requested, and to an expeditious appeal, unless waived.

C. A court-appointed guardian for an adult involved in an involuntary commitment proceeding shall have automatic standing to appear at all stages of the proceeding and shall be allowed to testify by telephone or through affidavit if circumstances make live testimony too burdensome.

D. The court shall include in its findings the guardian's opinion regarding the need for involuntary treatment or a statement detailing the efforts made to ascertain the guardian's opinion.

E. If, at the conclusion of the hearing, the fact-finder determines by clear and convincing evidence that the client presents a likelihood of harm to the client's self or to others, that extended treatment is likely to improve the client's condition and that the proposed extended commitment is consistent with the least drastic means principle, the court shall order commitment of the client for a period not to exceed six months, except that when the client has been committed for two consecutive periods of commitment, any commitment commencing thereafter shall not exceed one year. At the expiration of the commitment order, the client may be detained only after a new commitment hearing, unless waived after consultation with the client's attorney, and entry of a new order for commitment not to exceed six months.

F. A client involuntarily referred for treatment pursuant to this section shall be entitled to a reexamination of the order for the client's involuntary referral for treatment on the client's own petition, or that of the client's legal guardian, parent, spouse, relative or friend, to the district court of the county in which the client resides or is detained. Upon receipt of the petition, the court shall conduct a proceeding in accordance with this section, except that a proceeding shall not be required to be conducted if the petition is filed sooner than sixty days after the issuance of the order for involuntary referral for treatment or sooner than sixty days after the filing of a previous petition under this subsection.

G. Nothing in this section shall limit the right of a client to petition the court for a writ of habeas corpus.

H. Nothing in this code shall prohibit a client from seeking voluntary admission under Section 43-1-14 NMSA 1978.

I. No mental health treatment facility is required to detain, treat or provide services to a client when the client does not require such detention, treatment or services."

Chapter 159 Section 16 Laws 2009

Section 16. Section 43-1-13 NMSA 1978 (being Laws 1977, Chapter 279, Section 12, as amended) is amended to read:

"43-1-13. INVOLUNTARY COMMITMENT OF DEVELOPMENTALLY DISABLED ADULTS TO RESIDENTIAL CARE.--

A. A guardian appointed pursuant to the Uniform Probate Code may file an application with an evaluation facility seeking residential habilitation services for the protected person. The application shall set forth the basis for the guardian's belief that residential habilitation is necessary and shall include a copy of pertinent medical and psychological evaluations that have been completed.

B. Upon receipt of an application filed according to Subsection A of this section, an evaluation facility may accept the proposed client for a period of evaluation and treatment not to exceed fourteen days. An evaluation facility shall prepare an individualized habilitation plan that shall be consistent with the least drastic means principle.

C. If the habilitation plan recommends residential services, the evaluation facility shall file with the court a petition for extended residential placement. Upon receipt of the petition, the court shall appoint an attorney to represent the proposed client. Notice of the hearing scheduled on the petition and a copy of the habilitation plan shall be given to the proposed client, the client's attorney and the client's guardian. The petition shall contain a list of the names and addresses of proposed witnesses.

D. At the hearing on the petition, the proposed client shall be represented by counsel and shall have the right to present evidence on the proposed client's behalf, including testimony of a developmental disability professional of the proposed client's choosing; to cross-examine witnesses; to be present at the hearing; and to trial by a six-person jury, if requested. A complete record of the hearing shall be made. There shall be a right to an expeditious appeal.

E. The guardian of an adult involved in a commitment proceeding for extended residential habilitation services shall have automatic standing to appear at all stages of the proceeding and shall be allowed to testify by telephone or through affidavit if circumstances make live testimony too burdensome.

F. The court shall include in its findings the guardian's opinion regarding the need for residential habilitation services or a statement detailing the efforts made to ascertain the guardian's opinion.

G. The court shall order residential placement of the proposed client if it is established by clear and convincing evidence that the proposed client has a developmental disability that creates an imminent likelihood of serious harm to the proposed client's self or to others, or the person is so greatly disabled that residential services would be in the person's best interest and that such residential placement is, in

the person's case, the least drastic means. The court's order of residential placement shall be for a period not to exceed six months. At the expiration of the commitment order, the client may be detained only after a new commitment hearing, unless waived after consultation with the client's attorney, and entry of a new order for commitment not to exceed six months.

H. The court shall order placement that is least restrictive to the client and may order attendance and participation as a nonresident in habilitation programs conducted at residential or nonresidential facilities.

I. Any client involuntarily referred for habilitation treatment shall be entitled to a reexamination of the order for the client's involuntary referral for habilitation and treatment on the client's own petition, or that of the client's legal guardian, parent, spouse, relative or friend, to the district court of the county in which the client resides or is detained. Upon receipt of the petition, the court shall conduct or cause to be conducted by a special commissioner a proceeding in accordance with this section, except that a proceeding shall not be required to be conducted if the petition is filed sooner than sixty days after the issuance of the order for involuntary referral for habilitation and treatment or sooner than sixty days after the filing of a previous petition under this subsection.

J. Nothing in this section shall limit the right of a client to petition the court for a writ of habeas corpus.

K. No developmental disabilities treatment or habilitation facility is required to detain, treat or provide services to a client when the client does not appear to require detention, treatment or habilitation."

Chapter 159 Section 17 Laws 2009

Section 17. Section 43-1-14 NMSA 1978 (being Laws 1977, Chapter 279, Section 13, as amended) is amended to read:

"43-1-14. VOLUNTARY ADMISSION TO RESIDENTIAL TREATMENT OR HABILITATION.--

A. A person may voluntarily seek admission to residential treatment or habilitation.

B. A guardian appointed under the Uniform Probate Code, an agent or surrogate under the Uniform Health-Care Decisions Act or an agent under the Mental Health Care Treatment Decisions Act shall not consent to the admission of an individual to a mental health care facility. If a guardian has full power or limited power that includes medical or mental health treatment or, if the individual's written advance health-care directive or advance directive for mental health treatment expressly permits treatment in a mental health care facility, the guardian, agent or surrogate may present

the person to a facility only for evaluation for admission pursuant to Subsection E of Section 43-1-10 NMSA 1978.

C. Nothing in this section shall be construed as depriving voluntary clients of any right given to involuntary clients.

D. A client voluntarily admitted to residential treatment or habilitation has the right to immediate discharge from the residential facility upon request, unless the director of the facility or a physician determines that the client requires continued confinement and meets the criteria for involuntary residential treatment or habilitation under the code. If the director or physician so determines, the director or physician shall, on the first business day following the client's request for release, request the district attorney to initiate commitment proceedings under the code. The client has a right to a hearing on the client's confinement within five days of the client's request for release."

Chapter 159 Section 18 Laws 2009

Section 18. Section 43-1-15 NMSA 1978 (being Laws 1977, Chapter 279, Section 14, as amended) is amended to read:

"43-1-15. CONSENT TO TREATMENT--ADULT CLIENTS.--

A. No psychotropic medication, psychosurgery, convulsive therapy, experimental treatment or behavior modification program involving aversive stimuli or substantial deprivations shall be administered to a client without proper consent. If the client is capable of understanding the proposed nature of treatment and its consequences and is capable of informed consent, the client's consent shall be obtained before the treatment is performed. A client shall not be presumed to be incapable of giving consent for administration of psychotropic medications solely because the client has been involuntarily committed to a treatment facility or is awaiting a hearing on whether the client should be involuntarily committed to a treatment facility.

B. If the mental health or developmental disabilities professional or physician who is proposing this or any other course of treatment or any other interested person believes that the client is incapable of informed consent, the mental health or developmental disabilities professional or physician or other interested person may petition the court for the appointment of a treatment guardian to make a substitute decision for the client.

C. This original petition shall be served on the client and the client's attorney. A hearing on the petition shall be held within three court days. At the hearing, the client shall be represented by counsel and shall have the right to be present, to present witnesses and to cross-examine opposing witnesses.

D. When appointing a treatment guardian for an adult, the court shall give priority to a court-appointed guardian or, if no guardian has been appointed by a court, to an agent designated or nominated by the client when the client had capacity.

E. If after the hearing the court finds by clear convincing evidence that the client is not capable of making the client's own treatment decisions, the court may order the appointment of a treatment guardian.

F. The treatment guardian shall make a decision on behalf of the client whether to accept treatment, depending on whether the treatment appears to be in the client's best interest and is the least drastic means for accomplishing the treatment objective. In making a decision, the treatment guardian shall consult with the client and consider the client's expressed opinions, if any, even if those opinions do not constitute valid consent or rejection of treatment. The treatment guardian shall give consideration to previous decisions made by the client in similar circumstances when the client was able to make treatment decisions.

G. If a client, who is not a resident of a medical facility and for whom a treatment guardian has been appointed, refuses to comply with the decision of the treatment guardian, the treatment guardian may apply to the court for an enforcement order. Such an order may authorize a peace officer to take the client into custody and to transport the client to an evaluation facility and may authorize the facility forcibly to administer treatment.

H. The treatment guardian shall consult with the physician or other professional who is proposing treatment, the client's attorney and interested friends, relatives or other agents or guardians of the client to the extent reasonably practical in making a decision.

I. If the client, physician or other professional wishes to appeal the decision of the treatment guardian, the client, physician or other professional may do so, filing an appeal with the court within three calendar days of receiving notice of the treatment guardian's decision. In such a decision, the client shall be represented by counsel. The court may overrule the treatment guardian's decision if it finds that decision to be against the best interest of the client.

J. When the court appoints a treatment guardian, it shall specify the length of time during which the treatment guardian may exercise the treatment guardian's powers, up to a maximum period of one year. If at the end of the guardianship period the treatment guardian believes that the client is still incapable of making the client's own treatment decisions, the treatment guardian shall petition the court for reappointment or for appointment of a new treatment guardian. The petition shall be served on the client, the client's attorney and the previously appointed treatment guardian if filed by another party. The guardianship shall be extended or a new guardian shall be appointed only if the court finds the client is, at the time of the hearing, incapable of understanding and expressing an opinion regarding treatment decisions.

The client shall be represented by counsel and shall have the right to be present and present evidence at all such hearings.

K. If during a period of a treatment guardian's power, the treatment guardian, the client, the treatment provider, a member of the client's family or the client's attorney or another person believes that the client has regained competence to make the client's own treatment decisions, that person shall petition the court for a termination of the treatment guardianship. If the court finds the client is capable of making the client's own treatment decisions, it shall terminate the power of the treatment guardian and restore to the client the power to make the client's own treatment decisions.

L. A treatment guardian shall only have those powers enumerated in the code, unless the treatment guardian has also been appointed a guardian under the Uniform Probate Code pursuant to provisions of Section 45-5-303 NMSA 1978. A person carrying out the duties of a treatment guardian as provided in this section shall not be liable in any civil or criminal action so long as the treatment guardian is not acting in bad faith or with malicious purpose.

M. If a licensed physician believes that the administration of psychotropic medication is necessary to protect the client from serious harm that would occur while the provisions of Subsection B of this section are being satisfied, the licensed physician may administer the medication on an emergency basis. When medication is administered to a client on an emergency basis, the treating physician shall prepare and place in the client's medical records a report explaining the nature of the emergency and the reason that no treatment less drastic than administration of psychotropic medication without proper consent would have protected the client from serious harm. Upon the sworn application of the treating physician, the court may issue an order permitting the treating physician to continue to administer psychotropic medication until a treatment guardian is appointed, if the requirements of Subsection B of this section for appointment of a treatment guardian are in the process of being satisfied in a timely manner."

Chapter 159 Section 19 Laws 2009

Section 19. Section 43-1-19 NMSA 1978 (being Laws 1977, Chapter 279, Section 18, as amended) is amended to read:

"43-1-19. DISCLOSURE OF INFORMATION.--

A. Except as otherwise provided in the code, no person shall, without the authorization of the client, disclose or transmit any confidential information from which a person well acquainted with the client might recognize the client as the described person, or any code, number or other means that can be used to match the client with confidential information regarding the client.

B. Authorization from the client shall not be required for the disclosure or transmission of confidential information in the following circumstances:

(1) when the request is from a mental health or developmental disability professional or from an employee or trainee working with a person with a mental disability or developmental disability, to the extent that the practice, employment or training on behalf of the client requires access to such information is necessary;

(2) when such disclosure is necessary to protect against a clear and substantial risk of imminent serious physical injury or death inflicted by the client on the client's self or another;

(3) when the disclosure of such information is to the primary caregiver of the client and the disclosure is only of information necessary for the continuity of the client's treatment in the judgment of the treating physician or certified psychologist who discloses the information; or

(4) when such disclosure is to an insurer contractually obligated to pay part or all of the expenses relating to the treatment of the client at the residential facility. The information disclosed shall be limited to data identifying the client, facility and treating or supervising physician and the dates and duration of the residential treatment. It shall not be a defense to an insurer's obligation to pay that the information relating to the residential treatment of the client, apart from information disclosed pursuant to this section, has not been disclosed to the insurer.

C. No authorization given for the transmission or disclosure of confidential information shall be effective unless it:

(1) is in writing and signed; and

(2) contains a statement of the client's right to examine and copy the information to be disclosed, the name or title of the proposed recipient of the information and a description of the use that may be made of the information.

D. The client has a right of access to confidential information and has the right to make copies of any information and to submit clarifying or correcting statements and other documentation of reasonable length for inclusion with the confidential information. The statements and other documentation shall be kept with the relevant confidential information, shall accompany it in the event of disclosure and shall be governed by the provisions of this section to the extent they contain confidential information. Nothing in this subsection shall prohibit the denial of access to such records when a physician or other mental health or developmental disabilities professional believes and notes in the client's medical records that such disclosure would not be in the best interests of the client. In any such case, the client has the right to petition the court for an order granting such access.

E. Where there exists evidence that the client whose consent to disclosure of confidential information is sought is incapable of giving or withholding valid consent and the client does not have a guardian or treatment guardian appointed by a court, the person seeking such authorization shall petition the court for the appointment of a treatment guardian to make a substitute decision for the client, except that if the client is less than fourteen years of age, the client's parent or guardian is authorized to consent to disclosure on behalf of the client.

F. Information concerning a client disclosed under this section shall not be released to any other person, agency or governmental entity or placed in files or computerized data banks accessible to any persons not otherwise authorized to obtain information under this section.

G. Nothing in the code shall limit the confidentiality rights afforded by federal statute or regulation.

H. A person appointed as a treatment guardian in accordance with the Mental Health and Developmental Disabilities Code may act as the client's personal representative pursuant to the federal Health Insurance Portability and Accountability Act of 1996, Sections 1171-1179 of the Social Security Act, 42 U.S.C. Section 1320d, as amended, and applicable federal regulations to obtain access to the client's protected health information, including mental health information and relevant physical health information, and may communicate with the client's health-care providers in furtherance of such treatment."

Chapter 159 Section 20 Laws 2009

Section 20. Section 45-1-201 NMSA 1978 (being Laws 1993, Chapter 174, Section 4, as amended) is amended to read:

"45-1-201. DEFINITIONS.--

A. As used in the Uniform Probate Code, unless the context otherwise requires:

(1) "agent" includes an attorney-in-fact under a durable or nondurable power of attorney, an individual authorized to make decisions concerning another's health care and an individual authorized to make decisions for another under a natural death act;

(2) "application" means a written request to the probate court for an order of informal probate or appointment pursuant to Sections 45-3-301 through 45-3-311 NMSA 1978;

(3) "beneficiary", as it relates to a trust beneficiary, includes a person who has any present or future interest, vested or contingent, and also includes

the owner of an interest by assignment or other transfer; as it relates to a charitable trust, includes any person entitled to enforce the trust; as it relates to a "beneficiary of a beneficiary designation", refers to a beneficiary of an insurance or annuity policy, of an account with POD designation, of a security registered in beneficiary form (TOD) or of a pension, profit-sharing, retirement or similar benefit plan or other nonprobate transfer at death; and, as it relates to a "beneficiary designated in a governing instrument", includes a grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a beneficiary designation, a donee, appointee or taker in default of a power of appointment or a person in whose favor a power of attorney or a power held in any individual, fiduciary or representative capacity is exercised;

(4) "beneficiary designation" refers to a governing instrument naming a beneficiary of an insurance or annuity policy, of an account with POD designation, of a security registered in beneficiary form (TOD) or of a pension, profit-sharing, retirement or similar benefit plan or other nonprobate transfer at death;

(5) "child" includes an individual entitled to take as a child pursuant to the Uniform Probate Code by intestate succession from the parent whose relationship is involved and excludes a person who is only a stepchild, a foster child, a grandchild or any more remote descendant;

(6) "claims", in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person, whether arising in contract, in tort or otherwise and liabilities of the estate that arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration. "Claims" does not include estate or inheritance taxes or demands or disputes regarding title of a decedent, an incapacitated person or a minor protected person to specific assets alleged to be included in the estate;

(7) "conservator" means a person who is appointed by a court to manage the property or financial affairs or both of an incapacitated person or a minor protected person;

(8) "descendant" of an individual means all of the individual's descendants of all generations, with the relationship of parent and child at each generation being determined by the definition of child and parent contained in the Uniform Probate Code;

(9) "devise", when used as a noun, means a testamentary disposition of real or personal property and, when used as a verb, means to dispose of real or personal property by will;

(10) "devisee" means a person designated in a will to receive a devise. For the purposes of Chapter 45, Article 3 NMSA 1978, in the case of a devise to an existing trust or trustee or to a trustee or trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees;

(11) "distributee" means a person who has received property of a decedent from the decedent's personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in the testamentary trustee's hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For the purposes of this paragraph, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets;

(12) "estate" includes the property of the decedent, trust or other person whose affairs are subject to the Uniform Probate Code as originally constituted and as it exists from time to time during administration;

(13) "exempt property" means that property of a decedent's estate that is described in Section 45-2-403 NMSA 1978;

(14) "fiduciary" includes a personal representative, guardian, guardian ad litem, conservator and trustee;

(15) "foreign personal representative" means a personal representative appointed by another jurisdiction;

(16) "formal proceedings" means proceedings conducted before a judge with notice to interested persons;

(17) "governing instrument" means a deed, will, trust, insurance or annuity policy, account with POD designation, security registered in beneficiary form (TOD), pension, profit-sharing, retirement or similar benefit plan, instrument creating or exercising a power of appointment or a power of attorney or a dispositive, appointive or nominative instrument of a similar type;

(18) "guardian" means a person who has qualified to provide for the care, custody or control of the person of a minor or incapacitated person pursuant to testamentary or court appointment, but excludes one who is merely a guardian ad litem;

(19) "guardian ad litem" means a person appointed by the district court to represent and protect the interests of a minor or an incapacitated person in connection with litigation or any other court proceeding;

(20) "heirs", except as controlled by Section 45-2-711 NMSA 1978, means persons, including the surviving spouse and the state, who are entitled under the statutes of intestate succession to the property of a decedent;

(21) "incapacitated person" means an individual described in Section 45-5-101 NMSA 1978;

(22) "informal proceedings" means those proceedings conducted without notice to interested persons before the probate court for probate of a will or appointment of a personal representative, except as provided for in Section 45-3-306 NMSA 1978;

(23) "interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries and any others having a property right in or claim against a trust estate or the estate of a decedent, a minor protected person or an incapacitated person. "Interested person" also includes persons having priority for appointment as personal representatives and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, a proceeding. "Interested person" does not apply to the provisions of Chapter 45, Article 5 NMSA 1978;

(24) "issue" of a person means all of the person's descendants of all generations, with the relationship of parent and child at each generation being determined by the definition of child and parent contained in the Uniform Probate Code;

(25) "lease" includes an oil, gas or other mineral lease;

(26) "letters" includes letters testamentary, letters of guardianship, letters of administration and letters of conservatorship;

(27) "minor" means a person who has not reached eighteen years of age;

(28) "mortgage" means any conveyance, agreement or arrangement in which property is encumbered or used as security;

(29) "nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of death;

(30) "organization" means a corporation, business trust, estate, trust, partnership, joint venture, association, government or governmental subdivision or agency or any other legal or commercial entity;

(31) "parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent pursuant to the Uniform Probate Code by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent or grandparent;

(32) "payor" means a trustee, insurer, business entity, employer, government, governmental agency or subdivision or any other person authorized or obligated by law or a governing instrument to make payments;

(33) "person" means an individual or an organization;

(34) "personal representative" includes executor, administrator, successor personal representative, special administrator and persons who perform substantially the same function under the law governing their status. "General personal representative" excludes special administrator;

(35) "petition" means a written request to the probate court for an order after notice;

(36) "proceeding" includes action at law and suit in equity;

(37) "property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership;

(38) "protected person" is as defined in Section 45-5-101 NMSA 1978;

(39) "protective proceeding" means a proceeding described in Section 45-5-101 NMSA 1978;

(40) "security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security or any certificate of interest or participation, any temporary or interim certificate, receipt or certificate of deposit for or any warrant or right to subscribe to or purchase any of the foregoing;

(41) "settlement", in reference to a decedent's estate, includes the full process of administration, distribution and closing;

(42) "special administrator" means a personal representative as described by Sections 45-3-614 through

45-3-618 NMSA 1978;

(43) "state" means a state of the United States, the District of Columbia, the commonwealth of Puerto Rico or any territory or insular possession subject to the jurisdiction of the United States;

(44) "successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative;

(45) "successors" means persons, other than creditors, who are entitled to property of a decedent under the decedent's will or the Uniform Probate Code;

(46) "supervised administration" refers to the proceedings described in Article III, Part 5 of the Uniform Probate Code;

(47) "survive" means that an individual has neither predeceased an event, including the death of another individual, nor is deemed to have predeceased an event pursuant to Section 45-2-104 or 45-2-702 NMSA 1978. "Survive" includes its derivatives, such as "survives", "survived", "survivor" and "surviving";

(48) "testacy proceeding" means a proceeding to establish a will or determine intestacy;

(49) "testator" includes an individual of either sex;

(50) "trust" includes an express trust, private or charitable, with additions thereto, wherever and however created. "Trust" also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. "Trust" excludes other constructive trusts and excludes resulting trusts, conservatorships, personal representatives, trust accounts as defined in Article VI of the Uniform Probate Code, custodial arrangements, including those created under the Uniform Transfer to Minors Act, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions or employee benefits of any kind and any arrangement under which a person is nominee or escrowee for another;

(51) "trustee" includes an original, additional or successor trustee, whether or not appointed or confirmed by court; and

(52) "will" includes codicil and any testamentary instrument that merely appoints a personal representative, revokes or revises another will, nominates a guardian or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession. "Will" does not include a holographic will.

B. The definitions in Subsection A of this section are made subject to additional definitions contained in subsequent articles that are applicable to specific articles."

Chapter 159 Section 21 Laws 2009

Section 21. Section 45-1-303 NMSA 1978 (being Laws 1975, Chapter 257, Section 1-303) is amended to read:

"45-1-303. VENUE--MULTIPLE PROCEEDINGS--TRANSFER.--

A. Subject to the provisions of Section

45-3-201 NMSA 1978, where a proceeding under the Uniform Probate Code could be maintained in more than one place in New Mexico, the court in which the proceeding is first commenced has the exclusive right to proceed.

B. If proceedings concerning the same estate, protected person or trust are commenced in more than one court of New Mexico, the court in which the proceeding was first commenced shall continue to hear the matter and the other courts shall hold the matter in abeyance until the question of venue is decided. If the ruling court determines that venue is properly in another court, it shall transfer the proceeding to the other court.

C. If a court finds that in the interest of justice a proceeding or a file should be located in another court of New Mexico, the court making the finding may transfer the proceeding or file to the other court."

Chapter 159 Section 22 Laws 2009

Section 22. Section 45-1-305 NMSA 1978 (being Laws 1975, Chapter 257, Section 1-305, as amended) is amended to read:

"45-1-305. RECORDS AND CERTIFIED COPIES.--

A. The clerk of the district court and the clerk of the probate court shall each keep a record for each decedent, protected person or trust involved in any document that may be filed with the clerk's respective court under the Uniform Probate Code, including petitions and applications, demands for notices or bonds and orders by the respective court, and responses relating thereto, and shall establish and maintain a system for indexing, filing or recording that is sufficient to enable users of the records to obtain adequate information. Upon payment of the fees required by law, the clerk shall issue certified copies of any probated wills, letters issued to personal representatives or any other record or paper filed or recorded. Certificates relating to probated wills shall indicate whether the decedent was domiciled in New Mexico and whether the probate was formal or informal. Such certificates shall also indicate the names and addresses of any known heirs. Certificates relating to letters shall show the date of appointment.

B. If convenient or desirable for any reason, the presiding district judge for each judicial district shall have the power, at the judge's discretion, to order that the records of informal probate proceedings of a particular county be kept under the supervision of the probate court or clerk of the probate court of that county for such period of time as the district judge may determine."

Chapter 159 Section 23 Laws 2009

Section 23. Section 45-1-402 NMSA 1978 (being Laws 1975, Chapter 257, Section 1-402, as amended) is amended to read:

"45-1-402. NOTICE--WAIVER.--A person, including a guardian ad litem, conservator or other fiduciary, may waive notice either by a writing signed by the person and filed in the proceeding or by appearance in the proceeding. A person for whom a guardianship or other protective order is sought or a protected person may not waive notice."

Chapter 159 Section 24 Laws 2009

Section 24. Section 45-1-403 NMSA 1978 (being Laws 1975, Chapter 257, Section 1-403) is amended to read:

"45-1-403. PLEADINGS--WHEN PARTIES BOUND BY OTHERS--NOTICE.--In judicial proceedings involving trusts, or estates of decedents, minors, protected persons or incapacitated persons, and in judicially supervised settlements, the following apply:

A. interests to be affected shall be described in pleadings that give reasonable information to owners by name or class, by reference to the instrument creating the interests or in other appropriate manner;

B. persons are bound by orders binding others in the following cases:

(1) orders binding the sole holder or all co-holders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, bind other persons to the extent their interests as objects, takers in default or otherwise are subject to the power;

(2) to the extent there is no conflict of interest between them or among persons represented:

(a) orders binding a conservator bind the person whose estate the conservator controls;

(b) orders binding a guardian bind the protected person if no conservator of the protected person's estate has been appointed;

(c) orders binding a trustee bind beneficiaries of the trust in proceedings to probate a will establishing or adding to a trust, to review the acts or accounts of a prior fiduciary and in proceedings involving creditors or other third parties; and

(d) orders binding a personal representative bind persons interested in the undistributed assets of a decedent's estate in actions or proceedings

by or against the estate. If there is no conflict of interest and no conservator or guardian has been appointed, a parent may represent the parent's minor child; and

(3) an unborn or unascertained person who is not otherwise represented is bound by an order to the extent the unborn or unascertained person's interest is adequately represented by another party having a substantially identical interest in the proceeding;

C. notice is required as follows:

(1) notice as prescribed by Section 45-1-401 NMSA 1978 shall be given to any person having an interest in the subject of the hearing or to one who can bind that person as described in Paragraph (1) or (2) of Subsection B of this section. Notice may be given both to a person and to another who may bind that person; and

(2) notice is given to unborn or unascertained persons who are not represented under Paragraph (1) or (2) of Subsection B of this section by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn or unascertained persons; and

D. at any point in a proceeding, the district court shall appoint a guardian ad litem to represent the interest of a minor; an incapacitated, unborn or unascertained person; or a person whose identity or address is unknown, if the district court determines that representation of the interest would otherwise be inadequate. If not precluded by conflict of interests, a guardian ad litem may be appointed to represent several persons or interests. The district court shall set out its reasons for appointing a guardian ad litem as a part of the record of the proceeding."

Chapter 159 Section 25 Laws 2009

Section 25. Section 45-3-203 NMSA 1978 (being Laws 1975, Chapter 257, Section 3-203) 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) on application or petition of an interested person other than a spouse, devisee or heir, any qualified person.

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 exemptions 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 might be entitled to letters but for the person's age may nominate a qualified person to act as personal representative 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 appropriate writing filed with the court. When two or more persons share a priority, those of them who do not renounce shall concur in nominating another to act for them or in applying for appointment.

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 highest priority, including highest priority resulting from renunciation or nomination determined pursuant to this section, may be made only in formal proceedings. Before appointing one without highest priority, the court shall determine that those having highest 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;

(2) a person whom the court finds unsuitable in formal proceedings;

or

(3) a creditor of the decedent unless the appointment is to be made after forty-five days have elapsed from the death of the decedent.

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 159 Section 26 Laws 2009

Section 26. Section 45-5-101 NMSA 1978 (being Laws 1975, Chapter 257, Section 5-101, as amended) is amended to read:

"45-5-101. DEFINITIONS AND USE OF TERMS.--Unless otherwise apparent from the context, in Chapter 45, Article 5 NMSA 1978:

A. "conservator" is as defined in Section 45-1-201 NMSA 1978;

B. "court" means the district court or the children's or family division of the district court where such jurisdiction is conferred by the Children's Code;

C. "functional impairment" means an impairment that is measured by a person's inability to manage the person's personal care or the person's inability to manage the person's estate or financial affairs or both;

D. "guardian" is as defined in Section 45-1-201 NMSA 1978;

E. "guardian ad litem" is as defined in Section 45-1-201 NMSA 1978;

F. "incapacitated person" means any person who demonstrates over time either partial or complete functional impairment by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication or other cause, except minority, to the extent that the person is unable to manage the person's personal affairs or the person is unable to manage the person's estate or financial affairs or both;

G. "inability to manage the person's personal care" means the inability, as evidenced by recent behavior, to meet one's needs for medical care, nutrition, clothing, shelter, hygiene or safety so that physical injury, illness or disease has occurred or is likely to occur in the near future;

H. "inability to manage the person's estate or financial affairs or both" means gross mismanagement, as evidenced by recent behavior, of one's income and resources or medical inability to manage one's income and resources that has led or is likely in the near future to lead to financial vulnerability;

I. "interested person" means any person who has an interest in the welfare of the person to be protected under this article;

J. "least restrictive form of intervention" means that the guardianship or conservatorship imposed on the incapacitated person or minor protected person represents only those limitations necessary to provide the needed care and rehabilitative services and that the incapacitated person or minor protected person shall enjoy the greatest amount of personal freedom and civil liberties;

K. "letters" is as defined in Section 45-1-201 NMSA 1978;

L. "limited conservator" means any person who is qualified to manage the estate and financial affairs of an incapacitated person pursuant to a court appointment in a limited conservatorship;

M. "limited conservatorship" means that an incapacitated person is subject to a conservator's exercise of some but not all of the powers enumerated in Sections 45-5-424 and 45-5-425 NMSA 1978;

N. "limited guardian" means any person who is qualified to manage the care, custody and control of an incapacitated person pursuant to a court appointment of a limited guardianship;

O. "limited guardianship" means that an incapacitated person is subject to a guardian's exercise of some but not all of the powers enumerated in Section 45-5-312 NMSA 1978;

P. "minor" is as defined in Section 45-1-201 NMSA 1978;

Q. "minor protected person" means a minor for whom a guardian or conservator has been appointed solely because of minority;

R. "protective proceeding" means a conservatorship proceeding under Section 45-5-401 NMSA 1978;

S. "protected person" means a minor or other person for whom a guardian or conservator has been appointed or other protective order has been made;

T. "qualified health care professional" means a physician, psychologist, physician assistant, nurse practitioner or other health care practitioner whose training and expertise aid in the assessment of functional impairment; and

U. "visitor" means a person who is an appointee of the court who has no personal interest in the proceeding and who has been trained or has the expertise to appropriately evaluate the needs of the person who is allegedly incapacitated. A "visitor" may include, but is not limited to, a psychologist, a social worker, a developmental incapacity professional, a physical and occupational therapist, an educator and a rehabilitation worker."

Chapter 159 Section 27 Laws 2009

Section 27. Section 45-5-104 NMSA 1978 (being Laws 1975, Chapter 257, Section 5-104) is amended to read:

"45-5-104. DELEGATION OF POWERS BY PARENT OR GUARDIAN.--A parent or a guardian of a minor or an incapacitated person, by an acknowledged power of attorney, may delegate to another person, for a period not exceeding six months, any of the parent's or guardian's powers regarding care, custody or property of the minor child or protected person, except the power to consent to marriage or adoption of a minor protected person."

Chapter 159 Section 28 Laws 2009

Section 28. Section 45-5-201 NMSA 1978 (being Laws 1975, Chapter 257, Section 5-201, as amended) is amended to read:

"45-5-201. APPOINTMENT AND STATUS OF GUARDIAN OF MINOR--GENERAL.--A person becomes a guardian of a minor by parental appointment or upon appointment by the court. The guardianship status continues until terminated, without regard to the location from time to time of the guardian or minor protected person."

Chapter 159 Section 29 Laws 2009

Section 29. Section 45-5-209 NMSA 1978 (being Laws 1995, Chapter 210, Section 54) is amended to read:

"45-5-209. POWERS AND DUTIES OF GUARDIAN OF MINOR.--

A. A guardian of a minor protected person has the powers and responsibilities of a parent regarding the protected person's support, care and education, but a guardian is not personally liable for the protected person's expenses

and is not liable to third persons by reason of the relationship for acts of the protected person.

B. In particular and without qualifying the foregoing, a guardian shall:

(1) become or remain personally acquainted with the protected person and maintain sufficient contact with the protected person to know of the protected person's capacities, limitations, needs, opportunities and physical and mental health;

(2) take reasonable care of the protected person's personal effects and commence protective proceedings if necessary to protect other property of the protected person;

(3) apply any available money of the protected person to the protected person's current needs for support, care and education;

(4) conserve any excess money of the protected person for the protected person's future needs, but if a conservator has been appointed for the estate of the protected person, the guardian, at least quarterly, shall pay to the conservator money of the protected person to be conserved for the protected person's future needs; and

(5) report the condition of the protected person and of the protected person's estate that has been subject to the guardian's possession or control, as ordered by the court on petition of any person interested in the protected person's welfare or as required by court rule.

C. A guardian may:

(1) receive money payable for the support of the protected person to the protected person's parent, guardian or custodian under the terms of any statutory benefit or insurance system or any private contract, devise, trust, conservatorship or custodianship and money or property of the protected person paid or delivered pursuant to the provisions of Section 45-5-103 NMSA 1978 or any other statute;

(2) if consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the protected person, take custody of the person of the protected person and establish the protected person's place of abode within or without New Mexico;

(3) if no conservator for the estate of the protected person has been appointed, institute proceedings, including administrative proceedings, or take other appropriate action to compel the performance by any person of a duty to support the protected person or to pay sums for the welfare of the protected person;

(4) consent to medical or other professional care, treatment or advice for the protected person without liability by reason of the consent for injury to the protected person resulting from the negligence or acts of third persons unless a parent would have been liable in the circumstances;

(5) consent to the marriage or adoption of the protected person;
and

(6) if reasonable under all of the circumstances, delegate to the protected person certain responsibilities for decisions affecting the protected person's well-being.

D. A guardian is entitled to reasonable compensation for services as guardian and to reimbursement for room, board and clothing personally provided to the protected person, but only as approved by order of the court. If a conservator, other than the guardian or one who is affiliated with the guardian, has been appointed for the estate of the protected person, reasonable compensation and reimbursement to the guardian may be approved and paid by the conservator without order of the court controlling the guardian.

E. In the interest of developing self-reliance on the part of a protected person or for other good cause, the court, at the time of appointment or later, on its own motion or on appropriate petition or motion of the minor or other interested person, may limit the powers of a guardian otherwise conferred by this section and thereby create a limited guardianship. Any limitation on the statutory power of a guardian of a minor must be endorsed on the guardian's letters or, in the case of a guardian by parental appointment, must be reflected in letters that are issued at the time any limitation is imposed. Following the same procedure, a limitation may be removed and appropriate letters issued."

Chapter 159 Section 30 Laws 2009

Section 30. Section 45-5-210 NMSA 1978 (being Laws 1975, Chapter 257, Section 5-210) is amended to read:

"45-5-210. TERMINATION OF APPOINTMENT OF GUARDIAN--GENERAL.--A guardian's authority and responsibility terminate upon the death, resignation or removal of the guardian or upon the minor's death, adoption, marriage or attainment of majority, but termination does not affect the guardian's liability for prior acts nor the guardian's obligation to account for money and property of the protected person. Resignation of a guardian does not terminate the guardianship until it has been approved by the court. A testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding."

Chapter 159 Section 31 Laws 2009

Section 31. Section 45-5-211 NMSA 1978 (being Laws 1975, Chapter 257, Section 5-211) is amended to read:

"45-5-211. PROCEEDINGS SUBSEQUENT TO APPOINTMENT--VENUE.--

A. The court where the protected person resides has concurrent jurisdiction with the court that appointed the guardian or in which acceptance of a testamentary appointment was filed over resignation, removal, accounting and other proceedings relating to the guardianship.

B. If the court located where the protected person resides is not the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are commenced shall in all appropriate cases notify the other court, in New Mexico or another state, and, after consultation with that court, determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever is in the best interests of the protected person. A copy of any order accepting a resignation or removing a guardian shall be sent to the court in which acceptance of appointment is filed."

Chapter 159 Section 32 Laws 2009

Section 32. Section 45-5-212 NMSA 1978 (being Laws 1975, Chapter 257, Section 5-212, as amended) is amended to read:

"45-5-212. RESIGNATION, REMOVAL AND OTHER POST-APPOINTMENT PROCEEDINGS.--

A. Any person interested in the welfare of a protected person, or the protected person if fourteen or more years of age, may petition for removal of a guardian on the ground that removal would be in the best interest of the protected person. A guardian may petition for permission to resign. A petition for removal or for permission to resign may, but need not, include a request for appointment of a successor guardian.

B. Notice of hearing on a petition for an order after the appointment of a guardian must be given to the protected person, the guardian and any other person as ordered by the court.

C. After notice pursuant to Section 45-1-401 NMSA 1978 and hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make any further order that may be appropriate.

D. If at any time in the proceeding the court finds that the interest of the protected person is or may be inadequately represented, it may appoint an attorney to represent the minor, giving consideration to the preference of the minor if the minor is fourteen or more years of age."

Chapter 159 Section 33 Laws 2009

Section 33. Section 45-5-303 NMSA 1978 (being Laws 1989, Chapter 252, Section 5, as amended) is amended to read:

"45-5-303. PROCEDURE FOR COURT APPOINTMENT OF A GUARDIAN OF AN INCAPACITATED PERSON.--

A. An interested person may file a petition for the appointment of a person to serve as guardian for an alleged incapacitated person under the Uniform Probate Code. The petition shall state the following:

(1) the name, date of birth and address of the alleged incapacitated person for whom the guardian is sought to be appointed;

(2) the nature of the alleged incapacity as it relates to the functional limitations and physical and mental condition of the alleged incapacitated person and the reasons why guardianship is being requested;

(3) if a limited guardianship is sought, the particular limitations requested;

(4) whether a guardian has been appointed or is acting in any state for the alleged incapacitated person;

(5) the efforts that have been made that demonstrate due diligence to locate the other court-appointed guardian, agent or surrogate designated by the allegedly incapacitated person;

(6) the name and address of the proposed guardian;

(7) the name and address of two persons able to contact the proposed guardian if address or telephone contact information of the proposed guardian changes;

(8) the names and addresses, as far as known or as can reasonably be ascertained, of the persons most closely related by blood or marriage to the alleged incapacitated person;

(9) the name and address of the person or institution having the care and custody of the alleged incapacitated person;

(10) the number of other protected persons served by the proposed guardian, the other protected persons' relationships to the proposed guardian and the types of guardianship held if the proposed guardian is an individual;

(11) the reasons the appointment of a guardian is sought and the interest of the petitioner in the appointment;

(12) the steps taken to find less restrictive alternatives to the proposed guardianship; and

(13) the qualifications of the proposed guardian, including whether the guardian has ever been convicted of a felony.

B. Notice of a petition under this section for the appointment of a guardian and the hearing on the petition shall be given as provided in Section 45-5-309 NMSA 1978.

C. After the filing of a petition, the court shall set a date for hearing on the issues raised by the petition. Unless an alleged incapacitated person already has an attorney of the alleged incapacitated person's own choice, the court shall appoint an attorney to represent the alleged incapacitated person. The court-appointed attorney in the proceeding shall have the duties of a guardian ad litem, as set forth in Section 45-5-303.1 NMSA 1978.

D. The person alleged to be incapacitated shall be examined by a qualified health care professional appointed by the court who shall submit a report in writing to the court. The report shall:

(1) describe the nature and degree of the alleged incapacitated person's incapacity, if any, and the level of the respondent's intellectual, developmental and social functioning; and

(2) contain observations, with supporting data, regarding the alleged incapacitated person's ability to make health care decisions and manage the activities of daily living.

E. The court shall appoint a visitor who shall interview the person seeking appointment as guardian and the person alleged to be incapacitated. The visitor shall also visit the present place of abode of the person alleged to be incapacitated and the place where it is proposed the alleged incapacitated person will be detained or reside if the requested appointment is made. The visitor shall evaluate the needs of the person alleged to be incapacitated and shall submit a written report to the court. The report shall include a recommendation regarding the appropriateness of the appointment of the proposed guardian. The report to the court shall also include recommendations regarding:

(1) those aspects of personal care that the alleged incapacitated person can manage without supervision or assistance;

(2) those aspects of personal care that the alleged incapacitated person could manage with the supervision or assistance of support services and benefits; and

(3) those aspects of personal care that the alleged incapacitated person is unable to manage without the supervision of a guardian.

Unless otherwise ordered by the court, the appointment of the visitor terminates and the visitor is discharged from the visitor's duties upon entry of an order appointing a guardian and acceptance of the appointment by the guardian.

F. A person alleged to be incapacitated shall be present at the hearing on the issues raised by the petition and any response to the petition unless the court determines by evidence that it is not in the alleged incapacitated person's best interest to be present because of a threat to the health or safety of the alleged incapacitated person or others as determined by the court.

G. The court upon request or its own motion may conduct hearings at the location of the alleged incapacitated person who is unable to be present in court.

H. The rules of evidence shall apply and no hearsay evidence that is not otherwise admissible in a court shall be admitted into evidence except as otherwise provided in this article. There is a legal presumption of capacity, and the burden of proof shall be on the petitioner to prove the allegations set forth in the petition. Such proof shall be established by clear and convincing evidence.

I. A record of the proceedings shall be made if requested by the alleged incapacitated person or the alleged incapacitated person's attorney or when ordered by the court. Records, reports and evidence submitted to the court or recorded by the court shall be confidential, except that the public shall be granted access to the following information:

(1) docket entries;

(2) date of the proceeding, appointment and termination;

(3) duration of the guardianship; and

(4) the name and other information necessary to identify the alleged incapacitated person.

J. Notwithstanding the provisions of Subsection I of this section, a disclosure of information shall not include diagnostic information, treatment information or other medical or psychological information.

K. The issue of whether a guardian shall be appointed for the alleged incapacitated person shall be determined by the court at a closed hearing unless the alleged incapacitated person requests otherwise.

L. Upon request of the petitioner or alleged incapacitated person, the court shall schedule a jury trial."

Chapter 159 Section 34 Laws 2009

Section 34. Section 45-5-304 NMSA 1978 (being Laws 1989, Chapter 252, Section 7, as amended) is amended to read:

"45-5-304. FINDINGS--ORDER OF APPOINTMENT.--

A. The court, at the hearing on the petition for appointment for a guardian pursuant to provisions of Chapter 45, Article 5 NMSA 1978, shall:

(1) inquire into the nature and extent of the functional limitations of the alleged incapacitated person; and

(2) ascertain the alleged incapacitated person's capacity to care for the alleged incapacitated person's own self.

B. If it is determined that the alleged incapacitated person possesses the capacity to care for the alleged incapacitated person's own self, the court shall dismiss the petition.

C. Alternatively, the court may appoint a full guardian as requested in the petition or a limited guardian and confer specific powers of guardianship after finding in the record based on clear and convincing evidence that:

(1) the person for whom a guardian is sought is totally incapacitated or is incapacitated only in specific areas as alleged in the petition;

(2) the guardianship is necessary as a means of providing continuing care, supervision and rehabilitation of the incapacitated person;

(3) there are no available alternative resources that are suitable with respect to the alleged incapacitated person's welfare, safety and rehabilitation;

(4) the guardianship is appropriate as the least restrictive form of intervention consistent with the preservation of the civil rights and liberties of the alleged incapacitated person; and

(5) the proposed guardian is both qualified and suitable, has reviewed the proposed order of appointment and is willing to serve.

D. The court may enter any other appropriate order consistent with the findings of this section.

E. A copy of the order appointing the guardian shall be furnished to the proposed guardian, the incapacitated person and the incapacitated person's counsel.

F. The order shall contain the name and address of the guardian as well as notice of the incapacitated person's right to appeal the guardianship appointment and of the right to seek alteration or termination of the guardianship at any time."

Chapter 159 Section 35 Laws 2009

Section 35. Section 45-5-306 NMSA 1978 (being Laws 1975, Chapter 257, Section 5-306) is amended to read:

"45-5-306. DEATH OF PROTECTED PERSON OR GUARDIAN--INCAPACITY OF GUARDIAN.--The authority and responsibility of a guardian for an incapacitated person terminates upon the death of the guardian or protected person, the determination of incapacity of the guardian or upon removal or resignation as provided in Section 45-5-307 NMSA 1978. Upon the death of the protected person, the guardian shall submit notice to the appointing court. Testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding. Termination does not affect the guardian's liability for prior acts nor the guardian's obligation to account for funds and assets of the guardian's protected person."

Chapter 159 Section 36 Laws 2009

Section 36. Section 45-5-307 NMSA 1978 (being Laws 1975, Chapter 257, Section 5-307, as amended) is amended to read:

"45-5-307. SUBSTITUTION, REVIEW AND TERMINATION OF GUARDIANSHIP.--

A. On the petition of the incapacitated person or any person interested in the incapacitated person's welfare and upon notice and hearing, the court may remove a guardian and appoint a successor if it is in the best interest of the incapacitated person.

B. Upon death, removal or resignation of a guardian, the court may appoint another guardian or make any other order that may be appropriate. If a successor guardian is appointed, the successor guardian succeeds to the title and powers of the successor guardian's predecessor.

C. The incapacitated person or any person interested in the incapacitated person's welfare may petition for an order that the incapacitated person is no longer

incapacitated and for removal or resignation of the guardian. A request for this order may be made by informal letter to the court or judge. Any person who knowingly interferes with transmission of this kind of request to the court may be adjudged guilty of contempt of court.

D. Unless waived by the court upon the filing of a petition to terminate a guardianship for reasons other than the death of the incapacitated person, the court shall follow the same procedures to safeguard the rights of the incapacitated person as those that apply to a petition for appointment of a guardian as set forth in Section 45-5-303 NMSA 1978.

E. In a proceeding that increases the guardian's authority or reduces the autonomy of the protected person, the court shall follow the same procedures to safeguard the rights of the incapacitated person as those that apply to a petition for appointment of a guardian, as set forth in Section

45-5-303 NMSA 1978.

F. Following receipt of a request for review, the court shall hold a status hearing, which may be informal, to determine the appropriate order to be entered. If the court finds the incapacitated person is capable of more autonomy than at the time of the original order, the court may enter an order removing the guardian, terminating the guardianship or reducing the powers previously granted to the guardian. The court has the option to follow all or part of the procedures that apply for the appointment of a guardian as set forth in Section 45-5-303 NMSA 1978.

G. At any time following the appointment of a guardian, but not later than ten years after the initial appointment of a guardian for a protected person and every ten years thereafter, the court shall hold a status hearing, after notice to the guardian, the protected person and appropriate interested persons, to review the status of the protected person's capacity and the continued need for a guardian. If the court is unable to contact either the guardian or the protected person and neither appears for the status hearing, the court shall appoint a guardian ad litem to investigate and advise the court as to the status of the protected person and the guardian.

H. Following the status hearing or the court's report from the guardian ad litem on the status of the protected person and the guardian as provided in Subsection G of this section, the court may enter an appropriate order; provided that, in entering an order that increases the guardian's authority or reduces the autonomy of the protected person, the court shall follow the same procedures to safeguard the rights of the incapacitated person as those that apply to a petition for appointment of a guardian, as set forth in Section 45-5-303 NMSA 1978."

Chapter 159 Section 37 Laws 2009

Section 37. Section 45-5-309 NMSA 1978 (being Laws 1975, Chapter 257, Section 5-309, as amended) is amended to read:

"45-5-309. NOTICES IN GUARDIANSHIP PROCEEDINGS.--

A. In a proceeding for the appointment or removal of a guardian of an incapacitated person, other than the appointment of a temporary guardian or temporary suspension of a guardian, notice of hearing and a copy of the petition and any interim orders that may have been entered shall be given to each of the following:

(1) the person alleged to be incapacitated;

(2) the person's spouse, parents and adult children, or if there are no adult children, at least one of the person's closest adult relatives if any can be found;

(3) the proposed guardian; and

(4) a person, as far as known or as can reasonably be ascertained, previously nominated or designated in a writing signed by the incapacitated person prior to incapacity that has not been revoked by the incapacitated person or terminated by a court. This includes but is not limited to writings executed under the Uniform Health-Care Decisions Act, the Mental Health Care Treatment Decisions Act, the Uniform Power of Attorney Act, the Uniform Probate Code and the Uniform Trust Code.

Notice of hearing shall be given to a person who is serving as the guardian or conservator of the person to be protected or who has primary responsibility for the person's care.

B. Notice shall be served personally on the alleged incapacitated person and the person's spouse if they can be found within New Mexico. Notice to an out-of-state spouse, the parents and to all other persons, except the alleged incapacitated person, shall be given as provided in Section 45-1-401 NMSA 1978.

C. At least fourteen days' notice shall be given before the hearing takes place. The notice shall be in plain language and large type and shall include the following information and shall be substantially in the following form:

"NOTICE

TO: (name and address of person receiving notice)

On (date of hearing) at (time of hearing) in (place of hearing) at (city), New Mexico, the (name and address of court) will hold a hearing to determine whether a guardian should be appointed for (name of alleged incapacitated person). The purpose of this proceeding is to protect (name of alleged incapacitated person). A copy of the petition requesting appointment of a guardian is attached to this notice.

At the hearing, the court will determine whether (name of alleged incapacitated person) is an incapacitated person under New Mexico law.

If the court finds that (name of alleged incapacitated person) is incapacitated, the court at the hearing shall also consider whether (name of proposed guardian, if any) should be appointed as guardian of (name of alleged incapacitated person). The court may, in its discretion, appoint some other qualified person as guardian. The court may also, in its discretion, limit the powers and duties of the guardian to allow (name of alleged incapacitated person) to retain control over certain activities.

(Name of alleged incapacitated person) shall attend the hearing and be represented by an attorney. The petition may be heard and determined in the absence of (name of alleged incapacitated person) if the court determines that the presence of (name of alleged incapacitated person) is not possible. If (name of alleged incapacitated person) attends the hearing and is not represented by an attorney, the court must appoint an attorney to represent the alleged incapacitated person.

The court may, on its own motion or on request of any interested person, postpone the hearing to another date and time.

(signature of petitioner)". "

Chapter 159 Section 38 Laws 2009

Section 38. Section 45-5-311 NMSA 1978 (being Laws 1975, Chapter 257, Section 5-311, as amended) is amended to read:

"45-5-311. WHO MAY BE APPOINTED GUARDIAN--PRIORITIES.--

A. Any person deemed to be qualified by the court may be appointed guardian of an incapacitated person, except that no individual who operates or is an employee of a boarding home, residential care home, nursing home, group home or other similar facility in which the incapacitated person resides may serve as guardian for the incapacitated person, except an employee may serve in such capacity when related by affinity or consanguinity.

B. Persons who are not disqualified have priority for appointment as guardian in the following order:

(1) a guardian or other like fiduciary appointed by the appropriate court of any other jurisdiction;

(2) a person, as far as known or as can be reasonably ascertained, previously nominated or designated in a writing as defined in Paragraph (4) of

Subsection A of Section 45-5-309 NMSA 1978 to serve as guardian or agent in a writing signed by the incapacitated person prior to the incapacitated person's incapacity that has not been revoked by the incapacitated person or terminated by a court;

(3) the spouse of the incapacitated person;

(4) an adult child of the incapacitated person;

(5) a parent of the incapacitated person, including a person nominated by will or other writing signed by a deceased parent;

(6) any relative of the incapacitated person with whom the incapacitated person has resided for more than six months prior to the filing of the petition;

(7) a person nominated by the person who is caring for the incapacitated person or paying benefits to the incapacitated person; and

(8) any other person.

C. With respect to persons having equal priority, the court shall select the person it considers best qualified to serve as guardian. The court, acting in the best interest of the incapacitated person and for good cause shown, may pass over a person having priority and appoint a person having a lower priority under this section and shall take into consideration:

(1) the preference of the incapacitated person, giving weight to preferences expressed in writing by the person while having capacity;

(2) the geographic location of the proposed guardian;

(3) the relationship of the proposed guardian to the incapacitated person;

(4) the ability of the proposed guardian to carry out the powers and duties of the guardianship; and

(5) potential financial conflicts of interest between the incapacitated person and proposed guardian."

Chapter 159 Section 39 Laws 2009

Section 39. Section 45-5-312 NMSA 1978 (being Laws 1975, Chapter 257, Section 5-312, as amended) is amended to read:

"45-5-312. GENERAL POWERS AND DUTIES OF THE LIMITED GUARDIAN AND GUARDIAN.--

A. If the court enters judgment pursuant to Subsection C of Section 45-5-304 NMSA 1978, it shall appoint a limited guardian if it determines that the incapacitated person is able to manage some but not all aspects of personal care. The court shall specify those powers that the limited guardian shall have and may further restrict each power so as to permit the incapacitated person to care for the incapacitated person's own self commensurate with the incapacitated person's ability to do so. A person for whom a limited guardian has been appointed retains all legal and civil rights except those that have been specifically granted to the limited guardian by the court. The limited guardian shall exercise supervisory powers over the incapacitated person in a manner that is the least restrictive form of intervention consistent with the order of the court.

B. A guardian of an incapacitated person has the same powers, rights and duties respecting the incapacitated person that a parent has respecting an unemancipated minor child, except that a guardian is not legally obligated to provide from the guardian's own funds for the incapacitated person and is not liable to third persons for acts of the incapacitated person solely by reason of the guardianship. In particular and without qualifying the foregoing, a guardian or the guardian's replacement has the following powers and duties, except as modified by order of the court:

(1) to the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the incapacitated person, a guardian is entitled to custody of the incapacitated person and may establish the incapacitated person's place of abode within or without New Mexico;

(2) if entitled to custody of the incapacitated person, a guardian shall make provision for the care, comfort and maintenance of the incapacitated person and, whenever appropriate, arrange for training and education. The guardian shall take reasonable care of the incapacitated person's clothing, furniture, vehicles and other personal effects and commence conservatorship proceedings if other property of the incapacitated person is in need of protection;

(3) if no agent is entitled to make health-care decisions for the incapacitated person under the provisions of the Uniform Health-Care Decisions Act, then the guardian shall make health-care decisions for the incapacitated person in accordance with the provisions of that act. In exercising health-care powers, a guardian may consent or withhold consent that may be necessary to enable the incapacitated person to receive or refuse medical or other professional care, counsel, treatment or service. That decision shall be made in accordance with the values of the incapacitated person, if known, or the best interests of the incapacitated person if the values are not known;

(4) if no conservator for the estate of the incapacitated person has been appointed, if the court has determined that a conservatorship is not appropriate and if a guardian appointed by the court has been granted authority to make financial decisions on behalf of the protected person in the order of appointment and in the letters of guardianship pursuant to Subsection C of Section 45-5-308 NMSA 1978, the guardian has the following powers and duties, including the power:

(a) to institute proceedings to compel any person under a duty to support the protected person or to pay sums for the welfare of the protected person to perform that duty;

(b) to receive money and tangible property deliverable to the protected person and apply the money and property for support, care and education of the protected person, but the guardian shall not use funds from the protected person's estate for room and board that the guardian or the guardian's spouse, parent or child has furnished the protected person, unless a charge for the service is approved by order of the court made upon notice to at least one of the next of kin of the protected person, if notice is possible;

(c) to serve as advocate and decision-maker for the protected person in any disputes with persons or organizations, including financial institutions, regarding the protected person's finances;

(d) to obtain information regarding the protected person's assets and income from persons or organizations handling the protected person's finances;

(e) to file an initial inventory of all property belonging to the protected person within ninety days after appointment; and

(f) to exercise care to conserve any excess for the protected person's needs and include in the guardian's ninety-day and annual reports a description of decisions made regarding the protected person's finances and property; and

(5) the guardian shall exercise the guardian's supervisory powers over the incapacitated person in a manner that is least restrictive of the incapacitated person's personal freedom and consistent with the need for supervision.

C. A guardian of an incapacitated person for whom a conservator also has been appointed shall control the care and custody of the incapacitated person and is entitled to receive reasonable sums for services and for room and board furnished to the incapacitated person. The guardian may request the conservator to expend the incapacitated person's estate by payment to third persons or institutions for the incapacitated person's care and maintenance."

Chapter 159 Section 40 Laws 2009

Section 40. Section 45-5-313 NMSA 1978 (being Laws 1975, Chapter 257, Section 5-313) is amended to read:

"45-5-313. PROCEEDINGS SUBSEQUENT TO APPOINTMENT--VENUE.--

A. The court where the protected person resides has concurrent jurisdiction with the court that appointed the guardian, or in which acceptance of a testamentary appointment was filed, over resignation, removal, accounting and other proceedings relating to the guardianship.

B. If the court located where the protected person resides is not the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are commenced shall in all appropriate cases notify the other court, in this or another state, and after consultation with that court determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever may be in the best interests of the protected person. A copy of any order accepting a resignation or removing a guardian shall be sent to the court in which acceptance of appointment is filed."

Chapter 159 Section 41 Laws 2009

Section 41. Section 45-5-314 NMSA 1978 (being Laws 1989, Chapter 252, Section 14, as amended) is amended to read:

"45-5-314. ANNUAL REPORT.--

A. The guardian of an incapacitated person shall file an initial report with the appointing court within ninety days of the guardian's appointment. Thereafter, the guardian shall file an annual report within thirty days of the anniversary date of the guardian's appointment. A copy of the report shall also be submitted to the district judge who appointed the guardian or the judge's successor, to the incapacitated person and to the incapacitated person's conservator, if any. The court shall review this report. The report shall include information concerning the progress and condition of the incapacitated person, including but not limited to the incapacitated person's health, medical and dental care, residence, education, employment and habitation; a report on the manner in which the guardian carried out the guardian's powers and fulfilled the guardian's duties; and the guardian's opinion regarding the continued need for guardianship. If the guardian has been provided power pursuant to Paragraph (4) of Subsection B of Section 45-5-312 NMSA 1978, the report shall contain information on financial decisions made by the guardian. The report shall be substantially in the following form:

"STATE OF NEW MEXICO

COUNTY OF _____

_____ JUDICIAL DISTRICT COURT

IN THE MATTER OF THE GUARDIANSHIP OF

CAUSE NO. _____

an incapacitated adult

GUARDIAN'S 90-DAY _____ ANNUAL _____ FINAL _____ (check one)

REPORT ON THE CONDITION AND WELL-BEING OF AN ADULT PROTECTED PERSON

Date of Appointment: _____

Pursuant to Section 45-5-314 NMSA 1978, the undersigned duly appointed, qualified and acting guardian of the above-mentioned protected person reports to the court as follows (attach additional sheets, if necessary):

1. PROTECTED

Name _____

PERSON: Residential Address _____

Facility Name _____

City, State, Zip Code _____

Telephone _____ Date of Birth _____

Name of person primarily responsible at protected person's

place of residence: _____.

2. GUARDIAN: Name _____

Business Name (if any) _____

Address _____

City, State, Zip Code _____

Telephone _____ Alternate Telephone # _____

Relation to Protected Person _____

3. FINAL REPORTS ONLY (otherwise, go to #4)

I am filing a Final Report because of: ___ My resignation

___ Death of the Protected Person ___ Court Order

___ Other (please explain): _____

A. If because of **resignation**, Name of successor, if

appointed: _____

Address _____

City, State, Zip Code _____

B. If because of **Protected Person's death**: (attach

copy of death certificate, if available)

Date and place of death: _____

Name of personal representative if appointed: _____

Address _____

City, State, Zip Code _____

4. During the past year or 90 days (if initial report), I

have visited the Protected Person _____ times. The date of

my last personal visit was _____.

5. (A) Describe the residence of the Protected Person:

___ Hospital/medical facility ___ Protected Person's
home

___ Guardian's home ___ Relative's home (explain

below)

_____ Nursing home _____ Boarding/Foster/Group Home

_____ Other:

(B) During the past year or 90 days (if first report),
has the Protected Person changed his/her residence? _____

Do you anticipate a change of residence for the protected
person in the next year? _____

6. The name and address of any hospital or other institution
(if any) where the Protected Person is now admitted:

_____.

7. The Protected Person is under a physician's regular care.

_____ Yes _____ No

Identify the health care providers.

Physician: _____

Dentist (if any): _____

Mental Health Professional (i.e., psychiatrist, counselor):

Other: _____

8. (A) During the past year or 90 days (if initial report),
the Protected Person's physical health:

Remained the same _____

Primary diagnosis: _____

_____ improved _____ deteriorated
(explain) _____

(B) During the past year or 90 days (if initial report),
the Protected Person's mental health: Remained the same _____

Major diagnosis, if any: _____

Improved _____ deteriorated (explain) _____

If physical or mental health has deteriorated, please explain:

9. Describe any significant hospitalizations or mental or
medical events during the past year or 90 days (if initial report):

10. List the Protected Person's activities and changes, if
any, over the past year or 90 days (if initial report):

Recreational Activities: _____

Educational Activities: _____

Social Activities: _____

List Active Friends and/or Relatives: _____

Occupational activities: _____

Other: _____

11. Describe briefly any contracts entered into and major decisions
made on behalf of the Protected Person during the
past year or 90 days (if initial report): _____

12. The Protected Person has made the following statements
regarding his/her living arrangements and the guardianship
over him/her: _____

13. I believe the Protected Person has unmet needs.

Yes (explain) No

If yes, indicate efforts made to meet these needs: _____

14. The Protected Person continues to require the assistance

of a guardian: Yes No

Explain why or why not: _____

15. The authority given to me by the Court should:

remain the same be decreased be increased

Why: _____

16. Additional information concerning the Protected Person or

myself (the guardian) that I wish to share with the Court:

17. If the court has granted you the authority to make

financial decisions on behalf of the Protected Person, then

please describe the decisions you have made for the protected person:

Signature of Guardian: _____ Date: _____

Printed Name: _____."

A. Any guardian may rely on a qualified health care professional's current written report to provide descriptions of the physical and mental conditions required in items 7, 8, 9, 14 and 15 of the annual report as specified in Subsection A of this section.

B. The guardian may be fined five dollars (\$5.00) per day for an overdue annual report. The fine shall be used to fund the costs of visitors, counsel and functional assessments utilized in conservatorship and guardianship proceedings pursuant to the Uniform Probate Code.

C. The court shall not waive the requirement of an annual report under any circumstance but may grant an extension of time not to exceed sixty days. The court may require the filing of more than one report annually."

Chapter 159 Section 42 Laws 2009

Section 42. Section 46A-3-303 NMSA 1978 (being Laws 2003, Chapter 122, Section 3-303) is amended to read:

"46A-3-303. REPRESENTATION BY FIDUCIARIES AND PARENTS.--To the extent there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute:

A. a conservator may represent and bind the estate that the conservator controls;

B. a guardian may represent and bind the protected person if a conservator of the protected person's estate has not been appointed;

C. an agent having authority to act with respect to the particular question or dispute may represent and bind the principal;

D. a trustee may represent and bind the beneficiaries of the trust;

E. a personal representative of a decedent's estate may represent and bind persons interested in the estate; and

F. a parent may represent and bind the parent's minor or unborn child if a conservator or guardian for the child has not been appointed."

Approved April 7, 2009

LAWS 2009, CHAPTER 160

AN ACT

REPEALING SECTIONS 50-5-1 THROUGH 50-5-17 NMSA 1978 (BEING LAWS 1933, CHAPTER 148, SECTIONS 1 THROUGH 9, LAWS 1931, CHAPTER 109, SECTIONS 1 THROUGH 3 AND LAWS 1921, CHAPTER 180, SECTIONS 3, 6, 8, 9 AND 10, AS AMENDED) RELATING TO THE EMPLOYMENT OF WOMEN.

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

Chapter 160 Section 1 Laws 2009

Section 1. REPEAL.--Sections 50-5-1 through 50-5-17 NMSA 1978 (being Laws 1933, Chapter 148, Sections 1 through 9, Laws 1931, Chapter 109, Sections 1 through 3 and Laws 1921, Chapter 180, Sections 3, 6, 8, 9 and 10, as amended) are repealed.

House Bill 176

Approved April 7, 2009

LAWS 2009, CHAPTER 161

AN ACT

RELATING TO THE COMMISSION FOR THE PROMOTION OF UNIFORMITY OF LEGISLATION IN THE UNITED STATES; INCREASING MEMBERSHIP.

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

Chapter 161 Section 1 Laws 2009

Section 1. Section 2-4-1 NMSA 1978 (being Laws 1967, Chapter 234, Section 1, as amended) is amended to read:

"2-4-1. COMMISSION FOR THE PROMOTION OF UNIFORMITY OF LEGISLATION IN THE UNITED STATES.--

A. There is created a "commission for the promotion of uniformity of legislation in the United States", also known as the "uniform law commission". Its membership shall consist of:

(1) four members of the legislature, who are members of the state bar of New Mexico and who shall be appointed by the New Mexico legislative council, consisting of one member from each of the two major parties in the New Mexico senate and in the New Mexico house of representatives;

(2) any member of the New Mexico bar who has represented New Mexico as a member of the uniform law commission for twenty or more years and who has been elected as a life member of the uniform law commission;

(3) four members of the New Mexico bar, who shall be appointed by the New Mexico legislative council;

(4) two members of the New Mexico bar, who shall be appointed by the governor;

(5) the dean of the university of New Mexico law school or the dean's designee; and

(6) the director of the legislative council service, who shall serve ex officio.

B. The members shall be known as "uniform law commissioners" whose purpose is to promote uniformity of legislation in the United States."

Chapter 161 Section 2 Laws 2009

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.

House Bill 181, aa

Approved April 7, 2009

LAWS 2009, CHAPTER 162

AN ACT

RELATING TO SPECIAL EDUCATION; CLARIFYING THE STATE'S RESPONSIBILITY TO PROVIDE SPECIAL EDUCATION SERVICES; REQUIRING PUBLIC EDUCATION DEPARTMENT PARTICIPATION IN DEVELOPMENT OF AGREEMENTS BETWEEN SCHOOL DISTRICTS AND PRIVATE EDUCATIONAL TRAINING CENTERS AND RESIDENTIAL TREATMENT CENTERS; REQUIRING STUDENT IDENTIFICATION NUMBERS FOR STUDENTS ATTENDING EDUCATIONAL TRAINING CENTERS AND RESIDENTIAL TREATMENT CENTERS;

REQUIRING EDUCATIONAL TRAINING CENTERS AND RESIDENTIAL TREATMENT CENTERS TO PROVIDE REASONABLE PHYSICAL SPACE FOR EDUCATIONAL PROGRAMMING.

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

Chapter 162 Section 1 Laws 2009

Section 1. Section 22-13-8 NMSA 1978 (being Laws 1972, Chapter 95, Section 4, as amended) is repealed and a new Section 22-13-8 NMSA 1978 is enacted to read:

"22-13-8. SPECIAL EDUCATION--PRIVATE EDUCATIONAL TRAINING CENTERS AND RESIDENTIAL TREATMENT CENTERS.--

A. Notwithstanding other provisions of the Public School Code, as used in this section:

(1) "qualified student" means a public school student who:

(a) has not graduated from high school;

(b) is regularly enrolled in one-half or more of the minimum course requirements approved by the department for public school students; and

(c) in terms of age: 1) is at least five years of age prior to 12:01 a.m. on September 1 of the school year or will be five years of age prior to 12:01 a.m. on September 1 of the school year if the student is enrolled in a public school extended-year kindergarten program that begins prior to the start of the regular school year; 2) is at least three years of age at any time during the school year and is receiving special education pursuant to rules of the department; or 3) has not reached the student's twenty-second birthday on the first day of the school year and is receiving special education in accordance with federal law; and

(2) "school-age person" means a person who is not a qualified student but who meets the federal requirements for special education and who:

(a) will be at least three years old at any time during the school year;

(b) is not more than twenty-one years of age; and

(c) has not received a high school diploma or its equivalent.

B. The responsibility of school districts, state institutions and the state to provide a free appropriate public education for qualified students who need special education is not diminished by the availability of private schools and services. It is a

state responsibility to ensure that all qualified students who need special education receive the education to which federal and state laws entitle them whether provided by public or private schools and services.

C. A school district in which a private, nonsectarian, nonprofit educational training center or residential treatment center is located shall not be considered the resident school district of a school-age person if residency is based solely on the school-age person's enrollment at the facility and the school-age person would not otherwise be considered a resident of the state.

D. For a qualified student in need of special education or school-age person who is placed in a private, nonsectarian, nonprofit educational training center or residential treatment center by a school district or by a due process decision, the school district in which the qualified student or school-age person lives, whether in-state or out-of-state, is responsible for the educational, nonmedical care and room and board costs of that placement.

E. For a school-age person placed in a private, nonsectarian, nonprofit educational training center or residential treatment center not as a result of a due process decision but by a parent who assumes the responsibility for such placement, the department shall ensure that the school district in which the facility is located is allocating and distributing the school-age person's proportionate share of the federal Individuals with Disabilities Education Act Part B funds but the state is not required to distribute state funds for that school-age person.

F. For a qualified student or school-age person in need of special education placed in a private, nonsectarian, nonprofit educational training center or residential treatment center by a New Mexico public noneducational agency with custody or control of the qualified student or school-age person or by a New Mexico court of competent jurisdiction, the school district in which the facility is located shall be responsible for the planning and delivery of special education and related services, unless the qualified student's or school-age person's resident school district has an agreement with the facility to provide such services.

G. Except as provided in Subsection D of this section, the department shall determine which school district is responsible for the cost of educating a qualified student in need of special education who has been placed in a private, nonsectarian, nonprofit educational training center or residential treatment center outside the qualified student's resident school district. The department shall determine the reasonable reimbursement owed to the receiving school district.

H. A local school board, in consultation with the department, may make an agreement with a private, nonsectarian, nonprofit educational training center or residential treatment center for educating qualified students in need of special education and for whom the school district is responsible for providing a free appropriate public education under the federal Individuals with Disabilities Education Act and for providing

payment for that education. All financial agreements between local school boards and private, nonsectarian, nonprofit educational training centers and residential treatment centers must be negotiated in accordance with rules promulgated by the department.

I. All agreements between local school boards and private, nonsectarian, nonprofit educational training centers and residential treatment centers must be reviewed and approved by the secretary. The agreements shall ensure that all qualified students placed in a private, nonsectarian, nonprofit educational training center or residential treatment center receive the education to which they are entitled pursuant to federal and state laws. All agreements must provide for:

(1) student evaluations and eligibility;

(2) an educational program for each qualified student that meets state standards for such programs, except that teachers employed by private schools are not required to be highly qualified;

(3) special education and related services in conformance with an individualized education program that meets the requirements of federal and state law; and

(4) adequate classroom and other physical space provided at the private, nonsectarian, nonprofit educational training center or residential treatment center that allows the school district to provide an appropriate education.

J. The agreements must also acknowledge the authority and responsibility of the local school board and the department to conduct on-site evaluations of programs and student progress to ensure that the education provided to the qualified student is meeting state standards.

K. A qualified student for whom the state is required by federal law to provide a free appropriate public education and who is attending a private, nonsectarian, nonprofit educational training center or a residential treatment center is a public school student and shall be counted in the special education membership of the school district that is responsible for the costs of educating the student as provided in the individualized education program for the student.

L. The department shall adopt the format to report individual student data and costs for any qualified student or school-age person attending public or private educational training centers or residential treatment centers and shall include those reports in the student teacher accountability reporting system by using the same student identification number issued to a public school student pursuant to Section 22-2C-11 NMSA 1978 or by assigning a unique student identifier for school-age persons, including those who are not residents of this state but who are attending a private, nonsectarian, nonprofit educational training center or residential treatment center in this state. Every public and private educational training center and every public and private

residential treatment center that serves school-age persons in this state shall comply with this provision.

M. The department shall promulgate rules to carry out the provisions of this section."

Chapter 162 Section 2 Laws 2009

Section 2. Section 32A-12-2 NMSA 1978 (being Laws 1979, Chapter 227, Section 2, as amended) is amended to read:

"32A-12-2. RESIDENTIAL TREATMENT PROGRAMS--RULES.--The secretary of children, youth and families shall adopt rules to provide for:

A. minimum standards that shall be met by a residential treatment program, including a requirement that the program make reasonable provisions for adequate physical space for a school district to provide the required free appropriate public education;

B. procedures and forms for applying for a departmental grant or contract;

C. procedures and criteria for review and approval or denial of such applications;

D. procedures for approval of facilities and programs in or through which services are to be performed;

E. procedures and specifications of programmatic and financial information to be reported by residential treatment programs to the children, youth and families department for purposes of evaluating the effectiveness of programs funded by the department; and

F. procedures for review of potential clients for residential treatment or therapeutic group home care."

Chapter 162 Section 3 Laws 2009

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.

HEC/House Bill 199

Approved April 7, 2009

LAWS 2009, CHAPTER 163

AN ACT

RELATING TO CRIMINAL SENTENCING; REQUIRING THAT AN AGGRAVATING CIRCUMSTANCE BE PROVEN BEYOND A REASONABLE DOUBT BEFORE A JUDGE MAY INCREASE A BASIC SENTENCE OF INCARCERATION; AMENDING A SECTION OF THE CRIMINAL SENTENCING ACT.

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

Chapter 163 Section 1 Laws 2009

Section 1. Section 31-18-15.1 NMSA 1978 (being Laws 1979, Chapter 152, Section 2, as amended) is amended to read:

"31-18-15.1. ALTERATION OF BASIC SENTENCE--MITIGATING OR AGGRAVATING CIRCUMSTANCES--PROCEDURE.--

A. The court shall hold a sentencing hearing to determine if mitigating or aggravating circumstances exist and take whatever evidence or statements it deems will aid it in reaching a decision to alter a basic sentence. The judge may alter the basic sentence as prescribed in Section 31-18-15 NMSA 1978 upon:

(1) a finding by the judge of any mitigating circumstances surrounding the offense or concerning the offender; or

(2) a finding by a jury or by the judge beyond a reasonable doubt of any aggravating circumstances surrounding the offense or concerning the offender.

B. When the determination of guilt or innocence for the underlying offense is made by a jury, the original trial jury shall determine whether aggravating circumstances exist. If the offender waives a jury trial for the underlying offense, the offender retains the right to a jury determination of aggravating circumstances. If the offender waives a jury determination of aggravating circumstances, the basic sentence may be altered upon a finding by the judge beyond a reasonable doubt of any aggravating circumstances surrounding the offense or concerning the offender.

C. For the purpose of this section, the following shall not be considered aggravating circumstances:

(1) the use of a firearm, as provided in Section 31-18-16 NMSA 1978;

(2) a prior felony conviction, as provided in Section 31-18-17 NMSA 1978;

(3) the commission of a crime motivated by hate, as provided in the Hate Crimes Act; or

(4) any evidence relating to the proof of an essential element of the offense.

D. Not less than five days prior to trial or a sentencing proceeding pursuant to a plea agreement, the state shall give notice that it intends to seek an increase to an offender's basic sentence based upon aggravating circumstances. The notice shall state the aggravating circumstances upon which the sentence increase is sought.

E. Presentation of evidence or statements regarding an alleged aggravating circumstance shall be made as soon as practicable following the determination of guilt or innocence.

F. If the judge determines to alter the basic sentence, the judge shall issue a brief statement of reasons for the alteration and incorporate that statement in the record of the case.

G. The amount of the alteration of the basic sentence for noncapital felonies shall be determined by the judge. However, in no case shall the alteration exceed one-third of the basic sentence; provided that when the offender is a serious youthful offender or a youthful offender, the judge may reduce the sentence by more than one-third of the basic sentence."

Chapter 163 Section 2 Laws 2009

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.

House Bill 208, aa

Approved April 7, 2009

LAWS 2009, CHAPTER 164

AN ACT

RELATING TO AVIATION; INCREASING THE LIMITS ON AIRPORT FACILITIES ELIGIBLE FOR AVIATION FUNDING.

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

Chapter 164 Section 1 Laws 2009

Section 1. Section 64-1-13 NMSA 1978 (being Laws 1963, Chapter 314, Section 5, as amended) is amended to read:

"64-1-13. AVIATION DIVISION--POWERS AND DUTIES.--The division shall:

A. cooperate with all public and private agencies and organizations, state, local and federal, to encourage and advance aviation in this state;

B. assemble and distribute to the public information relating to aviation, landing fields, beacons and other matters pertaining to aviation and may accept federal money made available for the advancement of aviation;

C. authorize expenditures of money from the state aviation fund for construction, development and maintenance of public-use airport facilities, except airports serving regularly scheduled interstate airlines using aircraft with a maximum passenger capacity of more than one hundred seats or a maximum payload capacity of more than twenty-five thousand pounds, including rural landing fields and airstrips. Expenditures shall be made according to the need for airport facilities as determined by the division;

D. operate under a director, appointed by the secretary, with the approval of the governor, who shall have an aviation background and meet other qualifications prescribed by the secretary;

E. establish policies for operation of the division;

F. promulgate rules for proper enforcement of aviation laws, except for those relating to common carriers;

G. provide for a surety bond, paid from the state aviation fund, issued by a corporate surety company licensed to do business in New Mexico, in an amount set by the state board of finance, on a form approved by the attorney general, conditioned upon the faithful performance of the duties of the personnel of the division who expend or authorize the expenditure of state funds;

H. have the following powers with respect to state airports:

(1) the division may, on behalf of and in the name of the state, out of appropriations and other money made available for such purposes, plan, construct, enlarge, improve, maintain, equip and operate airports and air navigation facilities, including the construction, equipment, maintenance and operation at such airports of buildings and other facilities for the servicing of aircraft or for the comfort and accommodation of air travelers. For such purposes, the division may, in the name of the state, by purchase, gift, devise, lease or otherwise, acquire property, real or personal, or

any interest in property, including easements in airport hazards or land outside the boundaries of an airport or airport site, as are necessary to permit safe and efficient operation of the airports or air navigation facilities. The division may enter into any contracts necessary to the execution of the powers granted it by this paragraph; and

(2) the division may accept, receive, receipt for, disburse and expend federal money and other money, public or private, made available to accomplish, in whole or in part, any of the purposes of this subsection. All federal money accepted under this subsection shall be accepted and expended by the division upon such terms and conditions as are prescribed by the United States. The division, on behalf of the state, may enter into contracts with the United States or with any person that may be required in connection with a grant or loan of federal money for airport or air navigation facility purposes. All money received by the division pursuant to this subsection is appropriated for the purpose for which the money was made available, to be disbursed or expended in accordance with the terms and conditions upon which the money was made available; provided that nothing contained in this section shall affect the power of a local government to contract with the United States or any person in connection with a grant or loan of money for airports or air navigation facilities in accordance with the terms and conditions upon which the funds were made available; and

I. have the power to engage in planning for the development of a system of public airports within the state."

Chapter 164 Section 2 Laws 2009

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.

House Bill 227

Approved April 7, 2009

LAWS 2009, CHAPTER 165

AN ACT

RELATING TO REAL PROPERTY; REQUIRING DISCLOSURE OF ESTIMATED FUTURE PROPERTY TAXES AND OTHER INFORMATION TO A BUYER OF RESIDENTIAL REAL PROPERTY; PROVIDING FOR A WAIVER; GRANTING IMMUNITY FROM LIABILITY.

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

Chapter 165 Section 1 Laws 2009

Section 1. Section 47-13-1 NMSA 1978 (being Laws 1991, Chapter 74, Section 1) is amended to read:

"47-13-1. SHORT TITLE.--Chapter 47, Article 13 NMSA 1978 may be cited as the "Real Estate Disclosure Act"."

Chapter 165 Section 2 Laws 2009

Section 2. A new section of the Real Estate Disclosure Act, Section 47-13-1.1 NMSA 1978, is enacted to read:

"47-13-1.1. DEFINITIONS.--As used in the Real Estate Disclosure Act:

A. "estimated amount of property tax levy" means the product of one-third of the listed price of the residential real property being sold or otherwise transferred in the transaction multiplied by the current property tax rates applicable to the property if those tax rates have been imposed in accordance with Section 7-38-34 NMSA 1978 for the current year for the county in which the property is located or, in all other cases, by the tax rates for the prior year;

B. "listed price" means the current price at which the residential property is being marketed;

C. "seller's broker" means a real estate broker acting on behalf of a residential property seller; and

D. "buyer's broker" means a real estate broker acting on behalf of a prospective residential property purchaser."

Chapter 165 Section 3 Laws 2009

Section 3. A new section of the Real Estate Disclosure Act, Section 47-13-4 NMSA 1978, is enacted to read:

"47-13-4. FINDING--DISCLOSURE OF INFORMATION REQUIRED IN CERTAIN REAL ESTATE TRANSACTIONS.--

A. The legislature finds that property tax levied on a residential property for the current year can be a misleading guide to property tax levies in the years following the sale of that property and that a prospective buyer needs information regarding the property tax obligation in the year following the property's sale to properly judge the affordability of a contemplated purchase.

B. Prior to accepting an offer to purchase, the property seller or the seller's broker shall:

(1) request from the county assessor the estimated amount of property tax levy with respect to the property and shall specify the listed price as the value of the property to be used in the estimate; and

(2) provide a copy of the assessor's response pursuant to Subsection D of this section in writing to the prospective buyer or the buyer's broker.

C. A buyer's broker shall provide to the prospective buyer the county assessor's estimated amount of property tax levy immediately upon receiving it from the property seller or the seller's broker. The prospective buyer shall acknowledge in writing the receipt of the estimated amount of property tax levy.

D. Upon request, a county assessor shall furnish in writing, pursuant to the provisions of Subsection E of this section, an estimated amount of property tax levy with respect to a residential property in the county, calculated at a property value specified by the requestor. The request shall be complied with by the close of business of the business day following the day the request is received. A county may satisfy this obligation through an internet site or other automated format that allows a user to print the requested estimated amount of property tax levy. A document associated with the request or the response is not a public record or a valuation record. County assessors shall not use information provided with a request, including the specified value, to assess the valuation of the property. Neither the county nor any jurisdiction levying a tax against residential property in the county is bound in any way by the estimate given.

E. A county assessor's estimated amount of property tax levy with respect to a residential property in the county shall contain the following:

(1) the actual amount of property tax levied for the property for the current calendar year if the tax rates for the current year have been imposed in accordance with Section 7-38-34 NMSA 1978 for the county in which the property is located or, in all other cases, the amount of property tax levied with respect to the property for the prior calendar year;

(2) the estimated amount of property tax levy, as calculated by the county assessor, for the property for the calendar year following the year in which the transaction takes place; and

(3) a disclaimer substantially similar to the following:

"The estimated amount of property tax levy is calculated using the stated price and estimates of the applicable tax rates. The county assessor is required by law to value the property at its "current and correct" value, which may differ from the listed price. Further, the estimated tax rates may be higher or lower than those

that will actually be imposed. Accordingly, the actual tax levy may be higher or lower than the estimated amount. New Mexico law requires your real estate broker or agent to provide you an estimate of the property tax levy on the property on which you have submitted or intend to submit an offer to purchase. All real estate brokers and agents who have complied with these disclosure requirements shall be immune from suit and liability arising from suit relating to the estimated amount of property tax levy."

F. A prospective buyer may waive the disclosure requirements of this section by signing a written document prior to the time the offer to purchase is to be made in which the buyer acknowledges that the required estimated amount of property tax levy is not readily available and waives disclosure of the estimated amount of property tax levy.

G. All property sellers and real estate brokers and agents who have complied with the provisions of this section shall be immune from suit and liability arising from or relating to the estimated amount of property tax levy.

H. The New Mexico real estate commission shall biannually inform all New Mexico real estate licensees of the statutory requirement for disclosure of the estimated amount of property tax levy to prospective residential property purchasers."

Chapter 165 Section 4 Laws 2009

Section 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.

HBIC/House Bill 261, aa

Approved April 7, 2009

LAWS 2009, CHAPTER 166

AN ACT

RELATING TO HEALTH INFORMATION; PROVIDING FOR THE USE, DISCLOSURE AND PROTECTION OF RECORD-LEVEL DATA.

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

Chapter 166 Section 1 Laws 2009

Section 1. Section 24-14A-2 NMSA 1978 (being Laws 1989, Chapter 29, Section 2, as amended) is amended to read:

"24-14A-2. DEFINITIONS.--As used in the Health Information System Act:

A. "aggregate data" means data that are obtained by combining like data in a manner that precludes specific identification of a single client or provider;

B. "commission" means the New Mexico health policy commission;

C. "data source" or data provider means a person that possesses health information, including any public or private sector licensed health care practitioner, primary care clinic, ambulatory surgery center, ambulatory urgent care center, ambulatory dialysis unit, home health agency, long-term care facility, hospital, pharmacy, third-party payer and any public entity that has health information;

D. "department" means the department of health;

E. "health information" or "health data" means any data relating to health care; health status, including environmental, social and economic factors; the health system; or health costs and financing;

F. "hospital" means any general or special hospital licensed by the department, whether publicly or privately owned;

G. "long-term care facility" means any skilled nursing facility or nursing facility licensed by the department, whether publicly or privately owned;

H. "record-level data" means a medical record that contains unique and nonaggregated data elements that relate to a single identifiable individual, provider or hospital; and

I. "third-party payer" means any public or private payer of health care services and includes health maintenance organizations and health insurers."

Chapter 166 Section 2 Laws 2009

Section 2. Section 24-14A-6 NMSA 1978 (being Laws 1989, Chapter 29, Section 6, as amended) is amended to read:

"24-14A-6. HEALTH INFORMATION SYSTEM--ACCESS.--

A. Access to data in the health information system shall be provided in accordance with regulations adopted by the commission pursuant to the Health Information System Act.

B. A data provider may obtain data it has submitted to the system, as well as aggregate data, but, except as provided in Subsections D and E of this section, it shall not have access to data submitted by another provider that is limited only to that provider. Except as provided in Subsections D and E of this section, in no event may a data provider obtain data regarding an individual patient except in instances where the data were originally submitted by the requesting provider. Prior to the release of any data, in any form, data sources shall be permitted the opportunity to verify the accuracy of the data pertaining to that data source. Data identified in writing as inaccurate shall be corrected prior to the data's release. Time limits shall be set for the submission and review of data by data sources, and penalties shall be established for failure to submit and review the data within the established time.

C. Any person may obtain any aggregate data.

D. Through a secure delivery or transmission process, the commission may share with the department record-level data that contain identifiable individual, provider or hospital information.

E. Through a secure delivery or transmission process, the commission may share record-level data with a federal agency that is authorized to collect, analyze or disseminate health information. The commission shall remove identifiable individual or provider information from the record-level data prior to its disclosure to the federal agency. In providing hospital information under an agreement or arrangement with a federal agency, the commission shall ensure that any identifiable hospital information disclosed is necessary for the agency's authorized use and that its disclosure meets with state and federal privacy and confidentiality laws, rules and regulations."

Chapter 166 Section 3 Laws 2009

Section 3. Section 24-14A-8 NMSA 1978 (being Laws 1989, Chapter 29, Section 8, as amended) is amended to read:

"24-14A-8. HEALTH INFORMATION SYSTEM--CONFIDENTIALITY.--

A. Health information collected and disseminated pursuant to the Health Information System Act is strictly confidential and shall not be a matter of public record or accessible to the public except as provided in Sections 24-14A-6 and 24-14A-7 NMSA 1978. No data source shall be liable for damages to any person for having furnished the information to the commission.

B. Record-level data provided to the department pursuant to Section 24-14A-6 NMSA 1978 are confidential. The department that receives record-level data shall not disclose the data except to the extent that they are included in a compilation of aggregate data.

C. The individual forms, electronic information or other forms of data collected by and furnished for the health information system shall not be public records subject to inspection pursuant to Section 14-2-1 NMSA 1978. Compilations of aggregate data prepared for release or dissemination from the data collected, except for a report prepared for an individual data provider or the provider's designee containing information concerning only its transactions, shall be public records."

House Bill 293, aa

Approved April 7, 2009

LAWS 2009, CHAPTER 167

AN ACT

RELATING TO TRANSPORTATION; AUTHORIZING THE DEPARTMENT OF TRANSPORTATION TO UTILIZE MONEY IN THE LOCAL GOVERNMENTS ROAD FUND FOR A FINANCIAL HARDSHIP MATCH REQUIREMENT IN CERTAIN CIRCUMSTANCES.

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

Chapter 167 Section 1 Laws 2009

Section 1. Section 67-3-28.2 NMSA 1978 (being Laws 1986, Chapter 20, Section 125, as amended) is amended to read:

"67-3-28.2. LOCAL GOVERNMENTS ROAD FUND CREATED--USES.--

A. There is created in the state treasury the "local governments road fund" to be administered by the department. All income received from investment of the fund shall be credited to the fund. No money in the fund shall be used by the department to administer any program, and except as provided in Subsection E of this section, no entity receiving a distribution pursuant to a program requiring matching funds shall use another distribution made pursuant to this section to meet the match required.

B. No more than five hundred thousand dollars (\$500,000) annually from the local governments road fund shall be used by the department to purchase at fair market value, for municipalities and counties that can demonstrate financial hardship as determined by the department, automotive, major road and miscellaneous equipment that would otherwise be sold at auction by the department as unusable for department purposes. The department shall adopt rules setting the procedure to carry out the purposes of this subsection.

C. Except for the amounts in Subsections B and E of this section, money in the local governments road fund shall be distributed in the following amounts for the specified purposes:

(1) forty-two percent for the cooperative agreements program, to be used solely for the cooperative agreements entered into pursuant to Section 67-3-28 NMSA 1978 and in accordance with the match authorized pursuant to Section 67-3-32 NMSA 1978; provided, however, that distribution amounts made pursuant to this paragraph in each year shall be based on the following allocations:

(a) thirty-three percent for agreements entered into with counties;

(b) forty-nine percent for agreements entered into with municipalities;

(c) fourteen percent for agreements entered into with school districts; and

(d) four percent for agreements entered into with other entities;

(2) sixteen percent for the municipal arterial program, to be used solely for the necessary project development, construction, reconstruction, improvement, maintenance, repair and right-of-way and material acquisition of and for those streets that are principal extensions of rural state highways and of other streets not on the state highway system but that qualify under the designated criteria established by the department. In entering into agreements with municipalities to provide funds for any project qualifying for the municipal arterial program, the department shall give preference to municipalities that contribute an amount equal to at least twenty-five percent of the project cost, including a contribution made through funding received pursuant to Subsection E of this section;

(3) sixteen percent for school bus routes, to be used solely for cooperative agreements entered into pursuant to Section 67-3-28 NMSA 1978 and in accordance with the match authorized pursuant to Section 67-3-32 NMSA 1978 for acquiring rights of way and constructing, maintaining, repairing, improving and paving school bus routes and public school parking lots; and

(4) twenty-six percent for the county arterial program, to be used for project development, construction, reconstruction, improvement, maintenance, repair and right-of-way and material acquisition of and for county roads for which individual counties have prioritized road projects. Prior to entering into any agreements for projects with the counties for the following fiscal year, in June of each year the department shall determine and certify the amount to which each county is entitled pursuant to the following schedule:

Road Mileage Category Based on

Number of Miles Maintained

By a County:

Entitlement to County:

400 miles or under

\$250 for each mile

800 miles

\$100,000 plus \$200 for each

mile over 400 miles

801 to 1,200 miles

\$180,000 plus \$150 for each

mile over 800 miles

1,201 to 1,600 miles

\$240,000 plus \$100 for each

mile over 1,200 miles

Over 1,600 miles

\$300,000 plus \$50 for each

mile over 1,600 miles.

If in any year there is an insufficient amount in the fund of the county arterial program to certify the total amount to which all counties are entitled, the department shall decrease the entitlement amount due to each county in the same proportion as the insufficiency is to the total entitlements to all counties. Distribution of an entitlement amount and an agreement entered into with a county for any of the purposes for which the money may be spent requires an amount from the county equal to at least twenty-five percent of the entitlement. The county contribution may be made through funds received pursuant to Subsection E of this section. Any uncommitted or unencumbered balance remaining in the county arterial program fund at the end of a fiscal year shall be transferred to the cooperative agreements program specified in Paragraph (1) of this subsection for additional funding of that program in the next fiscal year.

D. The department may transfer funds from the state road fund to the local governments road fund to facilitate cash flow for the funding of these local governments road projects. The administrator of the local governments road fund shall reimburse the state road fund in a timely manner for any such transfers.

E. The department may distribute up to one million dollars (\$1,000,000) per calendar year of the money in the local governments road fund to municipalities and counties that can demonstrate financial hardship, for use as all or a portion of the municipality's or county's matching fund requirements pursuant to this section. In order to qualify for matching funds under this subsection, a county or municipality shall

provide the department with a financial hardship qualification certificate issued by the department of finance and administration."

House Bill 308, aa

Approved April 7, 2009

LAWS 2009, CHAPTER 168

AN ACT

MAKING AN APPROPRIATION FOR THE PURCHASE OF ADJACENT LANDS, MATCHING FEDERAL FUNDS OR MAKING IMPROVEMENTS AT LEGISLATURE-APPROVED STATE PARKS FROM THE PROCEEDS OF THE DISPOSAL OF SURPLUS LAND IN MCKINLEY COUNTY OWNED BY THE STATE PARKS DIVISION OF THE ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT.

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

Chapter 168 Section 1 Laws 2009

Section 1. APPROPRIATION.--The proceeds from the disposal of the surplus property in McKinley county owned by the state parks division of the energy, minerals and natural resources department are appropriated to the state parks division of the energy, minerals and natural resources department for expenditure in fiscal years 2009 through 2019 for the purpose of matching federal funds or making improvements or purchasing adjacent lands at state parks or at other parks authorized or to be authorized for acquisition by the legislature. This appropriation is contingent upon legislative ratification and approval, during the first session of the forty-ninth legislature, of the disposal of the surplus McKinley county property. Any unexpended or unencumbered balance remaining at the end of fiscal year 2019 shall revert to the general fund.

House Bill 326

Approved April 7, 2009

LAWS 2009, CHAPTER 169

AN ACT

RELATING TO CONTRACT LAW; ENACTING THE UNIFORM ATHLETE AGENTS ACT; PROVIDING STANDARDS FOR REPRESENTATION OF STUDENT ATHLETES BY AGENTS; PRESCRIBING PENALTIES.

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

Chapter 169 Section 1 Laws 2009

Section 1. SHORT TITLE.--This act may be cited as the "Uniform Athlete Agents Act".

Chapter 169 Section 2 Laws 2009

Section 2. DEFINITIONS.--As used in the Uniform Athlete Agents Act:

A. "agency contract" means an agreement in which a student athlete authorizes a person to negotiate or solicit on behalf of the student athlete a professional-sports-services contract or an endorsement contract;

B. "athlete agent" means an individual who enters into an agency contract with a student athlete or, directly or indirectly, recruits or solicits a student athlete to enter into an agency contract. "Athlete agent" includes an individual who represents to the public that the individual is an athlete agent. "Athlete agent" does not include the spouse, parent, sibling, grandparent or guardian of a student athlete or an individual acting solely on behalf of a professional sports team or professional sports organization;

C. "athletic director" means an individual responsible for administering the overall athletic program of an educational institution or, if an educational institution has separately administered athletic programs for male students and female students, the athletic program for males or the athletic program for females, as appropriate;

D. "contact" means a communication, direct or indirect, between an athlete agent and a student athlete, to recruit or solicit the student athlete to enter into an agency contract;

E. "endorsement contract" means an agreement under which a student athlete is employed or receives consideration to use on behalf of the other party any value that the student athlete may have because of publicity, reputation, following or fame obtained because of athletic ability or performance;

F. "intercollegiate sport" means a sport played at the collegiate level for which eligibility requirements for participation by a student athlete are established by a national association for the promotion or regulation of collegiate athletics;

G. "person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government,

governmental subdivision, governmental agency, governmental instrumentality, public corporation or any other legal or commercial entity;

H. "professional-sports-services contract" means an agreement under which an individual is employed, or agrees to render services, as a player on a professional sports team, with a professional sports organization or as a professional athlete;

I. "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;

J. "registration" means registration as an athlete agent pursuant to the Uniform Athlete Agents Act;

K. "secretary" means the secretary of state;

L. "state" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States; and

M. "student athlete" means an individual who engages in, is eligible to engage in, or may be eligible in the future to engage in, any intercollegiate sport. If an individual is permanently ineligible to participate in a particular intercollegiate sport, the individual is not a student athlete for purposes of that sport.

Chapter 169 Section 3 Laws 2009

Section 3. SERVICE OF PROCESS--SUBPOENAS.--

A. By acting as an athlete agent in this state, a nonresident individual appoints the secretary as the individual's agent for service of process in any civil action in this state related to the individual's acting as an athlete agent in this state.

B. The secretary may issue subpoenas for any material that is relevant to the administration of the Uniform Athlete Agents Act.

Chapter 169 Section 4 Laws 2009

Section 4. ATHLETE AGENTS--REGISTRATION REQUIRED--VOID CONTRACTS.--

A. Except as otherwise provided in Subsection B of this section, an individual shall not act as an athlete agent in this state without holding a certificate of registration pursuant to Section 6 or 8 of the Uniform Athlete Agents Act.

B. Before being issued a certificate of registration, an individual may act as an athlete agent in this state for all purposes except signing an agency contract, if:

(1) a student athlete or another person acting on behalf of the student athlete initiates communication with the individual; and

(2) within seven days after an initial act as an athlete agent, the individual submits an application for registration as an athlete agent in this state.

C. An agency contract resulting from conduct in violation of this section is void and the athlete agent shall return any consideration received under the contract.

Chapter 169 Section 5 Laws 2009

Section 5. REGISTRATION AS ATHLETE AGENT--FORM--REQUIREMENTS.--

A. An applicant for registration shall submit an application for registration to the secretary in a form prescribed by the secretary. An application filed under this section is a public record. The application shall be in the name of an individual and, except as otherwise provided in Subsection B of this section, shall be signed or otherwise authenticated by the applicant under penalty of perjury and shall state or contain:

(1) the name of the applicant and the address of the applicant's principal place of business;

(2) the name of the applicant's business or employer, if applicable;

(3) any business or occupation engaged in by the applicant for the five years next preceding the date of submission of the application;

(4) a description of the applicant's:

(a) formal training as an athlete agent;

(b) practical experience as an athlete agent; and

(c) educational background relating to the applicant's activities as an athlete agent;

(5) the names and addresses of three individuals, not related to the applicant, who are willing to serve as references;

(6) the name, sport and last known team for each individual for whom the applicant acted as an athlete agent during the five years next preceding the date of submission of the application;

(7) the names and addresses of all persons who are:

(a) with respect to the athlete agent's business if it is not a corporation, partners, members, officers, managers, associates or profit-sharers of the business; and

(b) with respect to a corporation employing the athlete agent, officers, directors and any shareholders of the corporation having an interest of five percent or greater;

(8) whether the applicant or any person named pursuant to Paragraph (7) of this subsection has been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony, and identify the crime;

(9) whether there has been an administrative or judicial determination that the applicant or any person named pursuant to Paragraph (7) of this subsection has made a false, misleading, deceptive or fraudulent representation;

(10) any instance in which the conduct of the applicant or any person named pursuant to Paragraph (7) of this subsection resulted in the imposition of a sanction, suspension or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student athlete or educational institution;

(11) any sanction, suspension or disciplinary action taken against the applicant or any person named pursuant to Paragraph (7) of this subsection arising out of occupational or professional conduct; and

(12) whether there has been a denial of an application for, suspension or revocation of, or refusal to renew, the registration or licensure of the applicant or any person named pursuant to Paragraph (7) of this subsection as an athlete agent in any state.

B. An individual who has submitted an application for, and holds a certificate of, registration or licensure as an athlete agent in another state may submit a copy of the application and certificate in lieu of submitting an application in the form prescribed pursuant to Subsection A of this section. The secretary shall accept the application and the certificate from the other state as an application for registration in this state if the application to the other state:

(1) was submitted in the other state within six months next preceding the submission of the application in this state and the applicant certifies that the information contained in the application is current;

(2) contains information substantially similar to or more comprehensive than that required in an application submitted in this state; and

(3) was signed by the applicant under penalty of perjury.

Chapter 169 Section 6 Laws 2009

Section 6. CERTIFICATE OF REGISTRATION--ISSUANCE OR DENIAL--RENEWAL.--

A. Except as otherwise provided in Subsection B of this section, the secretary shall issue a certificate of registration to an individual who complies with Subsection A of Section 5 of the Uniform Athlete Agents Act or whose application has been accepted pursuant to Subsection B of that section.

B. The secretary may refuse to issue a certificate of registration if the secretary determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to act as an athlete agent. In making the determination, the secretary may consider whether the applicant has:

(1) been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony;

(2) made a materially false, misleading, deceptive or fraudulent representation in the application or as an athlete agent;

(3) engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity;

(4) engaged in conduct prohibited by Section 14 of the Uniform Athlete Agents Act;

(5) had a registration or licensure as an athlete agent suspended, revoked or denied or was refused renewal of registration or licensure as an athlete agent in any state;

(6) engaged in conduct the consequence of which was that a sanction, suspension or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event was imposed on a student athlete or educational institution;
or

(7) engaged in conduct that significantly adversely reflects on the applicant's credibility, honesty or integrity.

C. In making a determination under Subsection B of this section, the secretary shall consider:

(1) how recently the conduct occurred;

and (2) the nature of the conduct and the context in which it occurred;

(3) any other relevant conduct of the applicant.

D. An athlete agent may apply to renew a certificate of registration by submitting an application for renewal in a form prescribed by the secretary. An application filed under this section is a public record. The application for renewal shall be signed by the applicant under penalty of perjury and shall contain current information on all matters required in an original registration.

E. An individual who has submitted an application for renewal of registration or licensure in another state, in lieu of submitting an application for renewal in the form prescribed pursuant to Subsection D of this section, may file a copy of the application for renewal and a valid certificate of registration or licensure from the other state. The secretary shall accept the application for renewal from the other state as an application for renewal in this state if the application to the other state:

(1) was submitted in the other state within six months next preceding the filing in this state and the applicant certifies the information contained in the application for renewal is current;

(2) contains information substantially similar to or more comprehensive than that required in an application for renewal submitted in this state; and

(3) was signed by the applicant under penalty of perjury.

F. A certificate of registration or a renewal of a certificate of registration is valid for two years.

Chapter 169 Section 7 Laws 2009

Section 7. SUSPENSION, REVOCATION OR REFUSAL TO RENEW REGISTRATION.--

A. The secretary may suspend, revoke or refuse to renew a certificate of registration for conduct that would have justified denial of registration pursuant to Subsection B of Section 6 of the Uniform Athlete Agents Act.

B. The secretary may deny, suspend, revoke or refuse to renew a certificate of registration or licensure only after proper notice and an opportunity for a hearing.

Chapter 169 Section 8 Laws 2009

Section 8. TEMPORARY REGISTRATION.--The secretary may issue a temporary certificate of registration while an application for registration or renewal of registration is pending.

Chapter 169 Section 9 Laws 2009

Section 9. REGISTRATION AND RENEWAL FEES.--An application for registration or renewal of registration shall be accompanied by a fee in the following amount:

- A. two hundred fifty dollars (\$250) for an initial application for registration;
- B. two hundred dollars (\$200) for an application for registration based upon a certificate of registration or licensure issued by another state;
- C. two hundred fifty dollars (\$250) for an application for renewal of registration; or
- D. two hundred dollars (\$200) for an application for renewal of registration based upon an application for renewal of registration or licensure submitted in another state.

Chapter 169 Section 10 Laws 2009

Section 10. REQUIRED FORM OF CONTRACT.--

- A. An agency contract shall be in a record, signed or otherwise authenticated by the parties.
- B. An agency contract shall state or contain:
 - (1) the amount and method of calculating the consideration to be paid by the student athlete for services to be provided by the athlete agent under the contract and any other consideration the athlete agent has received or will receive from any other source for entering into the contract or for providing the services;
 - (2) the name of any person not listed in the application for registration or renewal of registration who will be compensated because the student athlete signed the agency contract;
 - (3) a description of any expenses that the student athlete agrees to reimburse;
 - (4) a description of the services to be provided to the student athlete;

(5) the duration of the contract; and

(6) the date of execution.

C. An agency contract shall contain, in close proximity to the signature of the student athlete, a conspicuous notice in boldface type in capital letters stating:

"WARNING TO STUDENT ATHLETE

IF YOU SIGN THIS CONTRACT:

(1) YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT ATHLETE IN YOUR SPORT;

(2) IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN SEVENTY-TWO HOURS AFTER ENTERING INTO THIS CONTRACT, BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR ATHLETIC DIRECTOR; AND

(3) YOU MAY CANCEL THIS CONTRACT WITHIN FOURTEEN DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY."

D. An agency contract that does not conform to this section is voidable by the student athlete. If a student athlete voids an agency contract, the student athlete is not required to pay any consideration under the contract or to return any consideration received from the athlete agent to induce the student athlete to enter into the contract.

E. The athlete agent shall give a record of the signed or otherwise authenticated agency contract to the student athlete at the time of execution.

Chapter 169 Section 11 Laws 2009

Section 11. NOTICE TO EDUCATIONAL INSTITUTION.--

A. Within seventy-two hours after entering into an agency contract or before the next scheduled athletic event in which the student athlete may participate, whichever occurs first, the athlete agent shall give notice in a record of the existence of the contract to the athletic director of the educational institution at which the student athlete is enrolled or the athlete agent has reasonable grounds to believe the student athlete intends to enroll.

B. Within seventy-two hours after entering into an agency contract or before the next athletic event in which the student athlete may participate, whichever occurs first, the student athlete shall inform the athletic director of the educational institution at which the student athlete is enrolled that the student athlete has entered into an agency contract.

Chapter 169 Section 12 Laws 2009

Section 12. STUDENT ATHLETE'S RIGHT TO CANCEL.--

A. A student athlete may cancel an agency contract by giving notice of the cancellation to the athlete agent in a record within fourteen days after the contract is signed.

B. A student athlete shall not waive the right to cancel an agency contract.

C. If a student athlete cancels an agency contract, the student athlete is not required to pay any consideration under the contract or to return any consideration received from the athlete agent to induce the student athlete to enter into the contract.

Chapter 169 Section 13 Laws 2009

Section 13. REQUIRED RECORDS.--

A. An athlete agent shall retain the following records for a period of five years:

(1) the name and address of each individual represented by the athlete agent;

(2) any agency contract entered into by the athlete agent; and

(3) any direct costs incurred by the athlete agent in the recruitment or solicitation of a student athlete to enter into an agency contract.

B. Records required pursuant to Subsection A of this section to be retained are open to inspection by the secretary during normal business hours.

Chapter 169 Section 14 Laws 2009

Section 14. PROHIBITED CONDUCT.--

A. An athlete agent, with the intent to induce a student athlete to enter into an agency contract, shall not:

(1) give any materially false or misleading information or make a materially false promise or representation;

(2) furnish anything of value to a student athlete before the student athlete enters into the agency contract; or

(3) furnish anything of value to any individual other than the student athlete or another registered athlete agent.

B. An athlete agent shall not intentionally:

(1) initiate contact with a student athlete unless registered pursuant to the Uniform Athlete Agents Act;

(2) refuse or fail to retain or permit inspection of the records required to be retained pursuant to Section 13 of the Uniform Athlete Agents Act;

(3) fail to register when required pursuant to Section 4 of the Uniform Athlete Agents Act;

(4) provide materially false or misleading information in an application for registration or renewal of registration;

(5) predate or postdate an agency contract; or

(6) fail to notify a student athlete before the student athlete signs or otherwise authenticates an agency contract for a particular sport that the signing or authentication may make the student athlete ineligible to participate as a student athlete in that sport.

Chapter 169 Section 15 Laws 2009

Section 15. CRIMINAL PENALTIES.--An athlete agent who violates the provisions of Section 14 of the Uniform Athlete Agents Act is guilty of a misdemeanor and upon conviction shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

Chapter 169 Section 16 Laws 2009

Section 16. CIVIL REMEDIES.--

A. An educational institution has a right of action against an athlete agent for damages caused by a violation of the provisions of the Uniform Athlete Agents Act. In an action pursuant to this section, the court may award to the prevailing party costs and reasonable attorney fees.

B. Damages of an educational institution pursuant to Subsection A of this section include losses and expenses incurred because, as a result of the conduct of an athlete agent, the educational institution was injured by a violation of the Uniform Athlete Agents Act or was penalized, disqualified or suspended from participation in athletics by a national association for the promotion and regulation of athletics, by an

athletic conference or by reasonable self-imposed disciplinary action taken to mitigate sanctions likely to be imposed by such an organization.

C. A right of action pursuant to this section does not accrue until the educational institution discovers or by the exercise of reasonable diligence would have discovered the violation by the athlete agent.

D. The Uniform Athlete Agents Act does not restrict rights, remedies or defenses of any person under law or equity.

Chapter 169 Section 17 Laws 2009

Section 17. ADMINISTRATIVE PENALTY.--The secretary may assess a civil penalty against an athlete agent not to exceed twenty-five thousand dollars (\$25,000) for a violation of the Uniform Athlete Agents Act.

Chapter 169 Section 18 Laws 2009

Section 18. UNIFORMITY OF APPLICATION AND CONSTRUCTION.--In applying and construing the Uniform Athlete Agents 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 169 Section 19 Laws 2009

Section 19. FEDERAL ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.--The provisions of the Uniform Athlete Agents Act governing the legal effect, validity or enforceability of electronic records or signatures, and of contracts formed or performed with the use of such records or signatures, conform to the requirements of Section 102 of the federal Electronic Signatures in Global and National Commerce Act and supersede, modify and limit the federal Electronic Signatures in Global and National Commerce Act.

Chapter 169 Section 20 Laws 2009

Section 20. SEVERABILITY.--If any provision of the Uniform Athlete Agents Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of that act that can be given effect without the invalid provision or application, and to this end the provisions of that act are severable.

Chapter 169 Section 21 Laws 2009

Section 21. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.

House Bill 330, aa

Approved April 7, 2009

LAWS 2009, CHAPTER 170

AN ACT

RELATING TO PUBLIC EMPLOYEES; INCREASING THE MILEAGE RATE UNDER THE PER DIEM AND MILEAGE ACT.

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

Chapter 170 Section 1 Laws 2009

Section 1. Section 10-8-4 NMSA 1978 (being Laws 1963, Chapter 31, Section 3, as amended) is amended to read:

"10-8-4. PER DIEM AND MILEAGE RATES--IN LIEU OF PAYMENT.--

A. Notwithstanding any other specific law to the contrary and except as provided in Subsection I of this section, every nonsalaried public officer shall receive either reimbursement pursuant to the provisions of Subsection K or L of this section or up to ninety-five dollars (\$95.00) per diem expenses:

(1) for each board or committee meeting attended; or

(2) for each day spent in discharge of official duties for travel within the state but away from the officer's home.

Nonsalaried public officers who travel to attend a board or committee meeting may elect to be reimbursed per diem under either Paragraph (1) or (2) of this subsection.

B. Every salaried public officer or employee who is traveling within the state but away from the officer's or employee's home and designated post of duty on official business shall receive either reimbursement pursuant to the provisions of Subsection K or L of this section or:

(1) up to eighty-five dollars (\$85.00) per diem expenses for each day spent in the discharge of official duties for a salaried public officer or employee of a local public body or state agency. If the secretary finds that a per diem allowance of eighty-five dollars (\$85.00) is inadequate for reimbursement of expenses in any

municipality of this state, the secretary may authorize the reimbursement of per diem for travel to the municipality not to exceed one hundred thirty-five dollars (\$135); or

(2) up to eighty-five dollars (\$85.00) per diem expenses for each day spent in the discharge of official duties for a salaried public officer or employee of a public post-secondary educational institution. If the governing board finds that a per diem allowance of eighty-five dollars (\$85.00) is inadequate for reimbursement of expenses in any municipality of this state, the governing board may authorize the reimbursement of per diem for travel to the municipality not to exceed one hundred thirty-five dollars (\$135).

C. Every public officer or employee shall receive either reimbursement pursuant to the provisions of Subsection K or L of this section or:

(1) for public officers or employees of a state agency or local public body, up to one hundred fifteen dollars (\$115) per diem expenses for each day of travel outside the state on official business. If the secretary finds that a per diem allowance of one hundred fifteen dollars (\$115) is inadequate for out-of-state travel to a geographical area, the secretary may authorize per diem not to exceed two hundred fifteen dollars (\$215) for out-of-state travel to that geographical area; provided that the secretary may authorize per diem for travel to a locality inside or outside the continental United States for a public officer or employee who is reimbursed solely from federal funds in accordance with the rate allowed by the federal government for travel to that locality. In lieu of per diem, a person trained in the field of accountancy and performing duties in that field of training as an employee while assigned for periods exceeding three weeks per assignment to travel out of state on official business may receive either reimbursement pursuant to the provisions of Subsection K of this section or actual expenses not to exceed two hundred fifteen dollars (\$215) per day. Expenses shall be substantiated in accordance with rules promulgated by the department of finance and administration. The secretary may promulgate rules defining what constitutes out-of-state travel for purposes of the Per Diem and Mileage Act; or

(2) for public officers or employees of a public post-secondary educational institution, up to one hundred fifteen dollars (\$115) per diem expenses for each day of travel outside the state on official business. If the governing board finds that a per diem allowance of one hundred fifteen dollars (\$115) is inadequate for out-of-state travel to a geographical area, the governing board may authorize per diem not to exceed two hundred fifteen dollars (\$215) for out-of-state travel to that geographical area; provided that the governing board may authorize per diem for travel to a locality inside or outside the continental United States for a public officer or employee who is reimbursed solely from federal funds in accordance with the rate allowed by the federal government for travel to that locality. Expenses shall be substantiated in accordance with rules promulgated by the governing board. The governing board may promulgate rules defining what constitutes out-of-state travel for purposes of the Per Diem and Mileage Act.

D. Every public officer or employee shall receive up to the internal revenue service standard mileage rate set January 1 of the previous year for each mile traveled in a privately owned vehicle or eighty-eight cents (\$.88) a mile for each mile traveled in a privately owned airplane if the travel is necessary to the discharge of the officer's or employee's official duties and if the private conveyance is not a common carrier; provided, however, that only one person shall receive mileage for each mile traveled in a single privately owned vehicle or airplane, except in the case of common carriers, in which case the person shall receive the cost of the ticket in lieu of the mileage allowance.

E. The per diem and mileage or per diem and cost of tickets for common carriers paid to salaried public officers or employees is in lieu of actual expenses for transportation, lodging and subsistence.

F. In addition to the in-state per diem set forth in this section, the department of finance and administration, by rule, may authorize a flat subsistence rate in the amount set by the legislature in the general appropriation act for commissioned officers of the New Mexico state police in accordance with rules promulgated by the department of finance and administration.

G. In lieu of the in-state per diem set in Subsection B of this section, the department of finance and administration may, by rule, authorize a flat monthly subsistence rate for certain employees of the department of transportation, provided that the payments made under this subsection shall not exceed the maximum amount that would be paid under Subsection B of this section.

H. Per diem received by nonsalaried public officers for travel on official business or in the discharge of their official duties, other than attending a board or committee meeting, and per diem received by public officers and employees for travel on official business shall be prorated in accordance with rules of the department of finance and administration or the governing board.

I. The provisions of Subsection A of this section do not apply to payment of per diem expense to a nonsalaried public official of a municipality for attendance at board or committee meetings held within the boundaries of the municipality.

J. In addition to any other penalties prescribed by law for false swearing on an official voucher, it shall be cause for removal or dismissal from office.

K. With prior written approval of the secretary or the secretary's designee or the local public body, a nonsalaried public officer of a state agency or local public body, a salaried public officer of a state agency or local public body or a salaried employee of a state agency or local public body is entitled to per diem expenses under this subsection and shall receive:

(1) reimbursement for actual expenses for lodging; and

(2) reimbursement for actual expenses for meals not to exceed thirty dollars (\$30.00) per day for in-state travel and forty-five dollars (\$45.00) per day for out-of-state travel.

L. With prior written approval of the governing board or its designee, a nonsalaried public officer of a public post-secondary educational institution, a salaried public officer of a public post-secondary educational institution or a salaried employee of a public post-secondary educational institution is entitled to per diem expenses under this subsection and shall receive:

(1) reimbursement for actual expenses for lodging; and

(2) reimbursement for actual expenses for meals not to exceed thirty dollars (\$30.00) per day for in-state travel and forty-five dollars (\$45.00) per day for out-of-state travel."

House Bill 336, aa

Approved April 7, 2009

LAWS 2009, CHAPTER 171

AN ACT

RELATING TO TRANSPORTATION; AUTHORIZING THE DEPARTMENT OF TRANSPORTATION TO DONATE SURPLUS PERSONAL PROPERTY OR MATERIALS TO LOCAL GOVERNMENT ENTITIES IN THE STATE IN CERTAIN CIRCUMSTANCES.

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

Chapter 171 Section 1 Laws 2009

Section 1. A new section of Chapter 67, Article 3 NMSA 1978 is enacted to read:

"DISPOSITION OF SURPLUS PERSONAL PROPERTY OR MATERIALS.--

A. The department may donate available surplus personal property or materials to a local government entity to repair damage to public roads, highways and bridges in New Mexico resulting from natural or man-made causes if:

(1) the request is made by a local government entity, including a municipality, county, public school or tribal government, that certifies to the department that the local government entity does not have the financial or physical resources to

repair sudden and unforeseen damage to a public road, highway or bridge within its jurisdiction;

(2) the local government entity certifies that the damage was due to unforeseen natural or man-made causes, including bad weather, an accident or other catastrophic event, and that the damage creates a risk to public safety that requires immediate action;

(3) the local government entity certifies that it will use the donated property or materials only for the purpose of making the repairs needed to address the emergency; and

(4) the department determines that donation of the personal property or materials will not affect the department's ability to carry out its statutory obligations.

B. Upon receipt of a request for aid under this section, the department shall direct the highway district closest to the requesting local government entity to review the district's stores of construction and road maintenance materials to determine whether there is any surplus personal property or materials available to donate to the local government entity to address the emergency.

C. If a determination is made that surplus personal property or materials may be donated, the department shall prepare documentation that:

(1) describes the property or materials donated;

(2) identifies the amount of property or materials donated; and

(3) provides an estimate of the fair market value of the property or materials donated.

D. Upon delivery of the property or materials, the department shall obtain a receipt from the representative of the local government entity that evidences delivery pursuant to this section of law.

E. Within thirty days of a donation pursuant to this section, the department shall provide a report to the department of finance and administration that includes all certifications and representations made by the local government entity to request a donation of surplus materials, an estimate of the fair market value of the property donated and evidence that the donated property was delivered to and accepted by the requesting local government entity.

F. Within thirty days of acceptance of property or materials donated pursuant to this section, a local government entity shall submit a report to the

department of finance and administration that certifies that the property was used in conformity with the requirements of this section."

House Bill 350

Approved April 7, 2009

LAWS 2009, CHAPTER 172

AN ACT

RELATING TO ECONOMIC DEVELOPMENT; INCREASING THE LIMIT ON THE FUNDS THAT MAY BE EXPENDED BY A LOCAL GOVERNMENT PURSUANT TO THE LOCAL ECONOMIC DEVELOPMENT ACT; INCREASING THE TYPES OF RESIDENTIAL PROPERTY THAT MAY BE INCLUDED IN BUSINESS IMPROVEMENT DISTRICTS.

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

Chapter 172 Section 1 Laws 2009

Section 1. Section 5-10-4 NMSA 1978 (being Laws 1993, Chapter 297, Section 4, as amended) is amended to read:

"5-10-4. ECONOMIC DEVELOPMENT PROJECTS--RESTRICTIONS ON PUBLIC EXPENDITURES OR PLEDGES OF CREDIT.--

A. No local or regional government shall provide public support for economic development projects as permitted pursuant to Article 9, Section 14 of the constitution of New Mexico except as provided in the Local Economic Development Act or as otherwise permitted by law.

B. The total amount of public money expended and the value of credit pledged in the fiscal year in which that money is expended by a local government for economic development projects pursuant to Article 9, Section 14 of the constitution of New Mexico and the Local Economic Development Act shall not exceed ten percent of the annual general fund expenditures of the local government in that fiscal year. The limits of this subsection shall not apply to:

(1) the value of any land or building contributed to any project pursuant to a project participation agreement;

(2) revenue generated through the imposition of the municipal infrastructure gross receipts tax pursuant to the Municipal Local Option Gross Receipts

Taxes Act for furthering or implementing economic development plans and projects as defined in the Local Economic Development Act or projects as defined in the Statewide Economic Development Finance Act; provided that no more than the greater of fifty thousand dollars (\$50,000) or ten percent of the revenue collected shall be used for promotion and administration of or professional services contracts related to the implementation of any such economic development plan adopted by the governing body;

(3) revenue generated through the imposition of a county infrastructure gross receipts tax pursuant to the County Local Option Gross Receipts Taxes Act for furthering or implementing economic development plans and projects as defined in the Local Economic Development Act or projects as defined in the Statewide Economic Development Finance Act; provided that no more than the greater of fifty thousand dollars (\$50,000) or ten percent of the revenue collected shall be used for promotion and administration of or professional services contracts related to the implementation of any such economic development plan adopted by the governing body;

(4) the proceeds of a revenue bond issue to which municipal infrastructure gross receipts tax revenue is pledged;

(5) the proceeds of a revenue bond issue to which county infrastructure gross receipts tax revenue is pledged; or

(6) funds donated by private entities to be used for defraying the cost of a project.

C. A regional or local government that generates revenue for economic development projects to which the limits of Subsection B of this section do not apply shall create an economic development fund into which such revenues shall be deposited. The economic development fund and income from the economic development fund shall be deposited as provided by law. Money in the economic development fund may be expended only as provided in the Local Economic Development Act or the Statewide Economic Development Finance Act.

D. In order to expend money from an economic development fund for arts and cultural district purposes or cultural facilities, the governing body of a municipality or county that has imposed a municipal or county local option infrastructure gross receipts tax for furthering or implementing economic development plans and projects, as defined in the Local Economic Development Act, or projects, as defined in the Statewide Economic Development Finance Act, by referendum of the majority of the voters voting on the question approving the ordinance imposing the municipal or county infrastructure gross receipts tax before June 30, 2007 shall be required to adopt a resolution. The resolution shall call for an election to approve arts and cultural districts as a qualifying purpose and cultural facilities as a qualifying entity before any revenue generated by the municipal or county local option gross receipts tax for furthering or implementing

economic development plans and projects, as defined in the Local Economic Development Act, or projects, as defined in the Statewide Economic Development Finance Act, can be expended from the economic development fund for arts and cultural district purposes or cultural facilities.

E. 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 approving arts and cultural districts as a qualifying purpose and cultural facilities as a qualifying entity eligible to utilize revenue generated by the Municipal Local Option Gross Receipts Taxes Act or the County Local Option Gross Receipts Taxes Act for furthering or implementing economic development plans and projects as defined in the Local Economic Development Act or projects as defined in the Statewide Economic Development Finance Act.

F. The question shall be submitted to the voters of the municipality or county as a separate question at a regular municipal or county election or at a special election called for that purpose by the governing body. A special municipal election shall be called, conducted and canvassed as provided in the Municipal Election Code. A special county election shall be called, conducted and canvassed in substantially the same manner as provided by law for general elections.

G. If a majority of the voters voting on the question approves the ordinance adding arts and cultural districts and cultural facilities as an approved use of the local option municipal or county economic development infrastructure gross receipts tax fund, the ordinance shall become effective on July 1 or January 1, whichever date occurs first after the expiration of three months from the date of the adopted ordinance. The ordinance shall include the effective date."

Chapter 172 Section 2 Laws 2009

Section 2. Section 3-63-5 NMSA 1978 (being Laws 1988, Chapter 32, Section 5, as amended) is amended to read:

"3-63-5. DISTRICT--AUTHORITY--CREATION.--

A. A district shall assess a business improvement benefit fee on any real property or business located within the district.

B. A district shall include any real property or business that benefits by the improvements set out in the business improvement district plan and that is located within the district's geographic boundaries.

C. The district benefit fee assessment schedule shall not include:

(1) governmentally owned real property;

(2) residential real property that is not multifamily residential rental property with at least four units or homeowners associations of multifamily ownership properties;

(3) real property owned by a nonprofit corporation; or

(4) residential real property, located within an existing district, that became eligible for a business improvement benefit fee assessment after the district was created, unless the ordinance that created the district is amended to include the new business or property after notice is provided and a hearing is held in accordance with Section 3-63-10 NMSA 1978.

D. A district may be created by petition of real property owners or by petition of business owners in a proposed district after notice and public hearing."

Chapter 172 Section 3 Laws 2009

Section 3. Section 3-63-13 NMSA 1978 (being Laws 1988, Chapter 32, Section 13, as amended) is amended to read:

"3-63-13. ANNUAL ASSESSMENT--SPECIAL ACCOUNT.--

A. The council, upon recommendation of the management committee, may annually assess a business improvement benefit fee as defined by the ordinance upon all real property owners and business owners, exclusive of:

(1) governmentally owned real property;

(2) residential real property that is not multifamily residential rental property with at least four units or homeowners associations of multifamily ownership properties;

(3) real property owned by a nonprofit corporation; or

(4) residential real property, located within an existing district, that became eligible for a business improvement benefit fee assessment after the district was created, unless the ordinance that created the district is amended to include the new business or property after notice is provided and a hearing is held in accordance with Section 3-63-10 NMSA 1978.

B. The council may make reasonable classifications regarding real property owners located within the district. The annual assessment may be based on the amount of space used for business purposes, street front footage, building or land square footage or such other factors or combination of factors as shall be deemed reasonable. The annual assessment shall be in addition to any other incorporated

municipal-imposed license fees or other taxes, fees or other charges assessed or levied for the general benefit and use of the incorporated municipality.

C. All money received by the municipality from the district assessment shall be held in a special account for the benefit of the district.

D. In the case of a district that was created by a majority of real property owners, the amount owed by a commercial tenant shall be proportional to the square footage of space that the tenant rents but shall not be more than seventy-five percent of the total business improvement benefit fee assessed on the property. The property owner shall pay at least twenty-five percent of the business improvement benefit fee.

E. In the case of a district that was created by a majority of businesses, the business improvement benefit fee shall be collected at the same time that the real property owner's property taxes are collected. Businesses shall be assessed for one hundred percent of the business fee assessed to the property."

House Bill 377, aa

Approved April 7, 2009

LAWS 2009, CHAPTER 173

AN ACT

RELATING TO ELECTIONS; PROVIDING THAT A CONTRACT BETWEEN THE STATE BOARD OF FINANCE AND A COUNTY FOR THE LEASE PURCHASE OF ELECTRONIC VOTING SYSTEMS MAY BE RENEGOTIATED TO INCLUDE CERTAIN CONTRACT TERMINATION PROVISIONS.

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

Chapter 173 Section 1 Laws 2009

Section 1. A new section of the Election Code, Section 1-9-17.1 NMSA 1978, is enacted to read:

"1-9-17.1. ELECTRONIC VOTING SYSTEMS--RENEGOTIATION OF LEASE-PURCHASE CONTRACT.--A lease-purchase contract for an electronic voting system entered into between the state board of finance and a county pursuant to Section 1-19-17 NMSA 1978, after a renegotiation pursuant to Paragraph (5) of Subsection B of that section, may include provisions providing that, upon the transfer of the ownership in the electronic voting systems to the state board of finance, the contract shall be terminated and no additional payments from the county shall be due. The state board of finance

may dispose of electronic voting systems acquired pursuant to this subsection in any manner that is consistent with the interests of the state."

House Bill 387

Approved April 7, 2009

LAWS 2009, CHAPTER 174

AN ACT

RELATING TO PUBLIC HEALTH; PROVIDING FOR COURT-ORDERED TREATMENT OR ISOLATION UNTIL COMPLETION OF THERAPY FOR PERSONS DEEMED TO POSE A RISK OF TUBERCULOSIS TRANSMISSION TO MEMBERS OF THE PUBLIC, RELAPSE OR DEVELOPMENT OF THERAPY-RESISTANCE; ENACTING A SECTION OF THE PUBLIC HEALTH ACT.

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

Chapter 174 Section 1 Laws 2009

Section 1. A new section of the Public Health Act is enacted to read:

"PROTOCOL FOR MANAGEMENT OF INFECTIOUS FORMS OF TUBERCULOSIS.--

A. When a physician or other person knows that a person has an infectious form of tuberculosis, the physician or other person shall promptly notify the department.

B. Upon receiving notification that a person has an infectious form of 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. When the department has knowledge that a person who has an infectious form of tuberculosis has failed to comply with the department's treatment plan as described in Subsection B of this section, the department shall petition the court for an order of protection for the person who has an infectious form of 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.

D. The petition for an order of protection shall be made under oath or shall be accompanied by a sworn affidavit setting out specific facts showing that the person has an infectious form of tuberculosis.

E. The petition for an order of protection shall state that the person for whom the order is sought:

(1) has an infectious form of tuberculosis or presents a substantial likelihood of having an infectious form of 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 an order of protection, 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 an infectious form of 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 temporary order of protection 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 temporary order of protection, notice of hearing and an advisement of the terms of the order of protection, including the rights of the person alleged to have an infectious form of tuberculosis to representation and re-petition for termination of an order of protection, to be immediately served on the person alleged to have an infectious form of tuberculosis; and

(3) within five days after the granting of the temporary order of protection, hold an evidentiary hearing to determine if the court shall continue the order of protection.

G. A person held pursuant to a temporary order of protection 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 temporary order of protection 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 temporary 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 order of protection for the person who has an infectious form of tuberculosis until completion of therapy, as deemed by the department. The court shall order regular review of the order by providing the person under an order of protection with a subsequent hearing within ninety days of the temporary order's issuance and every ninety days thereafter. The order of protection 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 an order of protection has not completed therapy; or

(2) exceptional circumstances exist warranting the termination of the temporary order of protection.

J. The provisions of this section do not permit the forcible administration of medications.

K. The proceedings of any hearing held pursuant to the 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.

L. A person who in good faith reports that another person has an infectious form of tuberculosis shall not be held liable for civil damages as a result of the report; provided that the person reported as having an infectious form of 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.

M. For purposes of this section:

(1) "completion of therapy" means completion of the prescribed therapy, as determined by the department based upon published national consensus tuberculosis treatment guidelines;

(2) "court" means the district court of the judicial district where the person who is alleged to have an infectious form of tuberculosis resides or is found;

(3) "department" means the department of health or a person designated by the secretary of health to carry out the duties provided in this section;

(4) "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;

(5) "infectious form of tuberculosis" means a form of tuberculosis disease that has been determined, through whichever diagnostic procedures the department deems appropriate, to be in a communicable or infectious state because the patient is capable of expelling tubercle bacilli into the air; 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 monitored by a security officer;

(d) isolation in a state health care facility negative pressure room with appropriate security provisions; or

(e) isolation in a prison or detention center negative pressure room with an appropriate level of medical care."

Approved April 7, 2009

LAWS 2009, CHAPTER 175

AN ACT

RELATING TO TAXATION; CREATING AN OPTIONAL DESIGNATION FOR A PERSONAL INCOME TAX CONTRIBUTION FOR THE OPERATION, MAINTENANCE AND IMPROVEMENT OF THE VIETNAM VETERANS MEMORIAL STATE PARK NEAR ANGEL FIRE; PROVIDING FOR A DISTRIBUTION.

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

Chapter 175 Section 1 Laws 2009

Section 1. A new section of the Tax Administration Act is enacted to read:

"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 the Income Tax Act 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 175 Section 2 Laws 2009

Section 2. A new section of the Income Tax Act is enacted to read:

"OPTIONAL DESIGNATION OF TAX REFUND CONTRIBUTION--VIETNAM VETERANS MEMORIAL STATE PARK.--

A. Except as otherwise provided in Subsection C of this section, any individual whose state income tax liability after application of allowable credits and tax rebates in any year is lower than the amount of money held by the department to the credit of such individual for that tax year may designate any portion of the income tax refund due to the individual to be paid to the 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. 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 State Park - Check []
if you wish to contribute a part or all of your tax
refund to the state parks division of the energy,
minerals and natural resources department for the
operation, maintenance and improvement of the
Vietnam Veterans Memorial State Park 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."

Chapter 175 Section 3 Laws 2009

Section 3. APPLICABILITY.--The provisions of this act apply to taxable years beginning on or after January 1, 2010.

HTRC/House Bill 407

Approved April 7, 2009

LAWS 2009, CHAPTER 176

AN ACT

RELATING TO PROFESSIONAL LICENSING; AMENDING A QUALIFICATION FOR LICENSURE AS A NAPRAPATH.

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

Chapter 176 Section 1 Laws 2009

Section 1. Section 61-12E-5 NMSA 1978 (being Laws 2003, Chapter 60, Section 5) is amended to read:

"61-12E-5. EDUCATION--PROFESSIONAL QUALIFICATIONS.--

A. A person shall be licensed as a naprapath if that person:

(1) is at least twenty-one years of age;

(2) has graduated from a two-year college-level program or an equivalent program approved by the superintendent after consultation with the board;

(3) has completed, in not less than three years, a four-year academic curriculum in naprapathy, that is approved by the board, and the person has successfully completed one hundred thirty-two hours of academic credit, including sixty-six credit hours in basic science courses with emphasis on the study of connective tissue, and sixty-six credit hours in clinical naprapathic science, theory and application;

(4) has passed the national board of naprapathic examiners examination or holds a valid license as a naprapath in another jurisdiction; and

(5) has met all other requirements of the Naprapathic Practice Act.

B. The superintendent or the board may require a personal interview with an applicant to evaluate that person's qualifications for a license."

Chapter 176 Section 2 Laws 2009

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.

House Bill 413

Approved April 7, 2009

LAWS 2009, CHAPTER 177

AN ACT

RELATING TO LAW ENFORCEMENT; PROHIBITING BIAS-BASED PROFILING;
REQUIRING POLICIES AND PROCEDURES TO ELIMINATE PROFILING;
PROVIDING FOR ATTORNEY GENERAL OVERSIGHT.

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

Chapter 177 Section 1 Laws 2009

Section 1. SHORT TITLE.--This act may be cited as the "Prohibition of Profiling Practices Act".

Chapter 177 Section 2 Laws 2009

Section 2. PROFILING PRACTICES PROHIBITED.--

A. In conducting a routine or spontaneous investigatory activity, including an interview, a detention, a traffic stop, a pedestrian stop, a frisk or other type of bodily search or a search of personal or real property, or in determining the scope, substance or duration of the routine or spontaneous investigatory activity, a law enforcement agency or a law enforcement officer shall not rely on race, ethnicity, color, national origin, language, gender, gender identity, sexual orientation, political affiliation, religion, physical or mental disability or serious medical condition, except in a specific suspect description related to a criminal incident or suspected criminal activity, to select a person for or subject a person to the routine or spontaneous investigatory activity.

B. In conducting an investigatory activity in connection with an investigation, a law enforcement agency or a law enforcement officer shall not rely on race, ethnicity, color, national origin, language, gender, gender identity, sexual orientation, political affiliation, religion, physical or mental disability or serious medical condition, except to the extent that credible information, relevant to the locality or time frame, links a person with those identifying characteristics to an identified criminal incident or criminal activity.

Chapter 177 Section 3 Laws 2009

Section 3. POLICIES AND PROCEDURES--REQUIRED.--

A. A law enforcement agency shall:

(1) maintain written policies and procedures designed to eliminate practices by its law enforcement officers that violate the provisions of Section 2 of the Prohibition of Profiling Practices Act; and

(2) provide training to its law enforcement officers, during orientation and at least once every two years, that the law enforcement agency determines will assist its law enforcement officers in adhering to the applicable provisions of the Prohibition of Profiling Practices Act and to the law enforcement agency's policies and procedures.

B. As part of a law enforcement agency's administrative complaint procedures, the law enforcement agency shall, at a minimum:

(1) investigate a complaint alleging its law enforcement officer violated the provisions of Section 2 of the Prohibition of Profiling Practices Act;

(2) take appropriate measures to discipline a law enforcement officer, including facilitating mediation or other restorative justice measures, when it is determined that the law enforcement officer violated the provisions of Section 2 of the Prohibition of Profiling Practices Act;

(3) provide appropriate forms for submitting the complaint against its law enforcement officer;

(4) publish the policies and procedures designed to eliminate practices that violate the provisions of Section 2 of the Prohibition of Profiling Practices Act; and

(5) submit a redacted copy of the complaint and the disposition to the attorney general, which shall disclose the nature and disposition of the complaint but shall not disclose personal identifying information of a law enforcement officer or complainant.

C. A law enforcement agency shall establish a time frame within which a complaint alleging a violation of the provisions of Section 2 of the Prohibition of Profiling Practices Act may be made; provided that in no event shall the time frame be less than ninety days or exceed one hundred eighty days after the commission of the alleged violation of the provisions of Section 2 of the Prohibition of Profiling Practices Act. A law enforcement agency shall allow a complaint alleging a violation of the provisions of Section 2 of the Prohibition of Profiling Practices Act by its law enforcement officer to be made:

(1) in person or in writing sent by mail, facsimile or electronic mail and signed by the complainant; or

(2) by telephone, anonymously or by a third party; provided that the law enforcement agency shall determine the complaint to be valid before taking appropriate measures pursuant to Paragraph (2) of Subsection B of this section and shall comply with the provisions of Section 29-14-4 NMSA 1978.

Chapter 177 Section 4 Laws 2009

Section 4. INDEPENDENT OVERSIGHT--COMPLAINTS--CONFIDENTIALITY.--
The attorney general shall establish independent procedures for receiving, and for maintaining a record of, complaints alleging profiling by a law enforcement officer or agency. The attorney general may initiate an investigation of a complaint alleging a violation, or a systematic pattern of violations, of the provisions of Section 2 of the Prohibition of Profiling Practices Act and take necessary actions as the attorney general deems appropriate. The attorney general may publish a report or summary of the attorney general's findings regarding violations of the provisions of the Prohibition of Profiling Practices Act; provided that personal and identifying information shall not be published or released to the public.

Chapter 177 Section 5 Laws 2009

Section 5. EFFECTIVE DATE.--The effective date of the provisions of Sections 3 and 4 of this act is December 31, 2009.

HEC/House Bill 432, aa

Approved April 7, 2009

LAWS 2009, CHAPTER 178

AN ACT

RELATING TO PUBLIC SCHOOLS; ENACTING THE SCHOOL ATHLETICS EQUITY ACT; REQUIRING CERTAIN DATA TO BE REPORTED TO THE PUBLIC EDUCATION DEPARTMENT AND THE PUBLIC.

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

Chapter 178 Section 1 Laws 2009

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

"SHORT TITLE.--This act may be cited as the "School Athletics Equity Act"."

Chapter 178 Section 2 Laws 2009

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

"APPLICABILITY--NONDISCRIMINATION.--The School Athletics Equity Act applies to each public school that has an athletics program for grades seven through twelve. Each public school shall operate its program in a manner that does not discriminate against students or staff on the basis of gender."

Chapter 178 Section 3 Laws 2009

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

"DATA REPORTING.--The department shall collect annual data from public schools on their athletics programs. Each public school shall collect and submit the prior-year data required in this section in a format required by the department. The data submitted shall include:

A. by August 31, 2011, the following information pertaining to enrollment:

(1) the total enrollment in each public school as an average of enrollment at the eightieth and one hundred twentieth days of the school year;

(2) student enrollment by gender;

(3) total number of students participating in athletics;

(4) athletics participation by gender; and

(5) the number of boys' teams and girls' teams by sport and by competition level;

B. by August 31, 2011, the following information pertaining to athletic directors, coaches and other school personnel:

(1) the name and gender of each public school's athletic director;

(2) the name of each team's coaches and other team personnel, with their gender, job title and employment status, such as full-time, part-time, contract or seasonal, specified;

(3) the coach-to-athlete and staff-to-athlete ratio for each team; and

(4) the stipend or other compensation for coaching paid to coaches of boys' teams and to coaches of girls' teams for each public school;

C. by August 31, 2012, an accounting of the funding sources that are used to support the school's athletics programs and to which teams those funds are allocated; funding sources include state funding, federal funding, fundraising or booster clubs, game and concession receipts, gate receipts, cash or in-kind donations, grants and any other source;

D. by August 31, 2012, the following information regarding expenses, including:

(1) any capital outlay expenditures for each public school's athletics programs;

(2) the expenditures for each public school's athletics programs; and

(3) the expenditures for individual teams, including travel expenses such as transportation, meal allowances and overnight accommodations; equipment;

uniforms; facilities; facilities improvements; publicity expenses; awards; banquets; insurance; and any other expenses incurred by each team; and

E. by August 31, 2012, a statement of benefits and services to each team, including:

- (1) replacement schedules for equipment, uniforms and supplies;
- (2) practice and game schedules;
- (3) access to locker rooms, weight rooms and practice, competitive and training facilities; and
- (4) assistance in obtaining scholarships."

Chapter 178 Section 4 Laws 2009

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

"DISCLOSURE TO STUDENTS AND PUBLIC.--

A. Each public school shall make its data available to the public, including all materials relied upon to compile the data. Each public school shall inform all students at the public school of their right to review the data.

B. The department shall publish the following information:

- (1) each public school's data; and
- (2) a list of public schools that did not submit fully completed data.

C. Each public school shall maintain its data and all materials relied upon to complete the data for at least three years. Each public school shall publish its data in a newspaper of general circulation in the state or make the data available on a publicly accessible web site."

Chapter 178 Section 5 Laws 2009

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

"ASSURANCE OF COMPLIANCE.--

A. Each public school shall submit an assurance of compliance with Title 9 to its local school board or governing body and provide a copy to the department no later than August 31 of each year. The assurance shall be signed by the superintendent of the district or the head administrator of the charter school. The department shall

publish, in a newspaper of general circulation in the state or on a publicly accessible web site, a list of public schools that fail to submit the assurance of compliance with Title 9.

B. As used in this section, "Title 9" means federal Public Law 92-318, Title 9, of the Education Amendments of 1972, which is codified at 20 U.S.C. 1681, et seq., and the regulations promulgated pursuant to that act."

Chapter 178 Section 6 Laws 2009

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

"REPORT TO GOVERNOR AND LEGISLATURE.--Beginning December 1, 2011, the department shall submit annually a report on the School Athletics Equity Act to the governor and the legislature, including a summary of the data received from the public schools. The report shall include recommendations on how to increase gender equity in athletics in public schools. The department shall post the report on its web site."

HJC/House Bill 428

Approved April 7, 2009

LAWS 2009, CHAPTER 179

AN ACT

RELATING TO TAX INCREMENT DEVELOPMENT DISTRICTS; INCREASING THE STATE'S ROLE IN DEVELOPMENT, REGULATION AND OVERSIGHT OF CREATION AND IMPLEMENTATION OF TAX INCREMENT DEVELOPMENT DISTRICTS.

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

Chapter 179 Section 1 Laws 2009

Section 1. Section 5-15-1 NMSA 1978 (being Laws 2006, Chapter 75, Section 1) is amended to read:

"5-15-1. SHORT TITLE.--Chapter 5, Article 15 NMSA 1978 may be cited as the "Tax Increment for Development Act"."

Chapter 179 Section 2 Laws 2009

Section 2. Section 5-15-4 NMSA 1978 (being Laws 2006, Chapter 75, Section 4) is amended to read:

"5-15-4. RESOLUTION FOR FORMATION OF A DISTRICT.--

A. A tax increment development plan may be approved by the governing body of the municipality or county within which tax increment development projects are proposed. Upon filing with the clerk of the governing body of an approved tax increment development plan and upon receipt of a petition bearing the signatures of the owners of at least fifty percent of the real property located within a proposed tax increment development area, the governing body may adopt a resolution declaring its intent to form a tax increment development district. Prior to the formation of a district, the owner or developer of the real property located within an area proposed to be designated as a tax increment development area may enter into an agreement with the governing body concerning the improvement of specific property within the district, and that agreement may be used to establish obligations of the owner or developer and the governing body concerning the zoning, subdivision, improvement, impact fees, financial responsibilities and other matters relating to the development, improvement and use of real property within the district.

B. A governing body may adopt a resolution on its own motion upon its finding that a need exists for the formation of a district.

C. The resolution to form a district shall include:

(1) the area or areas to be included within the boundaries of the district;

(2) the purposes for which the district is to be formed;

(3) a statement that a tax increment development plan is on file with the clerk of the governing body and that the plan includes a map depicting the boundaries of the tax increment development area and the real property proposed to be included in the area;

(4) the rate of any proposed property tax levy;

(5) identification of gross receipts tax increment and property tax increment financing mechanisms proposed;

(6) identification of gross receipts tax increments and property tax increments proposed to secure proposed gross receipts tax increment bonds or property tax increment bonds;

(7) requirement of a public hearing for the formation of the district and notice of the hearing;

(8) a statement that formation of a district may result in the use of gross receipts tax increments or property tax increments to pay the costs of construction of public improvements made by the district; and

(9) a reference to the Tax Increment for Development Act.

D. A resolution may direct that, prior to holding a hearing on formation of a district, petitioners for the formation of a district prepare a study of the feasibility, the financing and the estimated costs of improvements, services and benefits to result from the formation of the proposed district. The governing body may require those petitioners to deposit with the clerk or treasurer of the governing body an amount equal to the estimated costs of conducting the study and other estimated formation costs. The deposit shall be reimbursed from the proceeds from the sale of bonds issued by the tax increment development district if the district is formed and if gross receipts tax increment bonds or property tax increment bonds are issued by that district pursuant to the Tax Increment for Development Act.

E. A resolution adopted pursuant to this section shall direct that a public hearing on formation of the district be scheduled and that notice of the hearing be mailed and published.

F. A governing body of the municipality or county within which tax increment development projects are proposed that adopts a resolution to form a district shall notify the secretary of taxation and revenue, the secretary of finance and administration and the director of the legislative finance committee of the governing body's action within ten days following the date on which the resolution was adopted. A copy of the adopted resolution shall be included in the notice sent pursuant to this subsection. All resolution materials, including fiscal and economic studies, shall also be available electronically to the public."

Chapter 179 Section 3 Laws 2009

Section 3. Section 5-15-6 NMSA 1978 (being Laws 2006, Chapter 75, Section 6) is amended to read:

"5-15-6. NOTICE OF PUBLIC HEARING.--

A. Upon adoption of a resolution indicating an intent to form a tax increment development district, a governing body shall set a date no sooner than thirty days and no later than sixty days after the adoption of the resolution for a public hearing regarding the formation of the district.

B. Notice of the hearing shall be provided by the governing body by:

(1) publication once each week for two consecutive weeks in a newspaper of general circulation in the municipality or county in which the proposed district is located;

(2) posting in a prominent location on property located within the proposed tax increment development area for fourteen days prior to the hearing; and

(3) written notice via registered or certified United States mail, postage prepaid, no later than ten days prior to the hearing to:

(a) all owners of real property within the proposed tax increment development area; and

(b) the secretary of taxation and revenue, the secretary of finance and administration and the director of the legislative finance committee.

C. The notice of the hearing shall contain:

(1) the date, time and place of the hearing;

(2) information regarding alternative methods for submission of objects or comments;

(3) a statement that the formation of a district is proposed;

(4) a map showing the boundaries of the proposed district;

(5) a statement that a tax increment development plan is on file with the clerk of the governing body and may be reviewed upon request;

(6) a summary of the resolution as set forth in Subsection D of this section; and

(7) a copy of the application.

D. A summary of the resolution declaring the governing body's intent to form a tax increment development district shall be attached to a notice issued pursuant to this section. The clerk of the governing body shall mail a copy of the notice to each owner of real property within the proposed tax increment development area and to all other persons claiming an interest in the property who have filed a written request for a copy of the notice within the six months preceding or at any time following the adoption of the resolution. The clerk of the governing body shall publish a copy of the notice and resolution summary at least twice in a newspaper of general circulation in the municipality or county in which the proposed tax increment development district is located. The clerk of the governing body shall obtain an affidavit from that newspaper after each publication is made. The clerk of the governing body shall cause the

affidavits to be placed in the official records of the municipality or county. The affidavits are conclusive evidence of the mailing and publishing of notice. Notice shall not be held invalid for failure of delivery to the addressee.

E. A clerk of a governing body who is informed of a transfer of ownership of real property within a proposed district and who obtains the name and address of the current property owner shall mail a copy of the notice and resolution as soon as practicable after learning of the transfer."

Chapter 179 Section 4 Laws 2009

Section 4. Section 5-15-9 NMSA 1978 (being Laws 2006, Chapter 75, Section 9) 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 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."

Chapter 179 Section 5 Laws 2009

Section 5. Section 5-15-10 NMSA 1978 (being Laws 2006, Chapter 75, Section 10) is amended to read:

"5-15-10. GOVERNANCE OF THE DISTRICT.--

A. Following formation of a tax increment development district, a district board shall administer in a reasonable manner the implementation of the tax increment development plan as approved by the governing body.

B. The district shall be governed by the governing body that adopted a resolution to form the district or by a five-member board composed of four members appointed by that governing body; provided, however, that the fifth member of the five-member board is the secretary of finance and administration or the secretary's designee with full voting privileges.

C. Two of the appointed directors shall serve an initial term of six years. Two of the appointed directors shall serve an initial term of four years. The resolution forming the district shall state which directors shall serve four-year terms and which shall serve six-year terms. If a vacancy occurs on the district board because of the death, resignation or inability of the director to discharge the duties of the director, the governing body shall appoint a director to fill the vacancy, and the director shall hold office for the remainder of the unexpired term until a successor is appointed or elected.

D. A director may be a director of more than one district.

E. In the case of an appointed board of directors that is not the governing body, at the end of the appointed directors' initial terms, the board shall hold an election of new directors by majority vote of owners and qualified resident electors in accordance with the Tax Increment for Development Act. Each owner shall have the number of votes or portion of votes equal to the number of acres or portion of acres rounded upward to the nearest one-fifth of an acre owned in the district by that owner."

Chapter 179 Section 6 Laws 2009

Section 6. Section 5-15-15 NMSA 1978 (being Laws 2006, Chapter 75, Section 15) is amended to read:

"5-15-15. TAX INCREMENT FINANCING--GROSS RECEIPTS TAX INCREMENT.--

A. Notwithstanding any law to the contrary, but in accordance with the provisions of the Tax Increment for Development Act, a tax increment development plan, as originally approved or as later modified, may contain a provision that a portion of certain gross receipts tax increments collected within the tax increment development area after the effective date of approval of the tax increment development plan may be

dedicated for the purpose of securing gross receipts tax increment bonds pursuant to the Tax Increment for Development Act.

B. As to a district formed by a municipality, a portion of any of the following gross receipts tax increments may be paid by the state directly into a special fund of the district to pay the principal of, the interest on and any premium due in connection with the bonds of, loans or advances to, or any indebtedness incurred by, whether funded, refunded, assumed or otherwise, the authority for financing or refinancing, in whole or in part, a tax increment development project within the tax increment development area:

(1) municipal gross receipts tax authorized pursuant to the Municipal Local Option Gross Receipts Taxes Act;

(2) municipal environmental services gross receipts tax authorized pursuant to the Municipal Local Option Gross Receipts Taxes Act;

(3) municipal infrastructure gross receipts tax authorized pursuant to the Municipal Local Option Gross Receipts Taxes Act;

(4) municipal capital outlay gross receipts tax authorized pursuant to the Municipal Local Option Gross Receipts Taxes Act;

(5) municipal regional transit gross receipts tax authorized pursuant to the Municipal Local Option Gross Receipts Taxes Act;

(6) an amount distributed to municipalities pursuant to Sections 7-1-6.4 and 7-1-6.46 NMSA 1978; and

(7) the state gross receipts tax.

C. As to a district formed by a county, all or a portion of any of the following gross receipts tax increments may be paid by the state directly into a special fund of the district to pay the principal of, the interest on and any premium due in connection with the bonds of, loans or advances to or any indebtedness incurred by, whether funded, refunded, assumed or otherwise, the district for financing or refinancing, in whole or in part, a tax increment development project within the tax increment development area:

(1) county gross receipts tax authorized pursuant to the County Local Option Gross Receipts Taxes Act;

(2) county environmental services gross receipts tax authorized pursuant to the County Local Option Gross Receipts Taxes Act;

(3) county infrastructure gross receipts tax authorized pursuant to the County Local Option Gross Receipts Taxes Act;

(4) county capital outlay gross receipts tax authorized pursuant to the County Local Option Gross Receipts Taxes Act;

(5) county regional transit gross receipts tax authorized pursuant to the County Local Option Gross Receipts Taxes Act;

(6) the amount distributed to counties pursuant to Section 7-1-6.47 NMSA 1978; and

(7) the state gross receipts tax.

D. The gross receipts tax increment generated by the imposition of municipal or county local option gross receipts taxes specified by statute for particular purposes may nonetheless be dedicated for the purposes of the Tax Increment for Development Act if intent to do so is set forth in the tax increment development plan approved by the governing body, if the purpose for which the increment is intended to be used is consistent with the purposes set forth in the statute authorizing the municipal or county local option gross receipts tax.

E. An imposition of a gross receipts tax increment attributable to the imposition of a gross receipts tax by a taxing entity may be dedicated for the purpose of securing gross receipts tax increment bonds with the agreement of the taxing entity, evidenced by a resolution adopted by a majority vote of that taxing entity. A taxing entity shall not agree to dedicate for the purposes of securing gross receipts tax increment bonds more than seventy-five percent of its gross receipts tax increment attributable to the imposition of gross receipts taxes by the taxing entity. A resolution of the taxing entity to dedicate a gross receipts tax increment or to increase the dedication of a gross receipts tax increment shall become effective only on January 1 or July 1 of the calendar year.

F. An imposition of a gross receipts tax increment attributable to the imposition of the state gross receipts tax within a district less the distributions made pursuant to Section 7-1-6.4 NMSA 1978 may be dedicated for the purpose of securing gross receipts tax increment bonds with the agreement of the state board of finance, evidenced by a resolution adopted by a majority vote of the state board of finance. The state board of finance shall not agree to dedicate more than seventy-five percent of the gross receipts tax increment attributable to the imposition of the state gross receipts tax within the district. The resolution of the state board of finance shall become effective only on January 1 or July 1 of the calendar year and shall find that:

(1) the state board of finance has reviewed the request for the use of the state gross receipts tax;

(2) based upon review by the state board of finance of the applicable tax increment development plan, the dedication by the state board of finance of a portion of the gross receipts tax increment attributable to the imposition of the state

gross receipts tax within the district for use in meeting the required goals of the tax increment plan is reasonable and in the best interest of the state; and

(3) the use of the state gross receipts tax is likely to stimulate the creation of jobs, economic opportunities and general revenue for the state through the addition of new businesses to the state and the expansion of existing businesses within the state.

G. The governing body of the jurisdiction in which a tax increment development district has been established shall timely notify the assessor of the county in which the district has been established, the taxation and revenue department and the local government division of the department of finance and administration when:

(1) a tax increment development plan has been approved that contains a provision for the allocation of a gross receipts tax increment;

(2) any outstanding bonds of the district have been paid off; and

(3) the purposes of the district have otherwise been achieved."

Chapter 179 Section 7 Laws 2009

Section 7. Section 5-15-21 NMSA 1978 (being Laws 2006, Chapter 75, Section 21) is amended to read:

"5-15-21. APPROVAL REQUIRED FOR ISSUANCE OF BONDS AGAINST STATE GROSS RECEIPTS TAX INCREMENTS.--In addition to all other requirements of the Tax Increment for Development Act, prior to a district board issuing bonds that are issued in whole or in part against a gross receipts tax increment attributable to the imposition of the state gross receipts tax within a district:

A. the New Mexico finance authority shall review the proposed issuance of the bonds and determine that the proceeds of the bonds will be used for a tax increment development project in accordance with the district's tax increment development plan and present the proposed issuance of the bonds to the legislature for approval; and

B. the issuance of the bonds and the maximum amount of bonds to be issued shall be specifically authorized by law."

Chapter 179 Section 8 Laws 2009

Section 8. A new section of the Tax Increment for Development Act is enacted to read:

"DEBT SERVICE RESERVE ACCOUNT.--After the retirement of all bonds issued pursuant to the tax increment development plan, any balance in a debt service

reserve account established for the payment of those bonds shall be paid to the governments that have dedicated a tax increment to the district in proportion to the amount of tax increment attributable to their dedication."

House Bill 451, aa

Approved April 7, 2009

LAWS 2009, CHAPTER 180

AN ACT

RELATING TO LOCAL GOVERNMENT; ENACTING THE RENEWABLE ENERGY FINANCING DISTRICT ACT; AUTHORIZING MUNICIPALITIES AND COUNTIES TO CREATE RENEWABLE ENERGY FINANCING DISTRICTS; AUTHORIZING THE IMPOSITION OF SPECIAL ASSESSMENTS ON REAL PROPERTY; AUTHORIZING ISSUANCE OF SPECIAL ASSESSMENT BONDS.

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

Chapter 180 Section 1 Laws 2009

Section 1. SHORT TITLE.--This act may be cited as the "Renewable Energy Financing District Act".

Chapter 180 Section 2 Laws 2009

Section 2. LEGISLATIVE FINDINGS.--The legislature finds that:

A. the development of renewable energy sources will advance the security, economic well-being and public and environmental health of the state, as well as contributing to the energy independence of the nation and addressing the issue of global climate change;

B. it is in the best interests of the state, municipalities and counties to encourage the development of distributed generation renewable energy sources and the installation by property owners of such energy sources;

C. the high front-end costs of renewable energy installations to real property prevents many property owners from making these improvements, and therefore it is desirable and necessary to authorize alternative financing procedures to promote the installation of the improvements; and

D. the creation and administration of renewable energy financing districts to facilitate the development of

renewable energy improvements on property in the district will serve a valid public purpose and is expressly declared to be in the public interest.

Chapter 180 Section 3 Laws 2009

Section 3. DEFINITIONS.--As used in the Renewable Energy Financing District Act:

A. "county" means any county, including an H class county;

B. "debt service" means the principal of, interest on and premium, if any, on the bonds, when due, whether at maturity or prior redemption and fees and costs of agents necessary to handle the bonds and the costs of credit enhancement or liquidity support;

C. "district" means a renewable energy financing district formed pursuant to the Renewable Energy Financing District Act by a municipality or by a county in an unincorporated area or in an incorporated area with the municipality's consent;

D. "district board" means the board of directors of the district, which shall be composed of the members of the governing body of the municipality or county in which the district is located, or at the option of the governing body, five directors appointed by the governing body, as provided in Section 9 of the Renewable Energy Financing District Act. The board shall serve until replaced by elected directors, which shall occur not later than six years after the date on which the resolution establishing the district is enacted;

E. "election" means an election held in compliance with the provisions of the Renewable Energy Financing District Act;

F. "governing body" means the body or board that by law is constituted as the governing body of the municipality or county in which the district is located;

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

H. "owner" means the person who is listed as the owner of real property in the district on the current property tax assessment roll;

I. "renewable energy improvement" means a photovoltaic, solar thermal, geothermal or wind energy system permanently installed on real property; and

J. "special assessment" means a levy imposed against real property within a district.

Chapter 180 Section 4 Laws 2009

Section 4. RENEWABLE ENERGY FINANCING DISTRICTS AUTHORIZED.--

A. A governing body of a municipality or county may form a district for the purpose of encouraging, accommodating and financing renewable energy improvements on property within the municipality or county. A district shall include only property for which an owner executes an agreement consenting to the inclusion of the property within the district and to the imposition of a special assessment on the property for the purpose of financing renewable energy improvements.

B. A district formed by a municipality shall be wholly within the boundaries of the municipality. A district formed by a county shall be wholly within the boundaries of the county and shall be in the unincorporated area of the county, or may include an incorporated area with the municipality's consent. A district may include contiguous and noncontiguous property.

C. 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.

Chapter 180 Section 5 Laws 2009

Section 5. RESOLUTION DECLARING INTENTION TO FORM DISTRICT.--

A. A governing body may adopt a resolution declaring its intention to form a district. The resolution shall state the following:

(1) the purposes for which the district is to be formed;

(2) that the district shall include only property for which the owner has agreed to the inclusion of the property within the district, and that inclusion of property may occur subsequent to the adoption of the resolution forming the district;

(3) the process by which a property owner can execute an agreement to include property in the district;

(4) a description of the specific types of renewable energy improvements that will be eligible for the financing provided pursuant to the Renewable Energy Financing District Act;

(5) that inclusion of property in the district will result in the imposition of special assessments on the property to pay the costs of the approved renewable energy improvements, financing and administrative fees;

(6) the method of calculating the amount of the special assessment and the manner of collection of the special assessment;

(7) that standards and requirements will be set by the district board for renewable energy improvements to be installed on property in the district;

(8) a reference to the Renewable Energy Financing District Act; and

(9) that the district will be governed by a district board composed of the members of the governing body or by five directors to be appointed by the governing body.

B. The resolution shall direct that a hearing on formation of the district be scheduled and notice be published as required for public hearings of the governing body.

Chapter 180 Section 6 Laws 2009

Section 6. HEARING--FORMATION OF A DISTRICT.--

A. At the hearing on formation of a district, the governing body shall accept and pass on written and oral testimony and evidence presented in support of or in opposition to the formation of the district. After hearing the written and oral testimony, the governing body shall determine whether the district should be formed based on the interests, convenience or necessity of the owners of property in the proposed district and the citizens of the municipality or county in which the proposed district would be located.

B. If the governing body determines that the district should be formed, it shall adopt an ordinance ordering that the district be formed and identifying the method by which property owners can execute agreements to have their property included in the district. The ordinance shall state that the district will be governed by a district board consisting of members of the governing body, or upon determination of the governing body, five directors appointed by the governing body. The ordinance shall state that one or more resolutions shall be adopted by the district board to identify the property to be included in the district and the special assessment to be imposed on that property.

C. The governing body shall cause a copy of the ordinance ordering formation of the district to be delivered to the county assessor and county treasurer of the county in which the district is located, the taxation and revenue department and the local government division of the department of finance and administration.

D. Subsequent to the formation of the district, property may be included in the district by execution of an agreement by the owner of the property and the district board, agreeing to the inclusion of the property and the imposition of a special assessment on the property, and the district board shall adopt a resolution to this effect. The district shall deliver a copy of the resolution to the county assessor and county treasurer of the county in which the district is located. A copy of the resolution and a

description of the property included in the district shall be recorded with the county clerk of the county in which the district is located.

Chapter 180 Section 7 Laws 2009

Section 7. SPECIAL ASSESSMENT--LIEN CREATED.--

A. The district board may impose a special assessment on property within the district to facilitate the financing of renewable energy improvements to the property. The special assessment shall be sufficient in the case of each property to pay the costs of the financing of the renewable energy improvements, including the costs of bond issuance, debt service and administrative costs of the district and the municipality or county in which the district is located.

B. The special assessment shall be levied and collected at the same time and in the same manner as property taxes are levied and collected, except to the extent that the district board has provided for other imposition and collection procedures. Money derived from the imposition of the special assessment shall be kept separately from other funds of the governing body.

C. A special assessment shall constitute a lien on the property, which shall be effective during the period in which the assessment is imposed and shall have priority over all other liens except liens for ad valorem property taxes.

D. The obligation to pay the special assessment may be prepaid and permanently satisfied, and the district board shall specify the conditions under which this may be achieved.

Chapter 180 Section 8 Laws 2009

Section 8. SPECIAL ASSESSMENT BONDS.--

A. A district may issue one or more series of bonds to provide money for renewable energy improvements to property in the district, and the bonds may be payable from the special assessments levied pursuant to one or more assessment resolutions.

B. For any bonds issued pursuant to the Renewable Energy Financing District Act, the district board shall prescribe the denominations of the bonds, the principal amount of each issue and the form of the bonds and shall establish the maturities, which shall not exceed twenty years, interest payment dates and interest rates, whether fixed or variable, not exceeding the maximum rate stated in the resolution of the district board. The bonds may be sold by competitive bid or negotiated sale for public or private offering at, below or above par. The proceeds of the bonds shall be deposited with the treasurer, or with a trustee or agent designated by the district board, to the credit of the district to be withdrawn for the purposes provided by

the Renewable Energy Financing District Act. Pending that use, the proceeds may be invested as determined by the district. The bonds shall be made payable as to both principal and interest solely from revenues of the district, and shall specify the revenues pledged for such purposes, and shall contain such other terms, conditions, covenants and agreements as the district board deems proper.

C. No holder of special assessment bonds issued pursuant to the Renewable Energy Financing District Act may compel any exercise of the taxing power of the district, municipality or county to pay the bonds or the interest on the bonds. Special assessment bonds issued pursuant to that act are not a debt or general obligation of the county or the municipality in which the district is located, nor is the payment of special assessment bonds enforceable out of any money other than the revenue pledged to the payment of the bonds.

D. Pursuant to this section, the district may issue and sell refunding bonds to refund any special assessment bonds of the district authorized by the Renewable Energy Financing District Act. Refunding bonds issued pursuant to this section shall have a final maturity date no later than the final maturity date of the bonds being refunded.

Chapter 180 Section 9 Laws 2009

Section 9. APPOINTMENT OF DIRECTORS--QUALIFICATIONS--TERMS--RESUMPTION OF GOVERNANCE BY GOVERNING BODY.--

A. The governing body, at its option, may authorize the appointment of a separate district board. In the case of an appointed district board, the directors shall serve an initial term of six years. If a vacancy occurs on the district board because of death, resignation or inability of a director to discharge the duties of director, the governing body shall appoint a director to fill the vacancy, who shall hold office for the remainder of the unexpired term until the appointed director's successor is appointed or elected.

B. At the end of the appointed director's initial term, the governing body shall resume governance of the district as its board, or, at its option, shall hold an election of directors by majority vote of the property owners in the district, pursuant to Section 10 of the Renewable Energy Financing District Act.

Chapter 180 Section 10 Laws 2009

Section 10. NOTICE AND CONDUCT OF ELECTION FOR DISTRICT BOARD.--

A. An election pursuant to the Renewable Energy Financing District Act for the purpose of election of directors of a district board shall be called by mailing notices to the owners of property included in the district not less than twenty days before the election. The property tax assessment rolls shall be used to determine the owners of

property included in the district. Notice shall also be published one time in a newspaper of general circulation in the municipality or county. The notice shall state the purpose of the election, the date of the election, the place of holding the election, the hours during the day in which the polls will be open and provisions for voting by mail.

B. Within thirty days after an election, the district board shall meet and canvass the returns, determining the number of votes properly cast. A majority of the votes cast at the election shall be required for election of a member to the district board.

Chapter 180 Section 11 Laws 2009

Section 11. POWERS AND DUTIES OF A DISTRICT.--

A. The district board shall:

(1) establish guidelines and standards for renewable energy improvements to be made to property included in the district;

(2) establish guidelines and procedures for a property owner to enter into an agreement with the district board to include property in the district;

(3) establish guidelines for the documentation required from a property owner prior to property being included in the district of the owner's contracts or agreements for purchase and installation of renewable energy improvements;

(4) establish the amount of and impose special assessments for the financing of the renewable energy improvements, including the costs of bond issuance, debt service and administrative costs of the district and the municipality or county in which the district is located; and

(5) enter into contracts, agreements and trust indentures to obtain credit enhancement or liquidity support for its bonds and process the issuance, registration, transfer and payment of its bonds and the disbursement and investment of proceeds of the bonds.

B. The district board may enter into contracts to carry out the purposes of the district on such terms and with such persons as the board determines to be appropriate.

Chapter 180 Section 12 Laws 2009

Section 12. CHANGE IN DISTRICT.--

A. At any time after adoption of a resolution creating a district, property may be added to the district at the request of the owner of the property, upon adoption of a resolution of the district board.

B. Property may be deleted from the district only upon request of the property owner and adoption of a resolution of intention to do so by the district board. Property within the district that is subject to the lien of special assessments or other charges imposed pursuant to the Renewable Energy Financing District Act shall not be deleted from the district while there are bonds outstanding that are payable by such special assessments or charges.

Chapter 180 Section 13 Laws 2009

Section 13. DISSOLUTION OF DISTRICT.--The district may be dissolved by the district board by a resolution of the district board upon a determination that the district has no outstanding bond obligations. The district shall not be dissolved if any bonds of the district remain outstanding unless an amount of money sufficient, together with investment income thereon, to make all payments due on the bonds either at maturity or prior redemption has been deposited with a trustee or escrow agent and pledged to the payment and redemption of the bonds. The district may continue to operate after dissolution only as needed to collect money and make payments on any outstanding bonds.

Senate Bill 647, aa

Approved April 7, 2009

LAWS 2009, CHAPTER 181

AN ACT

RELATING TO BUSINESS; MAKING TECHNICAL AMENDMENTS TO THE UNIFORM REVISED LIMITED PARTNERSHIP ACT; AMENDING SECTIONS OF LAWS 2007; RECTIFYING EFFECTIVE DATES.

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

Chapter 181 Section 1 Laws 2009

Section 1. Section 54-2A-101 NMSA 1978 (being Laws 2007, Chapter 129, Section 101) is amended to read:

"54-2A-101. SHORT TITLE.--Chapter 54, Article 2A NMSA 1978 may be cited as the "Uniform Revised Limited Partnership Act"."

Chapter 181 Section 2 Laws 2009

Section 2. Section 54-2A-108 NMSA 1978 (being Laws 2007, Chapter 129, Section 108) is amended to read:

"54-2A-108. NAME.--

A. The name of a limited partnership may contain the name of any partner. Because each partnership that is formed pursuant to the Uniform Revised Limited Partnership Act or that elects to be governed by that act shall be a limited liability limited partnership, the name of such a limited liability limited partnership shall contain the phrase "limited liability limited partnership" or the abbreviation "LLLP" or "L.L.L.P." and shall not contain the abbreviation "LP" or "L.P.".

B. Subject to the provisions of Subsection F of this section, the name of a foreign limited partnership that is not a limited liability limited partnership shall contain the phrase "limited partnership" or the abbreviation "L.P." or "LP" and shall not contain the phrase "limited liability limited partnership" or the abbreviation "LLLP" or "L.L.L.P.".

C. Subject to the provisions of Subsection F of this section, the name of a foreign limited liability limited partnership shall contain the phrase "limited liability limited partnership" or the abbreviation "LLLP" or "L.L.L.P." and shall not contain the abbreviation "L.P." or "LP".

D. Unless authorized by Subsection E of this section, the name of a limited partnership shall be distinguishable in the records of the secretary of state from:

(1) the name of each person other than an individual incorporated, organized or authorized to transact business in this state;

(2) each name reserved pursuant to Section 54-2A-109 NMSA 1978 or Section 53-11-8 or 53-19-4 NMSA 1978; and

(3) each name registered pursuant to Section 53-11-9 NMSA 1978.

E. A limited partnership may apply to the secretary of state for authorization to use a name that does not comply with Subsection D of this section. The secretary of state shall authorize use of the name applied for if, as to each conflicting name:

(1) the present user, registrant or owner of the conflicting name consents in a signed record to the use and submits an undertaking in a form satisfactory to the secretary of state to change the conflicting name to a name that complies with Subsection D of this section and is distinguishable in the records of the secretary of state from the name applied for;

(2) the applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use in this state the name applied for; or

(3) the applicant delivers to the secretary of state proof satisfactory to the secretary of state that the present user, registrant or owner of the conflicting name:

(a) has merged into the applicant;

(b) has been converted into the applicant; or

(c) has transferred substantially all of its assets, including the conflicting name, to the applicant.

F. Subject to Section 54-2A-905 NMSA 1978, this section applies to any foreign limited partnership transacting business in this state, having a certificate of authority to transact business in this state or applying for a certificate of authority."

Chapter 181 Section 3 Laws 2009

Section 3. Section 54-2A-902 NMSA 1978 (being Laws 2007, Chapter 129, Section 902) is amended to read:

"54-2A-902. APPLICATION FOR CERTIFICATE OF AUTHORITY.--

A. Before transacting business in New Mexico, a foreign limited partnership must have a certificate of authority to transact business in New Mexico. A foreign limited partnership may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing. The application must state:

(1) the name of the foreign limited partnership and, if the name does not comply with Section 54-2A-108 NMSA 1978, an alternate name adopted pursuant to Subsection A of Section 54-2A-905 NMSA 1978;

(2) the name of the state or other jurisdiction under whose law the foreign limited partnership is organized;

(3) any identification number issued to the foreign limited partnership by the foreign official; "foreign official" means the secretary of state or other official having custody of the foreign limited partnership's publicly filed records in the state or other jurisdiction under whose law the foreign limited partnership is organized;

(4) the street and mailing address of the foreign limited partnership's principal office and, if the laws of the jurisdiction under which the foreign

limited partnership is organized require the foreign limited partnership to maintain an office in that jurisdiction, the street and mailing address of the required office;

(5) the name and street and mailing address of the foreign limited partnership's initial agent for service of process in this state;

(6) the name and street and mailing address of each of the foreign limited partnership's general partners; and

(7) whether the foreign limited partnership is a foreign limited liability limited partnership.

B. A foreign limited partnership shall deliver with the completed application:

(1) a certificate of existence or a record of similar import signed by the foreign official; and

(2) if the foreign official is located outside of the United States of America, a certified copy of the limited partnership certificate or a record of similar import showing that it was filed with the foreign official.

C. A certificate or a certified copy described in Subsection B of this section is a part of the application for all purposes. It shall be revised or corrected as required by Section 54-2A-906 NMSA 1978. If it does not use the English language and Arabic numbers, it shall be accompanied by a certified translation. A certification or a certification of a copy or a translation shall be dated within thirty days of its presentation to the secretary of state for filing. A certificate shall state the information listed in Subsection A of Section 54-2A-209 NMSA 1978 or information of similar import."

Chapter 181 Section 4 Laws 2009

Section 4. Section 54-2A-1204 NMSA 1978 (being Laws 2007, Chapter 129, Section 1204) is amended to read:

"54-2A-1204. APPLICATION TO EXISTING LIMITED PARTNERSHIPS AND OTHER RELATIONSHIPS.--

A. The Uniform Revised Limited Partnership Act governs only:

(1) a limited partnership formed on or after January 1, 2008; and

(2) except as otherwise provided in Subsections B and C of this section, a limited partnership formed before January 1, 2008 that elects, in the manner provided in its partnership agreement or by law for amending the partnership

agreement, to be subject to the Uniform Revised Limited Partnership Act, and that presents to the secretary of state for filing:

(a) an amended and restated certificate of limited partnership stating that it elects to be subject to that act if the filing is made before January 1, 2010; or

(b) if the filing is made on or after January 1, 2010, an amended and restated certificate of limited partnership stating the information required by Section 54-2A-201 NMSA 1978. The "liability effective date" with respect to the limited partnership is the date that is ninety days after a limited partnership described in this paragraph files with the secretary of state an amended and restated certificate of limited partnership stating the information required by Section 54-2A-201 NMSA 1978.

B. With respect to a limited partnership formed before January 1, 2008 that elects pursuant to Paragraph (2) of Subsection A of this section to be subject to the Uniform Revised Limited Partnership Act, the following rules apply except as the partners otherwise elect in the manner provided in the partnership agreement or by law for amending the partnership agreement:

(1) Subsection C of Section 54-2A-104 NMSA 1978 does not apply and the limited partnership has whatever duration it had pursuant to the law applicable immediately before January 1, 2008;

(2) Sections 54-2A-601 and 54-2A-602 NMSA 1978 do not apply and a limited partner has the same right and power to dissociate from the limited partnership, with the same consequences, as existed immediately before

January 1, 2008;

(3) Subsection D of Section 54-2A-603 NMSA 1978 does not apply;

(4) Subsection E of Section 54-2A-603 NMSA 1978 does not apply and a court has the same power to expel a general partner as the court had immediately before

January 1, 2008; and

(5) Subsection C of Section 54-2A-801 NMSA 1978 does not apply and the connection between a person's dissociation as a general partner and the dissolution of the limited partnership is the same as existed immediately before January 1, 2008.

C. With respect to a limited partnership that elects pursuant to Paragraph (2) of Subsection A of this section to be subject to the Uniform Revised Limited Partnership Act, after the election takes effect the provisions of the Uniform Revised

Limited Partnership Act relating to the liability of the limited partnership's general partners to third parties apply:

(1) before the liability effective date, to:

(a) a third party that had not done business with the limited partnership in the year before the election took effect; and

(b) a third party that had done business with the limited partnership in the year before the election took effect only if the third party knows or has received a notification of the election; and

(2) on and after the liability effective date, to all third parties, but those provisions remain inapplicable to any obligation incurred while those provisions were inapplicable pursuant to Subparagraph (b) of Paragraph (1) of this subsection.

D. Until a limited partnership formed before January 1, 2008 elects to be governed by the Uniform Revised Limited Partnership Act, the limited partnership shall continue to be governed by the provisions of the Uniform Limited Partnership Act under which the limited partnership was formed as if that act had not been repealed, except that the limited partnership shall not be renewed unless so provided in the original agreement or in the manner provided in its partnership agreement or by law for amending the partnership agreement.

E. After January 1, 2010, the Uniform Revised Limited Partnership Act governs a foreign limited partnership formed at any time.

F. Certificates of limited partnership filed with a county clerk before July 1, 1993 may be refiled with the secretary of state. Such a refiling supersedes the filing in the county clerk's office. Such a refiling without compliance with the provisions of Paragraph (2) of Subsection A of this section is not an election to be subject to the Uniform Revised Limited Partnership Act. Certificates of limited partnership not refiled with the secretary of state shall remain valid until expiration or until cancellation pursuant to a certificate of cancellation filed with the county clerk."

Chapter 181 Section 5 Laws 2009

Section 5. Section 54-2A-1206 NMSA 1978 (being Laws 2007, Chapter 129, Section 1207) is amended to read:

"54-2A-1206. TRANSITION PROVISIONS.--Until January 1, 2010, the provisions of Sections 54-1A-105, 54-1A-303, 54-1A-304, 54-1A-704, 54-1A-805, 54-1A-901 through 54-1A-908, 54-2-3 through 54-2-5, 54-2-9 through 54-2-14, 54-2-49 through 54-2-56 and 54-2-62 NMSA 1978 as they existed on December 31, 2008, apply to:

A. a limited partnership formed on or after July 1, 2008;

B. a limited partnership formed before July 1, 2008 that elects pursuant to the provisions of Paragraph (2) of Subsection A of Section 54-2A-1204 NMSA 1978 to be subject to the Uniform Revised Limited Partnership Act; and

C. a foreign limited partnership formed at any time."

Chapter 181 Section 6 Laws 2009

Section 6. Laws 2007, Chapter 129, Section 1208 is amended to read:

"Section 1208. EFFECTIVE DATES.--

A. Except as provided in Subsections B and C of this section, the effective date of the provisions of this act is January 1, 2008.

B. The effective date of the provisions of Sections 108, 109, 114 through 117, 201 through 210, 901, 902, 904 through 908 and 1101 through 1113 of this act is January 1, 2010.

C. The effective date of the provisions of Section 903 of this act is July 1, 2007."

Chapter 181 Section 7 Laws 2009

Section 7. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.

Senate Bill 11, aa

Approved April 7, 2009

LAWS 2009, CHAPTER 182

AN ACT

RELATING TO INSURANCE; REQUIRING INSURERS TO SUBMIT RATE AND POLICY FORM FILINGS ELECTRONICALLY.

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

Chapter 182 Section 1 Laws 2009

Section 1. Section 59A-17-9 NMSA 1978 (being Laws 1984, Chapter 127, Section 305, as amended) is amended to read:

"59A-17-9. FILING OF RATES.--

A. In regard to filings in competitive markets:

(1) for purposes of this section, reverse competitive markets and residual markets are not competitive markets;

(2) for filings by insurers:

(a) an insurer shall file with the superintendent rates and supplementary rate information prior to their use in New Mexico;

(b) rates to be used in a competitive market for commercial insurance other than workers' compensation and medical professional liability need not be filed; and

(c) insurers that wish to use workers' compensation subclassifications, rating plans, loss costs or other supplementary rate information that differs from items filed by the advisory organization designated by the superintendent shall file with the superintendent relevant subclassifications, rating plans, rates, loss costs, other supplementary rate information and supporting information in accordance with the requirements and provisions of Subsection B of this section; and

(3) for filings by advisory organizations:

(a) with the exception of workers' compensation filings, an advisory organization shall file with the superintendent rates, supplementary rate information and supporting information prior to their use in New Mexico; and

(b) regarding workers' compensation filings, the advisory organization designated by the superintendent shall file with the superintendent rates, supplementary rate information and supporting information in accordance with the requirements and provisions of Subsection B of this section.

B. In regard to filings in noncompetitive, reverse competitive and residual markets:

(1) an insurer or advisory organization shall file with the superintendent rates, supplementary rate information and supporting information for noncompetitive, reverse competitive and residual markets at least thirty days before the proposed effective date;

(2) the superintendent may give written or electronic notice, within thirty days of receipt of the filing, that the superintendent needs additional time, not to exceed thirty days from the date of such notice, to consider the filing;

(3) upon written or electronic application of the insurer or advisory organization, the superintendent may authorize rates to be effective before the expiration of the waiting period or an extension of the waiting period;

(4) a filing shall be deemed to meet the requirements of this section and to become effective unless disapproved pursuant to Section 59A-17-13 NMSA 1978 by the superintendent before the expiration of the waiting period or an extension of the waiting period;

(5) the operation of the deemer provision shall be suspended during a period of not more than sixty days upon written or electronic notice to the insurer or advisory organization that made the filing that additional information is needed to complete the review of the filing. The suspension of the deemer provision may occur only once for a filing. Failure of the insurer or advisory organization to provide the requested information within sixty days shall be deemed a request to withdraw the filing from further consideration. The superintendent shall either approve or disapprove the filing within thirty days of receipt of the requested additional information. Failure of the superintendent to act within the thirty-day period shall result in the filing being deemed to meet the requirements of the Insurance Rate Regulation Law. Neither the insurer nor the superintendent may waive the timeliness requirements of the deemer provisions of this section; and

(6) residual market mechanisms or advisory organizations may file residual market rates.

C. In regard to reference filings, an insurer may file its rates either by filing its final rates or by filing a multiplier and, if applicable, an expense constant adjustment to be applied to prospective loss costs that have been filed by an advisory organization on behalf of the insurer as permitted by Section 59A-17-17 NMSA 1978. Such reference filings shall be made prior to their use or by other methods the superintendent may allow by rule. An insurer that chooses to adopt the prospective loss costs or rates that have been filed by an advisory organization on its behalf for a competitive commercial line other than workers' compensation or medical professional liability need not file.

D. All filings submitted pursuant to this section shall be filed electronically. The superintendent may designate an entity to receive the electronic filings submitted pursuant to this section."

Chapter 182 Section 2 Laws 2009

Section 2. Section 59A-18-12 NMSA 1978 (being Laws 1984, Chapter 127, Section 342, as amended) is amended to read:

"59A-18-12. FILING OF FORMS AND CLASSIFICATIONS--REVIEW OF EFFECT UPON INSURED.--

A. An insurance policy or annuity contract shall not be delivered or issued for delivery in this state, nor shall an assumption certificate, endorsement, rider or application that becomes a part of a policy be used, until a copy of the form and the classification of risks pertaining to the policy have been filed with the superintendent. A filing shall be made at least sixty days before its proposed effective date. A filing made pursuant to this section shall not become effective nor shall it be used until approved by the superintendent pursuant to Section 59A-18-14 NMSA 1978, at which time it may be used. A filing for any kind of insurance other than life insurance or health insurance, as defined in the Insurance Rate Regulation Law, shall be deemed to meet the requirements of Chapter 59A, Article 18 NMSA 1978 to become effective unless disapproved pursuant to Section 59A-18-14 NMSA 1978 by the superintendent before the expiration of the waiting period or an extension of the waiting period. Provided, that:

(1) this subsection shall not apply as to policies, contracts, endorsements or riders of unique and special character not for general use or offering but designed and used solely as to a particular insured or risk;

(2) if the superintendent has exempted a person or a class of persons or a market segment from a part or all of the provisions of the Insurance Rate Regulation Law pursuant to Subsection C of Section 59A-17-2 NMSA 1978, the superintendent also may exempt by rule that person, class of persons or market segment from a part or all of the provisions of this subsection;

(3) an insurer subject to the Insurance Rate Regulation Law may authorize an advisory organization to file policy forms, endorsements and other contract language and related attachment rules on its behalf. Reference filings shall be made prior to their use or by other methods the superintendent may allow by rule; and

(4) the superintendent may, by rule, exempt various lines and kinds of commercial insurance, as defined in the Insurance Rate Regulation Law, from some or all of the requirements of this subsection.

B. A workers' compensation insurance policy covering a risk arising from the employment of a worker performing work for an employer in New Mexico when that employer is not domiciled in New Mexico shall not be issued or become effective, nor shall any endorsement or rider covering such a risk be issued or become effective, until a copy of the form and the classification of risks pertaining thereto have been filed with the superintendent.

C. An insured may in writing request the insurer to review the manner in which its filing has been applied as to insurance afforded the insured. If the insurer fails to make a review and grant appropriate relief within thirty days after the request is received, the insured may file a written complaint and request for a hearing with the

superintendent, stating grounds relied upon. If the complaint charges a violation of the Insurance Code and the superintendent finds that the complaint was made in good faith and that the insured would be aggrieved if the violation is proved, the superintendent shall hold a hearing, with notice to the insured and insurer stating the grounds of complaint. If upon the hearing the superintendent finds the complaint justified, the superintendent shall order the insurer to correct the matter complained of within a reasonable time specified but not less than twenty days after a copy of the order was mailed to or served upon the insurer.

D. All filings submitted pursuant to this section shall be filed electronically. The superintendent may designate an entity to receive the electronic filings submitted pursuant to this section."

Chapter 182 Section 3 Laws 2009

Section 3. Section 59A-18-13 NMSA 1978 (being Laws 1984, Chapter 127, Section 343, as amended) is amended to read:

"59A-18-13. APPROVAL OR DISAPPROVAL OF HEALTH INSURANCE FORMS.--

A. With policy, endorsement, rider and application forms and classification of risks filed by the insurer with the superintendent under Section 59A-18-12 NMSA 1978 as to health insurance, the insurer shall also file with the superintendent its premium rates applicable to such health insurance forms. An insurer shall not use any such form or premium that has not been approved by the superintendent or that is not in effect in accordance with Section 59A-18-14 NMSA 1978.

B. An increase in a health insurance premium shall not be effective without sixty days' written notice to the policyholder.

C. All filings submitted pursuant to this section shall be filed electronically. The superintendent may designate an entity to receive the electronic filings submitted pursuant to this section."

Senate Bill 114

Approved April 7, 2009

LAWS 2009, CHAPTER 183

AN ACT

RELATING TO MOTOR CARRIERS; INVALIDATING INDEMNITY PROVISIONS IN MOTOR CARRIER TRANSPORTATION CONTRACTS.

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

Chapter 183 Section 1 Laws 2009

Section 1. A new section of the Motor Carrier Act is enacted to read:

"INDEMNITY PROVISIONS IN MOTOR CARRIER TRANSPORTATION CONTRACTS VOID.--

A. A provision or agreement contained in, collateral to or affecting a motor carrier transportation contract that requires the motor carrier to indemnify or hold harmless, or that has the effect of indemnifying or holding harmless, the shipper from liability for loss or damage resulting from the negligence or intentional acts or omissions of the shipper, or agents, employees or independent contractors that are directly responsible to the shipper, is against the public policy of this state and is void and unenforceable.

B. As used in this section, "motor carrier transportation contract":

(1) means a contract, agreement or understanding covering:

(a) the transportation of property for compensation or hire by the motor carrier;

(b) the entrance on real property by the motor carrier for the purpose of loading, unloading or transporting property for compensation or hire; or

(c) a service incidental to an activity described in Paragraph (1) or (2) of this subsection, including storage of property; and

(2) does not include the Uniform Intermodal Interchange and Facilities Access Agreement administered by the intermodal association of North America or other agreements providing for the interchange, use or possession of intermodal chassis or other intermodal equipment."

Chapter 183 Section 2 Laws 2009

Section 2. APPLICABILITY.--The provisions of this act are applicable to motor carrier transportation contracts entered into or renewed on or after July 1, 2009.

Approved April 7, 2009

LAWS 2009, CHAPTER 184

AN ACT

RELATING TO PHARMACY; REQUIRING THAT THE CURRENT RETAIL PRICE OF A PRESCRIPTION DRUG BE PROVIDED UPON REQUEST.

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

Chapter 184 Section 1 Laws 2009

Section 1. Section 61-11-15 NMSA 1978 (being Laws 1969, Chapter 29, Section 14, as amended) is amended to read:

"61-11-15. PHARMACIES--SALE OF DRUGS--SUPERVISION REQUIREMENTS.--

A. An owner of a pharmacy shall not:

- (1) fail to place a pharmacist in charge;
- (2) intentionally or fraudulently adulterate or cause to be adulterated or misbrand or cause to be misbranded any drugs compounded, sold or offered for sale in the pharmacy;
- (3) alone or through any other person, permit the compounding of prescriptions or the selling of dangerous drugs in the owner's place of business except by a pharmacist, pharmacist intern or pharmacy technician;
- (4) alone or through any other person, sell, offer for sale, compound or dispense dangerous drugs without being a pharmacist, pharmacist intern or pharmacy technician; provided that veterinary drugs bearing the legend: "caution: federal law restricts this drug to use by or on the order of a licensed veterinarian" may be sold, offered for sale or distributed by persons holding a license issued pursuant to Subsection B of Section 61-11-14 NMSA 1978; or
- (5) operate a pharmacy without the appropriate license.

B. An owner of a pharmacy shall provide to a consumer or the attorney general the current retail price for a prescription drug in any dosage or quantity when a consumer or the attorney general requests that information by phone, electronic device or otherwise. If a consumer requests the current retail prices for more than five prescription drugs at one time, the owner shall provide the information to the consumer no more than five days after the request is made; provided that the consumer:

(1) requests the information in writing;

(2) has a valid prescription for all the drugs for which the information is requested; and

(3) has made no more than three separate requests to the owner for the current retail prices for more than five prescription drugs within a six-month period.

C. Whenever an applicable law, rule or regulation requires or prohibits action by a pharmacy, responsibility for the violation shall be that of the owner and the pharmacist in charge.

D. As used in this section, "current retail price" means the cash price for a prescription drug charged to a consumer who has no prescription drug coverage."

Senate Bill 129

Approved April 7, 2009

LAWS 2009, CHAPTER 185

AN ACT

RELATING TO MAIN STREET REVOLVING LOANS; CHANGING CERTAIN LOAN PROCEDURES AND CRITERIA; SPECIFYING CERTAIN PROCEDURES OF THE MAIN STREET REVOLVING LOAN COMMITTEE; MAKING AN APPROPRIATION.

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

Chapter 185 Section 1 Laws 2009

Section 1. Section 3-60C-1 NMSA 1978 (being Laws 2007, Chapter 103, Section 1) is amended to read:

"3-60C-1. SHORT TITLE.--Chapter 3, Article 60C NMSA 1978 may be cited as the "Main Street Revolving Loan Act"."

Chapter 185 Section 2 Laws 2009

Section 2. Section 3-60C-3 NMSA 1978 (being Laws 2007, Chapter 103, Section 3) is amended to read:

"3-60C-3. DEFINITIONS.--As used in the Main Street Revolving Loan Act:

- A. "committee" means the main street revolving loan committee;
- B. "division" means the historic preservation division of the cultural affairs department;
- C. "eligible property" means a site, structure, building or object that is subject to the Main Street Act or otherwise found pursuant to rule of the committee to merit preservation pursuant to the Main Street Revolving Loan Act;
- D. "fund" means the main street revolving loan fund;
- E. "lending institution" means a bank, savings and loan association, credit union or nonprofit organization with lending programs as part of its bylaws; and
- F. "property owner" means the sole owner, joint owner, owner in partnership or an owner of a leasehold interest with a term of five years or longer of an eligible property."

Chapter 185 Section 3 Laws 2009

Section 3. Section 3-60C-4 NMSA 1978 (being Laws 2007, Chapter 103, Section 4) is amended to read:

"3-60C-4. MAIN STREET REVOLVING LOAN COMMITTEE--COMMITTEE AND DIVISION DUTIES.--

A. The "main street revolving loan committee" is created, consisting of six members as follows:

- (1) the director of the division or the director's designee;
- (2) the coordinator of the main street program under the Main Street Act or the coordinator's designee;
- (3) the chair of the cultural properties review committee or the chair's designee;
- (4) the director of the local government division of the department of finance and administration or the director's designee;
- (5) a member appointed by the governor with expertise in small loans; and

(6) the chair of the board of directors of friends of New Mexico mainstreet, inc., or the chair's designee.

B. Public members of the committee shall not be paid but shall be reimbursed for per diem and mileage pursuant to the Per Diem and Mileage Act.

C. The committee shall:

(1) elect a chair and such other officers as it deems necessary;

(2) meet at the call of the chair but no less than four times per year;

(3) by rule, establish eligibility criteria for properties and owners, establish procedures to govern the application outreach and marketing of the loan program and promulgate such other rules as are necessary to carry out the provisions of the Main Street Revolving Loan Act;

(4) after considering the recommendations of the division, make awards of loans or loan subsidies; and

(5) approve expenditures by the division for marketing, managing and administering the loan program.

D. A member of the committee may participate in a meeting of the committee by means of a conference telephone or other similar communications equipment as provided in the Open Meetings Act. Participation by conference telephone or other similar communications equipment shall constitute presence in person at a meeting.

E. The division shall:

(1) review applications for loans and loan subsidies and make recommendations to the committee;

(2) administer all loans and loan subsidies;

(3) serve as staff to the committee; and

(4) report annually to the governor, the legislative finance committee and the legislature on loans made, loan payments received and all other activities conducted pursuant to the Main Street Revolving Loan Act."

Chapter 185 Section 4 Laws 2009

Section 4. Section 3-60C-5 NMSA 1978 (being Laws 2007, Chapter 103, Section 5) is amended to read:

"3-60C-5. MAIN STREET REVOLVING LOAN FUND.--

A. The "main street revolving loan fund" is created in the state treasury. The fund shall consist of appropriations, loan payments, federal funds received for the purpose of making loans, gifts, grants, donations and bequests made to the fund. 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 committee for the purposes of:

(1) making revolving loans, including related fees, to property owners, with the loans processed and serviced by a lending institution; and

(2) paying division expenses to market, manage and administer the loan program; provided that no more than ten percent of the annual appropriation or other distribution or transfer made to the fund may be used for marketing, managing and administering the loan program.

B. Expenditures from the fund shall be made on warrant of the secretary of finance and administration pursuant to vouchers signed by the director of the division."

Chapter 185 Section 5 Laws 2009

Section 5. Section 3-60C-6 NMSA 1978 (being Laws 2007, Chapter 103, Section 6) is amended to read:

"3-60C-6. LOAN PROGRAM--APPLICATIONS--AWARDS.--

A. The division shall administer a program to make direct loans or loan subsidies and shall contract with one or more lending institutions for deposits to be used for the purpose of making or subsidizing loans to property owners for the restoration, rehabilitation or repair of eligible properties.

B. The committee shall adopt a procedure for the priority ranking of applications and projects, both eligible and ineligible for federal funding assistance, for which loan or loan subsidy applications have been received by the division. The procedure shall be based on factors including geographic distribution of recipient projects, severity of deterioration of the eligible property, degree of architectural and construction detail in the loan application demonstrating the feasibility of the proposed restoration, rehabilitation or repair of the eligible property and availability of other funding for the project. All loans or loan subsidies from the fund shall be granted pursuant to the procedure, and the procedure shall be reviewed annually by the division and the committee.

C. Loans or loan subsidies shall be made by the committee pursuant to the following criteria:

(1) loans or loan subsidies from the fund shall be made only to property owners who:

(a) agree to repay the loan in a time period not to exceed ten years;

(b) agree to maintain the eligible property as restored, rehabilitated or repaired for the period specified in the loan or five years, whichever is greater;

(c) agree to maintain complete and proper financial records regarding the eligible property and to make these available to the division and the committee on request;

(d) agree to complete the proposed restoration, rehabilitation or repair work on the eligible property within twenty-four months from the date of loan approval by the committee;

(e) provide sufficient collateral security interest, as determined by the lending institution, to the state in accordance with rules established by the committee;

(f) submit conceptual design and business plans with respect to the use of the loan proceeds, prepared with the assistance of the local main street project organization, the state main street program or other professionals with experience in architecture, design or business and financial planning;

(g) agree to all financial and other commitments, terms and conditions for the loan established by the division or the committee; and

(h) agree to any restrictions on assignments of loans from the fund required by the committee or the division;

(2) a loan shall be made for a period not to exceed ten years with interest on the unpaid balance at a rate not greater than the yield at the time of loan approval on United States treasury bills with a maturity of three hundred sixty-five days plus one-half of one percent. A loan shall be repaid by the property owner in equal installments not less often than annually with the first installment due within one year of the date the loan is issued. If a property owner transfers ownership of the eligible property with respect to which a loan is made, all amounts outstanding under the loan shall become immediately due and payable and the property owner shall make a final interest payment on the principal amount due at a rate equal to the interest rate on the loan plus an additional one percent;

(3) loans shall be made only for eligible costs. Eligible costs include loan servicing fees, architectural, design, graphic design, construction and engineering

documents and planning costs, inspection of work in progress, contracted restoration, rehabilitation and repair costs and costs necessary to meet code requirements. Eligible costs do not include costs of land acquisition, legal costs or certain fiscal agents' fees as determined by the committee; and

(4) loans are not assignable.

D. The division shall deposit in the fund all receipts from the repayment of loans made pursuant to the Main Street Revolving Loan Act."

Senate Bill 131

Approved April 7, 2009

LAWS 2009, CHAPTER 186

AN ACT

RELATING TO PUBLIC ASSISTANCE; EXCLUDING THE INCOME OF A LEGAL GUARDIAN IN AN ELIGIBILITY DETERMINATION FOR THE NEW MEXICO WORKS AND EDUCATION WORKS PROGRAMS; ALLOWING THE HUMAN SERVICES DEPARTMENT SOME FLEXIBILITY IN DETERMINING ELIGIBILITY; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2007.

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

Chapter 186 Section 1 Laws 2009

Section 1. Section 27-2B-1 NMSA 1978 (being Laws 1998, Chapter 8, Section 1 and Laws 1998, Chapter 9, Section 1) is amended to read:

"27-2B-1. SHORT TITLE.--Chapter 27, Article 2B NMSA 1978 may be cited as the "New Mexico Works Act"."

Chapter 186 Section 2 Laws 2009

Section 2. Section 27-2B-3 NMSA 1978 (being Laws 1998, Chapter 8, Section 3 and Laws 1998, Chapter 9, Section 3, as amended) is amended to read:

"27-2B-3. DEFINITIONS.--As used in the New Mexico Works Act:

A. "applicant" means a person applying for cash assistance on behalf of a benefit group;

B. "benefit group" means a pregnant woman or a group of people that includes a dependent child, all of that dependent child's full, half or adopted siblings or stepsiblings living with the dependent child's parent or relative within the fifth degree of consanguinity and the parent with whom the children live;

C. "cash assistance" means cash payments funded by the temporary assistance for needy families block grant pursuant to the federal act and by state funds;

D. "department" means the human services department;

E. "dependent child" means a natural child, adopted child, stepchild or ward who is:

(1) seventeen years of age or younger;

(2) eighteen years of age and is enrolled in high school; or

(3) between eighteen and twenty-two years of age and is receiving special education services regulated by the public education department;

F. "director" means the director of the income support division of the department;

G. "earned income" means cash or payment in kind that is received as wages from employment or payment in lieu of wages; and earnings from self-employment or earnings acquired from the direct provision of services, goods or property, production of goods, management of property or supervision of services;

H. "federal act" means the federal Social Security Act and rules promulgated pursuant to the Social Security Act;

I. "federal poverty guidelines" means the level of income defining poverty by family size published annually in the federal register by the United States department of health and human services;

J. "immigrant" means alien as defined in the federal act;

K. "parent" means natural parent, adoptive parent or stepparent;

L. "participant" means a recipient of cash assistance or services or a member of a benefit group who has reached the age of majority;

M. "person" means an individual;

N. "secretary" means the secretary of the department;

O. "services" means child care assistance; payment for employment-related transportation costs; job search assistance; employment counseling; employment, education and job training placement; one-time payment for necessary employment-related costs; case management; or other activities whose purpose is to assist transition into employment;

P. "unearned income" means old age, survivors and disability insurance; railroad retirement benefits; veterans administration compensation or pension; military retirement; pensions, annuities and retirement benefits; lodge or fraternal benefits; shared shelter payments; settlement payments; individual Indian money; child support; unemployment compensation benefits; union benefits paid in cash; gifts and contributions; and real property income;

Q. "vehicle" means a conveyance for the transporting of individuals to or from employment, for the activities of daily living or for the transportation of goods; "vehicle" does not include any boat, trailer or mobile home used as a principal place of residence; and

R. "vocational education" means an organized educational program that is directly related to the preparation of a person for employment in a current or emerging occupation requiring training other than a baccalaureate or advanced degree. Vocational education must be provided by an educational or a training organization, such as a vocational-technical school, community college, post-secondary educational institution or proprietary school."

Chapter 186 Section 3 Laws 2009

Section 3. Section 27-2B-7 NMSA 1978 (being Laws 1998, Chapter 8, Section 7 and Laws 1998, Chapter 9, Section 7, as amended by Laws 2007, Chapter 349, Section 14 and by Laws 2007, Chapter 350, Section 5) is amended to read:

"27-2B-7. FINANCIAL STANDARD OF NEED.--

A. The secretary shall adopt a financial standard of need based upon the availability of federal and state funds and based upon appropriations by the legislature of the available federal temporary assistance for needy families grant made pursuant to the federal act in the following categories:

- (1) cash assistance;
- (2) child care services;
- (3) other services; and
- (4) administrative costs.

The legislature shall determine the actual percentage of each category to be used annually of the federal temporary assistance for needy families grant made pursuant to the federal act. Within the New Mexico works program, the department may provide cash assistance or services to specific categories of benefit groups from general funds appropriated to cash assistance or services. The department may exclude these funds from temporary assistance for needy families maintenance of effort. The department shall identify alternative state spending to claim as maintenance of effort and make necessary arrangements to allow reporting of that spending.

B. The following income sources are exempt from the gross income test, the net income test and the cash payment calculation:

- (1) medicaid;
- (2) food stamps;
- (3) government-subsidized foster care payments if the child for whom the payment is received is also excluded from the benefit group;
- (4) supplemental security income;
- (5) government-subsidized housing or housing payments;
- (6) federally excluded income;
- (7) educational payments made directly to an educational institution;
- (8) government-subsidized child care;
- (9) earned income that belongs to a person seventeen years of age or younger who is not the head of household;
- (10) child support passed through to the participant by the child support enforcement division of the department in the following amounts:
 - (a) fifty dollars (\$50.00) per month through December 31, 2008; and
 - (b) no later than January 1, 2009, a minimum of one hundred dollars (\$100) for one child and two hundred dollars (\$200) for two or more children as based on the availability of state or federal funds;
- (11) earned income deposited in an individual development account by a member of the benefit group or money received as matching funds for allowable

uses by the owner of the individual development account pursuant to the Individual Development Account Act; and

(12) other income sources as determined by the department.

C. The total countable gross earned and unearned income of the benefit group cannot exceed eighty-five percent of the federal poverty guidelines for the size of the benefit group.

D. For a benefit group to be eligible to participate:

(1) gross countable income that belongs to the benefit group must not exceed eighty-five percent of the federal poverty guidelines for the size of the benefit group; and

(2) net countable income that belongs to the benefit group must not equal or exceed the financial standard of need after applying the disregards set out in Paragraphs (1) through (4) of Subsection E of this section.

E. Subject to the availability of state and federal funds, the department shall determine the cash payment of the benefit group by applying the following disregards to the benefit group's earned income and then subtracting that amount from the benefit group's financial standard of need:

(1) one hundred twenty-five dollars (\$125) of monthly earned income and one-half of the remainder, or for a two-parent family, two hundred twenty-five dollars (\$225) of monthly earned income and one-half of the remainder for each parent;

(2) monthly payments made for child care at a maximum of two hundred dollars (\$200) for a child under two years of age and at a maximum of one hundred seventy-five dollars (\$175) for a child two years of age or older;

(3) costs of self-employment income; and

(4) business expenses.

F. In addition to the disregards specified in Subsection E of this section, and between June 28, 2007 and June 30, 2008, or until implementation of the employment retention and advancement bonus program described in Subsection G of this section, the department shall apply the following income disregards to the benefit group's earned income and then subtract that amount from the benefit group's financial standard of need:

(1) for the first two years of receiving cash assistance or services, if a participant works over the work requirement rate set by the department pursuant to

the New Mexico Works Act, one hundred percent of the income earned by the participant beyond that rate; and

(2) for the first two years of receiving cash assistance or services, for a two-parent benefit group in which one parent works more than thirty-five hours per week and the other works more than twenty-four hours per week, one hundred percent of income earned by each participant beyond the work requirement rate set by the department.

G. No later than July 1, 2008, New Mexico employment incentives shall be as follows:

(1) the department shall implement an employment retention and advancement bonus program based on availability of state or federal funds that includes financial incentives to encourage a participant to:

(a) leave the New Mexico works program and move into an employment retention and advancement bonus incentive program;

(b) maintain a minimum of thirty hours per week employment; and

(c) leave the employment retention and advancement bonus incentive program due to increased earnings above the income eligibility standard and continue employment;

(2) the employment retention and advancement bonus incentive program shall provide a cash bonus and employment services to a former participant who, upon application:

(a) is currently engaged in paid work for a minimum of thirty hours per week;

(b) has received cash assistance for at least three months and one of the last three months;

(c) has had a gross income of less than one hundred fifty percent of the federal poverty guidelines; and

(d) has participated in the employment retention and advancement bonus incentive program for no longer than eighteen months;

(3) for continued eligibility in the employment retention and advancement bonus incentive program, a participant shall:

(a) be engaged in paid work for thirty hours per week for at least one of the past three months;

(b) be engaged in paid work for thirty hours per week for at least four of the past six months;

(c) have had gross income less than one hundred fifty percent of the federal poverty guidelines; and

(d) have participated in the program no more than eighteen months;

(4) the department shall provide employment services to assist participants in gaining access to available work supports, maintain employment and advance to higher-paying employment; and

(5) the department shall:

(a) establish the amount of bonus to be paid to participants in the employment retention and advancement bonus program based on availability of state and federal funds;

(b) propose rules to implement the employment retention and advancement bonus incentive program of this subsection no later than January 1, 2008; and

(c) begin implementation of the employment retention and advancement bonus incentive program of this subsection no later than July 1, 2008.

H. The department may recover overpayments of cash assistance on a monthly basis not to exceed fifteen percent of the financial standard of need applicable to the benefit group.

I. Based upon the availability of funds and in accordance with the federal act, the secretary may establish a separate temporary assistance for needy families cash assistance program that may waive certain New Mexico Works Act requirements due to a specific situation.

J. Subject to the availability of state and federal funds, the department may limit the eligibility of benefit groups that are eligible because a legal guardian is not included in the benefit group."

Chapter 186 Section 4 Laws 2009

Section 4. Section 27-2D-1 NMSA 1978 (being Laws 2003, Chapter 317, Section 1) is amended to read:

"27-2D-1. SHORT TITLE.--Chapter 27, Article 2D NMSA 1978 may be cited as the "Education Works Act"."

Chapter 186 Section 5 Laws 2009

Section 5. Section 27-2D-2 NMSA 1978 (being Laws 2003, Chapter 317, Section 2, as amended) is amended to read:

"27-2D-2. DEFINITIONS.--As used in the Education Works Act:

A. "applicant" means a person applying for cash assistance on behalf of a benefit group;

B. "benefit group" means a pregnant woman or a group of people that includes a dependent child, all of that dependent child's full, half, step- or adopted siblings living with the dependent child's parent or relative within the fifth degree of consanguinity and the parent with whom the children live;

C. "cash assistance" means cash payments distributed by the department pursuant to the Education Works Act;

D. "department" means the human services department;

E. "dependent child" means a natural, adopted step-child or ward who is:

(1) seventeen years of age or younger;

(2) eighteen years of age and is enrolled in high school; or

(3) between eighteen and twenty-two years of age and is receiving special education services regulated by the public education department;

F. "director" means the director of the income support division of the department;

G. "earned income" means cash or payment in kind that is received as wages from employment or payment in lieu of wages; and earnings from self-employment or earnings acquired from the direct provision of services, goods or property, production of goods, management of property or supervision of services;

H. "education works program" means the cash assistance, activities and services available to a recipient pursuant to the Education Works Act;

I. "federal act" means the federal Social Security Act and rules promulgated pursuant to the Social Security Act;

J. "federal poverty guidelines" means the level of income defining poverty by family size published annually in the federal register by the United States department of health and human services;

K. "parent" means natural parent, adoptive parent or stepparent;

L. "person" means an individual;

M. "recipient" means a person who receives cash assistance or services or a member of a benefit group who has reached the age of majority;

N. "secretary" means the secretary of human services;

O. "services" means child-care assistance; payment for education- or employment-related transportation costs; job search assistance; employment counseling; employment, education and job training placement; an annual payment for education-related costs; case management; or other activities whose purpose is to assist transition into employment;

P. "unearned income" means old age, survivors and disability insurance; railroad retirement benefits; veterans administration compensation or pension; military retirement; pensions, annuities and retirement benefits; lodge or fraternal benefits; shared shelter payments; settlement payments; individual Indian money; child support; unemployment compensation benefits; union benefits paid in cash; gifts and contributions; and real property income; and

Q. "vehicle" means a conveyance for the transporting of persons to or from employment or education for the activities of daily living or for the transportation of goods; "vehicle" does not include boats, trailers or mobile homes used as a principal place of residence."

Chapter 186 Section 6 Laws 2009

Section 6. Section 27-2D-5 NMSA 1978 (being Laws 2003, Chapter 317, Section 5, as amended) is amended to read:

"27-2D-5. FINANCIAL STANDARD OF NEED.--

A. The secretary shall adopt a financial standard of need based upon the availability of state funds.

B. The following income sources are exempt from the gross income test, the net income test and the cash payment calculation:

(1) medicaid;

(2) food stamps;

(3) government-subsidized foster care payments if the child for whom the payment is received is also excluded from the benefit group;

(4) supplemental security income;

(5) government-subsidized housing or housing payments;

(6) federally excluded income;

(7) educational payments made directly to an educational institution;

(8) government-subsidized child care;

(9) earned income that belongs to a person seventeen years of age or younger who is not the head of household;

(10) child support passed through to the participant by the child support enforcement division of the department in the following amounts:

(a) fifty dollars (\$50.00) per month through December 31, 2008; and

(b) no later than January 1, 2009, a minimum of one hundred dollars (\$100) for one child and two hundred dollars (\$200) for two or more children as based on availability of state and federal funds; and

(11) other income sources as determined by the department.

C. The total countable gross earned and unearned income of the benefit group shall not exceed eighty-five percent of the federal poverty guidelines for the size of the benefit group.

D. For a benefit group to be eligible to participate:

(1) earned and unearned income that belongs to the benefit group shall not exceed eighty-five percent of the federal poverty guidelines for the size of the benefit group; and

(2) earned and unearned income that belongs to the benefit group shall not equal or exceed the financial standard of need after applying the disregards set out in Paragraphs (1) through (4) of Subsection E of this section.

E. Subject to the availability of state funds, the department shall determine the cash payment of the benefit group by applying the following disregards to the benefit group's earned income and then subtracting that amount from the benefit group's financial standard of need:

(1) one hundred twenty-five dollars (\$125) of monthly earned income and one-half of the remainder, or for a two-parent family, two hundred twenty-five dollars (\$225) of monthly earned income and one-half of the remainder for each parent;

(2) monthly payments made for child care at a maximum of two hundred dollars (\$200) for a child under two years of age and a maximum of one hundred seventy-five dollars (\$175) for a child two years of age or older;

(3) costs of self-employment income; and

(4) business expenses.

F. In addition to the disregards specified in Subsection E of this section, and between June 28, 2007 and June 30, 2008, or until implementation of the employment retention and advancement bonus program in the New Mexico Works Act, the department shall apply the following income disregards to the benefit group's earned income and then subtract that amount from the benefit group's financial standard of need:

(1) for the first two years of receiving cash assistance or services, if a participant works over the work requirement rate set by the department pursuant to the New Mexico Works Act, one hundred percent of the income earned by the participant beyond that rate; and

(2) for the first two years of receiving cash assistance or services, for a two-parent benefit group in which one parent works more than thirty-five hours per week and the other works more than twenty-four hours per week, one hundred percent of income earned by each participant beyond the work requirement rate set by the department.

G. The department may recover overpayments of cash assistance on a monthly basis not to exceed fifteen percent of the financial standard of need applicable to the benefit group.

H. Subject to the availability of state and federal funds, the department may limit the eligibility of benefit groups that are eligible because a legal guardian is not included in the benefit group."

Chapter 186 Section 7 Laws 2009

Section 7. APPLICABILITY.--The provisions of this act apply beginning August 1, 2009.

Senate Bill 137, aa

Approved April 7, 2009

LAWS 2009, CHAPTER 187

AN ACT

RELATING TO PAWNBROKERS; CORRECTING A REFERENCE IN THE PAWNBROKERS ACT TO THE UNIFORM COMMERCIAL CODE.

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

Chapter 187 Section 1 Laws 2009

Section 1. Section 56-12-11 NMSA 1978 (being Laws 1985, Chapter 228, Section 11) is amended to read:

"56-12-11. DEFAULT--DISPOSITION OF PLEDGED PROPERTY.--

A. Except as otherwise specified in this section, upon default by the pledgor, the pawnbroker shall comply with the requirements of Chapter 55, Article 9 NMSA 1978 in the disposition of the pledged goods.

B. If there is a conflict between a specific provision of the Pawnbrokers Act and a more general provision of Chapter 55, Article 9 NMSA 1978, the more specific provision of the Pawnbrokers Act shall control.

C. Notwithstanding the provisions of Subsection A of this section, the pawnbroker shall not dispose of the pledged property, except by redemption, until at least ninety days after the indebtedness has become due.

D. Notwithstanding the provisions of Subsection A of this section, if the pawnbroker disposes of the pledged property by sale in the regular course of business, such sale shall conform to the requirements of Chapter 55, Article 9 NMSA 1978 and, if a surplus remains after sale of the pledged property, the pawnbroker shall make a record of the sale and the amount of the surplus and notify the pledgor by first class mail sent to the pledgor's last known address of the amount of the surplus and the pledgor's right to claim it at a specified location within ninety days of the date of mailing of the notice if the surplus is one hundred dollars (\$100) or less or within twelve months of the date of mailing of the notice if the surplus is greater than one hundred dollars

(\$100). In the event that the first class mail addressed to any person is returned unclaimed to the pawnbroker, then the pawnbroker shall post and maintain on a conspicuous public part of the pawnbroker's premises an appropriately entitled list naming each such person. Ninety days or twelve months, as applicable, after the date of the mailing or posting, whichever is later, the pawnbroker may retain any surplus remaining unclaimed by the pledgor as the pawnbroker's own property."

Senate Bill 143, aa

Approved April 7, 2009

LAWS 2009, CHAPTER 188

AN ACT

RELATING TO INSURANCE; ENACTING THE INTERSTATE INSURANCE PRODUCT REGULATION COMPACT; PROVIDING FOR NON-PREEMPTION.

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

Chapter 188 Section 1 Laws 2009

Section 1. A new section of Chapter 59A, Article 2 NMSA 1978 is enacted to read:

"NONPREEMPTION.--Nothing contained in the Interstate Insurance Product Regulation Compact, nor any decision or action by the interstate insurance product regulation commission, shall preempt, alter or modify any claims or remedies against insurance companies, agents or other persons or entities regulated under the Insurance Code that are or may become available under the common law, the Insurance Code or other statutes of this state."

Chapter 188 Section 2 Laws 2009

Section 2. COMPACT ENACTED AND ENTERED INTO.--The "Interstate Insurance Product Regulation Compact" is enacted into law and entered into on behalf of New Mexico with any and all other states legally joining therein in a form substantially as follows:

"INTERSTATE INSURANCE PRODUCT REGULATION COMPACT

Article I. Purposes.

The purposes of this compact, through means of joint and cooperative action among the compacting states, are to:

1. promote and protect the interest of consumers of individual and group annuity, life insurance, disability income and long-term care insurance products;
2. develop uniform standards for insurance products covered under the compact;
3. establish a central clearinghouse to receive and provide prompt review of insurance products covered under the compact and, in certain cases, related advertisements submitted by insurers authorized to do business in one or more compacting states;
4. give appropriate regulatory approval to those product filings and advertisements satisfying the applicable uniform standard;
5. improve coordination of regulatory resources and expertise between state insurance departments regarding the setting of uniform standards and review of insurance products covered under the compact;
6. create the interstate insurance product regulation commission; and
7. perform these and such other related functions as may be consistent with the state regulation of the business of insurance.

Article II. Definitions.

For purposes of this compact:

1. "advertisement" means any material designed to create public interest in a product, or induce the public to purchase, increase, modify, reinstate, borrow on, surrender, replace or retain a policy, as more specifically defined in the rules and operating procedures of the commission;
2. "bylaws" means those bylaws established by the commission for its governance or for directing or controlling the commission's actions or conduct;
3. "compacting state" means any state that has enacted this compact and that has not withdrawn pursuant to Section 1 of Article XIV of this compact or been terminated pursuant to Section 2 of Article XIV of this compact;
4. "commission" means the "interstate insurance product regulation commission" established by this compact;

5. "commissioner" means the chief insurance regulatory official of a state, including but not limited to commissioner, superintendent, director or administrator;

6. "domiciliary state" means the state in which an insurer is incorporated or organized or, in the case of an alien insurer, its state of entry;

7. "insurer" means any entity licensed by a state to issue contracts of insurance for any of the lines of insurance covered by this compact;

8. "member" means the person chosen by a compacting state as its representative to the commission, or the person's designee;

9. "non-compacting state" means any state that is not at the time a compacting state;

10. "operating procedures" means procedures promulgated by the commission implementing a rule, uniform standard or provision of this compact;

11. "product" means the form of a policy or contract, including any application, endorsement or related form that is attached to and made a part of the policy or contract, and any evidence of coverage or certificate, for an individual or group annuity, life insurance, disability income or long-term care insurance product that an insurer is authorized to issue;

12. "rule" means a statement of general or particular applicability and future effect promulgated by the commission, including a uniform standard developed pursuant to Article VII of this compact, designed to implement, interpret or prescribe law or policy or describe the organization, procedure or practice requirements of the commission, which shall have the force and effect of law in the compacting states;

13. "state" means any state, district or territory of the United States of America;

14. "third-party filer" means an entity that submits a product filing to the commission on behalf of an insurer; and

15. "uniform standard" means a standard adopted by the commission for a product line pursuant to Article VII of this compact and shall include all of the product requirements in aggregate; provided that a uniform standard shall be construed, whether express or implied, to prohibit the use of any inconsistent, misleading or ambiguous provisions in a product and the form of the product made available to the public shall not be unfair, inequitable or against public policy as determined by the commission.

Article III. Establishment of the Commission and Venue.

1. The compacting states hereby create and establish a joint public agency known as the "interstate insurance product regulation commission". Pursuant to Article IV of this compact, the commission shall have the power to develop uniform standards for product lines, receive and provide prompt review of products filed therewith and give approval to those product filings satisfying applicable uniform standards; provided that it is not intended for the commission to be the exclusive entity for receipt and review of insurance product filings. Nothing in this compact shall prohibit any insurer from filing its product in any state wherein the insurer is licensed to conduct the business of insurance; and any such filing shall be subject to the laws of the state where filed.

2. The commission is a body corporate and politic and an instrumentality of the compacting states.

3. The commission is solely responsible for its liabilities except as otherwise specifically provided in this compact.

4. Venue is proper, and judicial proceedings by or against the commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located.

Article IV. Powers of the Commission.

The commission shall have the power to:

1. promulgate rules, pursuant to Article VII of this compact, that shall have the force and effect of law and shall be binding in the compacting states to the extent and in the manner provided in this compact;

2. exercise its rulemaking authority and establish reasonable uniform standards for products covered under the compact, and advertisement related thereto, that shall have the force and effect of law and shall be binding in the compacting states, but only for those products filed with the commission; provided that a compacting state shall have the right to opt out of a uniform standard pursuant to Article VII of this compact, to the extent and in the manner provided in this compact; and provided further that any uniform standard established by the commission for long-term care insurance products may provide the same or greater protections for consumers as, but shall not provide less than, those protections set forth in the National Association of Insurance Commissioners' Long-Term Care Insurance Model Act and Long-Term Care Insurance Model Regulation, respectively, adopted as of 2001. The commission shall consider whether any subsequent amendments to the National Association of Insurance Commissioners' Long-Term Care Insurance Model Act or Long-Term Care Insurance Model Regulation adopted by the national association of insurance commissioners require amending of the uniform standards established by the commission for long-term care insurance products;

3. receive and review in an expeditious manner products filed with the commission and rate filings for disability income and long-term care insurance products and give approval of those products and rate filings that satisfy the applicable uniform standard, where such approval shall have the force and effect of law and be binding on the compacting states to the extent and in the manner provided in the compact;

4. receive and review in an expeditious manner advertisement relating to long-term care insurance products for which uniform standards have been adopted by the commission, and give approval to all advertisement that satisfies the applicable uniform standard. For any product covered under this compact, other than long-term care insurance products, the commission shall have the authority to require an insurer to submit all or any part of its advertisement with respect to that product for review or approval prior to use, if the commission determines that the nature of the product is such that an advertisement of the product could have the capacity or tendency to mislead the public. The actions of the commission as provided in this section shall have the force and effect of law and shall be binding in the compacting states to the extent and in the manner provided in the compact;

5. exercise its rulemaking authority and designate products and advertisement that may be subject to a self-certification process without the need for prior approval by the commission;

6. promulgate operating procedures, pursuant to Article VII of this compact, that shall be binding in the compacting states to the extent and in the manner provided in this compact;

7. bring and prosecute legal proceedings or actions in its name as the commission; provided that the standing of any state insurance department to sue or be sued under applicable law shall not be affected;

8. issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence;

9. establish and maintain offices;

10. purchase and maintain insurance and bonds;

11. borrow, accept or contract for services of personnel, including, but not limited to, employees of a compacting state;

12. hire employees, professionals or specialists, and elect or appoint officers, and to fix their compensation, define their duties and give them appropriate authority to carry out the purposes of the compact, and determine their qualifications; and to establish the commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation and qualifications of personnel;

13. accept any and all appropriate donations and grants of money, equipment, supplies, materials and services, and to receive, utilize and dispose of the same; provided that at all times the commission shall strive to avoid any appearance of impropriety;

14. lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve or use, any property, real, personal or mixed; provided that at all times the commission shall strive to avoid any appearance of impropriety;

15. sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of any property, real, personal or mixed;

16. remit filing fees to compacting states as may be set forth in the bylaws, rules or operating procedures;

17. enforce compliance by compacting states with rules, uniform standards, operating procedures and bylaws;

18. provide for dispute resolution among compacting states;

19. advise compacting states on issues relating to insurers domiciled or doing business in non-compacting jurisdictions, consistent with the purposes of this compact;

20. provide advice and training to those personnel in state insurance departments responsible for product review and be a resource for state insurance departments;

21. establish a budget and make expenditures;

22. borrow money;

23. appoint committees, including advisory committees comprising members, state insurance regulators, state legislators or their representatives, insurance industry and consumer representatives and other interested persons as may be designated in the bylaws;

24. provide information to, receive information from and cooperate with law enforcement agencies;

25. adopt and use a corporate seal; and

26. perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of the business of insurance.

Article V. Organization of the Commission.

Membership, Voting and Bylaws.

1. (a) Each compacting state shall have and be limited to one member. Each member shall be qualified to serve in that capacity pursuant to applicable law of the compacting state. Any member may be removed or suspended from office as provided by the law of the state from which the member shall be appointed. Any vacancy occurring in the commission shall be filled in accordance with the laws of the compacting state wherein the vacancy exists. Nothing herein shall be construed to affect the manner in which a compacting state determines the election or appointment and qualification of its own commissioner.

(b) Each member shall be entitled to one vote and shall have an opportunity to participate in the governance of the commission in accordance with the bylaws. Notwithstanding any provision herein to the contrary, no action of the commission with respect to the promulgation of a uniform standard shall be effective unless two-thirds of the members vote in favor thereof.

(c) The commission shall, by a majority of the members, prescribe bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes, and exercise the powers, of the compact, including:

(i) establishing the fiscal year of the commission;

(ii) providing reasonable procedures for appointing and electing members, as well as holding meetings, of the management committee;

(iii) providing reasonable standards and procedures: (i) for the establishment and meetings of other committees, and (ii) governing any general or specific delegation of any authority or function of the commission;

(iv) providing reasonable procedures for calling and conducting meetings of the commission that consists of a majority of commission members, ensuring reasonable advance notice of each such meeting and providing for the right of citizens to attend each such meeting with enumerated exceptions designed to protect the public's interest, the privacy of individuals and insurers' proprietary information, including trade secrets. The commission may meet in camera only after a majority of the entire membership votes to close a meeting en toto or in part. As soon as practicable, the commission must make public: (i) a copy of the vote to close the meeting revealing the vote of each member with no proxy votes allowed, and (ii) votes taken during such meeting;

(v) establishing the titles, duties and authority and reasonable procedures for the election of the officers of the commission;

(vi) providing reasonable standards and procedures for the establishment of the personnel policies and programs of the commission. Notwithstanding any civil service or other similar laws of any compacting state, the bylaws shall exclusively govern the personnel policies and programs of the commission;

(vii) promulgating a code of ethics to address permissible and prohibited activities of commission members and employees; and

(viii) providing a mechanism for winding up the operations of the commission and the equitable disposition of any surplus funds that may exist after the termination of the compact after the payment or reserving of all of its debts and obligations.

(d) The commission shall publish its bylaws in a convenient form and file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the compacting states.

Management Committee, Officers and Personnel.

2. (a) A management committee, comprising no more than fourteen members, shall be established as follows:

(i) one member from each of the six compacting states with the largest premium volume for individual and group annuities, life, disability income and long-term care insurance products, determined from the records of the national association of insurance commissioners for the prior year;

(ii) four members from those compacting states with at least two percent of the market based on the premium volume described above, other than the six compacting states with the largest premium volume, selected on a rotating basis as provided in the bylaws; and

(iii) four members from those compacting states with less than two percent of the market, based on the premium volume described above, with one selected from each of the four zone regions of the national association of insurance commissioners as provided in the bylaws.

(b) The management committee shall have such authority and duties as may be set forth in the bylaws, including but not limited to:

(i) managing the affairs of the commission in a manner consistent with the bylaws and purposes of the commission;

(ii) establishing and overseeing an organizational structure within, and appropriate procedures for, the commission to provide for the creation of uniform standards and other rules, receipt and review of product filings, administrative

and technical support functions, review of decisions regarding the disapproval of a product filing and the review of elections made by a compacting state to opt out of a uniform standard; provided that a uniform standard shall not be submitted to the compacting states for adoption unless approved by two-thirds of the members of the management committee;

(iii) overseeing the offices of the commission; and

(iv) planning, implementing and coordinating communications and activities with other state, federal and local government organizations in order to advance the goals of the commission.

(c) The commission shall elect annually officers from the management committee, with each having such authority and duties, as may be specified in the bylaws.

(d) The management committee may, subject to the approval of the commission, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the commission may deem appropriate. The executive director shall serve as secretary to the commission, but shall not be a member of the commission. The executive director shall hire and supervise such other staff as may be authorized by the commission.

Legislative and Advisory Committees.

3. (a) A legislative committee comprising state legislators or their designees shall be established to monitor the operations of, and make recommendations to, the commission, including the management committee; provided that the manner of selection and term of any legislative committee member shall be as set forth in the bylaws. Prior to the adoption by the commission of any uniform standard, revision to the bylaws, annual budget or other significant matter as may be provided in the bylaws, the management committee shall consult with and report to the legislative committee.

(b) The commission shall establish two advisory committees, one of which shall comprise consumer representatives independent of the insurance industry, and the other comprising insurance industry representatives.

(c) The commission may establish additional advisory committees as its bylaws may provide for the carrying out of its functions.

Corporate Records of the Commission.

4. The commission shall maintain its corporate books and records in accordance with the bylaws.

Qualified Immunity, Defense and Indemnification.

5. (a) The members, officers, executive director, employees and representatives of the commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties or responsibilities; provided that nothing in this paragraph shall be construed to protect any such person from suit or liability for any damage, loss, injury or liability caused by the intentional or willful and wanton misconduct of that person.

(b) The commission shall defend any member, officer, executive director, employee or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error or omission that occurred within the scope of commission employment, duties or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties or responsibilities; provided that nothing herein shall be construed to prohibit that person from retaining his or her own counsel; and provided further that the actual or alleged act, error or omission did not result from that person's intentional or willful and wanton misconduct.

(c) The commission shall indemnify and hold harmless any member, officer, executive director, employee or representative of the commission for the amount of any settlement or judgment, obtained against that person arising out of any actual or alleged act, error or omission that occurred within the scope of commission employment, duties or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties or responsibilities; provided that the actual or alleged act, error or omission did not result from the intentional or willful and wanton misconduct of that person.

Article VI. Meetings and Acts of the Commission.

1. The commission shall meet and take such actions as are consistent with the provisions of this compact and the bylaws.

2. Each member of the commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the commission. A member shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for members' participation in meetings by telephone or other means of communication.

3. The commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

Article VII. Rules and Operating Procedures:
Rulemaking Functions of the Commission
and Opting Out of Uniform Standards.

Rulemaking Authority.

1. The commission shall promulgate reasonable rules, including uniform standards, and operating procedures in order to effectively and efficiently achieve the purposes of this compact. Notwithstanding the foregoing, in the event the commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this compact, or the powers granted hereunder, then such an action by the commission shall be invalid and have no force and effect.

Rulemaking Procedure.

2. Rules and operating procedures shall be made pursuant to a rulemaking process that conforms to the Model State Administrative Procedure Act of 1981, as amended, as may be appropriate to the operations of the commission. Before the commission adopts a uniform standard, the commission shall give written notice to the relevant state legislative committee in each compacting state responsible for insurance issues of its intention to adopt the uniform standard. The commission in adopting a uniform standard shall consider fully all submitted materials and issue a concise explanation of its decision.

Effective Date and Opt-Out of a Uniform Standard.

3. A uniform standard shall become effective ninety days after its promulgation by the commission or such later date as the commission may determine; provided, however, that a compacting state may opt out of a uniform standard as provided in this article. "Opt out" shall be defined as any action by a compacting state to decline to adopt or participate in a promulgated uniform standard. All other rules and operating procedures, and amendments thereto, shall become effective as of the date specified in each rule, operating procedure or amendment.

Opt-Out Procedure.

4. A compacting state may opt out of a uniform standard, either by legislation or regulation duly promulgated by the insurance department under the compacting state's administrative procedure act. If a compacting state elects to opt out of a uniform standard by regulation, it must:

(a) give written notice to the commission no later than ten business days after the uniform standard is promulgated, or at the time the state becomes a compacting state; and

(b) find that the uniform standard does not provide reasonable protections to the citizens of the state, given the conditions in the state.

The commissioner shall make specific findings of fact and conclusions of law, based on a preponderance of the evidence, detailing the conditions in the state which warrant a departure from the uniform standard and determining that the uniform standard would not reasonably protect the citizens of the state. The commissioner must consider and balance the following factors and find that the conditions in the state and needs of the citizens of the state outweigh: (i) the intent of the legislature to participate in, and the benefits of, an interstate agreement to establish national uniform consumer protections for the products subject to this compact; and (ii) the presumption that a uniform standard adopted by the commission provides reasonable protections to consumers of the relevant product. Notwithstanding the foregoing, a compacting state may, at the time of its enactment of this compact, prospectively opt out of all uniform standards involving long-term care insurance products by expressly providing for such opt-out in the enacted compact, and such an opt-out shall not be treated as a material variance in the offer or acceptance of any state to participate in this compact. Such an opt-out shall be effective at the time of enactment of this compact by the compacting state and shall apply to all existing uniform standards involving long-term care insurance products and those subsequently promulgated.

Effect of Opt-Out.

5. If a compacting state elects to opt out of a uniform standard, the uniform standard shall remain applicable in the compacting state electing to opt out until such time the opt-out legislation is enacted into law or the regulation opting out becomes effective.

Once the opt-out of a uniform standard by a compacting state becomes effective as provided under the laws of that state, the uniform standard shall have no further force and effect in that state unless and until the legislation or regulation implementing the opt-out is repealed or otherwise becomes ineffective under the laws of the state. If a compacting state opts out of a uniform standard after the uniform standard has been made effective in that state, the opt-out shall have the same prospective effect as provided under Article XIV of this compact for withdrawals.

Stay of Uniform Standard.

6. If a compacting state has formally initiated the process of opting out of a uniform standard by regulation, and while the regulatory opt-out is pending, the compacting state may petition the commission, at least fifteen days before the effective date of the uniform standard, to stay the effectiveness of the uniform standard in that state. The commission may grant a stay if it determines the regulatory opt-out is being pursued in a reasonable manner and there is a likelihood of success. If a stay is granted or extended by the commission, the stay or extension thereof may postpone the effective date by up to ninety days, unless affirmatively extended by the commission;

provided that a stay may not be permitted to remain in effect for more than one year unless the compacting state can show extraordinary circumstances which warrant a continuance of the stay, including, but not limited to, the existence of a legal challenge which prevents the compacting state from opting out. A stay may be terminated by the commission upon notice that the rulemaking process has been terminated.

7. Not later than thirty days after a rule or operating procedure is promulgated, any person may file a petition for judicial review of the rule or operating procedure; provided that the filing of such a petition shall not stay or otherwise prevent the rule or operating procedure from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the commission consistent with applicable law and shall not find the rule or operating procedure to be unlawful if the rule or operating procedure represents a reasonable exercise of the commission's authority.

Article VIII. Commission Records and Enforcement.

1. The commission shall promulgate rules establishing conditions and procedures for public inspection and copying of its information and official records, except such information and records involving the privacy of individuals and insurers' trade secrets. The commission may promulgate additional rules under which it may make available to federal and state agencies, including law enforcement agencies, records and information otherwise exempt from disclosure, and may enter into agreements with such agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

2. Except as to privileged records, data and information, the laws of any compacting state pertaining to confidentiality or nondisclosure shall not relieve any compacting state commissioner of the duty to disclose any relevant records, data or information to the commission; provided that disclosure to the commission shall not be deemed to waive or otherwise affect any confidentiality requirement; and further provided that except as otherwise expressly provided in this compact, the commission shall not be subject to the compacting state's laws pertaining to confidentiality and nondisclosure with respect to records, data and information in its possession. Confidential information of the commission shall remain confidential after such information is provided to any commissioner.

3. The commission shall monitor compacting states for compliance with duly adopted bylaws, rules, including uniform standards, and operating procedures. The commission shall notify any noncomplying compacting state in writing of its noncompliance with commission bylaws, rules or operating procedures. If a noncomplying compacting state fails to remedy its noncompliance within the time specified in the notice of noncompliance, the compacting state shall be deemed to be in default as set forth in Article XIV of this compact.

4. The commissioner of any state in which an insurer is authorized to do business, or is conducting the business of insurance, shall continue to exercise his or her authority to oversee the market regulation of the activities of the insurer in accordance with the provisions of the state's law. The commissioner's enforcement of compliance with the compact is governed by the following provisions:

(a) with respect to the commissioner's market regulation of a product or advertisement that is approved or certified to the commission, the content of the product or advertisement shall not constitute a violation of the provisions, standards or requirements of the compact except upon a final order of the commission, issued at the request of a commissioner after prior notice to the insurer and an opportunity for hearing before the commission; and

(b) before a commissioner may bring an action for violation of any provision, standard or requirement of the compact relating to the content of an advertisement not approved or certified to the commission, the commission, or an authorized commission officer or employee, must authorize the action. However, authorization pursuant to this paragraph does not require notice to the insurer, opportunity for hearing or disclosure of requests for authorization or records of the commission's action on such requests.

Article IX. Dispute Resolution.

The commission shall attempt, upon the request of a member, to resolve any disputes or other issues that are subject to this compact and which may arise between two or more compacting states, or between compacting states and non-compacting states, and the commission shall promulgate an operating procedure providing for resolution of such disputes.

Article X. Product Filing and Approval.

1. Insurers and third-party filers seeking to have a product approved by the commission shall file the product with, and pay applicable filing fees to, the commission. Nothing in this compact shall be construed to restrict or otherwise prevent an insurer from filing its product with the insurance department in any state wherein the insurer is licensed to conduct the business of insurance, and such filing shall be subject to the laws of the states where filed.

2. The commission shall establish appropriate filing and review processes and procedures pursuant to commission rules and operating procedures. Notwithstanding any provision herein to the contrary, the commission shall promulgate rules to establish conditions and procedures under which the commission will provide public access to product filing information. In establishing such rules, the commission shall consider the interests of the public in having access to such information, as well as protection of personal medical and financial information and trade secrets, that may be contained in a product filing or supporting information.

3. Any product approved by the commission may be sold or otherwise issued in those compacting states for which the insurer is legally authorized to do business.

Article XI. Review of Commission Decisions Regarding Filings.

1. Not later than thirty days after the commission has given notice of a disapproved product or advertisement filed with the commission, the insurer or third-party filer whose filing was disapproved may appeal the determination to a review panel appointed by the commission. The commission shall promulgate rules to establish procedures for appointing such review panels and provide for notice and hearing. An allegation that the commission, in disapproving a product or advertisement filed with the commission, acted arbitrarily, capriciously or in a manner that is an abuse of discretion or otherwise not in accordance with the law, is subject to judicial review in accordance with Section 4 of Article III of this compact.

2. The commission shall have authority to monitor, review and reconsider products and advertisement subsequent to their filing or approval upon a finding that the product does not meet the relevant uniform standard. Where appropriate, the commission may withdraw or modify its approval after proper notice and hearing, subject to the appeal process in Section 1 of this article.

Article XII. Finance.

1. The commission shall pay or provide for the payment of the reasonable expenses of its establishment and organization. To fund the cost of its initial operations, the commission may accept contributions and other forms of funding from the national association of insurance commissioners, compacting states and other sources. Contributions and other forms of funding from other sources shall be of such a nature that the independence of the commission concerning the performance of its duties shall not be compromised.

2. The commission shall collect a filing fee from each insurer and third-party filer filing a product with the commission to cover the cost of the operations and activities of the commission and its staff in a total amount sufficient to cover the commission's annual budget.

3. The commission's budget for a fiscal year shall not be approved until it has been subject to notice and comment as set forth in Article VII of this compact.

4. The commission shall be exempt from all taxation in and by the compacting states.

5. The commission shall not pledge the credit of any compacting state, except by and with the appropriate legal authority of that compacting state.

6. The commission shall keep complete and accurate accounts of all its internal receipts, including grants and donations, and disbursements of all funds under its control. The internal financial accounts of the commission shall be subject to the accounting procedures established under its bylaws. The financial accounts and reports, including the system of internal controls and procedures of the commission, shall be audited annually by an independent certified public accountant. Upon the determination of the commission, but no less frequently than every three years, the review of the independent auditor shall include a management and performance audit of the commission. The commission shall make an annual report to the governor and legislature of the compacting states, which shall include a report of the independent audit. The commission's internal accounts shall not be confidential, and such materials may be shared with the commissioner of any compacting state upon request; provided, however, that any work papers related to any internal or independent audit and any information regarding the privacy of individuals and insurers' proprietary information, including trade secrets, shall remain confidential.

7. No compacting state shall have any claim to or ownership of any property held by or vested in the commission or to any commission funds held pursuant to the provisions of this compact.

Article XIII. Compacting States, Effective Date and Amendment.

1. Any state is eligible to become a compacting state.

2. The compact shall become effective and binding upon legislative enactment of the compact into law by two compacting states; provided that the commission shall become effective for purposes of adopting uniform standards for, reviewing, and giving approval or disapproval of, products filed with the commission that satisfy applicable uniform standards only after twenty-six states are compacting states or, alternatively, by states representing greater than forty percent of the premium volume for life insurance, annuity, disability income and long-term care insurance products, based on records of the national association of insurance commissioners for the prior year. Thereafter, it shall become effective and binding as to any other compacting state upon enactment of the compact into law by that state.

3. Amendments to the compact may be proposed by the commission for enactment by the compacting states. No amendment shall become effective and binding upon the commission and the compacting states unless and until all compacting states enact the amendment into law.

Article XIV. Withdrawal, Default and Termination.

Withdrawal.

1. (a) Once effective, the compact shall continue in force and remain binding upon each and every compacting state; provided that a compacting state may withdraw from the compact ("withdrawing state") by enacting a statute specifically repealing the statute which enacted the compact into law.

(b) The effective date of withdrawal is the effective date of the repealing statute. However, the withdrawal shall not apply to any product filings approved or self-certified, or any advertisement of such products, on the date the repealing statute becomes effective, except by mutual agreement of the commission and the withdrawing state unless the approval is rescinded by the withdrawing state as provided in Paragraph (e) of this section.

(c) The commissioner of the withdrawing state shall immediately notify the management committee in writing upon the introduction of legislation repealing this compact in the withdrawing state.

(d) The commission shall notify the other compacting states of the introduction of such legislation within ten days after its receipt of notice thereof.

(e) The withdrawing state is responsible for all obligations, duties and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal, except to the extent those obligations may have been released or relinquished by mutual agreement of the commission and the withdrawing state. The commission's approval of products and advertisement prior to the effective date of withdrawal shall continue to be effective and be given full force and effect in the withdrawing state, unless formally rescinded by the withdrawing state in the same manner as provided by the laws of the withdrawing state for the prospective disapproval of products or advertisement previously approved under state law.

(f) Reinstatement following withdrawal of any compacting state shall occur upon the effective date of the withdrawing state reenacting the compact.

Default.

2. (a) If the commission determines that any compacting state has at any time defaulted ("defaulting state") in the performance of any of its obligations or responsibilities under this compact, the bylaws or duly promulgated rules or operating procedures, then, after notice and hearing as set forth in the bylaws, all rights, privileges and benefits conferred by this compact on the defaulting state shall be suspended from the effective date of default as fixed by the commission. The grounds for default include, but are not limited to, failure of a compacting state to perform its obligations or responsibilities, and any other grounds designated in commission rules. The commission shall immediately notify the defaulting state in writing of the defaulting state's suspension pending a cure of the default. The commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If

the defaulting state fails to cure the default within the time period specified by the commission, the defaulting state shall be terminated from the compact and all rights, privileges and benefits conferred by this compact shall be terminated from the effective date of termination.

(b) Product approvals by the commission or product self-certifications, or any advertisement in connection with such product, that are in force on the effective date of termination shall remain in force in the defaulting state in the same manner as if the defaulting state had withdrawn voluntarily pursuant to Section 1 of this article.

(c) Reinstatement following termination of any compacting state requires a reenactment of the compact.

Dissolution of Compact.

3. (a) The compact dissolves effective upon the date of the withdrawal or default of the compacting state which reduces membership in the compact to one compacting state.

(b) Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the commission shall be wound up and any surplus funds shall be distributed in accordance with the bylaws.

Article XV. Severability and Construction.

1. The provisions of this compact shall be severable; and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

2. The provisions of this compact shall be liberally construed to effectuate its purposes.

Article XVI. Binding Effect of Compact and Other Laws.

Other Laws.

1. (a) Nothing herein prevents the enforcement of any other law of a compacting state, except as provided in Paragraph (b) of this section.

(b) For any product approved or certified to the commission, the rules, uniform standards and any other requirements of the commission shall constitute the exclusive provisions applicable to the content, approval and certification of such products. For advertisement that is subject to the commission's authority, any rule, uniform standard or other requirement of the commission that governs the content of the

advertisement shall constitute the exclusive provision that a commissioner may apply to the content of the advertisement. Notwithstanding the foregoing, no action taken by the commission shall abrogate or restrict:

(i) the access of any person to state courts;

(ii) remedies available under state law related to breach of contract, tort or other laws not specifically directed to the content of the product;

(iii) state law relating to the construction of insurance contracts; or

(iv) the authority of the attorney general of the state, including but not limited to maintaining any actions or proceedings, as authorized by law.

(c) All insurance products filed with individual states shall be subject to the laws of those states.

Binding Effect of this Compact.

2. (a) All lawful actions of the commission, including all rules and operating procedures promulgated by the commission, are binding upon the compacting states.

(b) All agreements between the commission and the compacting states are binding in accordance with their terms.

(c) Upon the request of a party to a conflict over the meaning or interpretation of commission actions, and upon a majority vote of the compacting states, the commission may issue advisory opinions regarding the meaning or interpretation in dispute.

(d) In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers or jurisdiction sought to be conferred by that provision upon the commission shall be ineffective as to that compacting state, and those obligations, duties, powers or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which those obligations, duties, powers or jurisdiction are delegated by law in effect at the time this compact becomes effective."

Senate Bill 15, aa

Approved April 7, 2009

LAWS 2009, CHAPTER 189

AN ACT

RELATING TO PUBLIC SCHOOLS; CREATING AN ALTERNATIVE SCHOOL ACCOUNTABILITY SYSTEM PILOT PROJECT; PROVIDING FOR DATA COLLECTION AND ANALYSIS; PROVIDING FOR PERIODIC REPORTS TO THE GOVERNOR AND THE LEGISLATURE.

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

Chapter 189 Section 1 Laws 2009

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

"ALTERNATIVE SCHOOL ACCOUNTABILITY SYSTEM PILOT PROJECT.--

A. The "alternative school accountability system" is created as a six-year pilot project to provide an opportunity for public school districts and charter schools to participate in an accountability system, aligned with state academic content and performance standards, that demonstrates the usefulness of a student growth model of accountability for targeting resources to improve elementary and middle schools most in need, and for recognizing elementary and middle schools that make the greatest progress in increasing student academic performance.

B. The alternative school accountability system shall complement but be separate from the statewide assessment and accountability system established pursuant to federal law. It shall be based on:

(1) a growth model that measures change in academic performance as demonstrated on state standards-based assessments from year to year for each student in participating school districts and charter schools in grades four through eight;

(2) in cases of students with disabilities, demonstration of proficiency on the state standards-based assessments or alternative assessments as specified in their individualized education plans, without regard to any predetermined number or percentage of students that may be counted as proficient based on demonstration of proficiency on alternative assessments; and

(3) in cases of students with limited English proficiency, achievement of English language proficiency as demonstrated on the New Mexico English language proficiency assessment within a period to be specified by the department based on current scientific research.

C. The alternative school accountability system shall include annual reports for each participating school that:

(1) are easily understood by school personnel, parents, students and community members;

(2) report results for all students and for groups based on ethnicity, race, limited English proficiency, students with disabilities, poverty and gender; and

(3) report relative improvement in academic achievement of students in schools that have comparable levels of students at risk because of high mobility, poverty and limited English proficiency.

D. The alternative school accountability system shall be administered by the department and shall be phased in over two years.

E. During year one, the department shall convene an assessment and accountability work group composed of representatives of school district superintendents, assessment and accountability specialists, public school principals, public school teachers and teacher organizations, educators in federal bureau of Indian education schools, bilingual educators, special education teachers and administrators, parents and members of the public to assist the department in designing a uniform alternative accountability system for school districts and charter schools that voluntarily choose to participate in the pilot project. The design shall include:

(1) a value table based on four levels of academic proficiency, from beginning step through advanced, that compares the achievement level that a student earns to the level the student earned the previous year and assigns a numerical value to the change;

(2) a methodology for establishing peer groups among participating schools based on comparable levels of student mobility, poverty and percentage of English language learners;

(3) the timetable that the department will use to supply annual student growth calculations and any other necessary accountability data to school districts and charter schools that participate in the pilot project; a schedule for producing accountability reports; the information to be included in the report; and a process for disseminating reports to school communities and the public; and

(4) a detailed application process with evaluation criteria for the pilot project, including a description of how the applicant proposes to use the results of the alternative school accountability system for school improvement and recognition.

F. During year two and subsequent years of the pilot project, depending on the availability of funds appropriated by the legislature or from other available

sources, the department shall make awards to applicant school districts and charter schools to participate in the pilot project. Awarded funds may be used, as described in participants' applications, for school improvement activities, including initiatives to improve school district and charter school capacity to analyze and use assessment data for targeted school improvement and to improve student achievement through individualized instruction.

G. The department shall establish reporting and evaluation requirements for school districts and charter schools that participate in the pilot project."

Senate Bill 156, aa

Approved April 7, 2009

LAWS 2009, CHAPTER 190

AN ACT

RELATING TO HEALTH INSURANCE; AMENDING THE MEDICAL INSURANCE POOL ACT TO PROVIDE FOR PREMIUM ASSISTANCE FOR LOW-INCOME HOUSEHOLDS.

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

Chapter 190 Section 1 Laws 2009

Section 1. Section 59A-54-19 NMSA 1978 (being Laws 1987, Chapter 154, Section 19, as amended) is amended to read:

"59A-54-19. RATES--STANDARD RISK RATE.--

A. The pool shall determine a standard risk rate by actuarially calculating the individual rate that an insurer would charge for an individual policy with the pool benefits issued to a person who was a standard risk. Separate schedules of standard risk rates based on age and other appropriate demographic characteristics may be used. In determining the standard risk rate, the pool shall consider the benefits provided, the standard risk experience and the anticipated expenses for a standard risk for the coverage provided. The rates charged for pool coverage shall be no more than one hundred fifty percent of the standard risk rate for each class of insureds.

B. The board shall adopt a low-income premium schedule that provides coverage at lower rates for those persons with an income less than four hundred percent of the current federal poverty level guidelines applicable to New Mexico, published by the United States department of health and human services. For

individuals with household incomes of one hundred ninety-nine percent of the federal poverty level or lower, the premium reduction shall be seventy-five percent. For individuals with household incomes of two hundred percent to two hundred ninety-nine percent of the federal poverty level, the premium reduction shall be fifty percent. For individuals with household incomes of three hundred percent to three hundred ninety-nine percent of the federal poverty level, the premium reduction shall be twenty-five percent, with the exception of those individuals in this category who were enrolled and receiving a fifty percent reduction in premium prior to January 1, 2009, who shall be phased down to a twenty-five percent premium reduction over a two-year period, provided that they continue to re-qualify annually for a premium reduction in the three hundred percent to three hundred ninety-nine percent of the federal poverty level category. The board shall determine income based on the preceding taxable year. No person shall be eligible for a low-income premium reduction if that person's premium is paid by a third party who is not a family member.

C. All rates and rate schedules shall be submitted to the superintendent for approval."

SPAC/Senate Bill 161, w/cc

Approved April 7, 2009

LAWS 2009, CHAPTER 191

AN ACT

RELATING TO BEHAVIORAL HEALTH; CLARIFYING RESPONSIBILITIES FOR THE INTERSTATE COMPACT ON MENTAL HEALTH.

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

Chapter 191 Section 1 Laws 2009

Section 1. Section 11-7-2 NMSA 1978 (being Laws 1969, Chapter 118, Section 2, as amended) is amended to read:

"11-7-2. COMPACT COORDINATOR--POWERS AND DUTIES.--Pursuant to the Interstate Compact on Mental Health, the administrator of the New Mexico behavioral health institute is designated as the compact administrator and, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms of the compact. The compact administrator is authorized, empowered and directed to cooperate with all departments, agencies and officers of and in the government of this state and its subdivisions in facilitating the proper

administration of the compact or of any supplementary agreement entered into by this state under the compact."

Senate Bill 178, aa

Approved April 7, 2009

LAWS 2009, CHAPTER 192

AN ACT

RELATING TO SPECIAL REGISTRATION PLATES; PROVIDING FOR THE DISTRIBUTION OF A PORTION OF SPECIAL PET CARE REGISTRATION PLATE FEES TO THE ANIMAL CARE AND FACILITY FUND; AMENDING SECTIONS OF THE NMSA 1978; MAKING AN APPROPRIATION.

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

Chapter 192 Section 1 Laws 2009

Section 1. Section 66-3-424.3 NMSA 1978 (being Laws 2003, Chapter 175, Section 2) is amended to read:

"66-3-424.3. SPECIAL PET CARE REGISTRATION PLATES.--

A. The division shall issue a standardized pet care special registration plate with a logo specified in

Section 66-3-424 NMSA 1978 indicating that the recipient supports pet care.

B. The division, with the advice and consultation of animal control offices and animal shelters in communities around the state, shall determine the color and design of the pet care special registration logo and provide for its issuance.

C. For a fee of thirty-five dollars (\$35.00) in addition to the regular motor vehicle registration fees, an owner of a motor vehicle may apply for the issuance of a pet care special registration plate. The owner of a motor vehicle shall apply and pay the fee each year that the owner wishes to retain and renew a pet care special registration plate.

D. The revenue from the pet care special registration plates shall be distributed as follows:

(1) ten dollars (\$10.00) of the fee collected for each pet care special registration plate shall be retained by and is appropriated to the division for the manufacture and issuance of the registration plates; and

(2) twenty-five dollars (\$25.00) of the fee collected for each pet care special registration plate shall be paid to the state treasurer for credit to the animal care and facility fund."

Chapter 192 Section 2 Laws 2009

Section 2. Section 77-1B-4 NMSA 1978 (being Laws 2007, Chapter 60, Section 4) 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 Services 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 Services 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 Services Act.

C. Money in the fund is subject to appropriation by the legislature to the department to be used to help animal shelters and communities defray the cost of implementing the board's initiatives conducted pursuant to the Animal Sheltering Services Act. The fund shall be administered by the department to carry out the purposes of the Animal Sheltering Services Act.

D. Each fiscal year, an amount of money in the fund appropriated pursuant to this section that is equal to the total amount of money credited to the fund for that fiscal year from special registration plates issued pursuant to Section 66-3-424.3 NMSA 1978 shall be administered so that spay and neuter programs in a county receive money attributable to the number of those special registration plates issued in that county.

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 superintendent of regulation and licensing or the superintendent's designee.

F. Unexpended and unencumbered balances in the fund at the end of a fiscal year shall not revert to the general fund."

Chapter 192 Section 3 Laws 2009

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.

Senate Bill 185, aa

Approved April 7, 2009

LAWS 2009, CHAPTER 193

AN ACT

RELATING TO COMPULSORY SCHOOL ATTENDANCE; CHANGING TERMS AND NOTICE PROVISIONS; CLARIFYING HOW UNEXCUSED ABSENCES ARE DETERMINED; REQUIRING REPORTS.

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

Chapter 193 Section 1 Laws 2009

Section 1. Section 22-8-2 NMSA 1978 (being Laws 1978, Chapter 128, Section 3, as amended) is amended to read:

"22-8-2. DEFINITIONS.--As used in the Public School Finance Act:

A. "ADM" or "MEM" means membership;

B. "membership" means the total enrollment of qualified students on the current roll of a class or school on a specified day. The current roll is established by the addition of original entries and reentries minus withdrawals. Withdrawals of students, in addition to students formally withdrawn from the public school, include students absent from the public school for as many as ten consecutive school days; provided that withdrawals do not include students in need of early intervention and habitual truants the school district is required to intervene with and keep in an educational setting as provided in Section 22-12-9 NMSA 1978;

C. "basic program ADM" or "basic program MEM" means the MEM of qualified students but excludes the full-time-equivalent MEM in early childhood education and three- and four-year-old students receiving special education services;

D. "cost differential factor" is the numerical expression of the ratio of the cost of a particular segment of the school program to the cost of the basic program in grades four through six;

E. "department" or "division" means the public education department;

F. "early childhood education ADM" or "early childhood education MEM" means the full-time-equivalent MEM of students attending approved early childhood education programs;

G. "full-time-equivalent ADM" or

"full-time-equivalent MEM" is that membership calculated by applying to the MEM in an approved public school program the ratio of the number of hours per school day devoted to the program to six hours or the number of hours per school week devoted to the program to thirty hours;

H. "operating budget" means the annual financial plan required to be submitted by a local school board or governing body of a state-chartered charter school;

I. "program cost" is the product of the total number of program units to which a school district is entitled multiplied by the dollar value per program unit established by the legislature;

J. "program element" is that component of a public school system to which a cost differential factor is applied to determine the number of program units to which a school district is entitled, including but not limited to MEM, full-time-equivalent MEM, teacher, classroom or public school;

K. "program unit" is the product of the program element multiplied by the applicable cost differential factor;

L. "public money" or "public funds" means all money from public or private sources received by a school district or state-chartered charter school or officer or employee of a school district or state-chartered charter school for public use;

M. "qualified student" means a public school student who:

(1) has not graduated from high school;

(2) is regularly enrolled in one-half or more of the minimum course requirements approved by the department for public school students; and

(3) in terms of age:

(a) is at least five years of age prior to 12:01 a.m. on September 1 of the school year;

(b) is at least three years of age at any time during the school year and is receiving special education services pursuant to rules of the department; or

(c) has not reached the student's twenty-second birthday on the first day of the school year and is receiving special education services pursuant to rules of the department; and

N. "state superintendent" means the secretary of public education or the secretary's designee."

Chapter 193 Section 2 Laws 2009

Section 2. Section 22-12-7 NMSA 1978 (being Laws 1967, Chapter 16, Section 175, as amended) is amended to read:

"22-12-7. ENFORCEMENT OF ATTENDANCE LAW--HABITUAL TRUANTS--PENALTY.--

A. Each local school board and each governing body of a charter school or private school shall initiate the enforcement of the provisions of the Compulsory School Attendance Law for students enrolled in their respective schools.

B. To initiate enforcement of the provisions of the Compulsory School Attendance Law against an habitual truant, a local school board or governing body of a charter school or private school or its authorized representatives shall give written notice of the habitual truancy by mail to or by personal service on the parent of the student subject to and in noncompliance with the provisions of the Compulsory School Attendance Law. The notice shall include a date, time and place for the parent to meet with the local school district, charter school or private school to develop intervention strategies that focus on keeping the student in an educational setting.

C. If unexcused absences continue after written notice of habitual truancy as provided in Subsection B of this section has occurred, the student shall be reported to the probation services office of the judicial district where the student resides for an investigation as to whether the student shall be considered to be a neglected child or a child in a family in need of services because of habitual truancy and thus subject to the provisions of the Children's Code. The probation services office may send a written notice to a parent of the student directing the parent and student to report to the probation services office to discuss services for the student or the family. In addition to any other disposition, the children's court may order the habitual truant's driving privileges to be suspended for a specified time not to exceed ninety days on the first

finding of habitual truancy and not to exceed one year for a subsequent finding of habitual truancy.

D. If, after review by the juvenile probation office where the student resides, a determination and finding is made that the habitual truancy by the student may have been caused by the parent of the student, then the matter will be referred by the juvenile probation office to the district attorney's office or any law enforcement agency having jurisdiction for appropriate investigation and filing of charges allowed under the Compulsory School Attendance Law. Charges against the parent may be filed in metropolitan court, magistrate court or district court.

E. A parent of the student who, after receiving written notice as provided in Subsection B of this section and after the matter has been reviewed in accordance with Subsection D of this section, knowingly allows the student to continue to violate the Compulsory School Attendance Law shall be guilty of a petty misdemeanor. Upon the first conviction, a fine of not less than twenty-five dollars (\$25.00) or more than one hundred dollars (\$100) may be imposed, or the parent of the student may be ordered to perform community service. If violations of the Compulsory School Attendance Law continue, upon the second and subsequent convictions, the parent of the student who knowingly allows the student to continue to violate the Compulsory School Attendance Law shall be guilty of a petty misdemeanor and shall be subject to a fine of not more than five hundred dollars (\$500) or imprisonment for a definite term not to exceed six months or both.

F. The provisions of this section shall apply beginning July 1, 2004."

Chapter 193 Section 3 Laws 2009

Section 3. Section 22-12-8 NMSA 1978 (being Laws 1985, Chapter 104, Section 1, as amended) is amended to read:

"22-12-8. EARLY IDENTIFICATION--UNEXCUSED ABSENCES AND TRUANCY.--Notwithstanding the provisions of Section 22-12-7 NMSA 1978, if a student is in need of early intervention, the school district, charter school or private school shall contact the student's parent to inform the parent that the student has unexcused absences from school and to discuss possible interventions. The provisions of this section do not apply to any absence if the parent has contacted the school to explain the absence."

Chapter 193 Section 4 Laws 2009

Section 4. Section 22-12-9 NMSA 1978 (being Laws 2004, Chapter 28, Section 1, as amended) is amended to read:

"22-12-9. UNEXCUSED ABSENCES AND TRUANCY--ATTENDANCE POLICIES.--

A. As used in this section and Sections 22-12-7 and 22-12-8 NMSA 1978:

(1) "habitual truant" means a student who has accumulated the equivalent of ten or more unexcused absences within a school year;

(2) "student in need of early intervention" means a student who has accumulated five unexcused absences within a school year; and

(3) "unexcused absence" means an absence from school or classes for which the student does not have an allowable excuse pursuant to the Compulsory School Attendance Law or rules of the local school board or governing authority of a charter school or private school.

B. An unexcused absence of two or more classes up to fifty percent of an instructional day shall be counted as one-half day absence, and the unexcused absence of more than fifty percent of an instructional day shall be counted as one full-day absence.

C. Each school district, and charter school shall maintain an attendance policy that:

(1) provides for early identification of students with unexcused absences, students in need of early intervention and habitual truants and provides intervention strategies that focus on keeping students in need of early intervention in an educational setting and prohibit out-of-school suspension and expulsion as the punishment for unexcused absences and habitual truancy;

(2) uses withdrawal as provided in Section 22-8-2 NMSA 1978 only after exhausting intervention efforts to keep students in educational settings;

(3) requires that class attendance be taken for every instructional day in every public school or school program in the school district; and

(4) provides for schools to document the following for each student identified as a habitual truant:

(a) attempts of the school to notify the parent that the student had unexcused absences;

(b) attempts of the school to meet with the parent to discuss intervention strategies; and

(c) intervention strategies implemented to support keeping the student in school.

D. The department shall review and approve school district and charter school attendance policies.

E. School districts and charter schools shall report unexcused absences and habitual truancy rates to the department in a form and at such times as the department determines and shall document intervention efforts made to keep students in need of early intervention and habitual truants in educational settings. Locally chartered charter schools shall provide copies of their reports to the school district. The department shall compile school district and charter school reports on rates of unexcused absences and habitual truancy and require school districts and charter schools to certify that the information is being reported consistently."

Chapter 193 Section 5 Laws 2009

Section 5. Section 32A-3B-2 NMSA 1978 (being Laws 1993, Chapter 77, Section 74, as amended) is amended to read:

"32A-3B-2. DEFINITIONS.--As used in Chapter 32A, Article 3B NMSA 1978, "family in need of court-ordered services" means the child or the family has refused family services or the department has exhausted appropriate and available family services and court intervention is necessary to provide family services to the child or family and the following circumstances exist:

A. it is a family whose child, subject to compulsory school attendance, is absent from school without an authorized excuse more than ten days during a school year;

B. it is a family whose child is absent from the child's place of residence for a time period of twelve hours or more without consent of the child's parent, guardian or custodian;

C. it is a family whose child refuses to return home and there is good cause to believe that the child will run away from home if forced to return to the parent, guardian or custodian; or

D. it is a family in which the child's parent, guardian or custodian refuses to allow the child to return home and a petition alleging neglect of the child is not in the child's best interests."

Senate Bill 189, aa

Approved April 7, 2009

LAWS 2009, CHAPTER 194

AN ACT

RELATING TO THE ENVIRONMENT; AMENDING SECTIONS OF THE WATER QUALITY ACT TO LIMIT RULEMAKING TO SPECIFIC AUTHORITY OF THE ACT.

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

Chapter 194 Section 1 Laws 2009

Section 1. Section 74-6-4 NMSA 1978 (being Laws 1967, Chapter 190, Section 4, as amended) is amended to read:

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

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

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

C. shall not adopt or promulgate a standard or regulation that exceeds a grant of rulemaking authority listed in the statutory section of the Water Quality Act authorizing the standard or regulation;

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

E. shall adopt, promulgate and publish regulations to prevent or abate water pollution in the state or in any specific geographic area, aquifer or watershed of the state or in any part thereof, or for any class of waters, and to govern the disposal of septage and sludge and the use of sludge for various beneficial purposes. The regulations governing the disposal of septage and sludge may include the use of tracking and permitting systems or other reasonable means necessary to assure that septage and sludge are designated for disposal in, and arrive at, disposal facilities, other than facilities on the premises where the septage and sludge is generated, for which a permit or other authorization has been issued pursuant to the federal act or the Water Quality Act. Regulations may specify a standard of performance for new sources that reflects the greatest reduction in the concentration of water contaminants that the

commission determines to be achievable through application of the best available demonstrated control technology, processes, operating methods or other alternatives, including where practicable a standard permitting no discharge of pollutants. In making regulations, the commission shall give weight it deems appropriate to all relevant facts and circumstances, including:

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

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

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

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

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

(6) property rights and accustomed uses; and

(7) federal water quality requirements;

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

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

H. may grant an individual variance from any regulation of the commission whenever it is found that compliance with the regulation will impose an unreasonable

burden upon any lawful business, occupation or activity. The commission may only grant a variance conditioned upon a person effecting a particular abatement of water pollution within a reasonable period of time. Any variance shall be granted for the period of time specified by the commission. The commission shall adopt regulations specifying the procedure under which variances may be sought, which regulations shall provide for the holding of a public hearing before any variance may be granted;

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

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

K. shall specify in regulations the measures to be taken to prevent water pollution and to monitor water quality. The commission may adopt regulations for particular industries. The commission shall adopt regulations for the dairy industry and the copper industry. The commission shall consider, in addition to the factors listed in Subsection E of this section, the best available scientific information. The regulations may include variations in requirements based on site-specific factors, such as depth and distance to ground water and geological and hydrological conditions. The constituent agency shall establish an advisory committee composed of persons with knowledge and expertise particular to the industry category and other interested stakeholders to advise the constituent agency on appropriate regulations to be proposed for adoption by the commission. The regulations shall be developed and adopted in accordance with a schedule approved by the commission. The schedule shall incorporate an opportunity for public input and stakeholder negotiations;

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

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

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

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

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

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

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

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

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

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

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

(9) gray water is not sprayed;

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

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

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

Chapter 194 Section 2 Laws 2009

Section 2. Section 74-6-5 NMSA 1978 (being Laws 1973, Chapter 326, Section 4, as amended) is amended to read:

"74-6-5. PERMITS--CERTIFICATION--APPEALS TO COMMISSION.--

A. By regulation, the commission may require persons to obtain from a constituent agency designated by the commission a permit for the discharge of any water contaminant or for the disposal or reuse of septage or sludge.

B. The commission shall adopt regulations establishing procedures for certifying federal water quality permits.

C. Prior to the issuance of a permit, the constituent agency may require the submission of plans, specifications and other relevant information that it deems necessary.

D. The commission shall by regulation set the dates upon which applications for permits shall be filed and designate the time periods within which the constituent agency shall, after the filing of an administratively complete application for a permit, either grant the permit, grant the permit subject to conditions or deny the permit. The constituent agency has the burden of showing that each condition is reasonable and necessary to ensure compliance with the Water Quality Act and applicable regulations, considering site-specific conditions. After regulations have been adopted for a particular industry, permits for facilities in that industry shall be subject to conditions contained in the regulations. Additional conditions on a final permit may be imposed if the applicant is provided with an opportunity to review and provide comments in writing on the draft permit conditions and to receive a written explanation of the reasons for the conditions from the constituent agency.

E. The constituent agency shall deny any application for a permit or deny the certification of a federal water quality permit if:

(1) the effluent would not meet applicable state or federal effluent regulations, standards of performance or limitations;

(2) any provision of the Water Quality Act would be violated;

(3) the discharge would cause or contribute to water contaminant levels in excess of any state or federal standard. Determination of the discharge's effect on ground water shall be measured at any place of withdrawal of water for present or reasonably foreseeable future use. Determination of the discharge's effect on surface waters shall be measured at the point of discharge; or

(4) the applicant has, within the ten years immediately preceding the date of submission of the permit application:

(a) knowingly misrepresented a material fact in an application for a permit;

(b) refused or failed to disclose any information required under the Water Quality Act;

(c) been convicted of a felony or other crime involving moral turpitude;

(d) been convicted of a felony in any court for any crime defined by state or federal law as being a restraint of trade, price-fixing, bribery or fraud;

(e) exhibited a history of willful disregard for environmental laws of any state or the United States; or

(f) had an environmental permit revoked or permanently suspended for cause under any environmental laws of any state or the United States.

F. The commission shall by regulation develop procedures that ensure that the public, affected governmental agencies and any other state whose water may be affected shall receive notice of each application for issuance, renewal or modification of a permit. Public notice shall include:

(1) for issuance or modification of a permit:

(a) notice by mail to adjacent and nearby landowners; local, state and federal governments; land grant organizations; ditch associations; and Indian nations, tribes or pueblos;

(b) posting at a place conspicuous to the public and near the discharge or proposed discharge site; and

(c) a display advertisement in English and Spanish in a newspaper of general circulation in the location of the discharge or proposed discharge; provided, however, that the advertisement shall not be displayed in the classified or legal advertisement sections; and

(2) for issuance of renewals of permits:

(a) notice by mail to the interested public, municipalities, counties, land grant organizations, ditch associations and Indian nations, tribes or pueblos; and

(b) a display advertisement in English and Spanish in a newspaper of general circulation in the location of the discharge; provided, however, that the advertisement shall not be displayed in the classified or legal advertisement sections.

G. No ruling shall be made on any application for a permit without opportunity for a public hearing at which all interested persons shall be given a reasonable chance to submit evidence, data, views or arguments orally or in writing and to examine witnesses testifying at the hearing. The hearing shall be recorded. Any person submitting evidence, data, views or arguments shall be subject to examination at the hearing.

H. The commission may adopt regulations for the operation and maintenance of the permitted facility, including requirements, as may be necessary or desirable, that relate to continuity of operation, personnel training and financial responsibility, including financial responsibility for corrective action.

I. Permits shall be issued for fixed terms not to exceed five years, except that for new discharges, the term of the permit shall commence on the date the discharge begins, but in no event shall the term of the permit exceed seven years from the date the permit was issued.

J. By regulation, the commission may impose reasonable conditions upon permits requiring permittees to:

(1) install, use and maintain effluent monitoring devices;

(2) sample effluents and receiving waters for any known or suspected water contaminants in accordance with methods and at locations and intervals as may be prescribed by the commission;

(3) establish and maintain records of the nature and amounts of effluents and the performance of effluent control devices;

(4) provide any other information relating to the discharge or direct or indirect release of water contaminants; and

(5) notify a constituent agency of the introduction of new water contaminants from a new source and of a substantial change in volume or character of water contaminants being introduced from sources in existence at the time of the issuance of the permit.

K. The commission shall provide by regulation a schedule of fees for permits, not exceeding the estimated cost of investigation and issuance, modification and renewal of permits. Fees collected pursuant to this section shall be deposited in the water quality management fund.

L. The issuance of a permit does not relieve any person from the responsibility of complying with the provisions of the Water Quality Act, any applicable regulations or water quality standards of the commission or any applicable federal laws, regulations or standards.

M. A permit may be terminated or modified by the constituent agency that issued the permit prior to its date of expiration for any of the following causes:

- (1) violation of any condition of the permit;
- (2) obtaining the permit by misrepresentation or failure to disclose fully all relevant facts;
- (3) violation of any provisions of the Water Quality Act or any applicable regulations, standard of performance or water quality standards;
- (4) violation of any applicable state or federal effluent regulations or limitations; or
- (5) change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

N. If the constituent agency denies, terminates or modifies a permit or grants a permit subject to condition, the constituent agency shall notify the applicant or permittee by certified mail of the action taken and the reasons. Notice shall also be given by mail to persons who participated in the permitting action.

O. A person who participated in a permitting action before a constituent agency or a person affected by a certification of a federal permit and who is adversely affected by such permitting action or certification may file a petition for review before the commission. Unless a timely petition for review is made, the decision of the constituent agency shall be final and not subject to judicial review. The petition shall:

- (1) be made in writing to the commission within thirty days from the date notice is given of the constituent agency's action;
- (2) include a statement of the issues to be raised and the relief sought; and
- (3) be provided to all other persons submitting evidence, data, views or arguments in the proceeding before the constituent agency.

P. If a timely petition for review is made, the commission shall consider the petition within ninety days after receipt of the petition. The commission shall notify the petitioner and the applicant or permittee, if other than the petitioner, by certified mail of the date, time and place of the review. If the petitioner is not the applicant or permittee, the applicant or permittee shall be a party to the proceeding. The commission shall ensure that the public receives notice of the date, time and place of the review.

Q. The commission shall review the record compiled before the constituent agency, including the transcript of any public hearing held on the application

or draft permit, and shall allow any party to submit arguments. The commission may designate a hearing officer to review the record and the arguments of the parties and recommend a decision to the commission. The commission shall consider and weigh only the evidence contained in the record before the constituent agency and the recommended decision of the hearing officer, if any, and shall not be bound by the factual findings or legal conclusions of the constituent agency. Based on the review of the evidence, the arguments of the parties and recommendations of the hearing officer, the commission shall sustain, modify or reverse the action of the constituent agency. The commission shall enter ultimate findings of fact and conclusions of law and keep a record of the review.

R. Prior to the date set for review, if a party shows to the satisfaction of the commission that there was no reasonable opportunity to submit comment or evidence on an issue being challenged, the commission shall order that additional comment or evidence be taken by the constituent agency. Based on the additional evidence, the constituent agency may revise the decision and shall promptly file with the commission the additional evidence received and action taken. The commission shall consider the additional evidence within ninety days after receipt of the additional evidence and shall notify the petitioner and the applicant or permittee, if other than the petitioner, of the date, time and place of the review.

S. The commission shall notify the petitioner and all other participants in the review proceeding of the action taken by the commission and the reasons for that action."

SFL/Senate Bill 206, aa

Approved April 7, 2009

LAWS 2009, CHAPTER 195

AN ACT

RELATING TO PUBLIC SCHOOLS; EXPANDING THE DEFINITION OF NEPOTISM;
AMENDING SECTIONS OF THE NMSA 1978.

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

Chapter 195 Section 1 Laws 2009

Section 1. Section 22-5-6 NMSA 1978 (being Laws 1971, Chapter 199, Section 1, as amended) is amended to read:

"22-5-6. NEPOTISM PROHIBITED.--

A. A local superintendent shall not initially employ or approve the initial employment in any capacity of a person who is the spouse, father, father-in-law, mother, mother-in-law, son, son-in-law, daughter, daughter-in-law, brother, brother-in-law, sister or sister-in-law of a member of the local school board or the local superintendent. The local school board may waive the nepotism rule for family members of a local superintendent.

B. Nothing in this section shall prohibit the continued employment of a person employed on or before July 1, 2008."

Chapter 195 Section 2 Laws 2009

Section 2. Section 22-8B-10 NMSA 1978 (being Laws 1999, Chapter 281, Section 10, as amended) is amended to read:

"22-8B-10. CHARTER SCHOOLS--EMPLOYEES.--

A. A charter school shall hire its own employees. The provisions of the School Personnel Act shall apply to such employees. The head administrator of the charter school shall employ, fix the salaries of, assign, terminate and discharge all employees of the charter school.

B. The head administrator of a charter school shall not initially employ or approve the initial employment in any capacity of a person who is the spouse, father, father-in-law, mother, mother-in-law, son, son-in-law, daughter, daughter-in-law, brother, brother-in-law, sister or sister-in-law of a member of the governing body or the head administrator. The governing body may waive the nepotism rule for family members of a head administrator.

C. Nothing in this section shall prohibit the continued employment of a person employed on or before July 1, 2008."

Senate Bill 212

Approved April 7, 2009

LAWS 2009, CHAPTER 196

AN ACT

RELATING TO TAXATION; AMENDING THE WEIGHT DISTANCE TAX ACT;
IMPOSING CIVIL PENALTIES FOR UNDERREPORTING MILEAGE DRIVEN OR
GROSS VEHICLE WEIGHT.

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

Chapter 196 Section 1 Laws 2009

Section 1. A new section of the Weight Distance Tax Act is enacted to read:

"CIVIL PENALTIES--UNDER-MILEAGE REPORTERS--UNDER-WEIGHT REPORTERS.--Any person required to file a report pursuant to Subsection B of Section 7-15A-8 NMSA 1978 that is determined to have reported less than the mileage actually traveled on New Mexico highways during a tax payment period or less than the actual gross vehicle weight traveled during a tax payment period shall, in addition to any other applicable fees, penalties and interest, pay an additional penalty computed in accordance with the following schedule:

Weight Distance Tax

Owed Per Period	Penalty
\$1 to \$99	\$ 100
\$100 to \$499	\$ 500
\$500 to \$999	\$1,000
\$1,000 to \$1,499	\$1,500
\$1,500 to \$1,999	\$2,000
\$2,000 to \$2,499	\$2,500
\$2,500 to \$2,999	\$3,000
\$3,000 and over	\$4,000."

Chapter 196 Section 2 Laws 2009

Section 2. SEVERABILITY.--If any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

Chapter 196 Section 3 Laws 2009

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.

Senate Bill 213, aa

Approved April 7, 2009

LAWS 2009, CHAPTER 197

AN ACT

RELATING TO TAXATION; AMENDING THE CIGARETTE TAX ACT TO EXPAND THE DEFINITION OF CIGARETTE, DECLARE AS CONTRABAND CIGARETTES NOT IN THE DIRECTORY, ALLOW DISTRIBUTORS TO SELL UNSTAMPED CIGARETTES TO OTHER DISTRIBUTORS, LIMIT THE WAIVER OF STAMPING REQUIREMENTS AND ALLOW THE DEPARTMENT TO DENY STAMPS TO VIOLATORS OR TO RENEW LICENSES; AMENDING AND IMPOSING PENALTIES; AMENDING THE TOBACCO PRODUCTS TAX ACT TO EXEMPT SALES TO CERTAIN TRIBAL GOVERNMENTS AND TO TAX FREE SAMPLES; AMENDING THE CIGARETTE ENFORCEMENT ACT; AMENDING THE TOBACCO ESCROW FUND ACT; REQUIRING ADDITIONAL DOCUMENTATION PRIOR TO DELIVERY SALES OF CIGARETTES; REQUIRING CERTAIN TOBACCO PRODUCTS MANUFACTURERS AND IMPORTERS TO POST BONDS; GRANTING ADDITIONAL POWERS TO THE ATTORNEY GENERAL; IMPOSING JOINT AND SEVERAL LIABILITY ON CERTAIN TOBACCO PRODUCTS MANUFACTURERS AND IMPORTERS.

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

Chapter 197 Section 1 Laws 2009

Section 1. Section 6-4-12 NMSA 1978 (being Laws 1999, Chapter 208, Section 1) is amended to read:

"6-4-12. DEFINITIONS.--As used in Sections 6-4-12 and 6-4-13 NMSA 1978:

A. "adjusted for inflation" means increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the master settlement agreement;

B. "affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms "owns", "is owned" and "ownership" mean ownership of an equity interest, or the equivalent thereof, of ten percent or more, and the term "person" means an individual, partnership, committee, association, corporation or any other organization or group of persons;

C. "allocable share" means Allocable Share as that term is defined in the master settlement agreement;

D. "cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains:

(1) any roll of tobacco wrapped in paper or in any substance not containing tobacco;

(2) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or

(3) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in Paragraph (1) of this subsection. The term "cigarette" includes "roll-your-own" (i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this definition of "cigarette", 0.09 ounces of "roll-your-own" tobacco shall constitute one individual "cigarette";

E. "master settlement agreement" means the settlement agreement (and related documents) entered into on November 23, 1998 by the state and leading United States tobacco product manufacturers;

F. "qualified escrow fund" means an escrow arrangement with a federally or state chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least one billion dollars (\$1,000,000,000) where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing or directing the use of the funds' principal except as consistent with Subsection B of Section 6-4-13 NMSA 1978;

G. "released claims" means Released Claims as that term is defined in the master settlement agreement;

H. "releasing parties" means Releasing Parties as that term is defined in the master settlement agreement;

I. "tobacco product manufacturer" means an entity that after the date of enactment of this act directly (and not exclusively through any affiliate):

(1) manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an original participating manufacturer (as that term is defined in the master settlement agreement) that will be responsible for the payments under the master settlement agreement with

respect to such cigarettes as a result of the provisions of subsection II(mm) of the master settlement agreement and that pays the taxes specified in subsection II(z) of the master settlement agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States);

(2) is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

(3) becomes a successor of an entity described in Paragraph (1) or (2) of this subsection.

The term "tobacco product manufacturer" shall not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within Paragraph (1), (2) or (3) of this subsection; and

J. "units sold" means the number of individual cigarettes sold in the state by the applicable tobacco product manufacturer (whether directly or through a distributor, retailer or similar intermediary or intermediaries) during the year in question, as measured by excise taxes collected, ounces of "roll-your-own" tobacco sold and sales of products bearing tax-exempt stamps on packs or "roll-your-own" tobacco containers. The secretary of taxation and revenue shall promulgate such rules as are necessary to ascertain the amount of state excise tax paid on the cigarettes of such tobacco product manufacturer for each year."

Chapter 197 Section 2 Laws 2009

Section 2. Section 6-4-14 NMSA 1978 (being Laws 2003, Chapter 114, Section 1) is amended to read:

"6-4-14. SHORT TITLE.--Sections 6-4-14 through 6-4-24 NMSA 1978 may be cited as the "Tobacco Escrow Fund Act"."

Chapter 197 Section 3 Laws 2009

Section 3. Section 6-4-17 NMSA 1978 (being Laws 2003, Chapter 114, Section 4) is amended to read:

"6-4-17. CERTIFICATION BY TOBACCO PRODUCT MANUFACTURER.--

A. No later than April 30 of each year, a tobacco product manufacturer whose cigarettes are sold in this state, whether directly or through a distributor, retailer or similar intermediary, shall execute and deliver to the attorney general, in the manner and on the form prescribed by the attorney general requesting such information as the attorney general deems reasonably necessary to make the determination required by

Section 6-4-18 NMSA 1978, a certification pursuant to this section. The certification shall:

(1) be made under penalty of perjury;

(2) state that as of the date of the certification, the tobacco product manufacturer is either a participating or a nonparticipating manufacturer; and

(3) include the information required pursuant to Subsection B or C of this section.

B. In its certification, a participating manufacturer shall include a complete list of its brand families.

C. In its certification, a nonparticipating manufacturer shall:

(1) certify that it is registered to do business in the state or has appointed an agent for service of process and has provided written notice to the attorney general in accordance with Section 6-4-20 NMSA 1978;

(2) certify that it is in full compliance with Section 6-4-13 NMSA 1978, the Tobacco Escrow Fund Act and any rules promulgated pursuant to that act, including all annual payments as may be required by the attorney general;

(3) certify that it has established and maintains a qualified escrow fund governed by a qualified escrow agreement that has been reviewed and approved by the attorney general and provide:

(a) the name, address and telephone number of the financial institution where the fund is established;

(b) the account number of the fund and the subaccount number for the state;

(c) the amounts placed in the fund for cigarettes sold in the state during the preceding calendar year, including the date and amount of each deposit and any other evidence or verification of the amounts as the attorney general deems necessary; and

(d) the amount and date of each withdrawal or transfer of funds made at any time from the fund or from any other qualified escrow fund into which the nonparticipating manufacturer has made escrow payments pursuant to Section 6-4-13 NMSA 1978; and

(4) include a complete list of its brand families and:

(a) separately list the number of units sold in the state for each brand family during the preceding calendar year, indicating any brand family sold in the state during the preceding calendar year that is no longer being sold as of the date of certification; and

(b) indicate all of its brand families that have been sold in the state at any time during the current calendar year, identifying by name and address any other manufacturer of the brand families in the preceding or current calendar year.

D. In its certification, a nonparticipating manufacturer located outside of the United States shall also:

(1) certify that it has provided a declaration, on a form prescribed by the attorney general, from each of its importers into the United States of any of its brand families to be sold in New Mexico that the importer accepts joint and several liability with the nonparticipating manufacturer for all escrow deposits due in accordance with Section 6-4-13 NMSA 1978, for all penalties assessed in accordance with Section 6-4-13 NMSA 1978 and for payment of all costs and attorney fees imposed in accordance with the Tobacco Escrow Fund Act or Section 6-4-13 NMSA 1978; and

(2) certify that it has appointed a resident agent for service of process in New Mexico in accordance with Section 6-4-20 NMSA 1978.

E. A tobacco product manufacturer may not include a brand family in its certification unless:

(1) in the case of a participating manufacturer, the participating manufacturer affirms that the brand family is to be deemed its cigarettes for purposes of calculating its payments under the master settlement agreement for the relevant year in the volume and shares determined pursuant to the master settlement agreement; or

(2) in the case of a nonparticipating manufacturer, the nonparticipating manufacturer affirms that the brand family is to be deemed its cigarettes for purposes of Section 6-4-13 NMSA 1978.

F. A tobacco product manufacturer shall update the list of its brand families thirty days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the attorney general.

G. A tobacco product manufacturer shall maintain all invoices and documentation of sales and other information relied upon for its certification to the attorney general for a period of five years, unless otherwise required by law to maintain them for a greater period of time.

H. Nothing in this section shall limit or otherwise affect the state's right to maintain that a brand family constitutes cigarettes of a different tobacco product

manufacturer for purposes of calculating payments under the master settlement agreement or for purposes of Section 6-4-13 NMSA 1978."

Chapter 197 Section 4 Laws 2009

Section 4. Section 6-4-18 NMSA 1978 (being Laws 2003, Chapter 114, Section 5) is amended to read:

"6-4-18. DIRECTORY OF TOBACCO PRODUCT MANUFACTURERS AND CIGARETTE BRANDS.--

A. The attorney general shall develop, maintain and publish on its web site a directory listing all tobacco product manufacturers that have provided current, accurate and complete certifications as required by the Tobacco Escrow Fund Act and all brand families that are listed in those certifications. The attorney general shall not include or retain in the directory a name or brand family if:

(1) the participating manufacturer fails to provide the required certification or to make a payment calculated by an independent auditor to be due from it under the master settlement agreement except to the extent that it is disputing such payment;

(2) the nonparticipating manufacturer fails to provide the required certification or the attorney general determines that its certification is not in compliance with Section 6-4-17 NMSA 1978; or

(3) the attorney general concludes that:

(a) all escrow payments required by Section 6-4-13 NMSA 1978 for any period for any brand family, whether or not listed by the nonparticipating manufacturer, have not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the attorney general;

(b) any outstanding final judgments, including interest thereon, for violations of Section 6-4-13 NMSA 1978 have not been fully satisfied for the brand family or the nonparticipating manufacturer;

(c) for a nonparticipating manufacturer or a tobacco product manufacturer that became a participating manufacturer after the master settlement agreement in New Mexico or in any other state, or any of its principals, the nonparticipating manufacturer or tobacco product manufacturer fails to provide reasonable assurance that it will comply with the requirements of the Tobacco Escrow Fund Act; or

(d) the manufacturer has knowingly failed to disclose any material information required or knowingly made any material false statement in the certification of any supporting information or documentation provided.

B. As used in this section, "reasonable assurances" means information and documentation establishing to the satisfaction of the attorney general that a failure to pay in New Mexico or elsewhere was the result of a good faith dispute over the payment obligation.

C. The attorney general shall update the directory as necessary by adding or removing a tobacco product manufacturer or a brand family to keep the directory in conformity with the requirements of the Tobacco Escrow Fund Act.

D. A distributor shall provide a current electronic mail address to the attorney general for the purpose of receiving notifications as may be required pursuant to the Tobacco Escrow Fund Act."

Chapter 197 Section 5 Laws 2009

Section 5. A new section of the Tobacco Escrow Fund Act, Section 6-4-18.1 NMSA 1978, is enacted to read:

"6-4-18.1. BOND REQUIREMENTS FOR NEWLY QUALIFIED AND ELEVATED RISK NONPARTICIPATING MANUFACTURERS.--

A. The attorney general may require a nonparticipating manufacturer to post a bond for the first three years of the manufacturer's listing in the directory or for a longer period if the manufacturer has been determined to pose an elevated risk for noncompliance with the Tobacco Escrow Fund Act. The attorney general may consult with other states to determine the viability of a potential nonparticipating manufacturer and may impose additional requirements to protect state interests.

B. Notwithstanding any other provision of law, if a nonparticipating manufacturer is to be listed in the directory, and if the attorney general reasonably determines that a nonparticipating manufacturer that has filed a certification pursuant to Section 6-4-17 NMSA 1978 poses an elevated risk for noncompliance with the Tobacco Escrow Fund Act, the nonparticipating manufacturer and any of its brand families shall not be included in the directory until the nonparticipating manufacturer, or its United States importer that undertakes joint and several liability for the manufacturer's performance in accordance with Section 6-4-20 NMSA 1978, has posted bond in accordance with this section.

C. The bond shall be posted by a corporate surety located within the United States in an amount equal to the greater of fifty thousand dollars (\$50,000) or the amount of escrow the manufacturer, in either its current or predecessor form, was required to deposit as a result of its previous calendar year sales in New Mexico. The

bond shall be written in favor of the state of New Mexico and shall be conditioned on the performance by the nonparticipating manufacturer or its United States importer that undertakes joint and several liability for the manufacturer's performance in accordance with all of its obligations under the Tobacco Escrow Fund Act or Section 6-4-13 NMSA 1978 during the year in which the certification is filed and the next succeeding calendar year.

D. A nonparticipating manufacturer may be deemed to pose an elevated risk for noncompliance with this section or Section 6-4-13 NMSA 1978 if:

(1) the nonparticipating manufacturer or any of its affiliates has underpaid an escrow obligation within the past three calendar years, unless:

(a) the manufacturer did not make underpayment knowingly or recklessly and the manufacturer promptly cured the underpayment within one hundred eighty days of notice; or

(b) the underpayment or lack of payment is the subject of a good faith dispute as documented to the satisfaction of the attorney general and the underpayment is cured within one hundred eighty days of entry of a final order establishing the amount of the required escrow payment;

(2) any state has removed the manufacturer or its brands or brand families or an affiliate or any of the affiliate's brands or brand families from the state's tobacco directory for noncompliance with the state law at any time within the past three calendar years; or

(3) any state has litigation pending against, or an unsatisfied judgment against, the manufacturer or any of its affiliates for escrow or for penalties, costs or attorney fees related to noncompliance with the state escrow laws.

E. As used in this section, "newly qualified nonparticipating manufacturer" means a nonparticipating manufacturer that has not previously been listed in the directory."

Chapter 197 Section 6 Laws 2009

Section 6. Section 6-4-20 NMSA 1978 (being Laws 2003, Chapter 114, Section 7) is amended to read:

"6-4-20. AGENT FOR SERVICE OF PROCESS.--

A. A nonparticipating manufacturer not registered to do business in the state shall, as a condition precedent to having its name or its brand families listed and retained in the directory, appoint and continually engage without interruption a registered agent in this state for service of process on whom all process and any action

or proceeding arising out of the enforcement of the Tobacco Escrow Fund Act or Section 6-4-13 NMSA 1978 may be served. The nonparticipating manufacturer shall provide to the attorney general the name, address and telephone number of its agent for service of process and shall provide any other information relating to its agent as may be requested by the attorney general.

B. A nonparticipating manufacturer located outside of the United States shall, as an additional condition precedent to having its brand families listed or retained in the directory, cause each of its importers of any of its brand families to be sold in New Mexico to appoint, and continually engage without interruption, the services of an agent in the state in accordance with the provisions of this section. All obligations of a nonparticipating manufacturer imposed by this section with respect to appointment of its agent shall also apply to the importers with respect to appointment of their agents.

C. A nonparticipating manufacturer shall provide written notice to the attorney general thirty calendar days prior to the termination of the authority of an agent appointed pursuant to Subsections A and B of this section. No less than five calendar days prior to the termination of an existing agent appointment, a nonparticipating manufacturer shall provide to the attorney general the name, address and telephone number of its newly appointed agent for service of process and shall provide any other information relating to the new appointment as may be requested by the attorney general. In the event an agent terminates an agency appointment, the nonparticipating manufacturer shall notify the attorney general of the termination within five calendar days and shall include proof to the satisfaction of the attorney general of the appointment of a new agent.

D. A nonparticipating manufacturer whose products are sold in this state without appointing or designating an agent as required by this section shall be deemed to have appointed the secretary of state as agent and may be proceeded against in the courts of this state by service of process upon the secretary of state; provided that the appointment of the secretary of state as agent shall not satisfy any other requirement of the Tobacco Escrow Fund Act."

Chapter 197 Section 7 Laws 2009

Section 7. A new section of the Tobacco Escrow Fund Act, Section 6-4-20.1 NMSA 1978, is enacted to read:

"6-4-20.1. JOINT AND SEVERAL LIABILITY.--For each nonparticipating manufacturer located outside the United States, each importer into the United States of the nonparticipating manufacturer's brand families that are sold in New Mexico shall bear joint and several liability with the nonparticipating manufacturer for deposit of all escrow amounts due under Section 6-4-13 NMSA 1978, payment of all penalties imposed in accordance with Section 6-4-13 NMSA 1978 and payment of all costs and attorney fees imposed in accordance with the Tobacco Escrow Fund Act."

Chapter 197 Section 8 Laws 2009

Section 8. Section 6-4-22 NMSA 1978 (being Laws 2003, Chapter 114, Section 9) is amended to read:

"6-4-22. PENALTIES AND OTHER REMEDIES.--

A. It is unlawful for a person to:

(1) affix a tax stamp or otherwise pay the tax due on a package or other container of cigarettes of a tobacco product manufacturer or a brand family that is not included in the directory; or

(2) sell, offer for sale or possess for any purpose other than personal use cigarettes of a tobacco product manufacturer or a brand family that is not included in the directory.

B. The secretary may revoke or suspend the registration or license of a person licensed or registered pursuant to Section 7-12-9.1 or 7-12A-7 NMSA 1978 that violates Subsection A of this section.

C. Each stamp affixed, payment of tobacco tax, offer to sell, possession for any purpose other than personal use or sale of cigarettes in violation of Subsection A of this section constitutes a separate violation. For each violation, the secretary may impose a civil penalty in an amount not to exceed the greater of five thousand dollars (\$5,000) or five hundred percent of the retail value of the cigarettes sold, offered for sale or possessed for any purpose other than personal use.

D. Cigarettes that have been sold, offered for sale or possessed for any purpose other than personal use in this state in violation of Subsection A of this section are contraband, are subject to seizure and forfeiture and shall be destroyed.

E. It is unlawful for a person to sell, distribute, acquire, hold, own, possess, transport, import or cause to be imported cigarettes that the person knows or should know are intended for distribution or sale in violation of Subsection A of this section. A person who violates this subsection is guilty of a misdemeanor and shall be sentenced in accordance with Section 31-19-1 NMSA 1978.

F. A tobacco product manufacturer, stamping agent or importer of cigarettes, or any officer, employee or agent of any such entity, who knowingly makes any materially false statement in any record required by the Tobacco Escrow Fund Act or Section 6-4-13 NMSA 1978 to be filed with the attorney general is guilty of a fourth degree felony and upon conviction shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

G. The attorney general or the department may seek an injunction to compel compliance with or to restrain a threatened or actual violation of Subsection A of this section. In any action brought pursuant to this subsection, the state shall be entitled to recover the costs of investigation, costs of the action and reasonable attorney fees, if the state prevails.

H. The attorney general may issue a civil investigative demand based on reasonable belief that any person may be in possession, custody or control of an original or copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription or other document or recording relevant to the subject matter of an investigation of a probable violation of the Tobacco Escrow Fund Act. The attorney general may, prior to the institution of a civil proceeding, execute in writing and cause to be served upon the person a civil investigative demand requiring the person to produce documentary material and permit the inspection and copying of the material.

I. For the purposes of this section, fewer than one thousand cigarettes shall be presumed to be for personal use."

Chapter 197 Section 9 Laws 2009

Section 9. A new Section 6-4-24.1 NMSA 1978 is enacted to read:

"6-4-24.1. ATTORNEY GENERAL AUTHORITY--AUDIT AND INVESTIGATION.-
-The attorney general or the attorney general's authorized representative may conduct audits and investigations of:

A. a nonparticipating tobacco product manufacturer and its importers;

B. a tobacco product manufacturer as defined in Section 6-4-12 NMSA 1978 that became a participating manufacturer after the master settlement agreement execution date, as defined at section II(aa) of the master settlement agreement, and its importers;

C. exclusive distributors, retail dealers, stamping agents and wholesale dealers; and

D. persons or entities engaged in delivery sales."

Chapter 197 Section 10 Laws 2009

Section 10. A new Section 6-4-24.2 NMSA 1978 is enacted to read:

"6-4-24.2. PRESUMPTION.--In any action under Section 6-4-13 NMSA 1978, reports of numbers of cigarettes stamped submitted pursuant to Subsection A of Section 6-4-21 NMSA 1978 shall be admissible evidence and shall be presumed to

state accurately the number of cigarettes stamped during the time period by the stamping agent that submitted the report, absent a contrary showing by the nonparticipating manufacturer or importer. Nothing in this section shall be construed as limiting or otherwise affecting the state's right to maintain that such reports are incorrect or do not accurately reflect a nonparticipating manufacturer's sales in the state during the time period in question, and the presumption shall not apply in the event that the state does so maintain."

Chapter 197 Section 11 Laws 2009

Section 11. Section 7-12-2 NMSA 1978 (being Laws 1971, Chapter 77, Section 2, as amended) is amended to read:

"7-12-2. DEFINITIONS.--As used in the Cigarette Tax Act:

A. "cigarette" means:

(1) any roll of tobacco or any substitute for tobacco wrapped in paper or in any substance not containing tobacco;

(2) any roll of tobacco that is wrapped in any substance containing tobacco, other than one hundred percent natural leaf tobacco, which, because of its appearance, the type of tobacco used in the filler, its packaging and labeling, or its marketing and advertising, is likely to be offered to, or purchased by, consumers as a cigarette, as described in Paragraph (1) of this subsection;

(3) bidis and kreteks; or

(4) any other roll of tobacco that is defined as a "cigarette" in Subsection D of Section 6-4-12 NMSA 1978;

B. "contraband cigarettes" means cigarette packages with counterfeit stamps, counterfeit cigarettes, cigarettes that have false or fraudulent manufacturing labels, cigarettes not sold in packages of five, ten, twenty or twenty-five, cigarette packages without the tax or tax-exempt stamps required by the Cigarette Tax Act and cigarettes produced by a manufacturer or in a brand family not included in the directory;

C. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee;

D. "directory" means a listing of tobacco product manufacturers and brand families that is developed, maintained and published by the attorney general under the Tobacco Escrow Fund Act;

E. "distributor" means a person licensed pursuant to the Cigarette Tax Act to sell or distribute cigarettes in New Mexico. "Distributor" does not include:

(1) a retailer;

(2) a cigarette manufacturer, export warehouse proprietor or importer with a valid permit pursuant to 26 U.S.C. 5713, if that person sells cigarettes in New Mexico only to distributors that hold valid licenses under the laws of a state or sells to an export warehouse proprietor or to another manufacturer; or

(3) a common or contract carrier transporting cigarettes pursuant to a bill of lading or freight bill, or a person who ships cigarettes through the state by a common or contract carrier pursuant to a bill of lading or freight bill;

F. "license" means a license granted pursuant to the Cigarette Tax Act that authorizes the holder to conduct business as a manufacturer or distributor of cigarettes;

G. "manufacturer" means a person that manufactures, fabricates, assembles, processes or labels a cigarette or that imports from outside the United States, directly or indirectly, a finished cigarette for sale or distribution in the United States;

H. "master settlement agreement" means the settlement agreement and related documents entered into on November 23, 1998 by the state and leading United States tobacco product manufacturers;

I. "package" means an individual pack, box or other container; "package" does not include a container that itself contains other containers, such as a carton of cigarettes;

J. "retailer" means a person, whether located within or outside of New Mexico, that sells cigarettes at retail to a consumer in New Mexico and the sale is not for resale;

K. "stamp" means an adhesive label issued and authorized by the department to be affixed to cigarette packages for excise tax purposes and upon which is printed a serial number and the words "State of New Mexico" and "tobacco tax";

L. "tax stamp" means a stamp that has a specific cigarette tax value pursuant to the Cigarette Tax Act; and

M. "tax-exempt stamp" means a stamp that indicates a tax-exempt status pursuant to the Cigarette Tax Act."

Chapter 197 Section 12 Laws 2009

Section 12. Section 7-12-5 NMSA 1978 (being Laws 1971, Chapter 77, Section 5, as amended) is amended to read:

"7-12-5. AFFIXING STAMPS.--

A. Except as provided in Section 7-12-6 NMSA 1978, all cigarettes shall be placed in packages or containers to which a stamp shall be affixed. Only a distributor with a valid license issued pursuant to the Cigarette Tax Act may purchase or obtain unaffixed tax-exempt stamps or tax stamps. A distributor shall not sell or provide unaffixed stamps to another distributor, manufacturer, export warehouse proprietor or importer with a valid permit pursuant to 26 U.S.C. 5713 or any other person.

B. Stamps shall be affixed by the distributor to each package of cigarettes to be sold or distributed in New Mexico within thirty days of receipt of those packages.

C. A distributor shall apply stamps only to packages of cigarettes that the distributor has received directly from another distributor or from a manufacturer or importer of cigarettes that possesses a valid and current permit pursuant to 26 U.S.C. 5713.

D. A distributor shall not affix a stamp to a package of cigarettes of a manufacturer or a brand family that is not included in the directory or sell, offer or possess for sale cigarettes of a manufacturer or brand family that is not included in the directory.

E. Packages shall contain cigarettes in lots of five, ten, twenty or twenty-five.

F. Unless the requirements of this section are waived pursuant to Section 7-12-6 NMSA 1978, a tax stamp shall be affixed to each package of cigarettes subject to the cigarette tax and a tax-exempt stamp shall be affixed to each package of cigarettes not subject to the cigarette tax pursuant to Section 7-12-4 NMSA 1978.

G. A tax-exempt stamp is not an excise tax stamp for purposes of determining units sold pursuant to Section 6-4-12 NMSA 1978.

H. Stamps shall be affixed inside the boundaries of New Mexico, unless the department has granted a license allowing a person to affix stamps outside New Mexico."

Chapter 197 Section 13 Laws 2009

Section 13. Section 7-12-6 NMSA 1978 (being Laws 1971, Chapter 77, Section 6, as amended) is amended to read:

"7-12-6. WAIVER OF REQUIREMENT THAT STAMPS BE AFFIXED.--The requirement imposed in Section 7-12-5 NMSA 1978 that stamps be affixed to packages or containers of cigarettes is waived if the cigarettes are:

A. distributed by a manufacturer pursuant to federal regulations and are exempt from tax pursuant to 26 U.S.C. 5704; and

B. not subsequently imported into New Mexico."

Chapter 197 Section 14 Laws 2009

Section 14. Section 7-12-9.1 NMSA 1978 (being Laws 2006, Chapter 91, Section 7) is amended to read:

"7-12-9.1. LICENSING--GENERAL LICENSING PROVISIONS.--

A. A person shall not engage in the manufacture or distribution of cigarettes in New Mexico without a license issued by the department.

B. The department shall issue or renew a license for a term not to exceed one year.

C. The department may charge a license fee of up to one hundred dollars (\$100) for each manufacturer's or distributor's license issued or renewed.

D. An application for a license or renewal of a license shall be submitted on a form determined by the department and shall include:

(1) the name and address of the applicant and:

(a) if the applicant is a firm, partnership or association, the name and address of each of its members; or

(b) if the applicant is a corporation, the name and address of each of its officers;

(2) the address of the applicant's principal place of business and every location where the applicant's business is conducted; and

(3) any other information the department may require.

E. The department may issue a distributor's license and a manufacturer's license to the same person.

F. Persons licensed as manufacturers or distributors may sell stamped cigarettes at retail.

G. A license may not be granted, maintained or renewed if one or more of the following conditions applies to an applicant:

(1) the applicant owes five hundred dollars (\$500) or more in delinquent cigarette taxes;

(2) the applicant has had a manufacturer's or distributor's license revoked by the department or any other state within the past two years;

(3) the applicant is convicted of a crime related to contraband cigarettes, stolen cigarettes or counterfeit stamps;

(4) the applicant is a manufacturer but not a participating manufacturer as defined in Section II(jj) of the master settlement agreement and the applicant is not in compliance with the provisions of Section 6-4-13 NMSA 1978 or the Tobacco Escrow Fund Act; or

(5) the applicant is a manufacturer and imports cigarettes into the United States that are in violation of 19 U.S.C. 1681a or manufactures cigarettes that do not comply with the Federal Cigarette Labeling and Advertising Act.

H. In addition to a civil or criminal penalty provided by law, upon a finding that a licensee has violated a provision of the Cigarette Tax Act or the Tobacco Escrow Fund Act or a rule adopted pursuant to either act, the department may revoke or suspend the license or licenses of the licensee.

I. As used in this section, "applicant" includes a person or persons owning, directly or indirectly, in the aggregate, more than ten percent of the ownership interest in the business holding or applying for a license pursuant to the Cigarette Tax Act."

Chapter 197 Section 15 Laws 2009

Section 15. Section 7-12-9.2 NMSA 1978 (being Laws 2006, Chapter 91, Section 8) is amended to read:

"7-12-9.2. DISTRIBUTOR'S LICENSE.--

A. A person shall not distribute stamped packages of cigarettes for resale or sell stamped packages of cigarettes at wholesale without first obtaining a distributor's license from the department.

B. A person licensed to distribute cigarettes is authorized to:

(1) receive unstamped packages of cigarettes from a manufacturer or a distributor;

- department;
- (2) purchase tax stamps and receive tax-exempt stamps from the
- of cigarettes;
- (3) affix tax stamps or tax-exempt stamps to unstamped packages
- a distributor; and
- (4) sell stamped packages of cigarettes to a retailer for resale or to
- (5) sell unstamped packages of cigarettes to a person licensed to distribute cigarettes outside of New Mexico or to a distributor."

Chapter 197 Section 16 Laws 2009

Section 16. Section 7-12-10.1 NMSA 1978 (being Laws 2006, Chapter 91, Section 11) is amended to read:

"7-12-10.1. RETENTION OF INVOICES AND RECORDS--INSPECTION BY DEPARTMENT.--

A. A manufacturer, distributor or retailer shall maintain copies of invoices for each of its facilities for every transaction involving a cigarette sale, purchase, transfer, receipt or consignment, except that a retailer need not retain copies of invoices for sales of cigarettes to consumers. An invoice shall show:

(1) the names and addresses of all persons involved in the transaction, including the seller, purchaser, consignor and consignee. If a transaction involves an additional facility of the same manufacturer, distributor or retailer, the invoice shall also show the address of the additional facility;

(2) the date;

(3) the price; and

(4) the quantity of each brand of cigarettes involved in each transaction.

B. Records required to be maintained pursuant to Subsection A of this section shall be preserved on the premises described in the license in a manner that ensures permanency and accessibility for inspection at reasonable hours by the department.

C. The records required to be maintained pursuant to Subsection A of this section shall be retained for a period of three years from the end of the year in which the transaction occurred, unless otherwise required by law to be retained for a longer period of time.

D. The department and the secretary of the United States department of the treasury, or a designee, may inspect the reports and records required pursuant to the Cigarette Tax Act along with any stock of cigarettes in the possession of the manufacturer, distributor or retailer. The department, at its sole discretion, may share those records and reports with law enforcement officials of the federal government, other states and international authorities."

Chapter 197 Section 17 Laws 2009

Section 17. Section 7-12-13.2 NMSA 1978 (being Laws 2006, Chapter 91, Section 17) is amended to read:

"7-12-13.2. CRIMINAL OFFENSES--CRIMINAL PENALTIES--SEIZURE AND DESTRUCTION OF EVIDENCE.--

A. Whoever violates a provision of the Cigarette Tax Act or a rule adopted pursuant to that act is guilty of a misdemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

B. Whoever, with intent to defraud, fails to comply with a licensing, reporting or stamping requirement of the Cigarette Tax Act or with a licensing, reporting or stamping rule adopted pursuant to that act is guilty of a fourth degree felony and upon conviction shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

C. Whoever packages cigarettes for sale in New Mexico or whoever sells cigarettes in New Mexico, in packages of other than five, ten, twenty or twenty-five cigarettes is:

(1) for the first offense, guilty of a misdemeanor and when convicted shall be sentenced pursuant to Section 31-19-1 NMSA 1978; and

(2) for the second or subsequent offense, guilty of a fourth degree felony and when convicted shall be sentenced pursuant to Section 31-18-15 NMSA 1978.

D. Whoever purchases or otherwise knowingly obtains counterfeit stamps or whoever produces, uses or causes counterfeit stamps to be used is guilty of a fourth degree felony and upon conviction shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

E. Whoever sells or possesses for the purpose of sale contraband cigarettes is in violation of the Cigarette Tax Act and shall have the product and related equipment seized. If convicted of selling or possessing for sale contraband cigarettes, the person shall be sentenced as follows:

(1) a violation with a quantity of fewer than two cartons of contraband cigarettes, or the equivalent, is a petty misdemeanor and is punishable in accordance with the provisions of Section 31-19-1 NMSA 1978;

(2) a first violation with a quantity of two cartons or more of contraband cigarettes, or the equivalent, is a misdemeanor and is punishable in accordance with the provisions of Section 31-19-1 NMSA 1978; and

(3) a second or subsequent violation with a quantity of two cartons or more of contraband cigarettes, or the equivalent, is a fourth degree felony and is punishable by a fine not to exceed fifty thousand dollars (\$50,000) or imprisonment for a definite term not to exceed eighteen months, or both, and shall also result in the revocation by the department of the manufacturer's or distributor's license, if any.

F. Contraband cigarettes or counterfeit stamps seized by the department or by a law enforcement agency shall be retained as evidence to the extent necessary. Contraband cigarettes or counterfeit stamps no longer needed as evidence shall be destroyed.

G. Prosecution for a violation of a provision of this section does not preclude prosecution under other applicable laws."

Chapter 197 Section 18 Laws 2009

Section 18. Section 7-12-17 NMSA 1978 (being Laws 1971, Chapter 77, Section 14, as amended) is amended to read:

"7-12-17. REPORTING REQUIREMENTS--PENALTY.--

A. Each person who sells in New Mexico cigarettes manufactured by that person or who receives on consignment or buys cigarettes either directly from the manufacturer or from any out-of-state person for resale in New Mexico shall report to the department by the twenty-fifth day of each month that person's sales of cigarettes during the preceding month in each municipality and within that portion of each county outside of the municipalities located in that county. The department shall then advise the state treasurer of the proportion of the total sales of cigarettes for the month within each municipality and within that portion of each county outside of municipalities. The reports of such persons shall, upon receipt by the department, become public records.

B. Any person who sells in New Mexico cigarettes manufactured by that person or who receives on consignment or buys cigarettes for resale in New Mexico who willfully fails to render accurately the reports required by this section and any municipal or county officer who approves any expenditure or expends funds distributed from the county and municipality recreational fund for any purposes other than permitted by Section 7-12-15 NMSA 1978 is guilty of a petty misdemeanor.

C. Any tobacco product manufacturer, stamping agent or importer of cigarettes, or any officer, employee or agent of any such entity, who knowingly makes a materially false statement in any record required to be kept by the Cigarette Tax Act, or in any report or return required to be filed with the department by the Cigarette Tax Act is guilty of a fourth degree felony."

Chapter 197 Section 19 Laws 2009

Section 19. Section 7-12-18 NMSA 1978 (being Laws 2006, Chapter 91, Section 14) is amended to read:

"7-12-18. REPORTS.--

A. A distributor shall submit periodic reports to the department, in the manner and on the form prescribed by the department. A distributor shall submit a separate report for each of its facilities. The information in the report shall be itemized and shall clearly disclose cigarette brands, quantities and the type of stamp applied to the packages of cigarettes. A report shall include:

(1) an inventory of stamped and unstamped packages of cigarettes held for sale or distribution within New Mexico at the beginning of the reporting period;

(2) the quantity of stamped packages of cigarettes held for sale or distribution within New Mexico that were received from another person during the reporting period and the name and address of each person from whom each quantity was received;

(3) the quantity of New Mexico stamped packages of cigarettes that were distributed or shipped to another distributor or retailer within New Mexico during the reporting period and the name and address of each person to whom each quantity was distributed or shipped;

(4) the quantity of unstamped packages of cigarettes that were distributed or shipped to another distributor within New Mexico during the reporting period and the name and address of each person to whom each quantity was distributed or shipped;

(5) the quantity of New Mexico stamped packages of cigarettes that were distributed or shipped to another facility of the same distributor within New Mexico during the reporting period and the address of that facility;

(6) the quantity of stamped cigarette packages that were distributed or shipped within New Mexico to an Indian nation, tribe or pueblo or to a person located on the land of an Indian nation, tribe or pueblo or to instrumentalities of the federal government during the reporting period and the name and address of each person, entity or instrumentality to whom each quantity was distributed or shipped;

(7) an inventory of stamped and unstamped packages of cigarettes held for sale or distribution within New Mexico at the end of the reporting period;

(8) an inventory of stamped and unstamped packages of cigarettes for sale or distribution outside of New Mexico at the beginning of the reporting period;

(9) the quantity of packages of cigarettes held for sale or distribution outside of New Mexico that were received from another person during the reporting period and the name and address of each person from whom each quantity was received;

(10) the quantity of packages of cigarettes that were distributed or shipped outside New Mexico during the reporting period;

(11) an inventory of packages of cigarettes held for sale or distribution outside of New Mexico at the end of the reporting period;

(12) the number of each type of stamp on hand at the beginning of the reporting period;

(13) the number of each type of stamp purchased or received during the reporting period;

(14) the number of each type of stamp applied during the reporting period; and

(15) the number of each type of stamp on hand at the end of the reporting period.

B. A manufacturer shall submit periodic reports in the manner and on the form prescribed by the department. The information in the report shall be itemized to clearly disclose cigarette brands and quantities. The reports shall be provided separately with respect to each of the facilities operated by the manufacturer. A report shall contain the quantity of packages of cigarettes that were distributed or shipped:

(1) to a manufacturer, distributor or retailer within New Mexico during the reporting period and the name and address of each person to whom each quantity was distributed or shipped;

(2) to another facility within New Mexico of the same manufacturer during the reporting period and the address of the facility; and

(3) within New Mexico to an Indian nation, tribe or pueblo or to a person located on the land of an Indian nation, tribe or pueblo or to instrumentalities of the federal government during the reporting period and the name and address of each person, entity or instrumentality to whom each quantity was distributed or shipped.

C. The department may require additional information to be submitted. The department shall establish the reporting period, which shall be no longer than three calendar months and no shorter than one calendar month."

Chapter 197 Section 20 Laws 2009

Section 20. Section 7-12A-2 NMSA 1978 (being Laws 1986, Chapter 112, Section 3, as amended) is amended to read:

"7-12A-2. DEFINITIONS.--As used in the Tobacco Products Tax Act:

A. "department" means the taxation and revenue department, the secretary or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

B. "distribute" means to sell or to give;

C. "engaging in business" means carrying on or causing to be carried on any activity with the purpose of direct or indirect benefit;

D. "first purchaser" means a person engaging in business in New Mexico who manufactures tobacco products or who purchases or receives on consignment tobacco products from any person outside of New Mexico, which tobacco products are to be distributed in New Mexico in the ordinary course of business;

E. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate, limited liability company, limited liability partnership, other association or gas, water or electric utility owned or operated by a county or municipality or other entity of the state; "person" also means, to the extent permitted by law, a federal, state or other governmental unit or subdivision or an agency, department or instrumentality;

F. "product value" means the amount paid, net of any discounts taken and allowed, for tobacco products or, in the case of tobacco products received on consignment, the value of the tobacco products received or, in the case of tobacco products manufactured and sold in New Mexico, the proceeds from the sale by the manufacturer of the tobacco products; and

G. "tobacco product" means any product, other than cigarettes, made from or containing tobacco."

Chapter 197 Section 21 Laws 2009

Section 21. Section 7-12A-3 NMSA 1978 (being Laws 1986, Chapter 112, Section 4, as amended) is amended to read:

"7-12A-3. IMPOSITION AND RATE OF TAX--DENOMINATION AS "TOBACCO PRODUCTS TAX"--DATE PAYMENT OF TAX DUE.--

A. For the manufacture or acquisition of tobacco products in New Mexico to be distributed in the ordinary course of business and for the consumption of tobacco products in New Mexico, there is imposed an excise tax at the rate of twenty-five percent of the product value of the tobacco products.

B. The tax imposed by Subsection A of this section may be referred to as the "tobacco products tax".

C. The tobacco products tax shall be paid by the first purchaser on or before the twenty-fifth day of the month following the month in which the taxable event occurs."

Chapter 197 Section 22 Laws 2009

Section 22. Section 7-12A-4 NMSA 1978 (being Laws 1986, Chapter 112, Section 5) is amended to read:

"7-12A-4. EXEMPTION--TOBACCO PRODUCTS TAX.--

A. Exempted from the tobacco products tax is the product value of tobacco products sold:

(1) to or by the United States or any agency or instrumentality thereof;

(2) to the governing body or any enrolled tribal member licensed by the governing body of an Indian nation, tribe or pueblo to be distributed on the reservation or pueblo grant of that Indian nation, tribe or pueblo; or

(3) the state of New Mexico or any political subdivision thereof.

B. As used in this section, the term "agency or instrumentality" does not include persons who are agents or instrumentalities of the United States for a particular purpose or only when acting in a particular capacity or corporate agencies or instrumentalities."

Chapter 197 Section 23 Laws 2009

Section 23. Section 57-2A-4 NMSA 1978 (being Laws 2000, Chapter 77, Section 4) is amended to read:

"57-2A-4. DOCUMENTATION.--

A. On the first business day of each month, each person licensed or registered to affix a state tax stamp to cigarettes pursuant to Section 7-12-9.1 NMSA 1978 shall file with the department for all cigarettes imported into the United States to which the person has affixed a tax stamp in the preceding month:

(1) copies of:

(a) the permit issued pursuant to 26 USCA 5713 to the person importing the cigarettes into the United States allowing the person to import the cigarettes; and

(b) the customs form containing, with respect to the cigarettes, the internal revenue tax information required by the federal bureau of alcohol, tobacco, firearms and explosives;

(2) a statement signed under penalty of perjury by the person affixing the state tax stamp identifying the brand and brand styles of all the cigarettes, the quantity of each brand style, the supplier of the cigarettes and the person to whom the cigarettes were conveyed for resale and a separate statement by that person under penalty of perjury, which is not confidential or exempt from public disclosure, identifying only the brands and the brand styles of the cigarettes; and

(3) a statement signed under penalty of perjury by an officer of the manufacturer or importer of the cigarettes certifying that the manufacturer or importer has complied with the package health warning and ingredient reporting requirements of 15 USCA Sections 1333 and 1335a with respect to the cigarettes, including a statement indicating whether the manufacturer is or is not a participating manufacturer within the meaning of that federal law.

B. Prior to making a delivery sale or mailing, shipping or otherwise delivering cigarettes in connection with a delivery sale, each person shall file with the department and with the attorney general a statement setting forth the person's name and trade name and the address of the person's principal place of business and any other place of business.

C. Not later than the tenth day of each month, each person who has made a delivery sale or mailed, shipped or otherwise delivered cigarettes in connection with a delivery sale during the previous calendar month shall file with the department and with the attorney general a report in the format prescribed by the attorney general, which may include an electronic format, that provides for each delivery sale:

(1) the name and address of the customer to whom the delivery sale was made;

(2) the brand or brands of cigarettes that were sold in the delivery sale; and

(3) the quantity of cigarettes that were sold in the delivery sale.

D. Any person who satisfies the requirements of Section 376 of Title 15 of the United States Code shall be deemed to satisfy the requirements of this section.

E. For purposes of any penalty that may be imposed for a violation of Subsection B or C of this section, a failure to file a particular statement or report with both the department and the attorney general shall constitute a single violation."

Chapter 197 Section 24 Laws 2009

Section 24. Section 57-2A-10 NMSA 1978 (being Laws 2000, Chapter 77, Section 10) is amended to read:

"57-2A-10. GENERAL PROVISIONS.--

A. The Cigarette Enforcement Act shall be enforced by the department and the attorney general; provided that, at the request of the department, the state police and all local police authorities shall enforce the provisions of the Cigarette Enforcement Act.

B. For the purpose of enforcing the Cigarette Enforcement Act, the department or the attorney general may request information from any state or local agency, and may share information with, and request information from, any federal agency and any agency of any other state or any local agency thereof.

C. In addition to any other remedy provided by law, including enforcement as provided in Subsection A of this section, any person may bring an action for appropriate injunctive or other equitable relief for a violation of the Cigarette Enforcement Act; actual damages, if any, sustained by reason of the violation; and, as determined by the court, interest on the damages from the date of the complaint, taxable costs and reasonable attorney fees. If the trier of fact finds that the violation is flagrant, it may increase recovery to an amount not in excess of three times the actual damages sustained by reason of the violation."

Chapter 197 Section 25 Laws 2009

Section 25. Section 57-12-2 NMSA 1978 (being Laws 1967, Chapter 268, Section 2, as amended) is amended to read:

"57-12-2. DEFINITIONS.--As used in the Unfair Practices Act:

A. "person" means, where applicable, natural persons, corporations, trusts, partnerships, associations, cooperative associations, clubs, companies, firms, joint ventures or syndicates;

B. "seller-initiated telephone sale" means a sale, lease or rental of goods or services in which the seller or the seller's representative solicits the sale by telephoning the prospective purchaser and in which the sale is consummated entirely by telephone or mail, but does not include a transaction:

(1) in which a person solicits a sale from a prospective purchaser who has previously made an authorized purchase from the seller's business; or

(2) in which the purchaser is accorded the right of rescission by the provisions of the federal Consumer Credit Protection Act, 15 U.S.C. 1635 or regulations issued pursuant thereto;

C. "trade" or "commerce" includes the advertising, offering for sale or distribution of any services and any property and any other article, commodity or thing of value, including any trade or commerce directly or indirectly affecting the people of this state;

D. "unfair or deceptive trade practice" means an act specifically declared unlawful pursuant to the Unfair Practices Act, a false or misleading oral or written statement, visual description or other representation of any kind knowingly made in connection with the sale, lease, rental or loan of goods or services or in the extension of credit or in the collection of debts by a person in the regular course of the person's trade or commerce, that may, tends to or does deceive or mislead any person and includes:

(1) representing goods or services as those of another when the goods or services are not the goods or services of another;

(2) causing confusion or misunderstanding as to the source, sponsorship, approval or certification of goods or services;

(3) causing confusion or misunderstanding as to affiliation, connection or association with or certification by another;

(4) using deceptive representations or designations of geographic origin in connection with goods or services;

(5) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that the person does not have;

(6) representing that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used or secondhand;

(7) representing that goods or services are of a particular standard, quality or grade or that goods are of a particular style or model if they are of another;

(8) disparaging the goods, services or business of another by false or misleading representations;

(9) offering goods or services with intent not to supply them in the quantity requested by the prospective buyer to the extent of the stock available, unless the purchaser is purchasing for resale;

(10) offering goods or services with intent not to supply reasonable expectable public demand;

(11) making false or misleading statements of fact concerning the price of goods or services, the prices of competitors or one's own price at a past or future time or the reasons for, existence of or amounts of price reduction;

(12) making false or misleading statements of fact for the purpose of obtaining appointments for the demonstration, exhibition or other sales presentation of goods or services;

(13) packaging goods for sale in a container that bears a trademark or trade name identified with goods formerly packaged in the container, without authorization, unless the container is labeled or marked to disclaim a connection between the contents and the trademark or trade name;

(14) using exaggeration, innuendo or ambiguity as to a material fact or failing to state a material fact if doing so deceives or tends to deceive;

(15) stating that a transaction involves rights, remedies or obligations that it does not involve;

(16) stating that services, replacements or repairs are needed if they are not needed;

(17) failing to deliver the quality or quantity of goods or services contracted for; or

(18) violating the Tobacco Escrow Fund Act; and

E. "unconscionable trade practice" means an act or practice in connection with the sale, lease, rental or loan, or in connection with the offering for sale, lease, rental or loan, of any goods or services, including services provided by licensed professionals, or in the extension of credit or in the collection of debts that to a person's detriment:

(1) takes advantage of the lack of knowledge, ability, experience or capacity of a person to a grossly unfair degree; or

(2) results in a gross disparity between the value received by a person and the price paid."

Chapter 197 Section 26 Laws 2009

Section 26. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.

Senate Bill 219, aa

Approved April 7, 2009

LAWS 2009, CHAPTER 198

AN ACT

RELATING TO PUBLIC SCHOOLS; ENACTING A NEW SECTION OF THE PUBLIC SCHOOL CODE AND AMENDING THE PUBLIC SCHOOL INSURANCE AUTHORITY ACT TO PROVIDE FOR THE ADOPTION OF POLICIES RELATING TO VOLUNTEERS AND THE PRIVATE USE OF SCHOOL FACILITIES AND TO PROVIDE FOR LIMITED INSURANCE COVERAGE, IN CERTAIN CIRCUMSTANCES, FOR LIABILITY RELATED TO THE PRIVATE USE OF SCHOOL FACILITIES.

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

Chapter 198 Section 1 Laws 2009

Section 1. Section 22-29-7 NMSA 1978 (being Laws 1986, Chapter 94, Section 7, as amended) is amended to read:

"22-29-7. AUTHORITY--DUTIES.--In order to effectuate the purposes of the Public School Insurance Authority Act, the authority has the power to:

A. enter into professional services and consulting contracts or agreements as necessary;

B. collect money and provide for the investment of the fund;

C. collect all current and historical claims and financial information necessary for effective procurement of lines of insurance coverage;

D. promulgate necessary rules, regulations and procedures for implementation of the Public School Insurance Authority Act;

E. by rule, establish a policy to be followed by participating members relating to the use of volunteers. The policy shall be distributed to participating members and posted upon the authority's web site;

F. by rule, establish a policy to be followed by participating members relating to the use of school facilities by private persons, provided that the policy shall relate only to liability and risk issues and shall not affect the rights and responsibilities of local school boards to determine how, when and by whom school district facilities are used. The policy shall be distributed to participating members and posted upon the authority's web site;

G. insure, by negotiated policy, self-insurance or any combination thereof, participating members against claims of bodily injury, personal injury or property damage related to the use of school facilities by private persons; provided that the coverage shall be subject to the following conditions:

(1) no more than one million dollars (\$1,000,000) shall be paid for each occurrence; and

(2) the coverage shall only apply if the participating member was following the policy adopted by the authority pursuant to Subsection F of this section;

H. negotiate new insurance policies covering additional or lesser benefits as determined appropriate by the authority, but the authority shall maintain all coverage levels required by federal and state law for each participating member. In the event it is practical to self-insure wholly a particular line of coverage, the authority may do so;

I. procure lines of insurance coverage in compliance with the provisions of the Health Care Purchasing Act and the competitive sealed proposal process of the Procurement Code; provided that any group medical insurance plan offered pursuant to this section shall include effective cost-containment measures to control the growth of health care costs. The board shall report annually by September 1 to appropriate interim legislative committees on the effectiveness of the cost-containment measures required by this subsection; and

J. purchase, renovate, equip and furnish a building for the board."

Chapter 198 Section 2 Laws 2009

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

"PRIVATE USE OF SCHOOL FACILITIES--POLICY--INSURANCE.--The local school board of a school district that is not a participant under the Public School Insurance Authority Act:

A. shall, by rule, establish a policy to be followed relating to the use of volunteers. The policy shall be distributed to each school in the district and posted upon the school district's web site;

B. shall, by rule, establish a policy to be followed relating to the use of school facilities by private persons. The policy shall be distributed to each school in the district and posted upon the school district's web site; and

C. may insure, by negotiated policy, self-insurance or any combination thereof, against claims of bodily injury, personal injury or property damage related to the use of school facilities by private persons; provided that the coverage shall be for no more than one million dollars (\$1,000,000) for each occurrence."

Chapter 198 Section 3 Laws 2009

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2010.

Senate Bill 226, aa

Approved April 7, 2009

LAWS 2009, CHAPTER 199

AN ACT

RELATING TO GAMING; AMENDING, REPEALING AND ENACTING CERTAIN SECTIONS OF THE GAMING CONTROL ACT.

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

Chapter 199 Section 1 Laws 2009

Section 1. Section 60-2E-3 NMSA 1978 (being Laws 1997, Chapter 190, Section 5, as amended) is amended to read:

"60-2E-3. DEFINITIONS.--As used in the Gaming Control Act:

A. "affiliate" means a person who, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with a specified person;

B. "affiliated company" means a company that:

(1) controls, is controlled by or is under common control with a company licensee; and

(2) is involved in gaming activities or involved in the ownership of property on which gaming is conducted;

C. "applicant" means a person who has applied for a license or for approval of an act or transaction for which approval is required or allowed pursuant to the provisions of the Gaming Control Act;

D. "application" means a request for the issuance of a license or for approval of an act or transaction for which approval is required or allowed pursuant to the provisions of the Gaming Control Act, but "application" does not include a supplemental form or information that may be required with the application;

E. "associated equipment" means equipment or a mechanical, electromechanical or electronic contrivance, component or machine used in connection with gaming activity;

F. "board" means the gaming control board;

G. "certification" means a notice of approval by the board of a person required to be certified by the board;

H. "cheat" or "cheating" means to alter the element of chance, the method of selection or other criteria in a manner that determines:

(1) the result of the game;

(2) the amount or frequency of payment in a game, including taking advantage of a malfunctioning machine;

(3) the value of a wagering instrument; or

(4) the value of a wagering credit;

I. "company" means a corporation, partnership, limited partnership, trust, association, joint stock company, joint venture, limited liability company or other form of business organization that is not a natural person; "company" does not mean a nonprofit organization;

J. "distributor" means a person who supplies gaming devices to a gaming operator but does not manufacture gaming devices;

K. "equity security" means an interest in a company that is evidenced by:

(1) voting stock or similar security;

(2) a security convertible into voting stock or similar security, with or without consideration, or a security carrying a warrant or right to subscribe to or purchase voting stock or similar security;

(3) a warrant or right to subscribe to or purchase voting stock or similar security; or

(4) a security having a direct or indirect participation in the profits of the issuer;

L. "executive director" means the chief administrative officer appointed by the board pursuant to Section 60-2E-7 NMSA 1978;

M. "finding of suitability" means a certification of approval issued by the board permitting a person to be involved directly or indirectly with a licensee, relating only to the specified involvement for which it is made;

N. "foreign institutional investor" means:

(1) a government-related pension plan of a foreign government; or

(2) a person that meets the requirement of a qualified institutional buyer as defined by the governing financial regulatory agency of the foreign country in which the company's primary operations are located and is registered or licensed in that country as a bank, an insurance company, an investment company, an investment advisor, a collective trust fund, an employee benefit plan or pension fund sponsored by a publicly traded corporation registered with the board or a group composed entirely of entities specified in this subsection;

O. "game" means an activity in which, upon payment of consideration, a player receives a prize or other thing of value, the award of which is determined by chance even though accompanied by some skill; "game" does not include an activity played in a private residence in which no person makes money for operating the activity except through winnings as a player;

P. "gaming" means offering a game for play;

Q. "gaming activity" means an endeavor associated with the manufacture or distribution of gaming devices or the conduct of gaming;

R. "gaming device" means associated equipment or a gaming machine and includes a system for processing information that can alter the normal criteria of random selection that affects the operation of a game or determines the outcome of a game;

S. "gaming employee" means a person connected directly with a gaming activity; "gaming employee" does not include:

(1) bartenders, cocktail servers or other persons engaged solely in preparing or serving food or beverages;

(2) secretarial or janitorial personnel;

(3) stage, sound and light technicians; or

(4) other nongaming personnel;

T. "gaming establishment" means the premises on or in which gaming is conducted;

U. "gaming machine" means a mechanical, electromechanical or electronic contrivance or machine that, upon insertion of a coin, token or similar object, or upon payment of any consideration, is available to play or operate a game, whether the payoff is made automatically from the machine or in any other manner;

V. "gaming operator" means a person who conducts gaming;

W. "holding company" means a company that directly or indirectly owns or has the power or right to control a company that is an applicant or licensee, but a company that does not have a beneficial ownership of more than ten percent of the equity securities of a publicly traded corporation is not a holding company;

X. "immediate family" means natural persons who are related to a specified natural person by affinity or consanguinity in the first through the third degree;

Y. "independent administrator" means a person who administers an annuity, who is not associated in any manner with the gaming operator licensee for which the annuity was purchased and is in no way associated with the person who will be receiving the annuity;

Z. "institutional investor" means:

(1) a foreign institutional investor;

(2) a state or federal government pension plan; or

(3) a person that meets the requirements of a qualified institutional buyer as defined in Rule 144A of the federal Securities Act of 1933, and is:

(a) a bank as defined in Section 3(a)(6) of the federal Securities Exchange Act of 1934;

(b) an insurance company as defined in Section 2(a)(17) of the federal Investment Company Act of 1940;

(c) an investment company registered under Section 8 of the federal Investment Company Act of 1940;

(d) an investment adviser registered under Section 203 of the federal Investment Advisers Act of 1940;

(e) collective trust funds as defined in Section 3(c)(11) of the federal Investment Company Act of 1940;

(f) an employee benefit plan or pension fund that is subject to the federal Employee Retirement Income Security Act of 1974, excluding an employee benefit plan or pension fund sponsored by a publicly traded corporation registered with the board; or

(g) a group comprised entirely of persons specified in Subparagraphs (a) through (f) of this paragraph;

AA. "intermediary company" means a company that:

(1) is a holding company with respect to a company that is an applicant or licensee; and

(2) is a subsidiary with respect to any holding company;

BB. "key executive" means an executive of a licensee or other person having the power to exercise significant influence over decisions concerning any part of the licensed operations of the licensee or whose compensation exceeds an amount established by the board in a rule;

CC. "license" means an authorization required by the board for engaging in gaming activities;

DD. "licensee" means a person to whom a valid license has been issued;

EE. "manufacturer" means a person who manufactures, fabricates, assembles, produces, programs or makes modifications to any gaming device for use or play in New Mexico or for sale, lease or distribution outside New Mexico from any location within New Mexico;

FF. "net take" means the total of the following, less the total of all cash paid out as losses to winning patrons and those amounts paid to purchase annuities to fund losses paid to winning patrons over several years by independent administrators:

(1) cash received from patrons for playing a game;

(2) cash received in payment for credit extended by a licensee to a patron for playing a game; and

(3) compensation received for conducting a game in which the licensee is not a party to a wager;

GG. "nonprofit organization" means:

(1) a bona fide chartered or incorporated branch, lodge, order or association, in existence in New Mexico prior to January 1, 1997, of a fraternal organization that is described in Section 501(c)(8) or (10) of the federal Internal Revenue Code of 1986 and that is exempt from federal income taxation pursuant to Section 501(a) of that code; or

(2) a bona fide chartered or incorporated post, auxiliary unit or society of, or a trust or foundation for the post or auxiliary unit, in existence in New Mexico prior to January 1, 1997, of a veterans' organization that is described in Section 501(c)(19) or (23) of the federal Internal Revenue Code of 1986 and that is exempt from federal income taxation pursuant to Section 501(a) of that code;

HH. "person" means a legal entity;

II. "premises" means land, together with all buildings, improvements and personal property located on the land;

JJ. "progressive jackpot" means a prize that increases over time or as gaming machines that are linked to a progressive system are played and upon conditions established by the board may be paid by an annuity;

KK. "public post-secondary educational institution" means an institution designated in Article 12, Section 11 of the constitution of New Mexico or an institution designated in Chapter 21, Article 13, 14 or 16 NMSA 1978;

LL. "progressive system" means one or more gaming machines linked to one or more common progressive jackpots;

MM. "publicly traded corporation" means a corporation that:

(1) has one or more classes of securities registered pursuant to the securities laws of the United States or New Mexico;

(2) is an issuer subject to the securities laws of the United States or New Mexico; or

(3) has one or more classes of securities registered or is an issuer pursuant to applicable foreign laws that, the board finds, provide protection for institutional investors that is comparable to or greater than the stricter of the securities laws of the United States or New Mexico;

NN. "registration" means a board action that authorizes a company to be a holding company with respect to a company that holds or applies for a license or that relates to other persons required to be registered pursuant to the Gaming Control Act;

OO. "subsidiary" means a company, all or a part of whose outstanding equity securities are owned, subject to a power or right of control or held, with power to vote, by a holding company or intermediary company;

PP. "technician" means a person approved by the board to repair and service gaming devices or associated equipment but who is prohibited from programming gaming devices; and

QQ. "work permit" means a card, certificate or permit issued by the board, whether denominated as a work permit, registration card or otherwise, authorizing the employment of the holder as a gaming employee."

Chapter 199 Section 2 Laws 2009

Section 2. Section 60-2E-8 NMSA 1978 (being Laws 1997, Chapter 190, Section 10, as amended) is amended to read:

"60-2E-8. BOARD REGULATIONS--DISCRETIONARY REGULATIONS--PROCEDURE--REQUIRED PROVISIONS.--

A. The board may adopt any regulation:

(1) consistent with the provisions of the Gaming Control Act; and

(2) it decides is necessary to implement the provisions of the Gaming Control Act.

B. No regulation shall be adopted, amended or repealed without a public hearing on the proposed action before the board or a hearing officer designated by it. Notice of the subject matter of the regulation, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed regulation, amendment or repeal may be obtained shall be published once at least thirty days prior to the hearing date in a newspaper of general circulation and mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice of hearing. All regulations and actions taken on regulations shall be filed in accordance with the State Rules Act.

C. The board shall adopt regulations:

(1) prescribing the method and form of application to be followed by an applicant;

(2) prescribing the information to be furnished by an applicant or licensee concerning the applicant's or licensee's antecedents, immediate family, habits, character, associates, criminal record, business activities and financial affairs, past or present;

(3) prescribing the manner and procedure of all hearings conducted by the board or a hearing officer;

(4) prescribing the manner and method of collection and payment of fees;

(5) prescribing the manner and method of the issuance of licenses, permits, registrations, certificates and other actions of the board not elsewhere prescribed in the Gaming Control Act;

(6) defining the area, games and gaming devices allowed and the methods of operation of the games and gaming devices for authorized gaming;

(7) prescribing under what conditions the nonpayment of winnings is grounds for suspension or revocation of a license of a gaming operator;

(8) governing the manufacture, sale, distribution, repair and servicing of gaming devices;

(9) prescribing accounting procedures, security, collection and verification procedures required of licensees and matters regarding financial responsibility of licensees;

(10) prescribing what shall be considered to be an unsuitable method of operating gaming activities;

(11) restricting access to confidential information obtained pursuant to the provisions of the Gaming Control Act and ensuring that the confidentiality of that information is maintained and protected;

(12) prescribing financial reporting and internal control requirements for licensees;

(13) prescribing the manner in which winnings, compensation from gaming activities and net take shall be computed and reported by a gaming operator licensee;

(14) prescribing the frequency of and the matters to be contained in audits of and periodic financial reports relevant to the gaming operator licensee's gaming activities from a gaming operator licensee consistent with standards prescribed by the board;

(15) prescribing the procedures to be followed by a gaming operator licensee for the exclusion of persons from gaming establishments;

(16) establishing criteria and conditions for the operation of progressive systems;

(17) establishing criteria and conditions for approval of procurement by the board of personal property valued in excess of twenty thousand dollars (\$20,000), including background investigation requirements for a person submitting a bid or proposal;

(18) establishing an applicant fee schedule for processing applications that is based on costs of the application review incurred by the board whether directly or through payment by the board for costs charged for investigations of applicants by state departments and agencies other than the board, which regulation shall set a maximum fee of one hundred thousand dollars (\$100,000); and

(19) establishing criteria and conditions for allowing temporary possession of gaming devices:

(a) by post-secondary educational institutions;

(b) for trade shows;

(c) for film or theater productions; or

(d) for other non-gaming purposes."

Chapter 199 Section 3 Laws 2009

Section 3. Section 60-2E-12 NMSA 1978 (being Laws 1997, Chapter 190, Section 14) is amended to read:

"60-2E-12. CONFLICTS OF INTEREST--BOARD--EXECUTIVE DIRECTOR--EMPLOYEES.--

A. In addition to all other provisions of New Mexico law regarding conflicts of interest of state officials and employees, a member of the board, the executive director, an employee of the board or a person in the immediate family of or residing in the household of any of the foregoing persons, shall not:

(1) directly or indirectly, as a proprietor or as a member, stockholder, director or officer of a company, have an interest in a business engaged in gaming activities in this or another jurisdiction; or

(2) accept or agree to accept any economic opportunity, gift, loan, gratuity, special discount, favor, hospitality or service having an aggregate value of one hundred dollars (\$100) or more in any calendar year from a licensee or applicant.

B. If a member of the board, the executive director or a person in the immediate family of or residing in the household of a member of the board or the executive director violates a provision of this section, the member of the board or executive director shall be removed from office. A board member shall be removed by the governor, and the executive director shall be removed from the executive director's position by the board."

Chapter 199 Section 4 Laws 2009

Section 4. Section 60-2E-13.1 NMSA 1978 (being Laws 2002, Chapter 102, Section 9) is amended to read:

"60-2E-13.1. TEMPORARY POSSESSION OF GAMING DEVICE FOR LIMITED PURPOSE.--

A. A public post-secondary educational institution may temporarily possess gaming devices for the limited purpose of providing instruction on the technical aspects of gaming devices to persons seeking certification as technicians qualified to repair and maintain gaming devices. A gaming device allowed for such limited use shall be subject to registration, transport, possession and use requirements and restrictions established in board regulations.

B. Trade shows and similar events for the purpose of demonstrating and marketing gaming devices may be conducted in the state at the discretion of the board. A gaming device allowed in the state for such limited use shall be subject to registration, transport, possession and use requirements and restrictions established in board regulations.

C. A person may possess an unlicensed gaming device used by the person for the purposes of testing or demonstration if that person is a manufacturer licensee or has obtained a waiver pursuant to the Gaming Control Act.

D. A person may possess a gaming device for the purpose of film or theater productions or other non-gaming purposes permitted by regulation of the board. Any gaming device allowed in the state for such limited use shall be subject to registration, transport, possession and use requirements and restrictions established in board regulations."

Chapter 199 Section 5 Laws 2009

Section 5. Section 60-2E-16 NMSA 1978 (being Laws 1997, Chapter 190, Section 18, as amended) is amended to read:

"60-2E-16. ACTION BY BOARD ON APPLICATIONS.--

A. A person that the board determines is qualified to receive a license pursuant to the provisions of the Gaming Control Act may be issued a license. The burden of proving qualifications is on the applicant.

B. A license shall not be issued unless the board is satisfied that the applicant is:

(1) a person of good moral character, honesty and integrity;

(2) a person whose prior activities, state and federal criminal records, reputation, habits and associations do not pose a threat to the public interest or to the effective regulation and control of gaming or create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto; and

(3) in all other respects qualified to be licensed consistent with the laws of this state.

C. A license shall not be issued unless the applicant has satisfied the board that:

(1) the applicant has adequate business probity, competence and experience in business and gaming;

(2) the proposed financing of the applicant is adequate for the nature of the proposed license and from a suitable source; any lender or other source of money or credit that the board finds does not meet the standards set forth in Subsection B of this section shall be deemed unsuitable; and

(3) the applicant is sufficiently capitalized under standards set by the board to conduct the business covered by the license.

D. An application to receive a license, certification or work permit constitutes a request for a determination of the applicant's general moral character, integrity and ability to participate or engage in or be associated with gaming. Any written or oral statement made in the course of an official proceeding of the board or by a witness testifying under oath that is relevant to the purpose of the proceeding is absolutely privileged and does not impose liability for defamation or constitute a ground for recovery in any civil action.

E. The board shall not issue a license or certification to an applicant who has previously been denied a license or certification in this state or another state, who has had a certification, permit or license issued pursuant to the gaming laws of a state or the United States permanently suspended or revoked for cause or who is currently under suspension or subject to any other limiting action in this state or another state involving gaming activities or licensure for gaming activities, unless the violation that is the basis of the denial, permanent suspension or other limiting action regarding a license, certification or permit applied for or issued in this state or another state is determined by the board to be a technical violation, and, if the board finds the violation to be a technical violation, the board may choose to issue a license or certification.

F. The board shall investigate the qualifications of each applicant before a license, certification or work permit is issued by the board and shall continue to observe and monitor the conduct of all licensees, work permit holders, persons certified as being suitable and the persons having a material involvement directly or indirectly with a licensee.

G. The board has the authority to deny an application or limit, condition, restrict, revoke or suspend a license, certification or permit for any cause.

H. After issuance, a license, certification or permit shall continue in effect upon proper payment of the initial and renewal fees, subject to the power of the board to revoke, suspend, condition or limit licenses, certifications and permits.

I. The board has full and absolute power and authority to deny an application for any cause it deems reasonable. If an application is denied, the board shall prepare and file its written decision on which its order denying the application is based."

Chapter 199 Section 6 Laws 2009

Section 6. Section 60-2E-19 NMSA 1978 (being Laws 1997, Chapter 190, Section 21, as amended) is amended to read:

"60-2E-19. COMPANY APPLICANTS--NONPROFIT ORGANIZATION APPLICANTS--REQUIRED INFORMATION.--

A. A company applicant for a license or a renewal of a license shall provide the following information to the board on forms provided by the board:

(1) the organization, financial structure and nature of the business to be operated, including the names and personal histories of all officers, directors and key executives;

(2) the rights and privileges acquired by the holders of different classes of authorized securities;

(3) the terms and conditions of all outstanding loans, mortgages, trust deeds, pledges or any other indebtedness or security interest evidenced by a security instrument pertaining to the proposed gaming operation or other licensed activity in this state and the name and address of the person who is servicing the loan, mortgage, trust deed, pledge or other indebtedness or security interest;

(4) remuneration to persons, other than directors, officers and key executives, exceeding one hundred thousand dollars (\$100,000) per year;

(5) bonus and profit-sharing arrangements within the company;

(6) a list of management and service contracts pertaining to the proposed gaming activity in this state;

(7) balance sheets and profit and loss statements for at least the three preceding fiscal years, or, if the company has not been in business for a period of three years, balance sheets and profit and loss statements from the time of its commencement of business operations and projected for three years from the time of its commencement of business operations. All balance sheets and profit and loss statements shall be audited by independent certified public accountants; and

(8) any further financial data that the board deems necessary or appropriate.

B. A nonprofit organization applying for a license or a renewal of a license as a nonprofit gaming operator pursuant to the Gaming Control Act shall provide in its application:

(1) the organization, financial structure and nature of the nonprofit organization, including the names of all officers, directors and key executives;

(2) the terms and conditions of all outstanding loans, mortgages, trust deeds, pledges or any other indebtedness or security interest evidenced by a security instrument pertaining to the proposed gaming operation or other licensed activity in this state and the name and address of the person who is servicing the loan, mortgage, trust deed, pledge or other indebtedness or security interest;

(3) management and service contracts pertaining to the proposed gaming activity in this state;

(4) balance and profit and loss statements for at least the three preceding fiscal years or, if the nonprofit organization has not been in business for a period of three years, balance sheets and profit and loss statements from the date of charter or incorporation and projected for three years from the date of charter or incorporation. All balance sheets and profit and loss statements shall be submitted in a manner prescribed by the board;

(5) any further financial data that the board deems necessary or appropriate;

(6) if the nonprofit organization has various classes of members, information detailing the rights and privileges attributed to each class of member and providing the number of members in each class;

(7) the level of remuneration for all paid employees of the nonprofit organization; and

(8) details about any other form of remuneration or awards that are conferred on members."

Chapter 199 Section 7 Laws 2009

Section 7. Section 60-2E-20 NMSA 1978 (being Laws 1997, Chapter 190, Section 22, as amended) is amended to read:

"60-2E-20. INDIVIDUAL CERTIFICATION OF FINDING OF SUITABILITY OF OFFICERS, DIRECTORS AND OTHER PERSONS.--

A. An officer, director, equity security holder of five percent or more, partner, general partner, limited partner, trustee or beneficiary of the company that holds or has applied for a license shall individually apply for and obtain a certification of finding of suitability, according to the provisions of the Gaming Control Act, and if, in the judgment of the board the public interest is served by requiring any or all of the company's key executives to apply for and obtain a certification of finding of suitability, the company shall require those persons to apply for certification. A person who is required to be certified pursuant to this subsection shall apply for certification within thirty days after becoming an officer, director, equity security holder of five percent or more, partner, general partner, limited partner of five percent or more, trustee, beneficiary or key executive. A person who is required to be certified pursuant to a decision of the board shall apply for certification within thirty days after the board so requests. A person required or requested to be certified pursuant to this subsection shall provide to the board an application for certification, including a personal history, a financial statement, copies of the person's income tax returns for the three years immediately prior to the year of the application and other information that the board deems necessary or appropriate.

B. The key executives of a nonprofit organization that holds or has applied for a license shall individually apply for and obtain a certification of finding of suitability. For purposes of this subsection, key executives are those officers, employees, volunteers and other persons who are designated by the nonprofit organization as key executives. The board may require additional officers, employees, volunteers and other persons to apply for and obtain a certification of finding of suitability if the board determines the public interest is served by the additional certifications. A person who is

required to be certified pursuant to this subsection shall apply for certification within thirty days after becoming an officer or key executive. A person who is required to be certified pursuant to a decision of the board shall apply for certification within thirty days after the board so requests. A person required or requested to be certified pursuant to this subsection shall provide to the board an application for certification, including a personal history, a financial statement, copies of the person's income tax returns for the three years immediately prior to the year of the application and other information that the board deems necessary or appropriate."

Chapter 199 Section 8 Laws 2009

Section 8. Section 60-2E-21 NMSA 1978 (being Laws 1997, Chapter 190, Section 23) is amended to read:

"60-2E-21. REQUIREMENTS IF COMPANY IS OR BECOMES A SUBSIDIARY-- INVESTIGATIONS--RESTRICTIONS ON UNSUITABLE PERSONS--OTHER REQUIREMENTS.--

A. If the company applicant or licensee is or becomes a subsidiary, each nonpublicly traded holding company and intermediary company with respect to the subsidiary company shall:

(1) qualify to do business in New Mexico; and

(2) register with the board and furnish to the board the following information:

(a) a complete list of all beneficial owners of five percent or more of its equity securities, which shall be updated within thirty days after any change;

(b) the names of all company officers and directors within thirty days of their appointment or election;

(c) its organization, financial structure and nature of the business it operates;

(d) the terms, position, rights and privileges of the different classes of its outstanding securities;

(e) the terms on which its securities are to be, and during the preceding three years have been, offered;

(f) the holder of and the terms and conditions of all outstanding loans, mortgages, trust deeds, pledges or any other indebtedness or security interest pertaining to the applicant or licensee;

(g) the extent of the securities holdings or other interest in the holding company or intermediary company of all officers, directors, key executives, underwriters, partners, principals, trustees or any direct or beneficial owners, and the amount of any remuneration paid them as compensation for their services in the form of salary, wages, fees or by contract pertaining to the licensee;

(h) remuneration to persons other than directors, officers and key executives exceeding two hundred fifty thousand dollars (\$250,000) per year;

(i) bonus and profit-sharing arrangements within the holding company or intermediary company, if deemed necessary by the board;

(j) management and service contracts pertaining to the licensee or applicant, if deemed necessary by the board;

(k) options existing or to be created in respect to the company's securities or other interests, if deemed necessary by the board;

(l) balance sheets and profit and loss statements, audited by independent certified public accountants or their foreign equivalents, for not more than the three preceding fiscal years, or, if the holding company or intermediary company has not been in existence more than three years, balance sheets and profit and loss statements from the time of its establishment, together with projections for three years from the time of its establishment;

(m) any further financial statements necessary or appropriate to assist the board in making its determinations; and

(n) a current annual profit and loss statement, a current annual balance sheet and a copy of the company's most recent federal income tax return or its foreign equivalent within thirty days after the return is filed.

B. The board may require all holders of five percent or more of the equity security of a holding company or intermediary company to apply for a certification of finding of suitability.

C. The board may in its discretion perform the investigations concerning the officers, directors, key executives, underwriters, security holders, partners, principals, trustees or direct or beneficial owners of any interest in any holding company or intermediary company as it deems necessary, either at the time of initial registration or at any time thereafter.

D. If at any time the board finds that any person owning, controlling or holding with power to vote all or any part of any class of securities of, or any interest in, any holding company or intermediary company is unsuitable to be connected with a licensee, it shall so notify both the unsuitable person and the holding company or

intermediary company. The unsuitable person shall immediately offer the securities or other interest to the issuing company for purchase. The company shall purchase the securities or interest offered upon the terms and within the time period ordered by the board.

E. Beginning on the date when the board serves notice that a person has been found to be unsuitable pursuant to Subsection D of this section, it is unlawful for the unsuitable person to:

(1) receive any dividend or interest upon any securities held in the holding company or intermediary company, or any dividend, payment or distribution of any kind from the holding company or intermediary company;

(2) exercise, directly or indirectly or through a proxy, trustee or nominee, any voting right conferred by the securities or interest; or

(3) receive remuneration in any form from the licensee, or from any holding company or intermediary company with respect to that licensee, for services rendered or otherwise.

F. A holding company or intermediary company subject to the provisions of Subsection A of this section shall not make any public offering of any of its equity securities unless such public offering has been approved by the board.

G. This section does not apply to a holding company or intermediary company that is a publicly traded corporation, the stock of which is traded on recognized stock exchanges, which shall instead comply with the provisions of Section 60-2E-22 NMSA 1978."

Chapter 199 Section 9 Laws 2009

Section 9. Section 60-2E-22 NMSA 1978 (being Laws 1997, Chapter 190, Section 24) is amended to read:

"60-2E-22. CHANGE IN COMPANY OWNERSHIP.--

A. If a company applicant or company licensee proposes to transfer ownership of twenty percent or more of the applicant or licensee, it shall notify the board in writing and provide the following information about the successor company:

(1) if the company is a publicly traded corporation, as of the date the company became a publicly traded corporation, and on any later date when the information changes, the names of all stockholders of record who hold five percent or more of the outstanding shares of any class of equity securities issued by the publicly traded corporation;

(2) the names of all officers within thirty days of their respective appointments;

(3) the names of all directors within thirty days of their respective elections or appointments;

(4) the organization, financial structure and nature of the businesses the company operates;

(5) if the company is a publicly traded corporation, the terms, position, rights and privileges of the different classes of securities outstanding as of the date the company became a publicly traded corporation;

(6) if the company is a publicly traded corporation, the terms on which the company's securities were issued during the three years preceding the date on which the company became a publicly traded corporation and the terms on which the publicly traded corporation's securities are to be offered to the public as of the date the company became a publicly traded corporation;

(7) the terms and conditions of all outstanding indebtedness and evidence of security pertaining directly or indirectly to the company;

(8) remuneration exceeding one hundred thousand dollars (\$100,000) per year paid to persons other than directors, officers and key executives who are actively and directly engaged in the administration or supervision of the gaming activities of the company;

(9) bonus and profit-sharing arrangements within the company directly or indirectly relating to its gaming activities;

(10) management and service contracts of the company pertaining to its gaming activities;

(11) options existing or to be created pursuant to its equity securities;

(12) balance sheets and profit and loss statements, certified by independent certified public accountants or their foreign equivalents, for not less than the three fiscal years preceding the date of the proposed transfer of ownership;

(13) any further financial statements deemed necessary or appropriate by the board; and

(14) a description of the company's affiliated companies and intermediary companies and gaming licenses, permits and approvals held by those entities.

B. The board shall determine whether the proposed transaction is a transfer or assignment of the license as prohibited by Subsection G of Section 60-2E-14 NMSA 1978. If the board determines that the proposed transaction is prohibited, it shall notify the licensee in writing and shall require the proposed transferee to file an application for a license. If the board determines that the proposed transaction is not a prohibited transfer or assignment of the license, it shall make a determination as to whether to issue a certification approving the transaction. The board shall consider the following information about the successor company in determining whether to certify the transaction:

(1) the business history of the company, including its record of financial stability, integrity and success of its gaming operations in other jurisdictions;

(2) the current business activities and interests of the company, as well as those of its officers, promoters, lenders and other sources of financing, or any other persons associated with it;

(3) the current financial structure of the company as well as changes that could reasonably be expected to occur to its financial structure as a consequence of its proposed action;

(4) the present and proposed compensation arrangements between the company and its directors, officers, key executives, securities holders, lenders or other sources of financing;

(5) the equity investment, commitment or contribution of present or prospective directors, key executives, investors, lenders or other sources of financing; and

(6) the dealings and arrangements, prospective or otherwise, between the company and its investment bankers, promoters, finders or lenders and other sources of financing.

C. The board may issue a certification upon receipt of a proper application and consideration of the criteria set forth in Subsection B of this section if it finds that the certification would not be contrary to the public interest or the policy set forth in the Gaming Control Act.

D. The board shall require the officers, directors key executives and holders of an equity security interest of five percent or more of the successor company and any other person specified in the Gaming Control Act to apply for and obtain a certification of finding of suitability."

Chapter 199 Section 10 Laws 2009

Section 10. Section 60-2E-25 NMSA 1978 (being Laws 1997, Chapter 190, Section 27) is amended to read:

"60-2E-25. REPORT OF PROPOSED ISSUANCE OR TRANSFER OF OWNERSHIP--REPORT OF CHANGE IN CORPORATE OFFICERS AND DIRECTORS--APPROVAL OF BOARD.--

A. Before a company licensee, other than a publicly traded corporation, may issue or transfer five percent or more of its ownership to a person, it shall file a report of its proposed action with the board, which report shall request the approval of the board. The board shall have ninety days within which to approve or deny the request. If the board fails to act in ninety days, the request is deemed approved. If the board denies the request, the company shall not issue or transfer five percent or more of its securities to the person about whom the request was made.

B. A company licensee shall file a report of each change of the corporate officers and directors with the board within thirty days of the change. The board shall have ninety days from the date the report is filed within which to approve or disapprove such change. During the ninety-day period and thereafter, if the board does not disapprove the change, an officer or director is entitled to exercise all powers of the office to which the officer or director was elected or appointed.

C. A company licensee shall report to the board in writing a change in company personnel who have been designated as key executives. The report shall be made no later than thirty days after the change.

D. The board may require that a company licensee furnish the board with a copy of its federal income tax return within thirty days after the return is filed."

Chapter 199 Section 11 Laws 2009

Section 11. Section 60-2E-26 NMSA 1978 (being Laws 1997, Chapter 190, Section 28) is amended to read:

"60-2E-26. GAMING OPERATOR LICENSEES--GENERAL PROVISIONS--BUSINESS PLAN--PLAYER AGE LIMIT--RESTRICTIONS.--

A. An applicant for a gaming operator's license shall submit with the application a plan for assisting in the prevention, education and treatment of compulsive gambling. The plan shall include regular educational training sessions for employees. Plan approval by the board is a condition of issuance of the license.

B. An applicant for a gaming operator's license shall submit with the application a proposed business plan. The plan shall include at least:

- operations;
- (1) a floor plan of the area to be used for gaming machine
 - (2) an advertising and marketing plan;
 - (3) the proposed placement and number of gaming machines;
 - (4) a current financial status and gaming protection plan;
 - (5) a security plan;
 - (6) a staffing plan for gaming machine operations;
 - (7) internal control systems in compliance with Section 60-2E-35 NMSA 1978; and
 - (8) details of any proposed progressive systems.

C. A gaming operator licensee shall be granted a license to operate a number of machines, not to exceed the statutory maximum, at a gaming establishment identified in the license application and shall be granted a license for each gaming machine.

D. A gaming operator licensee shall apply for and pay the machine license fee for any increase in the number of authorized gaming machines in operation at the licensed premises and shall notify the board of any decrease in the number of authorized gaming machines in operation at the licensed premises.

E. Gaming machines may be available for play only in an area restricted to persons twenty-one years of age or older.

F. A gaming operator licensee shall erect a permanent physical barrier to allow for multiple uses of the premises by persons of all ages. For purposes of this subsection, "permanent physical barrier" means a floor-to-ceiling wall separating the general areas from the restricted areas. The entrance to the area where gaming machines are located shall display a sign that the premises are restricted to persons twenty-one years of age or older. Persons under the age of twenty-one shall not enter the area where gaming machines are located.

G. A gaming operator licensee shall not have automated teller machines in the area restricted pursuant to Subsection F of this section.

H. A gaming operator licensee shall not provide, allow, contract or arrange to provide alcohol or food for no charge or at reduced prices as an incentive or enticement for patrons to game.

I. Only a racetrack licensed by the state racing commission or a nonprofit organization may apply for or be issued a gaming operator's license. No other persons are qualified to apply for or be issued a gaming operator's license pursuant to the Gaming Control Act."

Chapter 199 Section 12 Laws 2009

Section 12. 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 parimutuel wagering; or

(2) the racetrack fails to maintain a minimum of four live race days a week with at least nine live races on each race day during its licensed race meet, 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 than four live race days or nine 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 Paragraph (2) 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;

(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."

Chapter 199 Section 13 Laws 2009

Section 13. Section 60-2E-29 NMSA 1978 (being Laws 1997, Chapter 190, Section 31) is amended to read:

"60-2E-29. LICENSING OF MANUFACTURERS OF GAMING DEVICES--
EXCEPTION--DISPOSITION OF GAMING DEVICES.--

A. It is unlawful for a person to operate, carry on, conduct or maintain any form of manufacturing of a gaming device or associated equipment for use or play in New Mexico or any form of manufacturing of a gaming device or associated equipment in New Mexico for use or play outside of New Mexico without first obtaining and maintaining a manufacturer's license.

B. If the board revokes a manufacturer's license:

(1) no new gaming device manufactured by the manufacturer may be approved for use in this state;

(2) any previously approved gaming device manufactured by the manufacturer is subject to revocation of approval if the reasons for the revocation of the license also apply to that gaming device;

(3) no new gaming device or associated equipment made by the manufacturer may be distributed, sold, transferred or offered for use or play in New Mexico; and

(4) any association or agreement between the manufacturer and a distributor licensee or gaming operator licensee in New Mexico shall be terminated.

C. An agreement between a manufacturer licensee and a distributor licensee or a gaming operator licensee in New Mexico shall be deemed to include a provision for its termination without liability for the termination on the part of either party upon a finding by the board that either party is unsuitable. Failure to include that condition in the agreement is not a defense in an action brought pursuant to this section to terminate the agreement.

D. A gaming device shall not be used and offered for play by a gaming operator licensee unless it is identical in all material aspects to a model that has been specifically tested and approved by:

(1) the board;

(2) a laboratory selected by the board; or

(3) gaming officials in Nevada or New Jersey for current use.

E. The board may inspect every gaming device that is manufactured:

(1) for use in New Mexico; or

(2) in New Mexico for use outside of New Mexico.

F. The board may inspect every gaming device that is offered for play within New Mexico by a gaming operator licensee.

G. The board may inspect all associated equipment that is manufactured and sold for use in New Mexico or manufactured in New Mexico for use outside of New Mexico.

H. In addition to all other fees and charges imposed pursuant to the Gaming Control Act, the board may determine, charge and collect from each manufacturer an inspection fee, which shall not exceed the actual cost of inspection and investigation.

I. The board may prohibit the use of a gaming device by a gaming operator licensee if it finds that the gaming device does not meet the requirements of this section."

Chapter 199 Section 14 Laws 2009

Section 14. A new section of the Gaming Control Act, Section 60-2E-34.1 NMSA 1978, is enacted to read:

"60-2E-34.1. SELF-EXCLUSION FROM GAMING ESTABLISHMENTS--
PROCEDURE--FINES--CONFIDENTIALITY.--

A. The board shall develop rules that permit a person who is a compulsive gambler to be voluntarily excluded from a gaming establishment.

B. Self-exclusion shall occur through written application made by the compulsive gambler to the board and shall be governed by the following provisions:

(1) self-exclusion shall be enforceable upon issuance of a self-exclusion order by the board to each applicable gaming establishment identified in the order;

(2) only the person who is the compulsive gambler may apply on that person's behalf;

(3) the application shall be submitted to the board;

(4) except for notification of the gaming establishments for which the self-exclusion order is effective and for notification for mailing list exclusion pursuant to this section, the application and the self-exclusion order shall be held confidential by employees of the board and a gaming operator licensee and its employees and key executives;

(5) a self-exclusion order may apply to one or more gaming establishments licensed pursuant to the Gaming Control Act;

(6) a self-excluded person, if present at a gaming establishment from which the person is excluded, shall forfeit the following to that gaming establishment, provided that all money or other property forfeited shall be used by the gaming establishment only to supplement the one-fourth percent of the net take of its gaming machines to fund or support programs for the treatment and assistance of compulsive gamblers pursuant to Subsection E of Section 60-2E-47 NMSA 1978:

(a) all winnings of the person obtained while present at the gaming establishment; and

(b) all credits, tokens or vouchers received by the person while present at the gaming establishment;

(7) a gaming establishment is immune from liability arising out of its efforts to exclude a person identified in a self-exclusion order; and

(8) a specific term shall be set for each self-exclusion order.

C. Notice shall be submitted by the board at least monthly to all gaming establishments listing all persons who are currently self-excluded and ordering the removal of their names from direct mail or electronic advertisement or promotional lists.

D. The state gaming representative may negotiate an agreement with each tribal casino in the state to allow the state to include tribal casinos in the self-exclusion orders."

Chapter 199 Section 15 Laws 2009

Section 15. REPEAL.--Section 60-2E-45 NMSA 1978 (being Laws 1997, Chapter 190, Section 47) is repealed.

Senate Bill 230, aa

Approved April 7, 2009

LAWS 2009, CHAPTER 200

AN ACT

RELATING TO COMMERCIAL VEHICLE DRIVERS; UPDATING, CLARIFYING AND REORGANIZING SECTIONS OF THE MOTOR VEHICLE CODE APPLYING TO

COMMERCIAL MOTOR VEHICLE DRIVERS; INCREASING PENALTIES FOR CERTAIN VIOLATIONS; REORGANIZING CONVICTION REPORTING REQUIREMENTS THAT APPLY ONLY TO COMMERCIAL VEHICLE DRIVERS; AMENDING AND REPEALING SECTIONS OF THE NMSA 1978.

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

Chapter 200 Section 1 Laws 2009

Section 1. Section 65-3-7 NMSA 1978 (being Laws 1989, Chapter 201, Section 7) is amended to read:

"65-3-7. QUALIFICATIONS OF DRIVERS.--

A. A person shall not drive a motor vehicle unless the person is qualified to drive a motor vehicle, and a motor carrier shall not require or permit a person to drive a motor vehicle unless that person is qualified to drive a motor vehicle.

B. A person is qualified to drive a commercial motor carrier vehicle if the person:

(1) is at least:

(a) twenty-one years old; or

(b) eighteen years old if involved only in intrastate commerce and drives only within the boundaries of the state of New Mexico;

(2) is physically qualified to drive a motor vehicle;

(3) is not disqualified from driving a motor vehicle;

(4) has been issued a currently valid motor vehicle operator's license or permit of the proper class for the vehicle that the person is driving;

(5) can, by reason of experience, training or both, safely operate the type of motor vehicle that the person drives; and

(6) can, by reason of experience, training or both, determine whether the cargo that the person transports is properly located, distributed and secured in or on the motor vehicle that the person drives.

C. The director shall adopt regulations requiring motor carriers to maintain appropriate records pertaining to the qualifications of every commercial motor carrier vehicle driver in its employ, either regularly or casually. Such regulations shall not be inconsistent with or more stringent than applicable federal safety standards.

D. The director is authorized to adopt specific exceptions for the qualifications of drivers under the Motor Carrier Safety Act for drivers of articulated farm vehicles and intrastate drivers of motor vehicles transporting combustible liquids."

Chapter 200 Section 2 Laws 2009

Section 2. Section 65-3-14 NMSA 1978 (being Laws 2007, Chapter 151, Section 1) is amended to read:

"65-3-14. DRUG AND ALCOHOL TESTING PROGRAM--REPORT OF POSITIVE TEST.--

A. A motor carrier shall have an in-house drug and alcohol testing program that meets the requirements of 49 C.F.R. part 382 or be a member of a consortium, as defined in 49 C.F.R. part 382.107, that provides testing that meets the requirements of C.F.R. part 382.

B. A person or entity specified in 49 C.F.R. part 382.103, who is not explicitly excepted by New Mexico law, is subject to the provisions of this section and shall report positive test results or a refusal to submit to a test pursuant to provisions in this section. A refusal to submit to a pre-employment test shall not be considered a violation of this section.

C. When a person or entity specified in 49 C.F.R. part 382.103 determines that a positive test result is valid, the person or entity shall report the findings to the motor vehicle division of the taxation and revenue department. The motor vehicle division shall enter the report of a positive test result or refusal to submit to a test on the reported person's motor vehicle record so that it can be contained in the commercial driver's license information system pursuant to the New Mexico Commercial Driver's License Act.

D. The division shall keep the report of a positive test result or the refusal to submit to a test in the motor vehicle record of the driver for five years from the time the report was received by the motor vehicle division."

Chapter 200 Section 3 Laws 2009

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

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

A. "camping body" means a vehicle body primarily designed or converted for use as temporary living quarters for recreational, camping or travel activities excluding recreational vehicles unless used in commerce;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

N. "conviction":

(1) means:

(a) a finding of guilt in the trial court in regard to which the violator has waived or exhausted all rights to appeal;

(b) a plea of guilty or nolo contendere accepted by the court;

(c) an unvacated forfeiture of bail or collateral deposited to secure a person's appearance in court; or

(d) the promise to mail a payment on a penalty assessment;

and

(2) does not include a conditional discharge as provided in Section 31-20-13 NMSA 1978 or a deferred sentence when the terms of the deferred sentence are met;

O. "crosswalk" means:

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

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

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

Chapter 200 Section 4 Laws 2009

Section 4. Section 66-5-54 NMSA 1978 (being Laws 1989, Chapter 14, Section 3, as amended) is amended to read:

"66-5-54. DEFINITIONS.--As used in the New Mexico Commercial Driver's License Act:

A. "commerce" means:

(1) trade, traffic or transportation within the jurisdiction of the United States between a place in New Mexico and a place outside of New Mexico, including a place outside of the United States; and

(2) trade, traffic or transportation in the United States that affects any trade, traffic or transportation described in Paragraph (1) of this subsection;

B. "commercial driver's license holder" means an individual to whom a license has been issued by a state or other jurisdiction, in accordance with the standards found in 49 C.F.R. part 383, as amended or renumbered, that authorizes the individual to operate a commercial motor vehicle;

C. "commercial driver's license information system" means the information system created pursuant to the federal Commercial Motor Vehicle Safety Act of 1986 that contains information pertaining to operators of commercial motor vehicles;

D. "commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

(1) has a gross combination weight rating of more than twenty-six thousand pounds inclusive of a towed unit with a gross vehicle weight rating of more than ten thousand pounds;

(2) has a gross vehicle weight rating of more than twenty-six thousand pounds;

(3) is designed to transport sixteen or more passengers, including the driver; or

(4) is of any size and is used in the transportation of hazardous materials, as hazardous materials are defined in 49 C.F.R. part 383.5;

E. "conviction" means:

(1) an unvacated adjudication of guilt or a determination that a person has violated or failed to comply with the law by:

(a) a court of original jurisdiction; or

(b) an authorized administrative tribunal;

(2) an unvacated forfeiture of bail or collateral deposited to secure a person's appearance in court;

(3) a plea of guilty or nolo contendere accepted by the court;

(4) the payment of a fine or court cost;

(5) a violation of a condition of release without bail, regardless of whether the payment is rebated, suspended or probated;

(6) an assignment to a diversion program or a driver improvement school; or

(7) a conditional discharge as provided in Section 31-20-13 NMSA 1978;

F. "director" means the director of the motor vehicle division of the department;

G. "disqualification" means:

(1) a suspension, revocation or cancellation of a commercial driver's license by the state or jurisdiction that issued the commercial driver's license;

(2) a withdrawal of a person's privileges to drive a commercial motor vehicle by a state or other jurisdiction as the result of a violation of state or local law relating to motor vehicle control other than a parking, vehicle weight or vehicle defect violation; and

(3) a determination by the federal motor carrier safety administration that a person is not qualified to operate a motor vehicle;

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

I. "driving a commercial motor vehicle while under the influence of alcohol" means:

(1) driving a commercial motor vehicle while the driver has an alcohol concentration in the driver's blood or breath of four one hundredths or more;

(2) driving a commercial motor vehicle while the driver is under the influence of intoxicating liquor; or

(3) refusal to submit to chemical tests administered pursuant to Section 66-8-107 NMSA 1978;

J. "employee" means an operator of a commercial motor vehicle, including full-time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers; and independent owner-operator contractors, while in the course of operating a commercial motor vehicle, who is either directly employed by or under lease to an employer;

K. "employer" means a person, including the United States, a state and a political subdivision of a state or their agencies or instrumentalities, that owns or leases a commercial motor vehicle or assigns employees to operate such a vehicle;

L. "fatality" means the death of a person as a result of a motor vehicle accident;

M. "gross combination weight rating" means the value specified by the manufacturer as the loaded weight of a combination vehicle. In the absence of a value specified by the manufacturer, gross combination weight rating shall be determined by adding the gross vehicle weight rating of the power unit and the total weight of the towed unit or units and any load thereon;

N. "gross vehicle weight rating" means the value specified by the manufacturer as the loaded weight of a single vehicle;

O. "imminent hazard" means a condition that presents a substantial likelihood that death, serious illness, severe personal injury or a substantial endangerment to health, property or the environment will occur before the reasonable foreseeable completion date of a formal proceeding to lessen the risk of that death, illness, injury or endangerment;

P. "noncommercial motor vehicle" means a motor vehicle or combination of motor vehicles that is not a commercial motor vehicle;

Q. "nonresident commercial driver's license" means a commercial driver's license issued by another state to a person domiciled in that state or by a foreign country to a person domiciled in that country;

R. "out-of-service order" means a declaration by an authorized enforcement officer of a federal, state, Canadian, Mexican or local jurisdiction that a driver, a commercial motor vehicle or a motor carrier operation is temporarily prohibited from operating;

S. "railroad-highway grade crossing violation" means a violation of a provision of Section 66-7-341 or 66-7-343 NMSA 1978 or a violation of federal or local law or rule pertaining to stopping at or crossing a railroad-highway grade crossing;

T. "serious traffic violation" means conviction of any of the following if committed when operating a motor vehicle:

- (1) speed of fifteen miles or more per hour above the posted limits;
- (2) reckless driving as defined by Section 66-8-113 NMSA 1978 or a municipal ordinance or the law of another state;
- (3) homicide by vehicle, as defined in Section 66-8-101 NMSA 1978;
- (4) injury to pregnant woman by vehicle as defined in Section 66-8-101.1 NMSA 1978 or a municipal ordinance or the law of another state;
- (5) any other violation of law relating to motor vehicle traffic control, other than a parking violation, that the secretary determines by regulation to be a serious traffic violation. "Serious traffic violation" does not include a vehicle weight or vehicle defect violation;
- (6) improper or erratic lane changes in violation of Section 66-7-317 NMSA 1978;
- (7) following another vehicle too closely in violation of Section 66-7-318 NMSA 1978;
- (8) directly or indirectly causing death or great bodily injury to a human being in the unlawful operation of a motor vehicle in violation of Section 66-8-101 NMSA 1978;
- (9) driving a commercial motor vehicle without possession of a commercial driver's license in violation of Section 66-5-59 NMSA 1978;
- (10) driving a commercial motor vehicle without the proper class of commercial driver's license and endorsements pursuant to Section 66-5-65 NMSA 1978 and the Motor Carrier Safety Act for the specific vehicle group operated or for the passengers or type of cargo transported; or

(11) driving a commercial motor vehicle without obtaining a commercial driver's license in violation of Section 66-5-59 NMSA 1978; and

U. "state of domicile" means the state in which a person has a true, fixed and permanent home and principal residence and to which the person has the intention of returning whenever the person has been absent from that state."

Chapter 200 Section 5 Laws 2009

Section 5. Section 66-5-68 NMSA 1978 (being Laws 1989, Chapter 14, Section 17, as amended) is amended to read:

"66-5-68. DISQUALIFICATION.--

A. The department shall disqualify a person from driving a commercial motor vehicle for at least thirty days if the federal motor carrier safety administration reports to the division that the person poses an imminent hazard.

B. The department shall disqualify a person who holds a commercial driver's license or who is required to hold a commercial driver's license from driving a commercial motor vehicle for a period of not less than one year, which shall run concurrently with any revocation or suspension action for the same offense, if the person:

(1) refuses to submit to a chemical test when requested pursuant to the provisions of the Implied Consent Act;

(2) is twenty-one years of age or more and submits to chemical testing pursuant to the Implied Consent Act and the test results indicate an alcohol concentration of eight one hundredths or more;

(3) submits to chemical testing pursuant to the Implied Consent Act and the test results indicate an alcohol concentration of four one hundredths or more if the person is driving a commercial motor vehicle;

(4) is less than twenty-one years of age and submits to chemical testing pursuant to the Implied Consent Act and the test results indicate an alcohol concentration of two one hundredths or more; or

(5) is convicted of a violation of:

(a) driving a motor vehicle while under the influence of intoxicating liquor or drugs in violation of Section 66-8-102 NMSA 1978, an ordinance of a municipality of this state or the law of another state;

(b) leaving the scene of an accident involving a commercial motor vehicle driven by the person in violation of Section 66-7-201 NMSA 1978 or an ordinance of a municipality of this state or the law of another state;

(c) using a motor vehicle in the commission of a felony;

(d) driving a commercial motor vehicle after the driver's commercial driver's license is revoked, suspended, disqualified or canceled for violations while operating a commercial motor vehicle; or

(e) causing a fatality in the unlawful operation of a motor vehicle pursuant to Section 66-8-101 NMSA 1978.

C. The department shall disqualify a person from driving a commercial motor vehicle for a period of not less than three years if any of the violations specified in Subsection B of this section occur while transporting a hazardous material required to be placarded.

D. The department shall disqualify a person from driving a commercial motor vehicle for life if convicted of two or more violations of any of the offenses specified in Subsection B of this section, or any combination of those offenses, arising from two or more separate incidents, but the secretary may issue regulations establishing guidelines, including conditions, under which a disqualification for life under this subsection may be reduced to a period of not less than ten years. This subsection applies only to those offenses committed after July 1, 1989.

E. The department shall disqualify a person from driving a commercial motor vehicle for life if the person uses a commercial motor vehicle in the commission of any felony involving the manufacture, distribution or dispensing of a controlled substance or the possession with intent to manufacture, distribute or dispense a controlled substance.

F. The department shall disqualify a person from driving a commercial motor vehicle for a period of not less than sixty days if convicted of two serious traffic violations or one hundred twenty days if convicted of three serious traffic violations, if the violations were committed while driving a commercial motor vehicle, arising from separate incidents occurring within a three-year period.

G. The department shall disqualify a person from driving a commercial motor vehicle for a period of:

(1) not less than one hundred eighty days nor more than two years if the person is convicted of a first violation of an out-of-service order while transporting hazardous materials required to be placarded pursuant to the federal Hazardous Materials Transportation Act or while operating a motor vehicle designed to transport more than fifteen passengers, including the driver;

(2) not more than one year if the person is convicted of a first violation of an out-of-service order; or

(3) not less than three years nor more than five years if, during any ten-year period, the person is convicted of any subsequent violations of out-of-service orders, in separate incidents, while transporting hazardous materials required to be placarded pursuant to that act or while operating a motor vehicle designed to transport more than fifteen passengers, including the driver.

H. The department shall disqualify a person from driving a commercial motor vehicle for sixty days if:

(1) the person has been convicted of two serious traffic violations in separate incidents within a three-year period; and

(2) the second conviction results in revocation, cancellation or suspension of the person's commercial driver's license or noncommercial motor vehicle driving privileges for sixty days.

I. The department shall disqualify a person from driving a commercial motor vehicle for one hundred twenty days, in addition to any other period of disqualification, if:

(1) the person has been convicted of more than two serious traffic violations within a three-year period; and

(2) the third or a subsequent conviction results in the revocation, cancellation or suspension of the person's commercial driver's license or noncommercial motor vehicle driving privileges.

J. When a person is disqualified from driving a commercial motor vehicle, any commercial driver's license held by that person is invalidated without a separate proceeding of any kind and the driver is not eligible to apply for a commercial driver's license until the period of time for which the driver was disqualified has elapsed.

K. The department shall disqualify a person from driving a commercial motor vehicle for not less than:

(1) sixty days if the person is convicted of a first violation of a railroad-highway grade crossing violation;

(2) one hundred twenty days if, during any three-year period, the person is convicted of a second railroad-highway grade crossing violation in a separate incident; and

(3) one year if, during any three-year period, the person is convicted of a third or subsequent railroad-highway grade crossing violation in a separate incident.

L. After disqualifying, suspending, revoking or canceling a commercial driver's license, the department shall, within ten days, update its records to reflect that action. After disqualifying, suspending, revoking or canceling a nonresident commercial driver's privileges, the department shall, within ten days, notify the licensing authority of the state that issued the commercial driver's license.

M. When disqualifying, suspending, revoking or canceling a commercial driver's license, the department shall treat a conviction received in another state in the same manner as if it was received in this state.

N. The department shall post and enforce any disqualification sent by the federal motor carrier safety administration to the department that indicates that a commercial motor vehicle driver poses an imminent hazard.

O. The federal transportation security administration of the department of homeland security shall provide for an appeal of a disqualification for a commercial driver's license hazardous materials endorsement on the basis of a background check, and the department shall provide to a hazardous materials applicant a copy of the procedures established by the transportation security administration, on request, at the time of application.

P. New Mexico shall conform to the federal transportation security administration of the department of homeland security rules and shall "look back" or review a maximum of seven years for a background check."

Chapter 200 Section 6 Laws 2009

Section 6. Section 66-5-71 NMSA 1978 (being Laws 1998, Chapter 17, Section 5, as amended) is amended to read:

"66-5-71. PENALTIES FOR VIOLATION OF OUT-OF-SERVICE ORDERS.--

A. A driver who is convicted of violating an out-of-service order shall be subject to a civil penalty of not less than two thousand five hundred dollars (\$2,500) for a first violation and five thousand dollars (\$5,000) for a second or subsequent violation, in addition to disqualification as provided in Subsection C of this section. The director shall collect the penalty upon conviction.

B. An employer who is convicted of a violation of Subsection C of Section 66-5-58 NMSA 1978 shall be subject to a civil penalty of not less than two thousand seven hundred fifty dollars (\$2,750) or more than eleven thousand dollars (\$11,000). The director shall collect the penalty upon conviction.

C. A driver who is convicted of violating an out-of-service order shall be disqualified for:

(1) not less than ninety days or more than one year if the driver is convicted of a first violation of an out-of-service order;

(2) not less than one year or more than five years if, during any ten-year period, the driver is convicted of two violations of out-of-service orders in separate incidents; and

(3) not less than three years or more than five years if, during any ten-year period, the driver is convicted of three or more violations of out-of-service orders in separate incidents."

Chapter 200 Section 7 Laws 2009

Section 7. Section 66-8-135 NMSA 1978 (being Laws 1978, Chapter 35, Section 543, as amended) is amended to read:

"66-8-135. RECORD OF TRAFFIC CASES.--

A. Every trial court judge shall keep a record of every traffic complaint, uniform traffic citation and other form of traffic charge filed in the judge's court or its traffic violations bureau and every official action and disposition of the charge by that court.

B. Within ten days of the later of entry of judgment and sentence or failure to appear on a charge of violating the Motor Vehicle Code or other law or ordinance relating to motor vehicles or the final decision of any higher court that reviews the matter and from which no appeal or review is successfully taken, every trial court judge, including children's court judges, or the clerk of the court in which the entry of judgment and sentence or failure to appear occurred shall prepare and forward to the department an abstract of the record containing:

(1) the name and address of the defendant;

(2) the specific section number and common name of the provision of the NMSA 1978 or local law, ordinance or regulation under which the defendant was tried;

(3) the plea, finding of the court and disposition of the charge, including fine or jail sentence or both, forfeiture of bail or dismissal of the charge;

(4) an itemization of costs assessed to the defendant;

(5) the date of the hearing;

(6) the court's name and address;

(7) whether the defendant was a first or subsequent offender; and

(8) whether the defendant was represented by counsel or waived the right to counsel and, if represented, the name and address of counsel.

C. The abstract of record prepared and forwarded under Subsection B of this section shall be certified as correct by the person required to prepare it. With the prior approval of the department, the information required by Subsection B of this section may be transmitted electronically to the department. Report need not be made of any disposition of a charge of illegal parking or standing of a vehicle except when the uniform traffic citation is used.

D. When the uniform traffic citation is used, the court shall provide the information required by Subsection B of this section in the manner prescribed by the department.

E. Every court of record shall also forward a like report to the department upon conviction of any person of any felony if a motor vehicle was used in the commission. With the prior approval of the department, the information required by this subsection may be submitted electronically to the department. The report shall be forwarded to the department within ten days of the final decision of the court or of any higher court that reviews the matter and from which the decision of no appeal or review is successfully taken.

F. The failure or refusal of any judicial officer to comply with this section is misconduct in office and grounds for removal.

G. Except as set forth in Subsection H of this section for records of a person holding a commercial driver's license, the department shall keep records received on motorists licensed in this state at its main office. Records showing a record of conviction by a court of law shall be open to public inspection during business hours for three years from the date of their receipt, after which they shall be destroyed by the department except for records of convictions under Sections 66-8-101 through 66-8-112 NMSA 1978, which may not be destroyed until fifty-five years from the date of their receipt. Any record received on a motorist licensed in another state or country shall be forwarded to the licensing authority of that state or country.

H. The department shall keep records received on a person holding a commercial driver's license or an individual driving a commercial motor vehicle who was required to have a commercial driver's license but was driving a commercial motor vehicle without the appropriate license in its main office. Records showing a record of conviction by a court of law shall be open to public inspection during business hours for fifty-five years from the date of their receipt. Any record received on a person holding a

commercial driver's license licensed in another state or country shall be forwarded to the licensing authority of that state or country."

Chapter 200 Section 8 Laws 2009

Section 8. REPEAL.--Section 66-5-28 NMSA 1978 (being Laws 1978, Chapter 35, Section 250, as amended) is repealed.

Chapter 200 Section 9 Laws 2009

Section 9. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.

SJC/Senate Bill 229, aa, wo/ec

Approved April 7, 2009

LAWS 2009, CHAPTER 201

AN ACT

RELATING TO DOMESTIC AFFAIRS; CLARIFYING THE ABILITY OF A JUDICIAL DISTRICT TO ESTABLISH A SAFE EXCHANGE AND SUPERVISED VISITATION PROGRAM.

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

Chapter 201 Section 1 Laws 2009

Section 1. Section 40-12-1 NMSA 1978 (being Laws 1987, Chapter 153, Section 1) is amended to read:

"40-12-1. SHORT TITLE.--Chapter 40, Article 12 NMSA 1978 may be cited as the "Domestic Relations Mediation Act"."

Chapter 201 Section 2 Laws 2009

Section 2. Section 40-12-5.1 NMSA 1978 (being Laws 2001, Chapter 201, Section 2) is amended to read:

"40-12-5.1. SUPERVISED VISITATION PROGRAM.--

A. A judicial district may establish a "safe exchange and supervised visitation program" by local court rule approved by the supreme court. The safe exchange and supervised visitation program shall be used when, in the opinion of the court, the best interests of the child are served if confrontation or contact between the parents is to be avoided during exchanges of custody or if contact between a parent and a child should be supervised. In a safe exchange and supervised visitation program, the district court may employ or contract with a person:

(1) with whom a child may be left by one parent for a short period while waiting to be picked up by the other parent; or

(2) to supervise visits among one or both parents and the child.

B. A parent may request the services of the safe exchange and supervised visitation program or the court may order that the program be used.

C. Parents shall pay the cost of the safe exchange and supervised visitation program pursuant to a sliding fee scale approved by the supreme court. The sliding fee scale shall be based on ability to pay for the service. The fees shall be paid to the district court to be credited to the fund."

Senate Bill 299

Approved April 7, 2009

LAWS 2009, CHAPTER 202

AN ACT

RELATING TO ELECTIONS; CLARIFYING THE METHOD OF PLACING NAMES ON PRIMARY ELECTION BALLOTS FOR CANDIDATES FOR COUNTY OFFICE.

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

Chapter 202 Section 1 Laws 2009

Section 1. Section 1-8-21 NMSA 1978 (being Laws 1996, Chapter 20, Section 3) is amended to read:

"1-8-21. PRIMARY ELECTION--METHODS OF PLACING NAMES ON PRIMARY BALLOT.--

A. All candidates seeking primary election nomination to a statewide office or the office of United States representative shall file declarations of candidacy with the

proper filing officer. Candidates shall file nominating petitions at the time of filing their declarations of candidacy. Candidates who seek, but do not obtain, preprimary convention designation by a major political party may file new declarations of candidacy and nominating petitions pursuant to Section 1-8-33 NMSA 1978.

B. Except as provided in Subsection C of this section, candidates for any other office listed in Section 1-8-13C shall have their names placed on the primary election ballot by filing declarations of candidacy and nominating petitions with the proper filing officer.

C. Candidates for county office shall have their names placed on the primary election ballot by filing declarations of candidacy and paying filing fees or filing the proper paupers' statements at the time of filing declarations of candidacy with the proper filing officer."

Chapter 202 Section 2 Laws 2009

Section 2. Section 1-8-26 NMSA 1978 (being Laws 1975, Chapter 295, Section 12, as amended) is amended to read:

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

A. Declarations of candidacy by preprimary convention designation for any statewide office or for the office of United States representative and declarations of candidacy for retention of a justice of the supreme court or judge of the court of appeals shall be filed with the proper filing officer on the second Tuesday in February of each even-numbered year between the hours of 9:00 a.m. and 5:00 p.m.

B. Declarations of candidacy for any other office and declarations of candidacy for retention for all affected district judicial offices shall be filed with the proper filing officer on the third Tuesday of March of each even-numbered year between the hours of 9:00 a.m. and 5:00 p.m.

C. Certificates of designation shall be submitted to the secretary of state on the first Tuesday following the preprimary convention at which the candidate's designation took place between the hours of 9:00 a.m. and 5:00 p.m.

D. No candidate's name shall be placed on the ballot until the candidate has been notified in writing by the proper filing officer that the declaration of candidacy, the petition, if required, and the certificate of registration of the candidate on file are in proper order and that the candidate, based on those documents, is qualified to have the candidate's name placed on the ballot. The proper filing officer shall mail the notice no later than 5:00 p.m. on the Tuesday following the filing date.

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

Senate Bill 3, aa

Approved April 7, 2009

LAWS 2009, CHAPTER 203

AN ACT

RELATING TO THE ENVIRONMENT; ENACTING A NEW SECTION OF THE ENVIRONMENTAL IMPROVEMENT ACT TO PROVIDE FOR ASSISTANCE TO INDIGENT PERSONS TO REPLACE SUBSTANDARD LIQUID WASTE DISPOSAL SYSTEMS; CREATING A FUND; PROVIDING FOR DISTRIBUTIONS; MAKING AN APPROPRIATION.

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

Chapter 203 Section 1 Laws 2009

Section 1. A new section of the Environmental Improvement Act is enacted to read:

"LIQUID WASTE DISPOSAL SYSTEM ASSISTANCE FUND--CREATED--PURPOSE.--

A. The "liquid waste disposal system assistance fund" is created in the state treasury. The department shall administer the fund. The fund may be composed of appropriations and transfers of money earned from investment of the fund and otherwise accruing to the fund and transfers of money from the liquid waste fund not to exceed two hundred thousand dollars (\$200,000) from the unexpended balance in the fund. Balances remaining in the fund at the end of a fiscal year shall remain to the credit of the fund. Disbursements from the fund shall be drawn on warrant of the secretary of finance and administration pursuant to vouchers signed by the secretary of environment or the secretary's authorized representative. Money in the fund is appropriated to the department for the sole purpose of assisting indigent individuals or households that qualify for funding to accomplish one of the following purposes where there is a real or potential negative impact to public health or water quality from on-site liquid waste disposal system effluent:

(1) to pay for a liquid waste disposal system to replace a cesspool or other failed or improper on-site liquid waste disposal system;

(2) to purchase, install or maintain an advanced treatment system as required by the Environmental Improvement Act or regulations issued pursuant to that act;

(3) to pay for the decommissioning and removal of a cesspool or other failed or improper on-site liquid waste disposal system; or

(4) to pay for all or a portion of the connection fees in order to connect an individual or household to a centralized wastewater collection and treatment system.

B. Construction activities sponsored by the fund shall be performed by licensed contractors selected through competitive bid by the department and shall be managed by the department.

C. No more than five percent of the fund shall be used by the department on an annual basis to pay for the department costs associated with management and implementation of fund activities.

D. As used in this section:

(1) "advanced treatment system" means an on-site liquid wastewater treatment system that removes a greater amount of contaminants than is accomplished by a primary treatment system;

(2) "connection fee" means the fee paid directly to a public water or wastewater system or other wastewater management organization and does not include other fees, such as legal fees, related to connecting an individual or household to a centralized wastewater collection and treatment system; and

(3) "indigent individuals or households" means individuals or households whose annual incomes do not exceed the federal poverty guidelines."

Chapter 203 Section 2 Laws 2009

Section 2. Section 74-1-15 NMSA 1978 (being Laws 2000, Chapter 96, Section 3) is amended to read:

"74-1-15. LIQUID WASTE FUND CREATED.--The "liquid waste fund" is created in the state treasury. On-site liquid waste system fees shall be deposited in the fund. Money in the fund is appropriated to the department for administration of liquid waste regulations, and no more than two hundred thousand dollars (\$200,000) from unexpended money in the fund may be transferred to the liquid waste disposal system

assistance fund, if enacted into law by the first session of the forty-ninth legislature. Disbursements from the fund shall be by warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of environment or the secretary of environment's designee. Any unexpended or unencumbered balance or income earned from the money in the liquid waste fund remaining at the end of any fiscal year shall not revert to the general fund."

SFC/Senate Bill 30, aa

Approved April 7, 2009

LAWS 2009, CHAPTER 204

AN ACT

RELATING TO AGRICULTURE; AMENDING THE SOIL AND WATER CONSERVATION DISTRICT ACT TO PROVIDE FOR FINANCIAL REPORTING AND ANNUAL LEVY.

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

Chapter 204 Section 1 Laws 2009

Section 1. Section 73-20-41 NMSA 1978 (being Laws 1965, Chapter 137, Section 15, as amended) is amended to read:

"73-20-41. POWERS AND DUTIES OF SUPERVISORS.--

A. Supervisors may employ a secretary and other agents, employees and technical or professional experts as they require and may determine qualifications, compensation and duties applicable to any agent, employee or expert engaged.

B. Supervisors shall require and provide for the execution of a corporate surety bond in suitable penal sum for and to cover any person entrusted with the care or disposition of district funds or property.

C. Supervisors may delegate their powers to one or more supervisors or to one or more district employees, agents or experts.

D. Supervisors shall call upon the county clerk of a county within which all or a part of the district lands are located for advice and assistance with conduct of elections and referenda.

E. Supervisors may call upon the district attorney of the judicial district within which all or a part of the district lands may be situate for legal services required by the district. Supervisors may invite the legislative body of any municipality or county within, near or comprising a part of the district to designate a representative to advise and consult with the supervisors on matters affecting property, water distribution or other matters of interest to the municipality or county.

F. Supervisors are authorized to adopt and publish rules necessary for the proper execution of district duties and activities. The supervisors shall:

(1) keep a full and accurate record of all district proceedings and of all resolutions, rules and orders issued or adopted;

(2) provide for and submit to an annual financial audit pursuant to the Audit Act if the district's annual revenue is five hundred thousand dollars (\$500,000) or more;

(3) provide for a financial report, according to rules for financial reporting that are established by the state auditor, in lieu of the requirement to submit to an annual financial audit pursuant to the Audit Act if the district's annual revenue is less than five hundred thousand dollars (\$500,000);

(4) furnish to the commission a complete report of district proceedings and activities during each fiscal year, including a financial report;

(5) furnish or make available to the commission, upon request, district files and copies of rules, orders, contracts, forms and other documents adopted or employed in conducting district activities; and

(6) call and give due notice of at least one regular meeting of the supervisors each month of the calendar year, unless otherwise approved by the commission.

G. Supervisors and district employees are public employees for the purposes of the Tort Claims Act and shall be provided all insurance and self-insurance coverage provided by the risk management division of the general services department."

Chapter 204 Section 2 Laws 2009

Section 2. Section 73-20-46 NMSA 1978 (being Laws 1965, Chapter 137, Section 20, as amended) is amended to read:

"73-20-46. DISTRICT ASSESSMENTS.--

A. In the event a district is unable to meet or bear the expense of the duties imposed upon it by the Soil and Water Conservation District Act, the supervisors may adopt a resolution that, to be effective, shall be approved by referendum in the district and that shall provide for an annual levy for a stated period of up to ten years in a stated amount not exceeding one dollar (\$1.00) on each one thousand dollars (\$1,000) of net taxable value, as that term is defined in the Property Tax Code, of real property within the district, except that real property within incorporated cities and towns in the district may be excluded. The referendum held to approve or reject the resolution of the supervisors shall be conducted with appropriate ballot and in substantially the same manner as a referendum adopting and approving the creation of a proposed district. After the initial authorization is approved by referendum, the supervisors shall adopt a resolution in each following year authorizing the levy. To extend an assessment beyond the period of time originally authorized and approved by referendum, the supervisors shall adopt a new resolution and the district voters shall approve it in a referendum. The extension shall be for the same period of time as originally approved, but the rate of the tax may be different as long as it does not exceed one dollar (\$1.00) on each one thousand dollars (\$1,000) of net taxable value of real property within the district, except that real property within incorporated municipalities in the district may be excluded. If the district is indebted to the United States or the state or any of their respective agencies or instrumentalities, including the New Mexico finance authority, at the time of the expiration of the original authorization, the supervisors may renew the assessment by resolution for a period not to exceed the maturity date of the indebtedness, and no referendum for that renewal is necessary.

B. A resolution authorized under Subsection A of this section shall not be effective, and neither a referendum nor a levy is authorized, unless the resolution is submitted to and approved in writing by the commission.

C. In the event a resolution of the supervisors is adopted and approved in accordance with the provisions of Subsection A of this section, the supervisors of the district shall certify by the fifteenth of July of each year to the county assessor of each county in which there is situate land subject to the district assessment:

(1) a copy of the resolution of the supervisors;

(2) the results of any referendum held in the year the certification is made; and

(3) a list of landowners of the district and a description of the land owned by each that is subject to assessment.

D. A county assessor shall indicate the information on the tax schedules, compute the assessment and present the district assessment by regular tax bill.

E. The district assessment shall be collected by the county treasurer of each county in which taxable district land is situate in the same manner and at the same

time that county ad valorem taxes are levied. The conditions, penalties and rates of interest applicable to county ad valorem taxation apply to the levy and collection of district assessments. A county treasurer shall be entitled to a collection fee equal to the actual costs of collection or four percent of the money collected from the levy of the district assessment, whichever is the lesser.

F. District funds, regardless of origin, shall be transferred to and held by the supervisors and shall be expended for district obligations and functions. The supervisors shall prepare an annual budget and submit it for approval to the commission and to the local government division of the department of finance and administration. All district funds shall be expended in accordance with the approved budgets.

G. In the event the supervisors of a district determine that there are or will be sufficient funds available for the operation of the district for any year for which an assessment is to be levied, they shall, by resolution, direct the assessor of each county in which taxable district land is situate, by July 15 of each year, to decrease the district assessment or to delete the district assessment reflected on the tax schedules.

H. Any levy authorized by the Soil and Water Conservation District Act and any loan or other indebtedness authorized by that act that will require a levy shall be based exclusively on or levied exclusively on the real property in the district, except that real property within incorporated cities and towns may be excluded."

Senate Bill 311, aa

Approved April 7, 2009

LAWS 2009, CHAPTER 205

AN ACT

RELATING TO EDUCATION; REQUIRING THE USE OF STUDENT IDENTIFICATION NUMBERS ON TRANSCRIPTS AND GENERAL EDUCATIONAL DEVELOPMENT CERTIFICATES.

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

Chapter 205 Section 1 Laws 2009

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

"STUDENT IDENTIFICATION NUMBERS USED ON TRANSCRIPTS AND GENERAL EDUCATIONAL DEVELOPMENT CERTIFICATES.--The state identification

number issued for each public school student pursuant to Section 22-2C-11 NMSA 1978 shall be included on each student's transcripts and on general educational development certificates issued by the department."

Senate Bill 317

Approved April 7, 2009

LAWS 2009, CHAPTER 206

AN ACT

RELATING TO PUBLIC WORKS; PROVIDING FOR THE DETERMINATION OF PREVAILING WAGE RATES AND PREVAILING FRINGE BENEFIT RATES; REQUIRING PAYMENT OF THE PREVAILING RATES ON PUBLIC WORKS PROJECTS.

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

Chapter 206 Section 1 Laws 2009

Section 1. Section 13-4-10 NMSA 1978 (being Laws 1963, Chapter 304, Section 1) is amended to read:

"13-4-10. SHORT TITLE.--Sections 13-4-10 through 13-4-17 NMSA 1978 may be cited as the "Public Works Minimum Wage Act"."

Chapter 206 Section 2 Laws 2009

Section 2. A new section of the Public Works Minimum Wage Act, Section 13-4-10.1 NMSA 1978, is enacted to read:

"13-4-10.1. DEFINITIONS.--As used in the Public Works Minimum Wage Act:

- A. "director" means the director of the division;
- B. "division" means the labor relations division of the workforce solutions department;
- C. "fringe benefit" means payments made by a contractor, subcontractor, employer or person acting as a contractor, if the payment has been authorized through a negotiated process or by a collective bargaining agreement, for:

- (1) holidays;
- (2) time off for sickness or injury;
- (3) time off for personal reasons or vacation;
- (4) bonuses;
- (5) authorized expenses incurred during the course of employment;
- (6) health, life and accident or disability insurance;
- (7) profit-sharing plans;
- (8) contributions made on behalf of an employee to a retirement or other pension plan; and
- (9) any other compensation paid to an employee other than wages;

D. "labor organization" means an organization of any kind, or an agency or employee representation committee or plan, in which employees participate and that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work; and

E. "wage" means the basic hourly rate of pay."

Chapter 206 Section 3 Laws 2009

Section 3. Section 13-4-11 NMSA 1978 (being Laws 1965, Chapter 35, Section 1, as amended) is amended to read:

**"13-4-11. PREVAILING WAGE AND BENEFIT RATES DETERMINED--
MINIMUM WAGES AND FRINGE BENEFITS ON PUBLIC WORKS--WEEKLY
PAYMENT--WITHHOLDING FUNDS.--**

A. Every contract or project in excess of sixty thousand dollars (\$60,000) that the state or any political subdivision thereof is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads of the state and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, which shall be based upon the wages and benefits that will be determined by the director to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the state or locality, and every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a

person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Subsection B of this section to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.

B. The director shall determine prevailing wage rates and prevailing fringe benefit rates for respective classes of laborers and mechanics employed on public works projects at the same wage rates and fringe benefit rates used in collective bargaining agreements between labor organizations and their signatory employers that govern predominantly similar classes or classifications of laborers and mechanics for the locality of the public works project and the crafts involved; provided that:

(1) if the prevailing wage rates and prevailing fringe benefit rates cannot reasonably and fairly be determined in a locality because no collective bargaining agreements exist, the director shall determine the prevailing wage rates and prevailing fringe benefit rates for the same or most similar class or classification of laborer or mechanic in the nearest and most similar neighboring locality in which collective bargaining agreements exist;

(2) the director shall give due regard to information obtained during the director's determination of the prevailing wage rates and the prevailing fringe benefit rates made pursuant to this subsection;

(3) any interested person shall have the right to submit to the director written data, personal opinions and arguments supporting changes to the prevailing wage rate and prevailing fringe benefit rate determination; and

(4) prevailing wage rates and prevailing fringe benefit rates determined pursuant to the provisions of this section shall be compiled as official records and kept on file in the director's office and the records shall be updated in accordance with the applicable rates used in subsequent collective bargaining agreements.

C. The prevailing wage rates and prevailing fringe benefit rates to be paid shall be posted by the contractor or person acting as a contractor in a prominent and easily accessible place at the site of the work; and it is further provided that there may be withheld from the contractor, subcontractor, employer or a person acting as a contractor so much of accrued payments as may be considered necessary by the contracting officer of the state or political subdivision to pay to laborers and mechanics employed on the project the difference between the prevailing wage rates and prevailing fringe benefit rates required by the director to be paid to laborers and mechanics on the work and the wage rates and fringe benefit rates received by the laborers and mechanics and not refunded to the contractor, subcontractor, employer or a person

acting as a contractor or the contractor's, subcontractor's, employer's or person's agents.

D. Notwithstanding any other provision of law applicable to public works contracts or agreements, the director may, with cause:

(1) issue investigative or hearing subpoenas for the production of documents or witnesses pertaining to public works prevailing wage projects; and

(2) attach and prohibit the release of any assurance of payment required under Section 13-4-18 NMSA 1978 for a reasonable period of time beyond the time limits specified in that section until the director satisfactorily resolves any probable cause to believe a violation of the Public Works Minimum Wage Act or its implementing rules has taken place.

E. The director shall issue rules necessary to administer and accomplish the purposes of the Public Works Minimum Wage Act."

Chapter 206 Section 4 Laws 2009

Section 4. Section 13-4-13 NMSA 1978 (being Laws 1965, Chapter 35, Section 3, as amended) is amended to read:

"13-4-13. FAILURE TO PAY MINIMUM WAGE--TERMINATION OF CONTRACT.--Every contract within the scope of the Public Works Minimum Wage Act shall contain further provision that in the event it is found by the director that any laborer or mechanic employed on the site of the project has been or is being paid as a result of a willful violation a wage rate or fringe benefit rate less than the rates required, the contracting agency may, by written notice to the contractor, subcontractor, employer or person acting as a contractor, terminate the right to proceed with the work or the part of the work as to which there has been a willful failure to pay the required wages or fringe benefits, and the contracting agency may prosecute the work to completion by contract or otherwise, and the contractor or person acting as a contractor and the contractor's or person's sureties shall be liable to the state for any excess costs occasioned thereby. Any party receiving notice of termination of a project or subcontract pursuant to the provisions of this section may appeal the finding of the director as provided in the Public Works Minimum Wage Act."

Chapter 206 Section 5 Laws 2009

Section 5. Section 13-4-13.1 NMSA 1978 (being Laws 2004, Chapter 89, Section 1, as amended) is amended to read:

"13-4-13.1. PUBLIC WORKS CONTRACTS--REGISTRATION OF CONTRACTORS AND SUBCONTRACTORS.--

A. Except as otherwise provided in this subsection, in order to submit a bid valued at more than sixty thousand dollars (\$60,000) in order to respond to a request for proposals or to be considered for award of any portion of a public works project greater than sixty thousand dollars (\$60,000) for a public works project that is subject to the Public Works Minimum Wage Act, the contractor, serving as a prime contractor or not, shall be registered with the division. Bidding documents issued or released by a state agency or political subdivision of the state shall include a clear notification that each contractor, prime contractor or subcontractor is required to be registered pursuant to this subsection. The provisions of this section do not apply to vocational classes in public schools or public post-secondary educational institutions.

B. The state or any political subdivision of the state shall not accept a bid on a public works project subject to the Public Works Minimum Wage Act from a prime contractor that does not provide proof of required registration for itself.

C. Contractors and subcontractors may register with the division on a form provided by the division and in accordance with workforce solutions department rules. The division shall charge an annual registration fee of two hundred dollars (\$200). The division shall issue to the applicant a certificate of registration within fifteen days after receiving from the applicant the completed registration form and the registration fee.

D. Registration fees collected by the division shall be deposited in the labor enforcement fund."

Chapter 206 Section 6 Laws 2009

Section 6. Section 13-4-14 NMSA 1978 (being Laws 1965, Chapter 35, Section 4, as amended) is amended to read:

"13-4-14. PAYMENT OF WAGES FROM FUNDS WITHHELD--LIST OF CONTRACTORS VIOLATING ACT--ADDITIONAL RIGHT OF WAGE EARNERS.--

A. The director shall certify to the contracting agency the names of persons or firms the director has found to have disregarded their obligations to employees under the Public Works Minimum Wage Act and the amount of arrears. The contracting agency shall pay or cause to be paid to the affected laborers and mechanics, from any accrued payments withheld under the terms of the contract or designated for the project, any wages or fringe benefits found due to the workers pursuant to the Public Works Minimum Wage Act. The director shall, after notice to the affected persons, distribute a list to all departments of the state giving the names of persons or firms the director has found to have willfully violated the Public Works Minimum Wage Act. No contract or project shall be awarded to the persons or firms appearing on this list or to any firm, corporation, partnership or association in which the persons or firms have an interest until three years have elapsed from the date of publication of the list containing the names of the persons or firms. A person to be

included on the list to be distributed may appeal the finding of the director as provided in the Public Works Minimum Wage Act.

B. If the accrued payments withheld under the terms of the contract, as mentioned in Subsection A of this section, are insufficient to reimburse all the laborers and mechanics with respect to whom there has been a failure to pay the wages or fringe benefits required pursuant to the Public Works Minimum Wage Act, the laborers and mechanics shall have the right of action or intervention or both against the contractor or person acting as a contractor and the contractor's or person's sureties, conferred by law upon the persons furnishing labor and materials, and, in such proceeding, it shall be no defense that the laborers and mechanics accepted or agreed to less than the required rate of wages or voluntarily made refunds. The director shall refer such matters to the district attorney in the appropriate county, and it is the duty and responsibility of the district attorney to bring civil suit for wages and fringe benefits due and liquidated damages provided for in Subsection C of this section.

C. In the event of any violation of the Public Works Minimum Wage Act or implementing rules, the contractor, subcontractor, employer or a person acting as a contractor responsible for the violation shall be liable to any affected employee for the employee's unpaid wages or fringe benefits. In addition, the contractor, subcontractor, employer or person acting as a contractor shall be liable to any affected employee for liquidated damages beginning with the first day of covered employment in the sum of one hundred dollars (\$100) for each calendar day on which a contractor, subcontractor, employer or person acting as a contractor has willfully required or permitted an individual laborer or mechanic to work in violation of the provisions of the Public Works Minimum Wage Act.

D. In an action brought pursuant to Subsection C of this section, the court may award, in addition to all other remedies, attorney fees and costs to an employee adversely affected by a violation of the Public Works Minimum Wage Act by a contractor, subcontractor, employer or person acting as a contractor."

Chapter 206 Section 7 Laws 2009

Section 7. Section 13-4-14.1 NMSA 1978 (being Laws 2004, Chapter 89, Section 2) is amended to read:

"13-4-14.1. LABOR ENFORCEMENT FUND--CREATION--USE.--The "labor enforcement fund" is created in the state treasury. The fund shall consist of contractor and subcontractor registration fees collected by the division and all investment and interest income from the fund. The fund shall be administered by the division, and money in the fund is appropriated to the division for administration and enforcement of the Public Works Minimum Wage Act. Money in the fund shall not revert to the general fund at the end of a fiscal year."

Chapter 206 Section 8 Laws 2009

Section 8. Section 13-4-14.2 NMSA 1978 (being Laws 2004, Chapter 89, Section 3) is amended to read:

"13-4-14.2. REGISTRATION CANCELLATION, REVOCATION, SUSPENSION--INJUNCTIVE RELIEF.--The director may:

A. cancel, revoke or suspend with conditions, including probation, the registration of any party required to be registered pursuant to the Public Works Minimum Wage Act for failure to comply with the registration provisions or for good cause, subject to appeal pursuant to Section 13-4-15 NMSA 1978; and

B. seek injunctive relief in district court for failure to comply with the registration provisions of the Public Works Minimum Wage Act."

Chapter 206 Section 9 Laws 2009

Section 9. Section 13-4-15 NMSA 1978 (being Laws 1963, Chapter 304, Section 5, as amended) is amended to read:

"13-4-15. APPEALS.--

A. Any interested person may appeal any determination, finding or action of the director made pursuant to the Public Works Minimum Wage Act to the labor and industrial commission sitting as the appeals board by filing notice of the appeal with the director within fifteen days after the determination has been issued or notice of the finding or action has been given as provided in the Public Works Minimum Wage Act.

B. The labor and industrial commission, sitting as the appeals board, shall adopt rules as it deems necessary for the prompt disposition of appeals. A copy of the rules shall be filed with the librarian of the supreme court law library.

C. The appeals board, within ten days after the filing of the appeal, shall set the matter for an oral hearing within thirty days and, following the hearing, shall enter a decision within ten days after the close of the hearing and promptly mail copies of the decision to the parties.

D. Decisions of the appeals board may be appealed pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

Chapter 206 Section 10 Laws 2009

Section 10. Section 13-4-17 NMSA 1978 (being Laws 1937, Chapter 179, Section 5) is amended to read:

"13-4-17. OUTSTANDING CONTRACTS AND INVITATIONS.--The Public Works Minimum Wage Act shall not affect a contract existing or a contract that may be entered

into pursuant to invitations for bids that are outstanding at the time of enactment of that act."

Chapter 206 Section 11 Laws 2009

Section 11. REPEAL.--Section 13-4-12 NMSA 1978 (being Laws 1965, Chapter 35, Section 2, as amended) is repealed.

Chapter 206 Section 12 Laws 2009

Section 12. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.

Senate Bill 33, aa

Approved April 7, 2009

LAWS 2009, CHAPTER 207

AN ACT

RELATING TO PROCUREMENT; AUTHORIZING THE USE OF DESIGN AND BUILD PROJECT DELIVERY SYSTEMS FOR CERTAIN TRANSPORTATION CONSTRUCTION PROJECTS FUNDED IN WHOLE OR IN PART BY THE GRANTS PROGRAMS OF THE FEDERAL AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009; DECLARING AN EMERGENCY.

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

Chapter 207 Section 1 Laws 2009

Section 1. DESIGN AND BUILD PROCUREMENT FOR CERTAIN TRANSPORTATION PROJECTS.--Notwithstanding any prohibition on road and highway construction or reconstruction projects in Section 13-1-119.1 NMSA 1978, the department of transportation may use a design and build project delivery system pursuant to Section 13-1-119.1 NMSA 1978 for projects with a maximum allowable construction cost of more than fifty million dollars (\$50,000,000) funded in whole or in part by the grants programs of the federal American Recovery and Reinvestment Act of 2009.

Chapter 207 Section 2 Laws 2009

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

SFL/Senate Bill 345, w/ec

Approved April 7, 2009

LAWS 2009, CHAPTER 208

AN ACT

RELATING TO MOTOR VEHICLES; INCREASING THE PENALTY FOR A RAILROAD-HIGHWAY GRADE CROSSING VIOLATION.

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

Chapter 208 Section 1 Laws 2009

Section 1. Section 66-8-116 NMSA 1978 (being Laws 1978, Chapter 35, Section 524, as amended) is amended to read:

"66-8-116. PENALTY ASSESSMENT MISDEMEANORS--

DEFINITION--SCHEDULE OF ASSESSMENTS.--

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

COMMON NAME OF OFFENSE	SECTION VIOLATED	PENALTY ASSESSMENT
Permitting unlicensed minor to drive	66-5-40	\$ 10.00
Failure to obey sign	66-7-104	10.00
Failure to obey signal	66-7-105	10.00
	66-7-301	

(1) up to and including ten miles an hour over the speed limit	15.00
(2) from eleven up to and including fifteen miles an hour over the speed limit	30.00
(3) from sixteen up to and including twenty miles an hour over the speed limit	65.00
(4) from twenty-one up to and including twenty-five miles an hour over the speed limit	100.00
(5) from twenty-six up to and including thirty miles an hour over the speed limit	125.00
(6) from thirty-one up to and including thirty-five miles an hour over the speed limit	150.00

(7) more than thirty-five miles an hour over the speed limit		200.00
Unfastened safety belt	66-7-372	25.00
Child not in restraint device or seat belt	66-7-369	25.00
Minimum speed	66-7-305	10.00
	66-7-306	15.00
Improper starting	66-7-324	10.00
Improper backing	66-7-354	10.00
Improper lane	66-7-308	10.00
Improper lane	66-7-313	10.00
Improper lane	66-7-316	10.00
Improper lane	66-7-317	10.00
Improper lane	66-7-319	10.00
Improper passing	66-7-309 through 66-7-312	10.00
Improper passing	66-7-315	10.00
Controlled access violation	66-7-320	10.00
Controlled access violation	66-7-321	10.00
Improper turning	66-7-322	10.00
Improper turning	66-7-323	10.00

Improper turning	66-7-325	10.00
Following too closely	66-7-318	10.00
Failure to yield	66-7-328 through 66-7-331	10.00
	66-7-332	50.00
	66-7-332.1	25.00
Pedestrian violation	66-7-333	10.00
Pedestrian violation	66-7-340	10.00
Failure to stop	66-7-342 and 66-7-344	
	through 66-7-346	10.00
Railroad-highway grade		
crossing violation	66-7-341 and 66-7-343	150.00
Passing school bus	66-7-347	100.00
Failure to signal	66-7-325 through 66-7-327	10.00
Failure to secure load	66-7-407	100.00
Operation without oversize-		
overweight permit	66-7-413	50.00
Improper equipment	66-3-801	10.00
Improper equipment	66-3-901	20.00
Improper emergency		
	66-3-853 through 66-3-857	10.00
Operation interference	66-7-357	5.00
	66-7-364	300.00
Improper parking	66-7-349 through 66-7-352	

	and 66-7-353	5.00
parking	66-3-852	5.00
Failure to dim lights	66-3-831	10.00
Riding in or towing occupied house trailer	66-7-366	5.00
Improper opening of doors	66-7-367	5.00
No slow-moving vehicle emblem or flashing amber light	66-3-887	5.00
Open container - first violation	66-8-138	25.00.

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

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

D. The penalty assessment for speeding in violation of Paragraph (4) of Subsection A of Section

66-7-301 NMSA 1978 is twice the penalty assessment established in Subsection A of this section for the equivalent miles per hour over the speed limit.

E. Upon a second conviction for operation without a permit for excessive size or weight pursuant to Section 66-7-413 NMSA 1978, the penalty assessment shall be two hundred fifty dollars (\$250). Upon a third or subsequent conviction, the penalty assessment shall be five hundred dollars (\$500)."

Approved April 7, 2009

LAWS 2009, CHAPTER 209

AN ACT

RELATING TO EDUCATIONAL RETIREMENT; AMENDING THE EDUCATIONAL RETIREMENT ACT TO PROVIDE FOR AUDITS OF LOCAL ADMINISTRATIVE UNITS.

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

Chapter 209 Section 1 Laws 2009

Section 1. Section 22-11-22 NMSA 1978 (being Laws 1967, Chapter 16, Section 145, as amended) is amended to read:

"22-11-22. PAYMENT--RECORDS--AUDITS.--

A. Contributions shall be deducted from the salaries of members by the local administrative units as the salaries are paid. These contributions shall be forwarded monthly to the director for deposit in the fund.

B. Contributions of local administrative units shall be derived from revenue available to the local administrative unit and shall be forwarded monthly to the director for deposit in the fund. The board may assess an interest charge and a penalty charge on any remittance not made by its due date.

C. Each local administrative unit shall record and certify quarterly to the director an itemized account of the contributions paid by each member and the local administrative unit. The director shall keep a record of these itemized accounts.

D. The director or the director's authorized representative may audit the financial affairs, books and records, and may interview employees, of any local administrative unit at any time to ensure compliance with the Educational Retirement Act and rules adopted by the board. The local administrative unit shall cooperate with the director or the authorized representative and shall provide access to records, information and employees during regular business hours. If, during the course of the audit, the director or the director's designee finds discrepancies or violations of the Educational Retirement Act or rules adopted by the board, or if the director or the director's designee finds that a local administrative unit does not have adequate financial controls or procedures in place to allow the local administrative unit to properly account for and pay required contributions to the board:

(1) the director shall order the local administrative unit to implement measures to remedy those matters, including payment to the fund of any contributions

not properly calculated or paid, together with interest thereon at a rate to be established by the board. The local administrative unit shall promptly comply with that order; and

(2) the director shall submit a report describing the discrepancy, violation or failure to maintain adequate financial controls or procedures to the board, the state auditor and the public education department or the higher education department as may be appropriate.

E. If the director or the director's designee finds or has reason to suspect criminal activity with respect to contributions, payments or the management of the funds of a local administrative unit, the director shall notify the attorney general, the state auditor and the appropriate law enforcement agency."

Senate Bill 399, aa

Approved April 7, 2009

LAWS 2009, CHAPTER 210

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; AUTHORIZING THE NEW MEXICO FINANCE AUTHORITY TO MAKE GRANTS FOR CERTAIN ACEQUIA PROJECTS FROM THE ACEQUIA PROJECT FUND; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

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

Chapter 210 Section 1 Laws 2009

Section 1. AUTHORIZATION OF PROJECTS.--Pursuant to the provisions of Section 72-4A-9 NMSA 1978, the legislature authorizes the New Mexico finance authority to make loans or grants from the water project fund to the following qualified entities for the following qualifying water projects on terms and conditions established by the water trust board and the New Mexico finance authority:

1. to the Alcalde mutual domestic water consumers association in Rio Arriba county for a water storage, conveyance and delivery project;
2. to the Alto Lakes water and sanitation district in Lincoln county for a water storage, conveyance and delivery project;

3. to the village of Angel Fire in Colfax county for a water conservation, treatment, recycling or reuse project;

4. to the Anthony water and sanitation district in Dona Ana county for a water conservation, treatment, recycling or reuse project;

5. to the city of Belen in Valencia county for a water storage, conveyance and delivery project;

6. to the town of Bernalillo in Sandoval county for a water conservation, treatment, recycling or reuse project;

7. to the city of Bloomfield in San Juan county for water storage, conveyance and delivery projects;

8. to the city of Carlsbad in Eddy county for a water storage, conveyance and delivery project;

9. to the Chupadero water sewage corporation mutual domestic water consumers association in Santa Fe county for a water storage, conveyance and delivery project;

10. to the Ciudad soil and water conservation district in Bernalillo county for a watershed restoration and management project;

11. to the Claunch Pinto soil and water conservation district in Torrance county for a watershed restoration and management project;

12. to the city of Clovis in Curry county for a water storage, conveyance and delivery project;

13. to the village of Corona in Lincoln county for a water conservation, treatment, recycling or reuse project;

14. to the Cuatro Villas mutual domestic water users association in Rio Arriba county for a water storage, conveyance and delivery project;

15. to Dona Ana county for a water conservation, treatment, recycling or reuse project;

16. to Eddy county for a water storage, conveyance and delivery project;

17. to El Valle de los Ranchos water and sanitation district in Taos county for a water storage, conveyance and delivery project;

18. to El Valle regional water system in San Miguel county for a water storage, conveyance and delivery project;

19. to the Eldorado area water and sanitation district in Santa Fe county for a water storage, conveyance and delivery project;

20. to the Elephant Butte irrigation district in Dona Ana county for a water conservation, treatment, recycling or reuse project;

21. to the Elephant Butte irrigation district in Dona Ana county for a water storage, conveyance and delivery project;

22. to the city of Gallup in McKinley county for a water storage, conveyance and delivery project;

23. to the Glorieta Estate mutual domestic water consumers association in Santa Fe county for a water storage, conveyance and delivery project;

24. to the city of Grants in Cibola county for a water storage, conveyance and delivery project;

25. to the greater Chimayo mutual domestic water consumers association in Rio Arriba county for a water storage, conveyance and delivery project;

26. to the Hollywood Ranch domestic water users association in Guadalupe county for a water storage, conveyance and delivery project;

27. to the Pueblo of Jemez in Sandoval county for a water storage, conveyance and delivery project;

28. to the Jemez Springs domestic water association in Sandoval county for a water storage, conveyance and delivery project;

29. to La Plata conservancy district in San Juan county for a water storage, conveyance and delivery project;

30. to Los Alamos county for a water conservation, treatment, recycling or reuse project;

31. to Los Alamos county for a water storage, conveyance and delivery project;

32. to the city of Los Lunas in Valencia county for a water conservation, treatment, recycling or reuse project;

33. to Los Ojos mutual domestic water consumers association in Rio Arriba county for a water storage, conveyance and delivery project;

34. to McKinley county for a water storage, conveyance and delivery project;

35. to the town of Mesilla in Dona Ana county for a water storage, conveyance and delivery project;

36. to the town of Moriarty in Torrance county for a water storage, conveyance and delivery project;

37. to the town of Moriarty in Torrance county for a water conservation, treatment, recycling or reuse project;

38. to the Nogal mutual domestic water consumers association in Dona Ana county for a water conservation, treatment, recycling or reuse project;

39. to Ohkay Owingeh in Rio Arriba county for a water storage, conveyance and delivery project;

40. to the Pueblo of Laguna in Cibola county for a water storage, conveyance and delivery project;

41. to the city of Rio Rancho in Sandoval county for a water conservation, treatment, recycling or reuse project;

42. to the town of Ruidoso in Lincoln county for a water conservation, treatment, recycling or reuse project;

43. to the San Francisco soil and water conservation district in Catron county for a watershed restoration and management project;

44. to the village of San Jon in Quay county for a water storage, conveyance and delivery project;

45. to the San Rafael water and sanitation district in Cibola county for a water storage, conveyance and delivery project;

46. to San Ysidro in Sandoval county for a water storage, conveyance and delivery project;

47. to Sandoval county for a water storage, conveyance and delivery project;

48. to the Pueblo of Santa Clara in Rio Arriba county for a water storage, conveyance and delivery project;

49. to the city of Santa Fe in Santa Fe county for a watershed restoration and management project;

50. to the city of Santa Fe in Santa Fe county for a water storage, conveyance and delivery project;

51. to the town of Taos in Taos county for a water storage, conveyance and delivery project;

52. to the town of Taos in Taos county for a water conservation, treatment, recycling or reuse project;

53. to the village of Taos Ski Valley in Taos county for a water storage, conveyance and delivery project;

54. to the village of Tijeras in Bernalillo county for a water storage, conveyance and delivery project;

55. to the city of Truth or Consequences in Sierra county for a water storage, conveyance and delivery project;

56. to the city of Tucumcari in Quay county for a water storage, conveyance and delivery project;

57. to the Upper Hondo soil and water conservation district in Lincoln county for watershed restoration and management projects;

58. to the Vista Redonda mutual domestic water consumers association in Santa Fe county for a water storage, conveyance and delivery project;

59. to the Albuquerque-Bernalillo county water utility authority for Carnuel water and sewer system improvements;

60. to the Albuquerque-Bernalillo county water utility authority for a large scale aquifer storage and recovery project; and

61. to the city of Las Vegas in San Miguel county for a water storage, conveyance and delivery project.

Chapter 210 Section 2 Laws 2009

Section 2. AUTHORIZATION OF PROJECTS.--Pursuant to the provisions of Section 72-4A-9.1 NMSA 1978, the legislature authorizes the New Mexico finance

authority to make grants from the acequia project fund to the following qualified entities for the following qualifying acequia water projects on terms and conditions established by the water trust board and the New Mexico finance authority:

1. to the acequia de los Duranes in Rio Arriba county for an acequia project;
2. to the Abajo del Penasco acequia in Rio Arriba county for an acequia project;
3. to the acequia de Atalaya in Taos county for an acequia project;
4. to the acequia de Jarita in Rio Arriba county for an acequia project;
5. to the acequia de la Cueva in Rio Arriba county for an acequia project;
6. to the acequia de la Joyita in Rio Arriba county for acequia projects;
7. to the acequia de la Mariano in Rio Arriba county for an acequia project;
8. to the acequia Madre de Rio Chiquito in Taos county for an acequia project;
9. to the Cecilia acequia in Sandoval county for an acequia project;
10. to the Far West Las Nutrias community ditch in Rio Arriba county for an acequia project;
11. to the Jackson ditch in San Juan county for an acequia project;
12. to La Bajada ditch in Santa Fe county for an acequia project;
13. to La Pumpa ditch in San Juan county for an acequia project;
14. to the Lagunitas community ditch in Sandoval county for an acequia project;
15. to the Lower Canones ditch in Rio Arriba county for an acequia project;
16. to the Lower Ojo Caliente acequia in Rio Arriba county for an acequia project;
17. to the Romero acequia in San Miguel county for an acequia project;

18. to the Upper South Bent community in Otero county for an acequia project;

19. to the East and West Vallecitos community acequia in Rio Arriba county for an acequia project; and

20. to the acequia del Llano in Taos county for an acequia project.

Chapter 210 Section 3 Laws 2009

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

Senate Bill 405, aa, w/ec

Approved April 7, 2009

LAWS 2009, CHAPTER 211

AN ACT

RELATING TO PUBLIC HEALTH; CREATING THE HOSPITAL-ACQUIRED INFECTION ADVISORY COMMITTEE; PROVIDING FOR HOSPITAL PARTICIPATION; PROVIDING FOR SELECTION OF INFECTION INDICATORS; ESTABLISHING REPORTING REQUIREMENTS.

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

Chapter 211 Section 1 Laws 2009

Section 1. SHORT TITLE.--This act may be cited as the "Hospital-Acquired Infection Act".

Chapter 211 Section 2 Laws 2009

Section 2. DEFINITIONS.--As used in the Hospital-Acquired Infection Act:

A. "advisory committee" means the hospital-acquired infection advisory committee;

B. "department" means the department of health;

C. "hospital-acquired infection" means a localized or systemic condition that results from an infection that occurs in a hospital that was not present or incubating at the time of admission as an inpatient to the hospital, unless the infection was related to a previous admission to the same setting, and that meets the criteria for a specific infection as defined by the national healthcare safety network;

D. "indicator" means a measure of a hospital-acquired infection or other condition, process or serious reportable event identified and defined by the advisory committee that is based on objective, scientific standards and that may be tracked and reported;

E. "national healthcare safety network" means the secure, internet-based surveillance system that integrates patient and health care personnel safety managed by the centers for disease control and prevention of the federal department of health and human services;

F. "participating hospital" means a hospital that meets the criteria specified by the advisory committee or that desires to participate in hospital-acquired infection surveillance; and

G. "surveillance system" means a secure, internet-based system designed for the collection of hospital-acquired infection incidence and prevention data.

Chapter 211 Section 3 Laws 2009

Section 3. ADVISORY COMMITTEE CREATED--MEMBERS--DUTIES.--

A. The "hospital-acquired infection advisory committee" is created in the department to conduct surveillance of hospital-acquired infections. Members of the advisory committee shall include:

- (1) a consumer of health care services;
- (2) a representative of the New Mexico association for professionals in infection control and epidemiology;
- (3) a representative of the New Mexico hospital association;
- (4) a representative of the New Mexico medical review association;
- (5) a local representative of the society for healthcare epidemiology of America; and
- (6) the department's infectious disease epidemiology bureau.

B. The advisory committee shall:

(1) establish objectives, definitions, criteria and standards for the reporting of hospital-acquired infections;

(2) work with hospitals to identify and recruit volunteer participating hospitals in surveillance of hospital-acquired infections and other indicators;

(3) develop objectives and action plans for instituting a statewide program of surveillance of hospital-acquired infections and other indicators;

(4) identify the specific infections and indicators that are to be subject to surveillance and reporting;

(5) identify, and make recommendations regarding, training in the use of the surveillance system or in the prevention and control of hospital-acquired infections and infectious disease;

(6) develop and disseminate to the public appropriate reports of the findings of surveillance; and

(7) consult as necessary with technical advisors who have regional or national expertise in the prevention and control of hospital-acquired infections and infectious disease.

Chapter 211 Section 4 Laws 2009

Section 4. PARTICIPATING HOSPITALS--RECRUITMENT--TRAINING.--

A. The advisory committee shall identify hospitals willing and qualified to participate in surveillance of hospital-acquired infections as identified by the advisory committee. Recruitment of participating hospitals shall begin on a voluntary basis and shall include at least six hospitals representing rural and urban areas of the state. By July 1, 2011, the hospitals identified by the advisory committee as qualified shall participate in the surveillance program.

B. The advisory committee shall identify specific training and educational needs of participating hospitals, and the department shall develop curricula to reflect the training and educational recommendations of the advisory committee. The department shall provide training and educational support to participating hospitals subject to available resources. The department shall collaborate with the higher education department to identify appropriate programs for training and certification of infection control professionals.

Chapter 211 Section 5 Laws 2009

Section 5. HOSPITAL-ACQUIRED INFECTIONS--INDICATORS.--

A. The advisory committee shall determine the specific infections and indicators that are to be subject to surveillance and reporting. Indicators of hospital-acquired infections shall be selected based on scientific evidence that the infection or condition can be prevented with implementation and consistent use of evidence-based processes of care and on appropriateness for the state. The advisory committee shall consider the following indicators:

(1) central line associated bloodstream infections;

(2) surgical site wound infections;

(3) ventilator assisted pneumonia;

(4) catheter associated urinary tract infections; and

(5) other hospital-acquired infections that the advisory committee may determine in consultation with technical advisors who are regionally or nationally recognized experts in the prevention, identification and control of hospital-acquired infections and the public reporting of performance data.

B. Initially, and through calendar year 2009, hospital-acquired infection surveillance shall be conducted on the incidence of central line associated bloodstream infections and health care worker influenza vaccination rates.

C. Beginning on January 1, 2010, the advisory committee shall identify additional hospital-acquired infection, condition or process indicators that will be tracked and reported by participating hospitals. At least annually, the advisory committee shall consider additional indicators that meet the standard for selection identified in Subsection A of this section.

Chapter 211 Section 6 Laws 2009

Section 6. REPORTS.--

A. Participating hospitals shall report to the department the incidence of selected indicators using the national healthcare safety network surveillance system according to a schedule recommended by the advisory committee based on reporting frequencies identified by the national healthcare safety network. Reported data shall be verifiable and actionable.

B. The advisory committee shall determine the content, format, venue and frequency of regular reports to the public. Public reports shall be published no later than July 1, 2011 and periodically thereafter.

Senate Bill 408

Approved April 7, 2009

LAWS 2009, CHAPTER 212

AN ACT

RELATING TO HEALTH INSURANCE; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978 THAT RELATE TO COVERAGE OF CANCER CLINICAL TRIALS.

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

Chapter 212 Section 1 Laws 2009

Section 1. A new section of the Health Care Purchasing Act is enacted to read:

"REQUIRED COVERAGE OF PATIENT COSTS INCURRED IN CANCER CLINICAL TRIALS.--Group health coverage, including any form of self-insurance, offered, issued or renewed under the Health Care Purchasing Act shall provide coverage pursuant to Section 59A-22-43 NMSA 1978 for routine patient care costs incurred as a result of the patient's participation in cancer clinical trials."

Chapter 212 Section 2 Laws 2009

Section 2. Section 59A-22-43 NMSA 1978 (being Laws 2001, Chapter 27, Section 1, as amended) is amended to read:

"59A-22-43. REQUIRED COVERAGE OF PATIENT COSTS INCURRED IN CANCER CLINICAL TRIALS.--

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

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

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

(3) the clinical trial is being provided in this state as part of a scientific study of a new therapy or intervention and is for the prevention, prevention of

reoccurrence, early detection, treatment or palliation of cancer in humans and in which the scientific study includes all of the following:

- (a) specific goals;
- (b) a rationale and background for the study;
- (c) criteria for patient selection;
- (d) specific direction for administering the therapy or intervention and for monitoring patients;
- (e) a definition of quantitative measures for determining treatment response;
- (f) methods for documenting and treating adverse reactions;
- (g) a reasonable expectation that the treatment will be at least as efficacious as standard cancer treatment;

and
of the following:

- (4) the clinical trial is being conducted with approval of at least one of the following:
 - (a) one of the federal national institutes of health;
 - (b) a federal national institutes of health cooperative group or center;
 - (c) the federal department of defense;
 - (d) the federal food and drug administration in the form of an investigational new drug application;
 - (e) the federal department of veterans affairs; or
 - (f) a qualified research entity that meets the criteria established by the federal national institutes of health for grant eligibility;

(5) the clinical trial is being provided as part of a cancer clinical trial;

(6) the proposed clinical trial or study has been reviewed and approved by an institutional review board that has an active federal-wide assurance of protection for human subjects;

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

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

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

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

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

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

(10) there is a reasonable expectation based on clinical data that the medical treatment provided in the clinical trial will be at least as effective as any other medical treatment.

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

C. If a patient is denied coverage of a cost and contends that the denial is in violation of this section, the patient may appeal the decision to deny the coverage of a cost to the superintendent, and that appeal shall be expedited to ensure resolution of the appeal within no more than thirty days after the date of appeal to the superintendent. Programs pursuant to Title 19 or Title 21 of the federal Social Security Act, which have their respective expedited appeal processes, shall be exempt from this subsection.

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

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

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

G. In no event shall the health plan be responsible for out-of-state or out-of-network costs unless the health plan pays for standard treatment out of state or out of network. In no event shall the health plan be responsible for out-of-state costs for any trials undertaken for the purposes of the prevention of or the prevention of reoccurrence of cancer.

H. The provisions of this section do not apply to short-term travel, accident-only or limited or specified disease contracts or policies issued by a health plan.

I. As used in this section:

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

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

(3) "health plan":

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

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

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

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

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

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

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

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

(8) "routine patient care cost":

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

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

Chapter 212 Section 3 Laws 2009

Section 3. Section 59A-23-4 NMSA 1978 (being Laws 1984, Chapter 127, Section 463, as amended) is amended to read:

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

A. A blanket or group health insurance policy or contract shall not contain a provision relative to notice or proof of loss or the time for paying benefits or the time within which suit may be brought upon the policy that in the superintendent's opinion is less favorable to the insured than would be permitted in the required or optional provisions for individual health insurance policies as set forth in Chapter 59A, Article 22 NMSA 1978.

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

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

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

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

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

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

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

(4) Section 59A-22-34.3 NMSA 1978;

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

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

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

(8) Section 59A-22-39.1 NMSA 1978;

(9) Section 59A-22-40 NMSA 1978;

(10) Section 59A-22-40.1 NMSA 1978;

(11) Section 59A-22-41 NMSA 1978;

(12) Section 59A-22-42 NMSA 1978;

(13) Section 59A-22-43 NMSA 1978; and

(14) Section 59A-22-44 NMSA 1978."

Chapter 212 Section 4 Laws 2009

Section 4. Section 59A-46-30 NMSA 1978 (being Laws 1993, Chapter 266, Section 29, as amended) is amended to read:

"59A-46-30. STATUTORY CONSTRUCTION AND RELATIONSHIP TO OTHER LAWS.--

A. The provisions of the Insurance Code other than Chapter 59A, Article 46 NMSA 1978 shall not apply to health maintenance organizations except as expressly provided in the Insurance Code and that article. To the extent reasonable and not inconsistent with the provisions of that article, the following articles and provisions of the Insurance Code shall also apply to health maintenance organizations and their promoters, sponsors, directors, officers, employees, agents, solicitors and other representatives. For the purposes of such applicability, a health maintenance organization may therein be referred to as an "insurer":

- (1) Chapter 59A, Article 1 NMSA 1978;
- (2) Chapter 59A, Article 2 NMSA 1978;
- (3) Chapter 59A, Article 4 NMSA 1978;
- (4) Subsection C of Section 59A-5-22 NMSA 1978;
- (5) Sections 59A-6-2 through 59A-6-4 and 59A-6-6 NMSA 1978;
- (6) Chapter 59A, Article 8 NMSA 1978;
- (7) Chapter 59A, Article 10 NMSA 1978;
- (8) Section 59A-12-22 NMSA 1978;
- (9) Chapter 59A, Article 16 NMSA 1978;
- (10) Chapter 59A, Article 18 NMSA 1978;
- (11) the Policy Language Simplification Law;
- (12) Section 59A-22-14 NMSA 1978;
- (13) the Insurance Fraud Act;
- (14) Section 59A-22-43 NMSA 1978;
- (15) the Minimum Healthcare Protection Act;
- (16) Sections 59A-34-2, 59A-34-7 through 59A-34-13, 59A-34-17, 59A-34-23, 59A-34-33, 59A-34-36, 59A-34-37, 59A-34-40 through 59A-34-42 and 59A-34-44 through 59A-34-46 NMSA 1978;

(17) The Insurance Holding Company Law; and

(18) the Patient Protection Act.

B. Solicitation of enrollees by a health maintenance organization granted a certificate of authority, or its representatives, shall not be construed as violating any provision of law relating to solicitation or advertising by health professionals, but health professionals shall be individually subject to the laws, rules and ethical provisions governing their individual professions.

C. Any health maintenance organization authorized under the provisions of the Health Maintenance Organization Law shall not be deemed to be practicing medicine and shall be exempt from the provisions of laws relating to the practice of medicine."

Chapter 212 Section 5 Laws 2009

Section 5. Section 59A-47-33 NMSA 1978 (being Laws 1984, Chapter 127, Section 879.32, as amended) is amended to read:

"59A-47-33. OTHER PROVISIONS APPLICABLE.--The provisions of the Insurance Code other than Chapter 59A, Article 47 NMSA 1978 shall not apply to health care plans except as expressly provided in the Insurance Code and that article. To the extent reasonable and not inconsistent with the provisions of that article, the following articles and provisions of the Insurance Code shall also apply to health care plans, their promoters, sponsors, directors, officers, employees, agents, solicitors and other representatives; and, for the purposes of such applicability, a health care plan may therein be referred to as an "insurer":

A. Chapter 59A, Article 1 NMSA 1978;

B. Chapter 59A, Article 2 NMSA 1978;

C. Chapter 59A, Article 4 NMSA 1978;

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

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

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

G. Chapter 59A, Article 8 NMSA 1978;

H. Chapter 59A, Article 10 NMSA 1978;

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

- J. Chapter 59A, Article 16 NMSA 1978;
- K. Chapter 59A, Article 18 NMSA 1978;
- L. the Policy Language Simplification Law;
- M. Subsections B through E of Section 59A-22-5 NMSA 1978;
- N. Section 59A-22-14 NMSA 1978;
- O. Section 59A-22-34.1 NMSA 1978;
- P. Section 59A-22-39 NMSA 1978;
- Q. Section 59A-22-40 NMSA 1978;
- R. Section 59A-22-40.1 NMSA 1978;
- S. Section 59A-22-41 NMSA 1978;
- T. Section 59A-22-42 NMSA 1978;
- U. Section 59A-22-43 NMSA 1978;
- V. Section 59A-22-44 NMSA 1978;
- W. Sections 59A-34-7 through 59A-34-13, 59A-34-17, 59A-34-23, 59A-34-33, 59A-34-40 through 59A-34-42 and 59A-34-44 through 59A-34-46 NMSA 1978;
- X. The Insurance Holding Company Law, except Section 59A-37-7 NMSA 1978;
- Y. Section 59A-46-15 NMSA 1978; and
- Z. the Patient Protection Act."

Chapter 212 Section 6 Laws 2009

Section 6. REPEAL.--Laws 2001, Chapter 27, Section 2 and Laws 2004, Chapter 70, Section 1 are repealed.

Senate Bill 42, aa

Approved April 7, 2009

LAWS 2009, CHAPTER 213

AN ACT

RELATING TO PUBLIC SCHOOL FINANCE; PROVIDING FOR THE CALCULATION OF THE INSTRUCTIONAL STAFF TRAINING AND EXPERIENCE INDEX OF CHARTER SCHOOLS; PROVIDING A HOLD HARMLESS PROVISION FOR TWO FISCAL YEARS.

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

Chapter 213 Section 1 Laws 2009

Section 1. Section 22-8-6.1 NMSA 1978 (being Laws 1993, Chapter 227, Section 8, as amended) is amended to read:

"22-8-6.1. CHARTER SCHOOL BUDGETS.--

A. Each state-chartered charter school shall submit to the charter schools division of the department a school-based budget. For the first year of operation, the budget of every state-chartered charter school shall be based on the projected number of program units generated by that charter school and its students, using the at-risk index and the instructional staff training and experience index of the school district in which it is geographically located. For second and subsequent fiscal years of operation, the budgets of state-chartered charter schools shall be based on the number of program units generated using the average of the eightieth and one hundred twentieth day MEM of the prior year and its own instructional staff training and experience index and the at-risk index of the school district in which the state-chartered charter school is geographically located. The budget shall be submitted to the division for approval or amendment pursuant to the Public School Finance Act and the Charter Schools Act.

B. Each locally chartered charter school shall submit to the local school board a school-based budget. For the first year of operation, the budget of every locally chartered charter school shall be based on the projected number of program units generated by the charter school and its students, using the at-risk index and the instructional staff training and experience index of the school district in which it is geographically located. For second and subsequent fiscal years of operation, the budgets of locally chartered charter schools shall be based on the number of program units generated using the average of the eightieth and one hundred twentieth day MEM, of the prior year and its own instructional staff training and experience index and the at-risk index of the school district in which the locally chartered charter school is geographically located. The budget shall be submitted to the local school board for approval or amendment. The approval or amendment authority of the local school board relative to the charter school budget is limited to ensuring that sound fiscal practices are followed in the development of the budget and that the charter school budget is within the allotted resources. The local school board shall have no veto authority over

individual line items within the charter school's proposed budget, but shall approve or disapprove the budget in its entirety. Upon final approval of the local budget by the local school board, the individual charter school budget shall be included separately in the budget submission to the department required pursuant to the Public School Finance Act and the Charter Schools Act.

C. For the first year of operation after a locally chartered charter school converts to a state-chartered charter school or a state-chartered charter school converts to a locally chartered charter school, the charter school's budget shall be based on the number of program units generated using the average of the eightieth and one hundred twentieth day MEM of the prior year and the instructional staff training and experience index and the at-risk index of the school district in which it is geographically located. For second and subsequent fiscal years of operation, the charter school shall follow the provisions of Subsection A or B of this section, as applicable.

D. Notwithstanding the provisions of Subsections A through C of this section, each charter school that was in existence in fiscal year 2009 shall be held harmless in the calculation of its instructional staff training and experience index for two fiscal years. For fiscal years 2010 and 2011, the department shall use the greater of the charter school's 2008-2009 funded instructional staff training and experience index or the charter school's own instructional staff training and experience index. Beginning in fiscal year 2012, each charter school shall use its own instructional staff training and experience index."

SFC/Senate Bill 454

Approved April 7, 2009

LAWS 2009, CHAPTER 214

AN ACT

RELATING TO REAL PROPERTY; ENACTING THE APPRAISAL MANAGEMENT COMPANY REGISTRATION ACT; PROVIDING FOR REGISTRATION AND REGULATION OF REAL ESTATE APPRAISAL MANAGEMENT COMPANIES.

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

Chapter 214 Section 1 Laws 2009

Section 1. SHORT TITLE.--Sections 1 through 23 of this act may be cited as the "Appraisal Management Company Registration Act".

Chapter 214 Section 2 Laws 2009

Section 2. DEFINITIONS.--As used in the Appraisal Management Company Registration Act:

A. "appraisal" means the act or process of developing an opinion of the value of real property in conformance with the uniform standards for professional appraisal practice published by the appraisal foundation;

B. "appraisal foundation" means the appraisal foundation incorporated as an Illinois not-for-profit corporation on November 30, 1987 and to which reference is made in the federal Financial Institutions Examination Council Act of 1978, as amended by Title 11, Real Estate Appraisal Reform Amendments;

C. "appraisal management company" means a corporation, partnership, sole proprietorship, subsidiary, limited liability company or other business entity that:

(1) contracts with independent appraisers to perform real estate appraisal services for clients;

(2) receives requests for real estate appraisal services from clients and, for a fee paid by the client, enters into an agreement with one or more independent appraisers to perform the real estate appraisal services contained in the request; or

(3) otherwise serves as a third-party broker of appraisal management services between clients and appraisers;

D. "appraisal management services" means the process of receiving a request for the performance of real estate appraisal services from a client, and for a fee paid by the client, entering into an agreement with one or more independent appraisers to perform the real estate appraisal services contained in the request;

E. "appraiser" means a person who provides an opinion of the market value of real property;

F. "appraiser panel" means a group of independent appraisers that have been selected by an appraisal management company to perform real estate appraisal services for the appraisal management company;

G. "board" means the real estate appraisers board created pursuant to the Real Estate Appraisers Act;

H. "client" means a person or entity that contracts with, or otherwise enters into an agreement with, an appraisal management company for the performance of real estate appraisal services;

I. "controlling person" means:

(1) an owner, officer or director of a corporation, partnership, limited liability company or other business entity seeking to offer appraisal management services in this state;

(2) an individual employed, appointed or authorized by an appraisal management company that has the authority to enter into a contractual relationship with clients for the performance of appraisal management services and that has the authority to enter into agreements with independent appraisers for the performance of real estate appraisal services; or

(3) an individual who possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of an appraisal management company;

J. "real estate appraisal services" means the practice of developing an opinion of the value of real property in conformance with the uniform standards of professional appraisal practice published by the appraisal foundation; and

K. "uniform standards of professional appraisal practice" means the uniform standards of professional appraisal practice promulgated by the appraisal foundation and adopted by rule pursuant to the Real Estate Appraisers Act.

Chapter 214 Section 3 Laws 2009

Section 3. REGISTRATION REQUIRED.--

A. It is unlawful for a person, corporation, partnership, sole proprietorship, subsidiary, limited liability company or any other business entity to directly or indirectly engage or attempt to engage in business as an appraisal management company, to directly or indirectly engage or attempt to perform appraisal management services or to advertise or hold itself out as engaging in or conducting business as an appraisal management company without first obtaining a certificate of registration issued by the board under the provisions of the Appraisal Management Company Registration Act, regardless of the entity's use of the term "appraisal management company", "mortgage technology company" or any other name.

B. The registration required by Subsection A of this section shall include:

(1) the name of the entity seeking registration;

(2) the business address of the entity seeking registration;

(3) telephone contact information of the entity seeking registration;

(4) if the entity seeking registration is not a corporation that is domiciled in this state, the name and contact information for the company's agent for service of process in this state;

(5) the name, address and contact information for any individual or any corporation, partnership or other business entity that owns ten percent or more of the appraisal management company;

(6) the name, address and contact information for a controlling person;

(7) a certification that the entity seeking registration has a system and process in place to verify that a person being added to the appraiser panel of the appraisal management company holds a license or certification in good standing in this state pursuant to the Real Estate Appraisers Act;

(8) a certification that the entity seeking registration has a system in place to review the work of all independent appraisers that are performing real estate appraisal services for the appraisal management company on a periodic basis to ensure that the real estate appraisal services are being conducted in accordance with uniform standards of professional appraisal practice;

(9) a certification that the entity maintains a detailed record of each service request that it receives and the independent appraiser that performs the real estate appraisal services for the appraisal management company;

(10) an irrevocable consent to service of process; and

(11) any other information required by the board.

Chapter 214 Section 4 Laws 2009

Section 4. EXEMPTIONS.--The Appraisal Management Company Registration Act is not applicable to:

A. a corporation, partnership, sole proprietorship, subsidiary, limited liability company or other business entity that employs persons on an employer and employee basis exclusively for the performance of real estate appraisal services in the normal course of its business and the entity is responsible for ensuring that the real estate appraisal services being performed by its employees are being performed in accordance with uniform standards of professional appraisal practice;

B. an individual who in the normal course of the individual's business enters into an agreement, whether written or otherwise, with another independent contractor appraiser for the performance of real estate appraisal services that the hiring

or contracting appraiser cannot complete for any reason, including competency, work load, schedule or geographic location; or

C. an individual, corporation, partnership, sole proprietorship, subsidiary, limited liability company or other business entity that in the normal course of business enters into an agreement, whether written or otherwise, with an independent contractor appraiser for the performance of real estate appraisal services and upon the completion of the appraisal, the report of the appraiser performing the real estate appraisal services is co-signed by the appraiser who subcontracted with the independent appraiser for the performance of the real estate appraisal services.

Chapter 214 Section 5 Laws 2009

Section 5. FORMS.--An applicant for registration as an appraisal management company shall submit to the board an application on a form prescribed by the board.

Chapter 214 Section 6 Laws 2009

Section 6. EXPIRATION OF LICENSE.--A registration granted by the board pursuant to the Appraisal Management Company Registration Act shall be valid for one year from the date on which it is issued.

Chapter 214 Section 7 Laws 2009

Section 7. CONSENT TO SERVICE OF PROCESS.--Each entity applying for registration as an appraisal management company shall complete and execute an irrevocable consent to service of process form as prescribed by the board.

Chapter 214 Section 8 Laws 2009

Section 8. FEE.--The board shall establish the fee for appraisal management company registration by rule to cover the cost of the administration of the Appraisal Management Company Registration Act, but in no case shall the fee be more than two thousand dollars (\$2,000). Registration fees shall be credited to the appraiser fund pursuant to Section 61-30-18 NMSA 1978.

Chapter 214 Section 9 Laws 2009

Section 9. OWNER REQUIREMENTS.--

A. An appraisal management company applying for registration may not be owned by a person or have any principal of the company who has had a license or certificate to act as an appraiser refused, denied, canceled or revoked in this state or in any other state.

B. Each person that owns, is an officer of or has a financial interest in an appraisal management company in this state shall:

(1) be of good moral character, as determined by the board;

(2) submit to a background investigation, as determined by the board; and

(3) certify to the board that the person has never had a license to act as an appraiser refused, denied, canceled or revoked in this state or in any other state.

Chapter 214 Section 10 Laws 2009

Section 10. CONTROLLING PERSON.--Each appraisal management company applying to the board for registration in this state shall designate one controlling person that will be the main contact for all communication between the board and the appraisal management company.

Chapter 214 Section 11 Laws 2009

Section 11. CONTROLLING PERSON REQUIREMENTS.--In order to serve as a controlling person of an appraisal management company, a person shall:

A. certify to the board that the person has never had a certificate or a license issued by the board of this state, or the board of any other state, to act as an appraiser refused, denied, canceled or revoked;

B. be of good moral character, as determined by the board; and

C. submit to a background investigation, as determined by the board.

Chapter 214 Section 12 Laws 2009

Section 12. EMPLOYEE REQUIREMENTS.--

A. Any employee of the appraisal management company, or any person working on behalf of the appraisal management company, that has the responsibility of selecting independent appraisers for the performance of real estate appraisal services for the appraisal management company or the responsibility of reviewing completed appraisals shall be appropriately trained and qualified in the performance of real estate appraisals as determined by the board by rule.

B. Any employee of the appraisal management company that has the responsibility to review the work of independent appraisers shall have demonstrated

knowledge of the uniform standards of professional appraisal practice, as determined by the board by rule.

Chapter 214 Section 13 Laws 2009

Section 13. LIMITATIONS.--An appraisal management company registered in this state pursuant to the Appraisal Management Company Registration Act may not enter into contracts or agreements with an independent appraiser for the performance of real estate appraisal services unless that person is licensed or certified in good standing pursuant to the Real Estate Appraisers Act.

Chapter 214 Section 14 Laws 2009

Section 14. PRE-ENGAGEMENT CERTIFICATION.--Each appraisal management company seeking to be registered in this state shall certify to the board on an annual basis on a form prescribed by the board that the appraisal management company has a system and process in place to verify that a person being added to the appraiser panel of the appraisal management company holds a license in good standing in this state pursuant to the Real Estate Appraisers Act.

Chapter 214 Section 15 Laws 2009

Section 15. ADHERENCE TO STANDARDS.--Each appraisal management company seeking to be registered in this state shall certify to the board on an annual basis that it has a system in place to review the work of all independent appraisers that are performing real estate appraisal services for the appraisal management company on a periodic basis to ensure that the real estate appraisal services are being conducted in accordance with uniform standards of professional appraisal practice.

Chapter 214 Section 16 Laws 2009

Section 16. RECORDKEEPING.--Each appraisal management company seeking to be registered shall certify to the board on an annual basis that it maintains a detailed record of each service request that it receives and the independent appraiser that performs the real estate appraisal services for the appraisal management company.

Chapter 214 Section 17 Laws 2009

Section 17. APPRAISER INDEPENDENCE--PROHIBITIONS.--

A. It is unlawful for any employee, director, officer or agent of an appraisal management company registered pursuant to the Appraisal Management Company Registration Act to influence or attempt to influence the development, reporting or review of an appraisal through coercion, extortion, collusion, compensation, instruction, inducement, intimidation, bribery or in any other manner, including:

(1) withholding or threatening to withhold timely payment for an appraisal;

(2) withholding or threatening to withhold future business for an independent appraiser or demoting or terminating, or threatening to demote or terminate, an independent appraiser;

(3) expressly or impliedly promising future business, promotions or increased compensation for an independent appraiser;

(4) conditioning the request for an appraisal service or the payment of an appraisal fee or salary or bonus on the opinion, conclusion or valuation to be reached or on a preliminary estimate or opinion requested from an independent appraiser;

(5) requesting that an independent appraiser provide an estimated, predetermined or desired valuation in an appraisal report or provide estimated values of comparable sales at any time prior to the independent appraiser's completion of an appraisal service;

(6) providing to an independent appraiser an anticipated, estimated, encouraged or desired value for a subject property or a proposed or target amount to be loaned to the borrower, except that a copy of the sales contract for purchase transactions may be provided;

(7) providing to an independent appraiser, or any entity or person related to the appraiser, stock or other financial or non-financial benefits;

(8) allowing the removal of an independent appraiser from an appraiser panel, without prior written notice to such appraiser;

(9) obtaining, using or paying for a second or subsequent appraisal or ordering an automated valuation model in connection with a mortgage financing transaction unless there is a reasonable basis to believe that the initial appraisal was flawed or tainted and such basis is clearly and appropriately noted in the loan file, or unless such appraisal or automated valuation model is done pursuant to a bona fide pre- or post-funding appraisal review or quality control process; or

(10) engaging in any other act or practice that impairs or attempts to impair an appraiser's independence, objectivity or impartiality.

B. Nothing in Subsection A of this section shall be construed as prohibiting the appraisal management company from requesting that an independent appraiser:

(1) provide additional information about the basis for a valuation; or

(2) correct objective factual errors in an appraisal report.

Chapter 214 Section 18 Laws 2009

Section 18. PAYMENT--NONTAXABLE TRANSACTION CERTIFICATE.--

A. Each appraisal management company shall, except in cases of breach of contract or substandard performance of services, make payment to an independent appraiser for the completion of an appraisal or valuation assignment within sixty days of the date on which the independent appraiser transmits or otherwise provides the completed appraisal or valuation study to the appraisal management company or its assignee.

B. An appraisal management company shall provide an appraiser with the appropriate nontaxable transaction certificate pursuant to Section 7-9-48 NMSA 1978.

Chapter 214 Section 19 Laws 2009

Section 19. APPRAISAL REPORTS--ALTERATION--USE.--An appraisal management company shall not:

A. alter, modify or otherwise change a completed appraisal report submitted by an independent appraiser without the appraiser's written knowledge and consent; or

B. use an appraisal report submitted by an independent appraiser for any other transaction.

Chapter 214 Section 20 Laws 2009

Section 20. ADJUDICATION OF DISPUTES BETWEEN AN APPRAISAL MANAGEMENT COMPANY AND AN INDEPENDENT APPRAISER.--

A. Except within the first thirty days after an independent appraiser is first added to the appraiser panel of an appraisal management company, an appraisal management company shall not remove an appraiser from its appraiser panel, or otherwise refuse to assign requests for real estate appraisal services to an independent appraiser without notifying the appraiser in writing of the reasons for the appraiser being removed from the appraiser panel of the appraisal management company. If the appraiser is being removed from the panel for illegal conduct, violation of the uniform standards of professional appraisal practice or a violation of state licensing standards, the appraisal management company shall provide the independent appraiser the nature of the alleged conduct or violation and provide an opportunity for the appraiser to respond.

B. An independent appraiser that is removed from the appraiser panel of an appraisal management company for alleged illegal conduct, violation of the uniform standards of professional appraisal practice or violation of state licensing standards may file a complaint with the board for a review of the decision of the appraisal management company, except that in no case shall the board make any determination regarding the nature of the business relationship between the appraiser and the appraisal management company that is unrelated to the actions specified in Subsection A of this section.

C. If an independent appraiser files a complaint against an appraisal management company pursuant to Subsection B of this section, the board shall adjudicate the complaint within one hundred eighty days.

D. If after opportunity for hearing and review, the board determines that an independent appraiser did not commit a violation of law, a violation of the uniform standards of professional appraisal practice or a violation of state licensing standards, the board shall order that the appraiser be added to the appraiser panel of the appraisal management company that was the subject of the complaint without prejudice.

Chapter 214 Section 21 Laws 2009

Section 21. ENFORCEMENT.--The board may censure an appraisal management company, conditionally or unconditionally suspend or revoke any registration issued under the Appraisal Management Company Registration Act, levy fines or impose civil penalties not to exceed twenty-five thousand dollars (\$25,000) per violation if, in the opinion of the board, an appraisal management company is attempting to perform, has performed or has attempted to perform any of the following acts:

A. committing any act in violation of the Appraisal Management Company Registration Act;

B. violating any rule or regulation adopted by the board in the interest of the public and consistent with the provisions of the Appraisal Management Company Registration Act;

C. procuring a registration, license or certification by fraud, misrepresentation or deceit; or

D. violating the Real Estate Appraisers Act or the federal Financial Institutions Reform Recovery and Enforcement Act of 1989.

Chapter 214 Section 22 Laws 2009

Section 22. DISCIPLINARY HEARINGS.--The board may conduct adjudicatory proceedings in accordance with the Administrative Procedures Act; provided that:

A. before censuring any registrant, or suspending or revoking any registration, the board shall notify the registrant in writing of any charges made at least twenty days prior to the date set for the hearing and shall afford the registrant an opportunity to be heard in person or by counsel;

B. the written notice shall be satisfied by personal service on the controlling person of the registrant or the registrant's agent for service of process in this state or by sending the notice by certified mail, return receipt requested, to the controlling person of the registrant to the registrant's address on file with the board;

C. the hearing on the charges shall be at a time and place prescribed by the board; and

D. the board may make findings of fact and shall deliver or mail such findings to the registrant charged with an offense under the Appraisal Management Company Registration Act.

Chapter 214 Section 23 Laws 2009

Section 23. RULEMAKING AUTHORITY.--The board may adopt rules that are reasonably necessary to implement, administer and enforce the provisions of the Appraisal Management Company Registration Act, including rules for obtaining copies of appraisals and other documents necessary to audit compliance with the Appraisal Management Company Registration Act.

Chapter 214 Section 24 Laws 2009

Section 24. Section 61-30-18 NMSA 1978 (being Laws 1990, Chapter 75, Section 18, as amended) is amended to read:

"61-30-18. APPRAISER FUND CREATED--DISPOSITION--METHOD OF PAYMENT.--

A. There is created in the state treasury the "appraiser fund" to be administered by the board. All fees received by the board pursuant to the Real Estate Appraisers Act and the Appraisal Management Company Registration Act shall be deposited with the state treasurer to the credit of the appraiser fund. Income earned on investment of the fund shall be credited to the fund.

B. Money in the appraiser fund shall be used by the board to meet necessary expenses incurred in the enforcement of the provisions of the Real Estate Appraisers Act and the Appraisal Management Company Registration Act, in carrying out the duties imposed by the Real Estate Appraisers Act and the Appraisal Management Company Registration Act and for the promotion of education and standards for real estate appraisers in this state. Payments out of the appraiser 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. All unexpended or unencumbered balances remaining at the end of each fiscal year shall remain in the appraiser fund for use in accordance with the provisions of the Real Estate Appraisers Act and the Appraisal Management Company Registration Act."

Senate Bill 456, aa

Approved April 7, 2009

LAWS 2009, CHAPTER 215

AN ACT

RELATING TO FAMILY LAW; ENACTING THE NEW MEXICO UNIFORM PARENTAGE ACT; PROVIDING FOR ESTABLISHMENT OF THE PARENT-CHILD RELATIONSHIP, DETERMINATION OF PATERNITY AND GENETIC TESTING; PROVIDING PENALTIES; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

ARTICLE 1
GENERAL PROVISIONS AND DEFINITIONS

Chapter 215 Section 1-101 Laws 2009

Section 1-101. SHORT TITLE.--Sections 1-101 through 9-903 of this act may be cited as the "New Mexico Uniform Parentage Act".

Chapter 215 Section 1-102 Laws 2009

Section 1-102. DEFINITIONS.--As used in the New Mexico Uniform Parentage Act:

A. "acknowledged father" means a man who has established a father-child relationship pursuant to Article 3 of the New Mexico Uniform Parentage Act;

B. "adjudicated father" means a man who has been adjudicated by a court of competent jurisdiction to be the father of a child;

C. "alleged father" means a man who alleges himself to be, or is alleged to be, the genetic father or a possible genetic father of a child, but whose paternity has not been determined. "Alleged father" does not include:

- (1) a presumed father;
- (2) a man whose parental rights have been terminated or declared not to exist; or
- (3) a male donor;

D. "assisted reproduction" means a method of causing pregnancy other than sexual intercourse. "Assisted reproduction" includes:

- (1) intrauterine insemination;
- (2) donation of eggs;
- (3) donation of embryos;
- (4) in-vitro fertilization and transfer of embryos; and
- (5) intracytoplasmic sperm injection;

E. "bureau" means the vital records and health statistics bureau of the department of health;

F. "child" means a person of any age whose parentage may be determined pursuant to the New Mexico Uniform Parentage Act;

G. "commence" means to file the initial pleading seeking an adjudication of parentage in district court;

H. "determination of parentage" means the establishment of the parent-child relationship by the signing of a valid acknowledgment of paternity pursuant to Article 3 of the New Mexico Uniform Parentage Act or adjudication by the court;

I. "donor" means a person who produces eggs or sperm used for assisted reproduction, whether or not for consideration. "Donor" does not include:

- (1) a husband who provides sperm, or a wife who provides eggs, to be used for assisted reproduction by the wife;
- (2) a woman who gives birth to a child by means of assisted reproduction; or
- (3) a parent pursuant to Article 7 of the New Mexico Uniform Parentage Act;

J. "ethnic or racial group" means, for purposes of genetic testing, a recognized group that a person identifies as all or part of the person's ancestry or that is so identified by other information;

K. "genetic testing" means an analysis of genetic markers to exclude or identify a man as the father or a woman as the mother of a child. "Genetic testing" includes an analysis of one or a combination of the following:

(1) deoxyribonucleic acid; and

(2) blood-group antigens, red-cell antigens, human-leukocyte antigens, serum enzymes, serum proteins or red-cell enzymes;

L. "man" means a male person of any age;

M. "parent" means a person who has established a parent-child relationship pursuant to Section 2-201 of the New Mexico Uniform Parentage Act;

N. "parent-child relationship" means the legal relationship between a child and a parent of the child, including the mother-child relationship and the father-child relationship;

O. "paternity index" means the likelihood of paternity calculated by computing the ratio between:

(1) the likelihood that the tested man is the father, based on the genetic markers of the tested man, mother and child, conditioned on the hypothesis that the tested man is the father of the child; and

(2) the likelihood that the tested man is not the father, based on the genetic markers of the tested man, mother and child, conditioned on the hypothesis that the tested man is not the father of the child and that the father is of the same ethnic or racial group as the tested man;

P. "presumed father" means a man who, by operation of law pursuant to Section 2-204 of the New Mexico Uniform Parentage Act, is recognized as the father of a child until that status is rebutted or confirmed in a judicial proceeding;

Q. "probability of paternity" means the measure, for the ethnic or racial group to which the alleged father belongs, of the probability that the man in question is the father of the child, compared with a random, unrelated man of the same ethnic or racial group, expressed as a percentage incorporating the paternity index and a prior probability;

R. "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;

S. "signatory" means a person who signs or otherwise authenticates a record and is bound by its terms;

T. "state" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States; and

U. "support-enforcement agency" means the human services department designated pursuant to Section 27-2-27 NMSA 1978 as the single state agency for the enforcement of child and spousal support obligations pursuant to Title IV D of the federal Social Security Act and any other public official or agency authorized to seek:

- (1) enforcement of support orders or laws relating to the duty of support;
- (2) establishment or modification of child support;
- (3) determination of parentage; or
- (4) location of child-support obligors and their income and assets.

Chapter 215 Section 1-103 Laws 2009

Section 1-103. SCOPE OF ACT--CHOICE OF LAW.--

A. The New Mexico Uniform Parentage Act applies to determination of parentage in New Mexico.

B. The district court shall apply the law of New Mexico to adjudicate the parent-child relationship. The applicable law does not depend on:

- (1) the place of birth of the child; or
- (2) the past or present residence of the child.

C. The New Mexico Uniform Parentage Act does not create, enlarge, modify or diminish parental rights or duties pursuant to the Children's Code or other law of New Mexico. The definition or use of terms in the New Mexico Uniform Parentage Act shall not be used to interpret, by analogy or otherwise, the same or other terms in the Adoption Act or other law of New Mexico.

Chapter 215 Section 1-104 Laws 2009

Section 1-104. JURISDICTION.--The district court has jurisdiction to adjudicate parentage pursuant to the New Mexico Uniform Parentage Act. The provisions of the New Mexico Uniform Parentage Act shall not be used to expand personal jurisdiction of

the district court over nonresident persons in cases subject to the Uniform Interstate Family Support Act.

Chapter 215 Section 1-105 Laws 2009

Section 1-105. PROTECTION OF PARTICIPANTS.--Proceedings pursuant to the New Mexico Uniform Parentage Act are subject to other laws of New Mexico governing the health, safety, privacy and liberty of a child or other person who could be jeopardized by disclosure of identifying information, including address, telephone number, place of employment, social security number and the child's daycare facility and school.

Chapter 215 Section 1-106 Laws 2009

Section 1-106. DETERMINATION OF MATERNITY.--Provisions of the New Mexico Uniform Parentage Act relating to determination of paternity apply to determinations of maternity insofar as possible.

ARTICLE 2 PARENT-CHILD RELATIONSHIP

Chapter 215 Section 2-201 Laws 2009

Section 2-201. ESTABLISHMENT OF PARENT-CHILD RELATIONSHIP.--

A. The mother-child relationship is established between a woman and a child by:

- (1) the woman's having given birth to the child;
- (2) an adjudication of the woman's maternity; or
- (3) adoption of the child by the woman.

B. The father-child relationship is established between a man and a child by:

- (1) an un rebutted presumption of the man's paternity of the child pursuant to Section 2-204 of the New Mexico Uniform Parentage Act;
- (2) an effective acknowledgment of paternity by the man pursuant to Article 3 of the New Mexico Uniform Parentage Act, unless the acknowledgment has been rescinded or successfully challenged;
- (3) an adjudication of the man's paternity;

(4) adoption of the child by the man; or

(5) the man's having consented to assisted reproduction by a woman pursuant to Article 7 of the New Mexico Uniform Parentage Act that resulted in the birth of the child.

Chapter 215 Section 2-202 Laws 2009

Section 2-202. NO DISCRIMINATION BASED ON MARITAL STATUS.--A child born to parents who are not married to each other has the same rights pursuant to the law as a child born to parents who are married to each other.

Chapter 215 Section 2-203 Laws 2009

Section 2-203. CONSEQUENCES OF ESTABLISHMENT OF PARENTAGE.-- Unless parental rights are terminated or extinguished by relinquishment and decree of adoption pursuant to the Children's Code, a parent-child relationship established pursuant to the New Mexico Uniform Parentage Act applies for all purposes, except determinations of parental rights pursuant to the Children's Code or as otherwise provided by other law of New Mexico.

Chapter 215 Section 2-204 Laws 2009

Section 2-204. PRESUMPTION OF PATERNITY.--

A. A man is presumed to be the father of a child if:

(1) he and the mother of the child are married to each other and the child is born during the marriage;

(2) he and the mother of the child were married to each other and the child is born within three hundred days after the marriage is terminated by death, annulment, declaration of invalidity or divorce or after a decree of separation;

(3) before the birth of the child, he and the mother of the child married each other in apparent compliance with law, even if the attempted marriage is or could be declared invalid, and the child is born during the invalid marriage or within three hundred days after its termination by death, annulment, declaration of invalidity or divorce or after a decree of separation;

(4) after the birth of the child, he and the mother of the child married each other in apparent compliance with law, whether or not the marriage is or could be declared invalid, and he voluntarily asserted his paternity of the child, and:

(a) the assertion is in an acknowledgement of paternity on a form provided by the bureau that is filed with the bureau;

(b) he agreed to be and is named as the child's father on the child's birth certificate; or

(c) he promised in a record to support the child as his own;
or

(5) for the first two years of the child's life, he resided in the same household with the child and openly held out the child as his own.

B. A presumption of paternity established pursuant to this section may be rebutted only by an adjudication pursuant to Article 6 of the New Mexico Uniform Parentage Act. Rebuttal of a presumption of paternity pursuant to the New Mexico Uniform Parentage Act does not apply to a presumption of paternity established pursuant to the Adoption Act.

ARTICLE 3 VOLUNTARY ACKNOWLEDGMENT OF PATERNITY

Chapter 215 Section 3-301 Laws 2009

Section 3-301. ACKNOWLEDGMENT OF PATERNITY.--The mother of a child and a man claiming to be the genetic father of the child may sign an acknowledgment of paternity with intent to establish the man's paternity.

Chapter 215 Section 3-302 Laws 2009

Section 3-302. EXECUTION OF ACKNOWLEDGMENT OF PATERNITY.--

A. An acknowledgment of paternity shall:

(1) be on a form provided by the bureau;

(2) be signed or otherwise authenticated under penalty of perjury by the mother and by the man seeking to establish his paternity;

(3) state that the child whose paternity is being acknowledged:

(a) does not have a presumed father or has a presumed father whose full name is stated; and

(b) does not have another acknowledged or adjudicated father;

(4) state whether there has been genetic testing and, if so, that the acknowledging man's claim of paternity is consistent with the results of the testing; and

(5) state that the signatories understand that the acknowledgment is the equivalent of a judicial adjudication of paternity of the child and that a challenge to the acknowledgment is permitted only under limited circumstances and is barred after two years.

B. An acknowledgment of paternity is void if it:

(1) states that another man is a presumed father, unless a denial of paternity signed or otherwise authenticated by the presumed father is filed with the bureau;

(2) states that another man is an acknowledged or adjudicated father; or

(3) falsely denies the existence of a presumed, acknowledged or adjudicated father of the child.

C. A presumed father may sign or otherwise authenticate an acknowledgment of paternity.

Chapter 215 Section 3-303 Laws 2009

Section 3-303. DENIAL OF PATERNITY.--A presumed father may sign a denial of his paternity. The denial is valid only if:

A. an acknowledgment of paternity signed or otherwise authenticated by another man is filed pursuant to Section 3-305 of the New Mexico Uniform Parentage Act;

B. the denial is on a form provided by the bureau and is signed or otherwise authenticated under penalty of perjury; and

C. the presumed father has not previously:

(1) acknowledged his paternity, unless the previous acknowledgment has been rescinded pursuant to Section 3-307 of the New Mexico Uniform Parentage Act or successfully challenged pursuant to Section 3-308 of the New Mexico Uniform Parentage Act; or

(2) been adjudicated to be the father of the child.

Chapter 215 Section 3-304 Laws 2009

Section 3-304. RULES FOR ACKNOWLEDGMENT AND DENIAL OF PATERNITY.--

A. An acknowledgment of paternity and a denial of paternity may be contained in a single document or may be signed in counterparts, and may be filed separately or simultaneously. If the acknowledgment and denial are both necessary, neither is valid until both are filed.

B. An acknowledgment of paternity or a denial of paternity may be signed before or after the birth of the child.

C. Subject to Subsection A of this section, an acknowledgment of paternity or denial of paternity takes effect on the birth of the child or the filing of the document with the bureau, whichever occurs later.

D. An acknowledgment of paternity or denial of paternity signed by a minor is valid if it is otherwise in compliance with the New Mexico Uniform Parentage Act.

Chapter 215 Section 3-305 Laws 2009

Section 3-305. EFFECT OF ACKNOWLEDGMENT OR DENIAL OF PATERNITY.--

A. Except as otherwise provided in Sections 3-307 and 3-308 of the New Mexico Uniform Parentage Act, a valid acknowledgment of paternity filed with the bureau is equivalent to an adjudication of paternity of a child.

B. Except as otherwise provided in Sections 3-307 and 3-308 of the New Mexico Uniform Parentage Act, a valid denial of paternity by a presumed father filed with the bureau in conjunction with a valid acknowledgment of paternity is equivalent to an adjudication of the nonpaternity of the presumed father.

Chapter 215 Section 3-306 Laws 2009

Section 3-306. NO FILING FEE.--The bureau shall not charge for filing an acknowledgment of paternity or denial of paternity.

Chapter 215 Section 3-307 Laws 2009

Section 3-307. PROCEEDING FOR RESCISSION.--A signatory may rescind an acknowledgment of paternity or denial of paternity only by means of a judicial proceeding to rescind the acknowledgment or denial of paternity. A proceeding to rescind an acknowledgment of paternity or a denial of paternity shall be brought no later than the earlier of:

A. sixty days after the effective date of the acknowledgment or denial, as provided in Section 3-304 of the New Mexico Uniform Parentage Act;

B. in the case of a signatory who was a minor at the time of acknowledgment, the later of:

(1) sixty days after the eighteenth birthday of the signatory; or

(2) sixty days after the effective date of the acknowledgment or denial, as provided in Section 3-304 of the New Mexico Uniform Parentage Act; or

C. the date of the first hearing, in a proceeding to which the signatory is a party, before a court to adjudicate an issue relating to the child, including a proceeding that establishes support.

Chapter 215 Section 3-308 Laws 2009

Section 3-308. CHALLENGE AFTER EXPIRATION OF PERIOD FOR RESCISSION.--

A. After the period for rescission pursuant to Section 3-307 of the New Mexico Uniform Parentage Act has expired, a signatory to an acknowledgment of paternity or denial of paternity may commence a proceeding to challenge the acknowledgment or denial only:

(1) on the basis of fraud, duress or material mistake of fact; and

(2) within two years after the acknowledgment or denial is filed with the bureau or two years after the eighteenth birthday of the signatory, whichever is later.

B. A party challenging an acknowledgment of paternity or denial of paternity has the burden of proof.

Chapter 215 Section 3-309 Laws 2009

Section 3-309. PROCEDURE FOR RESCISSION OR CHALLENGE.--

A. Every signatory to an acknowledgment of paternity and any related denial of paternity shall be made a party to a proceeding to rescind or challenge the acknowledgment or denial.

B. For the purpose of rescission of or challenge to an acknowledgment of paternity or denial of paternity, a signatory submits to the personal jurisdiction of the district courts of this state by signing the acknowledgment or denial, effective upon the filing of the document with the bureau.

C. Except for good cause shown, during the pendency of a proceeding to rescind or challenge an acknowledgment of paternity or denial of paternity, the district

court shall not suspend the legal responsibilities of a signatory arising from the acknowledgment, including the duty to pay child support.

D. A proceeding to rescind or to challenge an acknowledgment of paternity or denial of paternity shall be conducted in the same manner as a proceeding to adjudicate parentage pursuant to Article 6 of the New Mexico Uniform Parentage Act.

E. At the conclusion of a proceeding to rescind or challenge an acknowledgment of paternity or denial of paternity, the court shall order the bureau to amend the birth record of the child, if appropriate.

Chapter 215 Section 3-310 Laws 2009

Section 3-310. RATIFICATION BARRED.--A court or administrative agency conducting a judicial or administrative proceeding shall not ratify an unchallenged acknowledgment of paternity.

Chapter 215 Section 3-311 Laws 2009

Section 3-311. FULL FAITH AND CREDIT--ACKNOWLEDGEMENT OR DENIAL OF PATERNITY.--A court of this state shall give full faith and credit to an acknowledgment of paternity or denial of paternity effective in another state if the acknowledgment or denial has been signed and is otherwise in compliance with the law of the other state.

Chapter 215 Section 3-312 Laws 2009

Section 3-312. FORMS FOR ACKNOWLEDGMENT AND DENIAL OF PATERNITY.--

A. The bureau shall prescribe forms for the acknowledgment of paternity and the denial of paternity.

B. A valid acknowledgment of paternity or denial of paternity is not affected by a later modification of the prescribed form.

Chapter 215 Section 3-313 Laws 2009

Section 3-313. RELEASE OF INFORMATION.--The bureau may release information relating to the acknowledgment of paternity or denial of paternity to a signatory of the acknowledgment or denial and to courts and to other agencies as permitted pursuant to the provisions of Chapter 24, Article 14 NMSA 1978.

Chapter 215 Section 3-314 Laws 2009

Section 3-314. ADOPTION OF RULES.--The bureau may adopt and promulgate rules and forms to implement the provisions of this article.

ARTICLE 4
REGISTRY OF PATERNITY

Chapter 215 Section 4-401 Laws 2009

Section 4-401. ESTABLISHMENT OF REGISTRY.--The putative father registry established pursuant to the provisions of Section 32A-5-20 NMSA 1978 is also the registry of paternity established pursuant to the New Mexico Uniform Parentage Act.

ARTICLE 5
GENETIC TESTING

Chapter 215 Section 5-501 Laws 2009

Section 5-501. SCOPE OF ARTICLE.--This article governs genetic testing of a person to determine parentage, whether the person:

- A. voluntarily submits to testing; or
- B. is tested pursuant to an order of the district court or a support-enforcement agency.

Chapter 215 Section 5-502 Laws 2009

Section 5-502. ORDER FOR TESTING.--

A. Except as otherwise provided in this article and Article 6 of the New Mexico Uniform Parentage Act, the district court shall order the child and other designated persons to submit to genetic testing if the request for testing is supported by the sworn statement of a party to the proceeding:

(1) alleging paternity and stating facts establishing a reasonable probability of the requisite sexual contact between the persons; or

(2) denying paternity and stating facts establishing a possibility that sexual contact between the persons, if any, did not result in the conception of the child.

B. A support-enforcement agency may order genetic testing only if there is no presumed, acknowledged or adjudicated father.

C. If a request for genetic testing of a child is made before birth, the district court or support-enforcement agency shall not order in-utero testing.

D. If two or more men are subject to court-ordered genetic testing, the testing may be ordered concurrently or sequentially.

Chapter 215 Section 5-503 Laws 2009

Section 5-503. REQUIREMENTS FOR GENETIC TESTING.--

A. Genetic testing shall be of a type reasonably relied upon by experts in the field of genetic testing and performed in a testing laboratory accredited by:

(1) the American association of blood banks or a successor to its functions;

(2) the American society for histocompatibility and immunogenetics or a successor to its functions; or

(3) an accrediting body designated by the federal secretary of health and human services.

B. A specimen used in genetic testing may consist of one or more samples, or a combination of samples, of blood, buccal cells, bone, hair or other body tissue or fluid. The specimen used in the testing need not be of the same kind for each person undergoing genetic testing.

C. Based on the ethnic or racial group of a person, the testing laboratory shall determine the databases from which to select frequencies for use in calculation of the probability of paternity. If there is disagreement as to the testing laboratory's choice, the following rules apply:

(1) the person objecting may require the testing laboratory, within thirty days after receipt of the report of the test, to recalculate the probability of paternity using an ethnic or racial group different from that used by the laboratory;

(2) the person objecting to the testing laboratory's initial choice shall:

(a) if the frequencies are not available to the testing laboratory for the ethnic or racial group requested, provide the requested frequencies compiled in a manner recognized by accrediting bodies; or

(b) engage another testing laboratory to perform the calculations; and

(3) the testing laboratory may use its own statistical estimate if there is a question regarding which ethnic or racial group is appropriate. If available, the

testing laboratory shall calculate the frequencies using statistics for any other ethnic or racial group requested.

D. If, after recalculation using a different ethnic or racial group, genetic testing does not rebuttably identify a man as the father of a child pursuant to Section 5-505 of the New Mexico Uniform Parentage Act, a person who has been tested may be required to submit to additional genetic testing.

E. The retention of material used for genetic testing shall be governed by the provisions of Section 24-21-5 NMSA 1978.

Chapter 215 Section 5-504 Laws 2009

Section 5-504. REPORT OF GENETIC TESTING.--

A. A report of genetic testing shall be in a record and signed under penalty of perjury by a designee of the testing laboratory. A report made pursuant to the requirements of this article is self-authenticating.

B. Documentation from the testing laboratory of the following information is sufficient to establish a reliable chain of custody that allows the results of genetic testing to be admissible without testimony:

(1) the names and photographs of the persons whose specimens have been taken;

(2) the names of the persons who collected the specimens;

(3) the places and dates the specimens were collected;

(4) the names of the persons who received the specimens in the testing laboratory;

(5) the dates the specimens were received; and

(6) the accreditation of the testing facility showing that it meets the requirements of Section 5-503 of the New Mexico Uniform Parentage Act.

Chapter 215 Section 5-505 Laws 2009

Section 5-505. GENETIC TESTING RESULTS--REBUTTAL.--

A. Pursuant to the New Mexico Uniform Parentage Act, a man is rebuttably identified as the father of a child if the genetic testing complies with this article and the results disclose that:

(1) the man has at least a ninety-nine percent probability of paternity, using a prior probability of zero point five zero, as calculated by using the combined paternity index obtained in the testing; and

(2) a combined paternity index of at least one hundred to one.

B. A man identified pursuant to Subsection A of this section as the father of the child may rebut the genetic testing results only by other genetic testing satisfying the requirements of this article that:

(1) excludes the man as a genetic father of the child; or

(2) identifies another man as the possible father of the child.

C. Except as otherwise provided in Section 5-510 of the New Mexico Uniform Parentage Act, if more than one man is identified by genetic testing as the possible father of the child, the court shall order them to submit to further genetic testing to identify the genetic father.

Chapter 215 Section 5-506 Laws 2009

Section 5-506. COSTS OF GENETIC TESTING.--

A. Subject to assessment of costs pursuant to Article 6 of the New Mexico Uniform Parentage Act, the cost of initial genetic testing shall be advanced:

(1) by a support-enforcement agency in a proceeding in which the support-enforcement agency is providing services;

(2) by the person who made the request;

(3) as agreed by the parties; or

(4) as ordered by the district court.

B. In cases in which the cost is advanced by the support-enforcement agency, the agency may seek reimbursement from a man who is rebuttably identified as the father.

Chapter 215 Section 5-507 Laws 2009

Section 5-507. ADDITIONAL GENETIC TESTING.--Prior to a final adjudication, the district court or the support-enforcement agency shall order additional genetic testing upon the request of a party who contests the result of the original testing. If the previous genetic testing identified a man as the father of the child pursuant to Section 5-

505 of the New Mexico Uniform Parentage Act, the court or agency shall not order additional testing unless the party provides advance payment for the testing.

Chapter 215 Section 5-508 Laws 2009

Section 5-508. GENETIC TESTING WHEN SPECIMENS NOT AVAILABLE.--

A. Subject to Subsection B of this section, if a genetic-testing specimen is not available from a man who may be the father of a child, upon notice and after an opportunity for a hearing, and for good cause and under circumstances the court considers to be just, the court may order the following persons to submit specimens for genetic testing:

- (1) the parents of the man;
- (2) brothers and sisters of the man;
- (3) other children of the man and their mothers; and
- (4) other relatives of the man necessary to complete genetic

testing.

B. Issuance of an order pursuant to this section requires a finding that a need for genetic testing outweighs the legitimate interests of the person sought to be tested.

Chapter 215 Section 5-509 Laws 2009

Section 5-509. DECEASED PERSON.--For good cause shown, the district court may order genetic testing of a deceased person.

Chapter 215 Section 5-510 Laws 2009

Section 5-510. IDENTICAL BROTHERS.--

A. The district court may order genetic testing of a brother of a man identified as the father of a child if the man is commonly believed to have an identical brother and evidence suggests that the brother may be the genetic father of the child.

B. If each brother satisfies the requirements as the identified father of the child pursuant to Section 5-505 of the New Mexico Uniform Parentage Act without consideration of another identical brother being identified as the father of the child, the district court may rely on nongenetic evidence to adjudicate which brother is the father of the child.

Chapter 215 Section 5-511 Laws 2009

Section 5-511. CONFIDENTIALITY OF GENETIC TESTING.--

A. Release of the report of genetic testing for parentage may be released only to the parties tested or their representatives, the support-enforcement agency and the court.

B. A person who intentionally releases an identifiable specimen of another person for any purpose other than that relevant to the proceeding regarding parentage without a court order or the written permission of the person who furnished the specimen is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

ARTICLE 6

PROCEEDING TO ADJUDICATE PARENTAGE

PART 1 -NATURE OF PROCEEDING

Chapter 215 Section 6-601 Laws 2009

Section 6-601. PROCEEDING AUTHORIZED.--A civil proceeding may be maintained in the district court to adjudicate the parentage of a child. The proceeding is governed by the Rules of Civil Procedure for the District Courts. The mother of the child and an alleged father or presumed father are competent to testify. Any witness may be compelled to testify.

Chapter 215 Section 6-602 Laws 2009

Section 6-602. STANDING TO MAINTAIN PROCEEDING.--Subject to Article 3 and Sections 6-607 and 6-609 of the New Mexico Uniform Parentage Act, a proceeding to adjudicate parentage may be maintained by:

- A. the child;
- B. the mother of the child;
- C. a man whose paternity of the child is to be adjudicated;
- D. the support-enforcement agency;
- E. an authorized adoption agency or licensed child-placing agency; or
- F. a representative authorized by law to act for a person who would otherwise be entitled to maintain a proceeding but who is deceased, incapacitated or a minor.

Chapter 215 Section 6-603 Laws 2009

Section 6-603. PARTIES TO PROCEEDING.--The following persons shall be joined as parties in a proceeding to adjudicate parentage:

- A. the mother of the child; and
- B. a man whose paternity of the child is to be adjudicated.

Chapter 215 Section 6-604 Laws 2009

Section 6-604. PERSONAL JURISDICTION.--

A. A person shall not be adjudicated to be a parent unless the district court has personal jurisdiction over the person.

B. A district court of this state having jurisdiction to adjudicate parentage may exercise personal jurisdiction over a nonresident person, or the guardian or conservator of the person, if the conditions prescribed in Section 40-6A-201 NMSA 1978 are fulfilled.

C. Lack of jurisdiction over one person does not preclude the district court from making an adjudication of parentage binding on another person over whom the district court has personal jurisdiction.

Chapter 215 Section 6-605 Laws 2009

Section 6-605. VENUE.--Venue for a proceeding to adjudicate parentage is in the county of this state in which:

- A. the child resides or is found;
- B. the respondent resides or is found if the child does not reside in this state; or
- C. a proceeding for probate or administration of the presumed, acknowledged or alleged father's estate is pending.

Chapter 215 Section 6-606 Laws 2009

Section 6-606. NO LIMITATION--CHILD HAVING NO PRESUMED, ACKNOWLEDGED OR ADJUDICATED FATHER.--

A. A proceeding to adjudicate the parentage of a child having no presumed, acknowledged or adjudicated father may be commenced by the child at any time, even after:

(1) the child becomes an adult; or

(2) an earlier proceeding to adjudicate paternity has been dismissed based on the application of a statute of limitation then in effect.

B. A proceeding to adjudicate child support pursuant to Subsection A of this section is limited by Sections 6-607 and 6-636 of the New Mexico Uniform Parentage Act.

Chapter 215 Section 6-607 Laws 2009

Section 6-607. LIMITATION--GENERAL.--

A. Any proceeding to adjudicate child support shall be brought not later than three years after the child has reached the age of majority.

B. Except as otherwise specifically provided in another provision of the New Mexico Uniform Parentage Act, any proceeding to adjudicate the parentage of a child shall be commenced not later than three years after the child has reached the age of majority.

Chapter 215 Section 6-608 Laws 2009

Section 6-608. AUTHORITY TO DENY MOTION FOR GENETIC TESTING.--

A. In a proceeding to adjudicate the parentage of a child having a presumed father or to challenge the paternity of a child having an acknowledged father, the district court may deny a motion seeking an order for genetic testing of the mother, the child and the presumed or acknowledged father if the district court determines that:

(1) the conduct of the mother or the presumed or acknowledged father estops that party from denying parentage; and

(2) it would be inequitable to disprove the father-child relationship between the child and the presumed or acknowledged father.

B. In determining whether to deny a motion seeking an order for genetic testing pursuant to this section, the district court shall consider the best interest of the child, including the following factors:

(1) the length of time between the proceeding to adjudicate parentage and the time that the presumed or acknowledged father was placed on notice that he might not be the genetic father;

(2) the length of time during which the presumed or acknowledged father has assumed the role of father of the child;

(3) the facts surrounding the presumed or acknowledged father's discovery of his possible nonpaternity;

(4) the nature of the relationship between the child and the presumed or acknowledged father;

(5) the age of the child;

(6) the harm that may result to the child if presumed or acknowledged paternity is successfully disproved;

(7) the nature of the relationship between the child and any alleged father;

(8) the extent to which the passage of time reduces the chances of establishing the paternity of another man and a child-support obligation in favor of the child; and

(9) other factors that may affect the equities arising from the disruption of the father-child relationship between the child and the presumed or acknowledged father or the chance of other harm to the child.

C. In a proceeding involving the application of this section, a minor or incapacitated child shall be represented by a guardian ad litem.

D. Denial of a motion seeking an order for genetic testing shall be based on clear and convincing evidence.

E. If the district court denies a motion seeking an order for genetic testing, it shall issue an order adjudicating the presumed or acknowledged father to be the father of the child.

Chapter 215 Section 6-609 Laws 2009

Section 6-609. LIMITATION--CHILD HAVING ACKNOWLEDGED OR ADJUDICATED FATHER.--

A. If a child has an acknowledged father, a signatory to the acknowledgment of paternity or denial of paternity may commence a proceeding

seeking to rescind the acknowledgment or denial or challenge the paternity of the child only within the time allowed pursuant to Section 3-307 or 3-308 of the New Mexico Uniform Parentage Act.

B. If a child has an acknowledged father or an adjudicated father, a person, other than the child, who is neither a signatory to the acknowledgment of paternity nor a party to the adjudication and who seeks an adjudication of paternity of the child shall commence a proceeding not later than two years after the effective date of the acknowledgment or adjudication.

C. A proceeding pursuant to this section is subject to the application of the principles of estoppel established in Section 6-608 of the New Mexico Uniform Parentage Act.

Chapter 215 Section 6-610 Laws 2009

Section 6-610. JOINDER OF PROCEEDINGS.--

A. Except as otherwise provided in Subsection B of this section, a proceeding to adjudicate parentage may be joined with a proceeding in the district court for adoption, termination of parental rights, child custody or visitation, child support, divorce, annulment, legal separation or separate maintenance, probate or administration of an estate or other appropriate proceeding.

B. A respondent shall not join a proceeding described in Subsection A of this section with a proceeding to adjudicate parentage brought pursuant to the Uniform Interstate Family Support Act.

Chapter 215 Section 6-611 Laws 2009

Section 6-611. PROCEEDING BEFORE BIRTH.--A proceeding to determine parentage may be commenced before the birth of the child, but shall not be concluded until after the birth of the child. The following actions may be taken before the birth of the child:

A. service of process;

B. discovery; and

C. except as prohibited by Section 5-502 of the New Mexico Uniform Parentage Act, collection of specimens for genetic testing.

Chapter 215 Section 6-612 Laws 2009

Section 6-612. CHILD AS PARTY--REPRESENTATION.--

A. A minor child is a permissible party, but is not a necessary party to a proceeding pursuant to this article.

B. The district court shall appoint a guardian ad litem to represent a minor or incapacitated child if the child is a party or the district court finds that the interests of the child are not adequately represented.

PART 2 -SPECIAL RULES FOR PROCEEDING TO ADJUDICATE PARENTAGE

Chapter 215 Section 6-621 Laws 2009

Section 6-621. ADMISSIBILITY OF RESULTS OF GENETIC TESTING-- EXPENSES.--

A. Except as otherwise provided in Subsection C of this section, a record of a genetic-testing expert is admissible as evidence of the truth of the facts asserted in the report unless a party objects, in a writing delivered to the adverse party, to the record's admission within fourteen days after its receipt by the objecting party. The objecting party shall cite specific grounds for exclusion. The admissibility of the report is not affected by whether the testing was performed:

(1) voluntarily or pursuant to an order of the district court or a support-enforcement agency; or

(2) before or after the commencement of the proceeding.

B. A party objecting to the results of genetic testing may call one or more genetic-testing experts to testify in person or by telephone, videoconference, deposition or another method approved by the district court. Unless otherwise ordered by the district court, the party offering the testimony bears the expense for the expert testifying.

C. If a child has a presumed, acknowledged or adjudicated father, the results of genetic testing are inadmissible to adjudicate parentage unless performed:

(1) with the consent of both the mother and the presumed, acknowledged or adjudicated father; or

(2) pursuant to an order of the district court pursuant to Section 5-502 of the New Mexico Uniform Parentage Act.

D. Copies of bills for genetic testing, for child birth and for prenatal and postnatal health care for the mother and child that are furnished to the adverse party not less than ten days before the date of a hearing are admissible to establish:

(1) the amount of the charges billed; and

(2) that the charges were reasonable, necessary and customary.

Chapter 215 Section 6-622 Laws 2009

Section 6-622. CONSEQUENCES OF DECLINING GENETIC TESTING.--

A. An order for genetic testing is enforceable by contempt.

B. If a person whose paternity is being determined declines to submit to genetic testing ordered by the district court, the district court for that reason may adjudicate parentage contrary to the position of the person who declines.

C. Genetic testing of the mother of a child is not a condition precedent to testing the child and a man whose paternity is being determined. If the mother is unavailable or declines to submit to genetic testing, the district court may order the testing of the child and every man whose paternity is being adjudicated.

Chapter 215 Section 6-623 Laws 2009

Section 6-623. ADMISSION OF PATERNITY AUTHORIZED.--

A. A respondent in a proceeding to adjudicate parentage may admit to the paternity of a child by filing a pleading to that effect or by admitting paternity under penalty of perjury when making an appearance or during a hearing.

B. If the district court finds that the admission of paternity satisfies the requirements of this section and finds that there is no reason to question the admission, the district court shall issue an order adjudicating the child to be the child of the man admitting paternity.

Chapter 215 Section 6-624 Laws 2009

Section 6-624. TEMPORARY ORDER.--

A. In a proceeding pursuant to this article, the district court shall issue a temporary order for support of a child if the order is appropriate and the person ordered to pay support is:

(1) a presumed father of the child;

(2) petitioning to have his paternity adjudicated;

(3) identified as the father through genetic testing pursuant to Section 5-505 of the New Mexico Uniform Parentage Act;

(4) an alleged father who has declined to submit to genetic testing;

(5) shown by clear and convincing evidence to be the father of the child; or

(6) the mother of the child.

B. A temporary order may include provisions for custody and visitation as provided by other law of this state. A temporary order of support is subject to Section 6-636 of the New Mexico Uniform Parentage Act.

Chapter 215 Section 6-625 Laws 2009

Section 6-625. PRETRIAL PROCEEDINGS.--As soon as practicable after an action to declare the existence or nonexistence of a father-child relationship has been brought, and unless judgment by default has been entered, an informal hearing shall be held. The court may order that the hearing be held before a master. The public shall be barred from the hearing. A record of the proceeding or any portion of the proceeding shall be kept if any party requests or the court so orders. The rules of evidence shall not apply.

Chapter 215 Section 6-626 Laws 2009

Section 6-626. PRETRIAL RECOMMENDATIONS.--

A. On the basis of the information produced at the pretrial hearing, the judge, hearing officer or master conducting the hearing shall evaluate the probability of determining the existence or nonexistence of a father-child relationship in a trial. On the basis of the evaluation, an appropriate recommendation for settlement shall be made to the parties. Based upon the evaluation, the judge, hearing officer or master may enter an order for temporary support consistent with the child-support guidelines as provided in Section 40-4-11.1 NMSA 1978.

B. If the parties accept a recommendation made in accordance with Subsection A of this section, judgment shall be entered accordingly.

C. If a party refuses to accept a recommendation made in accordance with Subsection A of this section and genetic testing has not been taken, the court shall require the parties to submit to genetic testing, if practicable. Thereafter, the judge, hearing officer or master shall make an appropriate final recommendation. If a party refuses to accept the final recommendation, the action shall be set for trial and a party's acceptance or rejection of the recommendation shall be treated as any other offer of settlement with respect to its admissibility as evidence in subsequent proceedings.

D. The child's guardian may accept or refuse to accept a recommendation under this section.

E. The informal hearing may be terminated and the action set for trial if the judge, hearing officer or master conducting the hearing finds it unlikely that all parties would accept a recommendation that the judge, hearing officer or master might make under Subsection A or C of this section.

PART 3 -HEARINGS AND ADJUDICATION

Chapter 215 Section 6-631 Laws 2009

Section 6-631. RULES FOR ADJUDICATION OF PATERNITY.--The district court shall apply the following rules to adjudicate the paternity of a child:

A. the paternity of a child having a presumed, acknowledged or adjudicated father may be disproved only by admissible results of genetic testing excluding that man as the father of the child or identifying another man as the father of the child;

B. unless the results of genetic testing are admitted to rebut other results of genetic testing, a man identified as the father of a child pursuant to Section 5-505 of the New Mexico Uniform Parentage Act shall be adjudicated the father of the child;

C. if the district court finds that genetic testing pursuant to Section 5-505 of the New Mexico Uniform Parentage Act neither identifies nor excludes a man as the father of a child, the district court shall not dismiss the proceeding. In that event, the results of genetic testing and other evidence are admissible to adjudicate the issue of paternity; and

D. unless the results of genetic testing are admitted to rebut other results of genetic testing, a man excluded as the father of a child by genetic testing shall be adjudicated not to be the father of the child.

Chapter 215 Section 6-632 Laws 2009

Section 6-632. JURY PROHIBITED.--The district court, without a jury, shall adjudicate paternity of a child.

Chapter 215 Section 6-633 Laws 2009

Section 6-633. HEARINGS--INSPECTION OF RECORDS.--

A. On request of a party and for good cause shown, the district court may close a proceeding to the public and except for a final order, may declare the proceeding to be confidential and seal the file.

B. A final order in a proceeding pursuant to this article is available for public inspection. Other papers and records are available only with the consent of the parties or on order of the district court for good cause.

C. The provisions of this section are subject to any rules established by the supreme court of New Mexico.

Chapter 215 Section 6-634 Laws 2009

Section 6-634. ORDER ON DEFAULT.--The district court shall issue an order adjudicating the paternity of a man who:

A. after service of process, is in default; and

B. is found by the district court to be the father of a child.

Chapter 215 Section 6-635 Laws 2009

Section 6-635. DISMISSAL FOR WANT OF PROSECUTION.--The district court may issue an order dismissing a proceeding commenced pursuant to the New Mexico Uniform Parentage Act for want of prosecution only without prejudice. An order of dismissal for want of prosecution purportedly with prejudice is void and has only the effect of a dismissal without prejudice.

Chapter 215 Section 6-636 Laws 2009

Section 6-636. ORDER ADJUDICATING PARENTAGE.--

A. The district court shall issue an order adjudicating whether a man alleged or claiming to be the father is the parent of the child.

B. An order adjudicating parentage shall identify the child by name and date of birth.

C. Except as otherwise provided in Subsection D of this section, the district court may assess filing fees, reasonable fees of counsel, experts and the child's guardian ad litem, fees for genetic testing, other costs, necessary travel and other reasonable expenses incurred in a proceeding pursuant to this article. The district court may award attorney fees, which may be paid directly to the attorney, who may enforce the order in the attorney's own name. The district court may order these fees, costs and expenses to be paid by any party in proportions and at times as determined by the court, but not exceeding twelve years unless there is a substantial showing that paternity could not have been established and an action for child support could not have been brought within twelve years of the child's birth. The court may order the proportion of any indigent party to be paid from court funds.

D. The district court shall not assess fees, costs or expenses against the support-enforcement agency of this state or another state, except as provided by other law.

E. On request of a party and for good cause shown, the district court may order that the name of the child be changed.

F. If the order of the district court is at variance with the child's birth certificate, the district court shall order the bureau to issue an amended birth certificate.

G. The judgment or order may contain any other provision directed against or on behalf of the appropriate party to the proceeding concerning the duty of past and future support, the custody and guardianship of the child, visitation with the child, the furnishing of bond or other security for the payment of the judgment or any other matter within the jurisdiction of the court. The judgment or order may direct the father to pay the reasonable expenses of the mother's pregnancy, birth and confinement. The court shall order child support retroactive to the date of the child's birth, but not to exceed twelve years unless there is a substantial showing that paternity could not have been established and an action for child support could not have been brought within twelve years of the child's birth pursuant to the provisions of Sections 40-4-11 through 40-4-11.3 NMSA 1978; provided that, in deciding whether or how long to order retroactive support, the court shall consider:

(1) whether the alleged or presumed father has absconded or could not be located; and

(2) whether equitable defenses are applicable.

H. Support judgments or orders ordinarily shall be for periodic payments, which may vary in amount. In the best interest of the child, a lump-sum payment or the purchase of an annuity may be ordered in lieu of periodic payments of support; provided, however, nothing in this section shall deprive a state agency of its right to reimbursement from an appropriate party should the child be a past or future recipient of public assistance.

I. In determining the amount to be paid by a parent for support of the child, a court, child support hearing officer or master shall make such determination in accordance with the provisions of the child support guidelines pursuant to Section 40-4-11.1 NMSA 1978.

Chapter 215 Section 6-637 Laws 2009

Section 6-637. BINDING EFFECT OF DETERMINATION OF PARENTAGE.--

A. Except as otherwise provided in Subsection B of this section, a determination of parentage is binding on:

(1) all signatories to an acknowledgment or denial of paternity as provided in Article 3 of the New Mexico Uniform Parentage Act; and

(2) all parties to an adjudication by a district court acting under circumstances that satisfy the jurisdictional requirements of Section 40-6A-201 NMSA 1978.

B. A child is not bound by a determination of parentage pursuant to the New Mexico Uniform Parentage Act unless:

(1) the determination was based on an unrescinded acknowledgment of paternity and the acknowledgment is consistent with the results of genetic testing;

(2) the adjudication of parentage was based on a finding consistent with the results of genetic testing and the consistency is declared in the determination or is otherwise shown;

(3) the child was a party or was represented in the proceeding determining parentage by a guardian ad litem; or

(4) there was a final order in the proceeding that satisfies the requirements of Paragraph (1), (2) or (3) of Subsection C of this section.

C. In a proceeding to dissolve a marriage, the district court is deemed to have made an adjudication of the parentage of a child if the district court acts under circumstances that satisfy the jurisdictional requirements of Section 40-6A-201 NMSA 1978, and the final order:

(1) expressly identifies a child as a "child of the marriage", "issue of the marriage", "child of the parties" or similar words indicating that the husband is the father of the child;

(2) provides for support of the child by the husband unless paternity is specifically disclaimed in the order; or

(3) contains a stipulation or admission that the parties are the parents of the child.

D. Except as otherwise provided in Subsection B of this section, a determination of parentage may be a defense in a subsequent proceeding seeking to adjudicate parentage by a person who was not a party to the earlier proceeding.

E. A party to an adjudication of paternity may challenge the adjudication only pursuant to the laws of New Mexico relating to appeal, vacation of judgments or other judicial review.

Chapter 215 Section 6-638 Laws 2009

Section 6-638. FULL FAITH AND CREDIT--DETERMINATION OF PARENTAGE.--A court of this state shall give full faith and credit to a determination of parentage made by a court of another state.

Chapter 215 Section 6-639 Laws 2009

Section 6-639. ENFORCEMENT OF JUDGMENT OR ORDER.--

A. If existence of the parental relationship is declared, or paternity or a duty of support has been acknowledged or adjudicated under the New Mexico Uniform Parentage Act or under prior law, the obligation of the noncustodial parent may be enforced in the same or other proceedings by any interested party.

B. The court shall order child support payments to be made in accordance with Section 40-4A-4.1 NMSA 1978.

C. Willful failure to obey the judgment or order of the court is a civil contempt of the court. All remedies for the enforcement of judgments apply.

Chapter 215 Section 6-640 Laws 2009

Section 6-640. MODIFICATION OF JUDGMENT OR ORDER.--The court has continuing jurisdiction to modify or revoke a judgment or order for future support, except as otherwise specifically provided by the Uniform Interstate Family Support Act.

Chapter 215 Section 6-641 Laws 2009

Section 6-641. RIGHT TO COUNSEL--FREE TRANSCRIPT ON APPEAL.--

A. At the pretrial hearing and in further proceedings, any party may be represented by counsel. The court shall appoint counsel for any party who is unable to obtain counsel for financial reasons if, in the court's discretion, appointment of counsel is required in the interest of justice.

B. If a party is financially unable to pay the cost of a transcript, the court shall furnish on request a transcript for purposes of appeal.

Chapter 215 Section 6-642 Laws 2009

Section 6-642. HEARINGS AND RECORDS--CONFIDENTIALITY.--Notwithstanding any other laws concerning public hearings and records, any hearing or trial held under the provisions of the New Mexico Uniform Parentage Act may be held in closed court without admittance of any person other than those necessary to the action

or proceeding. The court may order that certain papers and records pertaining to the action or proceeding, whether part of the permanent record of the court or any other file maintained by the state or elsewhere, are subject to inspection only upon consent of the court; provided, however, that nothing in this section shall infringe upon the right of the parties to an action or proceeding to inspect the court record. The provisions of this section are subject to any rules established by the New Mexico supreme court.

Chapter 215 Section 6-643 Laws 2009

Section 6-643. BIRTH RECORDS.--

A. Upon order of a court of this state or upon request of a court of another state, the bureau shall prepare a certificate of birth consistent with the findings of the court and shall substitute the certificate for the original certificate of birth.

B. The fact that the father-child relationship was declared after the child's birth shall not be ascertainable from the certificate prepared pursuant to Subsection A of this section, but the actual place and date of birth shall be shown.

C. The evidence upon which the certificate prepared pursuant to Subsection A of this section was made and the original birth certificate shall be kept in a sealed and confidential file and be subject to inspection only upon order of the court and consent of all interested parties, or in exceptional cases only upon an order of the court for good cause shown.

ARTICLE 7 CHILD OF ASSISTED REPRODUCTION

Chapter 215 Section 7-701 Laws 2009

Section 7-701. SCOPE OF ARTICLE.--This article does not apply to the birth of a child conceived by means of sexual intercourse.

Chapter 215 Section 7-702 Laws 2009

Section 7-702. PARENTAL STATUS OF DONOR.--Donors of eggs, sperm or embryos are not the parents of a child conceived by means of assisted reproduction.

Chapter 215 Section 7-703 Laws 2009

Section 7-703. PARENTAGE OF CHILD OF ASSISTED REPRODUCTION.--A person who provides eggs, sperm or embryos for or consents to assisted reproduction as provided in Section 7-704 of the New Mexico Uniform Parentage Act with the intent to be the parent of a child is a parent of the resulting child.

Chapter 215 Section 7-704 Laws 2009

Section 7-704. CONSENT TO ASSISTED REPRODUCTION.--

A. The intended parent or parents shall consent to the assisted reproduction in a record signed by them before the placement of the eggs, sperm or embryos. Donors shall also consent to an assisted reproduction before retrieval of the donors' eggs or sperm.

B. Failure of a parent to sign a consent required by Subsection A of this section does not preclude a finding of parentage if the parent, during the first two years of the child's life, resided in the same household with the child and openly held out the child as the parent's own.

C. All papers relating to the assisted reproduction, whether part of a court, medical or any other file, are subject to inspection only upon an order of the district court or with the consent, in a signed record, of:

(1) the donor or donors; and

(2) the parent or parents who consented to the assisted reproduction pursuant to Subsection A of this section or a child who was born as a result of the assisted reproduction pursuant to Subsection A of this section if the child is eighteen years of age or older.

Chapter 215 Section 7-705 Laws 2009

Section 7-705. LIMITATION ON HUSBAND'S DISPUTE OF PATERNITY.--

A. Except as otherwise provided in Subsection B of this section, the husband of a wife who gives birth to a child by means of assisted reproduction shall not challenge his paternity of the child unless:

(1) within two years after learning of the birth of the child, he commences a proceeding to adjudicate his paternity; and

(2) the district court finds that he did not consent to the assisted reproduction, before or after birth of the child.

B. A proceeding to adjudicate paternity may be maintained at any time if the district court determines that:

(1) the husband did not provide sperm for or, before or after the birth of the child, consent to assisted reproduction by his wife;

(2) the husband and the mother of the child have not cohabited since the probable time of assisted reproduction; and

(3) the husband never openly held out the child as his own.

C. The limitation provided in this section applies to a marriage dissolved or declared invalid after assisted reproduction.

Chapter 215 Section 7-706 Laws 2009

Section 7-706. EFFECT OF DISSOLUTION OF MARRIAGE OR WITHDRAWAL OF CONSENT.--

A. If a marriage is dissolved before placement of eggs, sperm or embryos, the former spouse is not a parent of the resulting child unless the former spouse consented in a signed record that if assisted reproduction were to occur after a divorce the former spouse would be a parent of the child.

B. Unless otherwise agreed in a signed record, the consent of a woman or a man to assisted reproduction may be withdrawn by that person in a signed record delivered to the other person at any time before placement of eggs, sperm or embryos if the placement has not occurred within one year after the consent. A person who withdraws consent pursuant to this section is not a parent of the resulting child.

Chapter 215 Section 7-707 Laws 2009

Section 7-707. PARENTAL STATUS OF DECEASED PERSON.--If a person who consented in a record to be a parent by assisted reproduction dies before placement of eggs, sperm or embryos, the deceased person is not a parent of the resulting child unless the deceased spouse consented in a signed record that if assisted reproduction were to occur after death, the deceased person would be a parent of the child.

ARTICLE 8 GESTATIONAL AGREEMENTS

Chapter 215 Section 8-801 Laws 2009

Section 8-801. GESTATIONAL AGREEMENTS NOT AUTHORIZED OR PROHIBITED.--

A. The New Mexico Uniform Parentage Act does not authorize or prohibit an agreement between a woman and the intended parents:

(1) in which the woman relinquishes all rights as the parent of a child to be conceived by means of assisted reproduction; and

(2) that provides that the intended parents become the parents of the child.

B. If a birth results pursuant to a gestational agreement pursuant to Subsection A of this section and the agreement is unenforceable under other law of New Mexico, the parent-child relationship shall be determined pursuant to Article 2 of the New Mexico Uniform Parentage Act.

ARTICLE 9 MISCELLANEOUS PROVISIONS

Chapter 215 Section 9-901 Laws 2009

Section 9-901. UNIFORMITY OF APPLICATION AND CONSTRUCTION.--In applying and construing the Uniform Parentage 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 215 Section 9-902 Laws 2009

Section 9-902. SEVERABILITY.--If any provision of the New Mexico Uniform Parentage Act or its application to a person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the New Mexico Uniform Parentage Act that can be given effect without the invalid provision or application, and to this end, the provisions of the New Mexico Uniform Parentage Act are severable.

Chapter 215 Section 9-903 Laws 2009

Section 9-903. TRANSITIONAL PROVISION.--A proceeding to adjudicate parentage that was commenced before the effective date of the New Mexico Uniform Parentage Act is governed by the law in effect at the time the proceeding was commenced.

Chapter 215 Section 10 Laws 2009

Section 10. Section 24-14-2 NMSA 1978 (being Laws 1961, Chapter 44, Section 2, as amended) is amended to read:

"24-14-2. DEFINITIONS.--As used in the Vital Statistics Act:

A. "vital statistics" means the data derived from certificates and reports of birth, death, spontaneous fetal death and induced abortion and related reports;

B. "system of vital statistics" includes the registration, collection, preservation, amendment and certification of vital records and related activities,

including the tabulation, analysis and publication of statistical data derived from these records;

C. "filing" means the presentation of a certificate, report or other record of a birth, death, spontaneous fetal death or adoption for registration by the bureau;

D. "registration" means the acceptance by the bureau and the incorporation in its official records of certificates, reports or other records provided for in the Vital Statistics Act of births, deaths, spontaneous fetal deaths, adoptions and legitimations;

E. "live birth" means the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy, which after the expulsion or extraction breathes or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached;

F. "spontaneous fetal death" means death prior to the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy, results in other than a live birth and that is not an induced abortion; and death is indicated by the fact that, after the expulsion or extraction, the fetus does not breathe or show any other evidence of life, such as beating of the heart, pulsation of the umbilical cord or definite movement of voluntary muscles;

G. "dead body" means a human body, or parts of such body or bones thereof other than skeletal remains that can be classified as artifacts, dead within the meaning of Section 12-2-4 NMSA 1978;

H. "final disposition" means the burial, interment, cremation, entombment, pulverization or other authorized disposition of a dead body or fetus;

I. "department" means the department of health;

J. "court" means a court of competent jurisdiction;

K. "state registrar" means the designated employee of the bureau;

L. "vital records" means certificates of birth and death;

M. "induced abortion" means the purposeful interruption of pregnancy with the intention other than to produce a live-born infant;

N. "physician" means a person authorized or licensed to practice medicine or osteopathy pursuant to the laws of this state;

O. "institution" means any establishment, public or private:

treatment; (1) that provides in-patient medical, surgical or diagnostic care or

(2) that provides nursing, custodial or domiciliary care; or

(3) to which persons are committed by law; and

P. "bureau" means the vital records and health statistics bureau of the department."

Chapter 215 Section 11 Laws 2009

Section 11. Section 24-14-3 NMSA 1978 (being Laws 1961, Chapter 44, Section 3, as amended) is amended to read:

"24-14-3. VITAL RECORDS AND HEALTH STATISTICS BUREAU--STATE SYSTEM.--There is established in the department a "vital records and health statistics bureau" for the purpose of installing, maintaining and operating a system of vital statistics throughout this state and carrying out all regulations relating to vital records and health statistics established by the department."

Chapter 215 Section 12 Laws 2009

Section 12. Section 24-14-4 NMSA 1978 (being Laws 1961, Chapter 44, Section 4, as amended) is amended to read:

"24-14-4. STATE REGISTRAR--APPOINTMENT.--The secretary of the department shall appoint the state registrar in accordance with the provisions of the Personnel Act."

Chapter 215 Section 13 Laws 2009

Section 13. Section 24-14-5 NMSA 1978 (being Laws 1961, Chapter 44, Section 5, as amended) is amended to read:

"24-14-5. DUTIES OF STATE REGISTRAR.--

A. The state registrar shall:

(1) administer and enforce the Vital Statistics Act and regulations issued pursuant to it and issue instructions for the efficient administration of the system of vital records and health statistics;

(2) direct and supervise the system of vital records and health statistics and be custodian of its records;

(3) direct, supervise and control the activities of all public employees, other than hospital employees, when they are engaged in activities pertaining to the operation of the system of vital records and health statistics;

(4) prescribe, with the approval of the department and after consultation with medical records professionals in the state, furnish and distribute such forms as are required by the Vital Statistics Act;

(5) prepare and publish reports of vital records and health statistics of this state and such other reports as may be required by the department;

(6) conduct training programs to promote uniformity of policy and procedures throughout the state; and

(7) provide to local health agencies copies of or data derived from certificates and reports required under the Vital Statistics Act as determined necessary for local health planning and program activities. The copies or data shall remain the property of the bureau, and the uses that may be made of them shall be prescribed by the state registrar.

B. The state registrar may establish or designate offices in the state to aid in the efficient administration of the system of vital records and health statistics and may delegate such functions and duties vested in the state registrar to employees of the bureau and to employees of any office of the state or political subdivision designated to aid in administering the Vital Statistics Act."

Chapter 215 Section 14 Laws 2009

Section 14. Section 24-14-12 NMSA 1978 (being Laws 1961, Chapter 44, Section 12, as amended) is amended to read:

"24-14-12. FORM AND CONTENTS OF CERTIFICATES AND REPORTS.--

A. In order to promote and maintain uniformity in the system of vital records and health statistics, the forms of certificates, reports and other returns required by the Vital Statistics Act or by regulations adopted pursuant to that act shall include as a minimum the items recommended by the federal agency responsible for national vital records and health statistics, subject to the approval of modifications by the department.

B. Each certificate, report and other document required to be registered under the Vital Statistics Act shall be on a form or in a format prescribed by the state registrar.

C. All vital records shall contain the date received for registration.

D. Information required in certificates or reports required or authorized by the Vital Statistics Act may be filed and registered by photographic, electronic or other means as prescribed by the state registrar; provided that certificates shall be filed and registered by either physical or photographic means."

Chapter 215 Section 15 Laws 2009

Section 15. Section 24-14-13 NMSA 1978 (being Laws 1961, Chapter 44, Section 13, as amended) is amended to read:

"24-14-13. BIRTH REGISTRATION.--

A. A certificate of birth for each live birth that occurs in this state shall be filed with the bureau or as otherwise directed by the state registrar within ten days after the birth and shall be registered if it has been completed and filed in accordance with this section. When a birth, however, occurs on a moving conveyance, a birth certificate shall be registered in this state and the place where the child is first removed shall be considered the place of birth.

B. When a birth occurs in an institution, the person in charge of the institution or the person's designated representative shall obtain the personal data, prepare the certificate of birth, secure the signatures required and file it as directed in this section. The physician or other person in attendance shall certify the medical information required by the certificate of birth within ten working days after the birth in accordance with policies established by the institution where the birth occurred. The person in charge of the institution or the person's designee shall complete and sign the certificate of birth.

C. When a birth occurs outside an institution, the certificate of birth shall be prepared and filed by one of the following in the indicated order of priority:

(1) the physician in attendance at or immediately after the birth;

(2) any other person in attendance at or immediately after the birth;

or

(3) the father, the mother or, in the absence of the father and the inability of the mother, the person in charge of the premises where the birth occurred.

D. If the mother was married at the time of either conception or birth, the name of the husband shall be entered on the certificate of birth as the father of the child, unless paternity has been determined pursuant to Subsection F or G of this section or by a court, in which case the name of the father as determined pursuant to Subsection F or G of this section or by the court shall be entered.

E. If the mother was not married at the time of either conception or birth, but the mother and father have signed under penalty of perjury an acknowledgment of paternity on a form provided by the bureau pursuant to the New Mexico Uniform Parentage Act, the father's name, date of birth and social security number shall be entered on the acknowledgment of paternity. The name of the father shall not be entered on the certificate of birth without such a written acknowledgment of paternity signed under penalty of perjury by the mother and the person to be named as the father, unless a determination of paternity has been made by a court, in which case the name of the father as determined by the court shall be entered.

F. At or before the birth of a child to an unmarried woman, the person in charge of the institution, a designated representative, the attending physician or midwife shall:

(1) provide an opportunity for the child's mother and father to sign under penalty of perjury an acknowledgment of paternity on a form provided by the bureau pursuant to the New Mexico Uniform Parentage Act. The completed acknowledgment of paternity shall be filed with the bureau. The acknowledgment shall contain or have attached to it:

(a) a statement by the mother consenting to the assertion of paternity;

(b) a statement by the father that he is the father of the child;

(c) written information, furnished by the human services department, explaining the implications of signing, including legal parental rights and responsibilities; and

(d) the social security numbers of both parents; and

(2) provide written information, furnished by the human services department, to the mother and father, regarding the benefits of having the child's paternity established and of the availability of paternity establishment services and child support enforcement services.

G. If a married mother claims that her husband is not the father of the child, the husband signs under penalty of perjury a denial of paternity on a form provided by the bureau pursuant to the New Mexico Uniform Parentage Act and the non-husband agrees that he is the father, an acknowledgment of paternity may be signed under penalty of perjury by the mother and the non-husband. Upon filing the acknowledgment of paternity and the denial of paternity with the bureau, the name of the non-husband shall be entered on the certificate of birth as the father.

H. Pursuant to an interagency agreement for proper reimbursement, the bureau shall make available to the human services department the birth certificate, the

mother's and father's social security numbers and paternity acknowledgments or denials. The human services department shall use these records only in conjunction with its duties as the state IV-D agency responsible for the child support program under Title IV-D of the federal Social Security Act.

I. Each party shall be provided with copies of any acknowledgment of paternity and any related denial of paternity.

J. The forms of acknowledgment of paternity and denial of paternity furnished by the bureau shall comply with the requirements of the New Mexico Uniform Parentage Act and shall be provided in English and in Spanish."

Chapter 215 Section 16 Laws 2009

Section 16. Section 24-14-16 NMSA 1978 (being Laws 1961, Chapter 44, Section 16, as amended) is amended to read:

"24-14-16. JUDICIAL PROCEDURE TO ESTABLISH FACTS OF BIRTH.--

A. If a delayed certificate of birth is rejected under the provisions of Section 24-14-15 NMSA 1978, a petition may be filed with a court for an order establishing a record of the date and place of the birth and the parentage of the person whose birth is to be registered.

B. The petition shall allege that:

(1) the person for whom a delayed certificate of birth is sought was born in this state;

(2) no record of birth of the person can be found in the bureau;

(3) diligent efforts by the petitioner have failed to obtain the evidence required in accordance with Section 24-14-15 NMSA 1978;

(4) the state registrar has refused to register a delayed certificate of birth; and

(5) any other allegations as may be required.

C. The petition shall be accompanied by a statement of the registration official made in accordance with Section 24-14-15 NMSA 1978 and all documentary evidence that was submitted to the registration official in support of the registration. The petition shall be sworn to by the petitioner.

D. The court shall fix a time and place for hearing the petition and shall give the registration official who refused to register the petitioner's delayed certificate of

birth ten days' notice of the hearing. The official or the official's authorized representative may appear and testify in the proceeding.

E. If the court finds from the evidence presented that the person for whom a delayed certificate of birth is sought was born in this state, it shall make findings as to the place and date of birth, parentage and other findings as the case may require and shall issue an order to establish a record of birth. This order shall include the birth data to be registered, a description of the evidence presented in the manner prescribed by Section 24-14-15 NMSA 1978 and the date of the court's action.

F. The court shall determine the parent-child relationship of the mother and father pursuant to the New Mexico Uniform Parentage Act.

G. The clerk of the court shall forward each order to the state registrar not later than the tenth day of the calendar month following the month in which it was entered. The order shall be registered by the state registrar and shall constitute the record of birth from which copies may be issued in accordance with Sections 24-14-28 and 24-14-29 NMSA 1978."

Chapter 215 Section 17 Laws 2009

Section 17. Section 24-14-25 NMSA 1978 (being Laws 1961, Chapter 44, Section 23, as amended) is amended to read:

"24-14-25. CORRECTION AND AMENDMENT OF VITAL RECORDS.--

A. A certificate or report registered under the Vital Statistics Act may be amended only in accordance with that act and regulations adopted by the department pursuant to that act to protect the integrity and accuracy of vital records and health statistics.

B. Upon receipt of a certified copy of a court order changing the name of a person born in this state and upon request of the person or the person's parent, guardian or legal representative, the state registrar shall amend the original certificate of birth to reflect the new name.

C. Upon request and receipt of an acknowledgement of paternity signed under penalty of perjury by both parents of a child born to an unmarried mother or, in the case of a married mother, upon receipt of an acknowledgment of paternity signed under penalty of perjury by the mother and the non-husband and of a denial of paternity signed under penalty of perjury by the husband, the state registrar shall amend a certificate of birth to show the paternity if paternity is not shown on the birth certificate. The certificate of birth shall not be marked "amended".

D. Upon receipt of a statement signed under penalty of perjury by the person in charge of an institution or from the attending physician indicating that the sex

of an individual born in this state has been changed by surgical procedure, together with a certified copy of an order changing the name of the person, the certificate of birth of the individual shall be amended as prescribed by regulation.

E. When an applicant does not submit the minimum documentation required in the regulations for amending a vital record or when the state registrar has reasonable cause to question the validity or adequacy of the applicant's statements or statements made under penalty of perjury or the documentary evidence and if the deficiencies are not corrected, the state registrar shall not amend the vital records and shall advise the applicant of the reason for this action.

F. A certificate or report that is amended under this section shall be marked "amended", except as otherwise provided in Subsection C of this section. The date of the amendment and a summary description of the evidence submitted in support of the amendment shall be endorsed on or made a part of the record. The department shall prescribe by regulation the conditions under which additions or minor corrections may be made to certificates or records within one year after the date of the event without the certificate or record being marked "amended".

Chapter 215 Section 18 Laws 2009

Section 18. Section 32A-5-20 NMSA 1978 (being Laws 1993, Chapter 77, Section 147) is amended to read:

"32A-5-20. PUTATIVE FATHER REGISTRY--NOTICE--PENALTY.--

A. The purpose of the putative father registry is to protect the parental rights of fathers who affirmatively assume responsibility for children they may have fathered and to expedite adoptions of children whose biological fathers are unwilling to assume responsibility for their children by registering with the putative father registry or otherwise acknowledging their children. The registry does not relieve the obligation of mothers to identify known fathers.

B. A putative father registry shall be established by the department of health to record the names and addresses of:

(1) any person adjudicated by a court of this state to be the father of a child;

(2) any person who has filed with the registry, before or after birth of a child out of wedlock, a notice of intent to claim paternity of the child;

(3) any person who has filed with the registry an instrument acknowledging paternity; or

(4) any person adjudicated by a court of another state or territory of the United States to be the father of an out-of-wedlock child, when a certified copy of the court order has been filed with the registry.

C. A person filing a notice of intent to claim paternity of a child or an acknowledgment of paternity shall include in the notice the following:

(1) his name;

(2) his current address;

(3) the mother's name and any other identifying information requested by the department of health; and

(4) the child's name, if known, and any other identifying information requested by the department of health.

D. If the person filing the notice of intent to claim paternity of a child or acknowledgment changes his address, the person shall notify the department of health of his new address in the manner prescribed by the department of health.

E. A person who has filed a notice of intent to claim paternity may at any time revoke a notice of intent to claim paternity previously filed. Upon receipt by the registry of the notice of revocation, the revoked notice of intent to claim paternity shall be deemed a nullity nunc pro tunc.

F. No registration fee shall be charged for registering the intent to claim paternity of a child or acknowledgment of paternity. The department of health may charge a reasonable fee as prescribed by regulation for processing searches of the putative father registry.

G. An unrevoked notice of intent to claim paternity of a child may be introduced in evidence by any party in any proceeding in which that fact may be relevant.

H. If a father-child relationship has not been established pursuant to the New Mexico Uniform Parentage Act, a petitioner for adoption of or termination of parental rights regarding a child shall obtain a certificate of search of the putative father registry.

I. If a petitioner for adoption of or termination of parental rights regarding a child has reason to believe that the conception or birth of the child may have occurred in another state, the petitioner shall also obtain a certificate of search from the putative father registry, if any, in that state.

J. The department of health shall furnish to the requester a certificate of search of the registry on request of any court, a state agency, the department, the petitioner's attorney or the mother of the child. The information shall not be disclosed to any other person, except upon order of the court for good cause shown. The requester shall furnish the department with a stamped, self-addressed reply envelope.

K. A certificate provided by the department of health shall be signed on behalf of the department of health and state that:

(1) a search has been made of the registry; and

(2) a registration containing the information required to identify the registrant:

(a) has been found and is attached to the certificate of search; or

(b) has not been found.

L. A petitioner shall file the certificate of search with the district court before a proceeding for adoption of or termination of parental rights regarding a child may be concluded.

M. Subject to any rules established by the New Mexico supreme court, a certificate of search of the registry of paternity in this or another state is admissible in a proceeding for adoption of or termination of parental rights regarding a child and, if relevant, in other legal proceedings.

N. The department of health may promulgate any regulations or forms necessary to implement the provisions of this section.

O. Any person who intentionally and unlawfully releases information from the putative father registry to the public or makes any other unlawful use of the information in violation of the provisions of this section is guilty of a petty misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978."

Chapter 215 Section 19 Laws 2009

Section 19. REPEAL.--Sections 40-11-1 through 40-11-23 NMSA 1978 (being Laws 1986, Chapter 47, Sections 1 through 23, as amended) are repealed.

Chapter 215 Section 20 Laws 2009

Section 20. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 2010.

Senate Bill 463, aa

Approved April 7, 2009

LAWS 2009, CHAPTER 216

AN ACT

RELATING TO BUSINESS; ENACTING A NEW SECTION OF THE PUBLIC REGULATION COMMISSION ACT; PROVIDING FOR THE REGULATION OF PROPANE SERVICE.

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

Chapter 216 Section 1 Laws 2009

Section 1. A new section of the Public Regulation Commission Act is enacted to read:

"PROPANE SERVICE--COMMISSION DUTIES.--

A. The commission shall adopt rules to protect consumers' rights with respect to propane service.

B. The commission shall report by December 2009 to the appropriate interim legislative committee appointed by the New Mexico legislative council on the progress of the rulemaking pursuant to this section."

SCORC/Senate Bill 468

Approved April 7, 2009

LAWS 2009, CHAPTER 217

AN ACT

RELATING TO PUBLIC SCHOOLS; AMENDING THE PUBLIC SCHOOL CODE TO INCLUDE MARRIAGE AND FAMILY THERAPISTS AS INSTRUCTIONAL SUPPORT PROVIDERS; PROVIDING FOR MARRIAGE AND FAMILY THERAPISTS TO BE LICENSED BY THE PUBLIC EDUCATION DEPARTMENT TO WORK IN PUBLIC SCHOOLS.

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

Chapter 217 Section 1 Laws 2009

Section 1. Section 22-1-2 NMSA 1978 (being Laws 2003, Chapter 153, Section 3, as amended) is amended to read:

"22-1-2. DEFINITIONS.--As used in the Public School Code:

A. "academic proficiency" means mastery of the subject-matter knowledge and skills specified in state academic content and performance standards for a student's grade level;

B. "adequate yearly progress" means the measure adopted by the department based on federal requirements to assess the progress that a public school or school district or the state makes toward improving student achievement;

C. "commission" means the public education commission;

D. "department" means the public education department;

E. "forty-day report" means the report of qualified student membership of each school district and of those eligible to be qualified students but enrolled in a private school or a home school for the first forty days of school;

F. "home school" means the operation by the parent of a school-age person of a home study program of instruction that provides a basic academic educational program, including reading, language arts, mathematics, social studies and science;

G. "instructional support provider" means a person who is employed to support the instructional program of a school district, including educational assistant, school counselor, social worker, school nurse, speech-language pathologist, psychologist, physical therapist, occupational therapist, recreational therapist, marriage and family therapist, interpreter for the deaf and diagnostician;

H. "licensed school employee" means teachers, school administrators and instructional support providers;

I. "local school board" means the policy-setting body of a school district;

J. "local superintendent" means the chief executive officer of a school district;

K. "parent" includes a guardian or other person having custody and control of a school-age person;

L. "private school" means a school, other than a home school, that offers on-site programs of instruction and that is not under the control, supervision or management of a local school board;

M. "public school" means that part of a school district that is a single attendance center in which instruction is offered by one or more teachers and is discernible as a building or group of buildings generally recognized as either an elementary, middle, junior high or high school or any combination of those and includes a charter school;

N. "school" means a supervised program of instruction designed to educate a student in a particular place, manner and subject area;

O. "school administrator" means a person licensed to administer in a school district and includes school principals and central district administrators;

P. "school-age person" means a person who is at least five years of age prior to 12:01 a.m. on September 1 of the school year and who has not received a high school diploma or its equivalent. A maximum age of twenty-one shall be used for a person who is classified as special education membership as defined in Section 22-8-21 NMSA 1978 or as a resident of a state institution;

Q. "school building" means a public school, an administration building and related school structures or facilities, including teacher housing, that is owned, acquired or constructed by the school district as necessary to carry out the functions of the school district;

R. "school bus private owner" means a person, other than a school district, the department, the state or any other political subdivision of the state, that owns a school bus;

S. "school district" means an area of land established as a political subdivision of the state for the administration of public schools and segregated geographically for taxation and bonding purposes;

T. "school employee" includes licensed and nonlicensed employees of a school district;

U. "school principal" means the chief instructional leader and administrative head of a public school;

V. "school year" means the total number of contract days offered by public schools in a school district during a period of twelve consecutive months;

W. "secretary" means the secretary of public education;

X. "state agency" or "state institution" means the New Mexico military institute, New Mexico school for the blind and visually impaired, New Mexico school for the deaf, New Mexico boys' school, girls' welfare home, New Mexico youth diagnostic and development center, Sequoyah adolescent treatment center, Carrie Tingley crippled children's hospital, New Mexico behavioral health institute at Las Vegas and any other state agency responsible for educating resident children;

Y. "state educational institution" means an institution enumerated in Article 12, Section 11 of the constitution of New Mexico;

Z. "substitute teacher" means a person who holds a certificate to substitute for a teacher in the classroom;

AA. "teacher" means a person who holds a level one, two or three-A license and whose primary duty is classroom instruction or the supervision, below the school principal level, of an instructional program or whose duties include curriculum development, peer intervention, peer coaching or mentoring or serving as a resource teacher for other teachers;

BB. "certified school instructor" means a teacher or instructional support provider; and

CC. "certified school employee" or "certified school personnel" means a licensed school employee."

Chapter 217 Section 2 Laws 2009

Section 2. Section 22-10A-17 NMSA 1978 (being Laws 2003, Chapter 153, Section 48, as amended) is amended to read:

"22-10A-17. INSTRUCTIONAL SUPPORT PROVIDER LICENSES.--

A. The department shall license instructional support providers, including educational assistants, school counselors, school social workers, school nurses, speech-language pathologists, psychologists, physical therapists, physical therapy assistants, occupational therapists, occupational therapy assistants, recreational therapists, marriage and family therapists, interpreters for the deaf, diagnosticians and other service providers. The department may provide a professional licensing framework in which licensees can advance in their careers through the demonstration of increased competencies and the undertaking of increased duties.

B. The department shall provide by rule for the requirements for licensure of types of instructional support providers. If an instructional support provider practices a licensed profession, the provider shall provide evidence satisfactory to the department that the provider holds a current, unsuspended license in the profession for which the provider is applying to provide instructional support services. The instructional support

provider shall notify the school district and department immediately if the provider's professional license is suspended, revoked or denied. Suspension, revocation or denial of a professional license shall be just cause for discharge or termination and suspension, revocation or denial of the instructional support provider license."

Senate Bill 484

Approved April 7, 2009

LAWS 2009, CHAPTER 218

AN ACT

RELATING TO PUBLIC FINANCE; AUTHORIZING LOCAL GOVERNING BODIES TO ACCEPT PAYMENT BY CREDIT CARD OR ELECTRONIC TRANSFER.

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

Chapter 218 Section 1 Laws 2009

Section 1. Section 6-10-1.2 NMSA 1978 (being Laws 1999, Chapter 176, Section 1) is amended to read:

"6-10-1.2. PAYMENT METHODS AUTHORIZED.--A state agency or local governing body may accept payment by credit card or electronic means of any amount due under any law or program administered by the agency or local governing body. The state board of finance shall adopt rules on the terms and conditions of a state agency accepting payments by credit card or electronic transfer. The local governing body shall adopt procedures, subject to the approval of the department of finance and administration, on the terms and conditions of accepting payments by credit card or electronic transfer."

Senate Bill 510

Approved April 7, 2009

LAWS 2009, CHAPTER 219

AN ACT

RELATING TO PUBLIC LANDS; PROVIDING THAT BUSINESS LEASES FOR REAL ESTATE PLANNING OR DEVELOPMENT PURPOSES SHALL BE ISSUED ONLY AFTER NOTICE AND COMPETITIVE BID.

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

Chapter 219 Section 1 Laws 2009

Section 1. Section 19-7-9 NMSA 1978 (being Laws 1971, Chapter 93, Section 1, as amended) is amended to read:

"19-7-9. SALE AND LEASE OF STATE LANDS--CONVEYANCE FOR TERM OF YEARS--TERMS AND CONDITIONS.--Any state lands offered for sale by the commissioner may be sold at the commissioner's discretion for cash or upon payment of not less than one-tenth of the purchase price in cash and payment of the balance in amortized installments for any period up to thirty years with interest on the principal balance at a rate to be set by the commissioner in the notice of auction pertaining to the particular sale in advance. Additional payments on the principal may be made at any time, but such payments shall not be effective for credit until the date the next installment is due. The purchase contract shall be upon a form prescribed by the commissioner prior to publication of the notice of auction and shall contain the terms and conditions the commissioner may deem to be in the best interest of the state and consistent with law. Should a purchaser die before completing the contract, the due date of the next installment payment shall, upon written application, be deferred by the commissioner for one year. In addition, the commissioner is authorized to convey for any period of time state lands under the commissioner's jurisdiction having value for commercial development or public use purposes, provided that:

A. all of the requirements for the disposition of lands set forth in the constitution of New Mexico and the New Mexico Enabling Act are complied with, including but not limited to those pertaining to appraisal at true value, advertising and public auction;

B. the term and nature of the estate to be conveyed is set forth in the public notice of auction pertaining to the particular conveyance; and

C. if the conveyance is a business lease for real estate planning or development purposes, then, notwithstanding the term of the lease, it shall only be issued after notice and competitive bid."

Senate Bill 540

Approved April 7, 2009

LAWS 2009, CHAPTER 220

AN ACT

RELATING TO HEALTH CARE FOR MINORS; AMENDING THE UNIFORM HEALTH-CARE DECISIONS ACT REGARDING MINORS FOURTEEN YEARS OF AGE OR OLDER WHO ARE NOT EMANCIPATED.

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

Chapter 220 Section 1 Laws 2009

Section 1. Section 24-7A-17 NMSA 1978 (being Laws 1995, Chapter 182, Section 17) is amended to read:

"24-7A-17. SHORT TITLE.--Chapter 24, Article 7A NMSA 1978 may be cited as the "Uniform Health-Care Decisions Act"."

Chapter 220 Section 2 Laws 2009

Section 2. Section 24-7A-6.1 NMSA 1978 (being Laws 1997, Chapter 168, Section 13) is amended to read:

"24-7A-6.1. LIFE-SUSTAINING TREATMENT FOR UNEMANCIPATED MINORS.--

A. Except as otherwise provided by law, a parent or guardian of an unemancipated minor may make that minor's health-care decisions.

B. A parent or guardian of an unemancipated minor shall have the authority to withhold or withdraw life-sustaining treatment for the unemancipated minor, subject to the provisions of this section and the standards for surrogate decision-making for adults provided for in the Uniform Health-Care Decisions Act.

C. Subject to the provisions of Subsection B of this section, if an unemancipated minor has capacity sufficient to understand the nature of that unemancipated minor's medical condition, the risks and benefits of treatment and the contemplated decision to withhold or withdraw life-sustaining treatment, that unemancipated minor shall have the authority to withhold or withdraw life-sustaining treatment.

D. For purposes of Subsection C of this section, a determination of the mental and emotional capacity of an unemancipated minor shall be determined by two qualified health-care professionals, one of whom shall be the unemancipated minor's primary physician and the other of whom shall be a physician that works with

unemancipated minors of the minor's age in the ordinary course of that physician's health-care practice. If the unemancipated minor lacks capacity due to mental illness or developmental disability, one of the qualified health-care professionals shall be a person whose training and expertise aid in the assessment of functional impairment.

E. If the unemancipated minor's primary physician has reason to believe that a parent or guardian of an unemancipated minor, including a non-custodial parent, has not been informed of a decision to withhold or withdraw life-sustaining treatment, the primary physician shall make reasonable efforts to determine if the uninformed parent or guardian has maintained substantial and continuous contact with the unemancipated minor and, if so, shall make reasonable efforts to notify that parent or guardian before implementing a decision.

F. If there is disagreement regarding the decision to withhold or withdraw life-sustaining treatment for an unemancipated minor, the provisions of Section 24-7A-11 NMSA 1978 shall apply."

Chapter 220 Section 3 Laws 2009

Section 3. A new Section 24-7A-6.2 NMSA 1978 is enacted to read:

"24-7A-6.2. CONSENT TO HEALTH CARE FOR CERTAIN MINORS
FOURTEEN YEARS OF AGE OR OLDER.--

A. An unemancipated minor fourteen years of age or older who has capacity to consent may give consent for medically necessary health care; provided that the minor is:

- (1) living apart from the minor's parents or legal guardian; or
- (2) the parent of a child.

B. For purposes of this section, "medically necessary health care" means clinical and rehabilitative, physical, mental or behavioral health services that are:

- (1) essential to prevent, diagnose or treat medical conditions or that are essential to enable an unemancipated minor to attain, maintain or regain functional capacity;
- (2) delivered in the amount and setting with the duration and scope that is clinically appropriate to the specific physical, mental and behavioral health-care needs of the minor;
- (3) provided within professionally accepted standards of practice and national guidelines; and

(4) required to meet the physical, mental and behavioral health needs of the minor, but not primarily required for convenience of the minor, health-care provider or payer.

C. The consent of the unemancipated minor to examination or treatment pursuant to this section shall not be disaffirmed because of minority.

D. The parent or legal guardian of an unemancipated minor who receives medically necessary health care is not liable for payment for those services unless the parent or legal guardian has consented to such medically necessary health care; provided that the provisions of this subsection do not relieve a parent or legal guardian of liability for payment for emergency health care provided to an unemancipated minor.

E. A health-care provider or a health-care institution shall not be liable for reasonably relying on statements made by an unemancipated minor that the minor is eligible to give consent pursuant to Subsection A of this section.

F. Nothing in this section shall otherwise limit the rights of an unemancipated minor to consent to treatment, nor shall this section be read to conflict with the rights of parents and children pursuant to the Children's Mental Health and Developmental Disabilities Act."

Senate Bill 569, aa

Approved April 7, 2009

LAWS 2009, CHAPTER 221

AN ACT

RELATING TO INSTRUCTIONAL MATERIALS; TRANSFERRING THE RESPONSIBILITY FOR INSTRUCTIONAL MATERIALS FOR ADULT BASIC EDUCATION FROM THE PUBLIC EDUCATION DEPARTMENT TO THE HIGHER EDUCATION DEPARTMENT; ALLOWING PRIVATE SCHOOLS TO PURCHASE OFF THE MULTIPLE LIST; LIMITING PRIVATE SCHOOL PURCHASES TO IN-STATE DEPOSITORIES; CLARIFYING PROVISIONS OF THE INSTRUCTIONAL MATERIAL FUND; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2007.

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

Chapter 221 Section 1 Laws 2009

Section 1. Section 21-1-27.6 NMSA 1978 (being Laws 1995, Chapter 56, Section 2, as amended) is amended to read:

"21-1-27.6. ADULT BASIC EDUCATION--DISTRIBUTION OF MONEY--OBJECTIVE FORMULA--HIGHER EDUCATION DEPARTMENT--ADOPTION OF FORMULA.--The higher education department in consultation with representatives of adult basic education administrative sites shall create an equitable formula for the distribution of money in the adult basic education fund, including funding for instructional materials for adult basic education students. In establishing an equitable formula, the department shall consider the types of programs conducted, the cost of service delivery, the types and cost of instructional materials and the socioeconomic profiles of the adult receiving services. The department shall review the formula and any proposed changes with the adult basic education administrative sites prior to adoption or amendment."

Chapter 221 Section 2 Laws 2009

Section 2. A new section of Chapter 21, Article 1 NMSA 1978 is enacted to read:

"ADULT BASIC EDUCATION--INSTRUCTIONAL MATERIALS.--The higher education department shall promulgate rules on the purchase and provision of instructional materials for the free use of adult basic education students. The rules shall include:

- A. the responsibilities of adult basic education administrative units as agents for the benefit of students entitled to the free use of instructional materials; and
- B. inventory and accounting procedures to be followed by the adult basic education administrative units."

Chapter 221 Section 3 Laws 2009

Section 3. Section 22-15-4 NMSA 1978 (being Laws 1967, Chapter 16, Section 208, as amended) is amended to read:

"22-15-4. BUREAU--DUTIES.--Subject to the policies and rules of the department, the bureau shall:

- A. administer the provisions of the Instructional Material Law;
- B. enforce rules for the handling, safekeeping and distribution of instructional material and instructional material funds and for inventory and accounting procedures to be followed by school districts, state institutions and private schools pursuant to the Instructional Material Law;

C. withdraw or withhold the privilege of participating in the free use of instructional material in case of any violation of or noncompliance with the provisions of the Instructional Material Law or any rules adopted pursuant to that law;

D. enforce rules relating to the use and operation of instructional material depositories in the instructional material distribution process; and

E. enforce rules that require local school boards to implement a process that ensures that parents and other community members are involved in the instructional material review process."

Chapter 221 Section 4 Laws 2009

Section 4. Section 22-15-5 NMSA 1978 (being Laws 1967, Chapter 16, Section 209, as amended) is amended to read:

"22-15-5. INSTRUCTIONAL MATERIAL FUND.--

A. The state treasurer shall establish a nonreverting fund to be known as the "instructional material fund". The fund consists of appropriations, gifts, grants, donations and any other money credited to the fund. The fund shall be administered by the department, and money in the fund is appropriated to the department to carry out the provisions of the Instructional Material Law.

B. The instructional material fund shall be used for the purpose of paying for the cost of purchasing instructional material pursuant to the Instructional Material Law. Transportation charges for the delivery of instructional material to a school district, a state institution or a private school as agent and emergency expenses incurred in providing instructional material to students may be included as a cost of purchasing instructional material. Charges for rebinding of used instructional material that appears on the multiple list pursuant to Section 22-15-8 NMSA 1978 may also be included as a cost of purchasing instructional material."

Chapter 221 Section 5 Laws 2009

Section 5. Section 22-15-7 NMSA 1978 (being Laws 1967, Chapter 16, Section 211, as amended) is amended to read:

"22-15-7. STUDENTS ELIGIBLE--DISTRIBUTION.--

A. Any qualified student or person eligible to become a qualified student attending a public school, a state institution or a private school approved by the department in any grade from first through the twelfth grade of instruction is entitled to the free use of instructional material. Any student enrolled in an early childhood education program as defined by Section 22-13-3 NMSA 1978 or person eligible to become an early childhood education student as defined by that section attending a

private early childhood education program approved by the department is entitled to the free use of instructional material.

B. Instructional material shall be distributed to school districts, state institutions and private schools as agents for the benefit of students entitled to the free use of the instructional material.

C. Any school district, state institution or private school as agent receiving instructional material pursuant to the Instructional Material Law is responsible for distribution of the instructional material for use by eligible students and for the safekeeping of the instructional material."

Chapter 221 Section 6 Laws 2009

Section 6. Section 22-15-8 NMSA 1978 (being Laws 1967, Chapter 16, Section 212, as amended) is amended to read:

"22-15-8. MULTIPLE LIST--SELECTION--REVIEW PROCESS.--

A. The department shall adopt a multiple list to be made available to students pursuant to the Instructional Material Law. At least ten percent of instructional material on the multiple list concerning language arts and social studies shall contain material that is relevant to the cultures, languages, history and experiences of multi-ethnic students. The department shall ensure that parents and other community members are involved in the adoption process at the state level.

B. Pursuant to the provisions of the Instructional Material Law, each school district, state institution or private school as agent may select instructional material for the use of its students from the multiple list adopted by the department. Local school boards shall give written notice to parents and other community members and shall invite parental involvement in the adoption process at the district level. Local school boards shall also give public notice, which notice may include publication in a newspaper of general circulation in the school district.

C. The department shall establish by rule an instructional material review process for the adoption of instructional material on the multiple list. The process shall include:

(1) a summer review institute at which basal materials in the content area under adoption will be facilitated by content and performance experts in the content area and reviewed by reviewers;

(2) that level two and level three-A teachers are reviewers of record; provided that level one teachers, college students completing teacher preparation programs, parents and community leaders will be recruited and partnered with the reviewers of record;

(3) that reviewed materials shall be scored and ranked primarily against how well they align with state academic content and performance standards, but research-based effectiveness may also be considered; and

(4) the adoption of supplementary materials that are not reviewed.

D. Participants in the summer review institute shall receive a stipend commensurate with the level of responsibility and participation as determined by department rule.

E. The department shall charge a processing fee to vendors of instructional materials not to exceed the retail value of the instructional material submitted for adoption."

Chapter 221 Section 7 Laws 2009

Section 7. Section 22-15-9 NMSA 1978 (being Laws 1967, Chapter 16, Section 213, as amended by Laws 2007, Chapter 284, Section 1 and by Laws 2007, Chapter 285, Section 2) is amended to read:

"22-15-9. DISTRIBUTION OF FUNDS FOR INSTRUCTIONAL MATERIAL.--

A. On or before April 1 of each year, the department shall allocate to each school district, state institution or private school as agent not less than ninety percent of its estimated entitlement as determined from the estimated forty-day membership for the next school year. A school district's, state institution's or private school's entitlement is that portion of the total amount of the annual appropriation less a deduction for a reasonable reserve for emergency expenses that its forty-day membership bears to the forty-day membership of the entire state. For the purpose of this allocation, additional pupils shall be counted as six pupils. The allocation for adult basic education shall be based on a full-time equivalency obtained by multiplying the total previous year's enrollment by .25. The department shall transfer the amount of the allocation for adult basic education to the adult basic education fund.

B. On or before January 15 of each year, the department shall recompute each entitlement using the forty-day membership for that year, except for adult basic education, and shall allocate the balance of the annual appropriation adjusting for any over- or under-estimation made in the first allocation.

C. An amount not to exceed fifty percent of the allocations attributed to each school district or state institution may be used for instructional material not included on the multiple list provided for in Section 22-15-8 NMSA 1978, and up to twenty-five percent of this amount may be used for other classroom materials. The local superintendent may apply to the department for a waiver of the use of funds allocated for the purchase of instructional material either included or not included on the multiple list. If the waiver is granted, the school district shall not be required to submit a budget

adjustment request to the department. Private schools may expend up to fifty percent of their instructional material funds for items that are not on the multiple list; provided that no funds shall be expended for religious, sectarian or nonsecular materials; and provided further that all instructional material purchases shall be through an in-state depository.

D. The department shall establish procedures for the distribution of funds directly to school districts and state institutions. Prior to the final distribution of funds to any school district or charter school, the department shall verify that the local school board or governing body has adopted a policy that requires that every student have a textbook for each class that conforms to curriculum requirements and that allows students to take those textbooks home.

E. The department shall provide payment to an in-state depository on behalf of a private school for instructional material.

F. A school district or state institution that has funds remaining for the purchase of instructional material at the end of the fiscal year shall retain those funds for expenditure in subsequent years. Any balance remaining in an instructional material account of a private school at the end of the fiscal year shall remain available for reimbursement by the department for instructional material purchases in subsequent years."

Chapter 221 Section 8 Laws 2009

Section 8. Section 22-15-10 NMSA 1978 (being Laws 1967, Chapter 16, Section 214, as amended) is amended to read:

"22-15-10. SALE OR LOSS OR RETURN OF INSTRUCTIONAL MATERIAL.--

A. With the approval of the chief, instructional material acquired by a school district, state institution or private school pursuant to the Instructional Material Law may be sold at a price determined by officials of the school district, state institution or private school. The selling price shall not exceed the cost of the instructional material to the state.

B. A school district, state institution or private school may hold the parent or student responsible for the loss, damage or destruction of instructional material while the instructional material is in the possession of the student. A school district may withhold the grades, diploma and transcripts of the student responsible for damage or loss of instructional material until the parent or student has paid for the damage or loss. When a parent or student is unable to pay for damage or loss, the school district shall work with the parent or student to develop an alternative program in lieu of payment. Where a parent is determined to be indigent according to guidelines established by the department, the school district shall bear the cost.

C. A school district or state institution that has funds remaining for the purchase of instructional material at the end of the fiscal year shall retain those funds for expenditure in subsequent years.

D. All money collected by a private school for the sale, loss, damage or destruction of instructional material received pursuant to the Instructional Material Law shall be sent to the department.

E. Upon order of the chief, a school district, state institution or private school shall transfer to the department or its designee instructional material, purchased with instructional material funds, that is in usable condition and for which there is no use expected by the respective schools."

Chapter 221 Section 9 Laws 2009

Section 9. Section 22-15-11 NMSA 1978 (being Laws 1967, Chapter 16, Section 215, as amended) is amended to read:

"22-15-11. RECORD OF INSTRUCTIONAL MATERIAL.--Each school district, state institution or private school shall keep accurate records of all instructional material, including cost records, on forms and by procedures prescribed by the bureau."

Chapter 221 Section 10 Laws 2009

Section 10. Section 22-15-12 NMSA 1978 (being Laws 1967, Chapter 16, Section 216, as amended) is amended to read:

"22-15-12. ANNUAL REPORT.--Annually, at a time specified by the department, each local school board of a school district and each governing authority of a state institution or private school acquiring instructional material pursuant to the Instructional Material Law shall file a report with the department that includes an itemized list of instructional material purchased by the eligible entity, by vendor; the total cost of the instructional material; the average per-student cost; and the year-end cash balance."

Chapter 221 Section 11 Laws 2009

Section 11. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2010.

Senate Bill 575, aa

Approved April 7, 2009

LAWS 2009, CHAPTER 222

AN ACT

RELATING TO THE ELECTION CODE; TEMPORARILY FREEZING PRECINCT BOUNDARIES FOR REDISTRICTING PURPOSES; PROVIDING FOR THE ADJUSTMENT OF PRECINCT BOUNDARIES; PROVIDING FOR DELAYED REPEAL; DECLARING AN EMERGENCY.

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

Chapter 222 Section 1 Laws 2009

Section 1. SUSPENSION OF CERTAIN REQUIREMENTS--PRECINCT BOUNDARY FREEZE--EXCEPTIONS.--

A. For the purpose of redistricting following the federal decennial census, the authority of boards of county commissioners to create new precincts or to combine precincts and to alter their boundaries pursuant to Section 1-3-2, 1-3-3 or 4-38-21 NMSA 1978 is suspended from July 1, 2009 until January 31, 2012, and all precinct boundaries are frozen until January 31, 2012, except those precinct boundaries not in compliance with the provisions of the Precinct Boundary Adjustment Act.

B. The secretary of state may authorize a board of county commissioners to adjust precinct boundaries in accordance with the Precinct Boundary Adjustment Act and shall notify the legislative council service of any adjustments.

Chapter 222 Section 2 Laws 2009

Section 2. Section 1-3-12 NMSA 1978 (being Laws 1984 (1st S.S.), Chapter 3, Section 4, as amended) is amended to read:

"1-3-12. ADJUSTING PRECINCT BOUNDARIES.--

A. Before each federal decennial census, every precinct boundary shall be adjusted to coincide with a feature or a boundary that is:

(1) shown on the standard base maps developed pursuant to Subsection B of this section;

(2) a designated census block boundary on the proposed federal PL 94-171 2010 census block maps; or

(3) approved by the secretary of state and the bureau of the census.

B. Prior to commencement of the federal decennial census, the secretary of state shall have prepared and shall furnish to each county clerk standard base maps of the county. The standard base map for urban and nonurban areas of the county shall, as nearly as practical, show:

- (1) all state and federal highways;
- (2) all numbered and named county roads that have been certified to the department of transportation;
- (3) all military installation boundaries and federal and state prison boundaries;
- (4) all major railroad lines;
- (5) federal, state and county political boundaries, municipal boundaries and school district boundaries;
- (6) all streets within urban areas; and
- (7) other major terrain features such as flowing rivers and streams, arroyos, powerlines, pipelines, roads, trails and ridgelines and other acceptable census block boundaries.

C. The board of county commissioners and the county clerks, upon receipt of the standard base maps from the secretary of state, shall:

- (1) adjust all precinct boundaries to coincide with numbered or named street boundaries or suitable visible terrain features shown on the standard base map; provided that the precincts shall be composed of contiguous and compact areas, and state, county, municipal, school district and other political boundary lines shall serve as precinct boundaries whenever possible; and
- (2) upon the completion of the precinct boundary adjustments as required in this section, indicate on the standard base maps the boundaries for both urban and nonurban precincts and, together with a written description of the precincts, shall send an electronic copy in a format approved by the secretary of state or four copies of the precinct maps to the secretary of state for approval.

D. The precincts shown upon the standard base maps submitted pursuant to the provisions of this section and as revised and approved by the secretary of state pursuant to the Precinct Boundary Adjustment Act shall become the official precincts of each county for the 2011 redistricting. For the 2012 and subsequent primary and general elections, changes in precincts shall be made in accordance with the provisions of Chapter 1, Article 3 NMSA 1978.

E. A local public body, when creating or redrawing districts, shall not split a precinct into two or more districts for any elected office unless necessary to comply with federal law or to preserve communities of interest.

F. Precincts shall be designated solely by whole numbers."

Chapter 222 Section 3 Laws 2009

Section 3. Section 1-3-13 NMSA 1978 (being Laws 1983, Chapter 223, Section 4, as amended) is amended to read:

"1-3-13. SECRETARY OF STATE POWERS AND DUTIES.--

A. The secretary of state shall review all county precinct maps submitted pursuant to Section 1-3-12 NMSA 1978 for compliance with the provisions of the Precinct Boundary Adjustment Act. Those county precinct maps determined not to be in compliance with the precinct boundary criteria set forth in Subsection A of Section 1-3-12 NMSA 1978 shall be rejected and returned to the appropriate county clerk with a written statement setting forth those instances in which the map does not comply. The county clerk and the board of county commissioners shall make the required adjustments and resubmit one copy of the corrected county precinct map within thirty days after receiving notice of noncompliance.

B. Prior to January 1, 2012, if any precinct boundary adjustments are necessary to meet the legal and constitutional requirements of redistricting, the secretary of state shall notify any county of those boundary adjustments that are necessary in that county. Upon review and certification of the adjusted precinct boundaries, the county shall submit the certified precinct changes to the secretary of state for final approval of the precincts for the 2012 primary and general elections."

Chapter 222 Section 4 Laws 2009

Section 4. DELAYED REPEAL.--Section 1 of this act is repealed effective January 31, 2012.

Chapter 222 Section 5 Laws 2009

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

Approved April 7, 2009

LAWS 2009, CHAPTER 223

AN ACT

RELATING TO THE NEW MEXICO FINANCE AUTHORITY; EXPANDING THE LIST OF QUALIFIED ENTITIES AND PUBLIC PROJECTS FOR THE PURPOSES OF THE PUBLIC PROJECT REVOLVING FUND; AMENDING THE NEW MEXICO FINANCE AUTHORITY ACT.

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

Chapter 223 Section 1 Laws 2009

Section 1. Section 6-21-3 NMSA 1978 (being Laws 1992, Chapter 61, Section 3, as amended) is amended to read:

"6-21-3. DEFINITIONS.--As used in the New Mexico Finance Authority Act:

- A. "authority" means the New Mexico finance authority;
- B. "bond" means any bonds, notes, certificates of participation or other evidence of indebtedness;
- C. "bondholder" or "holder" means a person who is the owner of a bond, whether registered or not;
- D. "emergency public project" means a public project:
 - (1) made necessary by an unforeseen occurrence or circumstance threatening the public health, safety or welfare; and
 - (2) requiring the immediate expenditure of money that is not within the available financial resources of the qualified entity as determined by the authority;
- E. "public project" means the acquisition, construction, improvement, alteration or reconstruction of assets of a long-term capital nature by a qualified entity, including land; buildings; water rights; water, sewerage and waste disposal systems; streets; airports; municipal utilities; public recreational facilities; public transportation systems; parking facilities; and machinery, furniture and equipment. "Public project" includes all proposed expenditures related to the entire undertaking. "Public project" also includes the acquisition, construction or improvement of real property, buildings, facilities and other assets by the authority for the purpose of leasing the property;

F. "qualified entity" means the state or an agency or institution of the state or a county, municipality, school district, two-year public post-secondary educational institution, charter school, land grant corporation, acequia association, public improvement district, federally chartered college located in New Mexico, intercommunity water or natural gas supply association or corporation, special water, drainage, irrigation or conservancy district or other special district created pursuant to law, nonprofit foundation or other support organization affiliated with a public university, college or other higher educational institution located in New Mexico, including a university research park corporation, an Indian nation, tribe or pueblo located wholly or partially in New Mexico, including a political subdivision or a wholly owned enterprise of an Indian nation, tribe or pueblo or a consortium of those Indian entities or a consortium of any two or more qualified entities created pursuant to law; and

G. "security" or "securities", unless the context indicates otherwise, means bonds, notes or other evidence of indebtedness issued by a qualified entity or leases or certificates or other evidence of participation in the lessor's interest in and rights under a lease with a qualified entity and that are payable from taxes, revenues, rates, charges, assessments or user fees or from the proceeds of funding or refunding bonds, notes or other evidence of indebtedness of a qualified entity or from certificates or evidence of participation in a lease with a qualified entity."

Chapter 223 Section 2 Laws 2009

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.

SFC/Senate Bill 584

Approved April 7, 2009

LAWS 2009, CHAPTER 224

AN ACT

RELATING TO COUNTIES; REVISING THE POPULATION ACCOUNTING BASIS FOR CLASSIFYING COUNTIES; CHANGING THE EFFECTIVE DATE OF SALARY CLASSIFICATION.

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

Chapter 224 Section 1 Laws 2009

Section 1. Section 4-44-1 NMSA 1978 (being Laws 1957, Chapter 196, Section 1) is amended to read:

"4-44-1. CLASSIFICATION FOR SALARY PURPOSES.--

A. For the purpose of fixing salaries of county officers, the several counties of the state, except "H" class counties, are hereby classified as follows:

(1) those having a final, full assessed valuation of over seventy-five million dollars (\$75,000,000) and having a population of one hundred thousand persons or more as determined by the most current annual population data or estimate available from the United States census bureau, as class "A" counties;

(2) those having a final, full assessed valuation in excess of seventy-five million dollars (\$75,000,000) with a population less than one hundred thousand persons as determined by the most current annual population data or estimate available from the United States census bureau, as class "B" counties;

(3) those having a final, full assessed valuation in excess of forty-five million dollars (\$45,000,000) with a population less than one hundred thousand persons as determined by the most current annual population data or estimate available from the United States census bureau, as class "C" counties;

(4) those having a final, full assessed valuation of over fourteen million dollars (\$14,000,000), as counties of the first class;

(5) those having a final, full assessed valuation of eight million two hundred fifty thousand dollars (\$8,250,000) and under fourteen million dollars (\$14,000,000), as counties of the second class;

(6) those having a final, full assessed valuation of six million five hundred thousand dollars (\$6,500,000) and under eight million two hundred fifty thousand dollars (\$8,250,000), as counties of the third class;

(7) those having a final, full assessed valuation of four million seven hundred fifty thousand dollars (\$4,750,000) and under six million five hundred thousand dollars (\$6,500,000), as counties of the fourth class; and

(8) those having a final, full assessed valuation of less than four million seven hundred fifty thousand dollars (\$4,750,000), as counties of the fifth class.

B. The assessed valuation for each year shall be the full valuation as finally fixed for that year."

Chapter 224 Section 2 Laws 2009

Section 2. Section 4-44-2 NMSA 1978 (being Laws 1915, Chapter 12, Section 19, as amended) is amended to read:

"4-44-2. BIENNIAL DETERMINATION OF CLASSIFICATION.--From and after January 1, 1962, the classification of counties shall be fixed and governed by the assessed valuation as finally fixed for the preceding year. Provided, one hundred twenty days after January 1, 1962 and one hundred twenty days from January 1 of each second year thereafter, the classification shall be determined by the secretary of finance and administration from the assessed valuation of each county as finally fixed for the preceding year, and the secretary of finance and administration upon making the determination shall notify the board of county commissioners of each county of the class within which each of the counties of this state falls according to the classification, and the classification as so fixed and determined by the secretary of finance and administration shall govern the salaries of the county officers for two years beginning July 1 of the year the classification is determined."

Senate Bill 587

Approved April 7, 2009

LAWS 2009, CHAPTER 225

AN ACT

RELATING TO HEALTH CARE; PROVIDING FOR CONDITIONAL TUITION WAIVERS FOR MEDICAL STUDENTS WHO CHOOSE PRIMARY CARE PRACTICE IN UNDERSERVED AREAS OF THE STATE; MAKING AN APPROPRIATION.

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

Chapter 225 Section 1 Laws 2009

Section 1. SHORT TITLE.--This act may be cited as the "Conditional Tuition Waiver for Primary Care Medical Students Act".

Chapter 225 Section 2 Laws 2009

Section 2. DEFINITIONS.--As used in the Conditional Tuition Waiver for Primary Care Medical Students Act:

A. "course of study" means a medical student's medical education, including any residency program;

B. "department" means the higher education department;

C. "fund" means the primary care physician conditional tuition waiver program fund;

D. "participant" means an individual that has applied to participate in, has been accepted into and has signed a contract agreeing to the terms of the program;

E. "primary care physician" means a medical doctor with specialty training in family medicine, general internal medicine or general pediatrics;

F. "program" means the primary care physician conditional tuition waiver program;

G. "residency" means three years of specialty training in family medicine, general internal medicine or general pediatrics after medical school;

H. "secretary" means the secretary of higher education;

I. "underserved area" means a health care underserved area as defined in the Rural Primary Health Care Act;

J. "university" means the university of New Mexico school of medicine;
and

K. "waiver" means a loan to cover tuition, fees and a stipend that is forgiven in whole or in part if the participant renders service as a primary care physician in an underserved area of the state pursuant to the provisions of the Conditional Tuition Waiver for Primary Care Medical Students Act.

Chapter 225 Section 3 Laws 2009

Section 3. PRIMARY CARE PHYSICIAN CONDITIONAL TUITION WAIVER PROGRAM CREATED--ADMINISTRATION--RULEMAKING--SELECTION PROCESS--REPAYMENT.--

A. The "primary care physician conditional tuition waiver program" is created and shall be administered by the department. The department shall:

(1) promulgate rules for implementing the program in consultation with the university;

(2) publicize the program to medical students and to prospective medical students;

(3) collect and manage repayments from students who do not meet their obligations under the program; and

(4) solicit and accept funds for the program, including grants and donations.

B. A participant shall be a New Mexico resident and either a graduate of a New Mexico high school or a graduate of a New Mexico college or university.

C. The department shall select participants according to rules it promulgates and, in consultation with the university, shall create a standard process for medical students to declare their intentions to be primary care physicians and to apply to participate in the program.

D. The department shall award no more than ten new waivers a year, in addition to renewing existing waivers for eligible participants, subject to the availability of funding.

E. Participation in the program shall be evidenced by a contract between the participant and the department. The contract shall provide for the payment of a participant's medical school tuition, fees and a reasonable stipend at the university from the fund and shall be conditioned upon the participant fulfilling the program obligations. An applicant whom the department offers to accept for enrollment in the program shall sign the contract before being accepted into the program. The department shall award a waiver to a medical student upon accepting the student into the program.

F. The department shall promulgate rules setting the maximum amount of the reasonable living stipend. The department shall determine the maximum amount of the living stipend based upon the availability of funds and information provided by the university regarding the current cost of attendance at the school of medicine.

G. For a period of no more than five years, the department shall allow participants to remain in the program and receive continued waivers in accordance with the availability of funds and the department's finding that the participant is meeting the university's standards for satisfactory academic progress.

H. The department shall award waivers to participants from the fund. The department shall approve the amount of the waiver granted to a participant. The amount of the waiver awarded to a participant shall not exceed a reasonable living stipend plus the amount of resident tuition and fees that a participant incurs. A student may receive a waiver on the following terms:

(1) interest shall accrue upon termination of the participant's course of study; the waiver amount shall bear interest at the rate of:

(a) eighteen percent per year if the participant completes a course of study and no portion of the principal and interest is forgiven pursuant to Subsection J of this section; and

(b) seven percent per year in all other cases; and

(2) the maximum period for repayment shall be ten years, commencing six months from the date the participant completes or discontinues the course of study, including a residency.

I. The department shall promulgate rules to implement the provisions of the Conditional Tuition Waiver for Primary Care Medical Students Act.

J. The contract shall provide that the department forgive a portion of the waiver for each year that a participant practices as a primary care physician in an underserved area of New Mexico as defined in the Rural Primary Health Care Act.

K. The waiver shall be forgiven as follows:

(1) a waiver term of one year shall require one year of practice as a primary care physician in an underserved area of the state for the one-year term of the waiver received. Upon completion of service, one hundred percent of the waiver and accrued interest shall be forgiven;

(2) a waiver term of two years shall require two years of practice as a primary care physician in an underserved area of the state for the two-year term of the waiver received. Upon completion of the first year of service, fifty percent of the waiver and accrued interest shall be forgiven; upon completion of the second year of service, the remainder of the waiver and accrued interest shall be forgiven;

(3) a waiver term of three years shall require three years of practice as a primary care physician in an underserved area of the state for the three-year term of the waiver received. Upon completion of the first year of service, twenty-five percent of the waiver and accrued interest shall be forgiven; upon completion of the second year of service, fifty percent of the waiver and accrued interest shall be forgiven; and upon completion of the third year of service, the remainder of the waiver and accrued interest shall be forgiven;

(4) a waiver term of four years shall require four years of practice as a primary care physician in an underserved area of the state for the four-year term of the waiver received. Upon completion of the first year of service, thirty percent of the waiver and accrued interest shall be forgiven; upon completion of the second year of service, forty percent of the waiver and accrued interest shall be forgiven; upon completion of the third year of service, fifty percent of the waiver and accrued interest shall be forgiven; and upon completion of the fourth year of service, the remainder of the waiver and accrued interest shall be forgiven; or

(5) a waiver term of five years shall require five years of practice as a primary care physician in an underserved area of the state for the five-year term of the waiver received. Upon completion of the first year of service, ten percent of the waiver and accrued interest shall be forgiven; upon completion of the second year of service, twenty percent of the waiver and accrued interest shall be forgiven; upon completion of the third year of service, thirty percent of the waiver and accrued interest shall be forgiven; upon completion of the fourth year of service, fifty percent of the waiver and accrued interest shall be forgiven; and upon completion of the fifth year of service, the remainder of the waiver and accrued interest shall be forgiven.

L. In the event that a participant completes the participant's course of study and does not meet the program obligation to serve as a primary care physician in an underserved area of the state, the department shall assess a penalty of up to three times the principal due, plus eighteen percent interest, unless the department finds acceptable extenuating circumstances for why the participant cannot serve. The department shall collect the penalty and remit it to the state treasury for deposit in the fund.

M. The department is authorized to cancel any contract made between it and any participant pursuant to the Conditional Tuition Waiver for Primary Care Medical Students Act, or set terms of alternative service in lieu of monetary repayment, for any cause the department deems reasonable.

N. The department shall be responsible for collecting repayments made pursuant to this section and shall exercise due diligence in collecting repayments and maintaining all necessary records to ensure that full repayments are made. The department shall collect and service repayments under this section to the full extent of the law, including wage garnishment where practicable. The department shall forgive all or parts of repayments under the criteria established in this section and shall maintain all necessary records of repayments it forgives.

O. When a participant makes payment of principal or interest to the department pursuant to the provisions of this section, the department shall deposit these payments into the fund and shall use these payments to cover the costs of granting waivers and the administrative expenses associated with the program and collection activity on its behalf. The department shall maintain accurate records of these expenses, and all receipts beyond those necessary to pay these expenses shall be used to grant waivers to participants.

Chapter 225 Section 4 Laws 2009

Section 4. PRIMARY CARE PHYSICIAN CONDITIONAL TUITION WAIVER FUND--CREATED.--

A. The "primary care physician conditional tuition waiver fund" is created as a nonreverting fund in the state treasury. The department shall deposit into the fund

all funds received for the program. The fund shall be self-sustaining and consist of money appropriated by the legislature for the program, private contributions to the program and receipts from participant repayments.

B. Expenditures from the fund shall be used solely to make waivers to participants in the program and administrative expenses associated with the program and collection activity on its behalf.

C. Disbursements from the fund shall be made only by authorization of the secretary or the secretary's designee.

Chapter 225 Section 5 Laws 2009

Section 5. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 2010.

Chapter 225 Section 6 Laws 2009

Section 6. DELAYED REPEAL.--The Conditional Tuition Waiver for Primary Care Medical Students Act is repealed January 1, 2020.

SFC/SPAC/Senate Bill 593, aa

Approved April 7, 2009

LAWS 2009, CHAPTER 226

AN ACT

RELATING TO HOUSING; AMENDING SECTIONS OF THE MUNICIPAL HOUSING LAW; EXPANDING ELIGIBILITY TO MODERATE-INCOME PERSONS; INCLUDING ELIGIBILITY FOR AFFORDABLE HOUSING PROGRAMS; PROVIDING FOR MULTI-JURISDICTIONAL HOUSING AUTHORITIES; REVISING THE GOVERNANCE AND OVERSIGHT OF MUNICIPAL HOUSING AUTHORITIES; DECLARING AN EMERGENCY.

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

Chapter 226 Section 1 Laws 2009

Section 1. Section 3-45-1 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-46-1) is amended to read:

"3-45-1. MUNICIPAL HOUSING LAW--SHORT TITLE.--Chapter 3, Article 45 NMSA 1978 may be cited as the "Municipal Housing Law"."

Chapter 226 Section 2 Laws 2009

Section 2. Section 3-45-2 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-46-2) is amended to read:

"3-45-2. FINDING AND DECLARATION OF NECESSITY.--It is hereby declared that:

A. unsanitary or unsafe dwelling accommodations exist in the state;

B. persons of low and moderate income are forced to reside in such unsanitary or unsafe accommodations;

C. within the state, there is a shortage of safe or sanitary dwelling accommodations available at rents that persons of low and moderate income can afford and that such persons are forced to occupy overcrowded, congested dwelling accommodations and that the aforesaid conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety and welfare of the residents of the state and impair economic values;

D. these conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety, fire and accident protection and other public services and facilities;

E. these areas in the state cannot be cleared nor can the shortage of safe and sanitary dwellings for persons of low and moderate income be relieved through the operation of private enterprise and that the construction of housing projects for persons of low and moderate income, as defined in the Municipal Housing Law, would therefore not be competitive with private enterprise;

F. the clearance, replanning and reconstruction of the areas in which unsanitary or unsafe housing conditions exist and the providing of safe and sanitary dwelling accommodations for persons of low and moderate income are public uses and purposes for which public money may be spent and private property acquired and are governmental functions of state and municipal concern; and

G. it is in the public interest that work on projects for such purposes be commenced as soon as possible in order to relieve a shortage of affordable housing, which now constitutes an emergency; and the necessity in the public interest for the provisions enacted by the Municipal Housing Law is hereby declared as a matter of legislative determination."

Chapter 226 Section 3 Laws 2009

Section 3. Section 3-45-3 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-46-3, as amended) is amended to read:

"3-45-3. DEFINITIONS.--The following terms, wherever used or referred to in the Municipal Housing Law, shall have the following respective meanings:

A. "city" means any municipality and, unless the context otherwise clearly indicates, any county. "The city" means the particular city or county for which a particular housing authority is created. "County" means any county;

B. "governing body" means, in the case of a city, the council or board of commissioners and, in the case of other state public bodies, the council, commissioners, board or other body having charge of the fiscal affairs of the state public body;

C. "mayor" means the mayor of the city or the officer charged with the duties customarily imposed on the mayor or executive head of a city. In the case of a county, the term "mayor" means the board of county commissioners;

D. "clerk" means the city recorder, the county clerk or the officer charged with the duties customarily imposed on the clerk;

E. "area of operation" includes all of the city or, in the case of a county, includes all of the county, except the area shall not include any area that lies within the boundaries of any city that has an established housing authority or housing agency without the consent of the city. Upon approval by the governing bodies of the cities involved, the area of operation of one city pursuant to the Municipal Housing Law may be enlarged to include the area within the boundaries of any other city. Any subsequent withdrawal of consent of a city for operation within its boundaries by another city shall not prohibit the development and operation of any housing projects initiated in the city by another city prior to the date of withdrawal;

F. "authority" or "housing authority" means any agency or other instrumentality of a city created pursuant to the Municipal Housing Law;

G. "state public body" means any county, municipal corporation, commission, district, authority, other subdivision or public body of the state;

H. "federal government" includes the United States of America, the federal department of housing and urban development or any other agency or instrumentality, corporate or otherwise, of the United States of America;

I. "slum" means any area where dwellings predominate that by reason of dilapidation, overcrowding, lack of ventilation, light or sanitary facilities or any combination of these factors, are detrimental to the safety, health or well-being of the occupants or to surrounding properties;

J. "housing project" means any work or undertaking of the city:

(1) to demolish, clear or remove buildings from any slum area. The work or undertaking may embrace the adaptation of the area to public purposes, including parks or other recreational or community purposes;

(2) to provide decent, safe and sanitary dwellings, apartments, single-family dwellings or other affordable living accommodations for persons of low and moderate income. The work or undertaking may include buildings, land, equipment, facilities and other real or personal property for necessary convenient or desirable appurtenances, streets, sewers, water service, parks, site preparation, gardening, administrative, community, health, recreational, welfare or other purposes; or

(3) to accomplish a combination of the foregoing.

The term "housing project" also may be applied to the planning of the buildings and improvements, the acquisition of property or existing structures, the demolition of existing structures, the construction, reconstruction, alteration and repair of the improvements and all other work in connection therewith;

K. "low-income person" means any individual, couple or family whose gross income does not exceed eighty percent of that person's particular area median income and who cannot afford to pay more than thirty-five percent of gross annual income for housing rent or mortgage payments or a "low-income person" as defined by the federal government;

L. "bonds" means any bonds, notes, interim certificates, debentures or other obligations issued by a city pursuant to the Municipal Housing Law;

M. "real property" includes all lands, including improvements and fixtures on the lands and property of any nature appurtenant to the lands or used in connection with the lands, and every estate, interest and right, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise and the indebtedness secured by such liens;

N. "obligee" includes any holder of bonds issued pursuant to the Municipal Housing Law, trustees for any such bondholders, or lessor demising to a city property used in connection with a housing project, or any assignee or assignees of the lessor's interest or any part of the lessor's interest and the federal government when it is a party to any contract with a city in regard to a housing project;

O. "affordable housing" means any housing accommodations that serve the needs of low- and moderate-income persons;

P. "affordable housing program" means an ongoing delivery system of affordable housing services that assists persons of low and moderate income;

Q. "moderate-income person" means any individual, couple or family whose gross annual income is not less than eighty percent of that person's particular area median income and does not exceed one hundred twenty percent of that area median income;

R. "multi-jurisdictional housing authority" means two or more housing authorities joined or cooperating for the purposes of consolidating administrative duties and obligations and providing more effective and efficient housing projects and programs within their jurisdictions; and

S. "immediate family member" means:

(1) a spouse, including a former spouse, a de facto spouse or a former de facto spouse;

(2) a child or an adult child, including an adopted child, a step-child or an ex-nuptial child;

(3) a parent or a step-parent;

(4) a grandparent;

(5) a grandchild;

(6) a sibling or a step-sibling;

(7) a first cousin;

(8) an aunt or an uncle;

(9) a father-in-law or a mother-in-law;

(10) a sister-in-law or a brother-in-law; and

(11) any other relative who is financially supported."

Chapter 226 Section 4 Laws 2009

Section 4. Section 3-45-4 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-46-4, as amended) is amended to read:

"3-45-4. POWERS.--

A. Every city, in addition to other powers conferred by the Municipal Housing Law, may:

(1) within its area of operation, prepare, carry out, acquire, purchase, lease, construct, reconstruct, improve, alter, extend or repair any housing project or any part of a housing project and operate and maintain the housing project, and for any of those purposes, the governing body of the city may appropriate money and authorize the use of any property of the city;

(2) purchase its bonds issued pursuant to the Municipal Housing Law at a price not more than the principal amount thereof and accrued interest, all bonds so purchased to be canceled;

(3) lease or rent any dwellings, houses, accommodations, lands, buildings, structures or facilities embraced in any housing project and, subject to the limitations contained in the Municipal Housing Law, establish and revise the rents or charges therefor; own, hold and improve real or personal property; purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise or otherwise any real or personal property or any interest in real or personal property; acquire by the exercise of the power of eminent domain any real property; sell, lease, exchange, transfer, assign, pledge or dispose of any real or personal property or any interest in real or personal property; and procure or agree to the procurement of insurance or guarantees from the federal government of the payment of any bonds or parts of any bonds issued pursuant to the Municipal Housing Law, including the power to pay premiums on any such insurance;

(4) enter on any lands, buildings or property for the purpose of making surveys, soundings and examinations in connection with the planning or construction or both of any housing project;

(5) insure or provide for the insurance of any housing project of the city against such risks as the city may deem advisable;

(6) arrange or contract for the furnishing by any person or agency, public or private, of services, privileges, works or facilities for or in connection with a housing project or the occupants of a housing project; and include in any construction contract let in connection with a housing project stipulations requiring that the contractor and any subcontractors comply with employment requirements, including those in the constitution and laws of this state, as to minimum wages and maximum hours of labor and comply with any conditions that the federal government may have attached to its financial aid of the project;

(7) within its area of operation, investigate the living, dwelling and housing conditions and the means and methods of improving the conditions; determine where slum areas exist or where there is a shortage of decent, safe and sanitary dwelling accommodations for persons of low and moderate income; make studies and recommendations relating to the problem of clearing, replanning and reconstructing slum areas and the problem of providing dwelling accommodations for persons of low and moderate income and cooperate with the state or any political subdivision of the

state in action taken in connection with the problems; and engage in research, studies and experimentation on the subject of housing and affordable housing programs; and

(8) exercise all or any part or combination of powers herein granted.

B. Any two or more cities or authorities may join or cooperate with one another in the exercise, either jointly or otherwise, of any or all of their powers for the purpose of financing, including the issuance of bonds, notes or other obligations and giving security therefor, or contracting with respect to housing projects or affordable housing programs located within the area of operation of any one or more of the cities or authorities. For that purpose, a city or authority may, by resolution, prescribe and authorize any other city or authority so joining or cooperating with it to act on its behalf with respect to any or all powers, as its agent or otherwise, in the name of the city or authority so joining or cooperating or in its own name."

Chapter 226 Section 5 Laws 2009

Section 5. Section 3-45-5 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-46-5, as amended) is amended to read:

"3-45-5. CREATION OF AUTHORITY.--

A. Every city, in addition to other powers conferred by the Municipal Housing Law, shall have power and is authorized, by proper resolution of its governing body, to create, as an agent of the city, an authority to be known as the "housing authority" of the city. The housing authority of the city may constitute a public body corporate. The city may delegate to the authority the power to construct, maintain, operate and manage any housing project or affordable housing programs of the city and may delegate to the authority any or all of the powers conferred on the city by the Municipal Housing Law.

B. When the governing body of a city adopts a resolution pursuant to Subsection A of this section, the mayor shall appoint five persons as commissioners of the authority created as agent for the city. The commissioners who are first appointed shall be designated to serve for terms of one, two, three, four and five years, respectively, from the date of their appointment, but thereafter, commissioners shall be appointed for a term of office of five years, except that all vacancies shall be filled for the unexpired term. A commissioner of an authority shall not hold any other office or employment of the city for which the authority is created. A commissioner shall hold office until a successor has been appointed and has qualified, unless sooner removed according to law. A commissioner may serve two or more successive terms of office. A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk, and the certificate shall be conclusive evidence of the due and proper appointment of the commissioner. A commissioner shall receive no compensation for

services for the authority in any capacity, but shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of duties.

C. Two or more cities joined together pursuant to Subsection B of Section 3-45-4 NMSA 1978 shall establish their commissioners in accordance with Subsection B of this section, except that each city shall have equitable representation on the commission. The commissioners representing each city shall be appointed by the mayor of the city.

D. Any powers delegated by a city to an authority shall be vested in the commissioners of the authority in office from time to time. Three commissioners shall constitute a quorum of the authority for the purpose of conducting its business and exercising its powers and for all other purposes. Action may be taken by the authority upon a vote of a majority of the commissioners present. The commission shall organize itself at its annual meeting each even-numbered year. Any city creating a housing authority may authorize the authority to employ a secretary, who shall be executive director and who shall be removable only for cause. With the delegated authority from the commission, the executive director may hire or terminate, according to the procurement and personnel policies and procedures of the authority, technical experts and such other officers, attorneys, agents and employees, permanent and temporary, as the authority may require; determine their qualifications, duties and compensation; and delegate to one or more of them such powers or duties as the authority may deem proper."

Chapter 226 Section 6 Laws 2009

Section 6. Section 3-45-6 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-46-6) is amended to read:

"3-45-6. PROHIBITED ACTIONS.--Neither a housing authority nor any of its contractors or their subcontractors may enter into any contract, subcontract or agreement in connection with a housing project under any contract in which any of the following persons has an interest, direct or indirect, during the person's tenure or for one year thereafter:

A. any present or former member of the commission of the housing authority or any member of the member's immediate family. The prohibition established by this subsection does not apply to any member who has not served on the governing body of a resident management corporation and who otherwise has not occupied a policymaking position with the resident management corporation or the housing authority;

B. any employee of the housing authority who formulates policy or who influences decisions with respect to a housing project, any member of the employee's immediate family or any partner of the employee; or

C. any public official, member of a governing body or state legislator, or any member of that person's immediate family, who exercises functions or responsibilities with respect to the housing project or the housing authority."

Chapter 226 Section 7 Laws 2009

Section 7. Section 3-45-7 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-46-7) is amended to read:

"3-45-7. REMOVAL OF COMMISSIONERS.--A commissioner of an authority may be removed by the mayor, but only for inefficiency, neglect of duty or misconduct in office and only after the commissioner has been given a copy of the charges at least ten days prior to the hearing on the charges and has had an opportunity to be heard in person or by counsel. In the event of the removal of any commissioner by the mayor, a record of the proceedings, together with the charges and findings, shall be filed in the office of the clerk. Commissioners may be removed for cause based on noncompliance with housing program regulations."

Chapter 226 Section 8 Laws 2009

Section 8. Section 3-45-9 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-46-9, as amended) is amended to read:

"3-45-9. OPERATION NOT FOR PROFIT.--It is declared to be the policy of this state that each city shall manage and operate its housing projects and affordable housing programs in an efficient manner so as to enable it to fix the rentals for dwelling accommodations at the lowest possible rates consistent with its providing decent, safe and sanitary dwelling accommodations and that no city shall construct or operate any housing project for profit. To this end, a city shall set the rental rates for dwellings in the housing projects it manages and operates at no higher rates than it finds to be necessary in order to produce revenues that, together with any grants or subsidies from the federal government or other sources for housing projects, will be sufficient:

A. to pay, as they become due, the principal and interest on the bonds or other obligations of the city issued under the Municipal Housing Law;

B. to meet the cost of and to provide for maintaining and operating the housing projects and affordable housing programs, including the cost of any insurance, the administrative expenses of the city incurred in connection with the housing projects and affordable housing programs and the funding of any operational reserves as the authority deems appropriate;

C. to fund such reserves to secure the payment of its bonds as the authority deems appropriate or convenient; and

D. to allow private, profit-making entities to enter into agreements with the authority, and such agreements shall not be deemed to affect the nonprofit status of the authority or conflict with the intent of the creation of the authority."

Chapter 226 Section 9 Laws 2009

Section 9. Section 3-45-10 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-46-10, as amended) is amended to read:

"3-45-10. SALES, RENTALS AND TENANT SELECTION.--

A. In the operation or management of housing projects and affordable housing programs or the sale of any property pursuant to the Municipal Housing Law, a city shall at all times observe the following duties with respect to rentals, property and tenant selection:

(1) it may rent, lease or sell the dwelling accommodations in the housing project and affordable housing programs only to persons falling within federally established standards;

(2) it may rent, lease or sell to a tenant dwelling accommodations consisting of the number of rooms, but no greater number, that it deems necessary to provide safe and sanitary accommodations to the proposed occupants without overcrowding; and

(3) it shall not accept any person as a tenant in any housing program if the person has an annual net income in excess of federally established standards.

B. Nothing contained in this section or Section 3-45-9 NMSA 1978 shall be construed as limiting the power of a city to vest in an obligee the right, in the event of a default by the city, to take possession and operate housing projects or affordable housing programs or cause the appointment of a receiver thereof, free from all the restrictions imposed by this section or Section 3-45-9 NMSA 1978."

Chapter 226 Section 10 Laws 2009

Section 10. Section 3-45-12 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-46-12, as amended) is amended to read:

"3-45-12. FORM AND SALE OF BONDS--INTEREST ON CERTAIN OBLIGATIONS.--

A. Bonds of a city issued under the Municipal Housing Law shall be authorized by its resolution and may be issued in any one or more series and shall bear such date, mature at such time, bear interest at such rate, be in such denomination, be

in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment at such place and be subject to such terms of redemption, with or without premium, as the resolution, its trust indenture or the bond so issued may provide.

B. Obligations issued by a city that are true loan obligations made to the farmers home administration of the United States department of agriculture or the department of housing and urban development may bear interest at a rate of interest not exceeding par.

C. The bonds shall be sold at not less than par at public sale held after notice published once at least five days prior to the sale in a newspaper having a general circulation in the city jurisdiction and in a financial newspaper published in the city of San Francisco, California, or in the city of New York, New York; provided that the bonds may be sold to the federal government at private sale at not less than par, and, in the event less than all of the bonds authorized in connection with any housing project are sold to the federal government, the balance of the bonds may be sold at private sale at not less than par at an interest cost to the city not to exceed the interest cost to the city of the portion of the bonds sold to the federal government.

D. In case any of the officers of the city, the authority or any of its instrumentalities whose signatures appear on any bonds or coupons cease to be officers before the delivery of the bonds, the signatures shall, nevertheless, be valid and sufficient for all purposes the same as if the officers had remained in office until delivery. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to the Municipal Housing Law shall be fully negotiable.

E. In any suit, action or proceedings involving the validity or enforceability of any bond of a city or the security for the bond, any such bond reciting in substance that it has been issued by the city to aid in financing a housing project to provide dwelling accommodations for persons of low and moderate income shall be conclusively deemed to have been issued for a housing project of that character, and the housing project shall be conclusively deemed to have been planned, located and constructed in accordance with the purposes and provisions of the Municipal Housing Law."

Chapter 226 Section 11 Laws 2009

Section 11. Section 3-45-20 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-46-20) is amended to read:

"3-45-20. AID FROM STATE OR FEDERAL GOVERNMENT.--In addition to the powers conferred upon a city by other provisions of the Municipal Housing Law, a city is empowered to borrow money or accept contributions, grants or other financial assistance from the state or federal government for, or in aid of, any housing project or affordable housing program within its area of operation and, to these ends, to comply

with such conditions, trust indentures, leases or agreements as may be necessary, convenient or desirable. It is the purpose and intent of the Municipal Housing Law to authorize every city to do any and all things necessary, convenient or desirable to secure the financial aid or cooperation of the federal government in the undertaking, acquisition, construction, maintenance or operation of any housing project or affordable housing program of the city."

Chapter 226 Section 12 Laws 2009

Section 12. Section 3-45-21 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-46-21) is amended to read:

"3-45-21. COOPERATION IN UNDERTAKING HOUSING PROJECTS OR AFFORDABLE HOUSING PROGRAMS.--

A. For the purpose of aiding and cooperating in the planning, undertaking, construction or operation of housing projects or affordable housing programs located within the area in which it is authorized to act, any state public body may, upon such terms, with or without consideration, as it may determine:

(1) dedicate, sell, convey or lease any of its interest in any property or grant easements, licenses or any other rights or privileges therein to any city;

(2) cause parks, playgrounds, recreational, community, educational, water, sewer or drainage facilities or any other works that it is otherwise empowered to undertake to be furnished adjacent to or in connection with housing projects or affordable housing programs;

(3) furnish, dedicate, close, pave, install, grade, regrade, plan or replan streets, roads, roadways, alleys, sidewalks or other places that it is otherwise empowered to undertake;

(4) cause services to be furnished for housing projects or affordable housing programs of the character that the state public body is otherwise empowered to furnish;

(5) enter into agreements with respect to the exercise by the state public body of its powers relating to the repair, elimination or closing of unsafe, unsanitary or unfit dwellings;

(6) do any and all things necessary or convenient to aid and cooperate in the planning, undertaking, construction or operation of such housing projects;

(7) incur the entire expense of any public improvements made by the state public body in exercising the powers granted in the Municipal Housing Law; and

(8) enter into agreements that may extend over any period, notwithstanding any provision or rule of law to the contrary, with any city or multi-jurisdictional housing authority as agent therefor, respecting action to be taken by the state public body pursuant to any of the powers granted by the Municipal Housing Law.

B. Any law or statute to the contrary notwithstanding, any sale, conveyance, lease or agreement provided for in this section may be made by a state public body without appraisal, public notice, advertisement or public bidding.

C. In the event an authority is declared by the federal department of housing and urban development to be in default on its annual contributions contract with that department, the authority may, by resolution of its governing body, transfer its assets and operation to another housing authority, including a multi-jurisdictional housing authority or regional housing authority. The multi-jurisdictional housing authority or regional housing authority shall accept, by resolution of its governing board, a transfer of assets and operations of an authority that has been declared by the federal department of housing and urban development to be in default of the annual contributions contract between that department and the authority."

Chapter 226 Section 13 Laws 2009

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

Senate Bill 60, aa, w/ec

Approved April 7, 2009

LAWS 2009, CHAPTER 227

AN ACT

RELATING TO PARKING STANDARDS; AMENDING A SECTION OF THE GREATER MUNICIPALITY PARKING LAW.

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

Chapter 227 Section 1 Laws 2009

Section 1. Section 3-51-46 NMSA 1978 (being Laws 1973, Chapter 22, Section 3, as amended) is amended to read:

"3-51-46. PASSENGER MOTOR VEHICLE OF A PERSON WITH A DISABILITY--PARKING PRIVILEGE.--Passenger motor vehicles owned by and carrying a person with a disability and displaying special registration plates, or passenger motor vehicles carrying persons with severe mobility impairment and displaying parking placards, issued pursuant to Section 66-3-16 NMSA 1978, shall be permitted to park for unlimited periods of time in parking zones restricted as to length of time parking is normally permitted and are exempt from payment of any parking fee of the state or its political subdivisions, except that airport parking facilities may charge long-term parking fees for periods of time exceeding twenty-four hours. The provisions of this section shall prevail over any other law, rule or local ordinance but do not apply to zones where stopping, standing or parking is prohibited, zones reserved for special types of vehicles, zones where parking is prohibited during certain hours of the day in order to facilitate traffic during those hours when parking is prohibited and zones subject to similar regulation because parking presents a traffic hazard."

SPAC/Senate Bill 610

Approved April 7, 2009

LAWS 2009, CHAPTER 228

AN ACT

RELATING TO THE NEW MEXICO MILITARY INSTITUTE; EXPANDING THE OPPORTUNITY FOR SCHOLARSHIPS.

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

Chapter 228 Section 1 Laws 2009

Section 1. Section 21-12-12 NMSA 1978 (being Laws 1989, Chapter 44, Section 2 and Laws 1989, Chapter 45, Section 2, as amended) is amended to read:

"21-12-12. PROGRAM ADMINISTRATION--CRITERIA.--

A. The General Richard T. Knowles legislative scholarship program shall be administered by the board of regents of the New Mexico military institute. The board of regents shall establish one hundred twelve scholarships available to New Mexico residents, one scholarship available for each state legislative district.

B. Annually, each state legislator may nominate four prospective scholarship recipients to the board of regents of the New Mexico military institute. If a legislator has no applicant from the legislator's district, that senator or representative may choose to nominate an applicant from a senate or representative district contiguous to the legislator's own district, thus maintaining geographical diversity in the corps of cadets while affording a greater opportunity for more New Mexicans to receive a scholarship. In the event no applicant is available by

July 1 of each year from either the legislator's district or a contiguous district, the scholarship may be awarded to any of the qualified nominees from any state legislative district.

C. Scholarships shall be awarded to qualifying New Mexico residents for a term not to exceed four years.

D. The board of regents shall establish criteria for the awarding of scholarships. Criteria shall include scholastic ability, faculty recommendations, standardized test scores, letters of recommendation, school honors and extracurricular activities."

Senate Bill 627

Approved April 7, 2009

LAWS 2009, CHAPTER 229

AN ACT

RELATING TO RAILROADS; DECREASING THE DISTANCE BEFORE CERTAIN CROSSINGS THAT BELLS ON CERTAIN RAILROADS ARE REQUIRED TO BE RUNG.

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

Chapter 229 Section 1 Laws 2009

Section 1. Section 63-3-34 NMSA 1978 (being Laws 1878, Chapter 1, Section 8-1, as amended) is amended to read:

"63-3-34. BELL TO BE RUNG AT HIGHWAY CROSSINGS.--

A. Except as provided in Subsection B of this section, every railroad corporation shall cause a bell to be attached to each of its locomotives and shall cause

the bell to be rung at a distance of not less than eighty rods from the crossing of any public street, road or highway.

B. For a railroad, owned by the state or one of its political subdivisions, if the crossing is within a designated quiet zone pursuant to federal railroad administration rules and the maximum allowed speed for a train using the crossing is equal to or less than forty miles per hour, the bell shall be rung not less than three hundred feet from the crossing.

C. A railroad corporation violating a provision of Subsection A or B of this section shall be subject to a penalty of one hundred dollars (\$100) to be recovered by action in the name of the state in any court of competent jurisdiction, one-half of which shall go to the informer and the other half of which shall go to the state. The corporation shall also be liable for all damages that may be sustained by any person by reason of noncompliance with the provisions of this section."

SPAC/Senate Bill 653

Approved April 7, 2009

LAWS 2009, CHAPTER 230

AN ACT

RELATING TO GAME AND FISH; INCREASING ELIGIBILITY FOR DISABLED VETERANS' BENEFITS.

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

Chapter 230 Section 1 Laws 2009

Section 1. Section 17-3-2 NMSA 1978 (being Laws 1964 (1st S.S.), Chapter 17, Section 2, as amended) is amended to read:

"17-3-2. CLASSES OF LICENSES.--

A. As used with reference to licenses in Chapter 17 NMSA 1978:

(1) "fishing" entitles the licensee to fish for game fish during the open seasons for each species;

(2) "small game" entitles the licensee to hunt game birds, other than wild turkey, and squirrel during the open seasons for each;

(3) "deer" entitles the licensee to hunt deer during the open season;

(4) "general hunting" entitles the licensee to hunt deer, squirrel and game birds during the open seasons for each;

(5) "general hunting and fishing" entitles the licensee to hunt deer, squirrel and game birds and to fish for game fish during the open seasons for each;

(6) "antelope" entitles the licensee to hunt antelope during the open season;

(7) "elk" entitles the licensee to hunt elk during the open season;

(8) "bighorn sheep" entitles the licensee to hunt bighorn sheep during the open season;

(9) "Barbary sheep" entitles the licensee to hunt Barbary sheep during the open season;

(10) "javelina" entitles the licensee to hunt javelina during the open season;

(11) "bear" entitles the licensee to hunt bear during the open season;

(12) "nongame" entitles the licensee to hunt or take any animal or bird not protected by law;

(13) "temporary fishing" entitles the licensee to fish for game fish during a specific period of time indicated on the license;

(14) "oryx" entitles the licensee to hunt oryx during the open season;

(15) "ibex" entitles the licensee to hunt ibex during the open season;

(16) "cougar" entitles the licensee to hunt cougar during the open season;

(17) "turkey" entitles the licensee to hunt turkey during the open season;

(18) "special season turkey" entitles the licensee to hunt turkey during special seasons designated by the state game commission;

(19) "quality elk" entitles the licensee to hunt elk during a special quality elk season, to be established by the state game commission, when the timing of the season and hunter density is specially regulated and the elk population is managed with an intent to provide the licensee an increased opportunity to take a mature elk;

(20) "quality deer" entitles the licensee to hunt deer during a special quality deer season, to be established by the state game commission, when the timing of the season and hunter density is specially regulated and the deer population is managed with an intent to provide the licensee an increased opportunity to take a mature deer;

(21) "temporary small game" entitles the licensee to hunt game birds, except wild turkey, and squirrel during a specific period of time indicated on the license;

(22) "second rod" entitles the licensee to fish using two fishing rods to fish for game fish during the open seasons for each species; and

(23) "fishing and small game combination" entitles the licensee to hunt squirrel and game birds, other than wild turkey, and to fish for game fish during the open season for each.

B. A hunting license does not entitle the licensee to hunt, kill or take game animals or birds within or upon a park or enclosure licensed or posted as provided by law or within or upon a privately owned enclosure without consent of the owner or within or upon a game refuge or game management area.

C. A fishing license does not entitle the licensee to fish for or take fish within or upon a park or enclosure licensed or posted as provided by law or within or upon a privately owned enclosure without consent of the owner or in or on closed waters.

D. A junior fishing license may be purchased by a resident who has reached the age of twelve years but has not reached the age of eighteen years. A junior fishing license entitles the licensee to fish for game fish during the open season for each species.

E. A senior fishing license may be purchased by a resident who has reached the age of sixty-five years. A senior fishing license entitles the licensee to fish for game fish during the open season for each species.

F. A nonresident junior fishing license may be purchased by a nonresident who has reached the age of twelve years but has not reached the age of eighteen years. A nonresident junior fishing license entitles the licensee to fish for game fish during the open season for each species.

G. A senior general hunting license may be purchased by a resident who has reached the age of sixty-five years. A senior general hunting license entitles the licensee to hunt for deer, squirrel and game birds during the open seasons for each species.

H. A junior general hunting license may be purchased by a resident who has not reached the age of eighteen years. A junior general hunting license entitles the licensee to hunt for deer, squirrel and game birds during the open seasons for each species.

I. A handicapped fishing license may be purchased by a resident who has a severe physical impairment that substantially limits one or more major life activities and who can furnish adequate proof of this disability to the state game commission. A handicapped fishing license may be purchased by a resident who has a developmental disability as defined in Subsection H of Section 43-1-3 NMSA 1978 and who can furnish adequate proof of this disability to the state game commission. A handicapped fishing license entitles the licensee to fish for game fish during the open season for each species.

J. A handicapped general hunting license may be purchased by a resident who has a severe physical impairment that substantially limits one or more major life activities and who can furnish adequate proof of this disability to the state game commission. A handicapped general hunting license entitles the licensee to hunt for deer, squirrel and game birds during the open season for each species.

K. A fishing license may be obtained at no cost by a resident who has reached the age of seventy years.

L. A second rod validation may be purchased by either a resident or nonresident. A second rod validation entitles the licensee to fish using two rods for game fish during the open season for each species.

M. A junior-senior elk license may be purchased by a resident who has not reached the age of eighteen years or by a resident who has reached the age of sixty-five years. A junior-senior elk license entitles the licensee to hunt for elk during the open season for that species.

N. A junior-senior deer license may be purchased by a resident who is younger than eighteen years or older than sixty-five years. A junior-senior deer license entitles the licensee to hunt for deer during the open season for that species.

O. A junior-senior fishing and small game combination license may be purchased by a resident who is younger than eighteen years or older than sixty-five years. A junior-senior fishing and small game combination license entitles the licensee to fish for game fish or hunt for squirrel and game birds, other than wild turkey, during the open seasons for each species.

P. A disabled veteran fishing and small game combination license may be purchased by a resident who has been granted a disability by the federal department of veterans affairs as a result of having served in the armed forces of the United States if the resident submits to the state game commission satisfactory proof that the resident was disabled as a result of having served in the armed forces of the United States. A disabled veteran fishing and small game combination license entitles the licensee to fish for game fish or hunt for squirrel and game birds, other than wild turkey, during the open season for each species."

Chapter 230 Section 2 Laws 2009

Section 2. Section 17-3-13 NMSA 1978 (being Laws 1964 (1st S.S.), Chapter 17, Section 5, as amended) is amended to read:

"17-3-13. LICENSE FEES.--

A. The director of the department of game and fish shall keep a record of all money received and licenses and permits issued by the department, numbering each class separately. Upon satisfactory proof that a license or permit has been lost before its expiration, the director may issue a duplicate and collect a just and reasonable fee for it as determined by regulation of the state game commission.

B. The director of the department of game and fish shall collect the following fees for each license of the class indicated:

Resident, fishing	\$25.00
Resident, small game	20.00
Resident, deer	36.00
Resident, junior-senior, deer	24.00
Resident, general hunting	40.00
Resident, general hunting and fishing	59.00
Resident, senior, handicapped, general hunting and fishing	28.00
Resident, junior, general hunting and fishing	20.00
Resident, fishing and small game combination	33.00

Resident, junior-senior, fishing and small game
combination 16.00

Resident, disabled veteran, fishing and small game combination 10.00

Resident, antelope 50.00

Resident, elk cow 50.00

Resident, elk bull or either sex 80.00

Resident, junior-senior, elk 48.00

Resident, bighorn sheep, ram 150.00

Resident, bighorn sheep, ewe 75.00

Resident, Barbary sheep 100.00

Resident, bear 44.00

Resident, turkey 25.00

Resident, cougar 40.00

Resident, oryx 150.00

Resident, ibex 100.00

Resident, javelina 55.00

Resident, fur dealer 15.00

Resident, trapper 20.00

Resident, junior trapper 9.00

Nonresident, fishing 56.00

Nonresident, junior fishing 28.00

Nonresident, small game 90.00

Nonresident, deer 260.00

Nonresident, quality deer	345.00
Nonresident, bear	250.00
Nonresident, cougar	280.00
Nonresident, turkey	100.00
Nonresident, antelope	260.00
Nonresident, elk cow	315.00
Nonresident, elk bull or either sex	525.00
Nonresident, quality elk	750.00
Nonresident, bighorn sheep	3,150.00
Nonresident, Barbary sheep	350.00
Nonresident, oryx	1,600.00
Nonresident, ibex	1,600.00
Nonresident, javelina	155.00
Nonresident, fur dealer	125.00
Nonresident, trapper	345.00
Nonresident, nongame	65.00
Resident, senior, handicapped, fishing	8.00
Resident, junior fishing	5.00
Temporary fishing, one day	12.00
Temporary fishing, five days	24.00
Resident, senior, handicapped, general hunting	24.00

Resident, junior general hunting 15.00

Temporary small game, four days 33.00

Second rod validation 4.00."

Chapter 230 Section 3 Laws 2009

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.

SFC/Senate Bill 669

Approved April 7, 2009

LAWS 2009, CHAPTER 231

AN ACT

RELATING TO PROCUREMENT; PROVIDING FOR AN EXEMPTION FROM THE PROCUREMENT CODE FOR CONTRACTS ENTERED INTO BY THE CRIME VICTIMS REPARATIONS COMMISSION TO DISTRIBUTE FEDERAL GRANTS FROM CERTAIN GRANTS TO ASSIST VICTIMS OF CRIME.

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

Chapter 231 Section 1 Laws 2009

Section 1. Section 13-1-98 NMSA 1978 (being Laws 1984, Chapter 65, Section 71, as amended by Laws 2008, Chapter 4, Section 2 and by Laws 2008, Chapter 70, Section 2) is amended to read:

"13-1-98. EXEMPTIONS FROM THE PROCUREMENT CODE.--The provisions of the Procurement Code shall not apply to:

A. procurement of items of tangible personal property or services by a state agency or a local public body from a state agency, a local public body or external procurement unit except as otherwise provided in Sections 13-1-135 through 13-1-137 NMSA 1978;

B. procurement of tangible personal property or services for the governor's mansion and grounds;

C. printing and duplicating contracts involving materials that are required to be filed in connection with proceedings before administrative agencies or state or federal courts;

D. purchases of publicly provided or publicly regulated gas, electricity, water, sewer and refuse collection services;

E. purchases of books and periodicals from the publishers or copyright holders thereof;

F. travel or shipping by common carrier or by private conveyance or to meals and lodging;

G. purchase of livestock at auction rings or to the procurement of animals to be used for research and experimentation or exhibit;

H. contracts with businesses for public school transportation services;

I. procurement of tangible personal property or services, as defined by Sections 13-1-87 and 13-1-93 NMSA 1978, by the corrections industries division of the corrections department pursuant to rules adopted by the corrections industries commission, which shall be reviewed by the purchasing division of the general services department prior to adoption;

J. minor purchases not exceeding five thousand dollars (\$5,000) consisting of magazine subscriptions, conference registration fees and other similar purchases where prepayments are required;

K. municipalities having adopted home rule charters and having enacted their own purchasing ordinances;

L. the issuance, sale and delivery of public securities pursuant to the applicable authorizing statute, with the exception of bond attorneys and general financial consultants;

M. contracts entered into by a local public body with a private independent contractor for the operation, or provision and operation, of a jail pursuant to Sections 33-3-26 and 33-3-27 NMSA 1978;

N. contracts for maintenance of grounds and facilities at highway rest stops and other employment opportunities, excluding those intended for the direct care and support of persons with handicaps, entered into by state agencies with private, nonprofit, independent contractors who provide services to persons with handicaps;

O. contracts and expenditures for services or items of tangible personal property to be paid or compensated by money or other property transferred to New

Mexico law enforcement agencies by the United States department of justice drug enforcement administration;

P. contracts for retirement and other benefits pursuant to Sections 22-11-47 through 22-11-52 NMSA 1978;

Q. contracts with professional entertainers;

R. contracts and expenditures for litigation expenses in connection with proceedings before administrative agencies or state or federal courts, including experts, mediators, court reporters, process servers and witness fees, but not including attorney contracts;

S. contracts for service relating to the design, engineering, financing, construction and acquisition of public improvements undertaken in improvement districts pursuant to Subsection L of Section 3-33-14.1 NMSA 1978 and in county improvement districts pursuant to Subsection L of Section 4-55A-12.1 NMSA 1978;

T. works of art for museums or for display in public buildings or places;

U. contracts entered into by a local public body with a person, firm, organization, corporation or association or a state educational institution named in Article 12, Section 11 of the constitution of New Mexico for the operation and maintenance of a hospital pursuant to Chapter 3, Article 44 NMSA 1978, lease or operation of a county hospital pursuant to the Hospital Funding Act or operation and maintenance of a hospital pursuant to the Special Hospital District Act;

V. purchases of advertising in all media, including radio, television, print and electronic;

W. purchases of promotional goods intended for resale by the tourism department;

X. procurement of printing services for materials produced and intended for resale by the cultural affairs department;

Y. procurement by or through the public education department from the federal department of education relating to parent training and information centers designed to increase parent participation, projects and initiatives designed to improve outcomes for students with disabilities and other projects and initiatives relating to the administration of improvement strategy programs pursuant to the federal Individuals with Disabilities Education Act; provided that the exemption applies only to procurement of services not to exceed two hundred thousand dollars (\$200,000);

Z. procurement of services from community rehabilitation programs or qualified individuals pursuant to the State Use Act;

AA. purchases of products or services for eligible persons with disabilities pursuant to the federal Rehabilitation Act of 1973;

BB. procurement, by either the department of health or Grant county or both, of tangible personal property, services or construction that are exempt from the Procurement Code pursuant to Section 9-7-6.5 NMSA 1978;

CC. contracts for investment advisory services, investment management services or other investment-related services entered into by the educational retirement board, the state investment officer or the retirement board created pursuant to the Public Employees Retirement Act;

DD. the purchase for resale by the state fair commission of feed and other items necessary for the upkeep of livestock; and

EE. contracts entered into by the crime victims reparation commission to distribute federal grants to assist victims of crime, including grants from the federal Victims of Crime Act and the federal Violence Against Women Act."

Chapter 231 Section 2 Laws 2009

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.

Senate Bill 680

Approved April 7, 2009

LAWS 2009, CHAPTER 232

AN ACT

RELATING TO PUBLIC ASSISTANCE; CLARIFYING THAT MUNICIPALITIES ARE SUBJECT TO THE PROVISIONS OF THE LOW INCOME UTILITY ASSISTANCE ACT AND ARE SUBJECT TO THE WINTER DISCONNECTION MORATORIUM.

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

Chapter 232 Section 1 Laws 2009

Section 1. Section 27-6-11 NMSA 1978 (being Laws 1979, Chapter 290, Section 1) is amended to read:

"27-6-11. SHORT TITLE.--Chapter 27, Article 6 NMSA 1978 may be cited as the "Low Income Utility Assistance Act"."

Chapter 232 Section 2 Laws 2009

Section 2. Section 27-6-13 NMSA 1978 (being Laws 1979, Chapter 290, Section 3, as amended) is amended to read:

"27-6-13. ADMINISTRATION OF LOW INCOME UTILITY ASSISTANCE ACT.--

A. As used in the Low Income Utility Assistance Act:

(1) "department" means the agency of the state designated by the governor; and

(2) "utility" means a publicly, privately or municipally owned utility or a distribution cooperative utility for the rendition of electric power or gas.

B. The department shall determine eligibility, establish payment amounts, make utility assistance payments to or on behalf of eligible recipients and otherwise administer the Low Income Utility Assistance Act.

C. The department shall use funds appropriated under the Low Income Utility Assistance Act to the maximum extent to generate available federal and local government funds and to mobilize other resources that may be applied to the concepts of the Low Income Utility Assistance Act."

Senate Bill 71, aa

Approved April 7, 2009

LAWS 2009, CHAPTER 233

AN ACT

RELATING TO ELECTIONS; REQUIRING A POST-ELECTION EVALUATION OF THE ACCURACY OF VOTING SYSTEMS; PROVIDING PROCEDURES; REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Chapter 233 Section 1 Laws 2009

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

"POST-ELECTION DUTIES--VOTING SYSTEM CHECK.--

A. At least ninety days prior to each general election, the secretary of state shall contract with an auditor qualified by the state auditor to audit state agencies to oversee a check on the accuracy of precinct electronic vote tabulators, alternate voting location electronic vote tabulators and absent voter precinct electronic vote tabulators. The voting system check shall be conducted for all federal offices, for governor and for the statewide elective office, other than the office of the governor, for which the winning candidate won by the smallest percentage margin of all candidates for statewide office in New Mexico.

B. For each selected office, the auditor shall publicly select a random sample of precincts from a pool of all precincts in the state no later than twelve days after the election. The random sample shall be chosen in a process that will ensure, with at least ninety percent probability for the selected offices, that faulty tabulators would be detected if they would change the outcome of the election for a selected office. The auditor shall select precincts starting with the statewide office with the largest winning margin and ending with the precincts for the statewide office with the smallest winning margin and then, in the same manner, select precincts from each congressional district. The size of the random sample for each office shall be determined as provided in Table 1 of this subsection. When a precinct is selected for one office, it shall be used in lieu of selecting a different precinct when selecting precincts for another office in the same congressional district, or for any statewide office. If the winning margin in none of the offices for which a voting system check is required is less than fifteen percent, a voting system check for that general election shall not be required.

Table 1

Winning margin between top two candidates for the office according to the county canvasses	Number of precincts in the state to be tested for that office
Percent greater than 15	no precincts for that office
greater than 14 but less than or equal to 15	4

greater than 13	
but less than or equal to 14	4
greater than 12	
but less than or equal to 13	5
greater than 11	
but less than or equal to 12	5
greater than 10	
but less than or equal to 11	6
greater than 9.0	
but less than or equal to 10	6
greater than 8.0	
but less than or equal to 9.0	7
greater than 7.0	
but less than or equal to 8.0	9
greater than 6.0	
but less than or equal to 7.0	10
greater than 5.5	
but less than or equal to 6.0	11
greater than 5.0	
but less than or equal to 5.5	13
greater than 4.5	
but less than or equal to 5.0	14
greater than 4.0	

but less than or equal to 4.5	16
greater than 3.5	
but less than or equal to 4.0	18
greater than 3.0	
but less than or equal to 3.5	22
greater than 2.5	
but less than or equal to 3.0	26
greater than 2.0	
but less than or equal to 2.5	32
greater than 1.8	
but less than or equal to 2.0	37
greater than 1.6	
but less than or equal to 1.8	42
greater than 1.4	
but less than or equal to 1.6	47
greater than 1.2	
but less than or equal to 1.4	54
greater than 1.1	
but less than or equal to 1.2	59
greater than 1.0	
but less than or equal to 1.1	65
greater than 0.9	
but less than or equal to 1.0	73

greater than 0.8	
but less than or equal to 0.9	82
greater than 0.7	
but less than or equal to 0.8	93
greater than 0.6	
but less than or equal to 0.7	109
greater than 0.5	
but less than or equal to 0.6	130
0.5 or less	automatic recount
	for that office.

C. The auditor shall notify the appropriate county clerks of the precincts that are to be included in the voting system check upon their selection. The auditor shall direct the appropriate county clerks to compare the original machine count precinct vote totals, including early absentee and absentee by mail machine count vote totals, for candidates for offices subject to the voting system check from the selected precincts for each office with the respective vote totals of a hand recount of the paper ballots from those precincts. The county clerks shall report their results to the auditor within ten days of the notice to conduct the voting system check.

D. Based on the results of the voting system check and any other auditing results, the auditor shall determine the error rate in the sample for each office. If the winning margin decreases and the error rate based on the difference between the vote totals of hand recounts of the paper ballots and the original precinct vote totals exceeds ninety percent of the winning margin for an office, another sample equal in size to the original sample shall be selected and the original precinct vote totals compared to the vote totals of hand recounts. The error rate based on the first and second sample shall be reported, and if it exceeds ninety percent of the winning margin for the office, the state canvassing board shall order that a full hand recount of the ballots for that office be conducted.

E. The auditor shall report the results of the voting system check to the secretary of state upon completion of the voting system check and release the results to the public.

F. Persons designated as county canvass observers may observe the hand recount described in Subsection C of this section. Observers shall comply with the

procedures governing county canvass observers as provided in Section 1-2-31 NMSA 1978.

G. If a recount for an office selected for a voting system check is conducted pursuant to the provisions of Chapter 1, Article 14 NMSA 1978, the vote totals from the hand count of ballots for that office in precincts selected for the voting system check may be used in lieu of recounting the same ballots for the recount.

H. All costs of a voting system check or required hand recount shall be paid in the same manner as automatic recounts."

Chapter 233 Section 2 Laws 2009

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

"GENERAL ELECTION AUDIT.--The secretary of state shall issue rules for the conduct and procedures of the post-election voting system check, set minimum qualifications for auditors eligible for selection to conduct post-election evaluations of the accuracy of voting systems and approve the contract terms for auditors. The state auditor shall review the rules, qualification standards and contract terms to ensure they meet audit standards."

Chapter 233 Section 3 Laws 2009

Section 3. REPEAL.--Section 1-14-13.1 NMSA 1978 (being Laws 2005, Chapter 270, Section 75) is repealed.

SRC/Senate Bill 72, aa

Approved April 7, 2009

LAWS 2009, CHAPTER 234

AN ACT

RELATING TO BUSINESS; MAKING TECHNICAL AMENDMENTS TO THE UNIFORM COMMERCIAL CODE; AMENDING AND REPEALING SECTIONS OF THE NMSA 1978.

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

Chapter 234 Section 1 Laws 2009

Section 1. Section 55-1-303 NMSA 1978 (being Laws 2005, Chapter 144, Section 17) is amended to read:

"55-1-303. COURSE OF PERFORMANCE, COURSE OF DEALING AND USAGE OF TRADE.--

(a) A "course of performance" is a sequence of conduct between the parties to a particular transaction that exists if:

(1) the agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; and

(2) the other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.

(b) A "course of dealing" is a sequence of conduct concerning previous transactions between the parties to a particular transaction that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(c) A "usage of trade" is any practice or method of dealing having such regularity of observance in a place, vocation or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage must be proved as facts. If it is established that such a usage is embodied in a trade code or similar record, the interpretation of the record is a question of law.

(d) A course of performance or course of dealing between the parties or usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware is relevant in ascertaining the meaning of the parties' agreement, may give particular meaning to specific terms of the agreement and may supplement or qualify the terms of the agreement. A usage of trade applicable in the place in which part of the performance under the agreement is to occur may be so utilized as to that part of the performance.

(e) Except as otherwise provided in Subsection (f) of this section, the express terms of an agreement and any applicable course of performance, course of dealing or usage of trade must be construed whenever reasonable as consistent with each other. If such a construction is unreasonable:

(1) express terms prevail over course of performance, course of dealing and usage of trade;

(2) course of performance prevails over course of dealing and usage of trade; and

(3) course of dealing prevails over usage of trade.

(f) Subject to Sections 55-2-209 and 55-2A-208 NMSA 1978, a course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

(g) Evidence of a relevant usage of trade offered by one party is not admissible unless that party has given the other party notice that the court finds sufficient to prevent unfair surprise to the other party."

Chapter 234 Section 2 Laws 2009

Section 2. Section 55-3-103 NMSA 1978 (being Laws 1992, Chapter 114, Section 90, as amended) is amended to read:

"55-3-103. DEFINITIONS.--

(a) In this article:

(1) "acceptor" means a drawee who has accepted a draft;

(2) "consumer account" means an account established by an individual primarily for personal, family or household purposes;

(3) "consumer transaction" means a transaction in which an individual incurs an obligation primarily for personal, family or household purposes;

(4) "drawee" means a person ordered in a draft to make payment;

(5) "drawer" means a person who signs or is identified in a draft as a person ordering payment;

(6) [Reserved];

(7) "maker" means a person who signs or is identified in a note as a person undertaking to pay;

(8) "order" means a written instruction to pay money signed by the person giving the instruction. The instruction may be addressed to any person, including the person giving the instruction, or to one or more persons jointly or in the alternative but not in succession. An authorization to pay is not an order unless the person authorized to pay is also instructed to pay;

(9) "ordinary care" in the case of a person engaged in business means observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged. In

the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from general banking usage not disapproved by this article or Chapter 55, Article 4 NMSA 1978;

(10) "party" means a party to an instrument;

(11) "principal obligor" with respect to an instrument means the accommodated party or any other party to the instrument against whom a secondary obligor has recourse pursuant to this article;

(12) "promise" means a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation;

(13) "prove" with respect to a fact means to meet the burden of establishing the fact (Paragraph (8) of Subsection (b) of Section 55-1-201 NMSA 1978);

(14) [Reserved];

(15) "remitter" means a person who purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser;

(16) [Reserved]; and

(17) "secondary obligor" with respect to an instrument means: (i) an indorser or an accommodation party;

(ii) a drawer having the obligation described in Subsection (d) of Section 55-3-414 NMSA 1978; or (iii) any other party to the instrument that has recourse against another party to the instrument pursuant to Subsection (b) of Section 55-3-116 NMSA 1978.

(b) Other definitions applying to this article and the sections in which they appear are:

"acceptance"	Section 55-3-409 NMSA 1978;
"accommodated party"	Section 55-3-419 NMSA 1978;
"accommodation party"	Section 55-3-419 NMSA 1978;
"alteration"	Section 55-3-407 NMSA 1978;
"anomalous indorsement"	Section 55-3-205 NMSA 1978;

"blank indorsement"	Section 55-3-205 NMSA 1978;
"cashier's check"	Section 55-3-104 NMSA 1978;
"certificate of deposit"	Section 55-3-104 NMSA 1978;
"certified check"	Section 55-3-409 NMSA 1978;
"check"	Section 55-3-104 NMSA 1978;
"consideration"	Section 55-3-303 NMSA 1978;
"draft"	Section 55-3-104 NMSA 1978;
"holder in due course"	Section 55-3-302 NMSA 1978;
"incomplete instrument"	Section 55-3-115 NMSA 1978;
"indorsement"	Section 55-3-204 NMSA 1978;
"indorser"	Section 55-3-204 NMSA 1978;
"instrument"	Section 55-3-104 NMSA 1978;
"issue"	Section 55-3-105 NMSA 1978;
"issuer"	Section 55-3-105 NMSA 1978;
"negotiable instrument"	Section 55-3-104 NMSA 1978;
"negotiation"	Section 55-3-201 NMSA 1978;
"note"	Section 55-3-104 NMSA 1978;
"payable at a definite time"	Section 55-3-108 NMSA 1978;
"payable on demand"	Section 55-3-108 NMSA 1978;
"payable to bearer"	Section 55-3-109 NMSA 1978;
"payable to order"	Section 55-3-109 NMSA 1978;
"payment"	Section 55-3-602 NMSA 1978;

"person entitled to enforce"	Section 55-3-301 NMSA 1978;
"presentment"	Section 55-3-501 NMSA 1978;
"reacquisition"	Section 55-3-207 NMSA 1978;
"special indorsement"	Section 55-3-205 NMSA 1978;
"teller's check"	Section 55-3-104 NMSA 1978;
"transfer of instrument"	Section 55-3-203 NMSA 1978;
"traveler's check"	Section 55-3-104 NMSA 1978; and
"value"	Section 55-3-303 NMSA 1978.

(c) The following definitions in other articles apply to this article:

"account"	Section 55-4-104 NMSA 1978;
"banking day"	Section 55-4-104 NMSA 1978;
"clearing house"	Section 55-4-104 NMSA 1978;
"collecting bank"	Section 55-4-105 NMSA 1978;
"depository bank"	Section 55-4-105 NMSA 1978;
"documentary draft"	Section 55-4-104 NMSA 1978;
"intermediary bank"	Section 55-4-105 NMSA 1978;
"item"	Section 55-4-104 NMSA 1978;
"payor bank"	Section 55-4-105 NMSA 1978;

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"suspends payments"	Section 55-4-104 NMSA 1978.
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(d) In addition, Chapter 55, Article 1 NMSA 1978 contains general definitions and principles of construction and interpretation applicable throughout this article."

Chapter 234 Section 3 Laws 2009

Section 3. Section 55-3-106 NMSA 1978 (being Laws 1992, Chapter 114, Section 93) is amended to read:

"55-3-106. UNCONDITIONAL PROMISE OR ORDER.--

(a) Except as provided in this section, for the purposes of Section 55-3-104(a) NMSA 1978, a promise or order is unconditional unless it states: (i) an express condition to payment; (ii) that the promise or order is subject to or governed by another record; or (iii) that rights or obligations with respect to the promise or order are stated in another record. A reference to another record does not of itself make the promise or order conditional.

(b) A promise or order is not made conditional: (i) by a reference to another record for a statement of rights with respect to collateral, prepayment or acceleration; or (ii) because payment is limited to resort to a particular fund or source.

(c) If a promise or order requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the promise or order, the condition does not make the promise or order conditional for the purposes of Section 55-3-104(a) NMSA 1978. If the person whose specimen signature appears on an instrument fails to countersign the instrument, the failure to countersign is a defense to the obligation of the issuer, but the failure does not prevent a transferee of the instrument from becoming a holder of the instrument.

(d) If a promise or order at the time it is issued or first comes into possession of a holder contains a statement, required by applicable statutory or administrative law, to the effect that the rights of a holder or transferee are subject to claims or defenses that the issuer could assert against the original payee, the promise or order is not thereby made conditional for the purposes of Section 55-3-104(a) NMSA 1978; but if the promise or order is an instrument, there cannot be a holder in due course of the instrument."

Chapter 234 Section 4 Laws 2009

Section 4. Section 55-3-116 NMSA 1978 (being Laws 1992, Chapter 114, Section 103) is amended to read:

"55-3-116. JOINT AND SEVERAL LIABILITY--CONTRIBUTION.--

(a) Except as otherwise provided in the instrument, two or more persons who have the same liability on an instrument as makers, drawers, acceptors, indorsers who indorse as joint payees or anomalous indorsers are jointly and severally liable in the capacity in which they sign.

(b) Except as provided in Section 55-3-419(e) NMSA 1978 or by agreement of the affected parties, a party having joint and several liability who pays the instrument is entitled to receive from any party having the same joint and several liability contribution in accordance with applicable law."

Chapter 234 Section 5 Laws 2009

Section 5. Section 55-3-119 NMSA 1978 (being Laws 1992, Chapter 114, Section 106) is amended to read:

"55-3-119. NOTICE OF RIGHT TO DEFEND ACTION.--In an action for breach of an obligation for which a third person is answerable over pursuant to Chapter 55, Article 3 or 4 NMSA 1978, the defendant may give the third person notice of the litigation in a record, and the person notified may then give similar notice to any other person who is answerable over. If the notice states: (i) that the person notified may come in and defend; and (ii) that failure to do so will bind the person notified in an action later brought by the person giving the notice as to any determination of fact common to the two litigations, the person notified is so bound unless after reasonable receipt of the notice the person notified does come in and defend."

Chapter 234 Section 6 Laws 2009

Section 6. Section 55-3-305 NMSA 1978 (being Laws 1992, Chapter 114, Section 118) is amended to read:

"55-3-305. DEFENSES AND CLAIMS IN RECOURPMENT.--

(a) Except as otherwise provided in this section, the right to enforce the obligation of a party to pay an instrument is subject to the following:

(1) a defense of the obligor based on: (i) infancy of the obligor to the extent it is a defense to a simple contract; (ii) duress, lack of legal capacity or illegality of the transaction that, under other law, nullifies the obligation of the obligor; (iii) fraud that induced the obligor to sign the instrument with neither knowledge nor reasonable opportunity to learn of its character or its essential terms; or (iv) discharge of the obligor in insolvency proceedings;

(2) a defense of the obligor stated in another section of Chapter 55, Article 3 NMSA 1978 or a defense of the obligor that would be available if the person entitled to enforce the instrument were enforcing a right to payment under a simple contract; and

(3) a claim in recoupment of the obligor against the original payee of the instrument if the claim arose from the transaction that gave rise to the instrument; but the claim of the obligor may be asserted against a transferee of the instrument only to reduce the amount owing on the instrument at the time the action is brought.

(b) The right of a holder in due course to enforce the obligation of a party to pay the instrument is subject to defenses of the obligor stated in Subsection (a)(1) of this section, but is not subject to defenses of the obligor stated in Subsection (a)(2) of this section or claims in recoupment stated in Subsection (a)(3) of this section against a person other than the holder.

(c) Except as stated in Subsection (d) of this section, in an action to enforce the obligation of a party to pay the instrument, the obligor shall not assert against the person entitled to enforce the instrument a defense, claim in recoupment or claim to the instrument (Section 55-3-306 NMSA 1978) of another person, but the other person's claim to the instrument may be asserted by the obligor if the other person is joined in the action and personally asserts the claim against the person entitled to enforce the instrument. An obligor is not obliged to pay the instrument if the person seeking enforcement of the instrument does not have rights of a holder in due course and the obligor proves that the instrument is a lost or stolen instrument.

(d) In an action to enforce the obligation of an accommodation party to pay an instrument, the accommodation party may assert against the person entitled to enforce the instrument any defense or claim in recoupment under Subsection (a) of this section that the accommodated party could assert against the person entitled to enforce the instrument, except the defenses of discharge in insolvency proceedings, infancy and lack of legal capacity.

(e) In a consumer transaction, if law other than this chapter requires that an instrument include a statement to the effect that the rights of a holder or transferee are subject to a claim or a defense that the issuer could assert against the original payee and the instrument does not include such a statement:

(1) the instrument has the same effect as if the instrument included such a statement;

(2) the issuer may assert against the holder or transferee all claims and defenses that would have been available if the instrument had included such a statement; and

(3) the extent to which claims may be asserted against the holder or transferee is determined as if the instrument included such a statement.

If an instrument includes or is deemed to include a statement under this subsection, a holder or transferee who is liable under the statement to the issuer, but who is not the seller of the goods or services, shall be entitled to full indemnity from the

seller for any liability under the statement incurred by the holder or transferee that results from the issuer's claims or defenses against the seller, plus reasonable attorney fees. The provision in this section for express indemnity does not affect any right of indemnity, subrogation or recovery to which a holder or transferee may be entitled under a contract or other law. This section is not intended to provide a holder or transferee indemnity from the seller with respect to the holder or transferee's direct liability to the issuer for the holder or transferee's own actionable misconduct unrelated to derivative liability under the statement.

(f) This section is subject to law other than this article that establishes a different rule for consumer transactions."

Chapter 234 Section 7 Laws 2009

Section 7. Section 55-3-312 NMSA 1978 (being Laws 1992, Chapter 114, Section 125) is amended to read:

"55-3-312. LOST, DESTROYED OR STOLEN CASHIER'S CHECK, TELLER'S CHECK OR CERTIFIED CHECK.--

(a) In this section:

(1) "check" means a cashier's check, teller's check or certified check;

(2) "claimant" means a person who claims the right to receive the amount of a cashier's check, teller's check or certified check that was lost, destroyed or stolen;

(3) "declaration of loss" means a statement, made in a record under penalty of perjury, to the effect that: (i) the declarer lost possession of a check; (ii) the declarer is the drawer or payee of the check, in the case of a certified check, or the remitter or payee of the check, in the case of a cashier's check or teller's check; (iii) the loss of possession was not the result of a transfer by the declarer or a lawful seizure; and (iv) the declarer cannot reasonably obtain possession of the check because the check was destroyed, its whereabouts cannot be determined or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process; and

(4) "obligated bank" means the issuer of a cashier's check or teller's check or the acceptor of a certified check.

(b) A claimant may assert a claim to the amount of a check by a communication to the obligated bank describing the check with reasonable certainty and requesting payment of the amount of the check, if: (i) the claimant is the drawer or payee of a certified check or the remitter or payee of a cashier's check or teller's check;

(ii) the communication contains or is accompanied by a declaration of loss of the claimant with respect to the check; (iii) the communication is received at a time and in a manner affording the bank a reasonable time to act on it before the check is paid; and (iv) the claimant provides reasonable identification if requested by the obligated bank. Delivery of a declaration of loss is a warranty of the truth of the statements made in the declaration. If a claim is asserted in compliance with this subsection, the following rules apply:

(1) the claim becomes enforceable at the later of: (i) the time the claim is asserted; or (ii) the ninetieth day following the date of the check, in the case of a cashier's check or teller's check, or the ninetieth day following the date of the acceptance in the case of a certified check;

(2) until the claim becomes enforceable, it has no legal effect and the obligated bank may pay the check or, in the case of a teller's check, may permit the drawee to pay the check. Payment to a person entitled to enforce the check discharges all liability of the obligated bank with respect to the check;

(3) if the claim becomes enforceable before the check is presented for payment, the obligated bank is not obliged to pay the check; and

(4) when the claim becomes enforceable, the obligated bank becomes obliged to pay the amount of the check to the claimant if payment of the check has not been made to a person entitled to enforce the check. Subject to Section 55-4-302 NMSA 1978, payment to the claimant discharges all liability of the obligated bank with respect to the check.

(c) If the obligated bank pays the amount of a check to a claimant under Subsection (b)(4) of this section and the check is presented for payment by a person having rights of a holder in due course, the claimant is obliged to: (i) refund the payment to the obligated bank if the check is paid; or (ii) pay the amount of the check to the person having rights of a holder in due course if the check is dishonored.

(d) If a claimant has the right to assert a claim under Subsection (b) of this section and is also a person entitled to enforce a cashier's check, teller's check or certified check that is lost, destroyed or stolen, the claimant may assert rights with respect to the check either under this section or Section 55-3-309 NMSA 1978."

Chapter 234 Section 8 Laws 2009

Section 8. Section 55-3-419 NMSA 1978 (being Laws 1992, Chapter 114, Section 144) is amended to read:

"55-3-419. INSTRUMENTS SIGNED FOR ACCOMMODATION.--

(a) If an instrument is issued for value given for the benefit of a party to the instrument ("accommodated party") and another party to the instrument ("accommodation party") signs the instrument for the purpose of incurring liability on the instrument without being a direct beneficiary of the value given for the instrument, the instrument is signed by the accommodation party "for accommodation".

(b) An accommodation party may sign the instrument as maker, drawer, acceptor or indorser and, subject to Subsection (d) of this section, is obliged to pay the instrument in the capacity in which the accommodation party signs. The obligation of an accommodation party may be enforced notwithstanding any statute of frauds and whether or not the accommodation party receives consideration for the accommodation.

(c) A person signing an instrument is presumed to be an accommodation party and there is notice that the instrument is signed for accommodation if the signature is an anomalous indorsement or is accompanied by words indicating that the signer is acting as surety or guarantor with respect to the obligation of another party to the instrument. Except as provided in Section 55-3-605 NMSA 1978, the obligation of an accommodation party to pay the instrument is not affected by the fact that the person enforcing the obligation had notice when the instrument was taken by that person that the accommodation party signed the instrument for accommodation.

(d) If the signature of a party to an instrument is accompanied by words indicating unambiguously that the party is guaranteeing collection rather than payment of the obligation of another party to the instrument, the signer is obliged to pay the amount due on the instrument to a person entitled to enforce the instrument only if: (i) execution of judgment against the other party has been returned unsatisfied; (ii) the other party is insolvent or in an insolvency proceeding; (iii) the other party cannot be served with process; or (iv) it is otherwise apparent that payment cannot be obtained from the other party.

(e) If the signature of a party to an instrument is accompanied by words indicating that the party guarantees payment or the signer signs the instrument as an accommodation party in some other manner that does not unambiguously indicate an intention to guarantee collection rather than payment, the signer is obliged to pay the amount due on the instrument to a person entitled to enforce the instrument in the same circumstances as the accommodated party would be obliged, without prior resort to the accommodated party by the person entitled to enforce the instrument.

(f) An accommodation party that pays the instrument is entitled to reimbursement from the accommodated party and is entitled to enforce the instrument against the accommodated party. In proper circumstances, an accommodation party may obtain relief that requires the accommodated party to perform its obligations on the instrument. An accommodated party that pays the instrument has no right of recourse against, and is not entitled to contribution from, an accommodation party."

Chapter 234 Section 9 Laws 2009

Section 9. Section 55-3-602 NMSA 1978 (being Laws 1992, Chapter 114, Section 152) is amended to read:

"55-3-602. PAYMENT.--

(a) Subject to Subsection (e) of this section, an instrument is paid to the extent payment is made by or on behalf of a party obliged to pay the instrument and to a person entitled to enforce the instrument. To the extent of the payment, the obligation of the party obliged to pay the instrument is discharged, even though payment is made with knowledge of a claim to the instrument under Section 55-3-306 NMSA 1978 by another person.

(b) Subject to Subsection (e) of this section, a note is paid to the extent payment is made by or on behalf of a party obliged to pay the note to a person that formerly was entitled to enforce the note only if at the time of the payment the party obliged to pay has not received adequate notification that the note has been transferred and that payment is to be made to the transferee. A notification is adequate only if it is signed by the transferor or the transferee, reasonably identifies the transferred note and provides an address at which payments subsequently are to be made. Upon request, a transferee shall seasonably furnish reasonable proof that the note has been transferred. Unless the transferee complies with the request, a payment to the person that formerly was entitled to enforce the note is effective for purposes of Subsection (c) of this section even if the party obliged to pay the note has received a notification pursuant to this subsection.

(c) Subject to Subsection (e) of this section, to the extent of a payment pursuant to Subsections (a) and (b) of this section, the obligation of the party obliged to pay the instrument is discharged, even though payment is made with knowledge of a claim to the instrument pursuant to Section 55-3-306 NMSA 1978 by another person.

(d) Subject to Subsection (e) of this section, a transferee, or any party that has acquired rights in the instrument directly or indirectly from a transferee, including any such party that has rights as a holder in due course, is deemed to have notice of any payment that is made pursuant to Subsection (b) of this section after the date that the note is transferred to the transferee, but before the party obliged to pay the note receives adequate notification of the transfer.

(e) The obligation of a party to pay the instrument is not discharged pursuant to Subsections (a) through (d) of this section if:

(1) a claim to the instrument under Section 55-3-306 NMSA 1978 is enforceable against the party receiving payment and: (i) payment is made with knowledge by the payor that payment is prohibited by injunction or similar process of a court of competent jurisdiction; or (ii) in the case of an instrument other than a cashier's check, teller's check or certified check, the party making payment accepted, from the

person having a claim to the instrument, indemnity against loss resulting from refusal to pay the person entitled to enforce the instrument; or

(2) the person making payment knows that the instrument is a stolen instrument and pays a person it knows is in wrongful possession of the instrument.

(f) As used in this section, "signed" with respect to a record that is not a writing includes the attachment to or logical association with the record of an electronic symbol, sound or process with the present intent to adopt or accept the record."

Chapter 234 Section 10 Laws 2009

Section 10. Section 55-3-604 NMSA 1978 (being Laws 1992, Chapter 114, Section 154) is amended to read:

"55-3-604. DISCHARGE BY CANCELLATION OR RENUNCIATION.--

(a) A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument: (i) by an intentional voluntary act, such as surrender of the instrument to the party; destruction, mutilation or cancellation of the instrument; cancellation or striking out of the party's signature; or the addition of words to the instrument indicating discharge; or (ii) by agreeing not to sue or otherwise renouncing rights against the party by a signed record.

(b) Cancellation or striking out of an indorsement pursuant to Subsection (a) of this section does not affect the status and rights of a party derived from the indorsement.

(c) As used in this section, "signed" with respect to a record that is not a writing includes the attachment to or logical association with the record of an electronic symbol, sound or process with the present intent to adopt or accept the record."

Chapter 234 Section 11 Laws 2009

Section 11. Section 55-3-605 NMSA 1978 (being Laws 1992, Chapter 114, Section 155) is amended to read:

"55-3-605. DISCHARGE OF SECONDARY OBLIGORS.--

(a) If a person entitled to enforce an instrument releases the obligation of a principal obligor in whole or in part and another party to the instrument is a secondary obligor with respect to the obligation of that principal obligor, the following rules apply:

(1) any obligations of the principal obligor to the secondary obligor with respect to any previous payment by the secondary obligor are not affected. Unless

the terms of the release preserve the secondary obligor's recourse, the principal obligor is discharged, to the extent of the release, from any other duties to the secondary obligor pursuant to this article;

(2) unless the terms of the release provide that the person entitled to enforce the instrument retains the right to enforce the instrument against the secondary obligor, the secondary obligor is discharged to the same extent as the principal obligor from any unperformed portion of its obligation on the instrument. If the instrument is a check and the obligation of the secondary obligor is based on an indorsement of the check, the secondary obligor is discharged without regard to the language or circumstances of the discharge or other release; and

(3) if the secondary obligor is not discharged pursuant to Paragraph (2) of this subsection, the secondary obligor is discharged to the extent of the value of the consideration for the release and to the extent that the release would otherwise cause the secondary obligor a loss.

(b) If a person entitled to enforce an instrument grants a principal obligor an extension of the time at which one or more payments are due on the instrument and another party to the instrument is a secondary obligor with respect to the obligation of that principal obligor, the following rules apply:

(1) any obligations of the principal obligor to the secondary obligor with respect to any previous payment by the secondary obligor are not affected. Unless the terms of the extension preserve the secondary obligor's recourse, the extension correspondingly extends the time for performance of any other duties owed to the secondary obligor by the principal obligor pursuant to this article;

(2) the secondary obligor is discharged to the extent that the extension would otherwise cause the secondary obligor a loss; and

(3) to the extent that the secondary obligor is not discharged pursuant to Paragraph (2) of this subsection, the secondary obligor either may perform its obligations to a person entitled to enforce the instrument as if the time for payment had not been extended or, unless the terms of the extension provide that the person entitled to enforce the instrument retains the right to enforce the instrument against the secondary obligor as if the time for payment had not been extended, may treat the time for performance of its obligations as having been extended correspondingly.

(c) If a person entitled to enforce an instrument agrees, with or without consideration, to a modification of the obligation of a principal obligor, other than a complete or a partial release or an extension of the due date, and another party to the instrument is a secondary obligor with respect to the obligation of that principal obligor, the following rules apply:

(1) any obligations of the principal obligor to the secondary obligor with respect to any previous payment by the secondary obligor are not affected. The modification correspondingly modifies any other duties owed to the secondary obligor by the principal obligor pursuant to this article;

(2) the secondary obligor is discharged from any unperformed portion of its obligation to the extent that the modification would otherwise cause the secondary obligor a loss; and

(3) to the extent that the secondary obligor is not discharged pursuant to Paragraph (2) of this subsection, the secondary obligor may satisfy its obligation on the instrument as if the modification had not occurred or treat its obligation on the instrument as having been modified correspondingly.

(d) If the obligation of a principal obligor is secured by an interest in collateral, if another party to the instrument is a secondary obligor with respect to that obligation, and if a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of the secondary obligor is discharged to the extent of the impairment. The value of an interest in collateral is impaired to the extent the value of the interest is reduced to an amount less than the amount of the recourse of the secondary obligor or the reduction in value of the interest causes an increase in the amount by which the amount of the recourse exceeds the value of the interest. For purposes of this subsection, "impairing the value of an interest in collateral" includes failure to obtain or maintain perfection or recordation of the interest in collateral; release of collateral without substitution of collateral of equal value or equivalent reduction of the underlying obligation; failure to perform a duty to preserve the value of collateral owed, pursuant to Article 9 of the Uniform Commercial Code or other law, to a debtor or other person secondarily liable; and failure to comply with applicable law in disposing of or otherwise enforcing the interest in collateral.

(e) A secondary obligor is not discharged pursuant to Paragraph (3) of Subsection (a) of this section or Subsection (b), (c) or (d) of this section unless the person entitled to enforce the instrument knows that the person is a secondary obligor or has notice pursuant to Subsection (c) of Section 55-3-419 NMSA 1978 that the instrument was signed for accommodation.

(f) A secondary obligor is not discharged pursuant to this section if the secondary obligor consents to the event or conduct that is the basis of the discharge or if the instrument or a separate agreement of the party provides for waiver of discharge pursuant to this section specifically or by general language indicating that parties waive defenses based on suretyship or impairment of collateral. Unless the circumstances indicate otherwise, consent by the principal obligor to an act that would lead to a discharge pursuant to this section constitutes consent to that act by the secondary obligor if the secondary obligor controls the principal obligor or deals with the person entitled to enforce the instrument on behalf of the principal obligor.

(g) A release or extension preserves a secondary obligor's recourse if the terms of the release or extension provide that:

(1) the person entitled to enforce the instrument retains the right to enforce the instrument against the secondary obligor; and

(2) the recourse of the secondary obligor continues as if the release or extension had not been granted.

(h) Except as otherwise provided in Subsection (i) of this section, a secondary obligor asserting discharge pursuant to this section has the burden of persuasion both with respect to the occurrence of the acts alleged to harm the secondary obligor and loss or prejudice caused by those acts.

(i) If the secondary obligor demonstrates prejudice caused by an impairment of its recourse and the circumstances of the case indicate that the amount of loss is not reasonably susceptible of calculation or requires proof of facts that are not ascertainable, it is presumed that the act impairing recourse caused a loss or impairment equal to the liability of the secondary obligor on the instrument. In that event, the burden of persuasion as to any lesser amount of the loss is on the person entitled to enforce the instrument."

Chapter 234 Section 12 Laws 2009

Section 12. Section 55-4-104 NMSA 1978 (being Laws 1961, Chapter 96, Section 4-104, as amended) is amended to read:

"55-4-104. DEFINITIONS AND INDEX OF DEFINITIONS.--

(a) In Chapter 55, Article 4 NMSA 1978, unless the context otherwise requires:

(1) "account" means any deposit or credit account with a bank, including a demand, time, savings, passbook, share draft or like account, other than an account evidenced by a certificate of deposit;

(2) "afternoon" means the period of a day between noon and midnight;

(3) "banking day" means the part of a day on which a bank is open to the public for carrying on substantially all of its banking functions;

(4) "clearing house" means an association of banks or other payors regularly clearing items;

(5) "customer" means a person having an account with a bank or for whom a bank has agreed to collect items, including a bank that maintains an account at another bank;

(6) "documentary draft" means a draft to be presented for acceptance or payment if specified documents, certificated securities pursuant to Section 55-8-102 NMSA 1978 or instructions for uncertificated securities pursuant to Section 55-8-102 NMSA 1978 or other certificates, statements or the like are to be received by the drawee or other payor before acceptance or payment of the drafts;

(7) "draft" means a draft as defined in Section 55-3-104 NMSA 1978 or an item, other than an instrument, that is an order;

(8) "drawee" means a person ordered in a draft to make payment;

(9) "item" means an instrument or a promise or order to pay money handled by a bank for collection or payment. The term does not include a payment order governed by Chapter 55, Article 4A NMSA 1978 or a credit or debit card slip;

(10) "midnight deadline" with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later;

(11) "settle" means to pay in cash, by "clearing-house" settlement, in a charge or credit or by remittance or otherwise as agreed. A settlement may be either provisional or final; and

(12) "suspends payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over or that it ceases or refuses to make payments in the ordinary course of business.

(b) Other definitions applying to Chapter 55, Article 4 NMSA 1978 and the sections in which they appear are:

"agreement for

electronic presentment" Section 55-4-110 NMSA 1978;

"collecting bank" Section 55-4-105 NMSA 1978;

"depository bank" Section 55-4-105 NMSA 1978;

"intermediary bank" Section 55-4-105 NMSA 1978;

"payor bank" Section 55-4-105 NMSA 1978;

"presenting bank" Section 55-4-105 NMSA 1978; and

"presentment notice" Section 55-4-110 NMSA 1978.

(c) "Control", as provided in Section 55-7-106 NMSA 1978, and the following definitions in other articles apply to Chapter 55, Article 4 NMSA 1978:

"acceptance" Section 55-3-409 NMSA 1978;

"alteration" Section 55-3-407 NMSA 1978;

"cashier's check" Section 55-3-104 NMSA 1978;

"certificate of

deposit" Section 55-3-104 NMSA 1978;

"certified check" Section 55-3-409 NMSA 1978;

"check" Section 55-3-104 NMSA 1978;

"holder in due

course" Section 55-3-302 NMSA 1978;

"instrument" Section 55-3-104 NMSA 1978;

"notice of dishonor" Section 55-3-503 NMSA 1978;

"order" Section 55-3-103 NMSA 1978;

"ordinary care" Section 55-3-103 NMSA 1978;

"person entitled

to enforce" Section 55-3-301 NMSA 1978;

"presentment" Section 55-3-501 NMSA 1978;

"promise" Section 55-3-103 NMSA 1978;

"prove" Section 55-3-103 NMSA 1978;

"teller's check" Section 55-3-104 NMSA 1978; and

"unauthorized

signature"

Section 55-3-403 NMSA 1978.

(d) In addition, Chapter 55, Article 1 NMSA 1978 contains general definitions and principles of construction and interpretation applicable throughout this article."

Chapter 234 Section 13 Laws 2009

Section 13. Section 55-4-105 NMSA 1978 (being Laws 1961, Chapter 96, Section 4-105, as amended) is amended to read:

"55-4-105. DEFINITIONS OF TYPES OF BANKS.--In this article:

(1) [Reserved];

(2) "depository bank" means the first bank to take an item even though it is also the payor bank, unless the item is presented for immediate payment over the counter;

(3) "payor bank" means a bank that is the drawee of a draft;

(4) "intermediary bank" means a bank to which an item is transferred in course of collection, except the depository or payor bank;

(5) "collecting bank" means a bank handling an item for collection except the payor bank; and

(6) "presenting bank" means a bank presenting an item, except a payor bank."

Chapter 234 Section 14 Laws 2009

Section 14. Section 55-4-212 NMSA 1978 (being Laws 1961, Chapter 96, Section 4-210, as amended) is amended to read:

"55-4-212. PRESENTMENT BY NOTICE OF ITEM NOT PAYABLE BY, THROUGH OR AT A BANK--LIABILITY OF DRAWER OR INDORSER.--

(a) Unless otherwise instructed, a collecting bank may present an item not payable by, through or at a bank by sending to the party to accept or pay a record providing notice that the bank holds the item for acceptance or payment. The notice must be sent in time to be received on or before the day when presentment is due, and the bank must meet any requirement of the party to accept or pay under Section 55-3-501 NMSA 1978 by the close of the bank's next banking day after it knows of the requirement.

(b) If presentment is made by notice and payment, acceptance or request for compliance with a requirement under Section 55-3-501 NMSA 1978 is not received by the close of business on the day after maturity, or, in the case of demand items, by the close of business on the third banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any drawer or indorser by sending it notice of the facts."

Chapter 234 Section 15 Laws 2009

Section 15. Section 55-4-301 NMSA 1978 (being Laws 1961, Chapter 96, Section 4-301, as amended) is amended to read:

"55-4-301. DEFERRED POSTING--RECOVERY OF PAYMENT BY RETURN OF ITEMS--TIME OF DISHONOR--RETURN OF ITEMS BY PAYOR BANK.--

(a) If a payor bank settles for a demand item other than a documentary draft presented otherwise than for immediate payment over the counter before midnight of the banking day of receipt, the payor bank may revoke the settlement and recover the settlement if, before it has made final payment and before its midnight deadline, it:

(1) returns the item;

(2) returns an image of the item, if the party to which the return is made has entered into an agreement to accept an image as a return of the item and the image is returned in accordance with that agreement; or

(3) sends a record providing notice of dishonor or nonpayment if the item is unavailable for return.

(b) If a demand item is received by a payor bank for credit on its books, it may return the item or send notice of dishonor and may revoke any credit given or recover the amount thereof withdrawn by its customer if it acts within the time limit and in the manner specified in Subsection (a) of this section.

(c) Unless previous notice of dishonor has been sent, an item is dishonored at the time when, for purposes of dishonor, it is returned or notice is sent in accordance with this section.

(d) An item is returned:

(1) as to an item presented through a clearing house, when it is delivered to the presenting or last collecting bank or to the clearing house or is sent or delivered in accordance with clearing-house rules; or

(2) in all other cases, when it is sent or delivered to the bank's customer or transferor or pursuant to the customer's instructions."

Chapter 234 Section 16 Laws 2009

Section 16. Section 55-4-403 NMSA 1978 (being Laws 1961, Chapter 96, Section 4-403, as amended) is amended to read:

"55-4-403. CUSTOMER'S RIGHT TO STOP PAYMENT--BURDEN OF PROOF OF LOSS.--

(a) A customer or any person authorized to draw on an account if there is more than one person may stop payment of any item drawn on the customer's account or close the account by an order to the bank describing the item or account with reasonable certainty received at a time and in a manner that affords the bank a reasonable opportunity to act on it before any action by the bank with respect to the item described in Section 55-4-303 NMSA 1978. If the signature of more than one person is required to draw on an account, any of these persons may stop payment or close the account.

(b) A stop-payment order is effective for six months, but it lapses after fourteen calendar days if the original order was oral and was not confirmed in a record within that period. A stop-payment order may be renewed for additional six-month periods by a record given to the bank within a period during which the stop-payment order is effective.

(c) The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a stop-payment order or order to close an account is on the customer. The loss from payment of an item contrary to a stop-payment order may include damages for dishonor of subsequent items under Section 55-4-402 NMSA 1978."

Chapter 234 Section 17 Laws 2009

Section 17. Section 55-4A-105 NMSA 1978 (being Laws 1992, Chapter 114, Section 201, as amended) is amended to read:

"55-4A-105. OTHER DEFINITIONS.--

(a) In this article:

(1) "authorized account" means a deposit account of a customer in a bank designated by the customer as a source of payment of payment orders issued by the customer to the bank; if a customer does not so designate an account, any account of the customer is an authorized account if payment of a payment order from that account is not inconsistent with a restriction on the use of that account;

(2) "bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union and trust company; a branch or separate office of a bank is a separate bank for purposes of this article;

(3) "customer" means a person, including a bank, having an account with a bank or from whom a bank has agreed to receive payment orders;

(4) "funds-transfer business day" of a receiving bank means the part of a day during which the receiving bank is open for the receipt, processing and transmittal of payment orders and cancellations and amendments of payment orders;

(5) "funds-transfer system" means a wire transfer network, automated clearing house or other communication system of a clearing house or other association of banks through which a payment order by a bank may be transmitted to the bank to which the order is addressed;

(6) [Reserved]; and

(7) "prove" with respect to a fact means to meet the burden of establishing the fact (Paragraph (8) of Subsection (b) of Section 55-1-201 NMSA 1978).

(b) Other definitions applying to this article and the sections in which they appear are:

"acceptance"	Section 55-4A-209 NMSA 1978;
"beneficiary"	Section 55-4A-103 NMSA 1978;
"beneficiary's bank"	Section 55-4A-103 NMSA 1978;
"executed"	Section 55-4A-301 NMSA 1978;
"execution date"	Section 55-4A-301 NMSA 1978;
"funds transfer"	Section 55-4A-104 NMSA 1978;
"funds-transfer system rule"	Section 55-4A-501 NMSA 1978;
"intermediary bank"	Section 55-4A-104 NMSA 1978;
"originator"	Section 55-4A-104 NMSA 1978;
"originator's bank"	Section 55-4A-104 NMSA 1978;

"payment by beneficiary's
bank to beneficiary" Section 55-4A-405 NMSA 1978;
"payment by originator to
beneficiary" Section 55-4A-406 NMSA 1978;
"payment by sender to
receiving bank" Section 55-4A-403 NMSA 1978;
"payment date" Section 55-4A-401 NMSA 1978;
"payment order" Section 55-4A-103 NMSA 1978;
"receiving bank" Section 55-4A-103 NMSA 1978;
"security procedure" Section 55-4A-201 NMSA 1978;

and

"sender" Section 55-4A-103 NMSA 1978.

(c) The following definitions in Chapter 55, Article 4 NMSA 1978 apply to this article:

"clearing house" Section 55-4-104 NMSA 1978;
"item" Section 55-4-104 NMSA 1978;

and

"suspends payments" Section 55-4-104 NMSA 1978.

(d) In addition, Chapter 55, Article 1 NMSA 1978 contains general definitions and principles of construction and interpretation applicable throughout this article."

Chapter 234 Section 18 Laws 2009

Section 18. REPEAL.--Sections 48-7-2 and 48-7-3 NMSA 1978 (being Laws 1927, Chapter 43, Sections 1 and 2) are repealed.

Chapter 234 Section 19 Laws 2009

Section 19. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 2010.

Senate Bill 74, aa

Approved April 7, 2009

LAWS 2009, CHAPTER 235

AN ACT

RELATING TO WORKERS' COMPENSATION; PROVIDING FOR LUMP-SUM SETTLEMENT AGREEMENTS FOR PAYMENTS OF COMPENSATION, MEDICAL BENEFITS OR BOTH; REQUIRING APPROVAL OF SETTLEMENTS BY WORKERS' COMPENSATION JUDGE; PROVIDING FOR A LIMIT ON ATTORNEY FEES IN SETTLEMENTS FOR FUTURE PAYMENTS OF COMPENSATION OR MEDICAL BENEFITS.

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

Chapter 235 Section 1 Laws 2009

Section 1. Section 52-5-12 NMSA 1978 (being Laws 1986, Chapter 22, Section 38, as amended) is amended to read:

"52-5-12. PAYMENT--PERIODIC OR LUMP SUM--SETTLEMENT.--

A. It is stated policy for the administration of the Workers' Compensation Act and the New Mexico Occupational Disease Disablement Law that it is in the best interest of the injured worker or disabled employee that the worker or employee receive benefit payments on a periodic basis. Except as provided in this section, lump-sum payments in exchange for the release of the employer from liability for future payments of compensation or medical benefits shall not be allowed.

B. With the approval of the workers' compensation judge, a worker may elect to receive compensation benefits to which the worker is entitled in a lump sum if the worker has returned to work for at least six months, earning at least eighty percent of the average weekly wage the worker earned at the time of injury or disablement. If a worker receives the benefit income in a lump sum, the worker is not entitled to any additional benefit income for the compensable injury or disablement and the worker shall only receive that portion of the benefit income that is attributable to the impairment rating as determined in Section 52-1-24 NMSA 1978. In making lump-sum payments, the payment due the worker shall not be discounted at a rate greater than a sum equal

to the present value of all future payments of compensation computed at a five-percent discount compounded annually.

C. After maximum medical improvement and with the approval of the workers' compensation judge, a worker may elect to receive a partial lump-sum payment of workers' compensation benefits for the sole purpose of paying debts that may have accumulated during the course of the injured or disabled worker's disability.

D. The worker and employer may elect to resolve a claim for injury with a lump-sum payment to the worker for all or a portion of past, present and future payments of compensation benefits, medical benefits or both in exchange for a full and final release or an appropriate release of the employer from liability for such compromised benefits. The proposed lump-sum payment agreement shall be presented to the workers' compensation judge for approval, and a hearing shall be held on the record. The workers' compensation judge shall approve the lump-sum payment agreement if the judge finds that:

(1) a written agreement describing the nature of the proposed settlement has been mutually agreed upon and executed by the worker and the employer;

(2) the worker has been fully informed and understands the terms, conditions and consequences of the proposed settlement;

(3) the lump-sum payment agreement is fair, equitable and provides substantial justice to the worker and employer; and

(4) the lump-sum payment agreement complies with the requirements for approval set forth in Sections 52-5-13 and 52-5-14 NMSA 1978.

E. The workers' compensation judge shall approve a lump-sum payment agreement pursuant to Subsection D of this section by order. Once the agreement has been approved and filed with the clerk of the administration, any further challenge to the terms of the settlement is barred and the lump-sum payment agreement shall not be reopened, set aside or reconsidered nor shall any additional benefits be imposed.

F. If a worker and employer elect to enter into a lump-sum payment agreement pursuant to Subsection D of this section, the limit on attorney fees pursuant to Subsection I of Section 52-1-54 NMSA 1978 shall apply.

G. If an insurer pays a lump-sum payment to an injured or disabled worker without the approval of a workers' compensation judge and if at a later date benefits are due for the injured or disabled worker's claim, the insurer alone shall be liable for that claim and shall not in any manner, including rate determinations and the employer's experience modifier, pass on the cost of the benefits due to the employer.

H. If the compensation benefit to which a worker is entitled is less than fifty dollars (\$50.00) per week, any party may petition the workers' compensation judge to consolidate that payment into quarterly installments."

Chapter 235 Section 2 Laws 2009

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.

Senate Bill 76, aa

Approved April 7, 2009

LAWS 2009, CHAPTER 236

AN ACT

RELATING TO CORRECTIONS; REQUIRING THE CORRECTIONS DEPARTMENT TO ACCEPT AND REDISPENSE UNUSED PRESCRIPTIONS.

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

Chapter 236 Section 1 Laws 2009

Section 1. CORRECTIONS DEPARTMENT REQUIRED TO ACCEPT AND REDISPENSE UNUSED PRESCRIPTIONS--CONDITIONS OF ACCEPTANCE AND REDISPENSING.--

A. A pharmacy operated by the corrections department or under contract with the department shall accept for the purpose of redispensing a prescription drug that has been dispensed and has left the control of the pharmacist if the prescription drug is being returned by a corrections facility that has a registered professional nurse or a licensed practical nurse who is responsible for the security, handling and administration of prescription drugs within that corrections facility and if all of the following conditions are met:

(1) the pharmacist is satisfied that the conditions under which the prescription drug has been delivered, stored and handled before and during its return were such as to prevent damage, deterioration or contamination that would adversely affect the identity, strength, quality, purity, stability, integrity or effectiveness of the prescription drug;

(2) the pharmacist is satisfied that the prescription drug did not leave the control of the registered professional nurse or licensed practical nurse responsible for the security, handling and administration of that prescription drug and that the prescription drug did not come into the physical possession of the individual for whom it was prescribed;

(3) the pharmacist is satisfied that the labeling and packaging of the prescription drug are accurate, have not been altered, defaced or tampered with and include the identity, strength, expiration date and lot number of the prescription drug; and

(4) the prescription drug was dispensed in a unit-dose package or unit-of-issue package.

B. A pharmacy operated by the corrections department or under contract with the department shall not accept for return prescription drugs as provided pursuant to this section until the pharmacist in charge develops a written set of protocols for accepting, returning to stock, repackaging, labeling and redispensing prescription drugs. The written protocols shall be maintained on the premises of any pharmacy dispensing prescriptions for the department and shall be readily accessible to each pharmacist on duty. The written protocols shall include, at a minimum, each of the following:

(1) methods for ensuring that damage, deterioration or contamination has not occurred during the delivery, handling, storage or return of the prescription drugs such that it would adversely affect the identity, strength, quality, purity, stability, integrity or effectiveness of the prescription drugs or otherwise render the drugs unfit for distribution;

(2) methods for accepting, returning to stock, repackaging, labeling and redispensing the prescription drugs returned pursuant to this section; and

(3) a uniform system of recording and tracking prescription drugs that are returned to stock, repackaged, labeled and redistributed pursuant to this section.

C. If the condition of a prescription drug and its package meets the standards set forth in Subsection B of this section, a prescription drug shall be returned to stock and redistributed as follows:

(1) a prescription drug that was originally dispensed in the manufacturer's unit-dose package or unit-of-issue package that is returned in that same package may be returned to stock, repackaged and redispensed as needed; and

(2) a prescription drug that is repackaged into a unit-dose package or a unit-of-issue package by the pharmacy, dispensed and returned to that pharmacy in that unit-dose package or unit-of-issue package may be returned to stock, but it shall

not be repackaged. A unit-dose package or unit-of-issue package prepared by the pharmacist and returned to stock shall only be redispensed in that same unit-dose package or unit-of-issue package and shall only be redispensed once. A pharmacist shall not add unit-dose package drugs to a partially used unit-of-issue package.

D. This section does not apply to any of the following:

- (1) a controlled substance;
- (2) a prescription drug that is dispensed as part of a customized patient medication package;
- (3) a prescription drug that is not dispensed as a unit-dose package or a unit-of-issue package; or
- (4) a prescription drug that is not properly labeled with the identity, strength, lot number and expiration date.

E. As used in this section:

(1) "customized patient medication package" means a package that is prepared by a pharmacist for a specific patient and that contains two or more prescribed solid oral dosage forms;

(2) "repackaging" means the process by which the pharmacy prepares a prescription it accepts pursuant to this section in a unit-dose package, unit-of-issue package or customized patient medication package for immediate dispensing in accordance with a current prescription;

(3) "corrections facility" means any facility or program controlled or operated by the state or any of its agencies or departments and supported wholly or in part by state funds for the correctional care of persons, including but not limited to:

(a) the "penitentiary of New Mexico", which consists of the penitentiary at Santa Fe and other places in the state designated by the secretary of corrections; and

(b) the parole board to the extent delegated by the Parole Board Act;

(4) "unit-dose package" means a package that contains a single-dose drug with the name, strength, control number and expiration date of that drug on the label; and

(5) "unit-of-issue package" means a package that provides multiple doses of the same drug, but each drug is individually separated and includes the name, lot number and expiration date of the drug.

Senate Bill 82, w/cc

Approved April 7, 2009

LAWS 2009, CHAPTER 237

AN ACT

RELATING TO FINANCE; AUTHORIZING THE NEW MEXICO FINANCE AUTHORITY TO MAKE LOANS FOR PRIVATE PROJECTS FROM THE ECONOMIC DEVELOPMENT REVOLVING FUND; DECLARING AN EMERGENCY.

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

Chapter 237 Section 1 Laws 2009

Section 1. AUTHORIZATION OF PROJECTS.--Pursuant to the provisions of Sections 6-25-6 and 6-25-13 NMSA 1978, the legislature authorizes the New Mexico finance authority to provide financing assistance in the form of loan participations with private lenders for up to forty-nine percent of total individual project financing, not to exceed five million dollars (\$5,000,000) per project, from the economic development revolving fund to eligible entities for the following standard projects, subject to detailed analysis, final approval and specific terms and conditions established by the authority:

1. a hospitality and tourism facility in Luna county;
2. a value-added agriculture manufacturing project in Roosevelt county;
3. a solar photovoltaic project in San Miguel county;
4. an agricultural processing project in Lea county;
5. a downtown revitalization project in Eddy county;
6. a hospitality and tourism facility in Lincoln county;
7. a metal fabrication manufacturing facility in San Juan county;
8. a solar photovoltaic manufacturing project in Quay county;

9. an electromagnetic mapping manufacturing project in Colfax county;
10. a wood manufacturing project in Mora county;
11. a cosmetics manufacturing project in Taos county;
12. a water conservation production facility in San Juan county;
13. a clean energy production facility in Cibola county;
14. an extraction project in Grant county;
15. an aviation manufacturing project in McKinley county;
16. a clean heat manufacturing project in Dona Ana county;
17. a refrigerated air manufacturing project in Grant county;
18. an agricultural equipment manufacturing project in Union county;
19. a clean energy site in Valencia county;
20. a food production facility expansion in Bernalillo county;
21. an expansion of a production facility in Bernalillo county;
22. a wood manufacturing project in Otero county;
23. an aviation manufacturing project in San Juan county;
24. a historic renovation project in Bernalillo county;
25. a metal fabrication manufacturing facility in San Juan county;
26. an airplane parts manufacturing facility in Sandoval county;
27. an assisted living facility expansion in Colfax county;
28. a beauty products manufacturing facility in Taos county;
29. an expansion of a water bottling company in Colfax county;
30. a value-added agriculture manufacturing facility in Dona Ana county;
31. a health improvement manufacturing project in Bernalillo county;

32. a hospitality development in Bernalillo county;
33. a value-added agriculture manufacturing project in Sandoval county;
34. a hospitality and tourism facility in Santa Fe county;
35. a high-tech water manufacturing project in Bernalillo county;
36. a solar photovoltaic manufacturing project in Bernalillo county;
37. a hospitality and tourism facility in Luna county;
38. a hospitality and tourism facility in Hidalgo county;
39. a value-added agriculture processing and distribution project in Luna county;
40. a countertop manufacturing facility in Dona Ana county;
41. a visual media production facility in San Juan county; and
42. an aviation manufacturing project in McKinley county.

Chapter 237 Section 2 Laws 2009

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

Senate Bill 90, aa, w/ec

Approved April 7, 2009

LAWS 2009, CHAPTER 238

AN ACT

RELATING TO CHILD CARE; ENACTING A NEW SECTION OF CHAPTER 50 NMSA 1978 TO PROVIDE FOR COLLECTIVE BARGAINING AND REPRESENTATION OF CHILD CARE PROVIDERS.

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

Chapter 238 Section 1 Laws 2009

Section 1. A new section of Chapter 50 NMSA 1978 is enacted to read:

"FAMILY CHILD CARE PROVIDER COLLECTIVE BARGAINING--
REPRESENTATION.--

A. The purpose of this section is to authorize family child care providers to organize and to use collective bargaining on all matters specified in this section. It is the intent of the legislature that the state action exemption to the application of federal and state antitrust laws be fully available to the extent that the activities of the family child care providers and their representatives are authorized under this section.

B. Family child care providers shall have the right to form, join or assist a labor organization for the purpose of collective bargaining through representatives chosen by family child care providers without interference, restraint or coercion and shall have the right to refuse any such activities.

C. The exclusive representative may be selected by mail ballot election conducted by a reputable organization with experience in conducting representation elections. In order for an election to occur, a representative or representative organization shall have collected signed cards from at least thirty percent of affected family child care providers indicating their desire for representation. The organization conducting the election shall establish procedures to ensure the secrecy of any ballot cast in any election held pursuant to this section. Costs of the election shall be borne by the labor organization seeking exclusive representative status. The providers in the unit shall be offered the opportunity to choose between the following:

(1) representation by the provider organization; or

(2) no representation.

D. Within ten days of receiving authorization cards requesting a mail-in ballot election, the children, youth and families department or another appropriate state agency shall submit a list verifying all eligible family child care providers in the state to the organization making the request.

E. A labor organization that has been certified through the process as representing the family child care providers shall be the exclusive representative for all family child care providers for the purposes of negotiating a collective bargaining agreement with the children, youth and families department.

F. The children, youth and families department shall meet with the family child care providers and their exclusive representative with the purpose of entering into a written agreement that shall be binding upon both the state and the exclusive representative. The written agreement shall include a binding arbitration procedure, a grievance process, the creation of a labor-management committee that will meet

regularly to discuss concerns and issues as they arise and mechanisms for dues collection.

G. Topics of negotiations shall include terms and conditions under which family child care providers provide child care in their homes and in the homes of parents, including reimbursement rates and payment procedures for publicly funded care, health and safety conditions, the monitoring and evaluating of family child care homes, licensing and other fees, quality rating standards, training and certification requirements and any other matters that would improve recruitment and retention of qualified family child care providers and the quality of the programs they provide. The labor organization and the state agency shall work together to explore systems for family child care providers to have access to affordable, comprehensive health insurance coverage.

H. An agreement provision by the state and the exclusive representative that requires the expenditure of funds shall be contingent upon the specific appropriation of funds by the legislature and the availability of funds.

I. In order to ensure that the children, youth and families department's mandate for quality measures continues for all licensed providers of child care services, the department shall ensure the adequate allocation of appropriated funds to those providing the highest-quality care, including licensed centers and licensed family child care providers.

J. Should the parties be unable to reach an agreement, the parties shall follow the impasse resolution procedure as outlined in the Public Employee Bargaining Act.

K. The children, youth and families department shall not:

(1) discriminate or knowingly allow any other organizations with which the children, youth and families department contracts to administer services related to child care to discriminate against a family child care provider with regard to the terms and conditions of its relationship with the provider because of the provider's membership in a labor organization;

(2) take negative action against a family child care provider or knowingly allow any other organizations with which the children, youth and families department contracts to administer services related to child care to take negative action because the provider has signed or filed an affidavit, petition, grievance or complaint or given information or testimony or because the provider is forming, joining or choosing to be represented by a labor organization;

(3) refuse to bargain collectively in good faith with the labor organization; or

(4) refuse to comply with a collective bargaining agreement reached with the labor organization pursuant to this section.

L. The labor organization shall not:

(1) discriminate against a family child care provider with regard to labor organization membership because of race, color, religion, creed, age, sex or national origin;

(2) refuse to bargain collectively in good faith with the children, youth and families department; or

(3) refuse to comply with a collective bargaining agreement reached with the children, youth and families department pursuant to this section.

M. If either party believes a provision of this section has been violated, the parties shall follow the public employee labor relations board's rules of prohibited practice proceedings.

N. By entering into an agreement, the children, youth and families department and the exclusive representative do not intend to interfere with parental rights to select or deselect family child care providers to provide care for children.

O. In enacting bargaining rights for family child care providers, the state intends to provide state action immunity under federal and state antitrust laws for the activities of family child care providers and their exclusive bargaining representative to the extent such activities are authorized by this section.

P. A family child care provider or an employee of a family child care provider is not a public employee for purposes of the Tort Claims Act.

Q. As used in this section:

(1) "exclusive representative" means a labor organization that, as a result of certification, has the right to represent family child care providers in an appropriate bargaining unit for the purposes of collective bargaining;

(2) "family child care provider" means a person who provides care services and supervision for children in the provider's own home under regulations established by the children, youth and families department and who is:

(a) licensed by the state and is a vendor in the state and federal child care assistance program; or

(b) registered with the state to participate in the child and adult care food program and is a vendor in the state and federal child care assistance program; and

(3) "labor organization" means a family child care provider organization whose purposes include the representation of family child care providers in collective bargaining and in otherwise meeting, consulting and conferring with the children, youth and families department on matters pertaining to family child care provider relations.

R. If any part or application of this section is held invalid, the remainder or its application to other situations or persons shall not be affected."

Senate Bill 402, aa

Approved April 7, 2009

LAWS 2009, CHAPTER 239

AN ACT

RELATING TO CHILDREN; AMENDING SECTIONS OF THE CHILDREN'S CODE AND OTHER LAWS; REPLACING THE JUVENILE PAROLE BOARD WITH A JUVENILE PUBLIC SAFETY ADVISORY BOARD; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Chapter 239 Section 1 Laws 2009

Section 1. Section 9-2A-5 NMSA 1978 (being Laws 1992, Chapter 57, Section 5) is amended to read:

"9-2A-5. ADMINISTRATIVELY ATTACHED AGENCY.--The juvenile public safety advisory board is administratively attached to the department."

Chapter 239 Section 2 Laws 2009

Section 2. Section 9-2A-16 NMSA 1978 (being Laws 1992, Chapter 57, Section 16) is amended to read:

"9-2A-16. FUNCTIONS OF JUVENILE JUSTICE ADVISORY COMMITTEE AND DEPARTMENT.--

A. The juvenile justice advisory committee shall have policymaking, planning and review powers over only the following functions pursuant to the federal Juvenile Justice and Delinquency Prevention Act of 1974:

(1) in conjunction with the department, approval of a comprehensive state plan and modifications reflecting statewide goals, objectives and priorities for the expenditure of federal funds received under that act;

(2) approval or disapproval of applications or amendments submitted by eligible entities pursuant to that act;

(3) in conjunction with the department, assurance that fund accounting, auditing and evaluation of programs and projects funded pursuant to that act comply with federal requirements and state law;

(4) in conjunction with the department, receive and review annual reports from adult jails and lockups regarding compliance with federal requirements that apply when a juvenile is temporarily held in an adult jail or lockup. The juvenile justice advisory committee and the department shall determine the format of the annual reports;

(5) assistance to the governor, the legislature and entities created or funded pursuant to that act in developing new or improved approaches, policies or legislation designed to improve juvenile justice in New Mexico; and

(6) provision of technical assistance by the department to eligible entities pursuant to that act.

B. All budgetary, evaluation, monitoring and grants administration functions required pursuant to the federal Juvenile Justice and Delinquency Prevention Act of 1974 shall be carried out by the department."

Chapter 239 Section 3 Laws 2009

Section 3. Section 30-22-11.1 NMSA 1978 (being Laws 1993, Chapter 121, Section 1) is amended to read:

"30-22-11.1. ESCAPE FROM THE CUSTODY OF THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT--ESCAPE FROM JUVENILE DETENTION.--Escape from the custody of the children, youth and families department consists of any person who has been adjudicated as a delinquent child and has been committed lawfully to the custody of a department juvenile justice facility or who is alleged to be a delinquent child and has been lawfully detained in a juvenile detention facility:

A. escaping or attempting to escape from custody within the confines of a children, youth and families department juvenile justice facility; or

B. escaping or attempting to escape from another lawful place of custody or confinement that is not within the confines of a children, youth and families department juvenile justice facility.

Any person who commits escape from the custody of a children, youth and families department juvenile justice facility is guilty of a misdemeanor."

Chapter 239 Section 4 Laws 2009

Section 4. Section 30-22-11.2 NMSA 1978 (being Laws 1994, Chapter 18, Section 1) is amended to read:

"30-22-11.2. AGGRAVATED ESCAPE FROM THE CUSTODY OF THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT.--Aggravated escape from the custody of the children, youth and families department consists of any person who has been adjudicated as a delinquent child and has been committed lawfully to the custody of a department juvenile justice facility or who is alleged to be a delinquent child and has been lawfully detained in a juvenile detention facility:

A. escaping or attempting to escape from custody within the confines of a children, youth and families department juvenile justice facility and committing assault or battery on another person in the course of escaping or attempting to escape; or

B. escaping or attempting to escape from a lawful place of custody or confinement that is not within the confines of a children, youth and families department juvenile justice facility and committing assault or battery on another person in the course of escaping or attempting to escape.

Any person who commits aggravated escape from the custody of the children, youth and families department is guilty of a fourth degree felony."

Chapter 239 Section 5 Laws 2009

Section 5. Section 31-26-12 NMSA 1978 (being Laws 1994, Chapter 144, Section 12, as amended) is amended to read:

"31-26-12. PROCEDURES WHEN AN INMATE IS RELEASED FROM INCARCERATION--ADULT PAROLE BOARD--CORRECTIONS DEPARTMENT-- PROCEDURES WHEN A DELINQUENT CHILD IS RELEASED FROM CUSTODY-- JUVENILE PAROLE BOARD--CHILDREN, YOUTH AND FAMILIES DEPARTMENT-- DISTRICT ATTORNEYS.--

A. The adult parole board and the children, youth and families department shall provide a copy of their respective regular release dockets to each district attorney in the state at least ten working days before the docket is considered. The district attorney shall notify any person known to reside in the district who was a victim of the

criminal offense for which the inmate was incarcerated or the delinquent child was committed.

B. The adult parole board or the children, youth and families department shall provide a copy of a supplemental, addendum or special docket to each district attorney at least five working days before the release docket is considered.

C. Following consideration of a release docket by the adult parole board or the children, youth and families department, the board and department shall promptly notify each district attorney of recommendations for release of an inmate from incarceration or a delinquent child from custody. The district attorney shall notify any person known to reside in the district attorney's district who was a victim of the criminal offense for which the inmate was incarcerated or the delinquent child was committed.

D. In the case of an inmate scheduled to be released from incarceration without parole or prior to parole for any reason, or a delinquent child scheduled to be released from custody, the corrections department or the children, youth and families department shall notify each district attorney at least fifteen working days before the inmate's or delinquent child's release. The district attorney shall notify any person known to reside in the district who was a victim of the criminal offense for which the inmate was incarcerated or the delinquent child was committed."

Chapter 239 Section 6 Laws 2009

Section 6. Section 32A-1-3 NMSA 1978 (being Laws 1993, Chapter 77, Section 12, as amended) is amended to read:

"32A-1-3. PURPOSE OF ACT.--The Children's Code shall be interpreted and construed to effectuate the following legislative purposes:

A. first to provide for the care, protection and wholesome mental and physical development of children coming within the provisions of the Children's Code and then to preserve the unity of the family whenever possible. A child's health and safety shall be the paramount concern. Permanent separation of a child from the child's family, however, would especially be considered when the child or another child of the parent has suffered permanent or severe injury or repeated abuse. It is the intent of the legislature that, to the maximum extent possible, children in New Mexico shall be reared as members of a family unit;

B. to provide judicial and other procedures through which the provisions of the Children's Code are executed and enforced and in which the parties are assured a fair hearing and their constitutional and other legal rights are recognized and enforced;

C. to provide a continuum of services for children and their families, from prevention to treatment, considering whenever possible prevention, diversion and early intervention, particularly in the schools;

D. to provide children with services that are sensitive to their cultural needs;

E. to reduce overrepresentation of minority children and families in the juvenile justice, family services and abuse and neglect systems through early intervention, linkages to community support services and the elimination of discrimination;

F. to provide for the cooperation and coordination of the civil and criminal systems for investigation, intervention and disposition of cases, to minimize interagency conflicts and to enhance the coordinated response of all agencies to achieve the best interests of a child victim; and

G. to provide continuity for children and families appearing before the children's court by assuring that, whenever possible, a single judge hears all successive cases or proceedings involving a child or family."

Chapter 239 Section 7 Laws 2009

Section 7. Section 32A-1-4 NMSA 1978 (being Laws 1993, Chapter 77, Section 13, as amended) is amended to read:

"32A-1-4. DEFINITIONS.--As used in the Children's Code:

A. "adult" means a person who is eighteen years of age or older;

B. "child" means a person who is less than eighteen years old;

C. "court", when used without further qualification, means the children's court division of the district court and includes the judge, special master or commissioner appointed pursuant to the provisions of the Children's Code or supreme court rule;

D. "court-appointed special advocate" or "CASA" means a person appointed as a CASA, pursuant to the provisions of the Children's Court Rules, who assists the court in determining the best interests of the child by investigating the case and submitting a report to the court;

E. "custodian" means an adult with whom the child lives who is not a parent or guardian of the child;

F. "department" means the children, youth and families department, unless otherwise specified;

G. "disproportionate minority contact" means the involvement of a racial or ethnic group with the criminal or juvenile justice system at a proportion either higher or lower than that group's proportion in the general population;

H. "foster parent" means a person, including a relative of the child, licensed or certified by the department or a child placement agency to provide care for children in the custody of the department or agency;

I. "guardian" means a person appointed as a guardian by a court or Indian tribal authority or a person authorized to care for the child by a parental power of attorney as permitted by law;

J. "guardian ad litem" means an attorney appointed by the children's court to represent and protect the best interests of the child in a court proceeding; provided that no party or employee or representative of a party to the proceeding shall be appointed to serve as a guardian ad litem;

K. "Indian child" means an unmarried person who is:

(1) less than eighteen years old;

(2) a member of an Indian tribe or is eligible for membership in an Indian tribe; and

(3) the biological child of a member of an Indian tribe;

L. "Indian child's tribe" means:

(1) the Indian tribe in which an Indian child is a member or eligible for membership; or

(2) in the case of an Indian child who is a member or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has more significant contacts;

M. "Indian tribe" means a federally recognized Indian tribe, community or group pursuant to 25 U.S.C. Section 1903(1);

N. "judge", when used without further qualification, means the judge of the court;

O. "legal custody" means a legal status created by order of the court or other court of competent jurisdiction or by operation of statute that vests in a person, department or agency the right to determine where and with whom a child shall live; the right and duty to protect, train and discipline the child and to provide the child with food, shelter, personal care, education and ordinary and emergency medical care; the right to

consent to major medical, psychiatric, psychological and surgical treatment and to the administration of legally prescribed psychotropic medications pursuant to the Children's Mental Health and Developmental Disabilities Act; and the right to consent to the child's enlistment in the armed forces of the United States;

P. "parent" or "parents" includes a biological or adoptive parent if the biological or adoptive parent has a constitutionally protected liberty interest in the care and custody of the child;

Q. "permanency plan" means a determination by the court that the child's interest will be served best by:

(1) reunification;

(2) placement for adoption after the parents' rights have been relinquished or terminated or after a motion has been filed to terminate parental rights;

(3) placement with a person who will be the child's permanent guardian;

(4) placement in the legal custody of the department with the child placed in the home of a fit and willing relative; or

(5) placement in the legal custody of the department under a planned permanent living arrangement;

R. "person" means an individual or any other form of entity recognized by law;

S. "preadoptive parent" means a person with whom a child has been placed for adoption;

T. "protective supervision" means the right to visit the child in the home where the child is residing, inspect the home, transport the child to court-ordered diagnostic examinations and evaluations and obtain information and records concerning the child;

U. "reunification" means either a return of the child to the parent or to the home from which the child was removed or a return to the noncustodial parent;

V. "tribal court" means:

(1) a court established and operated pursuant to a code or custom of an Indian tribe; or

(2) any administrative body of an Indian tribe that is vested with judicial authority;

W. "tribal court order" means a document issued by a tribal court that is signed by an appropriate authority, including a judge, governor or tribal council member, and that orders an action that is within the tribal court's jurisdiction; and

X. "tribunal" means any judicial forum other than the court."

Chapter 239 Section 8 Laws 2009

Section 8. Section 32A-1-8 NMSA 1978 (being Laws 1993, Chapter 77, Section 17, as amended) is amended to read:

"32A-1-8. JURISDICTION OF THE COURT--TRIBAL COURT JURISDICTION.--

A. The court has exclusive original jurisdiction of all proceedings under the Children's Code in which a person is eighteen years of age or older and was a child at the time the alleged act in question was committed or is a child alleged to be:

(1) a delinquent child;

(2) a child of a family in need of court-ordered services or a child in need of services pursuant to the Family in Need of Court-Ordered Services Act;

(3) a neglected child;

(4) an abused child;

(5) a child subject to adoption; or

(6) a child subject to placement for a developmental disability or a mental disorder.

B. The court has exclusive original jurisdiction to emancipate a minor.

C. During abuse or neglect proceedings in which New Mexico is the home state, pursuant to the provisions of the Uniform Child-Custody Jurisdiction and Enforcement Act, the court shall have jurisdiction over both parents to determine the best interest of the child and to decide all matters incident to the court proceedings.

D. Nothing in this section shall be construed to in any way abridge the rights of any Indian tribe to exercise jurisdiction over child custody matters as defined by and in accordance with the federal Indian Child Welfare Act of 1978.

E. A tribal court order pertaining to an Indian child in an action under the Children's Code shall be recognized and enforced by the district court for the judicial district in which the tribal court is located. A tribal court order pertaining to an Indian child that accesses state resources shall be recognized and enforced pursuant to the provisions of intergovernmental agreements entered into by the Indian child's tribe and the department or another state agency. An Indian child residing on or off a reservation, as a citizen of this state, shall have the same right to services that are available to other children of the state, pursuant to intergovernmental agreements. The cost of the services provided to an Indian child shall be determined and provided for in the same manner as services are made available to other children of the state, utilizing tribal, state and federal funds and pursuant to intergovernmental agreements. The tribal court, as the court of original jurisdiction, shall retain jurisdiction and authority over the Indian child.

F. The court may acquire jurisdiction over a Motor Vehicle Code or municipal traffic code violation as set forth in Section 32A-2-29 NMSA 1978."

Chapter 239 Section 9 Laws 2009

Section 9. Section 32A-1-21 NMSA 1978 (being Laws 2007, Chapter 185, Section 2) is amended to read:

"32A-1-21. RUNAWAY CHILD--LAW ENFORCEMENT--PERMITTED ACTS.-- Whenever a law enforcement agency receives a report from a parent, guardian or custodian that a child over whom the parent, guardian or custodian has custody has, without permission, left the home or residence lawfully prescribed for the child and the parent, guardian or custodian believes the child has run away, a law enforcement agent may help the parent, guardian or custodian locate the child and:

A. return the child to the parent, guardian or custodian unless safety concerns are present;

B. hold the child for up to six hours if the parent, guardian or custodian cannot be located; provided, however, that no child shall be placed in a secured setting pursuant to this section; or

C. after the six hours has expired, follow the procedures outlined in Section 32A-3B-3 NMSA 1978."

Chapter 239 Section 10 Laws 2009

Section 10. Section 32A-2-3 NMSA 1978 (being Laws 1993, Chapter 77, Section 32, as amended) is amended to read:

"32A-2-3. DEFINITIONS.--As used in the Delinquency Act:

A. "delinquent act" means an act committed by a child that would be designated as a crime under the law if committed by an adult, including the following offenses:

(1) any of the following offenses pursuant to municipal traffic codes or the Motor Vehicle Code:

(a) driving while under the influence of intoxicating liquor or drugs;

(b) failure to stop in the event of an accident causing death, personal injury or damage to property;

(c) unlawful taking of a vehicle or motor vehicle;

(d) receiving or transferring of a stolen vehicle or motor vehicle;

(e) homicide by vehicle;

(f) injuring or tampering with a vehicle;

(g) altering or changing of an engine number or other vehicle identification numbers;

(h) altering or forging of a driver's license or permit or any making of a fictitious license or permit;

(i) reckless driving;

(j) driving with a suspended or revoked license; or

(k) an offense punishable as a felony;

(2) buying, attempting to buy, receiving, possessing or being served any alcoholic liquor or being present in a licensed liquor establishment, other than a restaurant or a licensed retail liquor establishment, except in the presence of the child's parent, guardian, custodian or adult spouse. As used in this paragraph, "restaurant" means an establishment where meals are prepared and served primarily for on-premises consumption and that has a dining room, a kitchen and the employees necessary for preparing, cooking and serving meals. "Restaurant" does not include an establishment, as defined in regulations promulgated by the director of the special investigations division of the department of public safety, that serves only hamburgers, sandwiches, salads and other fast foods;

(3) a violation of Section 30-29-2 NMSA 1978, regarding the illegal use of a glue, aerosol spray product or other chemical substance;

(4) a violation of the Controlled Substances Act;

(5) escape from the custody of a law enforcement officer or a juvenile probation or parole officer or from any placement made by the department by a child who has been adjudicated a delinquent child;

(6) a violation of Section 30-15-1.1 NMSA 1978 regarding unauthorized graffiti on personal or real property; or

(7) a violation of an order of protection issued pursuant to the provisions of the Family Violence Protection Act;

B. "delinquent child" means a child who has committed a delinquent act;

C. "delinquent offender" means a delinquent child who is subject to juvenile sanctions only and who is not a youthful offender or a serious youthful offender;

D. "detention facility" means a place where a child may be detained under the Children's Code pending court hearing and does not include a facility for the care and rehabilitation of an adjudicated delinquent child;

E. "felony" means an act that would be a felony if committed by an adult;

F. "misdemeanor" means an act that would be a misdemeanor or petty misdemeanor if committed by an adult;

G. "restitution" means financial reimbursement by the child to the victim or community service imposed by the court and is limited to easily ascertainable damages for injury to or loss of property, actual expenses incurred for medical, psychiatric and psychological treatment for injury to a person and lost wages resulting from physical injury, which are a direct and proximate result of a delinquent act. "Restitution" does not include reimbursement for damages for mental anguish, pain and suffering or other intangible losses. As used in this subsection, "victim" means a person who is injured or suffers damage of any kind by an act that is the subject of a complaint or referral to law enforcement officers or juvenile probation authorities. Nothing contained in this definition limits or replaces the provisions of Subsections A and B of Section 32A-2-27 NMSA 1978;

H. "serious youthful offender" means an individual fifteen to eighteen years of age who is charged with and indicted or bound over for trial for first degree murder. A "serious youthful offender" is not a delinquent child as defined pursuant to the provisions of this section;

I. "supervised release" means the release of a juvenile, whose term of commitment has not expired, from a facility for the care and rehabilitation of adjudicated delinquent children, with specified conditions to protect public safety and promote successful transition and reintegration into the community. A juvenile on supervised release is subject to monitoring by the department until the term of commitment has expired, and may be returned to custody for violating conditions of release; and

J. "youthful offender" means a delinquent child subject to adult or juvenile sanctions who is:

(1) fourteen to eighteen years of age at the time of the offense and who is adjudicated for at least one of the following offenses:

(a) second degree murder, as provided in Section 30-2-1 NMSA 1978;

(b) assault with intent to commit a violent felony, as provided in Section 30-3-3 NMSA 1978;

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

(d) aggravated battery, as provided in Subsection C of Section 30-3-5 NMSA 1978;

(e) aggravated battery against a household member, as provided in Subsection C of Section 30-3-16 NMSA 1978;

(f) aggravated battery upon a peace officer, as provided in Subsection C of Section 30-22-25 NMSA 1978;

(g) shooting at a dwelling or occupied building or shooting at or from a motor vehicle, as provided in Section 30-3-8 NMSA 1978;

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

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

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

(k) aggravated burglary, as provided in Section 30-16-4 NMSA 1978;

(l) aggravated arson, as provided in Section 30-17-6 NMSA 1978; or

(m) abuse of a child that results in great bodily harm or death to the child, as provided in Section 30-6-1 NMSA 1978;

(2) fourteen to eighteen years of age at the time of the offense, who is adjudicated for any felony offense and who has had three prior, separate felony adjudications within a three-year time period immediately preceding the instant offense. The felony adjudications relied upon as prior adjudications shall not have arisen out of the same transaction or occurrence or series of events related in time and location. Successful completion of consent decrees are not considered a prior adjudication for the purposes of this paragraph; or

(3) fourteen years of age and who is adjudicated for first degree murder, as provided in Section 30-2-1 NMSA 1978."

Chapter 239 Section 11 Laws 2009

Section 11. Section 32A-2-4 NMSA 1978 (being Laws 1993, Chapter 77, Section 33, as amended) is amended to read:

"32A-2-4. DETENTION FACILITIES--STANDARDS--REPORTS--APPEALS.--

A. The department shall promulgate updated standards for all detention facilities, including standards for site, design, construction, equipment, care, program, personnel and clinical services. The department shall certify as approved all detention facilities in the state meeting the standards promulgated. The department may establish by rule appropriate procedures for provisional certification and the waiving of any of its standards for facilities in existence at the time of the adoption of the standards, except that it shall not allow waiver of any standard pertaining to adequate health and safety protection of the residents and staff of the facility. No child shall be detained in a detention facility unless it is certified as approved by the department, except as otherwise provided in Chapter 32A, Article 2 NMSA 1978.

B. The department shall inspect all detention facilities in the state at least once each twelve months and shall require those reports it deems necessary from detention facilities in a form and containing the information determined by the department. If as the result of an inspection a certified detention facility is determined as failing to meet the required standards, its certification is subject to revocation or refusal for renewal by the department.

C. The department shall promulgate rules establishing procedures that provide for prior notice and public hearings on detention facilities' standards adoption and changes. The department shall also promulgate rules establishing procedures for facility certification, renewal of certification, refusal to renew certification and revocation of certification. The procedures adopted on these matters shall provide for adequate prior notice of intended action by the department, opportunity for the aggrieved person to have an administrative hearing and written notification of the administrative decision.

Rules promulgated under this subsection shall not be effective unless filed in accordance with the State Rules Act.

D. Any person aggrieved by an administrative decision of the department rendered under the provisions of this section may petition for the review of the administrative decision by appealing to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

E. After January 1, 1994, no state or county detention facility shall hold juveniles sentenced by a federal court, unless the facility meets state standards promulgated by the department.

F. A juvenile detention facility certified by the department shall comply with the daily reporting requirement for children in detention, including reports on the length of stay for each child. This information shall be reported as required by the department."

Chapter 239 Section 12 Laws 2009

Section 12. A new Section 32A-2-4.1 NMSA 1978 is enacted to read:

"32A-2-4.1. ADULT JAILS AND LOCKUPS USED AS TEMPORARY HOLDING FACILITIES--REPORTS.--

A. A child arrested and detained for an alleged delinquent act may be temporarily held in an adult jail or lockup for no longer than six hours. A child who is detained in an adult jail or lockup shall be placed in a setting that is physically segregated by sight and sound from adult offenders. After six hours, the child may be placed or detained pursuant to the provisions of Section 32A-2-12 NMSA 1978.

B. An adult jail or lockup used as a temporary holding facility for alleged delinquent offenders shall file an annual report regarding its compliance with federal requirements. The juvenile justice advisory committee and the department shall determine the format of the annual reports."

Chapter 239 Section 13 Laws 2009

Section 13. Section 32A-2-5 NMSA 1978 (being Laws 1993, Chapter 77, Section 34, as amended) is amended to read:

"32A-2-5. JUVENILE PROBATION AND PAROLE SERVICES--
ESTABLISHMENT--JUVENILE PROBATION AND PAROLE OFFICERS--POWERS
AND DUTIES.--

A. Juvenile probation and parole services shall be provided by the department.

B. To carry out the objectives and provisions of the Delinquency Act, but subject to its limitations, the department has the power and duty to:

(1) receive and examine complaints and allegations that a child is a delinquent child for the purpose of considering beginning a proceeding pursuant to the provisions of the Delinquency Act;

(2) make case referrals for services as appear appropriate or desirable;

(3) make predisposition studies and assessments and submit reports and recommendations to the court;

(4) supervise and assist a child placed on probation or supervised release or under supervision by court order or by the department;

(5) give notice to any individual who has been the subject of a petition filed pursuant to the provisions of the Delinquency Act of the sealing of that individual's records in accordance with that act;

(6) informally dispose of up to three misdemeanor charges brought against a child within two years;

(7) give notice to the children's court attorney of the receipt of any felony complaint and of any recommended adjustment of such felony complaint;

(8) identify an Indian child for the purpose of contacting the Indian child's tribe in delinquency cases; and

(9) contact an Indian child's tribe to consult and exchange information for the purpose of preparing a predisposition report when commitment or placement of an Indian child is contemplated or has been ordered and indicate in the report the name of the person contacted in the Indian child's tribe and the results of the contact.

C. A juvenile probation and parole officer does not have the powers of a law enforcement officer. A juvenile probation and parole officer may take into physical custody and place in detention, subject to application of a detention risk assessment instrument, a child who is under supervision as a delinquent child or as a youthful offender when there is reasonable cause to believe that the child has violated the conditions of the child's probation or that the child may leave the jurisdiction of the court. Taking a child into custody under this subsection is subject to and shall proceed in accordance with the provisions of the Delinquency Act relating to custody and detention procedures and criteria."

Chapter 239 Section 14 Laws 2009

Section 14. Section 32A-2-10 NMSA 1978 (being Laws 1993, Chapter 77, Section 39, as amended) is amended to read:

"32A-2-10. RELEASE OR DELIVERY FROM CUSTODY.--

A. A person taking a child into custody shall, with all reasonable speed:

(1) release the child to the child's parent, guardian or custodian or an adult authorized by the child's parent, guardian or custodian and issue verbal counsel or warning as may be appropriate;

(2) release the child to the child's parent, guardian or custodian or an adult authorized to sign on behalf of the child's parent, guardian or custodian upon written promise to bring the child before the court when requested by the court. If the parent, guardian or custodian or an adult authorized to sign on behalf of the child's parent, guardian or custodian fails, when requested, to bring the child before the court as promised, the court may order the child taken into custody and brought before the court;

(3) deliver the child to a place of detention as provided in Section 32A-2-12 NMSA 1978;

(4) deliver the child to a medical facility, if available, if the child is believed to be suffering from a serious illness that requires prompt treatment or prompt diagnosis;

(5) deliver the child to an evaluation facility, if available, if the person taking the child into custody has reasonable grounds to believe the child presents a likelihood of serious harm to the child's self or others or is suffering from some other serious mental condition or illness that requires prompt treatment or prompt diagnosis; or

(6) deliver the child to a center or organization that the court or the department recognizes as an alternative to secure detention.

B. When an alleged delinquent child is delivered to a place of detention or a center or organization recognized as an alternative to secure detention as provided in Section 32A-2-12 NMSA 1978, only a department employee or a trained county detention professional designated by the department may place the child in detention or with a center or organization recognized as an alternative to secure detention in accordance with the criteria for detention set forth in Section 32A-2-11 NMSA 1978. If the criteria for detention of an alleged delinquent child are not met, the child shall be released from custody.

C. A child under the age of eleven shall not be held in detention. If a child under the age of eleven poses a substantial risk of harm to the child's self or others, a

peace officer may detain and transport that child for emergency mental health evaluation and care in accordance with Section 32A-6A-19 NMSA 1978.

D. If a child is taken into custody and is not released to the child's parent, guardian or custodian or an adult authorized by the child's parent, guardian or custodian, the person taking the child into custody shall give written notice thereof as soon as possible, and in no case later than twenty-four hours, to the child's parent, guardian or custodian or an adult authorized by the child's parent, guardian or custodian and to the court, together with a statement of the reason for taking the child into custody.

E. In all cases when a child is taken into custody, the child shall be released to the child's parent, guardian or custodian or an adult authorized by the child's parent, guardian or custodian in accordance with the conditions and time limits set forth in the Children's Court Rules."

Chapter 239 Section 15 Laws 2009

Section 15. Section 32A-2-12 NMSA 1978 (being Laws 1993, Chapter 77, Section 41, as amended) is amended to read:

"32A-2-12. PLACEMENT OR DETENTION.--

A. A child alleged to be a delinquent child may be placed or detained, pending a court hearing, in any of the following places:

(1) a licensed foster home or a home otherwise authorized under the law to provide foster or group care;

(2) a facility operated by a licensed child welfare services agency;

(3) a shelter-care facility provided for in the Children's Shelter Care Act that is in compliance with all standards, conditions and regulatory requirements and that shall be considered a temporary placement subject to judicial review within thirty days of placement;

(4) a detention facility certified by the department for children alleged to be delinquent children;

(5) any other suitable place, other than a facility for the long-term care and rehabilitation of delinquent children to which children adjudicated as delinquent may be confined pursuant to Section 32A-2-19 NMSA 1978, designated by the court and that meets the standards for detention facilities pursuant to the Children's Code and federal law; or

(6) the child's home or place of residence, under conditions and restrictions approved by the court.

B. A child alleged to be a youthful offender may be detained, pending a court hearing, in any of the following places:

(1) a detention facility, licensed by the department, for children alleged to be delinquent children; or

(2) any other suitable place, other than a facility for the long-term care and rehabilitation of delinquent children to which children adjudicated as delinquent children may be confined pursuant to Section 32A-2-19 NMSA 1978, designated by the court and that meets the standards for detention facilities pursuant to the Children's Code and federal law.

C. A child adjudicated as a youthful offender who is violent toward staff or other residents in a detention facility may be transferred and detained, pending a court hearing, in a county jail. In the event that a child is detained in a jail, the director of the jail shall presume that the child is vulnerable to victimization by inmates within the adult population because of the child's age, and shall take measures to provide protection to the child. However, provision of protective measures shall not result in diminishing a child's civil rights to less than those existing for an incarcerated adult.

D. A child who has previously been incarcerated as an adult or a person eighteen years of age or older shall not be detained in a juvenile detention facility or a facility for the long-term care and rehabilitation of delinquent children, but may be detained in a county jail. A child shall not be transferred to a county jail solely on the basis of attaining the age of eighteen while detained in a juvenile detention facility. In the event that a child is detained in a jail, the director of the jail shall presume that the child is vulnerable to victimization by inmates within the adult population because of the child's age, and shall take measures to provide protection to the child. However, provision of protective measures shall not result in diminishing a child's civil rights to less than those existing for an incarcerated adult.

E. A child alleged to be a serious youthful offender may be detained pending a court hearing in any of the following places, prior to arraignment in metropolitan, magistrate or district court:

(1) a detention facility, licensed by the department, for children alleged to be delinquent children;

(2) any other suitable place, other than a facility for the long-term care and rehabilitation of delinquent children to which children adjudicated as delinquent children may be confined pursuant to Section 32A-2-19 NMSA 1978, designated by the court that meets the standards for detention facilities pursuant to the Children's Code and federal law; or

(3) a county jail, if a facility in Paragraph (1) or (2) of this subsection is not appropriate. In the event that a child is detained in a jail, the director of the jail shall presume that the child is vulnerable to victimization by inmates within the adult population because of the child's age and shall take measures to provide protection to the child. However, provision of protective measures shall not result in diminishing a child's civil rights to less than those existing for an incarcerated adult.

F. When a person who is eighteen years of age or older is taken into custody and transported to an adult facility on a juvenile warrant or an adult warrant or other adult charges and an outstanding juvenile warrant exists, notice shall be given to the children's court attorney and the juvenile probation and parole office in the jurisdiction where the juvenile warrant was issued within one day of the person being taken into custody. The juvenile probation and parole office shall give notice that the person has been taken into custody to the children's court judge and the attorney who represented the person in the juvenile proceeding.

G. In addition to the judicial review required by Paragraph (3) of Subsection A of this section, a child detained in an out-of-home placement pursuant to this section may request judicial review of the appropriateness of the placement."

Chapter 239 Section 16 Laws 2009

Section 16. Section 32A-2-13 NMSA 1978 (being Laws 1993, Chapter 77, Section 42, as amended) is amended to read:

"32A-2-13. DETENTION HEARING REQUIRED ON DETAINED CHILDREN--
PROBABLE CAUSE DETERMINATION--COURT DETERMINATION--DISPOSITION.--

A. When a child who has been taken into custody is not released but is detained:

(1) a judicial determination of probable cause shall be made by a judge or special master or magistrate within forty-eight hours, including Saturdays, Sundays and legal holidays, except for children taken into custody under an arrest warrant pursuant to the Children's Court Rules. A statement by a law enforcement officer, which shall include the charges, may be the basis of a probable cause determination. The probable cause determination shall be nonadversarial, may be held in the absence of the child and counsel and may be conducted by telephone. If the court finds no probable cause to believe the child committed an offense, the child shall be released;

(2) a petition shall be filed within twenty-four hours from the time the child is taken into custody, excluding Saturdays, Sundays and legal holidays, and if not filed within the stated time, the child shall be released; and

(3) a detention hearing shall be held within twenty-four hours, excluding Saturdays, Sundays and legal holidays, from the time of filing the petition to determine whether continued detention is required pursuant to the criteria established by the Children's Code. At the request of any party, the court may permit a detention hearing to be conducted by appropriate means of electronic communication; provided that all hearings conducted by electronic means shall be recorded and preserved as part of the record, the child shall have legal representation present with the child, no plea shall be allowed to be taken via electronic communication and the court finds:

(a) that undue hardship will result from conducting the hearing with all parties, including the child, present in the courtroom; and

(b) that the hardship substantially outweighs any prejudice or harm to the child that is likely to result from the hearing being conducted by electronic means.

B. The judge may appoint one or more persons to serve as special master on a full- or part-time basis for the purpose of holding detention hearings. A juvenile probation and parole officer shall not be appointed as a special master. The judge shall approve all contracts with special masters and shall fix their hourly compensation, subject to the approval of the director of the administrative office of the courts.

C. Notice of the detention hearing, either oral or written, stating the time, place and purpose of the hearing shall be given by the person designated by the court to the child's parents, guardian or custodian, if they can be found, and to the child. The department shall be provided with reasonable oral or written notification and an opportunity to be heard. At any hearing held pursuant to this subsection, the department may appear as a party.

D. At the commencement of the detention hearing, the judge or special master shall advise the parties of their basic rights provided in the Children's Code and shall appoint counsel, guardians and custodians, if appropriate.

E. If the judge or special master finds that the child's detention is appropriate under the criteria established by the Children's Code, the judge or special master shall order detention in an appropriate facility in accordance with the Children's Code.

F. If the judge or special master finds that detention of the child is not appropriate under the criteria established by the Children's Code, the judge or special master shall order the release of the child, but, in so doing, may order one or more of the following conditions to meet the individual needs of the child:

(1) place the child in the custody of a parent, guardian or custodian or under the supervision of an agency agreeing to supervise the child;

(2) place restrictions on the child's travel, association with other persons or place of abode during the period of the child's release; or

(3) impose any other condition deemed reasonably necessary and consistent with the criteria for detaining children established by the Children's Code, including a condition requiring that the child return to custody as required.

G. An order releasing a child on any conditions specified in this section may at any time be amended to impose additional or different conditions of release or to return the child to custody or detention for failure to conform to the conditions originally imposed.

H. At the detention hearing, all relevant and material evidence helpful in determining the need for detention may be admitted by the judge or special master even though it would not be admissible in a hearing on the petition.

I. If the child is not released at the detention hearing and a parent, guardian or custodian was not notified of the hearing and did not appear or waive appearance at the detention hearing, the judge or special master shall rehear the detention matter without unnecessary delay upon the filing of an affidavit stating the facts and a motion for rehearing.

J. If a child is not released at the detention hearing, the child's detention may be subsequently reviewed by the court or the court may review the child's detention in conjunction with a pretrial conference.

K. If a child is not placed within ten days after a disposition hearing, the child may be released and placed under appropriate supervision, so long as the child does not pose a flight risk or substantial risk of harm to the child's self or others."

Chapter 239 Section 17 Laws 2009

Section 17. Section 32A-2-14 NMSA 1978 (being Laws 1993, Chapter 77, Section 43, as amended) is amended to read:

"32A-2-14. BASIC RIGHTS.--

A. A child subject to the provisions of the Delinquency Act is entitled to the same basic rights as an adult, except as otherwise provided in the Children's Code, including rights provided by the Delinquency Act, except as otherwise provided in the Children's Code.

B. If after due notice to the parent, guardian or custodian and after a hearing determining indigency, the parent, guardian or custodian is declared indigent by the court, the public defender shall represent the child. If the court finds that the parent, guardian or custodian is financially able to pay for an attorney but is unwilling to do so,

the court shall order the parent, guardian or custodian to reimburse the state for public defender representation.

C. No person subject to the provisions of the Delinquency Act who is alleged or suspected of being a delinquent child shall be interrogated or questioned without first advising the child of the child's constitutional rights and securing a knowing, intelligent and voluntary waiver.

D. Before any statement or confession may be introduced at a trial or hearing when a child is alleged to be a delinquent child, the state shall prove that the statement or confession offered in evidence was elicited only after a knowing, intelligent and voluntary waiver of the child's constitutional rights was obtained.

E. In determining whether the child knowingly, intelligently and voluntarily waived the child's rights, the court shall consider the following factors:

- (1) the age and education of the respondent;
- (2) whether the respondent is in custody;
- (3) the manner in which the respondent was advised of the respondent's rights;
- (4) the length of questioning and circumstances under which the respondent was questioned;
- (5) the condition of the quarters where the respondent was being kept at the time of being questioned;
- (6) the time of day and the treatment of the respondent at the time of being questioned;
- (7) the mental and physical condition of the respondent at the time of being questioned; and
- (8) whether the respondent had the counsel of an attorney, friends or relatives at the time of being questioned.

F. Notwithstanding any other provision to the contrary, no confessions, statements or admissions may be introduced against a child under the age of thirteen years on the allegations of the petition. There is a rebuttable presumption that any confessions, statements or admissions made by a child thirteen or fourteen years old to a person in a position of authority are inadmissible.

G. An extrajudicial admission or confession made by the child out of court is insufficient to support a finding that the child committed the delinquent acts alleged in the petition unless it is corroborated by other evidence.

H. The child and the parent, guardian or custodian of the child shall be advised by the court or its representative that the child shall be represented by counsel at all stages of the proceedings on a delinquency petition, including all post-dispositional court proceedings. If counsel is not retained for the child or if it does not appear that counsel will be retained, counsel shall be appointed for the child.

I. A child under the age of thirteen alleged or adjudicated to be a delinquent child shall not be fingerprinted or photographed for identification purposes without obtaining a court order.

J. The court, at any stage of the proceeding on a petition under the Children's Code, may appoint a guardian ad litem for a child who is a party if the child has no parent, guardian or custodian appearing on behalf of the child or if the parent's, guardian's or custodian's interests conflict with those of the child. A party to the proceeding or an employee or representative of a party shall not be appointed as guardian ad litem.

K. The court shall appoint a guardian for a child if the court determines that the child does not have a parent or a legally appointed guardian in a position to exercise effective guardianship. No officer or employee of an agency that is vested with the legal custody of the child shall be appointed guardian of the child except when parental rights have been terminated and the agency is authorized to place the child for adoption.

L. A person afforded rights under the Delinquency Act shall be advised of those rights at that person's first appearance before the court on a petition under that act.

M. A serious youthful offender who is detained prior to trial in an adult facility has a right to bail as provided under SCRA 1986, Rule 5-401. A child held in a juvenile facility designated as a place of detention prior to adjudication does not have a right to bail but may be released pursuant to the provisions of the Delinquency Act.

N. The provisions of the Delinquency Act shall not be interpreted to limit the right of a child to petition a court for a writ of habeas corpus."

Chapter 239 Section 18 Laws 2009

Section 18. Section 32A-2-16 NMSA 1978 (being Laws 1993, Chapter 77, Section 45) is amended to read:

"32A-2-16. CONDUCT OF HEARINGS--FINDINGS--DISMISSAL--
DISPOSITIONAL MATTERS--PENALTY.--

A. Hearings on petitions shall be conducted by the court separate from other proceedings. A jury trial on the issues of alleged delinquent acts may be demanded by the child, parent, guardian, custodian or counsel in proceedings on petitions alleging delinquency when the offense alleged would be triable by jury if committed by an adult. If a jury is demanded and the child is entitled to a jury trial, the jury's function is limited to that of trier of the factual issue of whether the child committed the alleged delinquent acts. If no jury is demanded, the hearing shall be by the court without a jury. Jury trials shall be conducted in accordance with rules promulgated under the provisions of Subsection B of Section 32A-1-5 NMSA 1978. A delinquent child facing a juvenile disposition shall be entitled to a six-member jury. If the children's court attorney has filed a motion to invoke an adult sentence, the child is entitled to a twelve-member jury. A unanimous verdict is required for all jury trials. The proceedings shall be recorded by stenographic notes or by electronic, mechanical or other appropriate means.

B. All hearings to declare a person in contempt of court and all hearings on petitions pursuant to the provisions of the Delinquency Act shall be open to the general public, except where the court in its discretion, after a finding of exceptional circumstances, deems it appropriate to conduct a closed delinquency hearing. Only the parties, their counsel, witnesses and other persons approved by the court may be present at a closed hearing. Those other persons the court finds to have a proper interest in the case or in the work of the court may be admitted by the court to closed hearings on the condition that they refrain from divulging any information concerning the exceptional circumstances that resulted in the need for a closed hearing. Accredited representatives of the news media shall be allowed to be present at closed hearings subject to the conditions that they refrain from divulging information concerning the exceptional circumstances that resulted in the need for a closed hearing and subject to such enabling regulations as the court finds necessary for the maintenance of order and decorum and for the furtherance of the purposes of the Delinquency Act.

C. Those persons or parties granted admission to a closed hearing who intentionally divulge information in violation of Subsection B of this section are guilty of a petty misdemeanor.

D. The court shall determine if the allegations of the petition are admitted or denied. If the allegations are denied, the court shall proceed to hear evidence on the petition. The court after hearing all of the evidence bearing on the allegations of delinquency shall make and record its findings on whether the delinquent acts subscribed to the child were committed by the child. If the court finds that the allegations of delinquency have not been established, it shall dismiss the petition and order the child released from any detention or legal custody imposed in connection with the proceedings.

E. The court shall make a finding of delinquency based on a valid admission of the allegations of the petition or on the basis of proof beyond a reasonable doubt.

F. If the court finds on the basis of a valid admission of the allegations of the petition or on the basis of proof beyond a reasonable doubt that the child is a delinquent, the court may proceed immediately or at a postponed hearing to make disposition of the case.

G. In that part of the hearings held under the Delinquency Act on dispositional issues, all relevant and material evidence helpful in determining the questions presented, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative value even though not competent had it been offered during the part of the hearings on adjudicatory issues.

H. On the court's motion or that of a party, the court may continue the hearing on the petition for a reasonable time to receive reports and other evidence in connection with disposition. The court may continue the hearing pending the receipt of the predisposition study and report if that document has not been prepared and received. During any continuances under this subsection, the court shall make an appropriate order for detention or legal custody."

Chapter 239 Section 19 Laws 2009

Section 19. Section 32A-2-17 NMSA 1978 (being Laws 1993, Chapter 77, Section 46, as amended) is amended to read:

"32A-2-17. PREDISPOSITION STUDIES--REPORTS AND EXAMINATIONS.--

A. After a petition has been filed and either a finding with respect to the allegations of the petition has been made or a notice of intent to admit the allegations of the petition has been filed, the court may direct that a predisposition study and report to the court be made in writing by the department or an appropriate agency designated by the court concerning the child, the family of the child, the environment of the child and any other matters relevant to the need for treatment or to appropriate disposition of the case. The following predisposition reports shall be provided to the parties and the court five days before actual disposition or sentencing:

(1) the adult probation and parole division of the corrections department shall prepare a predisposition report for a serious youthful offender;

(2) the department shall prepare a predisposition report for a serious youthful offender who is convicted of an offense other than first degree murder;

(3) the department shall prepare a predisposition report for a youthful offender concerning the youthful offender's amenability to treatment and if:

(a) the court determines that a juvenile disposition is appropriate, the department shall prepare a subsequent predisposition report; or

(b) the court makes the findings necessary to impose an adult sentence pursuant to Section 32A-2-20 NMSA 1978, the adult probation and parole division of the corrections department shall prepare a subsequent predisposition report; and

(4) the department shall prepare a predisposition report for a delinquent offender, upon the court's request.

B. Where there are indications that the child may have a mental disorder or developmental disability, the court, on motion by the children's court attorney or that of counsel for the child, may order the child to be examined at a suitable place by a physician or psychiatrist, a licensed psychologist, a licensed professional clinical counselor or a licensed independent social worker prior to a hearing on the merits of the petition. An examination made prior to the hearing or as a part of the predisposition study and report shall be conducted on an outpatient basis, unless the court finds that placement in a hospital or other appropriate facility is necessary.

C. The court, after a hearing, may order examination by a physician or psychiatrist, a licensed psychologist or a licensed professional clinical counselor or a licensed independent social worker of a parent or custodian whose ability to care for or supervise a child is an issue before the court.

D. The court may order that a child adjudicated as a delinquent child be administered a predispositional evaluation by a professional designated by the department for purposes of diagnosis, with direction that the court be given a report indicating what disposition appears most suitable when the interests of the child and the public are considered. The evaluation shall be completed within fifteen days of the court's order and the preference shall be for performing the evaluation in the child's community.

E. If a child is detained for purposes of performing a predispositional evaluation, it shall be completed within fifteen days and in no event shall a child be detained for more than fifteen days within a three-hundred-sixty-five-day period for a predispositional evaluation, unless for good cause shown."

Chapter 239 Section 20 Laws 2009

Section 20. Section 32A-2-19 NMSA 1978 (being Laws 1993, Chapter 77, Section 48, as amended) is amended to read:

"32A-2-19. DISPOSITION OF AN ADJUDICATED DELINQUENT OFFENDER.--

A. At the conclusion of the dispositional hearing, the court may make and include in the dispositional judgment its findings on the following:

(1) the interaction and interrelationship of the child with the child's parents and siblings and any other person who may significantly affect the child's best interests;

(2) the child's adjustment to the child's home, school and community;

(3) the mental and physical health of all individuals involved, including consideration of such factors as the child's brain development, maturity, trauma history and disability;

(4) the wishes of the child as to the child's custodian;

(5) the wishes of the child's parents as to the child's custody;

(6) whether there exists a relative of the child or other individual who, after study by the department, is found to be qualified to receive and care for the child;

(7) the availability of services recommended in the predisposition report; and

(8) the ability of the parents to care for the child in the home.

B. If a child is found to be delinquent, the court may impose a fine not to exceed the fine that could be imposed if the child were an adult and may enter its judgment making any of the following dispositions for the supervision, care and rehabilitation of the child:

(1) transfer legal custody to the department, an agency responsible for the care and rehabilitation of delinquent children, which shall receive the child at a facility designated by the secretary of the department as a juvenile reception facility. The department shall thereafter determine the appropriate placement, supervision and rehabilitation program for the child. The judge may include recommendations for placement of the child. Commitments are subject to limitations and modifications set forth in Section 32A-2-23 NMSA 1978. The types of commitments include:

(a) a short-term commitment of one year in a facility for the care and rehabilitation of adjudicated delinquent children. No more than nine months shall be served at the facility and no less than ninety days shall be served on supervised release, unless: 1) a petition to extend the commitment has been filed prior to the commencement of supervised release; 2) the commitment has been extended

pursuant to Section 32A-2-23 NMSA 1978; or 3) supervised release is revoked pursuant to Section 32A-2-25 NMSA 1978;

(b) a long-term commitment for no more than two years in a facility for the care and rehabilitation of adjudicated delinquent children. No more than twenty-one months shall be served at the facility and no less than ninety days shall be served on supervised release, unless: 1) supervised release is revoked pursuant to Section 32A-2-25 NMSA 1978; or 2) the commitment is extended pursuant to Section 32A-2-23 NMSA 1978;

(c) if the child is a delinquent offender who committed one of the criminal offenses set forth in Subsection I of Section 32A-2-3 NMSA 1978, a commitment to age twenty-one, unless sooner discharged; or

(d) if the child is a youthful offender, a commitment to age twenty-one, unless sooner discharged;

(2) place the child on probation under those conditions and limitations as the court may prescribe;

(3) place the child in a local detention facility that has been certified in accordance with the provisions of Section 32A-2-4 NMSA 1978 for a period not to exceed fifteen days within a three hundred sixty-five day time period; or if a child is found to be delinquent solely on the basis of Paragraph (3) of Subsection A of Section 32A-2-3 NMSA 1978, the court shall only enter a judgment placing the child on probation or ordering restitution or imposing a fine not to exceed the fine that could be imposed if the child were an adult or any combination of these dispositions; or

(4) if a child is found to be delinquent solely on the basis of Paragraph (2), (3) or (4) of Subsection A of Section 32A-2-3 NMSA 1978, the court may make any disposition provided by this section and may enter its judgment placing the child on probation and, as a condition of probation, transfer custody of the child to the department for a period not to exceed six months without further order of the court; provided that this transfer shall not be made unless the court first determines that the department is able to provide or contract for adequate and appropriate treatment for the child and that the treatment is likely to be beneficial.

C. When the child is an Indian child, the Indian child's cultural needs shall be considered in the dispositional judgment and reasonable access to cultural practices and traditional treatment shall be provided.

D. A child found to be delinquent shall not be committed or transferred to a penal institution or other facility used for the execution of sentences of persons convicted of crimes.

E. Whenever the court vests legal custody in an agency, institution or department, it shall transmit with the dispositional judgment copies of the clinical reports, predisposition study and report and other information it has pertinent to the care and treatment of the child.

F. Prior to any child being placed in the custody of the department, the department shall be provided with reasonable oral or written notification and an opportunity to be heard.

G. In addition to any other disposition pursuant to Subsection B of this section, the court may make an abuse or neglect report for investigation and proceedings as provided for in the Abuse and Neglect Act. The report may be made to a local law enforcement agency, the department or a tribal law enforcement or social service agency for an Indian child residing in Indian country.

H. In addition to any other disposition pursuant to this section or any other penalty provided by law, if a child fifteen years of age or older is adjudicated delinquent on the basis of Paragraph (2), (3) or (4) of Subsection A of Section 32A-2-3 NMSA 1978, the child's driving privileges may be denied or the child's driver's license may be revoked for a period of ninety days. For a second or a subsequent adjudication, the child's driving privileges may be denied or the child's driver's license revoked for a period of one year. Within twenty-four hours of the dispositional judgment, the court may send to the motor vehicle division of the taxation and revenue department the order adjudicating delinquency. Upon receipt of an order from the court adjudicating delinquency, the director of the motor vehicle division of the taxation and revenue department may revoke or deny the delinquent's driver's license or driving privileges. Nothing in this section may prohibit the delinquent from applying for a limited driving privilege pursuant to Section 66-5-35 NMSA 1978 or an ignition interlock license pursuant to the Ignition Interlock Licensing Act, and nothing in this section precludes the delinquent's participation in an appropriate educational, counseling or rehabilitation program.

I. In addition to any other disposition pursuant to this section or any other penalty provided by law, when a child is adjudicated delinquent on the basis of Paragraph (6) of Subsection A of Section 32A-2-3 NMSA 1978, the child shall perform the mandatory community service set forth in Section 30-15-1.1 NMSA 1978. When a child fails to completely perform the mandatory community service, the name and address of the child's parent or legal guardian shall be published in a newspaper of general circulation, accompanied by a notice that the parent or legal guardian is the parent or legal guardian of a child adjudicated delinquent for committing graffiti."

Chapter 239 Section 21 Laws 2009

Section 21. Section 32A-2-20 NMSA 1978 (being Laws 1993, Chapter 77, Section 49, as amended) is amended to read:

"32A-2-20. DISPOSITION OF A YOUTHFUL OFFENDER.--

A. The court has the discretion to invoke either an adult sentence or juvenile sanctions on a youthful offender. The children's court attorney shall file a notice of intent to invoke an adult sentence within ten working days of the filing of the petition, provided that the court may extend the time for filing of the notice of intent to invoke an adult sentence, for good cause shown, prior to the adjudicatory hearing. A preliminary hearing by the court or a hearing before a grand jury shall be held, within ten days after the filing of the intent to invoke an adult sentence, to determine whether probable cause exists to support the allegations contained in the petition.

B. If the children's court attorney has filed a notice of intent to invoke an adult sentence and the child is adjudicated as a youthful offender, the court shall make the following findings in order to invoke an adult sentence:

(1) the child is not amenable to treatment or rehabilitation as a child in available facilities; and

(2) the child is not eligible for commitment to an institution for children with developmental disabilities or mental disorders.

C. In making the findings set forth in Subsection B of this section, the judge shall consider the following factors:

(1) the seriousness of the alleged offense;

(2) whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner;

(3) whether a firearm was used to commit the alleged offense;

(4) whether the alleged offense was against persons or against property, greater weight being given to offenses against persons, especially if personal injury resulted;

(5) the maturity of the child as determined by consideration of the child's home, environmental situation, social and emotional health, pattern of living, brain development, trauma history and disability;

(6) the record and previous history of the child;

(7) the prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the child by the use of procedures, services and facilities currently available; and

(8) any other relevant factor, provided that factor is stated on the record.

D. If a child has previously been sentenced as an adult pursuant to the provisions of this section, there shall be a rebuttable presumption that the child is not amenable to treatment or rehabilitation as a child in available facilities.

E. If the court invokes an adult sentence, the court may sentence the child to less than, but shall not exceed, the mandatory adult sentence. A youthful offender given an adult sentence shall be treated as an adult offender and shall be transferred to the legal custody of an agency responsible for incarceration of persons sentenced to adult sentences. This transfer terminates the jurisdiction of the court over the child with respect to the delinquent acts alleged in the petition.

F. If a juvenile disposition is appropriate, the court shall follow the provisions set forth in Section 32A-2-19 NMSA 1978. A youthful offender may be subject to extended commitment in the care of the department until the age of twenty-one, pursuant to the provisions of Section 32A-2-23 NMSA 1978.

G. A child fourteen years of age or older, charged with first degree murder, but not convicted of first degree murder and found to have committed a youthful offender offense as set forth in Subsection I of Section 32A-2-3 NMSA 1978, is subject to the dispositions set forth in this section.

H. A child fourteen years of age or older charged with first degree murder, but found to have committed a delinquent act that is neither first degree murder nor a youthful offender offense as set forth in Subsection I of Section 32A-2-3 NMSA 1978, shall be adjudicated as a delinquent subject to the dispositions set forth in Section 32A-2-19 NMSA 1978."

Chapter 239 Section 22 Laws 2009

Section 22. Section 32A-2-23 NMSA 1978 (being Laws 1993, Chapter 77, Section 52, as amended) is amended to read:

"32A-2-23. LIMITATIONS ON DISPOSITIONAL JUDGMENTS--MODIFICATION--TERMINATION OR EXTENSION OF COURT ORDERS.--

A. A judgment transferring legal custody of an adjudicated delinquent child to an agency responsible for the care and rehabilitation of delinquent children divests the court of jurisdiction at the time of transfer of custody, unless the transfer of legal custody is for a commitment not exceeding fifteen days pursuant to the provisions of Section 32A-2-19 NMSA 1978, in which case the court retains jurisdiction.

B. A judgment of probation or protective supervision shall remain in force for an indeterminate period not to exceed the term of commitment from the date entered.

C. A child shall be released by an agency and probation or supervision shall be terminated by juvenile probation and parole services or the agency providing supervision when it appears that the purpose of the order has been achieved before the expiration of the period of the judgment. A release or termination and the reasons therefor shall be reported promptly to the court in writing by the releasing authority.

D. Prior to the expiration of a short-term commitment of one year, as provided for in Section 32A-2-19 NMSA 1978, the court may extend the judgment for up to one six-month period if the court finds that the extension is necessary to safeguard the welfare of the child or the public safety. If a short-term commitment is extended, the mandatory ninety-day supervised release, as required by Section 32A-2-19 NMSA 1978, shall be included in the extension. Notice and hearing are required for any extension of a juvenile's commitment.

E. Prior to the expiration of a long-term commitment, as provided for in Section 32A-2-19 NMSA 1978, the court may extend the judgment for additional periods of one year until the child reaches the age of twenty-one if the court finds that the extension is necessary to safeguard the welfare of the child or the public safety. If a long-term commitment is extended, the mandatory ninety-day supervised release, as required by Section 32A-2-19 NMSA 1978, shall be included in the extension. Notice and hearing are required for any extension of a juvenile's commitment.

F. Prior to the expiration of a judgment of probation, the court may extend the judgment for an additional period of one year until the child reaches the age of twenty-one if the court finds that the extension is necessary to protect the community or to safeguard the welfare of the child.

G. The court may dismiss a motion if it finds after preliminary investigation that the motion is without substance. If the court is of the opinion that the matter should be reviewed, it may, upon notice to all necessary parties, proceed to a hearing in the manner provided for hearings on petitions alleging delinquency. The court may terminate a judgment if it finds that the child is no longer in need of care, supervision or rehabilitation or it may enter a judgment extending or modifying the original judgment if it finds that action necessary to safeguard the child or the public interest.

H. A child may make a motion to modify a children's court or adult disposition within thirty days of the judge's decision. If the court is of the opinion that the matter should be reviewed, it may, upon notice to all necessary parties, proceed to a hearing in the manner provided for hearings on petitions alleging delinquency.

I. The department may seek a bench warrant from the court when the child absconds from supervised release."

Chapter 239 Section 23 Laws 2009

Section 23. A new Section 32A-2-23.1 NMSA 1978 is enacted to read:

"32A-2-23.1. RELEASE ELIGIBILITY.--

A. The department shall have exclusive jurisdiction and authority to release an adjudicated delinquent child during the term of the child's commitment, consistent with the provisions of the Victims of Crime Act. In determining whether to release a child, the department shall give due consideration to public safety, the extent to which the child has been rehabilitated, the adequacy and suitability of the proposed release plan and the needs and best interests of the child, including the child's need for behavioral health or medical services that are not available in facilities for adjudicated delinquent children.

B. The decision to grant or deny release shall be made by the secretary of children, youth and families or the secretary's designee. The department may impose such conditions of release as it deems appropriate.

C. A child is eligible for release any time after the entry of a judgment transferring legal custody to the department, and the department may consider a reasonable request for release from the child at any time sixty days after the child has been committed.

D. In the event release for a child is denied by the department after release is recommended for the child by the juvenile public safety advisory board, or release is approved by the department after the board has recommended that the child not be released, within ten days, the board may request a review of the decision by the court of the judicial district from which legal custody of the child was transferred, and the department shall transmit the child's records to the court. The court shall have jurisdiction to review the matter without conducting a formal hearing and to issue an order that either denies or grants release to the child. If the board requests review under this section, the child shall not be released until such time as the court has issued a decision. If the board does not petition the district court for review of the department's decision to grant or deny release within ten days of the department's decision, the department's decision shall be final, and the department shall release the child or continue the commitment in accordance with the terms of its decision.

E. The secretary of children, youth and families or the secretary's designee may review the case of any child upon the child's or the juvenile public safety advisory board's reasonable request at any time after release is denied."

Chapter 239 Section 24 Laws 2009

Section 24. A new Section 32A-2-23.2 NMSA 1978 is enacted to read:

"32A-2-23.2. RELEASE PROCEEDINGS.--

A. When the department determines that a child is ready to be released, it shall provide a list of children to the juvenile public safety advisory board at least thirty-five days prior to the next regularly scheduled release consideration meeting. The department shall ensure that all other notifications of a pending release proceeding are accomplished consistent with the provisions of the Victims of Crime Act.

B. Release consideration meetings shall be held at least quarterly, are not open to the public and shall include the child, a quorum of the board and a representative of the department. The child's attorney shall receive notice and may be present at the release meeting."

Chapter 239 Section 25 Laws 2009

Section 25. Section 32A-2-24 NMSA 1978 (being Laws 1993, Chapter 77, Section 53) is amended to read:

"32A-2-24. PROBATION REVOCATION--DISPOSITION.--

A. A child on probation incident to an adjudication as a delinquent child who violates a term of the probation may be proceeded against in a probation revocation proceeding. A proceeding to revoke probation shall be begun by filing in the original proceeding a petition styled as a "petition to revoke probation". Petitions to revoke probation shall be screened, reviewed and prepared in the same manner and shall contain the same information as petitions alleging delinquency. Procedures of the Delinquency Act regarding taking into custody and detention shall apply. The petition shall state the terms of probation alleged to have been violated and the factual basis for these allegations.

B. The standard of proof in probation revocation proceedings shall be evidence beyond a reasonable doubt and the hearings shall be before the court without a jury. In all other respects, proceedings to revoke probation shall be governed by the procedures, rights and duties applicable to proceedings on a delinquency petition. If a child is found to have violated a term of the child's probation, the court may extend the period of probation or make any other judgment or disposition that would have been appropriate in the original disposition of the case."

Chapter 239 Section 26 Laws 2009

Section 26. Section 32A-2-26 NMSA 1978 (being Laws 1993, Chapter 77, Section 55, as amended) is amended to read:

"32A-2-26. SEALING OF RECORDS.--

A. On motion by or on behalf of a person who has been the subject of a delinquency petition or on the court's own motion, the court shall vacate its findings, orders and judgments on the petition and order the legal and social files and records of the court, probation services, and any other agency in the case sealed. If requested in the motion, the court shall also order law enforcement files and records sealed. An order sealing records and files shall be entered if the court finds that:

(1) two years have elapsed since the final release of the person from legal custody and supervision or two years have elapsed since the entry of any other judgment not involving legal custody or supervision;

(2) the person has not, within the two years immediately prior to filing the motion, been convicted of a felony or of a misdemeanor involving moral turpitude or been found delinquent by a court and no proceeding is pending seeking such a conviction or finding; and

(3) the person is eighteen years of age or older or the court finds that good cause exists to seal the records prior to the child's eighteenth birthday.

B. Reasonable notice of the motion shall be given to:

(1) the children's court attorney;

(2) the authority granting the release;

(3) the law enforcement officer, department and central depository having custody of the law enforcement files and records; and

(4) any other agency having custody of records or files subject to the sealing order.

C. Upon the entry of the sealing order, the proceedings in the case shall be treated as if they never occurred and all index references shall be deleted. The court, law enforcement officers and departments and agencies shall reply, and the person may reply, to an inquiry that no record exists with respect to the person. Copies of the sealing order shall be sent to each agency or official named in the order.

D. Inspection of the files and records or the release of information in the records included in the sealing order may thereafter be permitted by the court only:

(1) upon motion by the person who is the subject of the records and only to those persons named in the motion; and

(2) in its discretion, in an individual case, to any clinic, hospital or agency that has the person under care or treatment or to other persons engaged in fact finding or research.

E. Any finding of delinquency or need of services or conviction of a crime subsequent to the sealing order may at the court's discretion be used by the court as a basis to set aside the sealing order.

F. A child who has been the subject of a petition filed pursuant to the provisions of the Delinquency Act shall be notified in writing by the department when the child reaches the age of eighteen or at the expiration of legal custody and supervision, whichever occurs later, that the department's records have been sealed and that the court, the children's court attorney, the child's attorney and the referring law enforcement agency have been notified that the child's records are subject sealing.

G. The department shall seal the child's files and records when the child reaches the age of eighteen or at the expiration of the disposition, whichever occurs later. The department shall notify the children's court attorney, the child's attorney and the referring law enforcement agency that the child's records are subject to sealing.

H. A child who is determined by the court not to be a delinquent offender shall have the child's files and records in the instant proceeding automatically sealed by the court upon motion by the children's court attorney at the conclusion of the proceedings.

I. After sealing, the department may store and use a person's records for research and reporting purposes, subject to the confidentiality provisions of Section 32A-2-32 NMSA 1978 and other applicable federal and state laws."

Chapter 239 Section 27 Laws 2009

Section 27. Section 32A-2-29 NMSA 1978 (being Laws 1993, Chapter 77, Section 58, as amended) is amended to read:

"32A-2-29. MOTOR VEHICLE CODE VIOLATIONS.--

A. The municipal, magistrate or metropolitan court shall have original exclusive jurisdiction over all Motor Vehicle Code or municipal traffic code violations when the person alleged to have committed the violation is a child, with the exception of those violations contained in Paragraph (1) of Subsection A of Section 32A-2-3 NMSA 1978 and all traffic offenses alleged to have been committed by the child arising out of the same occurrence pursuant to Subsection B of this section.

B. If the court acquires jurisdiction over a child pursuant to Section 32A-2-3 NMSA 1978, it shall have exclusive jurisdiction over all traffic offenses alleged to have been committed by the child arising out of the same occurrence.

C. Disposition as to any delinquent offenses shall be pursuant to the Delinquency Act.

D. Disposition as to a Motor Vehicle Code or municipal traffic code violation in which jurisdiction is acquired as set forth in Subsection B of this section shall be pursuant to the respective Motor Vehicle Code or municipal traffic code in the children's court's discretion and to the extent that it neither conflicts with nor is inconsistent with the dispositional provisions of the Children's Code.

E. All traffic offenses that the child is found to have committed by the municipal, magistrate or metropolitan court or for which the child is adjudicated delinquent by the children's court shall be subject to the reporting requirements and the suspension and revocation provisions of the Motor Vehicle Code and shall not be subject to the confidentiality provisions of the Delinquency Act.

F. Only the children's court may incarcerate a child who has been found guilty of any Motor Vehicle Code or municipal traffic code violations."

Chapter 239 Section 28 Laws 2009

Section 28. Section 32A-2-32 NMSA 1978 (being Laws 1993, Chapter 77, Section 61, as amended) is amended to read:

"32A-2-32. CONFIDENTIALITY--RECORDS.--

A. All records pertaining to the child, including all related social records, behavioral health screenings, diagnostic evaluations, psychiatric reports, medical reports, social studies reports, records from local detention facilities, client-identifying records from facilities for the care and rehabilitation of delinquent children, pre-parole or supervised release reports and supervision histories obtained by the juvenile probation office, parole officers and the juvenile public safety advisory board or in possession of the department, are confidential and shall not be disclosed directly or indirectly to the public.

B. The disclosure of all mental health and developmental disability records shall be made pursuant to the Children's Mental Health and Developmental Disabilities Act.

C. The records described in Subsection A of this section, other than mental health and developmental disability records, shall be disclosed only to any of the following, provided that the agency, person or institution receiving information shall not re-release the information without proper consent or as otherwise provided by law:

(1) court personnel;

(2) the child's court appointed special advocates;

(3) the child's attorney or guardian ad litem representing the child in any matter;

- (4) department personnel;
- (5) corrections department personnel;
- (6) law enforcement officials when the request is related to the investigation of a crime;
- (7) district attorneys or children's court attorneys;
- (8) a state government social services agency in any state;
- (9) those persons or entities of a child's Indian tribe specifically authorized to inspect such records pursuant to the federal Indian Child Welfare Act of 1978 or any regulations promulgated under that act;
- (10) tribal juvenile justice system and social service representatives;
- (11) a foster parent, if the records are those of a child currently placed with that foster parent or of a child being considered for placement with that foster parent, when the disclosure of the information is necessary for the child's treatment or care and shall include only that information necessary to provide for treatment and care of the child;
- (12) school personnel involved with the child if the records concern the child's educational needs, but shall only include that information necessary to provide for the child's educational planning and needs;
- (13) a health care or mental health professional involved in the evaluation or treatment of the child, the child's parents, guardians or custodian or other family members;
- (14) representatives of the protection and advocacy system;
- (15) the child's parent, guardian or legal custodian when the disclosure of the information is necessary for the child's treatment or care and shall include only that information necessary to provide for the treatment or care of the child;
- (16) any other person or entity, by order of the court, having a legitimate interest in the case or the work of the court who agrees not to otherwise release the records; and
- (17) the child, if fourteen years of age or older.

D. If disclosure of otherwise confidential records is made to the child or any other person or entity pursuant to a valid release of information signed by the child, all victim or witness identifying information shall be redacted or otherwise deleted.

E. Whoever intentionally and unlawfully releases any information or records closed to the public pursuant to this section or releases or makes other unlawful use of records in violation of this section is guilty of a petty misdemeanor.

F. The department shall promulgate rules for implementing disclosure of records pursuant to this section and in compliance with state and federal law and the Children's Court Rules."

Chapter 239 Section 29 Laws 2009

Section 29. Section 32A-3B-8 NMSA 1978 (being Laws 1993, Chapter 77, Section 80, as amended) is amended to read:

"32A-3B-8. BASIC RIGHTS.--

A. A child subject to the provisions of the Children's Code is entitled to the same basic rights as an adult, except as otherwise provided in the Children's Code.

B. In proceedings on a petition alleging a family in need of court-ordered services, the court may appoint counsel if appointment of counsel would serve the interests of justice.

C. In proceedings on a petition alleging a family in need of court-ordered services, the court shall appoint a guardian ad litem for a child under the age of fourteen and the court shall appoint an attorney for a child fourteen years of age or older at the inception of the proceedings. An officer or employee of an agency vested with legal custody of the child shall not be appointed as a guardian ad litem or attorney for the child. Only an attorney with appreciable training or experience shall be appointed as guardian ad litem or attorney for the child.

D. When a child reaches fourteen years of age, the child's guardian ad litem shall continue as the child's attorney; provided that the court shall appoint a different attorney for the child if:

(1) the child requests a different attorney;

(2) the guardian ad litem requests to be removed; or

(3) the court determines that the appointment of a different attorney is appropriate.

E. Whenever it is reasonable and appropriate, the court shall appoint a guardian ad litem or attorney who is knowledgeable about the child's cultural background.

F. A person afforded rights pursuant to the provisions of the Children's Code shall be advised of those rights at that person's first appearance before the court on a petition filed under the Children's Code.

G. A child of an alleged or adjudicated family in need of court-ordered services shall not be fingerprinted or photographed for identification purposes, unless pursuant to a court order."

Chapter 239 Section 30 Laws 2009

Section 30. Section 32A-3B-12 NMSA 1978 (being Laws 1993, Chapter 77, Section 84) is amended to read:

"32A-3B-12. ADJUDICATORY HEARING--TIME LIMITATIONS.--

A. An adjudicatory hearing for an alleged family in need of court-ordered services shall be commenced within sixty days after the date of service on the respondent.

B. The children's court attorney shall represent the state at the adjudicatory hearing.

C. If the adjudicatory hearing is not commenced within the time limits specified in this section or within the period of any extension of those time limits, the petition shall be dismissed with prejudice."

Chapter 239 Section 31 Laws 2009

Section 31. Section 32A-3B-16 NMSA 1978 (being Laws 1993, Chapter 77, Section 88) is amended to read:

"32A-3B-16. DISPOSITIONAL JUDGMENT.--

A. At the conclusion of the dispositional hearing, the court shall set forth its findings on the following issues in the dispositional judgment:

(1) the ability of the parent and child to share a residence;

(2) the interaction and interrelationship of the child with the child's parent, siblings and any other person who may significantly affect the child's best interest;

- (3) the child's adjustment to home, school and community;
- (4) whether the child's educational needs are being met;
- (5) the mental and physical health of all individuals involved;
- (6) the wishes of the child as to the child's custodian;
- (7) the wishes of the child's parent, guardian or custodian as to the child's custody;
- (8) whether there exists a relative of the child or any other individual who, after study by the department, is found to be qualified to receive and care for the child;
- (9) the availability of services recommended in the treatment plan;
- (10) the department's efforts to work with the parent and child in the home and a description of the in-home treatment programs that the department has considered and rejected;
- (11) whether the placement preferences set forth in the federal Indian Child Welfare Act of 1978 or the placement preferences of the child's Indian tribe have been incorporated into the plan. When placement preferences have not been incorporated into the plan, an explanation shall be clearly stated and supported;
- (12) when the child is an Indian child, whether the plan provides for maintaining the Indian child's cultural ties; and
- (13) when the child is an undocumented immigrant child, whether the family services plan included referral to nongovernmental agencies that may be able to assist the child, and family when appropriate, in addressing immigration status.

B. When there is an adjudication regarding a family in need of court-ordered services, the court shall enter judgment and make any of the following dispositions:

- (1) permit the child to remain with the child's parent, guardian or custodian, subject to conditions and limitations the court may prescribe;
- (2) place the child under the protective supervision of the department;
- (3) transfer legal custody of the child to:
 - (a) the department;

(b) an agency responsible for the care of neglected or abused children; or

(c) the child's noncustodial parent, if that is found to be in the child's best interests; or

(4) if the evidence indicates that the child's educational needs are not being met, the local education agency may be joined as a party and directed to assess the child's needs within forty-five days, attempt to meet the child's educational needs and document its efforts to meet the child's educational needs.

C. Unless a child of an adjudicated family in need of court-ordered services is also found to be a delinquent child, the child shall not be confined in an institution established for the long-term care and rehabilitation of delinquent children or in a facility for the detention of alleged delinquent children.

D. When the child is an Indian child, the child's cultural needs shall be considered during dispositional judgment and, when reasonable, access to cultural practices and traditional treatment shall be provided to the Indian child."

Chapter 239 Section 32 Laws 2009

Section 32. Section 32A-3B-18 NMSA 1978 (being Laws 1993, Chapter 77, Section 90) is amended to read:

"32A-3B-18. DISPOSITIONAL JUDGMENTS--TIME LIMITATIONS--MODIFICATION, TERMINATION OR EXTENSION OF COURT ORDER.--

A. A judgment vesting legal custody of a child in an agency shall remain in force for an indeterminate period not exceeding two years from the date entered.

B. A judgment vesting legal custody of a child in an individual, other than the child's parent, shall remain in force for two years from the date entered unless terminated sooner by court order.

C. A judgment vesting legal custody of a child in the child's parent or a permanent guardian shall remain in force for an indeterminate period from the date entered until terminated by court order or until the child is emancipated or reaches the age of majority.

D. At any time prior to expiration, a judgment vesting legal custody or granting protective supervision may be modified, revoked or extended on motion by a party, including the child by and through the child's guardian ad litem or attorney.

E. Prior to the expiration of a judgment transferring legal custody to an agency, the court may extend the judgment for additional periods of one year if it finds

that the extension is necessary to safeguard the welfare of the child or the public interest.

F. When a child reaches eighteen years of age, all family in need of court-ordered services orders affecting the child then in force automatically terminate. The termination of the orders shall not disqualify a child from eligibility for transitional services."

Chapter 239 Section 33 Laws 2009

Section 33. 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. "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;

E. "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;

F. "physical abuse" includes but is not limited to any case in which the child exhibits evidence of skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling or death and:

- (1) there is not a justifiable explanation for the condition or death;
- (2) the explanation given for the condition is at variance with the degree or nature of the condition;
- (3) the explanation given for the death is at variance with the nature of the death; or
- (4) circumstances indicate that the condition or death may not be the product of an accidental occurrence;

G. "sexual abuse" includes but is not limited to criminal sexual contact, incest or criminal sexual penetration, as those acts are defined by state law;

H. "sexual exploitation" includes but is not limited to:

- (1) allowing, permitting or encouraging a child to engage in prostitution;
- (2) allowing, permitting, encouraging or engaging a child in obscene or pornographic photographing; or
- (3) filming or depicting a child for obscene or pornographic commercial purposes, as those acts are defined by state law; and

I. "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 239 Section 34 Laws 2009

Section 34. Section 32A-4-5 NMSA 1978 (being Laws 1993, Chapter 77, Section 99, as amended) is amended to read:

"32A-4-5. ADMISSIBILITY OF REPORT IN EVIDENCE--IMMUNITY OF REPORTING PERSON--INVESTIGATION OF REPORT.--

A. In any proceeding alleging neglect or abuse under the Children's Code resulting from a report required by Section 32A-4-3 NMSA 1978 or in any proceeding in which that report or any of its contents are sought to be introduced in evidence, the report or its contents or any other facts related thereto or to the condition of the child who is the subject of the report shall not be excluded on the ground that the matter is or may be the subject of a physician-patient privilege or similar privilege or rule against disclosure.

B. Anyone reporting an instance of alleged child neglect or abuse or participating in a judicial proceeding brought as a result of a report required by Section 32A-4-3 NMSA 1978 is presumed to be acting in good faith and shall be immune from liability, civil or criminal, that might otherwise be incurred or imposed by the law, unless the person acted in bad faith or with malicious purpose.

C. After properly verifying the identity of the public official, any school personnel or other person who has the duty to report child abuse pursuant to Section 32A-4-3 NMSA 1978 shall permit a member of a law enforcement agency, including tribal police officers, an employee of the district attorney's office, an investigative interviewer for a program described in Subsection E of this section or an employee of the department, to interview a child with respect to a report without the permission of the child's parent or guardian. Any person permitting an interview pursuant to this subsection is presumed to be acting in good faith and shall be immune from liability, civil or criminal, that might otherwise be incurred or imposed by law, unless the person acted in bad faith or with malicious purpose.

D. An investigation may be conducted by law enforcement, the district attorney's office, a program described in Subsection E of this section and the department. Interviews shall be conducted in a manner and place that protects the child and family from unnecessary trauma and embarrassment. The investigating entity shall conduct the investigation in a manner that will protect the privacy of the child and the family, with the paramount consideration being the safety of the child. All interactions with child victims and child witnesses shall be conducted in a child-sensitive manner, taking into consideration the special needs of the child and the child's abilities, age and intellectual maturity. The interviews shall be conducted in a place where the child feels secure and in a language that the child uses and understands.

E. If a community has a program for child abuse investigation that includes an investigation interview of the alleged victim or child witness, the investigation may be conducted at a site designated by the community program. The child abuse victim or child witness shall, when possible, be interviewed in an environment where the alleged abuse perpetrator will not be present.

F. Prior to interviewing a child, the department shall notify the parent or guardian of the child who is being interviewed, unless the department determines that notification would adversely affect the safety of the child about whom the report has been made or compromise the investigation."

Chapter 239 Section 35 Laws 2009

Section 35. Section 32A-4-6 NMSA 1978 (being Laws 1993, Chapter 77, Section 100, as amended) is amended to read:

"32A-4-6. TAKING INTO CUSTODY--PENALTY.--

A. A child may be held or taken into custody:

(1) by a law enforcement officer when the officer has evidence giving rise to reasonable grounds to believe that the child is abused or neglected and that there is an immediate threat to the child's safety; provided that the law enforcement officer contacts the department to enable the department to conduct an on-site safety assessment to determine whether it is appropriate to take the child into immediate custody, except that a child may be taken into custody by a law enforcement officer without a protective services assessment being conducted if:

(a) the child's parent, guardian or custodian has attempted, conspired to cause or caused great bodily harm to the child or great bodily harm or death to the child's sibling;

(b) the child's parent, guardian or custodian has attempted, conspired to cause or caused great bodily harm or death to another parent, guardian or custodian of the child;

(c) the child has been abandoned;

(d) the child is in need of emergency medical care;

(e) the department is not available to conduct a safety assessment in a timely manner; or

(f) the child is in imminent risk of abuse; or

(2) by medical personnel when there are reasonable grounds to believe that the child has been injured as a result of abuse or neglect and that the child may be at risk of further injury if returned to the child's parent, guardian or custodian. The medical personnel shall hold the child until a law enforcement officer is available to take custody of the child pursuant to Paragraph (1) of Subsection A of this section.

B. When a child is taken into custody by law enforcement, the department is not compelled to place the child in an out-of-home placement and may release the child to the child's parent, guardian or custodian.

C. When a child is taken into custody, the department shall make reasonable efforts to determine whether the child is an Indian child.

D. If a child taken into custody is an Indian child and is alleged to be neglected or abused, the department shall give notice to the agent of the Indian child's tribe in accordance with the federal Indian Child Welfare Act of 1978.

E. Any person who intentionally interferes with protection of a child, as provided by Subsection A of this section, is guilty of a petty misdemeanor."

Chapter 239 Section 36 Laws 2009

Section 36. Section 32A-4-7 NMSA 1978 (being Laws 1993, Chapter 77, Section 101, as amended) is amended to read:

"32A-4-7. RELEASE OR DELIVERY FROM CUSTODY.--

A. A person taking a child into custody shall, with all reasonable speed:

(1) release the child to the child's parent, guardian or custodian and issue verbal counsel or warning as may be appropriate; or

(2) deliver the child to the department or, in the case of a child who is believed to be suffering from a serious physical or mental condition or illness that requires prompt treatment or diagnosis, deliver the child to a medical facility. If a law enforcement officer delivers a child to a medical facility, the officer shall immediately notify the department that the child has been placed in the department's legal custody.

B. When an alleged neglected or abused child is delivered to the department, a department caseworker shall review the need for placing the child in custody and shall release the child from custody unless custody is appropriate or has been ordered by the court. When a child is delivered to a medical facility, a department caseworker shall review the need for retention of custody within a reasonable time after delivery of the child to the facility and shall release the child from custody unless custody is appropriate or has been ordered by the court.

C. If a child is placed in the legal custody of the department and is not released to the child's parent, guardian or custodian, the department shall give written notice thereof as soon as possible, and in no case later than twenty-four hours, to the child's parent, guardian or custodian together with a statement of the reason for taking the child into custody.

D. Reasonable efforts shall be made to prevent or eliminate the need for removing the child from the child's home, with the paramount concern being the child's health and safety. In all cases when a child is taken into custody, the child shall be released to the child's parent, guardian or custodian, unless the department files a petition within two days from the date that the child was taken into custody.

E. The department may release the child at any time within the two-day period after the child was taken into custody if it is determined by the department that release is appropriate or if release has been ordered by the court."

Chapter 239 Section 37 Laws 2009

Section 37. Section 32A-4-14 NMSA 1978 (being Laws 1993, Chapter 77, Section 108, as amended) is amended to read:

"32A-4-14. CHANGE IN PLACEMENT.--

A. When the child's placement is changed, including a return to the child's home, written notice of the factual grounds supporting the change in placement shall be sent to the child's guardian ad litem or attorney, all parties, the child's CASA, the child's foster parents and the court ten days prior to the placement change, unless an emergency situation requires moving the child prior to sending notice.

B. When the child, by and through the child's guardian ad litem or attorney, files a motion and requests a court hearing to contest the proposed change, the department shall not change the child's placement pending the results of the court hearing, unless an emergency requires changing the child's placement prior to the hearing.

C. When a child's placement is changed without prior notice as provided for in Subsection A of this section, written notice shall be sent to the child's guardian ad litem or attorney, all parties, the child's CASA, the child's foster parents and the court within three days after the placement change.

D. Written notice is not required for removal of a child from temporary emergency care, emergency foster care or respite care. The department shall provide oral notification of the removal to the child's guardian ad litem or attorney.

E. Notice need not be given to the parties, other than the child, or to the court when placement is changed at the request of the child's foster parents or substitute care provider. Notice shall be given to the child's guardian ad litem or attorney."

Chapter 239 Section 38 Laws 2009

Section 38. Section 32A-4-18 NMSA 1978 (being Laws 1993, Chapter 77, Section 112, as amended) is amended to read:

"32A-4-18. CUSTODY HEARINGS--TIME LIMITATIONS--NOTICE--PROBABLE CAUSE.--

A. When a child alleged to be neglected or abused has been placed in the legal custody of the department or the department has petitioned the court for temporary custody, a custody hearing shall be held within ten days from the date the petition is filed to determine if the child should remain in or be placed in the department's custody pending adjudication. Upon written request of the respondent, the hearing may be held earlier, but in no event shall the hearing be held sooner than two days after the date the petition was filed.

B. The parent, guardian or custodian of the child alleged to be abused or neglected shall be given reasonable notice of the time and place of the custody hearing.

C. At the custody hearing, the court shall return legal custody of the child to the child's parent, guardian or custodian unless probable cause exists to believe that:

(1) the child is suffering from an illness or injury, and the parent, guardian or custodian is not providing adequate care for the child;

(2) the child is in immediate danger from the child's surroundings, and removal from those surroundings is necessary for the child's safety or well-being;

(3) the child will be subject to injury by others if not placed in the custody of the department;

(4) there has been an abandonment of the child by the child's parent, guardian or custodian; or

(5) the parent, guardian or custodian is not able or willing to provide adequate supervision and care for the child.

D. At the conclusion of the custody hearing, if the court determines that probable cause exists pursuant to Subsection C of this section, the court may:

(1) return legal custody of the child to the child's parent, guardian or custodian upon such conditions as will reasonably ensure the safety and well-being of the child, including protective supervision by the department; or

(2) award legal custody of the child to the department.

E. Reasonable efforts shall be made to preserve and reunify the family, with the paramount concern being the child's health and safety.

F. At the conclusion of the custody hearing, if the court determines that probable cause does not exist pursuant to Subsection C of this section, the court shall:

(1) retain jurisdiction and, unless the court permits otherwise, order that the respondent and child remain in the jurisdiction of the court pending the adjudication;

(2) return legal custody of the child to the child's parent, guardian or custodian with conditions to provide for the safety and well-being of the child; and

(3) order that the child's parent, guardian or custodian allow the child necessary contact with the child's guardian ad litem or attorney.

G. At the conclusion of the custody hearing, the court may order the respondent or the child alleged to be neglected or abused, or both, to undergo appropriate diagnostic examinations or evaluations. If the court determines that probable cause does not exist, the court may order the respondent or the child alleged to be neglected or abused, or both, to undergo appropriate diagnostic examinations or evaluations as necessary to protect the child's best interests, based upon the allegations in the petition and the evidence presented at the custody hearing. Copies of any diagnostic or evaluation reports ordered by the court shall be provided to the parties at least five days before the adjudicatory hearing is scheduled. The reports shall not be sent to the court.

H. The Rules of Evidence shall not apply to custody hearings.

I. Nothing in this section shall be construed to abridge the rights of Indian children pursuant to the federal Indian Child Welfare Act of 1978."

Chapter 239 Section 39 Laws 2009

Section 39. Section 32A-4-19 NMSA 1978 (being Laws 1993, Chapter 77, Section 113, as amended) is amended to read:

"32A-4-19. ADJUDICATORY HEARINGS--TIME LIMITATIONS.--

A. The adjudicatory hearing in a neglect or abuse proceeding shall be commenced within sixty days after the date of service on the respondent.

B. Prior to the adjudicatory hearing, all parties to the hearing shall attend a mandatory meeting and attempt to settle issues attendant to the adjudicatory hearing and develop a proposed treatment plan that serves the child's best interest.

C. The children's court attorney shall represent the state at the adjudicatory hearing.

D. When the adjudicatory hearing on any petition is not commenced within the time period specified in Subsection A of this section or within the period of any extension granted, the petition shall be dismissed with prejudice."

Chapter 239 Section 40 Laws 2009

Section 40. Section 32A-4-20 NMSA 1978 (being Laws 1993, Chapter 77, Section 114, as amended) is amended to read:

"32A-4-20. CONDUCT OF HEARINGS--FINDINGS--DISMISSAL--
DISPOSITIONAL MATTERS--PENALTY.--

A. The proceedings shall be recorded by stenographic notes or by electronic, mechanical or other appropriate means.

B. All abuse and neglect hearings shall be closed to the general public.

C. Only the parties, their counsel, witnesses and other persons approved by the court may be present at a closed hearing. The foster parent, preadoptive parent or relative providing care for the child shall be given notice and an opportunity to be heard at the dispositional phase. Those other persons the court finds to have a proper interest in the case or in the work of the court may be admitted by the court to closed hearings on the condition that they refrain from divulging any information that would identify the child or family involved in the proceedings.

D. Accredited representatives of the news media shall be allowed to be present at closed hearings, subject to the condition that they refrain from divulging information that would identify any child involved in the proceedings or the parent, guardian or custodian of that child and subject to enabling regulations as the court finds necessary for the maintenance of order and decorum and for the furtherance of the purposes of the Children's Code. A child who is the subject of an abuse and neglect proceeding and is present at a hearing may object to the presence of the media. The court may exclude the media if it finds that the presence of the media is contrary to the best interests of the child.

E. If the court finds that it is in the best interest of a child under fourteen years of age, the child may be excluded from a hearing under the Abuse and Neglect Act. A child fourteen years of age or older may be excluded from a hearing only if the court makes a finding that there is a compelling reason to exclude the child and states the factual basis for the finding.

F. Those persons or parties granted admission to a closed hearing who intentionally divulge information in violation of this section are guilty of a petty misdemeanor.

G. The court shall determine if the allegations of the petition are admitted or denied. If the allegations are denied, the court shall proceed to hear evidence on the petition. The court, after hearing all of the evidence bearing on the allegations of neglect or abuse, shall make and record its findings on whether the child is a neglected child, an abused child or both. If the petition alleges that the parent, guardian or custodian has

subjected the child to aggravated circumstances, then the court shall also make and record its findings on whether the aggravated circumstances have been proven.

H. If the court finds on the basis of a valid admission of the allegations of the petition or on the basis of clear and convincing evidence, competent, material and relevant in nature, that the child is neglected or abused, the court may proceed immediately or at a postponed hearing to make disposition of the case. If the court does not find that the child is neglected or abused, the court shall dismiss the petition and may refer the family to the department for appropriate services.

I. In that part of the hearings held under the Children's Code on dispositional issues, all relevant and material evidence helpful in determining the questions presented, including oral and written reports, may be received by the court and may be relied upon to the extent of its probative value even though not competent had it been offered during the part of the hearings on adjudicatory issues.

J. On the court's motion or that of a party, the court may continue the hearing on the petition for a period not to exceed thirty days to receive reports and other evidence in connection with disposition. The court shall continue the hearing pending the receipt of the predisposition study and report if that document has not been prepared and received. During any continuances under this subsection, the court shall make an appropriate order for legal custody."

Chapter 239 Section 41 Laws 2009

Section 41. Section 32A-4-21 NMSA 1978 (being Laws 1993, Chapter 77, Section 115, as amended) is amended to read:

"32A-4-21. NEGLECT OR ABUSE PREDISPOSITION STUDIES, REPORTS AND EXAMINATIONS.--

A. Prior to holding a dispositional hearing, the court shall direct that a predisposition study and report be submitted in writing to the court by the department.

B. The predisposition study required pursuant to Subsection A of this section shall contain the following information:

(1) a statement of the specific reasons for intervention by the department or for placing the child in the department's custody and a statement of the parent's ability to care for the child in the parent's home without causing harm to the child;

(2) a statement of how an intervention plan is designed to achieve placement of the child in the least restrictive setting available, consistent with the best interests and special needs of the child, including a statement of the likely harm the child may suffer as a result of being removed from the parent's home, including

emotional harm that may result due to separation from the child's parents, and a statement of how the intervention plan is designed to place the child in close proximity to the parent's home without causing harm to the child due to separation from parents, siblings or any other person who may significantly affect the child's best interest;

(3) the wishes of the child as to the child's custodian;

(4) whether the child has a family member who, subsequent to study by the department, is determined to be qualified to care for the child;

(5) a description of services offered to the child, the child's family and the child's foster care family and a summary of reasonable efforts made to prevent removal of the child from the child's family or reasonable efforts made to reunite the child with the child's family;

(6) a description of the home or facility in which the child is placed and the appropriateness of the child's placement;

(7) the results of any diagnostic examination or evaluation ordered at the custody hearing;

(8) a statement of the child's medical and educational background;

(9) if the child is an Indian child, whether the placement preferences set forth in the federal Indian Child Welfare Act of 1978 or the placement preferences of the child's Indian tribe were followed and whether the child's treatment plan provides for maintaining the child's cultural ties;

(10) a treatment plan that sets forth steps to ensure that the child's physical, medical, psychological and educational needs are met and that sets forth services to be provided to the child and the child's parents to facilitate permanent placement of the child in the parent's home;

(11) for children sixteen years of age and older, a plan for developing the specific skills the child requires for successful transition into independent living as an adult, regardless of whether the child is returned to the child's parent's home; and

(12) a treatment plan that sets forth steps to ensure that the child's educational needs are met and, for a child fourteen years of age or older, a treatment plan that specifically sets forth the child's educational and post-secondary goals; and

(13) a description of the child's foster care placement and whether it is appropriate in terms of the educational setting and proximity to the school the child was enrolled in at the time of the placement, including plans for travel for the child to

remain in the school in which the child was enrolled at the time of placement, if reasonable and in the child's best interest.

C. A copy of the predisposition report shall be provided by the department to counsel for all parties five days before the dispositional hearing.

D. If the child is an adjudicated abused child, any temporary custody orders shall remain in effect until the court has received and considered the predispositional study at the dispositional hearing."

Chapter 239 Section 42 Laws 2009

Section 42. Section 32A-4-22 NMSA 1978 (being Laws 1993, Chapter 77, Section 116, as amended) is amended to read:

"32A-4-22. DISPOSITION OF ADJUDICATED ABUSED OR NEGLECTED CHILD.--

A. If not held in conjunction with the adjudicatory hearing, the dispositional hearing shall be commenced within thirty days after the conclusion of the adjudicatory hearing. At the conclusion of the dispositional hearing, the court shall make and include in the dispositional judgment its findings on the following:

(1) the interaction and interrelationship of the child with the child's parent, siblings and any other person who may significantly affect the child's best interest;

(2) the child's adjustment to the child's home, school and community;

(3) the mental and physical health of all individuals involved;

(4) the wishes of the child as to the child's placement;

(5) the wishes of the child's parent, guardian or custodian as to the child's custody;

(6) whether there exists a relative of the child or other individual who, after study by the department, is found to be qualified to receive and care for the child;

(7) the availability of services recommended in the treatment plan prepared as a part of the predisposition study in accordance with the provisions of Section 32A-4-21 NMSA 1978;

(8) the ability of the parent to care for the child in the home so that no harm will result to the child;

(9) whether reasonable efforts were used by the department to prevent removal of the child from the home prior to placement in substitute care and whether reasonable efforts were used to attempt reunification of the child with the natural parent;

(10) whether reasonable efforts were made by the department to place siblings in custody together, unless such joint placement would be contrary to the safety or well-being of any of the siblings in custody, and whether any siblings not jointly placed have been provided reasonable visitation or other ongoing interaction, unless visitation or other ongoing interaction would be contrary to the safety or well-being of any of the siblings; and

(11) if the child is an Indian child, whether the placement preferences set forth in the federal Indian Child Welfare Act of 1978 or the placement preferences of the child's Indian tribe have been followed and whether the Indian child's treatment plan provides for maintaining the Indian child's cultural ties. When placement preferences have not been followed, good cause for noncompliance shall be clearly stated and supported.

B. If a child is found to be neglected or abused, the court may enter its judgment making any of the following dispositions to protect the welfare of the child:

(1) permit the child to remain with the child's parent, guardian or custodian, subject to those conditions and limitations the court may prescribe;

(2) place the child under protective supervision of the department;

or

(3) transfer legal custody of the child to any of the following:

(a) the noncustodial parent, if it is found to be in the child's best interest;

(b) an agency responsible for the care of neglected or abused children; or

(c) a child-placement agency willing and able to assume responsibility for the education, care and maintenance of the child and licensed or otherwise authorized by law to receive and provide care for the child.

C. If a child is found to be neglected or abused, in its dispositional judgment the court shall also order the department to implement and the child's parent, guardian or custodian to cooperate with any treatment plan approved by the court.

Reasonable efforts shall be made to preserve and reunify the family, with the paramount concern being the child's health and safety. The court may determine that reasonable efforts are not required to be made when the court finds that:

(1) the efforts would be futile; or

(2) the parent, guardian or custodian has subjected the child to aggravated circumstances.

D. Any parent, guardian or custodian of a child who is placed in the legal custody of the department or other person pursuant to Subsection B of this section shall have reasonable rights of visitation with the child as determined by the court, unless the court finds that the best interests of the child preclude any visitation.

E. The court may order reasonable visitation between a child placed in the custody of the department and the child's siblings or any other person who may significantly affect the child's best interest, if the court finds the visitation to be in the child's best interest.

F. Unless a child found to be neglected or abused is also found to be delinquent, the child shall not be confined in an institution established for the long-term care and rehabilitation of delinquent children.

G. When the court vests legal custody in an agency, institution or department, the court shall transmit with the dispositional judgment copies of the clinical reports, the predisposition study and report and any other information it has pertinent to the care and treatment of the child.

H. Prior to a child being placed in the custody or protective supervision of the department, the department shall be provided with reasonable oral or written notification and an opportunity to be heard. At any hearing held pursuant to this subsection, the department may appear as a party.

I. When a child is placed in the custody of the department, the department shall investigate whether the child is eligible for enrollment as a member of an Indian tribe and, if so, the department shall pursue the enrollment on the child's behalf.

J. When the court determines pursuant to Subsection C of this section that no reasonable efforts at reunification are required, the court shall conduct, within thirty days, a permanency hearing as described in Section 32A-4-25.1 NMSA 1978. Reasonable efforts shall be made to implement and finalize the permanency plan in a timely manner."

Chapter 239 Section 43 Laws 2009

Section 43. A new Section 32A-4-23.1 NMSA 1978 is enacted to read:

"32A-4-23.1. DISPOSITION OF AN UNDOCUMENTED IMMIGRANT CHILD IN A PROCEEDING UNDER THE ABUSE AND NEGLECT ACT.--

A. Whenever the court adjudicates that a child is abused or neglected, the department shall determine the child's immigration status. At the first judicial review, the department shall report the child's immigration status to the court. Services to children alleged to have been abused, neglected or abandoned must be provided without regard to the immigration status of the child except where immigration status is explicitly set forth as a statutory or regulatory condition of coverage or eligibility.

B. If the child is an undocumented immigrant, the department shall include in the treatment plan a recommendation as to whether the permanency plan for the child includes reuniting the child with the child's parents and whether it is in the child's best interest to be returned to the child's country of origin. If the permanency plan does not include reunification and the department does not recommend that the child be returned to the country of origin, the department shall determine whether the child may be eligible for special immigrant juvenile status under federal law.

C. If the child is eligible for special immigrant juvenile status, the department shall move the court for a special immigrant juvenile status order containing the necessary findings to establish that the child meets the criteria for federal special immigrant juvenile status. The department's motion shall include a statement of the express wishes of the child, as expressed by the child or the child's guardian ad litem or attorney.

D. After consultation with the child and the child's guardian ad litem or attorney, the department shall determine whether the child's best interests would be served by the filing of a petition for special immigrant juvenile status and application for adjustment of status and if in the child's best interest, within sixty days after an entry of the special immigrant juvenile status order, the department shall file a petition for special immigrant juvenile status and an application for adjustment of status on behalf of the child.

E. If a petition and application have been filed and the petition and application have not been granted by the time the child reaches eighteen years of age, the court may retain jurisdiction over the case for the sole purpose of ensuring that the child continues to satisfy the requirements for classification as a special immigrant juvenile.

F. Review hearings for the child shall be set solely for the purpose of confirming that the child continues to satisfy such requirements and determining the status of the petition and application.

G. The court's jurisdiction terminates upon the final decision of the federal authorities.

H. Retention of jurisdiction in this instance does not affect the transition services available to the child.

I. The court may not retain jurisdiction of the case after the immigrant child's twenty-first birthday.

J. In a judicial review report provided to the court for a child for whom the court has granted the special immigrant juvenile status order described in Subsection C of this section, the court shall be advised of the status of the petition and application process concerning the child."

Chapter 239 Section 44 Laws 2009

Section 44. Section 32A-4-24 NMSA 1978 (being Laws 1993, Chapter 77, Section 118) is amended to read:

"32A-4-24. LIMITATIONS ON DISPOSITIONAL JUDGMENTS--MODIFICATION, TERMINATION OR EXTENSION OF COURT ORDERS.--

A. A judgment vesting legal custody of a child in an agency shall remain in force for an indeterminate period not exceeding two years from the date entered.

B. A judgment vesting legal custody of a child in an individual, other than the child's parent or permanent guardian, shall remain in force for two years from the date entered, unless sooner terminated by court order.

C. A judgment vesting legal custody of a child in the child's parent or a permanent guardian shall remain in force for an indeterminate period from the date entered until terminated by court order or until the child is emancipated or reaches the age of majority.

D. At any time prior to expiration, a judgment vesting legal custody or granting protective supervision may be modified, revoked or extended on motion by any party, including the child by and through the child's guardian ad litem.

E. Prior to the expiration of a judgment transferring legal custody to an agency, the court may extend the judgment for additional periods of one year if it finds that the extension is necessary to safeguard the welfare of the child or the public interest.

F. When a child reaches eighteen years of age, all neglect and abuse orders affecting the child then in force automatically terminate except as provided in Section 32A-4-23.1 NMSA 1978 and Subsection D of Section 32A-4-25.3 NMSA 1978. The termination of the orders shall not disqualify a child from eligibility for transitional services."

Chapter 239 Section 45 Laws 2009

Section 45. Section 32A-4-25 NMSA 1978 (being Laws 1993, Chapter 77, Section 119, as amended) is amended to read:

"32A-4-25. PERIODIC REVIEW OF DISPOSITIONAL JUDGMENTS.--

A. The initial judicial review shall be held within sixty days of the disposition. At the initial review, the parties shall demonstrate to the court efforts made to implement the treatment plan approved by the court in its dispositional order. The court shall determine the extent to which the treatment plan has been implemented and make supplemental orders as necessary to ensure compliance with the treatment plan and the safety of the child. Prior to the initial judicial review, the department shall submit a copy of the adjudicatory order, the dispositional order and notice of the initial judicial review to the local substitute care review board for that judicial district created under the Citizen Substitute Care Review Act. A representative of the local substitute care review board shall be permitted to attend and comment to the court.

B. Subsequent periodic reviews of dispositional orders shall be held within six months of the conclusion of the permanency hearing or, if a motion has been filed for termination of parental rights or permanent guardianship, within six months of the decision on that motion and every six months thereafter. Prior to the review, the department shall submit a progress report to the local substitute care review board for that judicial district created under the Citizen Substitute Care Review Act. Prior to any judicial review by the court pursuant to this section, the local substitute care review board may review the dispositional order or the continuation of the order and the department's progress report and report its findings and recommendations to the court. The review may be carried out by either of the following:

(1) a judicial review hearing conducted by the court; or

(2) a judicial review hearing conducted by a special master appointed by the court; provided, however, that the court approve any findings made by the special master.

C. The children's court attorney shall give notice to all parties, including the child by and through the child's guardian ad litem or attorney, the child's CASA, a contractor administering the local substitute care review board and the child's foster parent or substitute care provider of the time, place and purpose of any judicial review hearing held pursuant to Subsection A or B of this section.

D. At any judicial review hearing held pursuant to Subsection B of this section, the department, the child's guardian ad litem or attorney and all parties given notice pursuant to Subsection C of this section shall have the opportunity to present evidence and to cross-examine witnesses. At the hearing, the department shall show that it has made reasonable effort to implement any treatment plan approved by the

court in its dispositional order and shall present a treatment plan consistent with the purposes of the Children's Code for any period of extension of the dispositional order. The respondent shall demonstrate to the court that efforts to comply with the treatment plan approved by the court in its dispositional order and efforts to maintain contact with the child were diligent and made in good faith. The court shall determine the extent of compliance with the treatment plan and whether progress is being made toward establishing a stable and permanent placement for the child.

E. The Rules of Evidence shall not apply to hearings held pursuant to this section. The court may admit testimony by any person given notice of the hearing who has information about the status of the child or the status of the treatment plan.

F. At the conclusion of any hearing held pursuant to this section, the court shall make findings of fact and conclusions of law.

G. When the child is an Indian child, the court shall determine during review of a dispositional order whether the placement preferences set forth in the federal Indian Child Welfare Act of 1978 or the placement preferences of the child's Indian tribe were followed and whether the child's treatment plan provides for maintaining the child's cultural ties. When placement preferences have not been followed, good cause for noncompliance shall be clearly stated and supported.

H. Based on its findings at a judicial review hearing held pursuant to Subsection B of this section, the court shall order one of the following dispositions:

(1) dismiss the action and return the child to the child's parent without supervision if the court finds that conditions in the home that led to abuse have been corrected and it is now safe for the return of the abused child;

(2) permit the child to remain with the child's parent, guardian or custodian subject to those conditions and limitations the court may prescribe, including protective supervision of the child by the department;

(3) return the child to the child's parent and place the child under the protective supervision of the department;

(4) transfer or continue legal custody of the child to:

(a) the noncustodial parent, if that is found to be in the child's best interests;

(b) a relative or other individual who, after study by the department or other agency designated by the court, is found by the court to be qualified to receive and care for the child and is appointed as a permanent guardian of the child; or

(c) the department, subject to the provisions of Paragraph (6) of this subsection;

(5) continue the child in the legal custody of the department with or without any required parental involvement in a treatment plan. Reasonable efforts shall be made to preserve and reunify the family, with the paramount concern being the child's health and safety unless the court finds that such efforts are not required. The court may determine that reasonable efforts are not required to be made when the court finds that:

(a) the efforts would be futile; or

(b) the parent, guardian or custodian has subjected the child to aggravated circumstances;

(6) make additional orders regarding the treatment plan or placement of the child to protect the child's best interests if the court determines the department has failed in implementing any material provision of the treatment plan or abused its discretion in the placement or proposed placement of the child; or

(7) if during a judicial review the court finds that the child's parent, guardian or custodian has not complied with the court-ordered treatment plan, the court may order:

(a) the child's parent, guardian or custodian to show cause why the parent, guardian or custodian should not be held in contempt of court; or

(b) a hearing on the merits of terminating parental rights.

I. Dispositional orders entered pursuant to this section shall remain in force for a period of six months, except for orders that provide for transfer of the child to the child's noncustodial parent or to a permanent guardian.

J. The report of the local substitute care review board submitted to the court pursuant to Subsection B of this section shall become a part of the child's permanent court record.

K. When the court determines, pursuant to Paragraph (5) of Subsection H of this section, that no reasonable efforts at reunification are required, the court shall conduct, within thirty days, a permanency hearing as described in Section 32A-4-25.1 NMSA 1978. Reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child."

Chapter 239 Section 46 Laws 2009

Section 46. Section 32A-4-25.1 NMSA 1978 (being Laws 1997, Chapter 34, Section 8, as amended) is amended to read:

"32A-4-25.1. PERMANENCY HEARINGS--PERMANENCY REVIEW HEARINGS.--

A. A permanency hearing shall be commenced within six months of the initial judicial review of a child's dispositional order or within twelve months of a child entering foster care pursuant to Subsection D of this section, whichever occurs first. Prior to the initial permanency hearing, all parties to the hearing shall attend a mandatory meeting and attempt to settle issues attendant to the permanency hearing and develop a proposed treatment plan that serves the child's best interest. Prior to the initial permanency hearing, the department shall submit a progress report regarding the child to the local substitute care review board for that judicial district. The local substitute care review board may review the child's dispositional order, any continuation of that order and the department's progress report and report its findings and recommendations to the court.

B. At the permanency hearing, all parties shall have the opportunity to present evidence and to cross-examine witnesses. At the conclusion of the permanency hearing, the court shall order one of the following permanency plans for the child:

(1) reunification;

(2) placement for adoption after the parents' rights have been relinquished or terminated or after a motion has been filed to terminate parental rights;

(3) placement with a person who will be the child's permanent guardian;

(4) placement in the legal custody of the department with the child placed in the home of a fit and willing relative; or

(5) placement in the legal custody of the department under a planned permanent living arrangement, provided that there is substantial evidence that none of the above plans is appropriate for the child.

C. If the court adopts a permanency plan of reunification, the court shall adopt a plan for transitioning the child home and schedule a permanency review hearing within three months. If the child is reunified, the subsequent hearing may be vacated.

D. If the court adopts a permanency plan other than reunification, the court shall determine whether the department has made reasonable efforts to identify and locate all grandparents and other relatives. The court shall also determine whether the department has made reasonable efforts to conduct home studies on any appropriate

relative expressing an interest in providing permanency for the child. The court must ensure the consideration has been given to the child's familial identity and connections. If the court finds that reasonable efforts have not been made to identify or locate grandparents and other relatives or to conduct home studies on appropriate and willing relatives, the court shall schedule a permanency review within sixty days to determine whether an appropriate relative placement has been made. If a relative placement is made, the subsequent hearing may be vacated.

E. At the permanency review hearing, all parties and the child's guardian ad litem or attorney shall have the opportunity to present evidence and cross-examine witnesses. Based on the evidence, the court shall:

(1) change the plan from reunification to one of the alternative plans provided in Subsection B of this section;

(2) dismiss the case and return custody of the child to the child's parent, guardian or custodian; or

(3) return the child to the custody of the child's parent, guardian or custodian, subject to any conditions or limitations as the court may prescribe, including protective supervision of the child by the department and continuation of the treatment plan for not more than six months, after which the case shall be dismissed. The department may seek removal of a child from the home by obtaining an order in the pending case or by seeking emergency removal under Section 32A-4-6 NMSA 1978 during the period of protective supervision if the child's best interest requires such action. When a child is removed in this situation, a permanency hearing shall be scheduled within thirty days of the child coming back into the department's legal custody.

F. The court shall hold a permanency hearing and adopt a permanency plan for a child within twelve months of the child entering foster care. For purposes of this section, a child shall be considered to have entered foster care on the earlier of:

(1) the date of the first judicial finding that the child has been abused or neglected; or

(2) sixty days after the date on which the child was removed from the home.

G. The court shall hold permanency hearings every twelve months when a child is in the legal custody of the department.

H. The children's court attorney shall give notice to all parties, including the child by and through the child's guardian ad litem or attorney, the child's CASA, a contractor administering the local substitute care review board and the child's foster

parent or substitute care provider of the time, place and purpose of any permanency hearing or permanency review hearing held pursuant to this section.

I. The rules of evidence shall not apply to permanency hearings. The court may admit testimony by any person given notice of the permanency hearing who has information about the status of the child or the status of the treatment plan. All testimony shall be subject to cross-examination."

Chapter 239 Section 47 Laws 2009

Section 47. A new Section 32A-4-25.2 NMSA 1978 is enacted to read:

"32A-4-25.2. TRANSITION SERVICES.--

A. Prior to a child's reaching seventeen years of age, the department shall meet with the child, the child's attorney and others of the child's choosing, including biological family members, to develop a transition plan. The department shall assist the child in identifying and planning to meet the child's needs after the child's eighteenth birthday, including housing, education, employment or income, health and mental health, local opportunities for mentors and continuing support services.

B. The department shall present the child's proposed transition plan to the court at the first hearing scheduled after the child's seventeenth birthday.

C. The court shall order a transition plan for the child. The transition plan approved by the court shall be reviewed at every subsequent review and permanency hearing."

Chapter 239 Section 48 Laws 2009

Section 48. A new Section 32A-4-25.3 NMSA 1978 is enacted to read:

"32A-4-25.3. DISCHARGE HEARING.--

A. At the last review or permanency hearing held prior to the child's eighteenth birthday, the court shall review the transition plan and shall determine whether the department has made reasonable efforts to implement the requirements of Subsection B of this section.

B. The court shall determine:

(1) whether written information concerning the child's family history, the whereabouts of any sibling if appropriate and education and health records have been provided to the child;

(2) whether the child's social security card, certified birth certificate, state-issued identification card, death certificate of a parent and proof of citizenship or residence have been provided to the child;

(3) whether assistance in obtaining medicaid has been provided to the child, unless the child is ineligible for medicaid; and

(4) whether referral for a guardianship or limited guardianship if the child is incapacitated has been made.

C. If the court finds that the department has not made reasonable efforts to meet all the requirements of Subsection B of this section and that termination of jurisdiction would be harmful to the young adult, the court may continue to exercise its jurisdiction for a period not to exceed one year from the child's eighteenth birthday. The young adult must consent to continued jurisdiction of the court. The court may dismiss the case at any time after the child's eighteenth birthday for good cause."

Chapter 239 Section 49 Laws 2009

Section 49. Section 32A-4-29 NMSA 1978 (being Laws 1993, Chapter 77, Section 123, as amended) is amended to read:

"32A-4-29. TERMINATION PROCEDURE.--

A. A motion to terminate parental rights may be filed at any stage of the abuse or neglect proceeding by a party to the proceeding.

B. The motion for termination of parental rights shall set forth:

(1) the date, place of birth and marital status of the child, if known;

(2) the grounds for termination and the facts and circumstances supporting the grounds for termination;

(3) the names and addresses of the persons or authorized agency or agency officer to whom legal custody might be transferred;

(4) whether the child resides or has resided with a foster parent who desires to adopt this child;

(5) whether the motion is in contemplation of adoption;

(6) the relationship or legitimate interest of the moving party to the child; and

(7) whether the child is subject to the federal Indian Child Welfare Act of 1978 and, if so:

(a) the tribal affiliations of the child's parents;

(b) the specific actions taken by the moving party to notify the parents' tribes and the results of the contacts, including the names, addresses, titles and telephone numbers of the persons contacted. Copies of any correspondence with the tribes shall be attached as exhibits to the petition; and

(c) what specific efforts were made to comply with the placement preferences set forth in the federal Indian Child Welfare Act of 1978 or the placement preferences of the appropriate Indian tribes.

C. Notice of the filing of the motion, accompanied by a copy of the motion, shall be served by the moving party on all other parties, the foster parent, preadoptive parent or relative providing care for the child with whom the child is residing, foster parents with whom the child has resided for six months within the previous twelve months, the custodian of the child, any person appointed to represent any party and any other person the court orders. Service shall be in accordance with the Children's Court Rules for the service of motions, except that foster parents and attorneys of record in this proceeding shall be served by certified mail. The notice shall state specifically that the person served shall file a written response to the motion within twenty days if the person intends to contest the termination. In any case involving a child subject to the federal Indian Child Welfare Act of 1978, notice shall also be sent by certified mail to the tribes of the child's parents and upon any "Indian custodian" as that term is defined in 25 U.S.C. Section 1903(6). Further notice shall not be required on a parent who has been provided notice previously pursuant to Section 32A-4-17 NMSA 1978 and who failed to make an appearance.

D. When a motion to terminate parental rights is filed, the moving party shall request a hearing on the motion. The hearing date shall be at least thirty days, but no more than sixty days, after service is effected upon the parties entitled to service under this section. The moving party shall also file a motion for court-ordered mediation between the parent and any prospective adoptive parent to discuss an open adoption agreement. If an open adoption agreement is reached at any time before termination of parental rights, it shall be made a part of the court record.

E. In any action for the termination of parental rights brought by a party other than the department and involving a child in the legal custody of the department, the department may:

(1) litigate a motion for the termination of parental rights that was initially filed by another party; or

(2) move that the motion for the termination of parental rights be found premature and denied.

F. When a motion to terminate parental rights is filed, the department shall perform concurrent planning.

G. When a child has been in foster care for not less than fifteen of the previous twenty-two months, the department shall file a motion to terminate parental rights, unless:

(1) a parent has made substantial progress toward eliminating the problem that caused the child's placement in foster care; it is likely that the child will be able to safely return to the parent's home within three months; and the child's return to the parent's home will be in the child's best interests;

(2) the child has a close and positive relationship with a parent and a permanent plan that does not include termination of parental rights will provide the most secure and appropriate placement for the child;

(3) the child is fourteen years of age or older, is firmly opposed to termination of parental rights and is likely to disrupt an attempt to place the child with an adoptive family;

(4) a parent is terminally ill, but in remission, and does not want parental rights to be terminated; provided that the parent has designated a guardian for the child;

(5) the child is not capable of functioning if placed in a family setting. In such a case, the court shall reevaluate the status of the child every ninety days unless there is a final court determination that the child cannot be placed in a family setting;

(6) grounds do not exist for termination of parental rights;

(7) the child is an unaccompanied, refugee minor and the situation regarding the child involves international legal issues or compelling foreign policy issues;

(8) adoption is not an appropriate plan for the child; or

(9) the parent's incarceration or participation in a court-ordered residential substance abuse treatment program constitutes the primary factor in the child's placement in substitute care and termination of parental rights is not in the child's best interest.

H. For purposes of this section, a child shall be considered to have entered foster care on the earlier of:

(1) the date of the first judicial finding that the child has been abused or neglected; or

(2) the date that is sixty days after the date on which the child was removed from the home.

I. The grounds for any attempted termination

shall be proved by clear and convincing evidence. In any proceeding involving a child subject to the federal Indian Child Welfare Act of 1978, the grounds for any attempted termination shall be proved beyond a reasonable doubt and shall meet the requirements set forth in 25 U.S.C. Section 1912(f).

J. When the court terminates parental rights, it shall appoint a custodian for the child and fix responsibility for the child's support.

K. In any termination proceeding involving a child subject to the federal Indian Child Welfare Act of 1978, the court shall in any termination order make specific findings that the requirements of that act have been met.

L. A judgment of the court terminating parental rights divests the parent of all legal rights and privileges and dispenses with both the necessity for the consent to or receipt of notice of any subsequent adoption proceeding concerning the child. A judgment of the court terminating parental rights shall not affect the child's rights of inheritance from and through the child's biological

parents.

M. When the court denies a motion to terminate parental rights, the court shall issue appropriate orders immediately. The court shall direct the parties to file a stipulated order and interim plan or a request for hearing within thirty days of the date of the hearing denying the termination of parental rights."

Chapter 239 Section 50 Laws 2009

Section 50. Section 32A-4-32 NMSA 1978 (being Laws 1993, Chapter 77, Section 126, as amended) is amended to read:

"32A-4-32. PERMANENT GUARDIANSHIP--PROCEDURE.--

A. A motion for permanent guardianship may be filed by any party.

B. A motion for permanent guardianship shall set forth:

- (1) the date, place of birth and marital status of the child, if known;
- (2) the facts and circumstances supporting the grounds for permanent guardianship;
- (3) the name and address of the prospective guardian and a statement that the person agrees to accept the duties and responsibilities of guardianship;
- (4) the basis for the court's jurisdiction;
- (5) the relationship of the child to the petitioner and the prospective guardian; and
- (6) whether the child is subject to the federal Indian Child Welfare Act of 1978 and, if so:
 - (a) the tribal affiliations of the child's parents;
 - (b) the specific actions taken by the petitioner to notify the parents' tribe and the results of the contacts, including the names, addresses, titles and telephone numbers of the persons contacted. Copies of any correspondence with the tribes shall be attached as exhibits to the petition; and
 - (c) what specific efforts were made to comply with the placement preferences set forth in the federal Indian Child Welfare Act of 1978 or the placement preferences of the appropriate Indian tribes.

C. If the motion is not filed by the prospective guardian, the motion shall be verified by the prospective guardian.

D. Notice of the filing of the motion, accompanied by a copy of the motion, shall be served by the moving party on any parent who has not previously been made a party to the proceeding, the parents of the child, foster parents with whom the child is residing, the foster parent, preadoptive parent or relative providing care for the child with whom the child has resided for six months, the child's custodian, the department, any person appointed to represent any party, including the child's guardian ad litem, and any other person the court orders provided with notice. Service shall be in accordance with the Children's Court Rules for the service of motions. In a case involving a child subject to the federal Indian Child Welfare Act of 1978, notice shall also be sent by certified mail to the Indian tribes of the child's parents and to any "Indian custodian" as that term is defined in 25 U.S.C. Section 1903(6). Further notice shall not be required to a parent who has been provided notice previously pursuant to Section 32A-4-17 NMSA 1978 and who failed to make an appearance.

E. The grounds for permanent guardianship shall be proved by clear and convincing evidence. The grounds for permanent guardianship shall be proved beyond a reasonable doubt and meet the requirements of 25 U.S.C. Section 1912(f) in any proceeding involving a child subject to the federal Indian Child Welfare Act of 1978.

F. A judgment of the court vesting permanent guardianship with an individual divests the biological or adoptive parent of legal custody or guardianship of the child, but is not a termination of the parent's rights. A child's inheritance rights from and through the child's biological or adoptive parents are not affected by this proceeding.

G. Upon a finding that grounds exist for a permanent guardianship, the court may incorporate into the final order provisions for visitation with the natural parents, siblings or other relatives of the child and any other provision necessary to rehabilitate the child or provide for the child's continuing safety and well-being.

H. The court shall retain jurisdiction to enforce its judgment of permanent guardianship.

I. Any party may make a motion for revocation of the order granting guardianship when there is a significant change of circumstances, including:

(1) the child's parent is able and willing to properly care for the child; or

(2) the child's guardian is unable to properly care for the child.

J. The court shall appoint a guardian ad litem for the child in all proceedings for the revocation of permanent guardianship if the child is under the age of fourteen. The court shall appoint an attorney for the child in all proceedings for the revocation of permanent guardianship if the child is fourteen years of age or older at the inception of the proceedings.

K. The court may revoke the order granting guardianship when a significant change of circumstances has been proven by clear and convincing evidence and it is in the child's best interests to revoke the order granting guardianship."

Chapter 239 Section 51 Laws 2009

Section 51. Section 32A-4-33 NMSA 1978 (being Laws 1993, Chapter 77, Section 127, as amended) is amended to read:

"32A-4-33. CONFIDENTIALITY--RECORDS--PENALTY.--

A. All records or information concerning a party to a neglect or abuse proceeding, including social records, diagnostic evaluations, psychiatric or

psychological reports, videotapes, transcripts and audio recordings of a child's statement of abuse or medical reports incident to or obtained as a result of a neglect or abuse proceeding or that were produced or obtained during an investigation in anticipation of or incident to a neglect or abuse proceeding shall be confidential and closed to the public.

B. The records described in Subsection A of this section shall be disclosed only to the parties and:

- (1) court personnel;
- (2) court-appointed special advocates;
- (3) the child's guardian ad litem;
- (4) the attorney representing the child in an abuse or neglect action, a delinquency action or any other action under the Children's Code;
- (5) department personnel;
- (6) any local substitute care review board or any agency contracted to implement local substitute care review boards;
- (7) law enforcement officials, except when use immunity is granted pursuant to Section 32A-4-11 NMSA 1978;
- (8) district attorneys, except when use immunity is granted pursuant to Section 32A-4-11 NMSA 1978;
- (9) any state government social services agency in any state or when, in the opinion of the department it is in the best interest of the child, a governmental social services agency of another country;
- (10) those persons or entities of an Indian tribe specifically authorized to inspect the records pursuant to the federal Indian Child Welfare Act of 1978 or any regulations promulgated thereunder;
- (11) a foster parent, if the records are those of a child currently placed with that foster parent or of a child being considered for placement with that foster parent and the records concern the social, medical, psychological or educational needs of the child;
- (12) school personnel involved with the child if the records concern the child's social or educational needs;

(13) health care or mental health professionals involved in the evaluation or treatment of the child, the child's parents, guardian, custodian or other family members;

(14) protection and advocacy representatives pursuant to the federal Developmental Disabilities Assistance and Bill of Rights Act and the federal Protection and Advocacy for Mentally Ill Individuals Amendments Act of 1991;

(15) children's safehouse organizations conducting investigatory interviews of children on behalf of a law enforcement agency or the department; and

(16) any other person or entity, by order of the court, having a legitimate interest in the case or the work of the court.

C. A parent, guardian or legal custodian whose child has been the subject of an investigation of abuse or neglect where no petition has been filed shall have the right to inspect any medical report, psychological evaluation, law enforcement reports or other investigative or diagnostic evaluation; provided that any identifying information related to the reporting party or any other party providing information shall be deleted. The parent, guardian or legal custodian shall also have the right to the results of the investigation and the right to petition the court for full access to all department records and information except those records and information the department finds would be likely to endanger the life or safety of any person providing information to the department.

D. Whoever intentionally and unlawfully releases any information or records closed to the public pursuant to the Abuse and Neglect Act or releases or makes other unlawful use of records in violation of that act is guilty of a petty misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

E. The department shall promulgate rules for implementing disclosure of records pursuant to this section and in compliance with state and federal law and the Children's Court Rules."

Chapter 239 Section 52 Laws 2009

Section 52. A new Section 32A-4-33.1 NMSA 1978 is enacted to read:

"32A-4-33.1. RECORDS RELEASE WHEN A CHILD DIES.--

A. After learning that a child fatality has occurred and that there is reasonable suspicion that the fatality was caused by abuse or neglect, the department shall, upon written request to the secretary of the department, release the following information, if in the department's possession, within five business days:

(1) the age and gender of the child;

(2) the date of death;

(3) whether the child was in foster care or in the home of the child's parent or guardian at the time of death; and

(4) whether an investigation is being conducted by the department.

B. If an investigation is being conducted by the department, then a request for further information beyond that listed in Subsection A of this section shall be answered with a statement that a report is under investigation.

C. Upon completion of a child abuse or neglect investigation into a child's death, if it is determined that abuse or neglect caused the child's death, the following documents shall be released upon request:

(1) a summary of the department's investigation;

(2) a law enforcement investigation report, if in the department's possession; and

(3) a medical examiner's report, if in the department's possession.

D. Prior to releasing any document pursuant to Subsection C of this section, the department shall consult with the district attorney and shall redact:

(1) information that would, in the opinion of the district attorney, jeopardize a criminal investigation or proceeding;

(2) identifying information related to a reporting party or any other party providing information; and

(3) information that is privileged, confidential or not subject to disclosure pursuant to any other state or federal law.

E. Once documents pursuant to this section have been released by the department, the department may comment on the case within the scope of the release.

F. Information released by the department consistent with the requirements of this section does not require prior notice to any other individual.

G. Nothing in this section shall be construed as requiring the department to obtain documents not in the abuse and neglect case file.

H. A person disclosing abuse and neglect case file information as required by this section shall not be subject to suit in civil or criminal proceedings for complying with the requirements of this section."

Chapter 239 Section 53 Laws 2009

Section 53. Section 32A-5-8 NMSA 1978 (being Laws 1993, Chapter 77, Section 135, as amended) is amended to read:

"32A-5-8. CONFIDENTIALITY OF RECORDS.--

A. Unless the petitioner agrees to be contacted or agrees to the release of the petitioner's identity to the parent and the parent agrees to be contacted or agrees to the release of the parent's identity to the petitioner, the attorneys, the court, the agency and the department shall maintain confidentiality regarding the names of the parties, unless the information is already otherwise known. After the petition is filed and prior to the entry of the decree, the records in adoption proceedings shall be open to inspection only by the attorney for the petitioner, the department or the agency, any attorney appointed as a guardian ad litem or attorney for the adoptee, any attorney retained by the adoptee or other persons upon order of the court for good cause shown.

B. All records, whether on file with the court, an agency, the department, an attorney or other provider of professional services in connection with an adoption, are confidential and may be disclosed only pursuant to the provisions of the Adoption Act. All information and documentation provided for the purpose of full disclosure is confidential. Documentation provided for the purpose of full disclosure shall remain the property of the person making full disclosure when a prospective adoptive parent decides not to accept a placement. Immediately upon refusal of the placement, the prospective adoptive parent shall return all full disclosure documentation to the person providing full disclosure. A prospective adoptive parent shall not disclose any confidential information received during the full disclosure process, except as necessary to make a placement decision or to provide information to a child's guardian ad litem or attorney or the court.

C. All hearings in adoption proceedings shall be confidential and shall be held in closed court without admittance of any person other than parties and their counsel.

D. A person who intentionally and unlawfully releases any information or records closed to the public pursuant to the Adoption Act or releases or makes other unlawful use of records in violation of that act is guilty of a petty misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

E. Prior to the entry of the decree of adoption, the parent consenting to the adoption or relinquishing parental rights to an agency or the department shall execute

an affidavit stating whether the parent will permit contact or the disclosure of the parent's identity to the adoptee or the adoptee's prospective adoptive parents."

Chapter 239 Section 54 Laws 2009

Section 54. Section 32A-5-16 NMSA 1978 (being Laws 1993, Chapter 77, Section 143, as amended) is amended to read:

"32A-5-16. TERMINATION PROCEDURES.--

A. A proceeding to terminate parental rights may be initiated in connection with or prior to an adoption proceeding. Venue shall be in the court for the county in which the child is physically present or in the county from which the child was placed. The proceeding may be initiated by any of the following:

(1) the department;

(2) an agency; or

(3) any other person having a legitimate interest in the matter, including a petitioner for adoption, the child's guardian, the child's guardian ad litem or attorney in another action, a foster parent, a relative of the child or the child.

B. A petition for termination of parental rights shall be signed and verified by the petitioner, be filed with the court and set forth:

(1) the date, place of birth and marital status of the child, if known;

(2) the grounds for termination and the facts and circumstances supporting the grounds for termination;

(3) the names and addresses of the person, authorized agency or agency officer to whom custody might be transferred;

(4) the basis for the court's jurisdiction;

(5) that the petition is in contemplation of adoption;

(6) the relationship or legitimate interest of the applicant to the child; and

(7) whether the child is an Indian child and, if so:

(a) the tribal affiliations of the child's parents;

(b) the specific actions taken by the moving party to notify the parents' tribe and the results of the contacts, including the names, addresses, titles and telephone numbers of the persons contacted. Copies of any correspondence with the Indian tribe shall be attached as exhibits to the petition; and

(c) what specific efforts were made to comply with the placement preferences set forth in the federal Indian Child Welfare Act of 1978 or the placement preferences of the appropriate Indian tribes.

C. Notice of the filing of the petition, accompanied by a copy of the petition, shall be served by the petitioner on the parents of the child, the child's guardian, the legal custodian of the child, the person with whom the child is residing, the individuals with whom the child has resided within the past six months and the department. Service shall be in accordance with the Rules of Civil Procedure for the District Courts for the service of process in a civil action in this state, with the exception that the department may be served by certified mail. The notice shall state specifically that the person served shall file a written response to the petition within twenty days if the person intends to contest the termination. In any case involving an Indian child, notice shall also be served on the child's Indian tribe pursuant to the federal Indian Child Welfare Act of 1978.

D. If the identification or whereabouts of a parent is unknown, the petitioner shall file a motion for an order granting service by publication or an order stating that service by publication is not required. A motion for an order granting service by publication shall be supported by the affidavit of the petitioner, the agency or the petitioner's attorney detailing the efforts made to locate the parent. Upon being satisfied that reasonable efforts to locate the parent have been made and that information as to the identity or whereabouts of the parent is still insufficient to effect service in accordance with SCRA, Rule 1-004, the court shall order service by publication or order that publication is not required because the parent's consent is not required pursuant to the provisions of Section 32A-5-19 NMSA 1978.

E. The court shall, upon request, appoint counsel for an indigent parent who is unable to obtain counsel or if, in the court's discretion, appointment of counsel for an indigent parent is required in the interest of justice. Payment for the appointed counsel shall be made by the petitioner pursuant to the rate determined by the supreme court of New Mexico for court-appointed attorneys.

F. The court shall appoint a guardian ad litem for the child in all contested proceedings for termination of parental rights. If the child is fourteen years of age or older and in the custody of the department, the child's attorney appointed pursuant to the Abuse and Neglect Act shall represent the child in any proceedings for termination of parental rights under this section.

G. Within thirty days after the filing of a petition to terminate parental rights, the petitioner shall request a hearing on the petition. The hearing date shall be at

least thirty days after service is effected upon the parent of the child or completion of publication.

H. The grounds for any attempted termination shall be proved by clear and convincing evidence. In any proceeding involving an Indian child, the grounds for any attempted termination shall be proved beyond a reasonable doubt and meet the requirements set forth in the federal Indian Child Welfare Act of 1978.

I. If the court terminates parental rights, it shall appoint a custodian for the child. Upon entering an order terminating the parental rights of a parent, the court may commit the child to the custody of the department, the petitioner or an agency willing to accept custody for the purpose of placing the child for adoption. In any termination proceeding involving an Indian child, the court shall, in any termination order, make specific findings that the requirements of the federal Indian Child Welfare Act of 1978 were met.

J. A judgment of the court terminating parental rights divests the parent of all legal rights. Termination of parental rights shall not affect the child's right of inheritance through the former parent."

Chapter 239 Section 55 Laws 2009

Section 55. Section 32A-5-24 NMSA 1978 (being Laws 1993, Chapter 77, Section 151, as amended) is amended to read:

"32A-5-24. RELINQUISHMENTS TO THE DEPARTMENT.--

A. When a parent elects to relinquish parental rights to the department, a petition to accept the relinquishment shall be filed, unless an abuse or neglect proceeding is pending. If an abuse or neglect proceeding is pending, the relinquishment shall be heard in the context of that proceeding.

B. In all hearings regarding relinquishment of parental rights to the department, the child shall be represented by a guardian ad litem. If the child is fourteen years of age or older and in the custody of the department, the child's attorney appointed pursuant to the Abuse and Neglect Act shall represent the child in any proceeding for termination of parental rights under this section.

C. If a proposed relinquishment of parental rights is not in contemplation of adoption, the court shall not allow the relinquishment of parental rights unless it finds that good cause exists, that the department has made reasonable efforts to preserve the family and that relinquishment of parental rights is in the child's best interest. Whenever a parent relinquishes the parent's rights pursuant to this subsection, the parent shall remain financially responsible for the child. The court may order the parent to pay the reasonable costs of support and maintenance of the child. The court may use

the child support guidelines set forth in Section 40-4-11.1 NMSA 1978 to calculate a reasonable payment.

D. When a parent relinquishes the parent's rights under this section, the parent shall be notified that no contact will be enforced by the court, regardless of any informal agreement, unless the parties have agreed to an open adoption pursuant to Section 32A-5-35 NMSA 1978. The consent for relinquishment shall be in writing and shall state that the parties understand that any informal agreement allowing contact will not be enforced by the courts."

Chapter 239 Section 56 Laws 2009

Section 56. Section 32A-5-33 NMSA 1978 (being Laws 1993, Chapter 77, Section 160) is amended to read:

"32A-5-33. APPOINTMENT OF GUARDIAN AD LITEM OR ATTORNEY FOR THE ADOPTEE OR OTHER PARTY.--Upon the motion of any party or upon the court's own motion, the court may appoint a guardian ad litem for the adoptee or for any person found to be incompetent or a child who is a party to the proceeding. In any contested proceeding, the court shall appoint a guardian ad litem for the adoptee. The court may appoint the child's attorney appointed pursuant to the Abuse and Neglect Act if the child is fourteen years of age or older and in the custody of the department."

Chapter 239 Section 57 Laws 2009

Section 57. Section 32A-5-35 NMSA 1978 (being Laws 1993, Chapter 77, Section 162, as amended) is amended to read:

"32A-5-35. OPEN ADOPTIONS.--

A. The parents of the adoptee and the petitioner may agree to contact between the parents and the petitioner or contact between the adoptee and one or more of the parents or contact between the adoptee and relatives of the parents. An agreement shall, absent a finding to the contrary, be presumed to be in the best interests of the child and shall be included in the decree of adoption. The agreement may also include contact between siblings and the adoptee based on a finding that it is in the best interests of the adoptee and the adoptee's siblings and a determination that the siblings' parent, guardian or custodian has consented to the agreement. The contact may include exchange of identifying or nonidentifying information or visitation between the parents or the parents' relatives or the adoptee's siblings and the petitioner or visitation between the parents or the parents' relatives or the adoptee's siblings and the adoptee. An agreement entered into pursuant to this section shall be considered an open adoption.

B. The court may appoint a guardian ad litem for the adoptee. The court shall adopt a presumption in favor of appointing a guardian ad litem for the adoptee

when visitation between the biological family and the adoptee is included in an agreement; however, this requirement may be waived by the court for good cause shown. When an adoptive placement is made voluntarily through an agency or pursuant to Section 32A-5-13 NMSA 1978, the court may, in its discretion, appoint a guardian ad litem. If the child is fourteen years of age or older, the court may appoint an attorney for the child. In all adoptions other than those in which the child is placed by the department, the court may assess the parties for the cost of services rendered by the guardian ad litem or the child's attorney. The duties of the guardian ad litem or child's attorney end upon the filing of the decree, unless otherwise ordered by the court.

C. In determining whether the agreement is in the adoptee's best interests, the court shall consider the adoptee's wishes, but the wishes of the adoptee shall not control the court's findings as to the best interests of the adoptee.

D. Every agreement entered into pursuant to provisions of this section shall contain a clause stating that the parties agree to the continuing jurisdiction of the court and to the agreement and understand and intend that any disagreement or litigation regarding the terms of the agreement shall not affect the validity of the relinquishment of parental rights, the adoption or the custody of the adoptee.

E. The court shall retain jurisdiction after the decree of adoption is entered, if the decree contains an agreement for contact, for the purpose of hearing motions brought to enforce or modify an agreement entered into pursuant to the provisions of this section. The court shall not grant a request to modify the agreement unless the moving party establishes that there has been a change of circumstances and the agreement is no longer in the adoptee's best interests."

Chapter 239 Section 58 Laws 2009

Section 58. A new Section 32A-7A-1 NMSA 1978 is enacted to read:

"32A-7A-1. SHORT TITLE.--Chapter 32A, Article 7A NMSA 1978 may be cited as the "Juvenile Public Safety Advisory Board Act"."

Chapter 239 Section 59 Laws 2009

Section 59. A new Section 32A-7A-2 NMSA 1978 is enacted to read:

"32A-7A-2. JUVENILE PUBLIC SAFETY ADVISORY BOARD--TERMS--DIRECTOR.--

A. The "juvenile public safety advisory board" is created, consisting of seven members appointed by the governor. The board is administratively attached to the department. The terms of members of the board shall be six years.

B. A director shall be appointed by the governor as the administrative officer of the juvenile public safety advisory board. The director shall employ other staff as necessary to carry out the duties of the board. Employees shall be employed in classified positions and shall be subject to the provisions of the Personnel Act."

Chapter 239 Section 60 Laws 2009

Section 60. A new Section 32A-7A-3 NMSA 1978 is enacted to read:

"32A-7A-3. BOARD--REMOVAL--VACANCIES.--A member of the juvenile public safety advisory board may be removed by the governor as provided in Article 5, Section 5 of the constitution of New Mexico. Vacancies shall be filled by the governor for the remainder of the unexpired term."

Chapter 239 Section 61 Laws 2009

Section 61. A new Section 32A-7A-4 NMSA 1978 is enacted to read:

"32A-7A-4. BOARD--QUALIFICATIONS.--Members of the juvenile public safety advisory board shall be persons qualified by education or professional training in such fields as criminology, education, health, psychology, psychiatry, law, social work or sociology for children and youth. The membership shall be reasonably representative of the various geographic regions of the state."

Chapter 239 Section 62 Laws 2009

Section 62. A new Section 32A-7A-5 NMSA 1978 is enacted to read:

"32A-7A-5. BOARD--CHAIR.--

A. The governor shall designate one member of the juvenile public safety advisory board to serve as chair.

B. The chair may designate two members of the board to serve as regional vice chairs."

Chapter 239 Section 63 Laws 2009

Section 63. A new Section 32A-7A-6 NMSA 1978 is enacted to read:

"32A-7A-6. BOARD--POWERS AND DUTIES.--

A. The juvenile public safety advisory board shall:

(1) advise the department on release decisions, including the criteria to be used to grant release and participation in decisions to grant or deny release;

(2) meet with the secretary of children, youth and families or the secretary's designee a minimum of twice each year for the purpose of reviewing the activities of the department;

(3) visit each facility for adjudicated delinquent children operated by the department at least once each year and on or before June 30 of each year, submit a written report to the governor and the secretary regarding conditions relating to the care and treatment of youth assigned to the facilities and any other matters pertinent in the judgment of the board;

(4) make recommendations to the secretary of children, youth and families and the director of the juvenile justice division of the department concerning programs and facilities for adjudicated delinquent children; and

(5) adopt rules and regulations as may be necessary for the effectual discharge of duties of the board.

B. Within forty days of a juvenile's arrival at a facility, the juvenile public safety advisory board shall conduct an initial assessment of the juvenile. At regularly scheduled intervals thereafter, the board shall conduct administrative reviews to assess the juvenile's progress or lack thereof. After each administrative review, the board shall prepare a report of the juvenile offender's progress with recommendations as to readiness for release or appropriateness of programming."

Chapter 239 Section 64 Laws 2009

Section 64. A new Section 32A-7A-7 NMSA 1978 is enacted to read:

"32A-7A-7. BOARD--COMPENSATION.--The members of the juvenile public safety advisory board shall receive per diem and mileage as provided for nonsalaried public officers in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance."

Chapter 239 Section 65 Laws 2009

Section 65. A new Section 32A-7A-8 NMSA 1978 is enacted to read:

"32A-7A-8. ACCESS.--The juvenile public safety advisory board shall have access at reasonable times to any adjudicated delinquent child and any records pertaining to the child for whom the department is considering release or who has requested release pursuant to procedures established by the department. The agency

or facility to which legal custody was transferred shall also provide the board with facilities for communicating with and interviewing children."

Chapter 239 Section 66 Laws 2009

Section 66. Section 32A-18-1 NMSA 1978 (being Laws 1993, Chapter 77, Section 224, as amended) is amended to read:

"32A-18-1. CULTURAL RECOGNITION.--

A. A person who serves as a judge, prosecutor, child's attorney, guardian ad litem, treatment guardian, court appointed attorney, court appointed special advocate, foster parent, mental health commissioner or mental health treatment service provider for a child subject to an abuse or neglect petition, a family in need of services petition or a mental health placement shall receive periodic training, to the extent of available resources, to develop his knowledge about children, the physical and psychological formation of children and the impact of ethnicity on a child's needs. Institutions that serve children and their families shall, considering available resources, provide similar training to institutional staff.

B. The training shall include study of:

- (1) cross-cultural dynamics and sensitivity;
- (2) child development;
- (3) family composition and dynamics;
- (4) parenting skills and practices;
- (5) culturally appropriate treatment plans; and
- (6) alternative health practices."

Chapter 239 Section 67 Laws 2009

Section 67. Section 33-9A-4 NMSA 1978 (being Laws 1988, Chapter 101, Section 42, as amended) is amended to read:

"33-9A-4. APPLICATIONS--CRITERIA.--

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

(1) the application is for funding a program with priority use being for delinquents selected pursuant to the provisions of Section 33-9A-5 NMSA 1978;

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

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

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

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

(6) no class A county alone or in conjunction with any municipality within a class A county shall receive more than forty-nine percent of any money appropriated to the fund.

B. Notwithstanding the provisions of Subsection A of this section, the department may utilize the fund to place individuals eligible, or within twelve months of eligibility, for parole in community-based settings. The department may, in its discretion, require participation by a delinquent in a program as a condition of supervised release.

C. The department may utilize not more than twenty-five percent of the fund to contract directly for community corrections programs or to establish programs operated by the department; provided, however, that the department may utilize up to an additional ten percent of the fund to operate juvenile community corrections programs if, after a reasonable effort to solicit proposals, there are no satisfactory proposals from a community where it is determined that a program is necessary or if it becomes necessary to cancel a program as provided in the contract.

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

Chapter 239 Section 68 Laws 2009

Section 68. Section 33-9A-5 NMSA 1978 (being Laws 1988, Chapter 101, Section 43, as amended) is amended to read:

"33-9A-5. SELECTION PANELS.--

A. The department shall establish a state panel whose duties shall be to immediately screen and identify delinquents sentenced to a juvenile correctional facility of the department and transferred to the legal custody of the department, except individuals who are sentenced or transferred from a judicial district that has established a local panel to exercise these duties pursuant to the provisions of this section and who meet the following criteria:

(1) the offense involved is one for which community service or reasonable restitution may be made using a payment schedule compatible with the total amount of restitution to be paid and the time the offender is to participate in a program; and

(2) the child is willing to enter into a contract that establishes objectives that shall be achieved before release from the program.

B. The department may establish criteria in addition to those established in Subsection A of this section for the screening of delinquents who would benefit from participation in a program and who would not pose a threat to the community.

C. If the state panel determines that a child is suitable for placement in a program, a recommendation to that effect and for modification of disposition shall be presented as soon as possible to the sentencing judge or the department, which may, notwithstanding any provision of law, accept, modify or reject the recommendation. The determination shall be presented to the county, municipality or private nonprofit organization, as applicable, for approval or rejection.

D. A county, municipality or private nonprofit organization, individually or jointly, may establish a local panel to exercise the duties and responsibilities of the state panel pursuant to the provisions of Subsection A of this section and, using the same criteria as the state panel, the local panel may screen and identify delinquents. The composition of a local panel shall include, to the maximum extent possible, representatives of the judiciary, the administrative office of the district attorneys, the public defender department, the children, youth and families department, the county sheriff or the municipal police department, individuals representing local programs and private citizens."

Chapter 239 Section 69 Laws 2009

Section 69. Section 66-5-11 NMSA 1978 (being Laws 1978, Chapter 35, Section 233, as amended) is amended to read:

"66-5-11. APPLICATION OF MINORS.--

A. The application of any person under the age of eighteen years for an instruction permit, provisional license or driver's license shall be signed and verified by the father, mother or guardian or, in the event there is no parent or guardian, by another responsible adult who is willing to assume the obligation imposed under this article upon a person signing the application of a minor.

B. The application of a minor who is in the custody of the state may be signed and verified by a grandparent; a sibling over the age of eighteen years; an aunt; an uncle; a foster parent with whom the minor resides; or as authorized by the secretary of children, youth and families, a child protective services worker or juvenile probation officer; provided that the child protective services worker or juvenile probation officer first notifies a foster parent or other responsible party of the intent to sign.

C. Any negligence or willful misconduct of a minor under the age of eighteen years when driving a motor vehicle upon a highway shall be imputed to the person who has signed the application of the minor for a permit or license, which person shall be jointly and severally liable with the minor for damages caused by the negligence or willful misconduct except as otherwise provided in Subsection D of this section.

D. In the event a minor deposits or there is deposited upon the minor's behalf proof of financial responsibility in respect to the operation of a motor vehicle owned by the minor or, if not the owner of a motor vehicle, with respect to the operation of any motor vehicle, in form and in amounts as required under the motor vehicle financial responsibility laws of this state, the division may accept the application of the minor when signed by one parent or the guardian of the minor, and, while such proof is maintained, the parent or guardian is not subject to the liability imposed under Subsection C of this section. Liability shall not be imposed under this section or under the Mandatory Financial Responsibility Act on the state or the secretary of children, youth and families or on a juvenile probation officer or child protective services worker for damages caused by the negligence or willful misconduct of a minor driver whose application for an instruction permit, provisional license or driver's license was signed by the child protective services worker or juvenile probation officer with the authorization of the children, youth and families department while the minor was in the custody of the state."

Chapter 239 Section 70 Laws 2009

Section 70. REPEAL.--Sections 9-2A-5 and 32A-7-1 through 32A-7-9 NMSA 1978 (being Laws 1992, Chapter 57, Section 5 and Laws 1993, Chapter 77, Sections 194 through 202, as amended) are repealed.

Chapter 239 Section 71 Laws 2009

Section 71. APPLICABILITY.--The provisions of this act apply to all children who, on July 1, 2009, are on release or are otherwise eligible to be placed on release as if

the Juvenile Public Safety Advisory Board Act had been in effect at the time they were placed on release or became eligible to be released.

Chapter 239 Section 72 Laws 2009

Section 72. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.

Senate Bill 248, aa

Approved April 7, 2009

LAWS 2009, CHAPTER 240

AN ACT

RELATING TO EDUCATIONAL RETIREMENT; ENACTING A NEW SECTION OF THE EDUCATIONAL RETIREMENT ACT TO PROHIBIT THE DISCLOSURE OF CERTAIN CONFIDENTIAL INFORMATION; PROVIDING A PENALTY.

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

Chapter 240 Section 1 Laws 2009

Section 1. A new section of the Educational Retirement Act is enacted to read:

"DISCLOSURE OF MEMBER OR RETIRED MEMBER INFORMATION--
PENALTY.--

A. Other than names of members and local administrative units by which a member was employed; dates of employment, retirement and reported death; service credit; reported salary and amounts of contributions made by members and local administrative units, neither the board nor its employees or contractors shall allow public inspection or disclosure of any information regarding a member or retired member to anyone except:

(1) the member, retired member or the spouse or authorized representative of the member or retired member;

(2) other persons specifically identified in a prior release and consent, in the form prescribed by the board, executed by the member, retired member, spouse or authorized representative; or

(3) the attorney general, appropriate law enforcement agencies, the state auditor or the public education department or higher education department, if the information provided relates to contributions, payments or management of money received by, or the financial controls or procedures of, a local administrative unit.

B. No person receiving information disclosed by a violation of Subsection A of this section shall disclose that information to any other person unless authorized by an applicable confidentiality agreement, board rule or state law.

C. Whoever knowingly violates a provision of Subsection A or B of this section is guilty of a petty misdemeanor and shall be sentenced in accordance with Section 31-19-1 NMSA 1978."

Senate Bill 490, aa

Approved April 7, 2009

LAWS 2009, CHAPTER 241

AN ACT

RELATING TO WATER AND SANITATION DISTRICTS; CLARIFYING SOURCES OF REVENUE TO BE USED IN REPAYMENT OF BONDS; PROVIDING FOR DISCLOSURE OF CERTAIN TAXPAYER INFORMATION TO A WATER AND SANITATION DISTRICT; REQUIRING DISTRICT CONFIDENTIALITY OF TAXPAYER INFORMATION RECEIVED; ALLOWING A REVIEW OF RATES BY THE DISTRICT COURT ON THE RECORD; CLARIFYING LANGUAGE.

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

Chapter 241 Section 1 Laws 2009

Section 1. Section 7-1-8 NMSA 1978 (being Laws 1965, Chapter 248, Section 13, as amended) is amended to read:

"7-1-8. CONFIDENTIALITY OF RETURNS AND OTHER INFORMATION.--It is unlawful for an employee of the department or a former employee of the department to reveal to an individual other than another employee of the department information contained in the return of a taxpayer made pursuant to a law subject to administration and enforcement under the provisions of the Tax Administration Act or any other information about a taxpayer acquired as a result of the employee's employment by the department and not available from public sources, except:

A. to an authorized representative of another state; provided that the receiving state has entered into a written agreement with the department to use the information for tax purposes only and that the receiving state has enacted a confidentiality statute similar to this section to which the representative is subject;

B. to a representative of the secretary of the treasury or the secretary's delegate pursuant to the terms of a reciprocal agreement entered into with the federal government for exchange of the information;

C. to the multistate tax commission, the federation of tax administrators or their authorized representatives; provided that the information is used for tax purposes only and is disclosed by the multistate tax commission or the federation of tax administrators only to states that have met the requirements of Subsection A of this section;

D. to another jurisdiction pursuant to an international fuel tax agreement; provided that the information is used for tax purposes only;

E. to a district court, an appellate court or a federal court:

(1) in response to an order thereof in an action relating to taxes or an action for tax fraud or any other crime that may affect taxes due to the state to which the state is a party and in which the information sought is about a taxpayer who is party to the action and is material to the inquiry, in which case only that information may be required to be produced in court and admitted in evidence subject to court order protecting the confidentiality of the information and no more;

(2) in an action in which the department is attempting to enforce an act with which the department is charged or to collect a tax; or

(3) in any matter in which the department is a party and the taxpayer has put the taxpayer's own liability for taxes at issue, in which case only that information regarding the taxpayer who is party to the action may be produced, but this shall not prevent the disclosure of department policy or interpretation of law arising from circumstances of a taxpayer who is not a party;

F. to the taxpayer or to the taxpayer's authorized representative; provided, however, that nothing in this subsection shall be construed to require any employee to testify in a judicial proceeding except as provided in Subsection E of this section;

G. information obtained through the administration of a law not subject to administration and enforcement under the provisions of the Tax Administration Act to the extent that release of that information is not otherwise prohibited by law;

H. in a manner, for statistical purposes, that the information revealed is not identified as applicable to an individual taxpayer;

I. with reference to information concerning the tax on tobacco imposed by the Cigarette Tax Act to a committee of the legislature for a valid legislative purpose or to the attorney general for purposes of Section 6-4-13 NMSA 1978 and the master settlement agreement defined in Section 6-4-12 NMSA 1978;

J. to a transferee, assignee, buyer or lessor of a liquor license, the amount and basis of an unpaid assessment of tax for which the transferor, assignor, seller or lessee is liable;

K. to a purchaser of a business as provided in Sections 7-1-61 through 7-1-63 NMSA 1978, the amount and basis of an unpaid assessment of tax for which the purchaser's seller is liable;

L. to a municipality of this state upon its request for a period specified by that municipality within the twelve months preceding the request for the information by that municipality:

(1) the names, taxpayer identification numbers and addresses of registered gross receipts taxpayers reporting gross receipts for that municipality under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax imposed by that municipality. The department may also release the information described in this paragraph quarterly or upon such other periodic basis as the secretary and the municipality may agree; and

(2) information indicating whether persons shown on a list of businesses located within that municipality furnished by the municipality have reported gross receipts to the department but have not reported gross receipts for that municipality under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax imposed by that municipality.

The employees of municipalities receiving information as provided in this subsection shall be subject to the penalty contained in Section 7-1-76 NMSA 1978 if that information is revealed to individuals other than other employees of the municipality in question or the department;

M. to the commissioner of public lands for use in auditing that pertains to rentals, royalties, fees and other payments due the state under land sale, land lease or other land use contracts; the commissioner of public lands and employees of the commissioner are subject to the same provisions regarding confidentiality of information as employees of the department;

N. the department shall furnish, upon request by the child support enforcement division of the human services department, the last known address with date of all names certified to the department as being absent parents of children receiving public financial assistance. The child support enforcement division personnel shall use such information only for the purpose of enforcing the support liability of the

absent parents and shall not use the information or disclose it for any other purpose; the child support enforcement division and its employees are subject to the provisions of this section with respect to any information acquired from the department;

O. the department shall furnish to the department of information technology, by electronic media, a database containing New Mexico personal income tax filers by county, which shall be updated quarterly. The database information shall be used only for the purpose of producing the random jury list for the selection of petit or grand jurors for the state courts pursuant to Section 38-5-3 NMSA 1978. The database shall not contain any financial information. If any information in the database is revealed by an employee of the administrative office of the courts or the department of information technology to individuals other than employees of the administrative office of the courts, the state courts, the department of information technology or the department, the employee shall be subject to the penalty provisions of Section 7-1-76 NMSA 1978;

P. with respect to the tax on gasoline imposed by the Gasoline Tax Act, the department shall make available for public inspection at monthly intervals a report covering the number of gallons of gasoline and ethanol blended fuels received and deducted and the amount of tax paid by each person required to file a gasoline tax return or pay gasoline tax in the state of New Mexico;

Q. the identity of a rack operator, importer, blender, supplier or distributor and the number of gallons reported on returns required under the Gasoline Tax Act, Special Fuels Supplier Tax Act or Alternative Fuel Tax Act to a rack operator, importer, blender, distributor or supplier, but only when it is necessary to enable the department to carry out its duties under the Gasoline Tax Act, the Special Fuels Supplier Tax Act or the Alternative Fuel Tax Act;

R. the department shall release upon request only the names and addresses of all gasoline or special fuel distributors, wholesalers and retailers to the New Mexico department of agriculture, the employees of which are thereby subject to the penalty contained in Section 7-1-76 NMSA 1978 if that information is revealed to individuals other than employees of either the New Mexico department of agriculture or the department;

S. the department shall answer all inquiries concerning whether a person is or is not a registered taxpayer for tax programs that require registration, but nothing in this subsection shall be construed to allow the department to answer inquiries concerning whether a person has filed a tax return;

T. upon request of a municipality or county of this state, the department shall permit officials or employees of the municipality or county to inspect the records of the department pertaining to an increase or decrease to a distribution or transfer made pursuant to Section 7-1-6.15 NMSA 1978 for the purpose of reviewing the basis for the increase or decrease. The municipal or county officials or employees receiving

information provided in this subsection shall not reveal that information to any person other than another employee of the municipality or the county, the department or a district court, an appellate court or a federal court in a proceeding relating to a disputed distribution and in which both the state and the municipality or county are parties. Information provided pursuant to provisions of this subsection that is revealed other than as provided in this subsection shall subject the person revealing the information to the penalty contained in Section 7-1-76 NMSA 1978;

U. to a county of this state that has in effect a local option gross receipts tax imposed by the county upon its request for a period specified by that county within the twelve months preceding the request for the information by that county:

(1) the names, taxpayer identification numbers and addresses of registered gross receipts taxpayers reporting gross receipts either for that county in the case of a local option gross receipts tax imposed on a countywide basis or only for the areas of that county outside of any incorporated municipalities within that county in the case of a county local option gross receipts tax imposed only in areas of the county outside of any incorporated municipalities. The department may also release the information described in this paragraph quarterly or upon such other periodic basis as the secretary and the county may agree;

(2) in the case of a local option gross receipts tax imposed by a county on a countywide basis, information indicating whether persons shown on a list of businesses located within the county furnished by the county have reported gross receipts to the department but have not reported gross receipts for that county under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax imposed by that county on a countywide basis; and

(3) in the case of a local option gross receipts tax imposed by a county only on persons engaging in business in that area of the county outside of incorporated municipalities, information indicating whether persons on a list of businesses located in that county outside of the incorporated municipalities but within that county furnished by the county have reported gross receipts to the department but have not reported gross receipts for that county outside of the incorporated municipalities within that county under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax imposed by the county only on persons engaging in business in that county outside of the incorporated municipalities.

The officers and employees of counties receiving information as provided in this subsection shall be subject to the penalty contained in Section 7-1-76 NMSA 1978 if the information is revealed to individuals other than other officers or employees of the county in question or the department;

V. to authorized representatives of an Indian nation, tribe or pueblo, the territory of which is located wholly or partially within New Mexico, pursuant to the terms of a reciprocal agreement entered into with the Indian nation, tribe or pueblo for the

exchange of that information for tax purposes only; provided that the Indian nation, tribe or pueblo has enacted a confidentiality statute similar to this section;

W. information with respect to the taxes or tax acts administered pursuant to Subsection B of Section 7-1-2 NMSA 1978, except that:

(1) information for or relating to a period prior to July 1, 1985 with respect to Sections 7-25-1 through 7-25-9 and 7-26-1 through 7-26-8 NMSA 1978 may be released only to a committee of the legislature for a valid legislative purpose;

(2) except as provided in Paragraph (3) of this subsection, contracts and other agreements between the taxpayer and other parties and the proprietary information contained in those contracts and agreements shall not be released without the consent of all parties to the contract or agreement; and

(3) audit workpapers and the proprietary information contained in the workpapers shall not be released except to:

(a) the minerals management service of the United States department of the interior, if production occurred on federal land;

(b) a person having a legal interest in the property that is subject to the audit;

(c) a purchaser of products severed from a property subject to the audit; or

(d) the authorized representative of any of the persons in Subparagraphs (a) through (c) of this paragraph. This paragraph does not prohibit the release of proprietary information contained in the workpapers that is also available from returns or from other sources not subject to the provisions of this section;

X. information with respect to the taxes, surtaxes, advance payments or tax acts administered pursuant to Subsection C of Section 7-1-2 NMSA 1978;

Y. to the public regulation commission, information with respect to the Corporate Income and Franchise Tax Act required to enable the commission to carry out its duties;

Z. to the state racing commission, information with respect to the state, municipal and county gross receipts taxes paid by racetracks;

AA. upon request of a corporation authorized to be formed under the Educational Assistance Act, the department shall furnish the last known address and the date of that address of every person certified to the department as an absent obligor of an educational debt due and owed to the corporation or that the corporation has

lawfully contracted to collect. The corporation and its officers and employees shall use that information only to enforce the educational debt obligation of the absent obligors and shall not disclose that information or use it for any other purpose;

BB. a decision and order made by a hearing officer pursuant to Section 7-1-24 NMSA 1978 with respect to a protest filed with the secretary on or after July 1, 1993;

CC. information required by a provision of the Tax Administration Act to be made available to the public by the department;

DD. upon request by the Bernalillo county metropolitan court, the department shall furnish the last known address and the date of that address for every person the court certifies to the department as a person who owes fines, fees or costs to the court or who has failed to appear pursuant to a court order or a promise to appear;

EE. upon request by a magistrate court, the department shall furnish the last known address and the date of that address for every person the court certifies to the department as a person who owes fines, fees or costs to the court or who has failed to appear pursuant to a court order or a promise to appear;

FF. to the national tax administration agencies of Mexico and Canada; provided the agency receiving the information has entered into a written agreement with the department to use the information for tax purposes only and is subject to a confidentiality statute similar to this section;

GG. to a district attorney, a state district court grand jury or federal grand jury for an investigation of or proceeding related to an alleged criminal violation of the tax laws;

HH. to a third party subject to a subpoena or levy issued pursuant to the provisions of the Tax Administration Act, the identity of the taxpayer involved, the taxes or tax acts involved and the nature of the proceeding;

II. to the gaming control board, tax returns of license applicants and their affiliates as provided in Subsection E of Section 60-2E-14 NMSA 1978;

JJ. any written ruling on questions of evidence or procedure made by a hearing officer pursuant to Section 7-1-24 NMSA 1978; provided that the name and identification number of the taxpayer requesting the ruling shall not be disclosed;

KK. to representatives of the workers' compensation administration, authorized by the director of the workers' compensation administration for this purpose, to facilitate the identification of taxpayers that are delinquent or noncompliant in payment of fees required by Section 52-1-9.1 or 52-5-19 NMSA 1978;

LL. to the secretary of workforce solutions or the secretary's delegate for use in enforcement of unemployment insurance collections pursuant to the terms of a reciprocal agreement entered into with the secretary of workforce solutions for exchange of information; the secretary of workforce solutions and employees of the workforce solutions department are subject to the provisions regarding confidentiality of information contained in the Tax Administration Act;

MM. information that the department is authorized by the Tax Administration Act to release to a local body that licenses professions or occupations pursuant to Chapter 36, Article 2 NMSA 1978 or Chapter 61 NMSA 1978;

NN. upon request for inspection by the public pursuant to Section 7-1-29 NMSA 1978, the department shall furnish the taxpayer name, refund or credit amount, tax program or business tax credit and the date the refund or credit was issued; nothing in this subsection shall be construed to require the release of information that would violate an agreement between the state and the federal internal revenue service for sharing of information or any provision or rule of the federal Internal Revenue Code to which a state is subject; and

OO. to 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 that water and sanitation district:

(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.

The officers and employees of water and sanitation districts receiving information as provided in this subsection shall be subject to the penalty in Section 7-1-76 NMSA 1978 if the information is revealed to persons other than officers or employees of the district in question or the department."

Chapter 241 Section 2 Laws 2009

Section 2. Section 73-21-4 NMSA 1978 (being Laws 1943, Chapter 80, Section 3, as amended) is amended to read:

"73-21-4. DEFINITIONS.--As used in the Water and Sanitation District Act:

A. "board" means the board of directors of a district;

B. "district" means a water and sanitation district that is established pursuant to the Water and Sanitation District Act and that is either entirely within or partly within and partly without one or more counties, provided those parts or parcels of the district lying in two or more counties are contiguous with one another, and further provided, a district created pursuant to a petition signed by the board of county commissioners of a county shall be entirely within that county;

C. "fee-for-service system" means a garbage or refuse collection system established by a district to fully implement the purposes for which the district is created and for which a service is offered, a fee is established by the board and the fee is paid by the customers of the district;

D. "proponents and opponents" means residents or nonresidents of a district who pay or are liable for paying rates, tolls, fees and charges assessed by that district;

E. "publication" means giving notice once a week for three consecutive weeks in at least one newspaper of general circulation in the county in which all or the major portion of the district is located; however, it is not necessary that publication be made on the same day of the week in each of the three weeks, but not less than fourteen days, excluding the day of first publication, shall intervene between the first publication and the last publication, and publication shall be complete on the date of the last publication;

F. "sewage system" includes all constructions for collection, transportation, pumping, treatment and final disposition of sewage;

G. "taxpaying elector of a district", "qualified elector" or "elector" means a person who is registered to vote in any precinct in the state and who:

(1) is a resident of the district;

(2) is a nonresident of the district who pays, or will be liable for paying, rates, tolls or charges set by the board; or

(3) is a nonresident of the district who either has paid or incurred a general tax liability on real property within the district in the twelve months immediately preceding a designated time or event or who is purchasing real property within the district under a real estate contract where a property tax has been paid or incurred on the real property in the twelve months immediately preceding a designated time or event; and

H. "utility" means a water system, sewer system or other fee-for-service system implemented by the district."

Chapter 241 Section 3 Laws 2009

Section 3. Section 73-21-14 NMSA 1978 (being Laws 1943, Chapter 80, Section 13, as amended) is amended to read:

"73-21-14. ELECTIONS.--

A. In any district, except a district created pursuant to a petition signed by the chair of the board of county commissioners of a county, on the second Tuesday of January in the second calendar year after the organization of the district and on the second Tuesday of January every second year thereafter, there shall be elected by the taxpaying electors of the district one member of the board to serve for a term of six years, except that if the district elects to adopt four-year terms, the member shall serve for a term of four years.

B. In any district created pursuant to a petition signed by the chair of the board of county commissioners of a county, one year after the organization of the district and every second year thereafter, there shall be elected by the taxpaying electors of the district at least two, but no more than three, members of the board to serve for a term of two years.

C. Not later than thirty days before any election pursuant to Subsection A or B of this section, nominations may be filed with the secretary of the board, and, if a nominee does not withdraw the nominee's name before the first publication of the notice of election, the name shall be placed on the ballot. The board shall provide for holding such election and shall appoint judges to conduct it. The secretary of the district shall give notice of election by publication and shall arrange such other details in connection with the election as the board may direct. If within ninety days prior to a board election, the district publishes materials that describe the qualifications, experience and accomplishments of incumbents, equal space shall be made available without charge for similar information provided by opponents seeking a position on the board. The returns of the election shall be certified to and shall be canvassed and declared by the board. The candidate receiving the most votes shall be elected. Any new member of the board shall qualify in the same manner as members of the first board qualify."

Chapter 241 Section 4 Laws 2009

Section 4. Section 73-21-28 NMSA 1978 (being Laws 1943, Chapter 80, Section 25) is amended to read:

"73-21-28. BOARD RESOLUTION--INDEBTEDNESS--ELECTION.--Whenever the board shall, by resolution, determine that the interest of the district and the public interest or necessity demand the acquisition, construction, installation or completion of any works or other improvements or facilities, or the making of any contract with the United States or other persons or corporations, to carry out the objects or purposes of the district, requiring the creation of a general obligation indebtedness of five thousand

dollars (\$5,000) or more, secured by property tax revenue from within the district, the board shall order the submission of the proposition of issuing the obligations or bonds or creating other indebtedness to the qualified taxpaying electors of the district at an election held for that purpose. Any such election may be held separately or may be consolidated or held concurrently with any other election authorized by the Water and Sanitation District Act. The declaration of public interest or necessity required in this section and the provision for the holding of the election may be included within one and the same resolution. The resolution, in addition to the declaration of public interest or necessity, shall recite the objects and purposes for which the indebtedness is proposed to be incurred, the estimated cost of the works or improvements, as the case may be, the amount of principal of the indebtedness to be incurred and the maximum rate of interest to be paid on the indebtedness. The resolution shall also fix the date upon which the election shall be held and the manner of holding it and the method of voting for or against the incurring of the proposed indebtedness. The resolution shall also fix the compensation to be paid the officers of the election and shall designate the polling place and shall appoint, for each polling place, from the electors of the district, the officers of the election consisting of three judges, one of whom shall act as clerk."

Chapter 241 Section 5 Laws 2009

Section 5. Section 73-21-36 NMSA 1978 (being Laws 1951, Chapter 195, Section 1) is amended to read:

"73-21-36. ACQUISITION, CONSTRUCTION OR IMPROVEMENT OF SYSTEMS--JOINT REVENUE BONDS.--

A. Whenever the board of a district shall, by resolution, determine that interest or necessity requires the acquisition, construction, repair, extension, improvement or betterment of a water system, sewer system or other fee-for-service system, districts are authorized to issue revenue bonds or obtain loans, payable solely out of the net income, to be derived from the operation of a publicly owned water system or sewer system or from services rendered by the district for a fee, and to pledge, irrevocably, the income to the payment of the bonds.

B. The proceeds of the bonds are to be used solely for the purchasing, acquiring, constructing and making of necessary improvements, extensions, repairs and betterments of the water system, sewer system or other fee-for-service system for the purchase and acquiring of wells, cisterns, reservoirs or other sources of water supply and pumping plants, sewage disposal plants or other machinery necessary for the operation of those facilities and the land and real estate upon which those facilities are situated or to be situated.

C. Joint revenue bonds may be issued for the acquisition, construction, extension, enlargement or betterment of a joint water system and joint sewer system or other joint fee-for-service system and the income of one or more of the utilities may be pledged to secure the repayment of the joint bonds."

Chapter 241 Section 6 Laws 2009

Section 6. Section 73-21-37 NMSA 1978 (being Laws 1951, Chapter 195, Section 2, as amended) is amended to read:

"73-21-37. INTEREST--MATURITY--FORM--METHOD OF SALE.--

A. Revenue bonds issued under the provisions of the Water and Sanitation District Act shall bear interest at not to exceed six percent per year, payable annually or semiannually, shall be payable at the option of the district, at the end of ten years from the date thereof; and due by their terms in not more than twenty years from date hereof; as determined by the district, shall be serial in form and maturity and numbered from one upward, consecutively, or may consist of one bond payable, at one time or in installments, and shall be sold for cash, at not less than par, and at either public or private sale.

B. All prior revenue bond issues of districts where one bond was issued in lieu of multiple bonds are validated."

Chapter 241 Section 7 Laws 2009

Section 7. Section 73-21-38 NMSA 1978 (being Laws 1951, Chapter 195, Section 3) is amended to read:

"73-21-38. REVENUE BOND ISSUANCE.--The board of a district issuing revenue bonds under the provisions of the Water and Sanitation District Act may authorize the issuance of the bonds by resolution adopted by the affirmative vote of two-thirds of all the members of the board at a regular or special meeting called for that purpose. At the meeting, the necessity of the issuance of the revenue bonds shall be declared and, when issued, shall be signed by the president of the board and attested by its secretary, with the seal of the district affixed to the bonds."

Chapter 241 Section 8 Laws 2009

Section 8. Section 73-21-39 NMSA 1978 (being Laws 1951, Chapter 195, Section 4) is amended to read:

"73-21-39. BONDS COLLECTIBLE FROM OPERATING REVENUES.--It is declared that revenue bonds, issued under the provisions of the Water and Sanitation District Act, except for those general obligation bonds described in Section 73-21-43 NMSA 1978, shall not be considered to be general obligations of the district issuing them and shall be collectible only out of the net revenues derived from the operation of the water or sewer system, or joint water and sewer systems or from services rendered by the district for a fee, whose income is so pledged. Each of the bonds of any issue of revenue bonds issued under the provisions of the Water and Sanitation District Act, with the exception of general obligation bonds, shall recite on its face that it is payable and

collectible solely from the revenues derived from the operations of the water or sewer system or joint water and sewer system or from the services rendered by the district for a fee, the income of which is so pledged, and that the holders of the bonds shall not look to any general or other fund for the payment of principal and interest of the obligation."

Chapter 241 Section 9 Laws 2009

Section 9. Section 73-21-40 NMSA 1978 (being Laws 1951, Chapter 195, Section 5, as amended) is amended to read:

"73-21-40. RATES--BONDHOLDERS' REMEDY AND TAXPAYER ELECTOR.--The board of each district issuing revenue bonds under the provisions of the Water and Sanitation District Act shall establish rates or fees for services rendered by the district utility systems to create an income sufficient to pay all reasonable expenses of operation and create a net revenue that shall be sufficient to pay interest coupons on the revenue bonds, as they mature, and to provide a sinking fund that shall be adequate to discharge the bonds when they mature. It is a board's duty to maintain the rates and fees continuously until the bonds issued by that board have been fully liquidated. In the event of a board's failure or refusal to do as required by this section, all the members of the board are subject to the penalties provided in Section 73-21-42 NMSA 1978, and any bondholder or a number of taxpayer electors of the district amounting to twenty-five persons or five percent of the electors, whichever is less, has the right to apply to the district court of the county where a district is located for a mandatory order requiring the establishment by a board of rates or fees that shall be adequate to meet the requirements of that act."

Chapter 241 Section 10 Laws 2009

Section 10. Section 73-21-41 NMSA 1978 (being Laws 1951, Chapter 195, Section 6) is amended to read:

"73-21-41. RESTRICTED USE OF BOND FUNDS.--Whenever under the provisions of the laws of this state a district obtains money or credits from the issuance of its bonds or other evidence of indebtedness for the purpose of the purchase, construction or extension or repair of district utilities in the district, it shall be unlawful to divert, use or expend any of the money or credits in the purchase, construction or extension or repair of any other water, sewer or fee-for-service system or for any purpose other than that for which the money or credits were obtained."

Chapter 241 Section 11 Laws 2009

Section 11. Section 73-21-42 NMSA 1978 (being Laws 1951, Chapter 195, Section 7) is amended to read:

"73-21-42. VIOLATIONS--PENALTIES.--The members of any board and any officer or agent of any district violating the provisions of the Water and Sanitation District Act shall be deemed guilty of a misdemeanor and upon conviction in the district court shall be subject to a fine not to exceed five hundred dollars (\$500) or by imprisonment in the county jail not to exceed six months or both in the discretion of the court trying the case."

Chapter 241 Section 12 Laws 2009

Section 12. Section 73-21-43 NMSA 1978 (being Laws 1963, Chapter 261, Section 8) is amended to read:

"73-21-43. VALIDATION--EXISTING DISTRICTS.--All districts previously created under the provisions of the Water and Sanitation District Act and all proceedings previously taken by the districts, including any elections that may have been held in the districts on the question of the issuance of bonds and that have carried, are validated, ratified and confirmed. Where district bonds have been previously approved by the voters but not yet issued, the bonds may be issued under the provisions of the Water and Sanitation District Act, and where the bonds are to be general obligations of the issuing district, the bonds shall be payable from taxes to be levied on all taxable property in the district as required by the Water and Sanitation District Act. All bonds approved by the voters and to be issued shall, when issued, constitute valid obligations of the districts in accordance with their terms."

Chapter 241 Section 13 Laws 2009

Section 13. Section 73-21-44 NMSA 1978 (being Laws 1967, Chapter 187, Section 2) is amended to read:

"73-21-44. SALE OF SYSTEM--ESCROW OF PROCEEDS.--A district may sell or otherwise dispose of all or any part of its water facilities, sewer facilities or both, including both real and personal property, without an election. A sale or other disposition of district facilities shall be authorized by resolution adopted by the affirmative vote of not less than a majority of all members of the board. A district may immediately apply the proceeds derived from the sale or other disposition of its facilities to the retirement of outstanding bonds or place the proceeds in escrow in a commercial bank or trust company, either a state or national banking institution that possesses and is exercising trust powers, that is located within New Mexico and that is a member of the federal deposit insurance corporation, to be applied to the payment of any outstanding bonds upon their presentation for payment. Any escrow is not necessarily limited to proceeds of the sale or other disposal, but may include other money available for its purpose. Any proceeds in escrow, pending use pursuant to the provisions of this section, may be invested or reinvested in bills, certificates of indebtedness, notes or bonds that are direct obligations of, or the principal and interest of which obligations are unconditionally guaranteed by, the United States or any other legal investment. The proceeds and investments in escrow, together with any interest to be derived from the

investment, shall be used only to pay charges of the escrow agent, which are expressly made payable from the escrow, and to pay as many bonds as possible as they become due at their respective maturities or due at a designated prior redemption date in connection with which the board shall exercise a prior redemption option. A purchaser of any facilities that may be sold or otherwise disposed of shall in no manner be responsible for the application of the proceeds by the district or any of its officers, agents or employees. Nothing in this section shall be construed as changing or modifying any contractual agreement or covenant concerning any outstanding bonds as may be provided in the proceedings authorizing any outstanding bonds or otherwise appertaining to them."

Chapter 241 Section 14 Laws 2009

Section 14. Section 73-21-45 NMSA 1978 (being Laws 1967, Chapter 187, Section 3) is amended to read:

"73-21-45. REFUNDING BONDS.--

A. Any bonds issued by any district may be refunded in the name of the district issuing the bonds being refunded without an election by the district issuing them or any successor bonds.

B. The issuance of refunding bonds shall be to:

(1) refund, pay and discharge all or any part of the outstanding bonds, including any interest on the bonds in arrears or about to become due within three years from the date of the refunding bonds;

(2) avoid or terminate any default in the payment of interest on and principal of the bonds to reduce interest costs or effect other economies; or

(3) modify or eliminate restrictive contractual limitations appertaining to the issuance of refunding bonds or for any combination of the purposes permitted by the provisions of this section.

C. Refunding bonds shall be authorized by a resolution adopted by the affirmative vote of not less than a majority of all members of the board. Any bonds that are refunded under the provisions of this section shall be paid at maturity or on any permitted prior redemption date in the amounts, at the times and places and, if called prior to maturity, in accordance with any applicable notice provisions, all as provided in the proceedings authorizing the issuance of the refunded bonds or otherwise appertaining to the bonds being refunded, except for any bonds that are voluntarily surrendered for exchange or payment by the holder. Refunding bonds may be delivered in exchange for the outstanding bonds refunded or may be sold at either public or private sale. The provisions of the Community Service District Act shall not apply to any refunding bonds of any district."

Chapter 241 Section 15 Laws 2009

Section 15. Section 73-21-46 NMSA 1978 (being Laws 1967, Chapter 187, Section 4) is amended to read:

"73-21-46. LIMITATIONS UPON ISSUANCE.--No bonds shall be refunded under the Water and Sanitation District Act unless the bonds either mature or are callable for prior redemption under their terms within ten years from the date of issuance of the refunding bonds, or unless the holders of them voluntarily surrender them for exchange or payment. Provision shall be made for paying the bonds refunded within that period of time. Interest on bonds may be increased, but it may not be increased to a rate exceeding six percent a year. The principal amount of the refunding bonds may exceed the principal amount of the refunded bonds, but only to the extent that any costs incidental to the refunding bonds or any interest on the bonds refunded in arrears or about to become due within three years from the date of the refunding bonds, or both the incidental costs and interest, are capitalized with the proceeds of refunding bonds. The principal amount of the refunding bonds may also exceed the principal amount of the refunded bonds if the aggregate principal and interest costs of the refunding bonds do not exceed the unaccrued costs of the bonds refunded. The principal amount of the refunding bonds may also be less than or the same as the principal amount of the bonds being refunded so long as provision is duly and sufficiently made for the payment of the refunded bonds."

Chapter 241 Section 16 Laws 2009

Section 16. Section 73-21-47 NMSA 1978 (being Laws 1967, Chapter 187, Section 5) is amended to read:

"73-21-47. PROCEEDS OF REFUNDING BONDS.--

A. The proceeds of refunding bonds shall either be immediately applied to the retirement of the bonds being refunded or be placed in escrow in a commercial bank or trust company, either a state or national banking institution that possesses and is exercising trust powers, that is located within New Mexico and that is a member of the federal deposit insurance corporation, to be applied to the payment of the bonds being refunded upon their presentation for payment; provided, to the extent any incidental expenses have been capitalized, that the refunding bond proceeds may be used to defray such expenses; and any accrued interest and any premium appertaining to a sale of refunding bonds may be applied to the payment of the interest on them and the principal of them, or both interest and principal, or may be deposited in a reserve as the board may determine.

B. Nothing in this section requires the establishment of an escrow account if the refunded bonds become due and payable within one year from the date of the refunding bonds and if the amount necessary to retire the refunded bonds within that time is deposited with the paying agent for the refunded bonds.

C. An escrow account shall not be limited to proceeds of refunding bonds but may include other money available for the account's purpose. Any proceeds in escrow may be invested or reinvested in bills, certificates of indebtedness, notes or bonds that are direct obligations of, or the principal and interest of which obligations are unconditionally guaranteed by, the United States.

D. The proceeds and investments in escrow, together with any interest derived from the investment of the escrow account, shall be sufficient to pay principal, interest, any prior redemption premium due and any charges of the escrow agent payable from the escrow account and to pay the bonds being refunded as they become due at their respective maturities or due at any designated prior redemption date on which the board shall exercise a prior redemption option.

E. Any purchaser of any refunding bond issued pursuant to the Water and Sanitation District Act is not responsible for the application of the refunding bond proceeds by the district or any of its officers, agents or employees."

Chapter 241 Section 17 Laws 2009

Section 17. Section 73-21-48 NMSA 1978 (being Laws 1967, Chapter 187, Section 6) is amended to read:

"73-21-48. REFUNDING BONDS--DETAIL--FORM.--Refunding bonds shall bear interest payable annually or semiannually, and the refunding bonds shall be due and payable either as term or serial bonds as determined by the board; provided that no refunding bond shall mature more than twenty-five years from the date of the refunding bond. The form and terms of the refunding bonds, including provisions for their payment and redemption, shall be determined by the board. If the board so determines in the authorizing resolution, the refunding bonds may be redeemable prior to maturity without or with the payment of a premium, which may be in any amount determined by the board."

Chapter 241 Section 18 Laws 2009

Section 18. Section 73-21-49 NMSA 1978 (being Laws 1967, Chapter 187, Section 7) is amended to read:

"73-21-49. COMBINATION OF ISSUES.--Bonds for refunding one or more issues originally authorized for one or more purposes and bonds for any other purpose authorized in the Water and Sanitation District Act may be issued separately or issued in combination in one series or more by any district. Bonds payable solely from revenues of any utility or combination of utilities of the district shall not be refunded by general obligation bonds that are payable from general ad valorem property taxes unless authorized at an election as provided in the Water and Sanitation District Act."

Chapter 241 Section 19 Laws 2009

Section 19. Section 73-21-55 NMSA 1978 (being Laws 1985, Chapter 166, Section 3, as amended) is amended to read:

"73-21-55. DISTRICTS NOT SUBJECT TO UTILITY LAWS--OPTION TO SUBMIT TO REGULATION.--

A. Any district organized under the provisions of the Water and Sanitation District Act may elect by resolution adopted by its board of directors to become subject to the jurisdiction of the public regulation commission and to the terms and provisions of the Public Utility Act; provided, however, that in no event shall Sections 62-9-1 through 62-9-7 NMSA 1978 apply to any district making such an election.

B. If the board has not elected to become subject to the jurisdiction of the public regulation commission:

(1) at least thirty days after publication of a notice of the board's intention to adjust rates, tolls, fees or charges, the board shall conduct a public hearing on the proposed resolution, at which time, after hearing proponents and opponents, the board may reject, amend or adopt the resolution adjusting the rates, tolls, fees or charges;

(2) within thirty days after publication of the resolution adjusting rates, tolls, fees or charges, the new rates, tolls, fees or charges may be appealed by a taxpaying elector to the district court of the county in which the district is located; and

(3) the district court shall consider the petition to overturn the adjustments, based on the record of the board hearing in which the resolution was adopted, under the court's rules governing review by a district court of administrative decisions or orders.

C. If the board of any district located in a class A county with a population according to the 2000 federal decennial census of more than one hundred twenty-five thousand and less than one hundred thirty-five thousand has not elected to become subject to the jurisdiction of the public regulation commission:

(1) at least thirty days after publication of a notice of the board's intention to adjust rates, tolls, fees or charges, the board shall conduct a public hearing on the proposed resolution;

(2) at the expense of the board, the board shall appoint a hearing officer to conduct the public hearing to be chosen from a list of hearing officers provided by the commission, and shall engage a court reporter to record the hearing and produce a verbatim written record of the hearing;

(3) the board's hearing officer shall:

(a) hear proponents and opponents of the proposal;

(b) issue a decision rejecting, amending or adopting the resolution adjusting the rates, tolls, fees or charges; and

(c) within thirty days following the hearing, file the decision with the board;

(4) within seven days of receipt of the decision, the board shall mail a copy of the decision to each proponent and opponent who appeared at the hearing or who requested a written copy of the decision, and the board shall post the decision on the district's web site;

(5) the board shall pay all expenses of the public hearing and may charge a reasonable fee for production of copies of the record; provided that any citizen has the right to obtain a copy of the record on payment of the fee;

(6) within twenty days following the board's mailing of the decision of the hearing officer, the decision may be appealed to the board by a taxpaying elector;

(7) within thirty days of receipt of an appeal of the hearing officer's decision, the board shall, based on a review of the record of the first public hearing, reject, approve or amend the decision of the hearing officer and shall mail a copy of the board's decision within seven days to each proponent and opponent who appeared at the hearing or who requested a written copy of the decision, and the board shall post the decision on the district's web site;

(8) within thirty days following mailing of the board's decision, a taxpaying elector may appeal the decision of the board to the district court of the county in which the district is located; and

(9) the district court shall consider the petition to overturn the adjustments, based on the record certified by the court reporter of the public hearing and the decision of the board, under the court's rules governing review by a district court of administrative decisions or orders."

House Bill 337, aa

Approved April 7, 2009

LAWS 2009, CHAPTER 242

AN ACT

RELATING TO TAX ADMINISTRATION; AUTHORIZING CERTAIN AGREEMENTS BETWEEN THE TAXATION AND REVENUE DEPARTMENT AND THE HUMAN SERVICES DEPARTMENT TO DISTRIBUTE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES FUNDS AS REBATES OR REFUNDS; PROVIDING AUTHORITY FOR THE TAXATION AND REVENUE DEPARTMENT TO REVEAL CERTAIN TAXPAYER INFORMATION CONCERNING THE USE OF FEDERAL FUNDS TO THE HUMAN SERVICES DEPARTMENT FOR OUTREACH TO LOW-INCOME PERSONS TO PROVIDE INFORMATION REGARDING PUBLIC ASSISTANCE, HEALTH CARE PROGRAMS AND OTHER BENEFITS; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

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

Chapter 242 Section 1 Laws 2009

Section 1. Section 7-1-6 NMSA 1978 (being Laws 1978, Chapter 55, Section 1, as amended) is amended to read:

"7-1-6. RECEIPTS--DISBURSEMENTS--FUNDS CREATED.--

A. All money received by the department with respect to laws administered 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 9-11-6.2 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 242 Section 2 Laws 2009

Section 2. Section 7-1-8 NMSA 1978 (being Laws 1965, Chapter 248, Section 13, as amended) is amended to read:

"7-1-8. CONFIDENTIALITY OF RETURNS AND OTHER INFORMATION.--It is unlawful for an employee of the department or a former employee of the department to reveal to an individual other than another employee of the department information contained in the return of a taxpayer made pursuant to a law subject to administration and enforcement under the provisions of the Tax Administration Act or any other information about a taxpayer acquired as a result of the employee's employment by the department and not available from public sources, except:

A. to an authorized representative of another state; provided that the receiving state has entered into a written agreement with the department to use the information for tax purposes only and that the receiving state has enacted a confidentiality statute similar to this section to which the representative is subject;

B. to a representative of the secretary of the treasury or the secretary's delegate pursuant to the terms of a reciprocal agreement entered into with the federal government for exchange of the information;

C. to the multistate tax commission, the federation of tax administrators or their authorized representatives; provided that the information is used for tax purposes only and is disclosed by the multistate tax commission or the federation of tax administrators only to states that have met the requirements of Subsection A of this section;

D. to another jurisdiction pursuant to an international fuel tax agreement; provided that the information is used for tax purposes only;

E. to a district court, an appellate court or a federal court:

(1) in response to an order thereof in an action relating to taxes or an action for tax fraud or any other crime that may affect taxes due to the state to which the state is a party and in which the information sought is about a taxpayer who is party to the action and is material to the inquiry, in which case only that information may be required to be produced in court and admitted in evidence subject to court order protecting the confidentiality of the information and no more;

(2) in an action in which the department is attempting to enforce an act with which the department is charged or to collect a tax; or

(3) in any matter in which the department is a party and the taxpayer has put the taxpayer's own liability for taxes at issue, in which case only that information regarding the taxpayer who is party to the action may be produced, but this shall not prevent the disclosure of department policy or interpretation of law arising from circumstances of a taxpayer who is not a party;

F. to the taxpayer or to the taxpayer's authorized representative; provided, however, that nothing in this subsection shall be construed to require any employee to testify in a judicial proceeding except as provided in Subsection E of this section;

G. information obtained through the administration of a law not subject to administration and enforcement under the provisions of the Tax Administration Act to the extent that release of that information is not otherwise prohibited by law;

H. in a manner, for statistical purposes, that the information revealed is not identified as applicable to an individual taxpayer;

I. with reference to information concerning the tax on tobacco imposed by the Cigarette Tax Act to a committee of the legislature for a valid legislative purpose or to the attorney general for purposes of Section 6-4-13 NMSA 1978 and the master settlement agreement defined in Section 6-4-12 NMSA 1978;

J. to a transferee, assignee, buyer or lessor of a liquor license, the amount and basis of an unpaid assessment of tax for which the transferor, assignor, seller or lessee is liable;

K. to a purchaser of a business as provided in Sections 7-1-61 through 7-1-63 NMSA 1978, the amount and basis of an unpaid assessment of tax for which the purchaser's seller is liable;

L. to a municipality of this state upon its request for a period specified by that municipality within the twelve months preceding the request for the information by that municipality:

(1) the names, taxpayer identification numbers and addresses of registered gross receipts taxpayers reporting gross receipts for that municipality under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax imposed by that municipality. The department may also release the information described in this paragraph quarterly or upon such other periodic basis as the secretary and the municipality may agree; and

(2) information indicating whether persons shown on a list of businesses located within that municipality furnished by the municipality have reported gross receipts to the department but have not reported gross receipts for that municipality under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax imposed by that municipality.

The employees of municipalities receiving information as provided in this subsection shall be subject to the penalty contained in Section 7-1-76 NMSA 1978 if that information is revealed to individuals other than other employees of the municipality in question or the department;

M. to the commissioner of public lands for use in auditing that pertains to rentals, royalties, fees and other payments due the state under land sale, land lease or other land use contracts; the commissioner of public lands and employees of the commissioner are subject to the same provisions regarding confidentiality of information as employees of the department;

N. the department shall furnish, upon request by the child support enforcement division of the human services department, the last known address with date of all names certified to the department as being absent parents of children receiving public financial assistance. The child support enforcement division personnel shall use such information only for the purpose of enforcing the support liability of the absent parents and shall not use the information or disclose it for any other purpose; the child support enforcement division and its employees are subject to the provisions of this section with respect to any information acquired from the department;

O. the department shall furnish to the department of information technology, by electronic media, a database containing New Mexico personal income tax filers by county, which shall be updated quarterly. The database information shall be used only for the purpose of producing the random jury list for the selection of petit or grand jurors for the state courts pursuant to Section 38-5-3 NMSA 1978. The database shall not contain any financial information. If any information in the database is revealed by an employee of the administrative office of the courts or the department of information technology to individuals other than employees of the administrative office of the courts, the state courts, the department of information technology or the department, the employee shall be subject to the penalty provisions of Section 7-1-76 NMSA 1978;

P. with respect to the tax on gasoline imposed by the Gasoline Tax Act, the department shall make available for public inspection at monthly intervals a report covering the number of gallons of gasoline and ethanol blended fuels received and deducted and the amount of tax paid by each person required to file a gasoline tax return or pay gasoline tax in the state of New Mexico;

Q. the identity of a rack operator, importer, blender, supplier or distributor and the number of gallons reported on returns required under the Gasoline Tax Act, the Special Fuels Supplier Tax Act or the Alternative Fuel Tax Act to a rack operator, importer, blender, distributor or supplier, but only when it is necessary to enable the department to carry out its duties under the Gasoline Tax Act, the Special Fuels Supplier Tax Act or the Alternative Fuel Tax Act;

R. the department shall release upon request only the names and addresses of all gasoline or special fuel distributors, wholesalers and retailers to the New Mexico department of agriculture, the employees of which are thereby subject to the penalty contained in Section 7-1-76 NMSA 1978 if that information is revealed to individuals other than employees of either the New Mexico department of agriculture or the department;

S. the department shall answer all inquiries concerning whether a person is or is not a registered taxpayer for tax programs that require registration, but nothing in this subsection shall be construed to allow the department to answer inquiries concerning whether a person has filed a tax return;

T. upon request of a municipality or county of this state, the department shall permit officials or employees of the municipality or county to inspect the records of the department pertaining to an increase or decrease to a distribution or transfer made pursuant to Section 7-1-6.15 NMSA 1978 for the purpose of reviewing the basis for the increase or decrease. The municipal or county officials or employees receiving information provided in this subsection shall not reveal that information to any person other than another employee of the municipality or the county, the department or a district court, an appellate court or a federal court in a proceeding relating to a disputed distribution and in which both the state and the municipality or county are parties. Information provided pursuant to provisions of this subsection that is revealed other than as provided in this subsection shall subject the person revealing the information to the penalty contained in Section 7-1-76 NMSA 1978;

U. to a county of this state that has in effect a local option gross receipts tax imposed by the county upon its request for a period specified by that county within the twelve months preceding the request for the information by that county:

(1) the names, taxpayer identification numbers and addresses of registered gross receipts taxpayers reporting gross receipts either for that county in the case of a local option gross receipts tax imposed on a countywide basis or only for the areas of that county outside of any incorporated municipalities within that county in the case of a county local option gross receipts tax imposed only in areas of the county outside of any incorporated municipalities. The department may also release the information described in this paragraph quarterly or upon such other periodic basis as the secretary and the county may agree;

(2) in the case of a local option gross receipts tax imposed by a county on a countywide basis, information indicating whether persons shown on a list of businesses located within the county furnished by the county have reported gross receipts to the department but have not reported gross receipts for that county under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax imposed by that county on a countywide basis; and

(3) in the case of a local option gross receipts tax imposed by a county only on persons engaging in business in that area of the county outside of incorporated municipalities, information indicating whether persons on a list of businesses located in that county outside of the incorporated municipalities but within that county furnished by the county have reported gross receipts to the department but have not reported gross receipts for that county outside of the incorporated municipalities within that county under the Gross Receipts and Compensating Tax Act

or a local option gross receipts tax imposed by the county only on persons engaging in business in that county outside of the incorporated municipalities.

The officers and employees of counties receiving information as provided in this subsection shall be subject to the penalty contained in Section 7-1-76 NMSA 1978 if the information is revealed to individuals other than other officers or employees of the county in question or the department;

V. to authorized representatives of an Indian nation, tribe or pueblo, the territory of which is located wholly or partially within New Mexico, pursuant to the terms of a reciprocal agreement entered into with the Indian nation, tribe or pueblo for the exchange of that information for tax purposes only; provided that the Indian nation, tribe or pueblo has enacted a confidentiality statute similar to this section;

W. information with respect to the taxes or tax acts administered pursuant to Subsection B of Section 7-1-2 NMSA 1978, except that:

(1) information for or relating to a period prior to July 1, 1985 with respect to Sections 7-25-1 through 7-25-9 and 7-26-1 through 7-26-8 NMSA 1978 may be released only to a committee of the legislature for a valid legislative purpose;

(2) except as provided in Paragraph (3) of this subsection, contracts and other agreements between the taxpayer and other parties and the proprietary information contained in those contracts and agreements shall not be released without the consent of all parties to the contract or agreement; and

(3) audit work papers and the proprietary information contained in the work papers shall not be released except to:

(a) the minerals management service of the United States department of the interior, if production occurred on federal land;

(b) a person having a legal interest in the property that is subject to the audit;

(c) a purchaser of products severed from a property subject to the audit; or

(d) the authorized representative of any of the persons in Subparagraphs (a) through (c) of this paragraph. This paragraph does not prohibit the release of proprietary information contained in the work papers that is also available from returns or from other sources not subject to the provisions of this section;

X. information with respect to the taxes, surtaxes, advance payments or tax acts administered pursuant to Subsection C of Section 7-1-2 NMSA 1978;

Y. to the public regulation commission, information with respect to the Corporate Income and Franchise Tax Act required to enable the commission to carry out its duties;

Z. to the state racing commission, information with respect to the state, municipal and county gross receipts taxes paid by racetracks;

AA. upon request of a corporation authorized to be formed under the Educational Assistance Act, the department shall furnish the last known address and the date of that address of every person certified to the department as an absent obligor of an educational debt due and owed to the corporation or that the corporation has lawfully contracted to collect. The corporation and its officers and employees shall use that information only to enforce the educational debt obligation of the absent obligors and shall not disclose that information or use it for any other purpose;

BB. a decision and order made by a hearing officer pursuant to Section 7-1-24 NMSA 1978 with respect to a protest filed with the secretary on or after July 1, 1993;

CC. information required by a provision of the Tax Administration Act to be made available to the public by the department;

DD. upon request by the Bernalillo county metropolitan court, the department shall furnish the last known address and the date of that address for every person the court certifies to the department as a person who owes fines, fees or costs to the court or who has failed to appear pursuant to a court order or a promise to appear;

EE. upon request by a magistrate court, the department shall furnish the last known address and the date of that address for every person the court certifies to the department as a person who owes fines, fees or costs to the court or who has failed to appear pursuant to a court order or a promise to appear;

FF. to the national tax administration agencies of Mexico and Canada; provided the agency receiving the information has entered into a written agreement with the department to use the information for tax purposes only and is subject to a confidentiality statute similar to this section;

GG. to a district attorney, a state district court grand jury or federal grand jury for an investigation of or proceeding related to an alleged criminal violation of the tax laws;

HH. to a third party subject to a subpoena or levy issued pursuant to the provisions of the Tax Administration Act, the identity of the taxpayer involved, the taxes or tax acts involved and the nature of the proceeding;

II. to the gaming control board, tax returns of license applicants and their affiliates as provided in Subsection E of Section 60-2E-14 NMSA 1978;

JJ. any written ruling on questions of evidence or procedure made by a hearing officer pursuant to Section 7-1-24 NMSA 1978; provided that the name and identification number of the taxpayer requesting the ruling shall not be disclosed;

KK. to representatives of the workers' compensation administration, authorized by the director of the workers' compensation administration for this purpose, to facilitate the identification of taxpayers that are delinquent or noncompliant in payment of fees required by Section 52-1-9.1 or 52-5-19 NMSA 1978;

LL. to the secretary of workforce solutions or the secretary's delegate for use in enforcement of unemployment insurance collections pursuant to the terms of a reciprocal agreement entered into with the secretary of workforce solutions for exchange of information; the secretary of workforce solutions and employees of the workforce solutions department are subject to the provisions regarding confidentiality of information contained in the Tax Administration Act;

MM. information that the department is authorized by the Tax Administration Act to release to a local body that licenses professions or occupations pursuant to Chapter 36, Article 2 NMSA 1978 or Chapter 61 NMSA 1978;

NN. upon request for inspection by the public pursuant to Section 7-1-29 NMSA 1978, the department shall furnish the taxpayer name, refund or credit amount, tax program or business tax credit and the date the refund or credit was issued; nothing in this subsection shall be construed to require the release of information that would violate an agreement between the state and the federal internal revenue service for sharing of information or any provision or rule of the federal Internal Revenue Code to which a state is subject; and

OO. the following to the secretary of human services or the secretary's delegate; provided that a person who receives the confidential 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 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 242 Section 3 Laws 2009

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

House Bill 590, aa, w/ec

Approved April 7, 2009

LAWS 2009, CHAPTER 243

AN ACT

RELATING TO TAXATION; AMENDING THE TAX ADMINISTRATION ACT TO DEFINE ADDITIONAL TERMS; REORGANIZING THE CONFIDENTIALITY PROVISIONS AND ADDING EXCEPTIONS; CLARIFYING THE PENALTY FOR REVEALING INFORMATION CONCERNING TAXPAYERS; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Chapter 243 Section 1 Laws 2009

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

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

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

B. "department" means the taxation and revenue department, the secretary or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

C. "electronic payment" means a payment made by automated clearinghouse deposit, any funds wire transfer system or a credit card, debit card or electronic cash transaction through the internet;

D. "employee of the department" means any employee of the department, including the secretary, or any person acting as agent or authorized to represent or perform services for the department in any capacity with respect to any law made subject to administration and enforcement under the provisions of the Tax Administration Act;

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

F. "Internal Revenue Code" means the Internal Revenue Code of 1986, as that code may be amended or its sections renumbered;

G. "levy" means the lawful power, hereby invested in the secretary, to take into possession or to require the present or future surrender to the secretary or the secretary's delegate of any property or rights to property belonging to a delinquent taxpayer;

H. "local option gross receipts tax" means a tax authorized to be imposed by a county or municipality upon the taxpayer's gross receipts, as that term is defined in the Gross Receipts and Compensating Tax Act, and required to be collected by the department at the same time and in the same manner as the gross receipts tax; "local option gross receipts tax" includes the taxes imposed pursuant to the Municipal Local Option Gross Receipts Taxes Act, Supplemental Municipal Gross Receipts Tax Act, County Local Option Gross Receipts Taxes Act, Local Hospital Gross Receipts Tax Act, County Correctional Facility Gross Receipts Tax Act and such other acts as may be enacted authorizing counties or municipalities to impose taxes on gross receipts, which taxes are to be collected by the department in the same time and in the same manner as it collects the gross receipts tax;

I. "managed audit" means a review and analysis conducted by a taxpayer under an agreement with the department to determine the taxpayer's compliance with a tax administered pursuant to the Tax Administration Act and the presentation of the results to the department for assessment of tax found to be due;

J. "net receipts" means the total amount of money paid by taxpayers to the department in a month pursuant to a tax or tax act less any refunds disbursed in that month with respect to that tax or tax act;

K. "overpayment" means an amount paid, pursuant to any law subject to administration and enforcement under the provisions of the Tax Administration Act, by a person to the department or withheld from the person in excess of tax due from the

person to the state at the time of the payment or at the time the amount withheld is credited against tax due;

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

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

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

O. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, limited liability company, limited liability partnership, joint venture, syndicate, other association or gas, water or electric utility owned or operated by a county or municipality; "person" also means, to the extent permitted by law, a federal, state or other governmental unit or subdivision, or an agency, department or instrumentality thereof; and "person", as used in Sections 7-1-72 through 7-1-74 NMSA 1978, also includes an officer or employee of a corporation, a member or employee of a partnership or any individual who, as such, is under a duty to perform any act in respect of which a violation occurs;

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

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

R. "return" means any tax or information return, 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;

S. "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;

T. "secretary" means the secretary of taxation and revenue and, except for purposes of Subsection B of Section 7-1-4 NMSA 1978 and Subsection E of Section 7-1-24 NMSA 1978, also includes the deputy secretary or a division director or deputy division director delegated by the secretary;

U. "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;

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

W. "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;

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

Y. "taxpayer" means a person liable for payment of any tax, a person responsible for withholding and payment or for collection and payment of any tax or a person to whom an assessment has been made, if the assessment remains unabated or the amount thereof has not been paid; and

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."

Chapter 243 Section 2 Laws 2009

Section 2. Section 7-1-8 NMSA 1978 (being Laws 1965, Chapter 248, Section 13, as amended) is amended to read:

"7-1-8. CONFIDENTIALITY OF RETURNS AND OTHER INFORMATION.--

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 7-1-8.10 NMSA 1978.

B. A return or return information revealed under Sections 7-1-8.1 through 7-1-8.10 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 7-1-8.10 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 243 Section 3 Laws 2009

Section 3. A new section of the Tax Administration Act, Section 7-1-8.1 NMSA 1978, is enacted to read:

"7-1-8.1. INFORMATION THAT MAY BE REVEALED TO AN EMPLOYEE OF THE DEPARTMENT, A TAXPAYER OR THE TAXPAYER'S REPRESENTATIVE.--An employee of the department may reveal a return or return information:

A. to another employee of the department whose official duties require the return or return information; and

B. to the taxpayer or to the taxpayer's authorized representative; provided, however, that nothing in this section shall be construed to require an employee to testify in a judicial proceeding except as provided in Subsection A of Section 7-1-8.4 NMSA 1978."

Chapter 243 Section 4 Laws 2009

Section 4. A new section of the Tax Administration Act, Section 7-1-8.2 NMSA 1978, is enacted to read:

"7-1-8.2. INFORMATION REQUIRED TO BE REVEALED.--

A. The department shall:

(1) furnish returns and return information required by a provision of the Tax Administration Act to be made available to the public by the department;

(2) answer all inquiries concerning whether a person is or is not a registered taxpayer for tax programs that require registration, but nothing in this subsection shall be construed to allow the department to answer inquiries concerning whether a person has filed a tax return;

(3) furnish, upon request for inspection by a member of the public pursuant to:

(a) Section 7-1-28 or Section 7-1-29 NMSA 1978, the taxpayer name, abatement, refund or credit amount, tax program or business tax credit and the date the abatement, refund or credit was issued; and

(b) Section 7-1-21 NMSA 1978, the installment agreement;
and

(4) with respect to the tax on gasoline imposed by the Gasoline Tax Act, make available for public inspection at monthly intervals a report covering the number of gallons of gasoline and ethanol blended fuels received and deducted and the

amount of tax paid by each person required to file a gasoline tax return or pay gasoline tax in the state of New Mexico.

B. Nothing in this section shall be construed to require the release of information that would violate an agreement between the state and the federal internal revenue service for sharing of information or any provision or rule of the federal Internal Revenue Code to which a state is subject."

Chapter 243 Section 5 Laws 2009

Section 5. A new section of the Tax Administration Act, Section 7-1-8.3 NMSA 1978, is enacted to read:

"7-1-8.3. INFORMATION THAT MAY BE REVEALED TO PUBLIC.--An employee of the department may reveal:

A. information obtained through the administration of a law not subject to administration and enforcement under the provisions of the Tax Administration Act to the extent that revealing that information is not otherwise prohibited by law;

B. return information with respect to the taxes or tax acts administered pursuant to Subsection B of Section 7-1-2 NMSA 1978, except that:

(1) return information for or relating to a period prior to July 1, 1985 with respect to Sections 7-25-1 through 7-25-9 and 7-26-1 through 7-26-8 NMSA 1978 may be revealed only to a committee of the legislature for a valid legislative purpose;

(2) except as provided in Paragraph (3) of this subsection, contracts and other agreements between the taxpayer and other parties and the proprietary information contained in those contracts and agreements shall not be revealed without the consent of all parties to the contract or agreement; and

(3) audit workpapers and the proprietary information contained in the workpapers shall not be revealed except to:

(a) the minerals management service of the United States department of the interior, if production occurred on federal land;

(b) a person having a legal interest in the property that is subject to the audit;

(c) a purchaser of products severed from a property subject to the audit; or

(d) the authorized representative of any of the persons in Subparagraphs (a) through (c) of this paragraph. This paragraph does not prohibit the

revelation of proprietary information contained in the workpapers that is also available from returns or from other sources not subject to the provisions of Section 7-1-8 NMSA 1978;

C. return information with respect to the taxes, surtaxes, advance payments or tax acts administered pursuant to Subsection C of Section 7-1-2 NMSA 1978;

D. a decision and order made by a hearing officer pursuant to Section 7-1-24 NMSA 1978 with respect to a protest filed with the secretary on or after July 1, 1993;

E. any written ruling on questions of evidence or procedure made by a hearing officer pursuant to Section 7-1-24 NMSA 1978; provided that the name and identification number of the taxpayer requesting the ruling shall not be revealed; and

F. return information included in a notice of lien or release or extinguishment of lien."

Chapter 243 Section 6 Laws 2009

Section 6. A new section of the Tax Administration Act, Section 7-1-8.4 NMSA 1978, is enacted to read:

"7-1-8.4. INFORMATION THAT MAY BE REVEALED TO JUDICIAL BODIES OR WITH RESPECT TO JUDICIAL PROCEEDINGS OR INVESTIGATIONS.--An employee of the department may reveal to:

A. a district court, an appellate court or a federal court, a return or return information:

(1) in response to an order thereof in an action relating to taxes or an action for tax fraud or any other crime that may involve taxes due to the state and in which the information sought is about a taxpayer who is party to the action and is material to the inquiry, in which case only that information may be required to be produced in court and admitted in evidence subject to court order protecting the confidentiality of the information and no more;

(2) in an action in which the department is attempting to enforce an act with which the department is charged or to collect a tax; or

(3) in any matter in which the department is a party and the taxpayer has put the taxpayer's own liability for taxes at issue, in which case only that information regarding the taxpayer who is party to the action may be produced, but this shall not prevent revelation of department policy or interpretation of law arising from circumstances of a taxpayer who is not a party;

B. the Bernalillo county metropolitan court, upon that court's request, the last known address and the date of that address for every person the court certifies to the department as a person who owes fines, fees or costs to the court or who has failed to appear pursuant to a court order or a promise to appear;

C. a magistrate court, upon the magistrate court's request, the last known address and the date of that address for every person the court certifies to the department as a person who owes fines, fees or costs to the court or who has failed to appear pursuant to a court order or a promise to appear;

D. a district attorney, a state district court grand jury or federal grand jury, information for an investigation of or proceeding related to an alleged criminal violation of the tax laws; and

E. a third party subject to a subpoena or levy issued pursuant to the provisions of the Tax Administration Act, the identity of the taxpayer involved, the taxes or tax acts involved and the nature of the proceeding."

Chapter 243 Section 7 Laws 2009

Section 7. A new section of the Tax Administration Act, Section 7-1-8.5 NMSA 1978, is enacted to read:

"7-1-8.5. INFORMATION THAT MAY BE REVEALED TO NATIONAL GOVERNMENTS OR THEIR AGENCIES.--An employee of the department may reveal return information to:

A. a representative of the secretary of the treasury or the secretary's delegate pursuant to the terms of a reciprocal agreement entered into with the federal government for exchange of the information; and

B. the national tax administration agencies of Mexico and Canada; provided the agency receiving the information has entered into a written agreement with the department to use the information for tax purposes only and is subject to a confidentiality statute and penalty similar to Sections 7-1-8 and 7-1-76 NMSA 1978."

Chapter 243 Section 8 Laws 2009

Section 8. A new section of the Tax Administration Act, Section 7-1-8.6 NMSA 1978, is enacted to read:

"7-1-8.6. INFORMATION THAT MAY BE REVEALED TO CERTAIN TRIBAL GOVERNMENTS.--An employee of the department may reveal return information to authorized representatives of an Indian nation, tribe or pueblo, the territory of which is located wholly or partially within New Mexico, pursuant to the terms of a written reciprocal agreement entered into by the department with the Indian nation, tribe or

pueblo for the exchange of that information for tax purposes only; provided that the Indian nation, tribe or pueblo has enacted a confidentiality statute and penalty similar to Sections 7-1-8 and 7-1-76 NMSA 1978."

Chapter 243 Section 9 Laws 2009

Section 9. A new section of the Tax Administration Act, Section 7-1-8.7 NMSA 1978, is enacted to read:

"7-1-8.7. INFORMATION THAT MAY BE REVEALED TO OTHER STATES OR MULTISTATE ADMINISTRATIVE BODIES.--An employee of the department may reveal return information to:

A. an authorized representative of another state; provided that the receiving state has entered into a written agreement with the department to use the return information for tax purposes only and that the receiving state has enacted a confidentiality statute and penalty similar to Sections 7-1-8 and 7-1-76 NMSA 1978 to which the representative is subject;

B. the multistate tax commission, the federation of tax administrators or their authorized representatives; provided that the return information is used for tax purposes only and is revealed by the multistate tax commission or the federation of tax administrators only to states that have met the requirements of Subsection A of this section; and

C. another jurisdiction pursuant to an international fuel tax agreement; provided that the return information is used for tax purposes only."

Chapter 243 Section 10 Laws 2009

Section 10. A new section of the Tax Administration Act, Section 7-1-8.8 NMSA 1978, is enacted 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; and

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."

Chapter 243 Section 11 Laws 2009

Section 11. A new section of the Tax Administration Act, Section 7-1-8.9 NMSA 1978, is enacted to read:

"7-1-8.9. INFORMATION THAT MAY BE REVEALED TO LOCAL GOVERNMENTS AND THEIR AGENCIES.--An employee of the department may reveal to:

A. the officials or employees of a municipality of this state authorized in a written request by the municipality for a period specified in the request within the twelve months preceding the request:

(1) the names, taxpayer identification numbers and addresses of registered gross receipts taxpayers reporting gross receipts for that municipality under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax imposed by that municipality. The department may also reveal the information described in this paragraph quarterly or upon such other periodic basis as the secretary and the municipality may agree; and

(2) information indicating whether persons shown on a list of businesses located within that municipality furnished by the municipality have reported gross receipts to the department but have not reported gross receipts for that municipality under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax imposed by that municipality;

B. the officials or employees of a county of this state authorized in a written request by the county for a period specified in the request within the twelve months preceding the request:

(1) the names, taxpayer identification numbers and addresses of registered gross receipts taxpayers reporting gross receipts either for that county in the case of a local option gross receipts tax imposed on a countywide basis or only for the areas of that county outside of any incorporated municipalities within that county in the case of a county local option gross receipts tax imposed only in areas of the county outside of any incorporated municipalities. The department may also reveal the information described in this paragraph quarterly or upon such other periodic basis as the secretary and the county may agree;

(2) in the case of a local option gross receipts tax imposed by a county on a countywide basis, information indicating whether persons shown on a list of businesses located within the county furnished by the county have reported gross receipts to the department but have not reported gross receipts for that county under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax imposed by that county on a countywide basis; and

(3) in the case of a local option gross receipts tax imposed by a county only on persons engaging in business in that area of the county outside of incorporated municipalities, information indicating whether persons on a list of businesses located in that county outside of the incorporated municipalities but within that county furnished by the county have reported gross receipts to the department but

have not reported gross receipts for that county outside of the incorporated municipalities within that county under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax imposed by the county only on persons engaging in business in that county outside of the incorporated municipalities; and

C. officials or employees of a municipality or county of this state, authorized in a written request of the municipality or county, for purposes of inspection, the records of the department pertaining to an increase or decrease to a distribution or transfer made pursuant to Section 7-1-6.15 NMSA 1978 for the purpose of reviewing the basis for the increase or decrease; the authorized officials or employees may only reveal the information provided in this subsection to another authorized official or employee, to an employee of the department, or a district court, an appellate court or a federal court in a proceeding relating to a disputed distribution and in which both the state and the municipality or county are parties."

Chapter 243 Section 12 Laws 2009

Section 12. A new section of the Tax Administration Act, Section 7-1-8.10 NMSA 1978, is enacted to read:

"7-1-8.10. INFORMATION THAT MAY BE REVEALED TO PRIVATE PERSONS OTHER THAN THE TAXPAYER.--An employee of the department may reveal to:

A. a transferee, assignee, buyer or lessor of a liquor license, the amount and basis of an unpaid assessment of tax for which the transferor, assignor, seller or lessee is liable;

B. a purchaser of a business as provided in Sections 7-1-61 through 7-1-63 NMSA 1978, the amount and basis of an unpaid assessment of tax for which the purchaser's seller is liable;

C. a rack operator, importer, blender, distributor or supplier, the identity of a rack operator, importer, blender, supplier or distributor and the number of gallons reported on returns required under the Gasoline Tax Act, Special Fuels Supplier Tax Act or Alternative Fuel Tax Act, but only when it is necessary to enable the department to carry out its duties under the Gasoline Tax Act, the Special Fuels Supplier Tax Act or the Alternative Fuel Tax Act; and

D. a corporation authorized to be formed under the Educational Assistance Act, upon its written request, the last known address and the date of that address of every person certified to the department as an absent obligor of an educational debt due and owed to the corporation or that the corporation has lawfully contracted to collect; this information may only be used by the corporation and its officers and employees to enforce the educational debt obligation of the absent obligors."

Chapter 243 Section 13 Laws 2009

Section 13. 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 7-1-8.10 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 243 Section 14 Laws 2009

Section 14. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.

HJC/House Bill 257

Approved April 7, 2009

LAWS 2009, CHAPTER 244

AN ACT

RELATING TO COURTS; CREATING A FUND; ESTABLISHING A FEE; PROVIDING FOR AN ALTERNATIVE JUDICIAL ADJUDICATION OF JUVENILES CHARGED WITH MINOR OFFENCES; MAKING AN APPROPRIATION.

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

Chapter 244 Section 1 Laws 2009

Section 1. Section 66-8-116.3 NMSA 1978 (being Laws 1989, Chapter 318, Section 35, Laws 1989, Chapter 319, Section 14 and Laws 1989, Chapter 320, Section 5, as amended) is amended to read:

"66-8-116.3. PENALTY ASSESSMENT MISDEMEANORS--ADDITIONAL FEES.--In addition to the penalty assessment established for each penalty assessment misdemeanor, there shall be assessed:

A. in a county without a metropolitan court, twenty dollars (\$20.00) to help defray the costs of local government corrections;

B. a court automation fee of ten dollars (\$10.00);

C. a traffic safety fee of three dollars (\$3.00), which shall be credited to the traffic safety education and enforcement fund;

D. a judicial education fee of three dollars (\$3.00), which shall be credited to the judicial education fund;

E. a juvenile adjudication fee of one dollar (\$1.00), which shall be credited to the juvenile adjudication fund;

F. a brain injury services fee of five dollars (\$5.00), which shall be credited to the brain injury services fund; and

G. a court facilities fee as follows:

in a county with a metropolitan court \$24.00;

in any other county 10.00."

Chapter 244 Section 2 Laws 2009

Section 2. A new section of Chapter 34 NMSA 1978 is enacted to read:

"JUVENILE ADJUDICATION FUND CREATED.--The "juvenile adjudication fund" is created in the state treasury to provide an alternative procedure of adjudication for juveniles charged with misdemeanor offenses to help alleviate the docket of the juvenile judicial system. The fund consists of juvenile adjudication fees levied and collected pursuant to Section 66-8-116.3 NMSA 1978. Money in the fund at the end of a fiscal year shall not revert to any other fund. The department of finance and administration shall administer the fund, and money in the fund is appropriated to the department of finance and administration to administer the fund and to provide an alternative adjudication process for juveniles charged with traffic offenses and other misdemeanors. Money expended to administer the fund shall not exceed five percent of the money credited to the fund in each fiscal year. Disbursements from the fund shall be made by warrant of the secretary of finance and administration pursuant to vouchers signed by the secretary or the secretary's authorized representative."

House Bill 700, aa

Approved April 7, 2009

LAWS 2009, CHAPTER 245

AN ACT

RELATING TO COURTS; INCREASING THE COURT AUTOMATION FEE IN CIVIL CASES FILED IN THE DISTRICT AND MAGISTRATE COURTS; PROVIDING FOR A JURY AND WITNESS FEE; INCREASING THE JUDICIAL EDUCATION FEE.

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

Chapter 245 Section 1 Laws 2009

Section 1. Section 34-6-40 NMSA 1978 (being Laws 1968, Chapter 69, Section 42, as amended by Laws 2001, Chapter 277, Section 1 and by Laws 2001, Chapter 279, Section 1) is amended to read:

"34-6-40. FINANCE--FEES.--

A. Except as provided in Subsection B of this section, district court clerks shall collect in civil matters docketing any cause, whether original or reopened or by appeal or transfer from any inferior court, a fee of one hundred seventeen dollars (\$117), twenty dollars (\$20.00) of which shall be deposited in the court automation fund and twenty-five dollars (\$25.00) of which shall be deposited in the civil legal services fund.

B. In those matters where the fee provided for in Section 40-12-6 NMSA 1978 is collected, district court clerks shall collect a fee of one hundred seven dollars (\$107), ten dollars (\$10.00) of which shall be deposited in the court automation fund and twenty-five dollars (\$25.00) of which shall be deposited in the civil legal services fund.

C. No fees or costs shall be taxed against the state, its political subdivisions or the nonprofit corporations authorized to be formed under the Educational Assistance Act.

D. Except as otherwise specifically provided by law, docket fees shall be paid into the general fund."

Chapter 245 Section 2 Laws 2009

Section 2. Section 35-6-1 NMSA 1978 (being Laws 1968, Chapter 62, Section 92, as amended) is amended to read:

"35-6-1. MAGISTRATE COSTS--SCHEDULE--DEFINITION OF "CONVICTED".--

A. Magistrate judges, including metropolitan court judges, shall assess and collect and shall not waive, defer or suspend the following costs:

docket fee, criminal actions under Section 29-5-1 NMSA 1978 \$ 1.00;

docket fee, to be collected prior to docketing any other criminal action, except as provided in Subsection B of Section 35-6-3 NMSA 1978 20.00.

Proceeds from this docket fee shall be transferred to the administrative office of the courts for deposit in the court facilities fund;

docket fee, twenty dollars (\$20.00) of which shall be deposited in the court automation fund and fifteen dollars (\$15.00) of which shall be deposited in the civil legal services fund, to be collected prior to docketing any civil action, except as provided in Subsection A of Section 35-6-3 NMSA 1978 72.00;

jury fee, to be collected from the party demanding trial by jury in any civil action at the time the demand is filed or made 25.00;

copying fee, for making and certifying copies of any records in the court, for each page copied by photographic process 50.
Proceeds from this copying fee shall be transferred to the administrative office of the courts for deposit in the court facilities fund; and

copying fee, for computer-generated or electronically transferred copies, per page 1.00.

Proceeds from this copying fee shall be transferred to the administrative office of the courts for deposit in the court automation fund.

Except as otherwise specifically provided by law, docket fees shall be paid into the court facilities fund.

B. Except as otherwise provided by law, no other costs or fees shall be charged or collected in the magistrate or metropolitan court.

C. The magistrate or metropolitan court may grant free process to any party in any civil proceeding or special statutory proceeding upon a proper showing of indigency. The magistrate or metropolitan court may deny free process if it finds that the complaint on its face does not state a cause of action.

D. As used in this subsection, "convicted" means the defendant has been found guilty of a criminal charge by the magistrate or metropolitan judge, either after trial, a plea of guilty or a plea of nolo contendere. Magistrate judges, including metropolitan court judges, shall assess and collect and shall not waive, defer or suspend the following costs:

(1) corrections fee, to be collected upon conviction from persons convicted of violating any provision of the Motor Vehicle Code involving the operation of a motor vehicle, convicted of a crime constituting a misdemeanor or a petty misdemeanor or convicted of violating any ordinance that may be enforced by the imposition of a term of imprisonment as follows:

in a county with a metropolitan court \$10.00;

in a county without a metropolitan court 20.00;

(2) court automation fee, to be collected upon conviction from persons convicted of violating any provision of the Motor Vehicle Code involving the operation of a motor vehicle, convicted of a crime constituting a misdemeanor or a petty misdemeanor or convicted of violating any ordinance that may be enforced by the imposition of a term of imprisonment 10.00;

(3) traffic safety fee, to be collected upon conviction from persons convicted of violating any provision of the Motor Vehicle Code involving the operation of a motor vehicle 3.00;

(4) judicial education fee, to be collected upon conviction from persons convicted of operating a motor vehicle in violation of the Motor Vehicle Code, convicted of a crime constituting a misdemeanor or a petty misdemeanor or convicted of violating any ordinance punishable by a term of imprisonment 3.00;

(5) jury and witness fee, to be collected upon conviction from persons convicted of operating a motor vehicle in violation of the Motor Vehicle Code, convicted of a crime constituting a misdemeanor or a petty misdemeanor or convicted of violating any ordinance punishable by a term of imprisonment 5.00;

(6) brain injury services fee, to be collected upon conviction from persons convicted of violating any provision of the Motor Vehicle Code involving the operation of a motor vehicle 5.00;

and

(7) court facilities fee, to be collected upon conviction from persons convicted of violating any provision of the Motor Vehicle Code involving the operation of a motor vehicle, convicted of a crime constituting a misdemeanor or a petty misdemeanor or convicted of violating any ordinance that may be enforced by the imposition of a term of imprisonment as follows:

in a county with a metropolitan court 24.00;

in any other county 10.00.

E. Metropolitan court judges shall assess and collect and shall not waive, defer or suspend as costs a mediation fee not to exceed five dollars (\$5.00) for the docketing of small claims and criminal actions specified by metropolitan court rule. Proceeds of the mediation fee shall be deposited into the metropolitan court mediation fund."

Chapter 245 Section 3 Laws 2009

Section 3. Section 35-7-4 NMSA 1978 (being Laws 1968, Chapter 62, Section 99, as amended) is amended to read:

"35-7-4. MAGISTRATE ADMINISTRATION--MONTHLY REMITTANCES.--Each magistrate court shall pay to the administrative office of the courts, not later than the date each month established by regulation of the director of the administrative office, the amount of all fines, forfeitures and costs collected by the court during the previous month, except for amounts disbursed in accordance with law. The administrative office shall return to each magistrate court a written receipt itemizing all money received. The administrative office shall deposit the amount of all fines and forfeitures with the state treasurer for credit to the current school fund. The administrative office shall deposit the amount of all costs, except all costs collected pursuant to Subsections D and E of Section 35-6-1 NMSA 1978, for credit to the general fund. The amount of all costs collected pursuant to Subsections D and E of Section 35-6-1 NMSA 1978 shall be credited as follows:

A. the amount of all costs collected pursuant to Paragraph (1) of Subsection D of Section 35-6-1 NMSA 1978 for credit to the local government corrections fund;

B. the amount of all costs collected pursuant to Paragraph (2) of Subsection D of Section 35-6-1 NMSA 1978 for credit to the court automation fund;

C. the amount of all costs collected pursuant to Paragraph (3) of Subsection D of Section 35-6-1 NMSA 1978 for credit to the traffic safety education and enforcement fund;

D. the amount of all costs collected pursuant to Paragraph (4) of Subsection D of Section 35-6-1 NMSA 1978 for credit to the judicial education fund;

E. the amount of all costs collected pursuant to Paragraph (5) of Subsection D of Section 35-6-1 NMSA 1978 for credit to the jury and witness fee fund;

F. the amount of all costs collected pursuant to Paragraph (6) of Subsection D of Section 35-6-1 NMSA 1978 for credit to the brain injury services fund;

G. the amount of all costs collected pursuant to Paragraph (7) of Subsection D of Section 35-6-1 NMSA 1978 for credit to the court facilities fund; and

H. the amount of all costs collected pursuant to Subsection E of Section 35-6-1 NMSA 1978 for credit to the metropolitan court mediation fund."

Chapter 245 Section 4 Laws 2009

Section 4. Section 35-14-11 NMSA 1978 (being Laws 1983, Chapter 134, Section 6, as amended) is amended to read:

"35-14-11. MUNICIPAL ORDINANCE--COURT COSTS--COLLECTION--PURPOSE.--

A. Every municipality shall enact an ordinance requiring assessment of corrections fees, judicial education fees and court automation fees to be collected as court costs and used as provided in this section.

B. A municipal judge shall collect the following costs:

- (1) a corrections fee of twenty dollars (\$20.00);
- (2) a judicial education fee of three dollars (\$3.00); and
- (3) a court automation fee of six dollars (\$6.00).

C. The fees are to be collected upon conviction from persons convicted of violating any ordinance relating to the operation of a motor vehicle or any ordinance that may be enforced by the imposition of a term of imprisonment.

D. All money collected pursuant to Paragraph (1) of Subsection B of this section shall be deposited in a special fund in the municipal treasury and shall be used for:

- (1) municipal jailer or juvenile detention officer training;
- (2) the construction planning, construction, operation and maintenance of a municipal jail or juvenile detention facility;
- (3) paying the cost of housing municipal prisoners in a county jail or detention facility or housing juveniles in a detention facility;
- (4) complying with match or contribution requirements for the receipt of federal funds relating to jails or juvenile detention facilities;
- (5) providing inpatient treatment or other substance abuse programs in conjunction with or as an alternative to jail sentencing;

(6) defraying the cost of transporting prisoners to jails or juveniles to juvenile detention facilities; or

(7) providing electronic monitoring systems.

E. A municipality may credit the interest collected from fees deposited in the special fund pursuant to Subsection D of this section to the municipality's general fund.

F. All money collected pursuant to Paragraph (2) of Subsection B of this section shall be remitted monthly to the state treasurer for credit to the judicial education fund and shall be used for the education and training, including production of bench books and other written materials, of municipal judges and other municipal court employees.

G. All money collected pursuant to Paragraph (3) of Subsection B of this section shall be remitted monthly to the state treasurer for credit to the municipal court automation fund and shall be used for the purchase, maintenance and operation of court automation systems in the municipal courts. Operation includes staff expenses, temporary or otherwise, and costs as needed to comply with Section 35-14-12 NMSA 1978. The court automation systems shall have the capability of providing, on a timely basis, electronic records in a format specified by the judicial information systems council.

H. As used in this section, "convicted" means the defendant has been found guilty of a criminal charge by a municipal judge, either after trial, a plea of guilty or a plea of nolo contendere."

Chapter 245 Section 5 Laws 2009

Section 5. Section 66-8-116.3 NMSA 1978 (being Laws 1989, Chapter 318, Section 35, Laws 1989, Chapter 319, Section 14 and Laws 1989, Chapter 320, Section 5, as amended) is amended to read:

"66-8-116.3. PENALTY ASSESSMENT MISDEMEANORS--ADDITIONAL FEES.--In addition to the penalty assessment established for each penalty assessment misdemeanor, there shall be assessed:

A. in a county without a metropolitan court, twenty dollars (\$20.00) to help defray the costs of local government corrections;

B. a court automation fee of ten dollars (\$10.00);

C. a traffic safety fee of three dollars (\$3.00), which shall be credited to the traffic safety education and enforcement fund;

D. a judicial education fee of three dollars (\$3.00), which shall be credited to the judicial education fund;

E. a jury and witness fee of five dollars (\$5.00), which shall be credited to the jury and witness fee fund;

F. a brain injury services fee of five dollars (\$5.00), which shall be credited to the brain injury services fund; and

G. a court facilities fee as follows:

in a county with a metropolitan court \$24.00;

in any other county 10.00."

Chapter 245 Section 6 Laws 2009

Section 6. Section 66-8-119 NMSA 1978 (being Laws 1968, Chapter 62, Section 159, as amended) is amended to read:

"66-8-119. PENALTY ASSESSMENT REVENUE--DISPOSITION.--

A. The division shall remit all penalty assessment receipts, except receipts collected pursuant to Subsections A through G of Section 66-8-116.3 NMSA 1978, to the state treasurer for credit to the general fund.

B. The division shall remit all penalty assessment fee receipts collected pursuant to:

(1) Subsection A of Section 66-8-116.3 NMSA 1978 to the state treasurer for credit to the local government corrections fund;

(2) Subsection B of Section 66-8-116.3 NMSA 1978 to the state treasurer for credit to the court automation fund;

(3) Subsection C of Section 66-8-116.3 NMSA 1978 to the state treasurer for credit to the traffic safety education and enforcement fund;

(4) Subsection D of Section 66-8-116.3 NMSA 1978 to the state treasurer for credit to the judicial education fund;

(5) Subsection E of Section 66-8-116.3 NMSA 1978 to the state treasurer for credit to the jury and witness fee fund;

(6) Subsection F of Section 66-8-116.3 NMSA 1978 to the state treasurer for credit to the brain injury services fund; and

(7) Subsection G of Section 66-8-116.3 NMSA 1978 to the state treasurer for credit to the court facilities fund."

Chapter 245 Section 7 Laws 2009

Section 7. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.

HJC/House Bills 263 & 542

Approved April 7, 2009

LAWS 2009, CHAPTER 246

AN ACT

RELATING TO TAXATION; EXEMPTING THE PERSONAL PROPERTY OF NONPROFIT MUTUAL DOMESTIC WATER ASSOCIATIONS FROM PROPERTY TAXATION.

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

Chapter 246 Section 1 Laws 2009

Section 1. Section 7-36-28 NMSA 1978 (being Laws 1975, Chapter 165, Section 9) is amended to read:

"7-36-28. SPECIAL METHOD OF VALUATION--PIPELINES, TANKS, SALES METERS, PLANTS AND HYDRANTS USED IN THE TRANSMISSION, STORAGE, MEASUREMENT OR DISTRIBUTION OF WATER.--

A. Except as provided in Subsection F of this section, all pipelines, tanks, sales meters, plants and hydrants used in the transmission, storage, measurement or distribution of water subject to valuation for property taxation purposes shall be valued in accordance with the provisions of this section.

B. As used in this section:

(1) "commercial water property" means privately owned pipelines, tanks, sales meters, plants, hydrants, materials and supplies, whether in service, in stock or under construction, owned and operated as a utility for the purpose of transmitting, storing, measuring or distributing water for sale to the consuming public, excluding general buildings and improvements;

(2) "depreciation" means straight line depreciation over the useful life of the item of property;

(3) "general buildings and improvements" means buildings of the nature of offices, residential housing, warehouses, shops and associated improvements in general use by the taxpayer but not directly associated with the transmission, storage, measurement or distribution of water;

(4) "gallons" means the measurement of water sold;

(5) "revenue" means gross utility operating revenue;

(6) "closed system" means a commercial water system in which water is gathered primarily by wells and stored in closed reservoirs and tanks; and

(7) "combination system" means a commercial water system in which water is gathered both in open reservoirs and by wells and is stored both in open reservoirs and closed reservoirs and tanks.

C. The value of commercial water property shall be determined as follows:

(1) a factor of two and forty-nine one hundredths per thousand gallons is to be used for a closed system and three and twenty-five one hundredths is to be used for a combination system;

(2) the department shall determine the type of system into which the taxpayer's commercial water properties should be categorized;

(3) the department shall then ascertain the number of thousand gallons sold to consumers by the taxpayer during each of the three immediately preceding calendar years and the taxpayer's revenue from the immediately preceding calendar year;

(4) a simple average of the three-year thousand gallon sales shall be computed and compared to the actual thousand gallons sold to consumers during the immediately preceding calendar year. The higher of the average thousand gallons or the immediately preceding year's actual thousand gallons shall be the basis for value calculations;

(5) the thousand gallon figure determined in Paragraph (4) of this subsection shall then be multiplied by the appropriate per thousand gallon factor from Paragraph (1) of this subsection. The result of this calculation is the value of commercial water property for property taxation purposes; and

(6) notwithstanding the calculations provided for above, the value of the taxpayer's commercial water property shall not be greater than four and one-half

times the revenue derived during the immediately preceding calendar year from the operation of the commercial water property.

D. Each item of property having a taxable situs in the state and valued under this section shall have its net taxable value allocated to the governmental units in which the property is located on the basis of the percentage of the taxpayer's total investment in each governmental unit.

E. The department shall adopt regulations to implement the provisions of this section.

F. Commercial water property owned or sold by a nonprofit mutual domestic water association is exempt from valuation for property taxation purposes."

Chapter 246 Section 2 Laws 2009

Section 2. APPLICABILITY.--The provisions of this act apply to taxable years beginning on or after January 1, 2010.

House Bill 297

Approved April 7, 2009

LAWS 2009, CHAPTER 247

AN ACT

RELATING TO TAXATION; ADDING WASTEWATER TO SPECIAL VALUATION OF PROPERTY; DECLARING AN EMERGENCY.

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

Chapter 247 Section 1 Laws 2009

Section 1. Section 7-36-28 NMSA 1978 (being Laws 1975, Chapter 165, Section 9) is amended to read:

"7-36-28. SPECIAL METHOD OF VALUATION--PIPELINES, TANKS, COLLECTION SYSTEMS, METERS, PLANTS AND HYDRANTS USED IN THE COLLECTION, TRANSMISSION, STORAGE, TREATMENT, DISCHARGE, MEASUREMENT OR DISTRIBUTION OF WATER OR WASTEWATER.--

A. All pipelines, tanks, meters, lift stations, treatment facilities, plants and hydrants used in the collection, transmission, storage, measurement, treatment, discharge or distribution of water or wastewater subject to valuation for property taxation purposes shall be valued in accordance with the provisions of this section.

B. As used in this section:

(1) "commercial water property" means privately owned pipelines, tanks, meters, plants, hydrants, materials and supplies, whether in service, in stock or under construction, owned and operated as a utility for the purpose of transmitting, storing, measuring or distributing water for sale to the consuming public, excluding general buildings and improvements;

(2) "commercial wastewater property" means privately owned pipelines, collection systems, lift stations, meters, treatment facilities, materials and supplies, whether in service, in stock or under construction, owned and operated as a utility for the purpose of collecting, transmitting, measuring, treating or discharging wastewater used for the purpose of providing wastewater service to the public, excluding general buildings and improvements;

(3) "depreciation" means straight line depreciation over the useful life of the item of property;

(4) "general buildings and improvements" means buildings of the nature of offices, residential housing, warehouses, shops and associated improvements in general use by the taxpayer but not directly associated with the collection, transmission, storage, measurement, treatment, discharge or distribution of water or wastewater;

(5) "gallons" means the measurement of water sold or the measurement of wastewater discharged to a third party's treatment facility or the measurement of wastewater treated and discharged;

(6) "revenue" means gross utility operating revenue;

(7) "closed system" means a commercial water system in which water is gathered primarily by wells and stored in closed reservoirs and tanks; and

(8) "combination system" means a commercial water system in which water is gathered both in open reservoirs and by wells and is stored both in open reservoirs and closed reservoirs and tanks.

C. The value of commercial water property shall be determined as follows:

(1) a factor of two and forty-nine one hundredths per thousand gallons is to be used for a closed system and three and twenty-five one hundredths is to be used for a combination system;

(2) the department shall determine the type of system into which the taxpayer's commercial water properties should be categorized;

(3) the department shall then ascertain the number of thousand gallons sold to consumers by the taxpayer during each of the three immediately preceding calendar years and the taxpayer's water revenue from the immediately preceding calendar year;

(4) a simple average of the three-year thousand gallon sales shall be computed and compared to the actual thousand gallons sold to consumers during the immediately preceding calendar year. The higher of the average thousand gallons or the immediately preceding year's actual thousand gallons shall be the basis for value calculations;

(5) the thousand gallon figure determined in Paragraph (4) of this subsection shall then be multiplied by the appropriate per thousand gallon factor from Paragraph (1) of this subsection. The result of this calculation is the value of commercial water property for property taxation purposes; and

(6) notwithstanding the calculations provided for in Paragraphs (1) through (5) of this subsection, the value of the taxpayer's commercial water property shall not be greater than four and one-half times the revenue derived during the immediately preceding calendar year from the operation of the commercial water property.

D. The value of commercial wastewater property shall be determined as follows:

(1) a factor of two and forty-nine one hundredths per thousand gallons shall be used;

(2) the department shall then ascertain the number of thousand gallons wastewater discharged to a third party's treatment facility or the number of thousand gallons wastewater treated and discharged during each of the three immediately preceding calendar years and the taxpayer's wastewater revenue from the immediately preceding calendar year;

(3) a simple average of the three-year thousand gallons shall be computed and compared to the actual thousand gallons during the immediately preceding calendar year. The higher of the average thousand gallons or the immediately preceding year's actual thousand gallons shall be the basis for value calculations;

(4) the thousand gallon figure determined in Paragraph (3) of this subsection shall then be multiplied by the factor provided in Paragraph (1) of this subsection. The result of this calculation is the value of commercial wastewater property for property taxation purposes; and

(5) notwithstanding the calculations provided for in this subsection, the value of the taxpayer's commercial wastewater property shall not be greater than four and one-half times the revenue derived during the immediately preceding calendar year from the operation of the commercial wastewater property.

E. Each item of property having a taxable situs in the state and valued pursuant to this section shall have its net taxable value allocated to the governmental units in which the property is located on the basis of the percentage of the taxpayer's total investment in each governmental unit.

F. The department shall adopt regulations to implement the provisions of this section."

Chapter 247 Section 2 Laws 2009

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

House Bill 388, w/ec

Approved April 7, 2009

LAWS 2009, CHAPTER 248

AN ACT

RELATING TO EDUCATIONAL RETIREMENT; ENACTING A NEW SECTION OF THE EDUCATIONAL RETIREMENT ACT TO PROHIBIT THE DISCLOSURE OF CERTAIN CONFIDENTIAL INFORMATION; PROVIDING A PENALTY.

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

Chapter 248 Section 1 Laws 2009

Section 1. A new section of the Educational Retirement Act is enacted to read:

"DISCLOSURE OF MEMBER OR RETIRED MEMBER INFORMATION--
PENALTY.--

A. Other than names of members and local administrative units by which a member was employed; dates of employment, retirement and reported death; service credit; reported salary; and amounts of contributions made by members and local administrative units, neither the board nor its employees or contractors shall allow public inspection or disclosure of any information regarding a member or retired member to anyone except:

(1) the member, retired member or the spouse or authorized representative of the member or retired member;

(2) other persons specifically identified in a prior release and consent, in the form prescribed by the board, executed by the member, retired member, spouse or authorized representative; or

(3) the attorney general, appropriate law enforcement agencies, the state auditor or the public education department or higher education department, if the information provided relates to contributions, payments or management of money received by, or the financial controls or procedures of, a local administrative unit.

B. No person receiving information disclosed by a violation of Subsection A of this section shall disclose that information to any other person unless authorized by an applicable confidentiality agreement, board rule or state law.

C. Whoever knowingly violates a provision of Subsection A or B of this section is guilty of a petty misdemeanor and shall be sentenced in accordance with Section 31-19-1 NMSA 1978."

House Bill 722, aa

Approved April 7, 2009

LAWS 2009, CHAPTER 249

AN ACT

RELATING TO LAW ENFORCEMENT; ADDING CERTIFIED PART-TIME SALARIED POLICE OFFICERS TO THE DEFINITION OF LAW ENFORCEMENT OFFICER IN THE CRIMINAL PROCEDURE ACT AND TORT CLAIMS ACT.

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

Chapter 249 Section 1 Laws 2009

Section 1. Section 31-1-2 NMSA 1978 (being Laws 1972, Chapter 71, Section 5, as amended) is amended to read:

"31-1-2. DEFINITIONS.--Unless a specific meaning is given, as used in the Criminal Procedure Act:

A. "accused" means any person charged with the violation of any law of this state imposing a criminal penalty;

B. "bail bond" is a contract between surety and the state to the effect that the accused and the surety will appear in court when required and will comply with all conditions of the bond;

C. "defendant" means any person accused of a violation of any law of this state imposing a criminal penalty;

D. "felony" means any crime so designated by law or if upon conviction thereof a sentence of death or of imprisonment for a term of one year or more is authorized;

E. "person", unless a contrary intention appears, means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other entity;

F. "police officer", "law enforcement officer", "peace officer" or "officer" means any full-time salaried or certified part-time salaried officer who by virtue of office or public employment is vested by law with the duty to maintain the public peace;

G. "recognizance" means any obligation of record entered into before a court requiring the accused to appear at all appropriate times or forfeit any bail and be subject to criminal penalty for failure to appear;

H. "release on personal recognizance" or "release on own recognizance" means the release of a defendant without bail, bail bond or sureties upon the defendant's promise to appear at all appropriate times;

I. "rules of civil procedure" means rules of civil procedure for the district courts of the state of New Mexico, as may be amended from time to time;

J. "rules of criminal procedure" means rules of criminal procedure for the district courts, magistrate courts and municipal courts adopted by the New Mexico supreme court, as may be amended from time to time;

K. "misdemeanor" means any offense for which the authorized penalty upon conviction is imprisonment in excess of six months but less than one year; and

L. "petty misdemeanor" means any offense so designated by law or if upon conviction a sentence of imprisonment for six months or less is authorized."

Chapter 249 Section 2 Laws 2009

Section 2. Section 41-4-3 NMSA 1978 (being Laws 1976, Chapter 58, Section 3, as amended) is amended to read:

"41-4-3. DEFINITIONS.--As used in the Tort Claims Act:

A. "board" means the risk management advisory board;

B. "governmental entity" means the state or any local public body as defined in Subsections C and H of this section;

C. "local public body" means all political subdivisions of the state and their agencies, instrumentalities and institutions and all water and natural gas associations organized pursuant to Chapter 3, Article 28 NMSA 1978;

D. "law enforcement officer" means a full-time salaried public employee of a governmental entity, or a certified part-time salaried police officer employed by a governmental entity, whose principal duties under law are to hold in custody any person accused of a criminal offense, to maintain public order or to make arrests for crimes, or members of the national guard when called to active duty by the governor;

E. "maintenance" does not include:

(1) conduct involved in the issuance of a permit, driver's license or other official authorization to use the roads or highways of the state in a particular manner; or

(2) an activity or event relating to a public building or public housing project that was not foreseeable;

F. "public employee" means an officer, employee or servant of a governmental entity, excluding independent contractors except for individuals defined in Paragraphs (7), (8), (10) and (14) of this subsection, or of a corporation organized pursuant to the Educational Assistance Act, the Small Business Investment Act or the Mortgage Finance Authority Act or a licensed health care provider, who has no medical liability insurance, providing voluntary services as defined in Paragraph (16) of this subsection and including:

(1) elected or appointed officials;

(2) law enforcement officers;

(3) persons acting on behalf or in service of a governmental entity in any official capacity, whether with or without compensation;

(4) licensed foster parents providing care for children in the custody of the human services department, corrections department or department of health, but not including foster parents certified by a licensed child placement agency;

(5) members of state or local selection panels established pursuant to the Adult Community Corrections Act;

(6) members of state or local selection panels established pursuant to the Juvenile Community Corrections Act;

(7) licensed medical, psychological or dental arts practitioners providing services to the corrections department pursuant to contract;

(8) members of the board of directors of the New Mexico medical insurance pool;

(9) individuals who are members of medical review boards, committees or panels established by the educational retirement board or the retirement board of the public employees retirement association;

(10) licensed medical, psychological or dental arts practitioners providing services to the children, youth and families department pursuant to contract;

(11) members of the board of directors of the New Mexico educational assistance foundation;

(12) members of the board of directors of the New Mexico student loan guarantee corporation;

(13) members of the New Mexico mortgage finance authority;

(14) volunteers, employees and board members of court-appointed special advocate programs;

(15) members of the board of directors of the small business investment corporation; and

(16) health care providers licensed in New Mexico who render voluntary health care services without compensation in accordance with rules promulgated by the secretary of health. The rules shall include requirements for the types of locations at which the services are rendered, the allowed scope of practice and measures to ensure quality of care;

G. "scope of duty" means performing any duties that a public employee is requested, required or authorized to perform by the governmental entity, regardless of the time and place of performance; and

H. "state" or "state agency" means the state of New Mexico or any of its branches, agencies, departments, boards, instrumentalities or institutions."

House Bill 531

Approved April 7, 2009

LAWS 2009, CHAPTER 250

AN ACT

RELATING TO HOMELAND SECURITY AND EMERGENCY MANAGEMENT; CHANGING THE TITLE OF THE STATE DIRECTOR OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT; MAKING THE HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT A CABINET DEPARTMENT; DESIGNATING THE HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT TO COORDINATE THE NATIONAL FLOOD INSURANCE PROGRAM; REMOVING HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT VEHICLES FROM THE CUSTODY OF THE TRANSPORTATION SERVICES DIVISION OF THE GENERAL SERVICES DEPARTMENT; DECLARING AN EMERGENCY.

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

Chapter 250 Section 1 Laws 2009

Section 1. Section 3-18-7 NMSA 1978 (being Laws 1975, Chapter 14, Section 1, as amended) is amended to read:

"3-18-7. ADDITIONAL COUNTY AND MUNICIPAL POWERS--FLOOD AND MUDSLIDE HAZARD AREAS--FLOOD PLAIN PERMITS--LAND USE CONTROL-- JURISDICTION--AGREEMENT.--

A. For the purpose of minimizing or eliminating damage from floods or mudslides in federal emergency management agency and locally designated flood-prone areas and for the purpose of promoting health, safety and the general welfare, a county or municipality with identified flood or mudslide hazard areas shall by ordinance:

(1) designate and regulate flood plain areas having special flood or mudslide hazards;

(2) prescribe standards for constructing, altering, installing or repairing buildings and other improvements under a permit system within a designated flood or mudslide hazard area;

(3) require review by the local flood plain manager for development within a designated flood or mudslide hazard area; provided that final decisions are approved by the local governing body;

(4) review subdivision proposals and other new developments within a designated flood or mudslide hazard area to ensure that:

(a) all such proposals are consistent with the need to minimize flood damage;

(b) all public utilities and facilities such as sewer, gas, electrical and water systems are designed to minimize or eliminate flood damage; and

(c) adequate drainage is provided so as to reduce exposure to flood hazards;

(5) require new or replacement water supply systems or sanitary sewage systems within a designated flood or mudslide hazard area to be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters and require on-site waste disposal systems to be located so as to avoid impairment of them or contamination from them during flooding; and

(6) designate and regulate floodways for the passage of flood waters.

B. A flood plain ordinance adopted pursuant to this section shall substantially conform to the minimum standards prescribed by the federal insurance administration, regulation 1910 issued pursuant to Subsection 7(d), 79 Stat. 670, Section 1361, 82 Stat. 587 and 82 Stat. 575, all as amended.

C. A county or municipality that enacts a flood plain ordinance shall designate a person, certified pursuant to the state-certified flood plain manager program, as the flood plain manager to administer the flood plain ordinance.

D. A county or municipality that has areas designated by the federal emergency management agency and the county or municipality as flood-prone shall participate in the national flood insurance program.

E. A county or municipality shall have exclusive jurisdiction over flood plain permits issued under its respective flood plain ordinance in accordance with this section and so long as all structures built in flood plains are subject to inspection and approval pursuant to the Construction Industries Licensing Act. Notwithstanding Section

3-18-6 NMSA 1978, when a municipality adopts a flood plain ordinance pursuant to Paragraph (2) of Subsection A of this section, the municipality's jurisdiction under the flood plain ordinance may take precedence over a respective county flood plain ordinance within the municipality's boundary and within the municipality's subdividing and platting jurisdiction.

F. A county or municipality shall designate flood plain areas having special flood or mudslide hazards in substantial conformity with areas identified as flood- or mudslide-prone by the federal insurance administration pursuant to the national flood insurance program and may designate areas as flood- or mudslide-prone that may not be so identified by the federal insurance administration.

G. A municipality or county adopting a flood plain ordinance pursuant to this section may enter into reciprocal agreements with any agency of the state, other political subdivisions or the federal government in order to effectively carry out the provisions of this section.

H. The homeland security and emergency management department is designated as the state coordinating agency for the national flood insurance program and may assist counties or municipalities when requested by a county or municipality to provide technical advice and assistance."

Chapter 250 Section 2 Laws 2009

Section 2. Section 9-28-2 NMSA 1978 (being Laws 2007, Chapter 291, Section 2) is amended to read:

"9-28-2. PURPOSE--CRIMINAL JUSTICE LAW ENFORCEMENT AGENCY.--

A. The purpose of the Homeland Security and Emergency Management Department Act is to establish a department to:

(1) consolidate and coordinate homeland security and emergency management functions to provide comprehensive and coordinated preparedness, mitigation, prevention, protection, response and recovery for emergencies and disasters, regardless of cause, and acts or threats of terrorism;

(2) act as the central primary coordinating agency for the state and its political subdivisions in response to emergencies, disasters and acts or threats of terrorism; and

(3) act as the conduit for federal assistance and cooperation in response to emergencies, disasters and acts or threats of terrorism.

B. The department shall be considered a criminal justice law enforcement agency in order to accomplish the purposes provided in Subsection A of this section."

Chapter 250 Section 3 Laws 2009

Section 3. Section 9-28-3 NMSA 1978 (being Laws 2007, Chapter 291, Section 3) is amended to read:

"9-28-3. DEFINITIONS.--As used in the Homeland Security and Emergency Management Department Act:

A. "department" means the homeland security and emergency management department; and

B. "secretary" means the secretary of homeland security and emergency management."

Chapter 250 Section 4 Laws 2009

Section 4. Section 9-28-4 NMSA 1978 (being Laws 2007, Chapter 291, Section 4) is amended to read:

"9-28-4. HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT--CREATED--POWERS AND DUTIES.--

A. The "homeland security and emergency management department" is created in the executive branch. The department is a cabinet department. The chief administrative and executive officer of the department is the "secretary of homeland security and emergency management", who shall be appointed by the governor with the consent of the senate and hold office at the pleasure of the governor.

B. 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.

C. 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 Homeland Security and Emergency Management Department 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 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 or actions in the courts;

(6) conduct research and studies that will improve the operations of the department and the provision of services to 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, 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.

D. 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.

E. The secretary may make and adopt such reasonable and procedural rules as may be necessary to carry out the duties of the department and its divisions. No rule promulgated by the director of any division in carrying out the functions and duties of the division shall be effective until approved by the secretary, unless otherwise provided by statute. Unless otherwise provided by statute, no rule affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by 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 advance notice of hearing. All rules shall be filed in accordance with the State Rules Act."

Chapter 250 Section 5 Laws 2009

Section 5. Section 9-28-6 NMSA 1978 (being Laws 2007, Chapter 291, Section 6) is amended to read:

"9-28-6. COOPERATION WITH FEDERAL GOVERNMENT--AUTHORITY OF SECRETARY--SINGLE STATE AGENCY STATUS.--

A. The department is authorized to cooperate with the federal government in the administration of homeland security and emergency management programs in which financial or other participation by the federal government is authorized or mandated under state or federal laws, rules or orders. The department may enter into agreements with agencies of the federal government to implement homeland security and emergency management programs subject to availability of appropriated state funds and any provisions of state laws applicable to such agreements or participation by the state.

B. The governor may by appropriate order designate the department as the single state agency for the administration of any homeland security or emergency management program when that designation is a condition of federal financial or other participation in the program under applicable federal law, rule or order. Whether or not a federal condition exists, the governor may designate the department as the single state agency for the administration of any homeland security or emergency management program. No designation of a single state agency under the authority granted in this section shall be made in contravention of state law."

Chapter 250 Section 6 Laws 2009

Section 6. Section 15-8-6 NMSA 1978 (being Laws 1994, Chapter 119, Section 6, as amended) is amended to read:

"15-8-6. STATE VEHICLES--USE--MARKINGS--STATE GOVERNMENT PLATES.--

A. The division shall adopt rules governing the use of vehicles used by state agencies, including driver requirements and responsibilities, under what circumstances someone can be assigned a state vehicle on a permanent or semi-permanent basis and when custody of a state vehicle can be vested in another state agency.

B. The division may determine that it is impractical to retain custody of certain state vehicles, and it may provide that custody reside in another state agency in the following cases:

(1) the state vehicle is used for emergency or law enforcement purposes; or

(2) the state vehicle is a department of transportation, energy, minerals and natural resources department, department of game and fish or homeland security and emergency management department passenger vehicle, truck or tractor or heavy road equipment.

C. Except as provided in Subsections E and F of this section, all state vehicles shall be marked as state vehicles. Each side of the vehicle shall be marked, in letters not less than two inches in height, with the following designation of ownership: "State of New Mexico,..... Department" or "State of New Mexico Department of" and naming the department using the vehicle.

D. Except as provided in Subsections E and F of this section, all state vehicles shall have specially designed government registration plates.

E. Only state vehicles used for legitimate undercover law enforcement purposes are exempt from the requirements of Subsections C and D of this section. All other state vehicles owned or in the custody of state agencies that have law enforcement functions shall be marked and have state government registration plates.

F. A state agency may seek custody of state vehicles as an exception to Subsection B of this section or an exemption to the provisions of Subsection C of this section by making a written request to the director, specifying the reasons for the proposed custody or exemption. The director may approve the custody or exemption, in writing, indicating the duration and any conditions of the custody or exemption."

Chapter 250 Section 7 Laws 2009

Section 7. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

House Bill 318, aa, w/ec

Approved April 7, 2009

LAWS 2009, CHAPTER 251

AN ACT

RELATING TO ELECTIONS; PROVIDING FOR ABSENTEE VOTING IN LIEU OF ESTABLISHING A POLLING PLACE IN SMALL, ISOLATED PRECINCTS; CHANGING PROVISIONS FOR THE DELIVERY AND HANDLING OF ABSENTEE BALLOTS; PROVIDING STANDARDS FOR THE OPERATION OF ALTERNATE EARLY VOTING LOCATIONS; AMENDING REQUIREMENTS FOR ALTERNATE EARLY VOTING LOCATIONS ON INDIAN NATION, TRIBAL OR PUEBLO LANDS; CHANGING PROVISIONS FOR EARLY ABSENTEE VOTING; REMOVING A RESTRICTION ON THE TYPE OF BALLOT THAT MAY BE SENT TO ABSENTEE OVERSEAS VOTERS; PROVIDING FOR ELECTRONIC TRANSMISSION OF ABSENTEE BALLOTS TO AND FROM FEDERAL QUALIFIED ELECTORS AND OVERSEAS VOTERS; AMENDING AND REPEALING SECTIONS OF THE NMSA 1978; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2003.

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

Chapter 251 Section 1 Laws 2009

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

"MAIL BALLOT ELECTION PRECINCT--ABSENTEE VOTING IN LIEU OF POLLING PLACE.--

A. Notwithstanding the provisions of Section 1-1-11 NMSA 1978, 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 fifty voters and the nearest polling place for an adjoining precinct is more than thirty miles driving distance from the polling place designated 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 registered mail all voters in that precinct at least forty 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, the voter should return the card before the date the county clerk is scheduled to mail out absentee ballots. The card 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.

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 if a voter from that precinct does not receive an absentee ballot before election day, the voter may vote on an absentee ballot in the office of the county clerk on election day in lieu of voting on the missing ballot."

Chapter 251 Section 2 Laws 2009

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

"EARLY VOTING--NATIVE AMERICAN EARLY VOTING LOCATIONS.--A county clerk shall provide at least one alternate early voting or mobile alternate voting location on Indian nation, tribal or pueblo land when requested by the Indian nation, tribe or pueblo in the county; provided that:

A. the Indian nation, tribe or pueblo submits a written request to the county clerk no later than the first Monday in November of each odd-numbered year;

B. the alternate early voting or mobile alternate voting location may operate for less than the full early voting period, to be decided upon between the Indian nation, tribe or pueblo and the county clerk;

C. the county clerk may limit voting to precincts on and near the Indian nation, tribe or pueblo;

D. the location of the alternate early voting or mobile alternate voting location on Indian nation, tribal or pueblo land conforms to the requirements for alternate early voting locations, except as specified in this section;

E. the county clerk provides federally mandated language translators at the alternate early voting or mobile alternate voting locations;

F. the Indian nation, tribe or pueblo provides the facility and services for the alternate early voting or mobile alternate voting location; and

G. the costs of voting equipment and personnel for the alternate early voting or mobile alternate voting locations on Indian nation, tribal or pueblo land pursuant to this section are reimbursed to the county by the secretary of state."

Chapter 251 Section 3 Laws 2009

Section 3. Section 1-3-2 NMSA 1978 (being Laws 1969, Chapter 240, Section 51, as amended) is amended to read:

"1-3-2. PRECINCTS--DUTIES OF COUNTY COMMISSIONERS.--

A. Not later than the first Monday in November of each odd-numbered year, the board of county commissioners shall by resolution:

(1) designate the polling place of each precinct that shall provide individuals with physical mobility limitations an unobstructed access to at least one voting machine;

(2) create additional precincts to meet the requirements of Section 1-3-1 NMSA 1978 or upon petition pursuant to Section 4-38-21 NMSA 1978;

(3) create additional polling places in existing precincts as necessary pursuant to Section 1-3-7.1 NMSA 1978;

(4) divide any precincts as necessary to meet legal and constitutional requirements for redistricting; and

(5) designate any mail ballot election precincts.

B. The county clerk shall notify the secretary of state in writing of any proposed changes in precincts or the designation of polling places made by the board of county commissioners and shall furnish a copy of the map showing the current geographical boundaries, designation and word description of each new polling place and each new or changed precinct.

C. The secretary of state shall review all new or changed precinct maps submitted pursuant to this section for compliance under the Precinct Boundary Adjustment Act. Any necessary precinct boundary adjustments shall be made and submitted to the secretary of state no later than the first Monday in December of each odd-numbered year. Upon approval of the new or changed precincts by the secretary of state, the precincts and polling places as changed by the resolution of the boards of county commissioners and approved by the secretary of state shall be the official precincts and polling places for the next succeeding primary and general elections."

Chapter 251 Section 4 Laws 2009

Section 4. Section 1-3-7 NMSA 1978 (being Laws 1969, Chapter 240, Section 57, as amended) is amended to read:

"1-3-7. POLLING PLACES.--

A. No less than one polling place shall be provided for each precinct that is not a mail ballot election precinct.

B. The board of county commissioners shall designate as the polling place or places, as the case may be, in each precinct, other than a mail ballot election precinct, the most convenient and suitable public building or public school building in the precinct that can be obtained.

C. If no public building or public school building is available, the board of county commissioners shall provide some other suitable place, which shall be the most convenient and appropriate place obtainable in the precinct, considering the purpose for which it is to be used pursuant to the Election Code.

D. If, in a precinct that is not a mail ballot election precinct, there is no public building or public school building available in the precinct, and there is no other suitable place obtainable in the precinct, the board of county commissioners may designate as a polling place for the precinct the most convenient and suitable building or public school building nearest to that precinct that can be obtained. No polling place shall be designated outside the boundary of the precinct as provided in this subsection until such designated polling place is approved by written order of the district court of the county in which the precinct is located.

E. Upon application of the board of county commissioners, the governing board of any school district shall permit the use of any school building or a part thereof for registration purposes and the conduct of any election, provided that the building or the part used for the election complies with the standards set out in the federal Voting Accessibility for the Elderly and Handicapped Act.

F. Public schools may be closed for elections at the discretion of local school boards."

Chapter 251 Section 5 Laws 2009

Section 5. Section 1-6-5 NMSA 1978 (being Laws 1969, Chapter 240, Section 131, as amended) is amended to read:

"1-6-5. PROCESSING APPLICATION--ISSUANCE OF BALLOT.--

A. The county clerk shall mark each completed absentee ballot application with the date and time of receipt in the clerk's office and enter the required information

in the absentee ballot register. The county clerk shall then determine if the applicant is a voter, an absent uniformed services voter or an overseas voter.

B. If the applicant does not have a valid certificate of registration on file in the county and is not a federal qualified elector or if the applicant states that the applicant is a federal qualified elector but the application indicates the applicant is not a federal qualified elector, an absentee ballot shall not be issued and the county clerk shall mark the application "rejected" and file the application in a separate file from those accepted.

C. The county clerk shall notify in writing each applicant of the fact of acceptance or rejection of the application and, if rejected, shall explain why the application was rejected.

D. If the applicant has on file with the county a valid certificate of registration that indicates that the applicant is a voter who is a new registrant and who registered by mail without submitting the required voter identification, the county clerk shall notify the voter that the voter must submit with the absentee ballot the required physical form of identification. The county clerk shall note on the absentee ballot register and signature roster that the applicant's absentee ballot must be returned with the required identification.

E. If the county clerk finds that the applicant is a voter other than a federal qualified elector or overseas voter, the county clerk shall mark the application "accepted" and, beginning twenty-eight days before the election, deliver an absentee ballot to the voter in the county clerk's office or mail to the applicant an absentee ballot and the required envelopes for use in returning the ballot. If the county clerk finds that the applicant is a federal qualified elector or overseas voter, the county clerk shall mark the application "accepted" and beginning forty-five days before the election, mail to the applicant an absentee ballot and the required envelopes for use in returning the ballot. Acceptance of an application of a federal qualified elector constitutes registration for the election in which the ballot is to be cast. Acceptance of an application from an overseas voter who is not an absent uniformed services voter constitutes a request for changing information on the certificate of registration of any such voter. An absent voter shall not be permitted to change party affiliation during those periods when change of party affiliation is prohibited by the Election Code. Upon delivery of an absentee ballot to a voter in the county clerk's office or mailing of an absentee ballot to an applicant who is a voter, an appropriate designation shall be made on the signature line of the signature roster next to the name of the voter who has been provided or mailed an absentee ballot.

F. If an application for an absentee ballot is delivered in person to the county clerk and is accepted, the county clerk shall provide the voter an absentee ballot and it shall be marked by the applicant in a voting booth of a type prescribed by the secretary of state, sealed in the proper envelopes and otherwise properly executed and returned to the county clerk or the clerk's authorized representative before the voter

leaves the office of the county clerk. The act of marking the absentee ballot in the office of the county clerk shall be a convenience to the voter in the delivery of the absentee ballot and does not make the office of the county clerk a polling place subject to the requirements of a polling place in the Election Code other than is provided in this subsection. It is unlawful to solicit votes, display or otherwise make accessible any posters, signs or other forms of campaign literature whatsoever in the clerk's office or alternate voting location. In marking the absentee ballot, the voter, pursuant to the provisions of Section 1-12-15 NMSA 1978, may be assisted by one person of the voter's choice.

G. Absentee ballots may be marked in person at the county clerk's office during the regular hours and days of business beginning on the twenty-eighth day preceding the election and from 10:00 a.m. to 6:00 p.m. on the Saturday immediately prior to the date of the election. If the county clerk establishes an additional alternate voting location near the clerk's office, absentee ballots may be marked in person at that location during the regular hours and days of business beginning on the twenty-eighth day preceding the election and during the hours for voting at alternate voting locations commencing on the third Saturday prior to the election through the Saturday immediately prior to the election.

H. Absentee ballots shall be sent to applicants not later than on the Friday immediately prior to the date of the election.

I. An absentee ballot shall not be delivered or mailed by the county clerk to any person other than the applicant for such ballot.

J. The secretary of state and each county clerk shall make reasonable efforts to publicize and inform voters of the times and locations for absentee voting; provided, however, that notice is provided at least ten days before early voting begins.

K. The secretary of state shall establish procedures for the submittal, when required by federal law, of required voter identification with mailed-in absentee ballots."

Chapter 251 Section 6 Laws 2009

Section 6. Section 1-6-5.1 NMSA 1978 (being Laws 1991, Chapter 105, Section 10, as amended) is amended to read:

"1-6-5.1. ABSENTEE BALLOT DISTRIBUTION TO FEDERAL QUALIFIED ELECTORS AND OVERSEAS VOTERS.--In the distribution of absentee ballots, federal qualified electors, including members of the uniformed services and overseas voters, shall receive the entire ballot."

Chapter 251 Section 7 Laws 2009

Section 7. Section 1-6-5.6 NMSA 1978 (being Laws 2003, Chapter 357, Section 6, as amended) is amended to read:

"1-6-5.6. EARLY VOTING--ALTERNATE VOTING LOCATIONS--PROCEDURES.--The secretary of state shall adopt rules to:

A. ensure that voters have adequate access to alternate locations for early voting in each county, taking into consideration population density and travel time to the location of voting;

B. ensure that early voters are not allowed to vote in person on election day;

C. ensure that adequate interpreters are available at alternate early voting locations in those precincts having a majority of qualified electors who are part of a recognized language minority; and

D. allow for mobile alternate voting locations in rural areas of the state that may be set up temporarily in specified precincts of the county during the period when early voting is allowed at alternate voting locations."

Chapter 251 Section 8 Laws 2009

Section 8. Section 1-6-5.7 NMSA 1978 (being Laws 2005, Chapter 270, Section 40) is amended to read:

"1-6-5.7. EARLY VOTING--USE OF ABSENTEE VOTING PROCEDURES--ALTERNATE VOTING LOCATIONS.--

A. Commencing on the third Saturday prior to an election and ending on the Saturday immediately preceding the election, an early voter may vote in person on a voting system at an alternate voting location established by the county clerk.

B. In class A counties with more than two hundred thousand registered voters, the county clerk shall establish not fewer than twelve alternate voting locations as a convenience to the voters. For class A counties with two hundred thousand registered voters or fewer, the county clerk shall establish not fewer than four alternate voting locations. In non-class A counties with more than ten thousand registered voters, the county clerk shall establish at least one alternate voting location. In non-class A counties with ten thousand registered voters or fewer, early voting shall be conducted in the office of the county clerk or at such alternate locations as may be designated by the county clerk.

C. Not later than ninety days before each primary and general election, the county clerk shall publicly fix the hours of operation for alternate voting locations in the county, which shall open no earlier than 7:00 a.m. and shall close no later than 9:00

p.m. Within ninety days of a primary or general election, a county clerk may modify the hours of operation of alternate voting locations with the written approval of the secretary of state. Alternate voting locations shall be open each day of early voting for at least eight consecutive hours. Alternate voting locations may be closed Sundays and Mondays during the early voting period.

D. Each alternate voting location shall comply with the following provisions, unless the county clerk receives a written waiver from the secretary of state specifying the location and specific provision being waived:

(1) have ballots available for voters from every precinct in the county;

(2) have at least one optical scan tabulator programmed to read every ballot style in the county;

(3) have at least one voting system available to assist disabled voters to cast and record their votes;

(4) have a broadband internet connection;

(5) have sufficient spaces for at least five voters to simultaneously and privately mark their ballots, with at least one of those spaces wheelchair-accessible;

(6) have a secure area for storage of ballots or storage of a ballot on demand printing system; and

(7) be in a location that is accessible and compliant with the requirements of the federal Americans with Disabilities Act of 1990.

E. When voting early, the voter shall provide the required voter identification to the county clerk or the clerk's authorized representative. If the voter does not provide the required voter identification, the voter shall be allowed to vote on a provisional ballot. If the voter provides the required identification, the voter shall be allowed to vote after subscribing an application to vote in accordance with secretary of state rules. The county clerk or the clerk's authorized representative shall make an appropriate designation on the signature roster next to the voter's name indicating that the voter has voted early."

Chapter 251 Section 9 Laws 2009

Section 9. Section 1-6-6 NMSA 1978 (being Laws 1969, Chapter 240, Section 132, as amended by Laws 2003, Chapter 356, Section 21 and by Laws 2003, Chapter 357, Section 3) is amended to read:

"1-6-6. ABSENTEE BALLOT REGISTER.--

A. For each election, the county clerk shall keep an "absentee ballot register", in which the county clerk shall enter:

- (1) the name and address of each absentee ballot applicant;
- (2) the date and time of receipt of the application;
- (3) whether the application was accepted or rejected;
- (4) the date of issue of an absentee ballot in the county clerk's office or at an alternate location or the mailing of an absentee ballot to the applicant;
- (5) the applicant's precinct;
- (6) whether the applicant is a voter, a federal qualified elector or an overseas voter;
- (7) whether the voter is required to submit identification pursuant to Section 1-6-5 NMSA 1978; and
- (8) the date and time the completed absentee ballot was received from the applicant by the county clerk or the absent voter voted early in person in the county clerk's office or at an alternate location.

B. Absentee ballots shall be sent to applicants beginning twenty-eight days before the election. For each application for an absentee ballot received twenty-three or more days before the election, the county clerk shall send either the ballot or a notice of rejection to the applicant as soon as practicable, provided it is sent not later than twenty-two days before the election. Within twenty-two days of election day, the county clerk shall send either the ballot or a notice of rejection to the applicant within twenty-four hours after receipt of the voter's application for an absentee ballot.

C. The absentee ballot register is a public record open to public inspection in the county clerk's office during regular office hours. The county clerk shall have an updated absentee ballot register available for public inspection Monday through Friday during regular office hours.

D. The county clerk shall deliver to the absent voter precinct on election day a complete list of all absentee ballot applicants and early voters with applicable information shown in the absentee ballot register for each applicant and early voter up to 6:00 p.m. on the Saturday preceding the election. The county clerk shall deliver a signature roster containing the same information as the lists to the absent voter precinct board.

E. Upon request, the county clerk shall transmit to the county chair of each of the major political parties in the county a complete copy of entries made in the

absentee ballot register. Such transmissions shall be made once each week beginning four weeks immediately prior to the election. A final copy shall be transmitted on the Saturday immediately following the election.

F. If the county clerk has available the technology to do so, at the request of a candidate or chair of a political party of the county, the county clerk shall electronically transmit to the candidate or chair via the internet the information, when updated, on the absentee ballot register indicating voters who have requested absentee ballots, returned their absentee ballots or voted early in person."

Chapter 251 Section 10 Laws 2009

Section 10. Section 1-6-9 NMSA 1978 (being Laws 1969, Chapter 240, Section 135, as amended) is amended to read:

"1-6-9. MANNER OF VOTING--ALTERNATE DELIVERY METHODS.--

A. Except as provided in Subsection B of this section or Section 1-6-5.7 NMSA 1978, a person voting pursuant to the Absent Voter Act shall secretly mark the absentee ballot in the manner provided in the Election Code for marking paper ballots, place it in the official inner envelope and securely seal the envelope. The voter shall then place the official inner envelope inside the official mailing envelope and securely seal the envelope. The voter shall then complete the form on the reverse of the official mailing envelope, which shall include a statement by the voter under penalty of perjury that the facts stated in the form are true and the voter's name, registration address and year of birth. Voters shall either deliver or mail the official mailing envelope to the county clerk of their county of residence.

B. Federal qualified electors and overseas voters shall either deliver or mail the official mailing envelope or, in accordance with Subsection C of this section, electronically transmit the absentee ballot to the county clerk of their county of residence or deliver it to a person designated by federal authority to receive executed ballots for transmission to the county clerk of the county of residence or former residence as the case may be.

C. A federal qualified elector or overseas voter may return an absentee ballot by electronic transmission if:

(1) the voter signs a statement under penalty of perjury waiving the right of secrecy of the voter's ballot;

(2) the voter transmits the statement with the absentee ballot; and

(3) the transmission of the absentee ballot and statement are received by the county clerk no later than 7:00 p.m. on election day."

Chapter 251 Section 11 Laws 2009

Section 11. Section 1-6-14 NMSA 1978 (being Laws 1971, Chapter 317, Section 11, as amended) is amended to read:

"1-6-14. HANDLING ABSENTEE BALLOTS BY ABSENT VOTER PRECINCT BOARDS.--

A. Before opening an official mailing envelope, the presiding judge and the election judges shall determine that the required information has been completed on the reverse side of the official mailing envelope.

B. If the voter's signature is missing, the presiding judge shall write "Rejected" on the front of the official mailing envelope. The election clerks shall enter the voter's name in the signature rosters and shall write the notation "Rejected--Missing Signature" in the "Notations" column of the signature rosters. The presiding judge shall place the official mailing envelope unopened in an envelope provided for rejected ballots, seal the envelope and write the voter's name on the front of the envelope and deposit it in the locked ballot box.

C. A lawfully appointed challenger may examine the official mailing envelope and may challenge the ballot of any absent voter for the following reasons:

(1) the official mailing envelope has been opened prior to being received by the absent voter precinct board; or

(2) the person offering to vote is not a federal voter, federal qualified elector, overseas voter or voter as provided in the Election Code.

Upon the challenge of an absentee ballot, the election judges and the presiding election judge shall follow the same procedure as when ballots are challenged when a person attempts to vote in person. If a challenge is upheld, the official mailing envelope shall not be opened but shall be placed in an envelope provided for challenged ballots. The same procedure shall be followed in canvassing and determining the validity of challenged absentee ballots as with other challenged ballots.

D. If the official mailing envelope has been properly subscribed and the voter has not been challenged:

(1) the election clerks shall enter the absent voter's name and residence address as shown on the official mailing envelope in the signature rosters and shall mark the notation "AB" opposite the voter's name in the "Notations" column of the signature rosters; and

(2) only between 8:00 a.m. and 10:00 p.m. on the five days preceding election day, including Saturday and Sunday, and beginning at 7:00 a.m. on

election day, under the personal supervision of the presiding election judge, shall the election judges open the official mailing envelope and the official inner envelope and insert the enclosed ballot into an electronic voting machine to be registered and retained until votes are counted and canvassed following the closing of the polls on election night.

E. It is unlawful for a person to disclose the results of a count and tally or the registration on a voting machine of absentee ballots prior to the closing of the polls.

F. Absentee ballots shall be counted and tallied on an electronic voting machine as provided in the Election Code.

G. Absent voter precinct polls shall close in accordance with Section 1-6-23 NMSA 1978, and the results of the election shall be certified as prescribed by the secretary of state.

H. If an absentee ballot does not contain the identification required pursuant to Subsection D of Section 1-6-5 NMSA 1978, it shall be handled as a provisional paper ballot in accordance with the Election Code."

Chapter 251 Section 12 Laws 2009

Section 12. Section 1-12-18 NMSA 1978 (being Laws 1969, Chapter 240, Section 270) is amended to read:

"1-12-18. CONDUCT OF ELECTION--DISCLOSURE OF VOTE.--An election official, a member of the precinct board, a watcher or a challenger shall not disclose the name of any candidate for whom any voter has voted."

Chapter 251 Section 13 Laws 2009

Section 13. REPEAL.--Section 1-6-7 NMSA 1978 (being Laws 1969, Chapter 240, Section 133, as amended) is repealed.

SFL/SRC/Senate Bill 685, House Bill 42, House Bill 487 and HVEC/House Bill 91

Approved April 7, 2009

LAWS 2009, CHAPTER 252

AN ACT

RELATING TO THE NEW MEXICO OCCUPATIONAL DISEASE DISABLEMENT LAW;
REQUIRING CERTAIN DISEASES AND INJURIES TO BE PRESUMED TO BE
CAUSED BY EMPLOYMENT FOR CERTAIN FIREFIGHTERS;

PROVIDING EXCEPTIONS; ESTABLISHING BURDEN OF PROOF FOR DEFENSES;
REQUIRING WORKERS' COMPENSATION REIMBURSEMENT IN CERTAIN
SITUATIONS.

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

Chapter 252 Section 1 Laws 2009

Section 1. A new section of the New Mexico Occupational Disease Disablement Law is enacted to read:

"FIREFIGHTER OCCUPATIONAL DISEASE.--

A. As used in this section, "firefighter" means a person who is employed as a full-time non-volunteer firefighter by the state or a local government entity and who has taken the oath prescribed for firefighters.

B. If a firefighter is diagnosed with one or more of the following diseases after the period of employment indicated, which disease was not revealed during an initial employment medical screening examination or during a subsequent medical review pursuant to the Occupational Health and Safety Act and rules promulgated pursuant to that act, the disease is presumed to be proximately caused by employment as a firefighter:

- (1) brain cancer after ten years;
- (2) bladder cancer after twelve years;
- (3) kidney cancer after fifteen years;
- (4) colorectal cancer after ten years;
- (5) non-Hodgkin's lymphoma after fifteen years;
- (6) leukemia after five years;
- (7) ureter cancer after twelve years;
- (8) testicular cancer after five years if diagnosed before the age of forty with no evidence of anabolic steroids or human growth hormone use;

(9) breast cancer after five years if diagnosed before the age of forty without a breast cancer 1 or breast cancer 2 genetic predisposition to breast cancer;

(10) esophageal cancer after ten years;

(11) multiple myeloma after fifteen years; and

(12) hepatitis, tuberculosis, diphtheria, meningococcal disease and methicillin-resistant staphylococcus aureus appearing and diagnosed after entry into employment.

C. The presumptions created in Subsection B and D of this section may be rebutted by a preponderance of evidence in a court of competent jurisdiction showing that the firefighter engaged in conduct or activities outside of employment that posed a significant risk of contracting or developing a described disease.

D. If a firefighter is diagnosed with a heart injury or stroke suffered within twenty-four hours of fighting a fire, while responding to an alarm, while returning from an alarm call, while engaging in supervised physical training or while responding to or performing in a non-fire emergency, the heart injury or stroke is presumed to be proximately caused by employment as a firefighter. The presumption created in this subsection shall not be made if the firefighter's employer does not have a current physical training program and the firefighter does not have a current medical screening examination or review pursuant to the Occupational Health and Safety Act and rules promulgated pursuant to that act allowing participation in that program.

E. When any presumptions created in this section do not apply, it shall not preclude a firefighter from demonstrating a causal connection between employment and disease or injury by a preponderance of evidence in a court of competent jurisdiction.

F. Medical treatment based on the presumptions created in this section shall be provided by an employer as for a job-related illness or injury unless and until a court of competent jurisdiction determines that the presumption does not apply. If the court determines that the presumption does not apply or that the illness or injury is not job related, the employer's workers' compensation insurance provider shall be reimbursed for health care costs by the medical or health insurance plan or benefit provided for the firefighter by the employer."

Chapter 252 Section 2 Laws 2009

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2010.

Senate Bill 303, aa, w/cc

Approved April 8, 2009

LAWS 2009, CHAPTER 253

AN ACT

RELATING TO CRIMINAL LAW; PROVIDING ADDITIONAL PENALTIES FOR UNLAWFUL TAKING OF A VEHICLE OR MOTOR VEHICLE; CREATING NEW CRIMINAL OFFENSES OF EMBEZZLEMENT OF A VEHICLE OR MOTOR VEHICLE AND FRAUDULENTLY OBTAINING A VEHICLE OR MOTOR VEHICLE; INCLUDING OFFENSES RELATING TO MOTOR VEHICLES IN THE CRIMINAL OFFENSE OF RACKETEERING; AMENDING AND ENACTING SECTIONS OF THE CRIMINAL CODE; AMENDING AND RECOMPILING SECTIONS OF THE MOTOR VEHICLE CODE.

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

Chapter 253 Section 1 Laws 2009

Section 1. Section 66-3-504 NMSA 1978 (being Laws 1978, Chapter 35, Section 91, as amended) is recompiled as Section 30-16D-1 NMSA 1978 and is amended to read:

"30-16D-1. UNLAWFUL TAKING OF A VEHICLE OR MOTOR VEHICLE.--

A. Unlawful taking of a vehicle or motor vehicle consists of a person taking any vehicle or motor vehicle as defined by the Motor Vehicle Code intentionally and without consent of the owner. Whoever commits unlawful taking of a vehicle or motor vehicle is guilty of a:

- (1) fourth degree felony for a first offense;
- (2) third degree felony for a second offense; and
- (3) second degree felony for a third or subsequent offense.

B. The consent of the owner of the vehicle or motor vehicle to its taking shall not in any case be presumed or implied because of the owner's consent on a previous occasion to the taking of the vehicle or motor vehicle by the same or a different person.

C. Nothing in this section shall be construed to prohibit the holder of a lien duly recorded with the motor vehicle division of the taxation and revenue department from taking possession of a vehicle to which possession the lienholder is legally entitled

under the provisions of the instrument evidencing the lien. A holder of a duly recorded lien who takes possession of a vehicle without the knowledge of the owner of the vehicle shall immediately notify the local police authority of the fact that the holder has taken possession of the vehicle."

Chapter 253 Section 2 Laws 2009

Section 2. A new Section 30-16D-2 NMSA 1978 is enacted to read:

"30-16D-2. EMBEZZLEMENT OF A VEHICLE OR MOTOR VEHICLE.--

A. Embezzlement of a vehicle or motor vehicle consists of a person embezzling or converting to the person's own use a vehicle or motor vehicle as defined by the Motor Vehicle Code, with which the person has been entrusted, with the fraudulent intent to deprive the owner of the vehicle or motor vehicle.

B. Whoever commits embezzlement of a vehicle or motor vehicle is guilty of a:

- (1) fourth degree felony for a first offense;
- (2) third degree felony for a second offense; and
- (3) second degree felony for a third or subsequent offense."

Chapter 253 Section 3 Laws 2009

Section 3. A new Section 30-16D-3 NMSA 1978 is enacted to read:

"30-16D-3. FRAUDULENTLY OBTAINING A VEHICLE OR MOTOR VEHICLE.--

A. Fraudulently obtaining a vehicle or motor vehicle consists of a person intentionally misappropriating or taking a vehicle or motor vehicle as defined by the Motor Vehicle Code that belongs to another person by means of fraudulent conduct, practices or representations.

B. Whoever commits fraudulently obtaining a vehicle or motor vehicle is guilty of a:

- (1) fourth degree felony for a first offense;
- (2) third degree felony for a second offense; and
- (3) second degree felony for a third or subsequent offense."

Chapter 253 Section 4 Laws 2009

Section 4. Section 66-3-505 NMSA 1978 (being Laws 1978, Chapter 35, Section 92) is recompiled as Section 30-16D-4 NMSA 1978 and is amended to read:

"30-16D-4. RECEIVING OR TRANSFERRING STOLEN VEHICLES OR MOTOR VEHICLES.--

A. Receiving or transferring a stolen vehicle or motor vehicle consists of a person who, with intent to procure or pass title to a vehicle or motor vehicle as defined by the Motor Vehicle Code that the person knows or has reason to believe has been stolen or unlawfully taken, receives or transfers possession of the vehicle or motor vehicle from or to another or who has in the person's possession any vehicle that the person knows or has reason to believe has been stolen or unlawfully taken. This section shall not apply to an officer of the law engaged at the time in the performance of the officer's duty as an officer.

B. Whoever commits receiving or transferring a stolen vehicle or motor vehicle is guilty of a:

- (1) fourth degree felony for a first offense;
- (2) third degree felony for a second offense; and
- (3) second degree felony for a third or subsequent offense."

Chapter 253 Section 5 Laws 2009

Section 5. Section 66-3-506 NMSA 1978 (being Laws 1978, Chapter 35, Section 93) is recompiled as Section 30-16D-5 NMSA 1978 and is amended to read:

"30-16D-5. INJURING OR TAMPERING WITH A MOTOR VEHICLE.--

A. Injuring or tampering with a motor vehicle consists of a person, individually or in association with another person:

- (1) purposely and without authority from the owner starting or causing to be started the engine of any motor vehicle;
- (2) purposely and maliciously shifting or changing the starting device or gears of a standing motor vehicle to a position other than that in which they were left by the owner or driver of the motor vehicle;
- (3) purposely scratching or damaging the chassis, running gear, body, sides, top covering or upholstery of a motor vehicle that is the property of another;

(4) purposely destroying any part of a motor vehicle or purposely cutting, mashing or marking or in any other way destroying or damaging any part, attachment, fastening or appurtenance of a motor vehicle without the permission of the owner;

(5) purposely draining or starting the drainage of any radiator, oil tank or gas tank upon a motor vehicle without the permission of the owner;

(6) purposely putting any metallic or other substance or liquid in the radiator, carburetor, oil tank, grease cup, oilers, lamps, gas tanks or machinery of the motor vehicle with the intent to injure or damage or impede the working of the machinery of the motor vehicle;

(7) maliciously tightening or loosening any bracket, bolt, wire, nut, screw or other fastening on a motor vehicle; or

(8) purposely releasing the brake upon a standing motor vehicle with the intent to injure the motor vehicle.

B. Whoever commits injuring or tampering with a motor vehicle is guilty of a misdemeanor.

C. As used in this section, "motor vehicle" means a motor vehicle as defined by the Motor Vehicle Code."

Chapter 253 Section 6 Laws 2009

Section 6. Section 66-3-508 NMSA 1978 (being Laws 1978, Chapter 35, Section 95) is recompiled as Section 30-16D-6 NMSA 1978 and is amended to read:

"30-16D-6. ALTERING OR CHANGING ENGINE OR OTHER NUMBERS.--

A. No person shall, with fraudulent intent, deface, remove, cover, destroy or alter the manufacturer's serial number, engine number, decal or other distinguishing number or identification mark or number placed under assignment of the motor vehicle division of the taxation and revenue department of a vehicle required to be registered under the Motor Vehicle Code or any vehicle, motor vehicle or motor vehicle engine or component as defined by the Motor Vehicle Code for which a dismantler's notification form has been processed through the division, nor shall any person place or stamp any serial, engine, decal or other number or mark upon the vehicle except one assigned by the division. Any violation of this section is a fourth degree felony.

B. This section shall not prohibit the restoration by an owner of an original serial, engine, decal or other number or mark when the restoration is made under permit issued by the division nor prevent any manufacturer from placing, in the ordinary course of business, numbers, decals or marks upon vehicles or parts thereof."

Chapter 253 Section 7 Laws 2009

Section 7. Section 30-42-3 NMSA 1978 (being Laws 1980, Chapter 40, Section 3, as amended) is amended to read:

"30-42-3. DEFINITIONS.--As used in the Racketeering Act:

A. "racketeering" means any act that is chargeable or indictable under the laws of New Mexico and punishable by imprisonment for more than one year, involving any of the following cited offenses:

- (1) murder, as provided in Section 30-2-1 NMSA 1978;
- (2) robbery, as provided in Section 30-16-2 NMSA 1978;
- (3) kidnapping, as provided in Section 30-4-1 NMSA 1978;
- (4) forgery, as provided in Section 30-16-10 NMSA 1978;
- (5) larceny, as provided in Section 30-16-1 NMSA 1978;
- (6) fraud, as provided in Section 30-16-6 NMSA 1978;
- (7) embezzlement, as provided in Section 30-16-8 NMSA 1978;
- (8) receiving stolen property, as provided in Section 30-16-11
NMSA 1978;
- (9) bribery, as provided in Sections 30-24-1 through 30-24-3.1
NMSA 1978;
- (10) gambling, as provided in Sections 30-19-3, 30-19-13 and 30-
19-15 NMSA 1978;
- (11) illegal kickbacks, as provided in Sections 30-41-1 and 30-41-2
NMSA 1978;
- (12) extortion, as provided in Section 30-16-9 NMSA 1978;
- (13) trafficking in controlled substances, as provided in Section 30-
31-20 NMSA 1978;
- (14) arson and aggravated arson, as provided in Subsection A of
Section 30-17-5 and Section 30-17-6 NMSA 1978;

1978; (15) promoting prostitution, as provided in Section 30-9-4 NMSA

1978; (16) criminal solicitation, as provided in Section 30-28-3 NMSA

(17) fraudulent securities practices, as provided in the New Mexico Securities Act of 1986;

(18) loan sharking, as provided in Sections 30-43-1 through 30-43-5 NMSA 1978;

(19) distribution of controlled substances or controlled substance analogues, as provided in Sections 30-31-21 and 30-31-22 NMSA 1978;

(20) a violation of the provisions of Section 30-51-4 NMSA 1978;

(21) unlawful taking of a vehicle or motor vehicle, as provided in Section 30-16D-1 NMSA 1978;

(22) embezzlement of a vehicle or motor vehicle, as provided in Section 30-16D-2 NMSA 1978;

(23) fraudulently obtaining a vehicle or motor vehicle, as provided in Section 30-16D-3 NMSA 1978;

(24) receiving or transferring stolen vehicles or motor vehicles, as provided in Section 30-16D-4 NMSA 1978; and

(25) altering or changing the serial number, engine number, decal or other numbers or marks of a vehicle or motor vehicle, as provided in Section 30-16D-6 NMSA 1978;

B. "person" means an individual or entity capable of holding a legal or beneficial interest in property;

C. "enterprise" means a sole proprietorship, partnership, corporation, business, labor union, association or other legal entity or a group of individuals associated in fact although not a legal entity and includes illicit as well as licit entities; and

D. "pattern of racketeering activity" means engaging in at least two incidents of racketeering with the intent of accomplishing any of the prohibited activities set forth in Subsections A through D of Section 30-42-4 NMSA 1978; provided at least one of the incidents occurred after February 28, 1980 and the last incident occurred within five years after the commission of a prior incident of racketeering."

Chapter 253 Section 8 Laws 2009

Section 8. Section 66-3-501 NMSA 1978 (being Laws 1978, Chapter 35, Section 88, as amended) is amended to read:

"66-3-501. REPORT OF STOLEN AND RECOVERED VEHICLES OR MOTOR VEHICLES.--

A. Every sheriff, chief of police or peace officer upon receiving reliable information that any vehicle or motor vehicle has been stolen shall immediately, but in no case later than one week after receiving the information, report the theft to the New Mexico state police or other appropriate law enforcement agency unless, prior thereto, information has been received of the recovery of the vehicle or motor vehicle. Any officer, upon receiving information that any vehicle or motor vehicle that the officer has previously reported as stolen has been recovered, shall immediately report the fact of recovery to the local sheriff's office or police department and to the New Mexico state police.

B. The requirement that the theft or recovery of a vehicle or motor vehicle be reported to the New Mexico state police is satisfied if the report is made to the national crime information center."

Chapter 253 Section 9 Laws 2009

Section 9. Section 66-3-502 NMSA 1978 (being Laws 1978, Chapter 35, Section 89) is amended to read:

"66-3-502. REPORTS BY OWNERS OF STOLEN AND RECOVERED VEHICLES OR MOTOR VEHICLES.--

A. The owner or person having a lien or encumbrance upon a vehicle or motor vehicle that has been stolen or embezzled may notify the New Mexico state police or other appropriate law enforcement agency of the theft or embezzlement but, in the event of an embezzlement, may make a report only after having procured the issuance of a warrant for the arrest of the person charged with the embezzlement.

B. Every owner or other person who has given any such notice shall immediately notify the New Mexico state police or the law enforcement agency that took the report of a recovery of the vehicle."

Chapter 253 Section 10 Laws 2009

Section 10. Section 66-3-507 NMSA 1978 (being Laws 1978, Chapter 35, Section 94) is amended to read:

"66-3-507. ALTERED VEHICLE IDENTIFICATION NUMBERS--CONTRABAND.-

A. Any person receiving, disposing of, offering to dispose of or having in the person's possession any vehicle, motor vehicle or motor vehicle engine or component shall make adequate inquiry and inspection to determine that no manufacturer's serial number, engine or component number or other distinguishing number or mark or identification mark or number placed under assignment of the division has been removed, defaced, covered, altered or destroyed.

B. When the inspection of a vehicle, motor vehicle or motor vehicle engine or component by any law enforcement officer indicates that the manufacturer's serial number or decal, engine or component number or other distinguishing number or mark or identification mark or number placed under assignment of the division has been removed, defaced, covered, altered or destroyed, that vehicle, motor vehicle or motor vehicle engine or component may be impounded for a period of time not to exceed ninety-six hours unless part of that time falls upon a Saturday, Sunday or a legal holiday, in which case the vehicle, motor vehicle or motor vehicle engine or component may be impounded for a period of time not to exceed six days. At the expiration of the stated time period, the vehicle, motor vehicle or motor vehicle engine or component shall be returned to the person from whom it was taken at no cost unless an ex parte order allowing continued impoundment is issued by a magistrate or district court judge after finding that probable cause exists to believe that the manufacturer's serial number, engine or component number or other distinguishing number or mark or identification mark or number placed under assignment of the division has been removed, defaced, covered, altered or destroyed. Within ten days of the issuance of the order, the law enforcement agency shall cause to have the matter of the vehicle, motor vehicle or motor vehicle engine or component brought before a district court by filing in that court a petition requesting that the vehicle or item be declared contraband unless the court grants an extension of time for the filing based on some reasonable requirement for extension of the filing by the law enforcement agency. If at the time of the hearing on that petition the court finds that the manufacturer's serial number, engine or component number or other distinguishing number or mark or identification mark or number placed under assignment of the division has been removed, defaced, covered, altered or destroyed, the court shall declare the vehicle, motor vehicle or motor vehicle engine or component to be contraband unless one of the exceptions enumerated in this section applies. At the time the vehicle, motor vehicle or motor vehicle engine or component is declared to be contraband, the court shall order that it be disposed of according to Subsection D of this section. Any vehicle, motor vehicle or motor vehicle engine or component in such condition shall not be subject to replevin except by an owner who can trace the owner's ownership of that vehicle, motor vehicle or motor vehicle engine or component from the manufacturer by furnishing the court records indicating the identity of all intermediate owners. The law enforcement agency seizing the vehicle, motor vehicle or motor vehicle engine or component shall provide the person from whom it was taken a receipt for the vehicle, motor vehicle or motor vehicle engine or component.

C. The vehicle, motor vehicle or motor vehicle engine or component shall not be considered contraband when:

(1) it has been determined that the vehicle, motor vehicle or motor vehicle engine or component has been reported as stolen;

(2) the vehicle, motor vehicle or motor vehicle engine or component is recovered in the condition described in Subsection B of this section;

(3) it clearly appears that the true owner is not responsible for the altering, concealing, defacing or destroying of the vehicle, motor vehicle or motor vehicle engine or component;

(4) the true owner obtains an assigned number issued by the division for the vehicle, motor vehicle or motor vehicle engine or component;

(5) the new assigned numbers have been issued for and placed upon the vehicle, motor vehicle or motor vehicle engine or component by the division utilizing a unique numbering system for that purpose; or

(6) a person licensed under the provisions of Sections 66-4-1 through 66-4-9 NMSA 1978, when in the course of the person's business and consistent with the provisions of Section 30-16D-6 NMSA 1978 and the rules and regulations promulgated by the division, removes, defaces, covers, alters or destroys the manufacturer's serial or engine or component number or other distinguishing number or identification mark or number placed under assignment of the division of a vehicle required to be registered under the Motor Vehicle Code.

D. If it is impossible to locate a true owner who meets the provisions of Subsection C of this section to claim the vehicle, motor vehicle or motor vehicle engine or component, it may be retained as long as it is used for police purposes, after which time, or if not suitable for police use, it shall be destroyed."

Chapter 253 Section 11 Laws 2009

Section 11. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.

SJC/Senate Bill 26, aa

Approved April 8, 2009

LAWS 2009, CHAPTER 254

AN ACT

RELATING TO DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; REQUIRING A MINIMUM OF SIX MONTHS OF DRIVING WITH AN IGNITION INTERLOCK DEVICE BEFORE REINSTATEMENT OF A DRIVER'S LICENSE; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2007.

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

Chapter 254 Section 1 Laws 2009

Section 1. Section 66-5-33.1 NMSA 1978 (being Laws 1985, Chapter 47, Section 1, as amended) is amended to read:

"66-5-33.1. REINSTATEMENT OF DRIVER'S LICENSE OR REGISTRATION--
IGNITION INTERLOCK--FEE.--

A. Whenever a driver's license or registration is suspended or revoked and an application has been made for its reinstatement, compliance with all appropriate provisions of the Motor Vehicle Code and the payment of a fee of twenty-five dollars (\$25.00) is a prerequisite to the reinstatement of any license or registration.

B. If a driver's license was revoked for driving while under the influence of intoxicating liquor or drugs, for aggravated driving while under the influence of intoxicating liquor or drugs or pursuant to the Implied Consent Act, the following are required to reinstate the driver's license:

- (1) an additional fee of seventy-five dollars (\$75.00);
- (2) completion of the license revocation period;
- (3) satisfaction of any court-ordered ignition interlock requirements;

and

(4) a minimum of six months of driving with an ignition interlock license with no attempts to circumvent or tamper with the ignition interlock device.

C. The department may reinstate the driving privileges of an out-of-state resident without the requirement that the person obtain an ignition interlock license for a minimum of six months, if the following conditions are met:

- (1) the license revocation period is completed;
- (2) satisfactory proof is presented to the department that the person is no longer a resident of New Mexico; and

(3) the license reinstatement fee is paid.

D. Fees collected pursuant to Subsection B of this section are appropriated to the local governments road fund. The department shall maintain an accounting of the fees collected and shall report that amount upon request to the legislature."

Chapter 254 Section 2 Laws 2009

Section 2. Section 66-5-503 NMSA 1978 (being Laws 2003, Chapter 239, Section 3, as amended) is amended to read:

"66-5-503. IGNITION INTERLOCK LICENSE--REQUIREMENTS--EXCLUSIONS.--

A. A person whose driving privilege or driver's license has been revoked or denied or who has not met the ignition interlock license requirement as a condition of reinstatement pursuant to Section 66-5-33.1 NMSA 1978 may apply for an ignition interlock license from the division.

B. An applicant for an ignition interlock license shall:

(1) provide proof of installation of the ignition interlock device by a traffic safety bureau-approved ignition interlock installer on any vehicle the applicant drives; and

(2) sign an affidavit acknowledging that:

(a) operation by the applicant of any vehicle that is not equipped with an ignition interlock device is subject to penalties for driving with a revoked license;

(b) tampering or interfering with the proper and intended operation of an ignition interlock device may subject the applicant to penalties for driving with a license that was revoked for driving under the influence of intoxicating liquor or drugs or a violation of the Implied Consent Act; and

(c) the applicant shall maintain the ignition interlock device and keep up-to-date records in the motor vehicle showing required service and calibrations and be able to provide the records upon request.

C. A person who has been convicted of homicide by vehicle or great bodily injury by vehicle while under the influence of intoxicating liquor or drugs, as provided in Section 66-8-101 NMSA 1978, shall not be issued an ignition interlock license."

Chapter 254 Section 3 Laws 2009

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.

SJC/Senate Bill 275, aa

Approved April 8, 2009

LAWS 2009, CHAPTER 255

AN ACT

RELATING TO DOMESTIC ABUSE; PROHIBITING CRIMINAL DAMAGE TO THE PROPERTY OF A HOUSEHOLD MEMBER WITH THE INTENT TO INTIMIDATE, THREATEN OR HARASS; PROHIBITING DEPRIVATION OF PROPERTY; PROVIDING PENALTIES; ENACTING A NEW SECTION OF THE CRIMINAL CODE.

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

Chapter 255 Section 1 Laws 2009

Section 1. Section 30-3-10 NMSA 1978 (being Laws 1995, Chapter 221, Section 1) is amended to read:

"30-3-10. SHORT TITLE.--Sections 30-3-10 through 30-3-18 NMSA 1978 may be cited as the "Crimes Against Household Members Act"."

Chapter 255 Section 2 Laws 2009

Section 2. A new section of the Crimes Against Household Members Act, Section 30-3-18 NMSA 1978, is enacted to read:

"30-3-18. CRIMINAL DAMAGE TO PROPERTY OF HOUSEHOLD MEMBER--DEPRIVATION OF PROPERTY OF HOUSEHOLD MEMBER.--

A. Criminal damage to the property of a household member consists of intentionally damaging real, personal, community or jointly owned property of a household member with the intent to intimidate, threaten or harass that household member.

B. Whoever commits criminal damage to the property of a household member is guilty of a misdemeanor, except that when the damage to the household

member's interest in the property amounts to more than one thousand dollars (\$1,000), the offender is guilty of a fourth degree felony.

C. Deprivation of the property of a household member consists of intentionally depriving a household member of the use of separate, community or jointly owned personal property of the household member with the intent to intimidate or threaten that household member.

D. Whoever commits deprivation of the property of a household member is guilty of a misdemeanor."

Senate Bill 4, aa

Approved April 8, 2009

LAWS 2009, CHAPTER 256

AN ACT

RELATING TO PUBLIC SCHOOLS; ALLOWING SCHOOL DISTRICTS TO PROVIDE FOR INDUSTRY-TAUGHT OR -GUIDED PRE-APPRENTICESHIP PROGRAMS FOR QUALIFIED HIGH SCHOOL STUDENTS; PROVIDING FOR APPROVAL OF PRE-APPRENTICESHIP PROGRAMS, PROVIDERS AND INDUSTRY INSTRUCTORS; EXEMPTING INDUSTRY INSTRUCTORS FROM LICENSURE PROVISIONS; PROVIDING POWERS AND DUTIES.

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

Chapter 256 Section 1 Laws 2009

Section 1. Section 22-13-1.1 NMSA 1978 (being Laws 1986, Chapter 33, Section 5, as amended) is amended to read:

"22-13-1.1. GRADUATION REQUIREMENTS.--

A. At the end of grades eight through eleven, each student shall prepare an interim next-step plan that sets forth the coursework for the grades remaining until high school graduation. Each year's plan shall explain any differences from previous interim next-step plans, shall be filed with the principal of the student's high school and shall be signed by the student, the student's parent 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, 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. 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.

G. 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.

H. The department shall establish a procedure for students to be awarded credit through completion of specified career technical education courses for certain graduation requirements.

I. 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;

(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 and government and economics, and one-half unit of New Mexico history;

(5) one unit in physical education;

(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. 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.

J. Final examinations shall be administered to all students in all classes offered for credit.

K. 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.

L. 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 requirement of this subsection, the student may receive a New Mexico diploma of excellence.

M. As used in this section:

(1) "final next-step plan" means a next-step plan that shows that the student has committed or intends to commit in the near future to a four-year college or university, a two-year college, a trade or vocational program, an internship or apprenticeship, military service or a job;

(2) "interim next-step plan" means an annual next-step plan in which the student specifies post-high-school goals and sets forth the coursework that will allow the student to achieve those goals; and

(3) "next-step plan" means an annual personal written plan of studies developed by a student in a public school or other state-supported school or institution in consultation with the student's parent and school counselor or other school official charged with coursework planning for the student 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.

N. The secretary may establish a policy to provide for administrative interpretations to clarify curricular and testing provisions of the Public School Code."

Chapter 256 Section 2 Laws 2009

Section 2. A new section of Chapter 22, Article 14 NMSA 1978 is enacted to read:

"PRE-APPRENTICESHIP PROGRAMS.--

A. As used in this section:

(1) "apprenticeable trade" means a skilled trade that possesses the following characteristics:

(a) it is customarily learned in a practical way through a structured, systematic program of on-the-job supervised training;

(b) it is clearly identified and commonly recognized throughout an industry;

(c) it involves manual, mechanical or technical skills and knowledge that require a minimum of two thousand hours of on-the-job work experience; and

(d) it requires related instruction to supplement on-the-job training;

(2) "apprenticeship" means a formal educational method for training a person in a skilled trade that combines supervised employment with classroom study;

(3) "course of instruction" means an organized and systematic program of study designed to provide the pre-apprentice with knowledge of the theoretical subjects related to one or more specific apprenticeable trades and that meets apprenticeship-related instruction requirements; provided that "course of instruction" may include hands-on training but does not include on-the-job training;

(4) "industry instructor" means a person who is:

(a) working or has worked in an apprenticeable trade for the number of years required by established industry practices of the particular trade to be an industry-recognized expert in the trade; or

(b) a career-technical faculty member at a public post-secondary educational institution;

(5) "local school board" includes the governing body of a charter school;

(6) "pre-apprentice" means a public school student who is enrolled in a pre-apprenticeship program;

(7) "pre-apprenticeship program" means a local school board-approved course of instruction offered through a provider that results, upon satisfactory completion of the program, in a certificate of completion that is acceptable to an apprenticeship training program registered with the apprenticeship council; and

(8) "provider" means a registered apprenticeship program, an employer of an apprenticeable trade, a union, a trade association, a post-secondary educational institution or other person approved by the local school board to provide a pre-apprenticeship program.

B. Any school district or charter school may allow pre-apprenticeship programs to be offered to qualified eleventh and twelfth grade students. The local school board shall only approve providers and pre-apprenticeship programs, including courses of instruction and industry instructors, that meet apprenticeship requirements of the apprenticeship council or the apprenticeship requirements of an appropriate nationally recognized trade organization. Pre-apprenticeship programs shall meet department content and performance standards and shall be provided at no cost to students.

C. A person may apply to the local school board to become a provider by submitting an application in the form prescribed by the local school board. The application shall include:

(1) the pre-apprenticeship program to be offered by the provider, including the course of instruction and the provision of tools, supplies and textbooks that will be provided by the pre-apprenticeship program;

(2) a description of the way in which a pre-apprentice's coursework and program participation will be evaluated and reported as grades to the high school;

(3) a description of the qualifications for pre-apprentices, the way in which students will be recruited and accepted into the pre-apprenticeship program and the circumstances under which a pre-apprentice may be dismissed from the pre-apprenticeship program;

(4) the names and qualifications of the pre-apprenticeship program's industry instructors;

(5) a description of the location where the pre-apprenticeship program will be conducted; and

(6) any other information the local school board deems necessary to determine the fitness of the applicant to deliver a pre-apprenticeship program and the appropriateness of the program in achieving school district or charter school goals.

D. In approving an application, the local school board shall include its approvals of the provider, the pre-apprenticeship program and the industry instructors. If a single applicant proposes to offer more than one pre-apprenticeship program, each program and its industry instructors shall be approved by the local school board.

E. Pre-apprenticeship programs shall be designed so that pre-apprentices may earn elective credits toward high school graduation and meet requirements for apprenticeship-related supplemental instruction or post-secondary education course credits. Pre-apprenticeship programs shall be offered during the school day whenever possible. Programs may be conducted at industry locations, including union halls or

other industry training facilities; at existing school facilities, if available; or at any other location approved by the local school board.

F. To qualify for a pre-apprenticeship program, a student must:

- (1) be at least sixteen years of age;
- (2) be in the eleventh or twelfth grade;
- (3) have at least the number of electives required for the pre-apprenticeship program applied for and commit those electives to the program; and
- (4) meet other requirements of the pre-apprenticeship program approved by the local school board.

G. Once a provider and pre-apprenticeship program have been approved, the provider shall recruit students and accept and retain or dismiss them as provided in the provider's approved application.

H. Once accepted into a pre-apprenticeship program, a student may withdraw only with the approval of the high school principal.

I. If a provider wishes to cease its pre-apprenticeship program, it shall notify the local school board, the superintendent and the principals of the pre-apprentices' high schools. The notification shall include a plan for the continuation of the pre-apprenticeship program of the pre-apprentices currently enrolled in the provider's program."

Chapter 256 Section 3 Laws 2009

Section 3. A new section of Chapter 22, Article 14 NMSA 1978 is enacted to read:

"LICENSURE NOT REQUIRED--BACKGROUND CHECKS--SCHOOL-SPONSORED ACTIVITY AND VOLUNTEERS.--

A. The provisions of the School Personnel Act, including licensure requirements, shall not apply to industry instructors, except that they shall be required to undergo a background check as provided for licensed school employees in Section 22-10A-5 NMSA 1978. The school district or charter school may act on the information received from the background check and refuse to approve a person as an industry instructor. An industry instructor shall provide for the safety of students under the industry instructor's care in the same manner as required of licensed school employees and shall not allow persons who have not been vetted through the background check process to have unsupervised contact with students.

B. For purposes of the public school insurance authority, each pre-apprenticeship program shall be considered a school-sponsored activity and each industry instructor shall be considered a school volunteer."

Senate Bill 46, aa

Approved April 8, 2009

LAWS 2009, CHAPTER 257

AN ACT

RELATING TO LIVESTOCK; PROVIDING FOR THE CONTROL OF FERAL HOGS;
PROVIDING PENALTIES.

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

Chapter 257 Section 1 Laws 2009

Section 1. A new section of The Livestock Code is enacted to read:

"FERAL HOGS--PROHIBITION--PENALTY.--

A. The purpose of this section is to ensure the public health, safety and welfare and to prevent the introduction or spread of disease to New Mexico's livestock and wildlife.

B. No person shall import into the state, transport within the state, hold for breeding, release or sell a live feral hog or operate a commercial feral hog hunting enterprise.

C. Any person who violates this section 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 a definite term of less than one year or both.

D. As used in this section, "feral hog" means a pig that exists in an untamed state from domestication."

Senate Bill 504, aa

Approved April 8, 2009

LAWS 2009, CHAPTER 258

AN ACT

RELATING TO PUBLIC SCHOOL FACILITIES; AMENDING THE PUBLIC SCHOOL CAPITAL OUTLAY ACT TO CHANGE CERTAIN CRITERIA FOR GRANTS FOR LEASE PAYMENTS, TO PROVIDE AN OFFSET FOR CERTAIN FEDERAL RECEIPTS, ~~[TO ALLOW FOR ADJUSTMENTS FOR CERTAIN SCHOOL FACILITIES IN REMOTE RURAL AREAS,]~~ TO FUND ~~[IMPROVEMENTS TO ATHLETIC FIELDS IN RURAL AREAS AND]~~ NECESSARY ROOF REPAIRS AND REPLACEMENTS AND TO LIMIT ANNUAL EXPENDITURES FOR CERTAIN OPERATING COSTS; REVISING THE STANDARDS REQUIRED FOR CHARTER SCHOOL FACILITIES; AMENDING THE PUBLIC SCHOOL CAPITAL IMPROVEMENTS ACT TO REQUIRE CERTAIN DISTRIBUTIONS TO CHARTER SCHOOLS AND TO EXPAND THE DEFINITION OF "CAPITAL IMPROVEMENTS"; MAKING APPROPRIATIONS; DECLARING AN EMERGENCY. *LINE-ITEM VETO*

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

Chapter 258 Section 1 Laws 2009

Section 1. Section 22-8B-4.2 NMSA 1978 (being Laws 2005, Chapter 221, Section 3 and Laws 2005, Chapter 274, Section 2, as amended) is amended to read:

"22-8B-4.2. CHARTER SCHOOL FACILITIES--STANDARDS.--

A. The facilities of a charter school that is approved on or after July 1, 2005 and before July 1, 2015 shall meet educational occupancy standards required by applicable New Mexico construction codes.

B. The facilities of a charter school whose charter has been renewed at least once shall be evaluated, prioritized and eligible for grants pursuant to the Public School Capital Outlay Act in the same manner as all other public schools in the state; provided that for charter school facilities in leased facilities, grants may be used to provide additional lease payments for leasehold improvements made by the lessor.

C. On or after July 1, 2015, a new charter school shall not open and an existing charter shall not be renewed unless the charter school:

(1) is housed in a building that is:

(a) owned by the charter school, the school district, the state, an institution of the state, another political subdivision of the state, the federal government or one of its agencies or a tribal government; or

(b) subject to a lease purchase arrangement that has been entered into and approved pursuant to the Public School Lease Purchase Act; or

(2) if it is not housed in a building described in Paragraph (1) of this subsection, demonstrates that:

(a) the facility in which the charter school is housed meets the statewide adequacy standards developed pursuant to the Public School Capital Outlay Act and the owner of the facility is contractually obligated to maintain those standards at no additional cost to the charter school or the state; and

(b) either: 1) public buildings are not available or adequate for the educational program of the charter school; or 2) the owner of the facility is a nonprofit entity specifically organized for the purpose of providing the facility for the charter school.

D. The public school capital outlay council:

(1) shall determine whether facilities of a charter school meet the educational occupancy standards pursuant to the requirements of Subsection A of this section or the requirements of Subsections B and C of this section, as applicable; and

(2) upon a determination that specific requirements are not appropriate or reasonable for a charter school, may grant a variance from those requirements for that charter school."

Chapter 258 Section 2 Laws 2009

Section 2. 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 L 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 and custody to the portable classrooms shall rest in the public school facilities authority. The council shall authorize the lending of the portable classrooms to school districts upon request and upon finding that sufficient need exists. Application for use or return of

state-owned portable classroom buildings shall be submitted by school districts to the council. Expenses of maintenance of the portable classrooms while in the custody of the public school facilities authority shall be paid from the fund; expenses of maintenance and insurance of the portable classrooms while in the custody of a school district shall be the responsibility of the school district. The council may authorize the permanent disposition of the portable classrooms by the public school facilities authority with prior approval of the state board of finance.

D. Applications for assistance from the fund shall be made by school districts to the council in accordance with requirements of the council. 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. Up to ten million dollars (\$10,000,000) of the fund may be allocated by the council for expenditure in fiscal years 2010 through 2012 for a roof repair and replacement initiative with projects to be identified by the council pursuant to Section 22-24-4.3 NMSA 1978; provided that money allocated pursuant to this subsection shall be expended within two 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 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 authority shall enter into contracts with the state fire marshal, the construction industries division or the appropriate local authorities to carry out the provisions of this subsection. 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.

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 two million dollars (\$2,000,000) of the fund may be allocated by the council for expenditure in fiscal years 2009 through 2011 for lights and bleachers for certain rural high school athletic fields pursuant to Section 22-24-4.5 NMSA 1978.]~~ *LINE-ITEM VETO*

Chapter 258 Section 3 Laws 2009

Section 3. Section 22-24-4.3 NMSA 1978 (being Laws 2005, Chapter 274, Section 6) is amended to read:

~~"22-24-4.3. ROOF REPAIR AND REPLACEMENT INITIATIVE.--~~

~~A. The council shall develop guidelines for a roof repair and replacement initiative pursuant to the provisions of this section.~~

~~B. A school district, desiring a grant award pursuant to this section, shall submit an application to the council. The application shall include an assessment of the roofs on district school buildings that, in the opinion of the school district, create a threat of significant property damage.~~

~~C. The public school facilities authority shall verify the assessment made by the school district and rank the application with similar applications pursuant to a methodology adopted by the council.~~

~~D. After a public hearing and to the extent that money is available in the fund for such purposes, the council shall approve roof repair or replacement projects on the established priority basis; provided that no project shall be approved unless the council determines that the school district is willing and able to pay the portion of the total cost of the project that is not funded with grant assistance from the fund. In order to pay its portion of the total project cost, a school district may use state distributions made to the school district pursuant to the Public School Capital Improvements Act or, if within the scope of the authorizing resolution, proceeds of the property tax imposed pursuant to that act.~~

~~E. The state share of the cost of an approved roof repair or replacement project shall be calculated pursuant to the methodology in Paragraph (5) of Subsection B of Section 22-24-5 NMSA 1978.~~

~~F. A grant made pursuant to this section shall be expended by the school district within two years of the grant allocation."~~

Chapter 258 Section 4 Laws 2009

~~[Section 4. A new section of the Public School Capital Outlay Act, Section 22-24-4.5 NMSA 1978, is enacted to read:~~

~~"22-24-4.5. GRANTS FOR RURAL ATHLETIC FIELD IMPROVEMENTS.--~~

~~A. Pursuant to the provisions of this section, the council shall develop guidelines for awarding grants for lights and bleachers for high school athletic fields that were previously funded pursuant to the Public School Capital Outlay Act.~~

~~B. A school district, desiring a grant award pursuant to this section, shall submit an application to the council, containing all information required by rule of the council.~~

~~C. Pursuant to rules adopted by the council, the public school facilities authority shall evaluate each application and rank the application with similar applications.~~

~~D. After a public hearing and to the extent that money is available in the fund for such purposes, the council shall approve grants on the established priority basis; provided that no project shall be approved unless the council determines that:~~

~~(1) the athletic field was built or acquired as part of a project that was previously funded pursuant to the Public School Capital Outlay Act;~~

~~(2) the athletic field is in a rural area;~~

~~(3) there is no other athletic field with lights and bleachers that is practicably available for use by the high school; and~~

~~(4) the school district is willing and able to pay the portion of the total cost of the project that is not funded with grant assistance from the fund.~~

~~E. The state share of an approved project shall be calculated pursuant to the methodology in Paragraph (5) of Subsection B of Section 22-24-5 NMSA 1978."]LINE-ITEM VETO~~

Chapter 258 Section 5 Laws 2009

Section 5. Section 22-24-5 NMSA 1978 (being Laws 1975, Chapter 235, Section 5, as amended) is amended to read:

"22-24-5. PUBLIC SCHOOL CAPITAL OUTLAY PROJECTS--APPLICATION--GRANT ASSISTANCE.--

A. Applications for grant assistance, approval of applications, prioritization of projects and grant awards shall be conducted pursuant to the provisions of this section.

B. Except as provided in Sections 22-24-4.3, [22-24-4.5,] 22-24-5.4 and 22-24-5.6 NMSA 1978, the following provisions govern grant assistance from the fund for a public school capital outlay project not wholly funded pursuant to Section 22-24-4.1 NMSA 1978: *LINE-ITEM VETO*

(1) all school districts are eligible to apply for funding from the fund, regardless of percentage of indebtedness;

(2) priorities for funding shall be determined by using the statewide adequacy standards developed pursuant to Subsection C of this section; provided that:

(a) the council shall apply the standards to charter schools to the same extent that they are applied to other public schools; and

(b) in an emergency in which the health or safety of students or school personnel is at immediate risk or in which there is a threat of significant property damage, the council may award grant assistance for a project using criteria other than the statewide adequacy standards;

(3) the council shall establish criteria to be used in public school capital outlay projects that receive grant assistance pursuant to the Public School Capital Outlay Act. In establishing the criteria, the council shall consider:

(a) the feasibility of using design, build and finance arrangements for public school capital outlay projects;

(b) the potential use of more durable construction materials that may reduce long-term operating costs;

(c) concepts that promote efficient but flexible utilization of space; and

(d) any other financing or construction concept that may maximize the dollar effect of the state grant assistance;

(4) no more than ten percent of the combined total of grants in a funding cycle shall be used for retrofitting existing facilities for technology infrastructure;

(5) except as provided in Paragraph (6), (8), (9) [~~or (11)~~] of this subsection, the state share of a project approved and ranked by the council shall be funded within available resources pursuant to the provisions of this paragraph. No later than May 1 of each calendar year, a value shall be calculated for each school district in accordance with the following procedure: *LINE-ITEM VETO*

(a) the final prior year net taxable value for a school district divided by the MEM for that school district is calculated for each school district;

(b) the final prior year net taxable value for the whole state divided by the MEM for the state is calculated;

(c) excluding any school district for which the result calculated pursuant to Subparagraph (a) of this paragraph is more than twice the result calculated pursuant to Subparagraph (b) of this paragraph, the results calculated pursuant to Subparagraph (a) of this paragraph are listed from highest to lowest;

(d) the lowest value listed pursuant to Subparagraph (c) of this paragraph is subtracted from the highest value listed pursuant to that subparagraph;

(e) the value calculated pursuant to Subparagraph (a) of this paragraph for the subject school district is subtracted from the highest value listed in Subparagraph (c) of this paragraph;

(f) the result calculated pursuant to Subparagraph (e) of this paragraph is divided by the result calculated pursuant to Subparagraph (d) of this paragraph;

(g) the sum of the property tax mill levies for the prior tax year imposed by each school district on residential property pursuant to Chapter 22, Article 18 NMSA 1978, the Public School Capital Improvements Act, the Public School Buildings Act, the Education Technology Equipment Act and Paragraph (2) of Subsection B of Section 7-37-7 NMSA 1978 is calculated for each school district;

(h) the lowest value calculated pursuant to Subparagraph (g) of this paragraph is subtracted from the highest value calculated pursuant to that subparagraph;

(i) the lowest value calculated pursuant to Subparagraph (g) of this paragraph is subtracted from the value calculated pursuant to that subparagraph for the subject school district;

(j) the value calculated pursuant to Subparagraph (i) of this paragraph is divided by the value calculated pursuant to Subparagraph (h) of this paragraph;

(k) if the value calculated for a subject school district pursuant to Subparagraph (j) of this paragraph is less than five-tenths, then, except as provided in Subparagraph (n) or (o) of this paragraph, the value for that school district equals the value calculated pursuant to Subparagraph (f) of this paragraph;

(l) if the value calculated for a subject school district pursuant to Subparagraph (j) of this paragraph is five-tenths or greater, then that value is multiplied by five-hundredths;

(m) if the value calculated for a subject school district pursuant to Subparagraph (j) of this paragraph is five-tenths or greater, then the value calculated pursuant to Subparagraph (l) of this paragraph is added to the value calculated pursuant to Subparagraph (f) of this paragraph. Except as provided in Subparagraph (n) or (o) of this paragraph, the sum equals the value for that school district;

(n) in those instances in which the calculation pursuant to Subparagraph (k) or (m) of this paragraph yields a value less than one-tenth, one-tenth shall be used as the value for the subject school district;

(o) in those instances in which the calculation pursuant to Subparagraph (k) or (m) of this paragraph yields a value greater than one, one shall be used as the value for the subject school district;

(p) except as provided in Section 22-24-5.7 NMSA 1978 and except as adjusted pursuant to Paragraph (6), (8), (9) [~~or (14)~~] of this subsection, the amount to be distributed from the fund for an approved project shall equal the total project cost multiplied by a fraction the numerator of which is the value calculated for the subject school district in the current year plus the value calculated for that school district in each of the two preceding years and the denominator of which is three; and *LINE-ITEM VETO*

(q) as used in this paragraph: 1) "MEM" means the average full-time-equivalent enrollment of students attending public school in a school district on the eightieth and one hundred twentieth days of the prior school year; 2) "total project cost" means the total amount necessary to complete the public school capital outlay project less any insurance reimbursement received by the school district for the project; and 3) in the case of a state-chartered charter school that has submitted an application for grant assistance pursuant to this section, the "value calculated for the subject school district" means the value calculated for the school district in which the state-chartered charter school is physically located;

(6) the amount calculated pursuant to Subparagraph (p) of Paragraph (5) of this subsection shall be reduced by the following procedure:

(a) the total of all legislative appropriations made after January 1, 2003 for nonoperating purposes either directly to the subject school district or to another governmental entity for the purpose of passing the money through directly to the subject school district, and not rejected by the subject school district, is calculated; provided that: 1) an appropriation made in a fiscal year shall be deemed to be accepted by a school district unless, prior to June 1 of that fiscal year, the school district notifies the department of finance and administration and the public education department that the district is rejecting the appropriation; 2) the total shall exclude any educational technology appropriation made prior to January 1, 2005 unless the appropriation was on or after January 1, 2003 and not previously used to offset distributions pursuant to the Technology for Education Act; 3) the total shall exclude any appropriation previously made to the subject school district that is reauthorized for expenditure by another recipient; 4) the total shall exclude one-half of the amount of any appropriation made or reauthorized after January 1, 2007 if the purpose of the appropriation or reauthorization is to fund, in whole or in part, a capital outlay project that, when prioritized by the council pursuant to this section either in the immediately preceding funding cycle or in the current funding cycle, ranked in the top one hundred

fifty projects statewide; 5) the total shall exclude the proportionate share of any appropriation made or reauthorized after January 1, 2008 for a capital project that will be jointly used by a governmental entity other than the subject school district. Pursuant to criteria adopted by rule of the council and based upon the proposed use of the capital project, the council shall determine the proportionate share to be used by the governmental entity and excluded from the total; and 6) unless the grant award is made to the state-chartered charter school or unless the appropriation was previously used to calculate a reduction pursuant to this paragraph, the total shall exclude appropriations made after January 1, 2007 for nonoperating purposes of a specific state-chartered charter school, regardless of whether the charter school is a state-chartered charter school at the time of the appropriation or later opts to become a state-chartered charter school;

(b) the total of all federal money received by the subject school district for nonoperating purposes pursuant to Title XIV of the American Recovery and Reinvestment Act of 2009 is calculated; provided that: 1) unless the grant award is made to the state-chartered charter school or unless the federal money received was previously used to calculate a reduction pursuant to this paragraph, before the charter school became a state-chartered charter school, the total shall exclude federal money received for nonoperating purposes of a specific state-chartered charter school, regardless of whether the charter school is a state-chartered charter school at the time of receiving the federal money or later opts to become a state-chartered charter school; and 2) the total shall exclude federal money distributed through the fund as grant awards pursuant to the Public School Capital Outlay Act;

(c) the value calculated pursuant to Subparagraph (a) of this paragraph is added to the value calculated pursuant to Subparagraph (b) of this paragraph;

(d) the applicable fraction used for the subject school district and the current calendar year for the calculation in Subparagraph (p) of Paragraph (5) of this subsection is subtracted from one;

(e) the value calculated pursuant to Subparagraph (c) of this paragraph for the subject school district is multiplied by the amount calculated pursuant to Subparagraph (d) of this paragraph for that school district;

(f) the total amount of reductions for the subject school district previously made pursuant to Subparagraph (g) of this paragraph for other approved public school capital outlay projects is subtracted from the amount calculated pursuant to Subparagraph (e) of this paragraph; and

(g) the amount calculated pursuant to Subparagraph (p) of Paragraph (5) of this subsection shall be reduced by the amount calculated pursuant to Subparagraph (f) of this paragraph;

(7) as used in this subsection:

(a) "governmental entity" includes an Indian nation, tribe or pueblo; and

(b) "subject school district" means the school district that has submitted the application for funding and in which the approved public school capital outlay project will be located;

(8) the amount calculated pursuant to Subparagraph (p) of Paragraph (5) of this subsection, after any reduction pursuant to Paragraph (6) of this subsection, may be increased by an additional five percent if the council finds that the subject school district has been exemplary in implementing and maintaining a preventive maintenance program. The council shall adopt such rules as are necessary to implement the provisions of this paragraph;

(9) the council may adjust the amount of local share otherwise required if it determines that a school district has used all of its local resources. Before making any adjustment to the local share, the council shall consider whether:

(a) the school district has insufficient bonding capacity over the next four years to provide the local match necessary to complete the project and, for all educational purposes, has a residential property tax rate of at least ten dollars (\$10.00) on each one thousand dollars (\$1,000) of taxable value, as measured by the sum of all rates imposed by resolution of the local school board plus rates set to pay interest and principal on outstanding school district general obligation bonds;

(b) the school district: 1) has fewer than an average of eight hundred full-time-equivalent students on the eightieth and one hundred twentieth days of the prior school year; 2) has at least seventy percent of its students eligible for free or reduced-fee lunch; 3) has a share of the total project cost, as calculated pursuant to provisions of this section, that would be greater than fifty percent; and 4) for all educational purposes, has a residential property tax rate of at least seven dollars (\$7.00) on each one thousand dollars (\$1,000) of taxable value, as measured by the sum of all rates imposed by resolution of the local school board plus rates set to pay interest and principal on outstanding school district general obligation bonds; or

(c) the school district: 1) has an enrollment growth rate over the previous school year of at least two and one-half percent; 2) pursuant to its five-year facilities plan, will be building a new school within the next two years; and 3) for all educational purposes, has a residential property tax rate of at least ten dollars (\$10.00) on each one thousand dollars (\$1,000) of taxable value, as measured by the sum of all rates imposed by resolution of the local school board plus rates set to pay interest and principal on outstanding school district general obligation bonds;

(10) no application for grant assistance from the fund shall be approved unless the council determines that:

(a) the public school capital outlay project is needed and included in the school district's five-year facilities plan among its top priorities;

(b) the school district has used its capital resources in a prudent manner;

(c) the school district has provided insurance for buildings of the school district in accordance with the provisions of Section 13-5-3 NMSA 1978;

(d) the school district has submitted a five-year facilities plan that includes: 1) enrollment projections; 2) a current preventive maintenance plan that has been approved by the council pursuant to Section 22-24-5.3 NMSA 1978 and that is followed by each public school in the district; 3) the capital needs of charter schools located in the school district; and 4) projections for the facilities needed in order to maintain a full-day kindergarten program;

(e) the school district is willing and able to pay any portion of the total cost of the public school capital outlay project that, according to Paragraph (5), (6), (8) or (9) of this subsection, is not funded with grant assistance from the fund; provided that school district funds used for a project that was initiated after September 1, 2002 when the statewide adequacy standards were adopted, but before September 1, 2004 when the standards were first used as the basis for determining the state and school district share of a project, may be applied to the school district portion required for that project;

(f) the application includes the capital needs of any charter school located in the school district or the school district has shown that the facilities of the charter school have a smaller deviation from the statewide adequacy standards than other district facilities included in the application; and

(g) the school district has agreed, in writing, to comply with any reporting requirements or conditions imposed by the council pursuant to Section 22-24-5.1 NMSA 1978; ~~and~~

~~(11) the amount distributed from the fund to the subject school district for an approved high school project may be increased by an amount up to twenty percent of the total project cost if:~~

~~(a) the public high school facility to be constructed, improved or replaced by the project has previously qualified for a rural community adjustment pursuant to the provisions of Section 22-24-5.8 NMSA 1978; and~~

~~(b) the council finds that the planned use of the additional distribution will enhance public school education at the facility, will further the subject school district's educational plan for student success for students attending the facility, is needed by and will benefit the community in which the facility is located and is a prudent use of state money].~~ *LINE-ITEM VETO*

C. After consulting with the public school capital outlay oversight task force and other experts, the council shall regularly review and update statewide adequacy standards applicable to all school districts. The standards shall establish the acceptable level for the physical condition and capacity of buildings, the educational suitability of facilities and the need for technological infrastructure. Except as otherwise provided in the Public School Capital Outlay Act, the amount of outstanding deviation from the standards shall be used by the council in evaluating and prioritizing public school capital outlay projects.

D. The acquisition of a facility by a school district or charter school pursuant to a financing agreement that provides for lease payments with an option to purchase for a price that is reduced according to lease payments made may be considered a public school capital outlay project and eligible for grant assistance under this section pursuant to the following criteria:

(1) no grant shall be awarded unless the council determines that, at the time of exercising the option to purchase the facility by the school district or charter school, the facility will equal or exceed the statewide adequacy standards and the building standards for public school facilities;

(2) no grant shall be awarded unless the school district and the need for the facility meet all of the requirements for grant assistance pursuant to the Public School Capital Outlay Act;

(3) the total project cost shall equal the total payments that would be due under the agreement if the school district or charter school would eventually acquire title to the facility;

(4) the portion of the total project cost to be paid from the fund may be awarded as one grant, but disbursements from the fund shall be made from time to time as lease payments become due;

(5) the portion of the total project cost to be paid by the school district or charter school may be paid from time to time as lease payments become due; and

(6) neither a grant award 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 facility.

E. In order to encourage private capital investment in the construction of public school facilities, the purchase of a privately owned school facility that is, at the time of application, in use by a school district may be considered a public school capital outlay project and eligible for grant assistance pursuant to this section if the council finds that:

(1) at the time of the initial use by the school district, the facility to be purchased equaled or exceeded the statewide adequacy standards and the building standards for public school facilities;

(2) at the time of application, attendance at the facility to be purchased is at seventy-five percent or greater of design capacity and the attendance at other schools in the school district that the students at the facility would otherwise attend is at eighty-five percent or greater of design capacity; and

(3) the school district and the capital outlay project meet all of the requirements for grant assistance pursuant to the Public School Capital Outlay Act; provided that, when determining the deviation from the statewide adequacy standards for the purposes of evaluating and prioritizing the project, the students using the facility shall be deemed to be attending other schools in the school district.

F. It is the intent of the legislature that grant assistance made pursuant to this section allows every school district to meet the standards developed pursuant to Subsection C of this section; provided, however, that nothing in the Public School Capital Outlay Act or the development of standards pursuant to that act prohibits a school district from using other funds available to the district to exceed the statewide adequacy standards.

G. Upon request, the council shall work with, and provide assistance and information to, the public school capital outlay oversight task force.

H. The council may establish committees or task forces, not necessarily consisting of council members, and may use the committees or task forces, as well as existing agencies or organizations, to conduct studies, conduct surveys, submit recommendations or otherwise contribute expertise from the public schools, programs, interest groups and segments of society most concerned with a particular aspect of the council's work.

I. Upon the recommendation of the public school facilities authority, the council shall develop building standards for public school facilities and shall promulgate other such rules as are necessary to carry out the provisions of the Public School Capital Outlay Act.

J. No later than December 15 of each year, the council shall prepare a report summarizing its activities during the previous fiscal year. The report shall describe in detail all projects funded, the progress of projects previously funded but not

completed, the criteria used to prioritize and fund projects and all other council actions. The report shall be submitted to the public education commission, the governor, the legislative finance committee, the legislative education study committee and the legislature."

Chapter 258 Section 6 Laws 2009

Section 6. Section 22-24-6.1 NMSA 1978 (being Laws 2007, Chapter 214, Section 1) is amended to read:

"22-24-6.1. PROCEDURES FOR A STATE-CHARTERED CHARTER SCHOOL.-
-All of the provisions of the Public School Capital Outlay Act apply to an application by a state-chartered charter school for grant assistance for a capital project except:

A. the portion of the cost of the project to be paid from the fund shall be calculated pursuant to Paragraph (5) of Subsection B of Section 22-24-5 NMSA 1978 using data from the school district in which the state-chartered charter school is located;

B. in calculating a reduction pursuant to Paragraph (6) of Subsection B of Section 22-24-5 NMSA 1978:

(1) the amount to be used in Subparagraph (a) of that paragraph shall equal the total of all legislative appropriations made after January 1, 2007 for nonoperating expenses either directly to the charter school or to another governmental entity for the purpose of passing the money through directly to the charter school, regardless of whether the charter school was a state-chartered charter school at the time of the appropriation or later opted to become a state-chartered charter school, except that the total shall not include any such appropriation if, before the charter school became a state-chartered charter school, the appropriation was previously used to calculate a reduction pursuant to Paragraph (6) of Subsection B of Section 22-24-5 NMSA 1978; and

(2) the amount to be used in Subparagraph (b) of that paragraph shall equal the total of all federal money received by the charter school for nonoperating purposes pursuant to Title XIV of the American Recovery and Reinvestment Act of 2009, regardless of whether the charter school was a state-chartered charter school at the time of receiving the federal money or later opted to become a state-chartered charter school, except that the total shall not include any such federal money if, before the charter school became a state-chartered charter school, the money was previously used to calculate a reduction pursuant to Paragraph (6) of Subsection B of Section 22-24-5 NMSA 1978; and

C. if the council determines that the state-chartered charter school does not have the resources to pay all or a portion of the total cost of the capital outlay project that is not funded with grant assistance from the fund, to the extent that money is available in the charter school capital outlay fund, the council shall make an award

from that fund for the remaining amount necessary to pay for the project. The council may establish, by rule, a procedure for determining the amount of resources available to the charter school and the amount needed from the charter school capital outlay fund."

Chapter 258 Section 7 Laws 2009

[Section 7. A new section of the Public School Capital Outlay Act, Section 22-24-5.8 NMSA 1978, is enacted to read:

~~"22-24-5.8. RURAL COMMUNITY ADJUSTMENT FOR CERTAIN FACILITIES.--~~

~~A. Upon application by a school district pursuant to rules adopted by the council, the council may decide if a public high school facility, located within that school district, qualifies for a rural community adjustment.~~

~~B. The council shall qualify a public high school facility for the rural community adjustment if the council determines that:~~

~~(1) the facility is located in an unincorporated, rural area;~~

~~(2) the public high school facility is the only facility practicably available for community purposes and is sharing its use with the community, primarily at the school district's expense with little contribution from the community;~~

~~(3) the community served by the facility does not have adequate infrastructure or resources to acquire its own facilities or to compensate the school district for use of the public high school facility;~~

~~(4) in calculating the grant assistance from the fund for a project pursuant to Section 22-24-5 NMSA 1978, the value calculated for the school district in which the facility is located pursuant to Subparagraph (k), (m), (n) or (o) of Paragraph (5) of Subsection B of that section is equal to or greater than seven-tenths;~~

~~(5) averaged over the previous four property tax years, the school district in which the facility is located had a residential property tax rate of at least nine dollars (\$9.00) 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;~~

~~(6) at least seventy percent of the students in the school district in which the facility is located are eligible for free or reduced-fee lunch; and~~

~~(7) the school district has complied with all rules adopted by the council for the implementation of the provisions of this section.~~

~~C. Upon the award of a capital outlay grant pursuant to Section 22-24-5 NMSA 1978 for a public school facility that has qualified for a rural community adjustment pursuant to the provisions of this section, pursuant to Paragraph (11) of Subsection B of Section 22-24-5 NMSA 1978, the school district shall be eligible for an additional distribution to benefit that facility.--]~~*LINE-ITEM VETO*

Chapter 258 Section 8 Laws 2009

Section 8. 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, 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; or

(5) purchasing computer software and hardware for student use in public school classrooms."

Chapter 258 Section 9 Laws 2009

Section 9. Section 22-25-3 NMSA 1978 (being Laws 1975 (S.S.), Chapter 5, Section 3, as amended) is amended to read:

"22-25-3. AUTHORIZATION FOR LOCAL SCHOOL BOARD TO SUBMIT QUESTION OF CAPITAL IMPROVEMENTS TAX IMPOSITION.--

A. A local school board may adopt a resolution to submit to the qualified electors of the school district the question of whether a property tax should be imposed upon the net taxable value of property allocated to the school district under the Property Tax Code at a rate not to exceed that specified in the resolution for the purpose of capital improvements in the school district. The resolution shall:

(1) identify the capital improvements for which the revenue proposed to be produced will be used;

(2) specify the rate of the proposed tax, which shall not exceed two dollars (\$2.00) on each one thousand dollars (\$1,000) of net taxable value of property allocated to the school district under the Property Tax Code;

(3) specify the date an election will be held to submit the question of imposition of the tax to the qualified electors of the district; and

(4) limit the imposition of the proposed tax to no more than six property tax years.

B. On or after July 1, 2009, a resolution submitted to the qualified electors pursuant to Subsection A of this section shall include capital improvements funding for a locally chartered or state-chartered charter school located within the school district if the charter school timely provides the necessary information to the school district for inclusion in the resolution that identifies the capital improvements of the charter school for which the revenue proposed to be produced will be used."

Chapter 258 Section 10 Laws 2009

Section 10. Section 22-25-7 NMSA 1978 (being Laws 1975 (S.S.), Chapter 5, Section 7, as amended) is amended to read:

"22-25-7. IMPOSITION OF TAX--LIMITATION ON EXPENDITURES.--

A. If as a result of an election held in accordance with the Public School Capital Improvements Act a majority of the qualified electors voting on the question votes in favor of the imposition of the tax, the tax rate shall be certified, unless the local school board requests by resolution that a rate be discontinued, by the department of finance and administration at the rate specified in the resolution authorized under Section 22-25-3 NMSA 1978 or at any lower rate required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978 upon the rate specified in the resolution and be imposed at the rate certified in accordance with the provisions of the Property Tax Code.

B. The revenue produced by the tax and, except as provided in Subsection F, G or H of Section 22-25-9 NMSA 1978, any state distribution resulting to the district under the Public School Capital Improvements Act shall be expended only for the capital improvements specified in the authorizing resolution.

C. For resolutions approved by the electors on or after July 1, 2009, the amount of tax revenue to be distributed to each charter school that was included in the resolution shall be determined each year and shall be in the same proportion as the average full-time-equivalent enrollment of the charter school on the fortieth day of the prior school year is to the total such enrollment in the school district; provided that no distribution shall be made to an approved charter school that had not commenced classroom instruction in the prior school year and, provided further, that, in determining a school district's total enrollment, students attending a state-chartered charter school within that school district shall be included. Each year, the department shall certify to the county treasurer of the county in which the eligible charter schools in the school district are located the percentage of the revenue to be distributed to each charter school. The county treasurer shall distribute the charter school's share of the property tax revenue directly to the charter school."

Chapter 258 Section 11 Laws 2009

Section 11. Section 22-25-9 NMSA 1978 (being Laws 1975 (S.S.), Chapter 5, Section 9, as amended) is amended to read:

"22-25-9. STATE DISTRIBUTION TO SCHOOL DISTRICT IMPOSING TAX UNDER CERTAIN CIRCUMSTANCES.--

A. Except as provided in Subsection C or G of this section, the secretary shall distribute to any school district that has imposed a tax under the Public School Capital Improvements Act an amount from the public school capital improvements fund that is equal to the amount by which the revenue estimated to be received from the imposed tax, at the rate certified by the department of finance and administration in accordance with Section 22-25-7 NMSA 1978, assuming a one hundred percent collection rate, is less than an amount calculated by multiplying the school district's first forty days' total program units by the amount specified in Subsection B of this section and further multiplying the product obtained by the tax rate approved by the qualified electors in the most recent election on the question of imposing a tax under the Public School Capital Improvements Act. The distribution shall be made each year that the tax is imposed in accordance with Section 22-25-7 NMSA 1978; provided that no state distribution from the public school capital improvements fund may be used for capital improvements to any administration building of a school district. In the event that sufficient funds are not available in the public school capital improvements fund to make the state distribution provided for in this section, the dollar per program unit figure shall be reduced as necessary.

B. In calculating the state distribution pursuant to Subsection A of this section, the following amounts shall be used:

(1) the amount calculated pursuant to Subsection D of this section per program unit; and

(2) an additional amount certified to the secretary by the public school capital outlay council. No later than June 1 of each year, the council shall determine the amount needed in the next fiscal year for public school capital outlay projects pursuant to the Public School Capital Outlay Act and the amount of revenue, from all sources, available for the projects. If, in the sole discretion of the council, the amount available exceeds the amount needed, the council may certify an additional amount pursuant to this paragraph; provided that the sum of the amount calculated pursuant to this paragraph plus the amount in Paragraph (1) of this subsection shall not result in a total statewide distribution that, in the opinion of the council, exceeds one-half of the total revenue estimated to be received from taxes imposed pursuant to the Public School Capital Improvements Act.

C. For any fiscal year notwithstanding the amount calculated to be distributed pursuant to Subsections A and B of this section, except as provided in Subsection G of this section, a school district, the voters of which have approved a tax pursuant to Section 22-25-3 NMSA 1978, shall not receive a distribution less than the amount calculated pursuant to Subsection E of this section multiplied by the school district's first forty days' total program units and further multiplying the product obtained by the approved tax rate.

D. For purposes of calculating the distribution pursuant to Subsection B of this section, the amount used in Paragraph (1) of that subsection shall equal seventy dollars (\$70.00) in fiscal year 2008 and in each subsequent fiscal year shall equal the amount for the previous fiscal year adjusted by the percentage increase between the next preceding calendar year and the preceding calendar year of the consumer price index for the United States, all items, as published by the United States department of labor.

E. For purposes of calculating the minimum distribution pursuant to Subsection C of this section, the amount used in that subsection shall equal five dollars (\$5.00) through fiscal year 2005 and in each subsequent fiscal year shall equal the amount for the previous fiscal year adjusted by the percentage increase between the next preceding calendar year and the preceding calendar year of the consumer price index for the United States, all items, as published by the United States department of labor.

F. In expending distributions made pursuant to this section, school districts and charter schools shall give priority to maintenance projects, including payments under contracts with regional education cooperatives for maintenance support services.

In addition, distributions made pursuant to this section may be expended by school districts and charter schools as follows:

(1) for the school district portion of the total project cost for roof repair or replacement required by Section 22-24-4.3 NMSA 1978; or

(2) for the school district portion of payments made under a financing agreement entered into by a school district or a charter school for the leasing of a building or other real property with an option to purchase for a price that is reduced according to the payments made, if the school district has received a grant for the state share of the payments pursuant to Subsection D of Section 22-24-5 NMSA 1978.

G. If a serious deficiency in a roof of a public school facility has been corrected pursuant to Section 22-24-4.4 NMSA 1978 and the school district has refused to pay its share of the cost as determined by that section, until the public school capital outlay fund is reimbursed in full for the share attributed to the district, the distribution calculated pursuant to this section shall not be made to the school district but shall be made to the public school capital outlay fund.

H. A portion of each distribution made by the state pursuant to this section on or after July 1, 2009 shall be further distributed by the school district to each locally chartered or state-chartered charter school located within the school district. The amount to be distributed to each charter school shall be in the same proportion as the average full-time-equivalent enrollment of the charter school on the fortieth day of the prior school year is to the total such enrollment in the school district; provided that no distribution shall be made to an approved charter school that had not commenced classroom instruction in the prior school year. Each year, the department shall certify to the school district the amount to be distributed to each charter school. Distributions received by a charter school pursuant to this subsection shall be expended pursuant to the provisions of the Public School Capital Improvements Act; except that if capital improvements for the charter school were not identified in a resolution approved by the electors, the charter school may expend the distribution for any capital improvements, including those specified in Subsection F of this section.

I. In determining a school district's total program units pursuant to Subsections A and C of this section and a school district's total enrollment pursuant to Subsection H of this section, students attending a state-chartered charter school within the school district shall be included.

J. In making distributions pursuant to this section, the secretary shall include such reporting requirements and conditions as are required by rule of the public school capital outlay council. The council shall adopt such requirements and conditions as are necessary to ensure that the distributions are expended in the most prudent manner possible and are consistent with the original purpose as specified in the authorizing resolution. Copies of reports or other information received by the secretary in response to the requirements and conditions shall be forwarded to the council."

Chapter 258 Section 12 Laws 2009

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

immediately.

SFC/Senate Bill 378, w/ec

Approved April 8, 2009

LAWS 2009, CHAPTER 259

AN ACT

RELATING TO CHILD ABUSE; PROVIDING THAT EXPOSING A CHILD TO METHAMPHETAMINE USE IS PRIMA FACIE EVIDENCE OF CHILD ABUSE.

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

Chapter 259 Section 1 Laws 2009

Section 1. Section 30-6-1 NMSA 1978 (being Laws 1973, Chapter 360, Section 10, as amended) is amended to read:

"30-6-1. ABANDONMENT OR ABUSE OF A CHILD.--

A. As used in this section:

(1) "child" means a person who is less than eighteen years of age;

(2) "neglect" means that a child is without proper parental care and control of subsistence, education, medical or other care or control necessary for the child's well-being because of the faults or habits of the child's parents, guardian or custodian or their neglect or refusal, when able to do so, to provide them; and

(3) "negligently" refers to criminal negligence and means that a person knew or should have known of the danger involved and acted with a reckless disregard for the safety or health of the child.

B. Abandonment of a child consists of the parent, guardian or custodian of a child intentionally leaving or abandoning the child under circumstances whereby the child may or does suffer neglect. A person who commits abandonment of a child is

guilty of a misdemeanor, unless the abandonment results in the child's death or great bodily harm, in which case the person is guilty of a second degree felony.

C. A parent, guardian or custodian who leaves an infant less than ninety days old in compliance with the Safe Haven for Infants Act shall not be prosecuted for abandonment of a child.

D. Abuse of a child consists of a person knowingly, intentionally or negligently, and without justifiable cause, causing or permitting a child to be:

(1) placed in a situation that may endanger the child's life or health;

(2) tortured, cruelly confined or cruelly punished; or

(3) exposed to the inclemency of the weather.

E. A person who commits abuse of a child that does not result in the child's death or great bodily harm is, for a first offense, guilty of a third degree felony and for second and subsequent offenses is guilty of a second degree felony. If the abuse results in great bodily harm to the child, the person is guilty of a first degree felony.

F. A person who commits negligent abuse of a child that results in the death of the child is guilty of a first degree felony.

G. A person who commits intentional abuse of a child twelve to eighteen years of age that results in the death of the child is guilty of a first degree felony.

H. A person who commits intentional abuse of a child less than twelve years of age that results in the death of the child is guilty of a first degree felony resulting in the death of a child.

I. Evidence that demonstrates that a child has been knowingly, intentionally or negligently allowed to enter or remain in a motor vehicle, building or any other premises that contains chemicals and equipment used or intended for use in the manufacture of a controlled substance shall be deemed prima facie evidence of abuse of the child.

J. Evidence that demonstrates that a child has been knowingly and intentionally exposed to the use of methamphetamine shall be deemed prima facie evidence of abuse of the child.

K. A person who leaves an infant less than ninety days old at a hospital may be prosecuted for abuse of the infant for actions of the person occurring before the infant was left at the hospital."

HJC/House Bill 117, aa

Approved April 8, 2009

LAWS 2009, CHAPTER 260

AN ACT

RELATING TO PROFESSIONAL AND OCCUPATIONAL LICENSES; AUTHORIZING THE CHIROPRACTIC BOARD, THE NEW MEXICO MEDICAL BOARD AND THE BOARD OF PHARMACY TO DEVELOP AND APPROVE FORMULARIES FOR A CHIROPRACTIC PHYSICIAN.

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

Chapter 260 Section 1 Laws 2009

Section 1. Section 61-4-9.2 NMSA 1978 (being Laws 2008, Chapter 44, Section 2) is amended to read:

"61-4-9.2. CERTIFIED ADVANCED PRACTICE CHIROPRACTIC PHYSICIAN AUTHORITY DEFINED.--

A. A certified advanced practice chiropractic physician may prescribe, administer and dispense herbal medicines, homeopathic medicines, over-the-counter drugs, vitamins, minerals, enzymes, glandular products, protomorphogens, live cell products, gerovital, amino acids, dietary supplements, foods for special dietary use, bioidentical hormones, sterile water, sterile saline, sarapin or its generic, caffeine, procaine, oxygen, epinephrine and vapocoolants.

B. A formulary that includes all substances listed in Subsection A of this section, including compounded preparations for topical and oral administration, shall be developed and approved by the board. A formulary for injection that includes the substances in Subsection A of this section that are within the scope of practice of the certified advanced practice chiropractic physician shall be developed and approved by the board. Dangerous drugs or controlled substances, drugs for administration by injection and substances not listed in Subsection A of this section shall be submitted to the board of pharmacy and the New Mexico medical board for approval."

HHGAC/House Bill 14

Approved April 8, 2009

LAWS 2009, CHAPTER 261

AN ACT

RELATING TO CRIMINAL LAW; PROVIDING ADDITIONAL PENALTIES FOR UNLAWFUL TAKING OF A VEHICLE OR MOTOR VEHICLE; CREATING NEW CRIMINAL OFFENSES OF EMBEZZLEMENT OF A VEHICLE OR MOTOR VEHICLE AND FRAUDULENTLY OBTAINING A VEHICLE OR MOTOR VEHICLE; INCLUDING OFFENSES RELATING TO MOTOR VEHICLES IN THE CRIMINAL OFFENSE OF RACKETEERING; AMENDING AND ENACTING SECTIONS OF THE CRIMINAL CODE; AMENDING AND RECOMPILING SECTIONS OF THE MOTOR VEHICLE CODE.

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

Chapter 261 Section 1 Laws 2009

Section 1. Section 66-3-504 NMSA 1978 (being Laws 1978, Chapter 35, Section 91, as amended) is recompiled as Section 30-16D-1 NMSA 1978 and is amended to read:

"30-16D-1. UNLAWFUL TAKING OF A VEHICLE OR MOTOR VEHICLE.--

A. Unlawful taking of a vehicle or motor vehicle consists of a person taking any vehicle or motor vehicle as defined by the Motor Vehicle Code intentionally and without consent of the owner. Whoever commits unlawful taking of a vehicle or motor vehicle is guilty of a:

- (1) fourth degree felony for a first offense;
- (2) third degree felony for a second offense; and
- (3) second degree felony for a third or subsequent offense.

B. The consent of the owner of the vehicle or motor vehicle to its taking shall not in any case be presumed or implied because of the owner's consent on a previous occasion to the taking of the vehicle or motor vehicle by the same or a different person.

C. Nothing in this section shall be construed to prohibit the holder of a lien duly recorded with the motor vehicle division of the taxation and revenue department from taking possession of a vehicle to which possession the lienholder is legally entitled under the provisions of the instrument evidencing the lien. A holder of a duly recorded lien who takes possession of a vehicle without the knowledge of the owner of the vehicle shall immediately notify the local police authority of the fact that the holder has taken possession of the vehicle."

Chapter 261 Section 2 Laws 2009

Section 2. A new Section 30-16D-2 NMSA 1978 is enacted to read:

"30-16D-2. EMBEZZLEMENT OF A VEHICLE OR MOTOR VEHICLE.--

A. Embezzlement of a vehicle or motor vehicle consists of a person embezzling or converting to the person's own use a vehicle or motor vehicle as defined by the Motor Vehicle Code, with which the person has been entrusted, with the fraudulent intent to deprive the owner of the vehicle or motor vehicle.

B. Whoever commits embezzlement of a vehicle or motor vehicle is guilty of a:

- (1) fourth degree felony for a first offense;
- (2) third degree felony for a second offense; and
- (3) second degree felony for a third or subsequent offense."

Chapter 261 Section 3 Laws 2009

Section 3. A new Section 30-16D-3 NMSA 1978 is enacted to read:

"30-16D-3. FRAUDULENTLY OBTAINING A VEHICLE OR MOTOR VEHICLE.--

A. Fraudulently obtaining a vehicle or motor vehicle consists of a person intentionally misappropriating or taking a vehicle or motor vehicle as defined by the Motor Vehicle Code that belongs to another person by means of fraudulent conduct, practices or representations.

B. Whoever commits fraudulently obtaining a vehicle or motor vehicle is guilty of a:

- (1) fourth degree felony for a first offense;
- (2) third degree felony for a second offense; and
- (3) second degree felony for a third or subsequent offense."

Chapter 261 Section 4 Laws 2009

Section 4. Section 66-3-505 NMSA 1978 (being Laws 1978, Chapter 35, Section 92) is recompiled as Section 30-16D-4 NMSA 1978 and is amended to read:

"30-16D-4. RECEIVING OR TRANSFERRING STOLEN VEHICLES OR MOTOR VEHICLES.--

A. Receiving or transferring a stolen vehicle or motor vehicle consists of a person who, with intent to procure or pass title to a vehicle or motor vehicle as defined by the Motor Vehicle Code that the person knows or has reason to believe has been stolen or unlawfully taken, receives or transfers possession of the vehicle or motor vehicle from or to another or who has in the person's possession any vehicle that the person knows or has reason to believe has been stolen or unlawfully taken. This section shall not apply to an officer of the law engaged at the time in the performance of the officer's duty as an officer.

B. Whoever commits receiving or transferring a stolen vehicle or motor vehicle is guilty of a:

- (1) fourth degree felony for a first offense;
- (2) third degree felony for a second offense; and
- (3) second degree felony for a third or subsequent offense."

Chapter 261 Section 5 Laws 2009

Section 5. Section 66-3-506 NMSA 1978 (being Laws 1978, Chapter 35, Section 93) is recompiled as Section 30-16D-5 NMSA 1978 and is amended to read:

"30-16D-5. INJURING OR TAMPERING WITH A MOTOR VEHICLE.--

A. Injuring or tampering with a motor vehicle consists of a person, individually or in association with another person:

- (1) purposely and without authority from the owner starting or causing to be started the engine of any motor vehicle;
- (2) purposely and maliciously shifting or changing the starting device or gears of a standing motor vehicle to a position other than that in which they were left by the owner or driver of the motor vehicle;
- (3) purposely scratching or damaging the chassis, running gear, body, sides, top covering or upholstery of a motor vehicle that is the property of another;
- (4) purposely destroying any part of a motor vehicle or purposely cutting, mashing or marking or in any other way destroying or damaging any part, attachment, fastening or appurtenance of a motor vehicle without the permission of the owner;

(5) purposely draining or starting the drainage of any radiator, oil tank or gas tank upon a motor vehicle without the permission of the owner;

(6) purposely putting any metallic or other substance or liquid in the radiator, carburetor, oil tank, grease cup, oilers, lamps, gas tanks or machinery of the motor vehicle with the intent to injure or damage or impede the working of the machinery of the motor vehicle;

(7) maliciously tightening or loosening any bracket, bolt, wire, nut, screw or other fastening on a motor vehicle; or

(8) purposely releasing the brake upon a standing motor vehicle with the intent to injure the motor vehicle.

B. Whoever commits injuring or tampering with a motor vehicle is guilty of a misdemeanor.

C. As used in this section, "motor vehicle" means a motor vehicle as defined by the Motor Vehicle Code."

Chapter 261 Section 6 Laws 2009

Section 6. Section 66-3-508 NMSA 1978 (being Laws 1978, Chapter 35, Section 95) is recompiled as Section 30-16D-6 NMSA 1978 and is amended to read:

"30-16D-6. ALTERING OR CHANGING ENGINE OR OTHER NUMBERS.--

A. No person shall, with fraudulent intent, deface, remove, cover, destroy or alter the manufacturer's serial number, engine number, decal or other distinguishing number or identification mark or number placed under assignment of the motor vehicle division of the taxation and revenue department of a vehicle required to be registered under the Motor Vehicle Code or any vehicle, motor vehicle or motor vehicle engine or component as defined by the Motor Vehicle Code for which a dismantler's notification form has been processed through the division, nor shall any person place or stamp any serial, engine, decal or other number or mark upon the vehicle except one assigned by the division. Any violation of this section is a fourth degree felony.

B. This section shall not prohibit the restoration by an owner of an original serial, engine, decal or other number or mark when the restoration is made under permit issued by the division nor prevent any manufacturer from placing, in the ordinary course of business, numbers, decals or marks upon vehicles or parts thereof."

Chapter 261 Section 7 Laws 2009

Section 7. Section 30-42-3 NMSA 1978 (being Laws 1980, Chapter 40, Section 3, as amended) is amended to read:

"30-42-3. DEFINITIONS.--As used in the Racketeering Act:

A. "racketeering" means any act that is chargeable or indictable under the laws of New Mexico and punishable by imprisonment for more than one year, involving any of the following cited offenses:

- (1) murder, as provided in Section 30-2-1 NMSA 1978;
- (2) robbery, as provided in Section 30-16-2 NMSA 1978;
- (3) kidnapping, as provided in Section 30-4-1 NMSA 1978;
- (4) forgery, as provided in Section 30-16-10 NMSA 1978;
- (5) larceny, as provided in Section 30-16-1 NMSA 1978;
- (6) fraud, as provided in Section 30-16-6 NMSA 1978;
- (7) embezzlement, as provided in Section 30-16-8 NMSA 1978;
- (8) receiving stolen property, as provided in Section 30-16-11
NMSA 1978;
- (9) bribery, as provided in Sections 30-24-1 through 30-24-3.1
NMSA 1978;
- (10) gambling, as provided in Sections 30-19-3, 30-19-13 and 30-
19-15 NMSA 1978;
- (11) illegal kickbacks, as provided in Sections 30-41-1 and 30-41-2
NMSA 1978;
- (12) extortion, as provided in Section 30-16-9 NMSA 1978;
- (13) trafficking in controlled substances, as provided in Section 30-
31-20 NMSA 1978;
- (14) arson and aggravated arson, as provided in Subsection A of
Section 30-17-5 and Section 30-17-6 NMSA 1978;
- (15) promoting prostitution, as provided in Section 30-9-4 NMSA
1978;
- (16) criminal solicitation, as provided in Section 30-28-3 NMSA
1978;

(17) fraudulent securities practices, as provided in the New Mexico Securities Act of 1986;

(18) loan sharking, as provided in Sections 30-43-1 through 30-43-5 NMSA 1978;

(19) distribution of controlled substances or controlled substance analogues, as provided in Sections 30-31-21 and 30-31-22 NMSA 1978;

(20) a violation of the provisions of Section 30-51-4 NMSA 1978;

(21) unlawful taking of a vehicle or motor vehicle, as provided in Section 30-16D-1 NMSA 1978;

(22) embezzlement of a vehicle or motor vehicle, as provided in Section 30-16D-2 NMSA 1978;

(23) fraudulently obtaining a vehicle or motor vehicle, as provided in Section 30-16D-3 NMSA 1978;

(24) receiving or transferring stolen vehicles or motor vehicles, as provided in Section 30-16D-4 NMSA 1978; and

(25) altering or changing the serial number, engine number, decal or other numbers or marks of a vehicle or motor vehicle, as provided in Section 30-16D-6 NMSA 1978;

B. "person" means an individual or entity capable of holding a legal or beneficial interest in property;

C. "enterprise" means a sole proprietorship, partnership, corporation, business, labor union, association or other legal entity or a group of individuals associated in fact although not a legal entity and includes illicit as well as licit entities; and

D. "pattern of racketeering activity" means engaging in at least two incidents of racketeering with the intent of accomplishing any of the prohibited activities set forth in Subsections A through D of Section 30-42-4 NMSA 1978; provided at least one of the incidents occurred after February 28, 1980 and the last incident occurred within five years after the commission of a prior incident of racketeering."

Chapter 261 Section 8 Laws 2009

Section 8. Section 66-3-501 NMSA 1978 (being Laws 1978, Chapter 35, Section 88, as amended) is amended to read:

"66-3-501. REPORT OF STOLEN AND RECOVERED VEHICLES OR MOTOR VEHICLES.--

A. Every sheriff, chief of police or peace officer upon receiving reliable information that any vehicle or motor vehicle has been stolen shall immediately, but in no case later than one week after receiving the information, report the theft to the New Mexico state police or other appropriate law enforcement agency unless, prior thereto, information has been received of the recovery of the vehicle or motor vehicle. Any officer, upon receiving information that any vehicle or motor vehicle that the officer has previously reported as stolen has been recovered, shall immediately report the fact of recovery to the local sheriff's office or police department and to the New Mexico state police.

B. The requirement that the theft or recovery of a vehicle or motor vehicle be reported to the New Mexico state police is satisfied if the report is made to the national crime information center."

Chapter 261 Section 9 Laws 2009

Section 9. Section 66-3-502 NMSA 1978 (being Laws 1978, Chapter 35, Section 89) is amended to read:

"66-3-502. REPORTS BY OWNERS OF STOLEN AND RECOVERED VEHICLES OR MOTOR VEHICLES.--

A. The owner or person having a lien or encumbrance upon a vehicle or motor vehicle that has been stolen or embezzled may notify the New Mexico state police or other appropriate law enforcement agency of the theft or embezzlement but, in the event of an embezzlement, may make a report only after having procured the issuance of a warrant for the arrest of the person charged with the embezzlement.

B. Every owner or other person who has given any such notice shall immediately notify the New Mexico state police or the law enforcement agency that took the report of a recovery of the vehicle."

Chapter 261 Section 10 Laws 2009

Section 10. Section 66-3-507 NMSA 1978 (being Laws 1978, Chapter 35, Section 94) is amended to read:

"66-3-507. ALTERED VEHICLE IDENTIFICATION NUMBERS--CONTRABAND.-

A. Any person receiving, disposing of, offering to dispose of or having in the person's possession any vehicle, motor vehicle or motor vehicle engine or component shall make adequate inquiry and inspection to determine that no

manufacturer's serial number, engine or component number or other distinguishing number or mark or identification mark or number placed under assignment of the division has been removed, defaced, covered, altered or destroyed.

B. When the inspection of a vehicle, motor vehicle or motor vehicle engine or component by any law enforcement officer indicates that the manufacturer's serial number or decal, engine or component number or other distinguishing number or mark or identification mark or number placed under assignment of the division has been removed, defaced, covered, altered or destroyed, that vehicle, motor vehicle or motor vehicle engine or component may be impounded for a period of time not to exceed ninety-six hours unless part of that time falls upon a Saturday, Sunday or a legal holiday, in which case the vehicle, motor vehicle or motor vehicle engine or component may be impounded for a period of time not to exceed six days. At the expiration of the stated time period, the vehicle, motor vehicle or motor vehicle engine or component shall be returned to the person from whom it was taken at no cost unless an ex parte order allowing continued impoundment is issued by a magistrate or district court judge after finding that probable cause exists to believe that the manufacturer's serial number, engine or component number or other distinguishing number or mark or identification mark or number placed under assignment of the division has been removed, defaced, covered, altered or destroyed. Within ten days of the issuance of the order, the law enforcement agency shall cause to have the matter of the vehicle, motor vehicle or motor vehicle engine or component brought before a district court by filing in that court a petition requesting that the vehicle or item be declared contraband unless the court grants an extension of time for the filing based on some reasonable requirement for extension of the filing by the law enforcement agency. If at the time of the hearing on that petition the court finds that the manufacturer's serial number, engine or component number or other distinguishing number or mark or identification mark or number placed under assignment of the division has been removed, defaced, covered, altered or destroyed, the court shall declare the vehicle, motor vehicle or motor vehicle engine or component to be contraband unless one of the exceptions enumerated in this section applies. At the time the vehicle, motor vehicle or motor vehicle engine or component is declared to be contraband, the court shall order that it be disposed of according to Subsection D of this section. Any vehicle, motor vehicle or motor vehicle engine or component in such condition shall not be subject to replevin except by an owner who can trace the owner's ownership of that vehicle, motor vehicle or motor vehicle engine or component from the manufacturer by furnishing the court records indicating the identity of all intermediate owners. The law enforcement agency seizing the vehicle, motor vehicle or motor vehicle engine or component shall provide the person from whom it was taken a receipt for the vehicle, motor vehicle or motor vehicle engine or component.

C. The vehicle, motor vehicle or motor vehicle engine or component shall not be considered contraband when:

(1) it has been determined that the vehicle, motor vehicle or motor vehicle engine or component has been reported as stolen;

(2) the vehicle, motor vehicle or motor vehicle engine or component is recovered in the condition described in Subsection B of this section;

(3) it clearly appears that the true owner is not responsible for the altering, concealing, defacing or destroying of the vehicle, motor vehicle or motor vehicle engine or component;

(4) the true owner obtains an assigned number issued by the division for the vehicle, motor vehicle or motor vehicle engine or component;

(5) the new assigned numbers have been issued for and placed upon the vehicle, motor vehicle or motor vehicle engine or component by the division utilizing a unique numbering system for that purpose; or

(6) a person licensed under the provisions of Sections 66-4-1 through 66-4-9 NMSA 1978, when in the course of the person's business and consistent with the provisions of Section 30-16D-6 NMSA 1978 and the rules and regulations promulgated by the division, removes, defaces, covers, alters or destroys the manufacturer's serial or engine or component number or other distinguishing number or identification mark or number placed under assignment of the division of a vehicle required to be registered under the Motor Vehicle Code.

D. If it is impossible to locate a true owner who meets the provisions of Subsection C of this section to claim the vehicle, motor vehicle or motor vehicle engine or component, it may be retained as long as it is used for police purposes, after which time, or if not suitable for police use, it shall be destroyed."

Chapter 261 Section 11 Laws 2009

Section 11. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.

HJC/House Bill 31

Approved April 8, 2009

LAWS 2009, CHAPTER 262

AN ACT

RELATING TO VOLUNTEER FIREFIGHTERS RETIREMENT; REQUIRING CERTAIN ADMINISTRATIVE PROCEDURES; CHANGING THE REQUIREMENTS FOR ESTABLISHING SERVICE CREDIT; AUTHORIZING A DEPENDENT CHILD TO BE DESIGNATED AS A BENEFICIARY.

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

Chapter 262 Section 1 Laws 2009

Section 1. Section 10-11A-2 NMSA 1978 (being Laws 1983, Chapter 263, Section 2, as amended) is amended to read:

"10-11A-2. DEFINITIONS.--As used in the Volunteer Firefighters Retirement Act:

- A. "association" means the public employees retirement association;
- B. "board" means the retirement board of the association;
- C. "fire department" means a fire department with volunteer members that is certified by the fire marshal division of the public regulation commission;
- D. "fund" means the volunteer firefighters retirement fund; and
- E. "member" means a volunteer nonsalaried firefighter who is listed as an active member on the rolls of a fire department and whose first year of service credit was accumulated during or after the year the member attained the age of sixteen. A volunteer firefighter who receives reimbursement for personal out-of-pocket costs shall not be considered a salaried firefighter."

Chapter 262 Section 2 Laws 2009

Section 2. Section 10-11A-4 NMSA 1978 (being Laws 1983, Chapter 263, Section 4) is amended to read:

"10-11A-4. ADMINISTRATION OF THE VOLUNTEER FIREFIGHTERS RETIREMENT ACT, PROGRAM AND FUNDS BY THE BOARD--ANNUAL ACTUARIAL EVALUATION.--

A. The provisions of the Volunteer Firefighters Retirement Act and the volunteer firefighters retirement program authorized under that act shall be administered by the board. The provisions of law relating to the administration and investment of retirement funds administered by the board shall apply to all funds transferred and paid into the fund. In its administration of the volunteer firefighters retirement program, the board is authorized to promulgate rules and regulations.

B. The board shall provide for an annual actuarial evaluation of the fund and shall make recommendations to the legislature for any changes necessary to maintain the actuarial soundness of the fund.

C. The association shall remove a member's information file from the association's active database and enter it into an inactive database if qualifying

documentation for the member has not been provided to the association for five consecutive years. A member's information file that has been entered into an inactive database shall not be included in the board's annual actuarial evaluation of the fund. The association shall return a member's information file to the association's active database if the association receives new qualifying documentation for the member."

Chapter 262 Section 3 Laws 2009

Section 3. Section 10-11A-5 NMSA 1978 (being Laws 1983, Chapter 263, Section 5) is amended to read:

"10-11A-5. RETIREMENT BENEFITS--ELIGIBILITY.--

A. Any member who attains the age of fifty-five years and has twenty-five years or more of service credit shall be eligible to receive a retirement annuity of two hundred dollars (\$200), payable monthly from the fund during the remainder of the member's life.

B. Any member who attains the age of fifty-five years and has at least ten but less than twenty-five years or more of service credit shall be eligible to receive a retirement annuity of one hundred dollars (\$100), payable monthly from the fund during the remainder of the member's life.

C. Any member who ceases to be a volunteer nonsalaried firefighter after completing at least ten but less than twenty-five years of service credit is eligible to receive upon attaining the age of fifty-five years a retirement annuity of one hundred dollars (\$100), payable monthly from the fund during the remainder of the member's life.

D. Any member who ceases to be a volunteer nonsalaried firefighter after completing twenty-five years of service credit is eligible to receive upon attaining the age of fifty-five years a retirement annuity of two hundred dollars (\$200), payable monthly from the fund during the remainder of the member's life.

E. Any member who qualifies for and receives a retirement annuity pursuant to this section may continue as an active member on the rolls of a fire department. However, such member shall not accrue additional service credit for the purpose of increasing the amount of the member's retirement annuity."

Chapter 262 Section 4 Laws 2009

Section 4. Section 10-11A-6 NMSA 1978 (being Laws 1983, Chapter 263, Section 6, as amended) is amended to read:

"10-11A-6. DETERMINATION OF SERVICE CREDIT.--

A. A member may claim one year of service credit for each year in which a fire department certifies that the member:

(1) attended fifty percent of all scheduled fire drills for which the fire department held the member responsible to attend;

(2) attended fifty percent of all scheduled business meetings for which the fire department held the member responsible to attend; and

(3) participated in at least fifty percent of all emergency response calls for which the fire department held the member responsible to attend.

B. The chief of each fire department shall submit to the association by March 31 of each year documentation of the qualifications of each member for the preceding calendar year; provided that the chief shall:

(1) submit the documentation on forms provided by the association;

(2) acknowledge the truth of the records under oath before a notary public; and

(3) have the notarized forms signed by the mayor, if distributions from the fire protection fund for the fire department are made to an incorporated municipality, or the chair of the county commission, if distributions from the fire protection fund for the fire department are made to a county fire district.

C. For service credit that has been earned, but not credited pursuant to Subsection B of this section, a member may post or adjust service credit earned for one or more calendar years beginning on or after January 1, 1979; provided that the member shall:

(1) file with the association a completed "Corrected Qualification Record" or "Adjusted Qualification Record" as prescribed by the board;

(2) acknowledge the truth of the records under oath before a notary public; and

(3) have the notarized forms signed by the mayor, if distributions from the fire protection fund for the fire department are made to an incorporated municipality, or the chair of the county commission, if distributions from the fire protection fund for the fire department are made to a county fire district.

D. The association may request the fire marshal division of the public regulation commission to verify member qualifications submitted to the association."

Chapter 262 Section 5 Laws 2009

Section 5. Section 10-11A-7 NMSA 1978 (being Laws 1983, Chapter 263, Section 7) is amended to read:

"10-11A-7. RETIREMENT ANNUITY--SURVIVING BENEFICIARY.--A member may designate a spouse or dependent child as a beneficiary. In the event a retirement annuitant dies, the surviving beneficiary shall receive an annuity equal to two-thirds of the retirement annuity being paid to the retirement annuitant at the time of death; provided that the annuity paid to a beneficiary spouse shall cease upon the surviving spouse's marriage or death and the annuity paid to a beneficiary dependent child shall cease upon the child reaching eighteen years of age or upon the child's death, whichever comes first."

Chapter 262 Section 6 Laws 2009

Section 6. A new section of the Volunteer Firefighters Retirement Act is enacted to read:

"RETROACTIVITY--APPLICATION OF 2003 LAW.--

A. The change in law made by Laws 2003, Chapter 370, Section 2 eliminating a maximum age for a volunteer nonsalaried firefighter to establish a first year of service credit under the Volunteer Firefighters Retirement Act shall apply to a volunteer nonsalaried firefighter who was listed as an active member on the rolls of a fire department before the effective date of Laws 2003, Chapter 370, Section 2.

B. A volunteer nonsalaried firefighter who retired before the effective date of Laws 2003, Chapter 370, Section 2 shall be entitled to receive retirement benefits under the Volunteer Firefighters Retirement Act if otherwise qualified under that act."

House Bill 353

Approved April 8, 2009

LAWS 2009, CHAPTER 263

AN ACT

RELATING TO PUBLIC ASSISTANCE; REQUIRING COST-SHARING PAYMENTS FOR MEDICAID RECIPIENTS WHO CHOOSE EMERGENCY MEDICAL SERVICES WHEN NON-EMERGENCY SERVICES ARE INDICATED.

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

Chapter 263 Section 1 Laws 2009

Section 1. A new section of the Public Assistance Act is enacted to read:

"MEDICAID RECIPIENTS--COST-SHARING PAYMENTS FOR EMERGENCY MEDICAL SERVICES WHEN NON-EMERGENCY SERVICES ARE INDICATED.--

A. Consistent with the federal act and subject to the appropriation and availability of federal and state funds, the department shall promulgate rules that require a recipient who chooses a high-cost medical service provided through a hospital emergency room to pay a co-payment, premium payment or other cost-sharing payment for the high-cost medical service if:

(1) the hospital from which the recipient seeks service:

(a) performs an appropriate medical screening and determines that the recipient does not have a condition requiring emergency medical services;

(b) informs the recipient that the recipient does not have a condition requiring emergency medical services;

(c) informs the recipient that if the hospital provides the non-emergency service, the hospital may require the recipient to pay a co-payment, premium payment or other cost-sharing payment in advance of providing the service;

(d) informs the recipient of the name and address of a non-emergency medicaid provider that can provide the appropriate medical service without imposing a cost-sharing payment; and

(e) offers to provide the recipient with a referral to the non-emergency provider to facilitate scheduling of the service;

(2) after receiving the information and assistance from the hospital described in Paragraph (1) of this subsection, the recipient chooses to obtain emergency medical services despite having access to medically acceptable, lower-cost non-emergency medical services; and

(3) the recipient's household income is at least one hundred percent of the federal poverty level.

B. The cost-sharing payment for a high-cost medical service made pursuant to this section shall be:

(1) for a child whose household income is one hundred to one hundred fifty percent of the federal poverty level, six dollars (\$6.00);

(2) for an adult whose household income is one hundred to one hundred fifty percent of the federal poverty level, twenty-five dollars (\$25.00);

(3) for a child whose household income is greater than one hundred fifty percent of the federal poverty level, twenty dollars (\$20.00); and

(4) for an adult whose household income is greater than one hundred fifty percent of the federal poverty level, fifty dollars (\$50.00).

C. The department shall not seek a federal waiver or other authorization to carry out the provisions of Subsection A of this section that would prevent a medicaid recipient who has a condition requiring emergency medical services from receiving care through a hospital emergency room or waive any provision under Section 1867 of the federal act.

D. The department shall not reduce hospital payments to reflect the potential receipt of a co-payment or other payment from a recipient receiving medical services provided through a hospital emergency room.

E. The secretary shall apply for a grant pursuant to Subsection 1903(y) of the federal Deficit Reduction Act to establish a program to provide for non-emergency services to serve as an alternative to emergency rooms as providers of health care. This program shall establish partnerships with local community hospitals and shall focus on providing alternatives to emergency services for primary care for rural and underserved areas where medicaid recipients do not have regular access to primary care. As used in this section, "primary care" means the first level of basic physical or behavioral health care for an individual's health needs, including diagnostic and treatment services."

HCPAC/House Bill 438, aa

Approved April 8, 2009

LAWS 2009, CHAPTER 264

AN ACT

RELATING TO LIVESTOCK; PROVIDING FOR THE CONTROL OF FERAL HOGS;
PROVIDING PENALTIES.

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

Chapter 264 Section 1 Laws 2009

Section 1. A new section of The Livestock Code is enacted to read:

"FERAL HOGS--PROHIBITION--PENALTY.--

A. The purpose of this section is to ensure the public health, safety and welfare and to prevent the introduction or spread of disease to New Mexico's livestock and wildlife.

B. No person shall import into the state, transport within the state, hold for breeding, release or sell a live feral hog or operate a commercial feral hog hunting enterprise.

C. Any person who violates this section 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 a definite term of less than one year or both.

D. As used in this section, "feral hog" means a pig that exists in an untamed state from domestication."

House Bill 594, aa

Approved April 8, 2009

LAWS 2009, CHAPTER 265

AN ACT

RELATING TO FIRE PREVENTION; ENACTING THE FIRE-SAFER CIGARETTE AND FIREFIGHTER PROTECTION ACT; IMPOSING PENALTIES; MAKING AN APPROPRIATION.

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

Chapter 265 Section 1 Laws 2009

Section 1. SHORT TITLE.--This act may be cited as the "Fire-Safer Cigarette and Firefighter Protection Act".

Chapter 265 Section 2 Laws 2009

Section 2. DEFINITIONS.--As used in the Fire-Safer Cigarette and Firefighter Protection Act:

A. "agent" means any person authorized by the taxation and revenue department to purchase and affix stamps on packages of cigarettes;

B. "cigarette" means:

(1) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or

(2) any roll of tobacco wrapped in any substance containing tobacco that, because of its appearance, the type of tobacco used in the filler or its packaging and labeling, is likely to be offered to or purchased by consumers as a cigarette as described in Paragraph (1) of this subsection;

C. "manufacturer" means:

(1) any entity that manufactures or otherwise produces cigarettes or causes cigarettes to be manufactured or produced that are intended to be sold in New Mexico, including cigarettes intended to be sold in New Mexico through an importer; or

(2) any entity that becomes a successor of an entity described in Paragraph (1) of this subsection;

D. "quality control and assurance program" means the laboratory procedures implemented to ensure that operator bias, systematic and nonsystematic methodological errors and equipment-related problems do not affect the results of the testing and that the testing repeatability remains within the required repeatability values in Subsection C of Section 3 of the Fire-Safer Cigarette and Firefighter Protection Act for all test trials used to certify cigarettes under that act;

E. "repeatability" means the range of values within which the repeat results of cigarette test trials from a single laboratory will fall ninety-five percent of the time;

F. "retail dealer" means any person, other than a manufacturer or wholesale dealer, engaged in selling cigarettes or tobacco products;

G. "sale" or "sell" means a transfer of or an offer or agreement to transfer title or possession by exchange, barter or any other means. In addition to cash and credit sales, giving cigarettes as samples, prizes or gifts and exchanging cigarettes for any consideration other than money is a "sale"; and

H. "wholesale dealer" means any person other than a manufacturer who sells cigarettes or tobacco products to retail dealers or other persons for purposes of resale and any person who owns, operates or maintains one or more cigarette or tobacco product vending machines on premises owned or occupied by another person.

Chapter 265 Section 3 Laws 2009

Section 3. TEST METHOD AND PERFORMANCE STANDARD.--

A. Except as provided in Subsection K of this section, cigarettes shall not be sold or offered for sale in New Mexico unless:

(1) the cigarettes have been tested in accordance with the test method and meet the performance standard specified in this section;

(2) a written certification has been filed by the manufacturer with the state fire marshal in accordance with Section 4 of the Fire-Safer Cigarette and Firefighter Protection Act; and

(3) the cigarettes have been marked in accordance with Section 5 of that act.

B. Testing of cigarettes shall be conducted in accordance with the American society of testing and materials standard E2187-04 standard test method for measuring the ignition strength of cigarettes and shall be conducted on ten layers of filter paper. No more than twenty-five percent of the cigarettes tested in a test trial in accordance with this section shall exhibit full-length burns. Forty replicate tests shall constitute a complete test trial for each cigarette tested. The performance standard required by this section shall only be applied to a complete test trial. Written certifications shall be based upon testing conducted by a laboratory that has been accredited pursuant to standard ISO/IEC 17025 of the international organization for standardization or other comparable accreditation standard required by the state fire marshal.

C. Laboratories conducting testing in accordance with this section shall implement a quality control and quality assurance program that includes a procedure that will determine the repeatability of the testing results. The repeatability value shall be no greater than 0.19.

D. Testing performed or sponsored by the state fire marshal to determine a cigarette's compliance with the performance standard required by this section shall be conducted in accordance with this section.

E. This section does not require additional testing if cigarettes are tested consistent with the Fire-Safer Cigarette and Firefighter Protection Act for any other purpose.

F. Each cigarette listed in a certification submitted pursuant to Section 4 of the Fire-Safer Cigarette and Firefighter Protection Act that uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standard set forth in this section shall have at least two nominally identical bands on the paper

surrounding the tobacco column. At least one complete band shall be located at least fifteen millimeters from the lighting end of the cigarette. For cigarettes on which the bands are positioned by design, there shall be at least two bands fully located at least fifteen millimeters from the lighting end and ten millimeters from the filter end of the tobacco column or ten millimeters from the labeled end of the tobacco column for non-filtered cigarettes.

G. A manufacturer of a cigarette that the state fire marshal determines cannot be tested in accordance with the test method prescribed in Subsection B of this section shall propose a test method and performance standard for the cigarette to the state fire marshal. Upon approval of the proposed test method and a determination by the state fire marshal that the performance standard proposed by the manufacturer is equivalent to the performance standard prescribed in Subsection B of this section, the manufacturer may employ that test method and performance standard to certify the cigarette pursuant to Section 4 of the Fire-Safer Cigarette and Firefighter Protection Act. If the state fire marshal determines that another state has enacted reduced cigarette ignition propensity standards that include a test method and performance standard that are the same as those contained in the Fire-Safer Cigarette and Firefighter Protection Act, and the state fire marshal finds that the officials responsible for implementing those requirements have approved the proposed alternative test method and performance standard for a particular cigarette proposed by a manufacturer as meeting the fire safety standards of that state's law or regulation under a legal provision comparable to this section, the state fire marshal shall authorize that manufacturer to employ the alternative test method and performance standard to certify that cigarette for sale in New Mexico, unless the state fire marshal demonstrates a reasonable basis why the alternative test should not be accepted under the Fire-Safer Cigarette and Firefighter Protection Act. All other applicable requirements of this section shall apply to the manufacturer.

H. Each manufacturer shall maintain copies of the reports of all tests conducted on all cigarettes offered for sale for a period of three years and shall make copies of the reports available to the state fire marshal and the attorney general upon written request. Any manufacturer who fails to make copies of the reports available within sixty days of receiving a written request may be assessed a civil penalty not to exceed ten thousand dollars (\$10,000) for each day after the sixtieth day that the manufacturer does not make the copies available.

I. The state fire marshal may adopt a subsequent American society of testing and materials standard test method for measuring the ignition strength of cigarettes upon a finding that the subsequent method does not result in a change in the percentage of full-length burns exhibited by any tested cigarette when compared to the percentage of full-length burns the same cigarette would exhibit when tested in accordance with the American society of testing and materials standard E2187-04 and the performance standard in Subsection B of this section.

J. The state fire marshal shall review the effectiveness of this section and report findings and make recommendations to the legislature every three years.

K. The requirements of Subsection A of this section shall not prohibit:

(1) wholesale or retail dealers from selling their existing inventory of cigarettes on or after the effective date of this section if the wholesale or retail dealer can establish that state tax stamps were affixed to the cigarettes prior to the effective date and the wholesale or retail dealer can establish that the inventory was purchased prior to the effective date in comparable quantity to the inventory purchased during the same period of the prior year; or

(2) the sale of cigarettes solely for the purpose of consumer testing. For purposes of this subsection, the term "consumer testing" means an assessment of cigarettes that is conducted by a manufacturer, or under the control and direction of a manufacturer, for the purpose of evaluating consumer acceptance of the cigarettes, utilizing only the quantity of cigarettes that is reasonably necessary for an assessment.

L. The Fire-Safer Cigarette and Firefighter Protection Act shall be interpreted and construed to effectuate its general purpose and to make that act uniform with the laws of those states that have enacted reduced cigarette ignition propensity laws as of the date that the Fire-Safer Cigarette and Firefighter Protection Act is enacted.

Chapter 265 Section 4 Laws 2009

Section 4. CERTIFICATION AND PRODUCT CHANGE.--

A. Each manufacturer shall submit to the state fire marshal a written certification attesting that each cigarette listed in the certification has been tested in accordance with the test method and meets the performance standard in Section 3 of the Fire-Safer Cigarette and Firefighter Protection Act.

B. Each cigarette listed in the certification shall be described with the following information:

- (1) the brand or the trade name on the package;
- (2) the style, such as light or ultralight;
- (3) the length in millimeters;
- (4) the circumference in millimeters;
- (5) the flavor, such as menthol or chocolate, if applicable;

(6) whether the cigarette has a filter or is a nonfilter cigarette;

(7) the package description, such as soft pack or box;

(8) the marking pursuant to Section 5 of the Fire-Safer Cigarette and Firefighter Protection Act;

(9) the name, address and telephone number of the laboratory, if different than the manufacturer that conducted the test; and

(10) the date that the testing occurred.

C. The state fire marshal shall verify that the manufacture's certifications have been received by the state fire marshal and shall make the verified certifications available to the attorney general for purposes consistent with the Fire-Safer Cigarette and Firefighter Protection Act and to the taxation and revenue department for the purposes of ensuring compliance with this section.

D. Each cigarette certified under this section shall be recertified every three years.

E. For each cigarette listed in a certification, a manufacturer shall pay to the state fire marshal a fee of two hundred fifty dollars (\$250). The state fire marshal may adjust the amount of the fee by rule on an annual basis as necessary to defray the costs of processing, testing, enforcement and oversight activities required by the Fire-Safer Cigarette and Firefighter Protection Act, but in no case shall the fee exceed four hundred dollars (\$400). The state fire marshal may establish the amount of the fee by rule on an annual basis.

F. If a manufacturer has certified a cigarette pursuant to this section, and thereafter makes any change to the cigarette that is likely to alter its compliance with the reduced cigarette ignition propensity standards required by the Fire-Safer Cigarette and Firefighter Protection Act, that cigarette shall not be sold or offered for sale in New Mexico until the manufacturer retests the cigarette in accordance with the testing standards set forth in Section 3 of that act and maintains records of that retesting as required by Section 3 of that act. Any altered cigarette that does not meet the performance standard set forth in Section 3 of that act shall not be sold in New Mexico.

Chapter 265 Section 5 Laws 2009

Section 5. MARKING OF CIGARETTE PACKAGING.--

A. Cigarettes that are certified by a manufacturer in accordance with the Fire-Safer Cigarette and Firefighter Protection Act shall be marked to indicate compliance with that act. The marking shall be in eight-point type or larger and consist of the letters "FSC", which signifies fire standard compliant, and shall be permanently

printed, stamped, engraved or embossed on the package at or near the universal product code.

B. A manufacturer shall use only one marking and shall apply this marking uniformly for all packages, including packs, cartons and cases, and for brands marketed by that manufacturer.

C. A manufacturer certifying cigarettes in accordance with Section 4 of the Fire-Safer Cigarette and Firefighter Protection Act shall provide a copy of the certifications to all wholesale dealers and agents to which it sells cigarettes. Wholesale dealers, agents and retail dealers shall permit the state fire marshal, the taxation and revenue department and the attorney general to inspect markings of cigarette packaging marked in accordance with this section.

Chapter 265 Section 6 Laws 2009

Section 6. PENALTIES.--

A. A manufacturer, wholesale dealer, agent or any other person who knowingly sells cigarettes, other than through retail sales, in violation of Section 3 of the Fire-Safer Cigarette and Firefighter Protection Act may be assessed a civil penalty not to exceed one hundred dollars (\$100) for each pack of the cigarettes sold; provided that in no case shall the penalty against any person or entity exceed one hundred thousand dollars (\$100,000) for sales during any thirty-day period.

B. A retail dealer who knowingly sells cigarettes in violation of Section 3 of the Fire-Safer Cigarette and Firefighter Protection Act may be assessed a civil penalty not to exceed one hundred dollars (\$100) for each pack of the cigarettes sold; provided that in no case shall the penalty against any retail dealer exceed twenty-five thousand dollars (\$25,000) for sales during any thirty-day period.

C. In addition to any penalty prescribed by law, any corporation, partnership, sole proprietor, limited partnership or association engaged in the manufacture of cigarettes that knowingly makes a false certification pursuant to Section 4 of the Fire-Safer Cigarette and Firefighter Protection Act may be assessed a civil penalty of at least seventy-five thousand dollars (\$75,000), not to exceed two hundred fifty thousand dollars (\$250,000) for each false certification.

D. A person violating any other provision of the Fire-Safer Cigarette and Firefighter Protection Act may be assessed a civil penalty for a first offense not to exceed one thousand dollars (\$1,000), and for a subsequent offense subject to a civil penalty not to exceed five thousand dollars (\$5,000) for each violation.

E. Whenever a law enforcement agency or duly authorized representative of the state fire marshal discovers any cigarettes for which no certification has been filed as required by Section 4 of the Fire-Safer Cigarette and Firefighter Protection Act or that

have not been marked as required by Section 5 of that act, the state fire marshal or law enforcement agency may seize and take possession of the cigarettes. Cigarettes seized pursuant to this section shall be destroyed; provided, however, that, prior to the destruction of any cigarette seized pursuant to these provisions, the attorney general and the true holder of the trademark rights in the cigarette brand shall be permitted to inspect the cigarettes.

F. In addition to any other remedy provided by law, the attorney general may file an action in district court for a violation of the Fire-Safer Cigarette and Firefighter Protection Act, including petitioning for preliminary or permanent injunctive relief or to recover costs, damages and attorney fees. Each violation of the Fire-Safer Cigarette and Firefighter Protection Act or of rules or regulations adopted under that act constitutes a separate civil violation for which the state fire marshal or attorney general may obtain relief. Upon obtaining judgment for injunctive relief under this section, the state fire marshal or attorney general shall provide a copy of the judgment to all wholesale dealers and agents to which a cigarette has been sold.

Chapter 265 Section 7 Laws 2009

Section 7. IMPLEMENTATION.--

A. The state fire marshal may promulgate rules pursuant to the Administrative Procedures Act, necessary to effectuate the purposes of the Fire-Safer Cigarette and Firefighter Protection Act and for inspection, seizure and destruction of cigarettes pursuant to the Forfeiture Act.

B. The taxation and revenue department in the regular course of conducting inspections of wholesale dealers, agents and retail dealers, pursuant to the Cigarette Tax Act, may inspect cigarettes to determine if the cigarettes are marked as required by Section 5 of the Fire-Safer Cigarette and Firefighter Protection Act. If the cigarettes are not marked as required, the taxation and revenue department shall notify the state fire marshal.

Chapter 265 Section 8 Laws 2009

Section 8. INSPECTION.--To enforce the provisions of the Fire-Safer Cigarette and Firefighter Protection Act, the attorney general, the taxation and revenue department and the state fire marshal, their duly authorized representatives and other law enforcement personnel may examine the books, papers, invoices and other records of any person in possession, control or occupancy of premises where cigarettes are placed, stored, sold or offered for sale, as well as the stock of cigarettes on the premises. Every person in the possession, control or occupancy of premises where cigarettes are placed, sold or offered for sale is hereby directed and required to give the attorney general, the taxation and revenue department and the state fire marshal and other law enforcement personnel the means, facilities and opportunity for the examinations authorized by this section.

Chapter 265 Section 9 Laws 2009

Section 9. FIRE-SAFER CIGARETTE AND FIREFIGHTER PROTECTION ACT FUND.--The "fire-safer cigarette and firefighter protection fund" is created in the state treasury. The fund consists of appropriations, income from investment of the fund, money otherwise accruing to the fund, certification fees paid under Section 4 of the Fire-Safer Cigarette and Firefighter Protection Act and money recovered as penalties under Section 6 of that act. Money in the fund shall not revert to any other fund at the end of a fiscal year. Money in the fund is appropriated to the state fire marshal to enforce the Fire-Safer Cigarette and Firefighter Protection Act and to support fire safety and prevention programs and shall be disbursed on warrants signed by the secretary of finance and administration pursuant to vouchers signed by the state fire marshal or the state fire marshal's authorized representative.

Chapter 265 Section 10 Laws 2009

Section 10. SALE OUTSIDE OF NEW MEXICO.--Nothing in the Fire-Safer Cigarette and Firefighter Protection Act shall be construed to prohibit a person or entity from manufacturing or selling cigarettes that do not meet the requirements of Section 3 of that act if the cigarettes are or will be stamped for sale in another state or are packaged for sale outside the United States and that person or entity has taken reasonable steps to ensure that the cigarettes will not be sold or offered for sale to persons located in New Mexico.

Chapter 265 Section 11 Laws 2009

Section 11. CONTINGENT REPEAL.--The Fire-Safer Cigarette and Firefighter Protection Act is repealed, effective on the date that the New Mexico compilation commission receives certification from the state fire marshal that the federal government has adopted or enacted a reduced cigarette ignition propensity standard and that the standard is in effect.

Chapter 265 Section 12 Laws 2009

Section 12. STATE PREEMPTION.--Cities, counties, home rule municipalities and other political subdivisions of the state shall not adopt or continue in effect any ordinance, rule, regulation, resolution or statute on cigarette testing and standards. The Fire-Safer Cigarette and Firefighter Protection Act preempts any local law, ordinance or regulation that conflicts with any provision of that act or any policy of the state of New Mexico implemented in accordance with that act, and, notwithstanding any other provision of law, a governmental unit of the state of New Mexico shall not enact or enforce an ordinance, local law or regulation conflicting with or preempted by that act.

Chapter 265 Section 13 Laws 2009

Section 13. EFFECTIVE DATE.--The effective date of the provisions of Sections 1 through 6 and 8 through 11 of this act is January 1, 2010.

HFL/HJC/House Bill 70, aa

Approved April 8, 2009

LAWS 2009, CHAPTER 266

AN ACT

RELATING TO THE FIRE PROTECTION GRANT COUNCIL; ELIMINATING CERTAIN APPOINTEE EXCLUSIONS.

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

Chapter 266 Section 1 Laws 2009

Section 1. Section 59A-53-19 NMSA 1978 (being Laws 2006, Chapter 103, Section 8) is amended to read:

"59A-53-19. FIRE PROTECTION GRANT COUNCIL--DUTIES.--

A. The "fire protection grant council" is created. Subject to the requirements of Subsection B of this section, the council shall consist of:

- (1) a representative of the New Mexico municipal league;
 - (2) a representative of the New Mexico association of counties;
 - (3) two members appointed by the public regulation commission who shall serve at the pleasure of the commission;
 - (4) three members, one from each congressional district, appointed by the governor who shall serve at the pleasure of the governor; and
 - (5) the marshal, who shall serve as a nonvoting advisory member.
- The council shall elect a chair and vice chair from its membership.

B. No appointee to the council shall be a member of the public regulation commission, the superintendent of insurance or any other employee of the commission.

C. The public members shall receive per diem and mileage as provided in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

D. The council shall develop criteria for assessing the critical needs of municipal and county fire districts for fire apparatus and equipment, communications equipment, equipment for wildfires, fire station construction or expansion or equipment for hazardous material response.

E. Applications for grant assistance from the fire protection grant fund shall be made by fire districts to the council in accordance with the requirements of the council. Using criteria developed by the council, the council shall evaluate applications and prioritize those applications most in need of grant assistance from the fund. To the extent that money in the fund is available, the council shall award grant assistance for those prioritized applications.

F. In awarding grant assistance, the council may require conditions and procedures necessary to ensure that the money is expended in the most prudent manner."

House Bill 706

Approved April 8, 2009

LAWS 2009, CHAPTER 267

AN ACT

RELATING TO EDUCATION; PROVIDING FOR MEDIA LITERACY AS AN ELECTIVE FOR PUBLIC SCHOOL STUDENTS IN GRADES SIX THROUGH TWELVE.

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

Chapter 267 Section 1 Laws 2009

Section 1. Section 22-13-1 NMSA 1978 (being Laws 2003, Chapter 153, Section 57, as amended by Laws 2007, Chapter 307, Section 7 and by Laws 2007, Chapter 308, Section 7) is amended to read:

"22-13-1. SUBJECT AREAS--MINIMUM INSTRUCTIONAL AREAS REQUIRED--ACCREDITATION.--

A. The department shall require public schools to address department-approved academic content and performance standards when instructing in specific

department-required subject areas as provided in this section. A public school or school district failing to meet these minimum requirements shall not be accredited by the department.

B. All kindergarten through third grade classes shall provide daily instruction in reading and language arts skills, including phonemic awareness, phonics and comprehension, and in mathematics. Students in kindergarten and first grades shall be screened and monitored for progress in reading and language arts skills and students in second grade shall take diagnostic tests on reading and language arts skills.

C. All first, second and third grade classes shall provide instruction in art, music and a language other than English, and instruction that meets content and performance standards shall be provided in science, social studies, physical education and health education.

D. In fourth through eighth grades, instruction that meets academic content and performance standards shall be provided in the following subject areas:

(1) reading and language arts skills, with an emphasis on writing and editing for at least one year and an emphasis on grammar and writing for at least one year;

(2) mathematics;

(3) language other than English;

(4) communication skills;

(5) science;

(6) art;

(7) music;

(8) social studies;

(9) New Mexico history;

(10) United States history;

(11) geography;

(12) physical education; and

(13) health education.

E. Beginning with the 2008-2009 school year, in eighth grade, algebra 1 shall be offered in regular classroom settings or through on-line courses or agreements with high schools.

F. In fourth through eighth grades, school districts shall offer electives that contribute to academic growth and skill development and provide career and technical education. In sixth through eighth grades, media literacy may be offered as an elective.

G. In ninth through twelfth grades, instruction that meets academic content and performance standards shall be provided in health education."

Chapter 267 Section 2 Laws 2009

Section 2. Section 22-13-1.1 NMSA 1978 (being Laws 1986, Chapter 33, Section 5, as amended) is amended to read:

"22-13-1.1. GRADUATION REQUIREMENTS.--

A. At the end of grades eight through eleven, each student shall prepare an interim next-step plan that sets forth the coursework for the grades remaining until high school graduation. Each year's plan shall explain any differences from previous interim next-step plans, shall be filed with the principal of the student's high school and shall be signed by the student, the student's parent and the student's guidance counselor or other school official charged with coursework planning for the student.

B. Each student must complete a final next-step plan during the senior year and prior to graduation. The plan shall be filed with the principal of the student's high school and shall be signed by the student, the student's parent and the student's guidance counselor or other school official charged with coursework planning for the student.

C. An individualized education program that meets the requirements of Subsections A and B of this section and that meets all applicable transition and procedural requirements of the federal Individuals with Disabilities Education Act for a student with a disability shall satisfy the next-step plan requirements of this section for that student.

D. A local school board shall ensure that each high school student has the opportunity to develop a next-step plan 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 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. 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. Media literacy may be offered as an elective.

G. 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.

H. The department shall establish a procedure for students to be awarded credit through completion of specified career technical education courses for certain graduation requirements.

I. 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;

(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 and government and economics, and one-half unit of New Mexico history;

(5) one unit in physical education;

(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. Student service learning shall be offered as an elective.

Financial literacy shall be offered as an elective. Media literacy may be offered as an elective.

J. Final examinations shall be administered to all students in all classes offered for credit.

K. 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.

L. 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 requirement of this subsection, the student may receive a New Mexico diploma of excellence.

M. As used in this section:

(1) "final next-step plan" means a next-step plan that shows that the student has committed or intends to commit in the near future to a four-year college or university, a two-year college, a trade or vocational program, an internship or apprenticeship, military service or a job;

(2) "interim next-step plan" means an annual next-step plan in which the student specifies post-high-school goals and sets forth the coursework that will allow the student to achieve those goals; and

(3) "next-step plan" means an annual personal written plan of studies developed by a student in a public school or other state-supported school or institution in consultation with the student's parent and school counselor or other school

official charged with coursework planning for the student 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; and
- (c) distance learning courses.

N. The secretary may establish a policy to provide for administrative interpretations to clarify curricular and testing provisions of the Public School Code."

House Bill 342, aa

Approved April 8, 2009

LAWS 2009, CHAPTER 268

AN ACT

RELATING TO PUBLIC SCHOOLS; CHANGING THE WAY GRADUATION RATES ARE CALCULATED; DECLARING AN EMERGENCY.

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

Chapter 268 Section 1 Laws 2009

Section 1. Section 22-13-1.1 NMSA 1978 (being Laws 1986, Chapter 33, Section 5, as amended) is amended to read:

"22-13-1.1. GRADUATION REQUIREMENTS.--

A. At the end of grades eight through eleven, each student shall prepare an interim next-step plan that sets forth the coursework for the grades remaining until high school graduation. Each year's plan shall explain any differences from previous interim next-step plans, shall be filed with the principal of the student's high school and shall be signed by the student, the student's parent 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 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. 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.

G. 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.

H. The department shall establish a procedure for students to be awarded credit through completion of specified career technical education courses for certain graduation requirements.

I. 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;

(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 and government and economics, and one-half unit of New Mexico history;

(5) one unit in physical education;

(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. Student service learning shall be offered as an elective. Financial literacy shall be offered as an elective.

J. Final examinations shall be administered to all students in all classes offered for credit.

K. 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.

L. 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 requirement 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.

M. As used in this section:

(1) "final next-step plan" means a next-step plan that shows that the student has committed or intends to commit in the near future to a four-year college or university, a two-year college, a trade or vocational program, an internship or apprenticeship, military service or a job;

(2) "interim next-step plan" means an annual next-step plan in which the student specifies post-high-school goals and sets forth the coursework that will allow the student to achieve those goals; and

(3) "next-step plan" means an annual personal written plan of studies developed by a student in a public school or other state-supported school or institution in consultation with the student's parent and school counselor or other school official charged with coursework planning for the student 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; and

(c) distance learning courses.

N. The secretary may establish a policy to provide for administrative interpretations to clarify curricular and testing provisions of the Public School Code."

Chapter 268 Section 2 Laws 2009

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

House Bill 333, aa, w/ec

Approved April 8, 2009

LAWS 2009, CHAPTER 269

AN ACT

RELATING TO MUNICIPALITIES; PROHIBITING, IN CERTAIN CASES, THE POWERS OF MUNICIPALITIES TO CONDEMN WATER AND WATER RIGHTS.

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

Chapter 269 Section 1 Laws 2009

Section 1. Section 3-27-1 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-26-1) is amended to read:

"3-27-1. POTABLE--AUTHORITY TO ACQUIRE AND OPERATE WATER FACILITIES.--

A. A municipality, within and without the municipal boundary, may:

(1) acquire water facilities that may include but are not limited to:

- (a) wells, cisterns and reservoirs;
- (b) distribution pipes and ditches;
- (c) pumps;
- (d) rights of way;
- (e) water treatment plants; and
- (f) their necessary appurtenances; and

(2) use and supply water for:

- (a) sewer purposes;
- (b) private use; and
- (c) public use.

B. In acquiring private property pursuant to this section, a municipality may exercise the power of eminent domain pursuant to procedures of the Eminent Domain Code and subject to any applicable provisions of Section 3-27-2 NMSA 1978."

Chapter 269 Section 2 Laws 2009

Section 2. Section 3-27-2 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-26-2, as amended) is amended to read:

"3-27-2. POTABLE--METHODS OF ACQUISITION--CONDEMNATION
CONVEYANCES AUTHORIZED--LAND FOR APPURTENANCES--PUBLIC AND
PRIVATE USE--COMPENSATION.--

A. Subject to the provisions of this section, municipalities within and without the municipal boundary may:

(1) acquire, contract for or condemn:

(a) springs;

(b) wells;

(c) water rights;

(d) other water supplies; and

(e) rights of way or other necessary ownership for the acquisition of water facilities;

(2) acquire, maintain, contract for or condemn for use as a municipal utility privately owned water facilities used or to be used for the furnishing and supply of water to the municipality or its inhabitants; and

(3) change the place of diversion of any water to any place selected by the municipality in order to make the water available to the municipality.

B. Municipalities shall not condemn water sources used by, water stored for use by or water rights owned or served by an acequia, community ditch, irrigation district, conservancy district or political subdivision of the state. The provisions of this subsection apply only to an acequia or community ditch formed before July 1, 2009.

C. For the purposes stated in Section 3-27-3 NMSA 1978, a municipality may take water from any stream, gulch or spring. If the taking of the water materially interferes with or impairs the vested right of any person to the creek, gulch or stream or to any milling or manufacturing on the creek, gulch or stream, the municipality shall obtain the consent of the person with the vested right or acquire the vested right by condemnation and make full compensation or satisfaction for all damages occasioned to the person, subject to the provisions set forth in Subsection B of this section.

D. Any person may lawfully convey to any municipality any water, water right and ditch right or any interest in any water, water right and ditch right held or claimed by the grantor. No change or use of the:

- (1) water;
- (2) water right;
- (3) place of diversion; or

(4) purpose for which the water or water right was originally acquired by the grantor, shall invalidate the right of the municipality to use the water or water right.

E. Proceedings to obtain any condemnation authorized in this section shall be in the manner provided by law.

F. At any time before or after commencement of a condemnation action authorized by Chapter 3, Article 27 NMSA 1978 to condemn any well, cistern, reservoir, distribution pipe or ditch, spring, stream, water or water right, the parties may agree to and carry out a compromise or settlement as to any matter. Within twenty days following the filing of the petition, the condemnee may elect to proceed through an arbitration process pursuant to the Uniform Arbitration Act by filing a written notice with the condemnor. The arbitrators may award an amount they find to be just compensation for the condemnation of the water or water rights. The arbitrators may decide that the interests of justice are not served by permitting the taking of the condemnee's water or water rights and may order that the arbitration be dismissed and that the property not be taken by the municipality. If the award of the arbitrators exceeds the amount offered by the condemnor pursuant to this subsection by more than one hundred fifteen percent, or if the arbitrators decide that no taking shall occur as permitted in this subsection, or if the arbitration is abandoned by the condemnor, then the arbitrators shall award reasonable and necessary arbitration expenses, including attorney fees, to the condemnee.

G. In any condemnation proceeding pursuant to this section, the entity shall have reasonably satisfied the following criteria prior to commencing any such proceeding:

(1) the entity has a requirement for water or water rights for public health or safety purposes; or

(2) the entity has a requirement for water or water rights for other purposes and:

(a) suitable water rights are unavailable for voluntary sale at up to one hundred twenty-five percent of appraised value;

(b) suitable water rights in the public domain are unavailable for purchase at up to one hundred twenty-five percent of appraised value;

and (c) the entity has implemented a water conservation plan;

(d) the acquisition and purpose is consistent with the regional water plan."

Chapter 269 Section 3 Laws 2009

Section 3. Section 3-27-3 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-26-3, as amended) is amended to read:

"3-27-3. POTABLE--JURISDICTION OVER WATER FACILITIES AND SOURCE.--

A. For the purpose of acquiring, maintaining, contracting for, condemning or protecting its water facilities and water from pollution, the jurisdiction of the municipality extends within and without its boundary to:

(1) all territory occupied by the water facilities;

(2) all reservoirs, streams and other sources supplying the reservoirs and streams; and

(3) five miles above the point from which the water is taken.

B. In exercising its jurisdiction to acquire, maintain, contract for or condemn and protect the water facilities, the municipality shall not act so as to physically isolate and make nonviable any portion of the water facilities, within or without the municipality. The municipality may adopt any ordinance and regulation necessary to carry out the power conferred by this section."

HJC/House Bill 40

Approved April 9, 2009

LAWS 2009, CHAPTER 270

AN ACT

RELATING TO LOCAL GOVERNMENT; ENACTING THE SOLAR ENERGY IMPROVEMENT SPECIAL ASSESSMENT ACT; AUTHORIZING COUNTIES TO IMPOSE, ADMINISTER AND DISBURSE SOLAR ENERGY IMPROVEMENT SPECIAL ASSESSMENTS TO ENCOURAGE THE DEVELOPMENT OF SOLAR ENERGY IMPROVEMENTS.

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

Chapter 270 Section 1 Laws 2009

Section 1. SHORT TITLE.--This act may be cited as the "Solar Energy Improvement Special Assessment Act".

Chapter 270 Section 2 Laws 2009

Section 2. DEFINITIONS.--As used in the Solar Energy Improvement Special Assessment Act:

- A. "county" means a county, including an H class county;
- B. "eligible solar energy improvement" means a photovoltaic or solar thermal system installed on residential or commercial property;
- C. "photovoltaic system" means an energy system that collects or absorbs sunlight for conversion into electricity; and
- D. "solar thermal system" means an energy system that collects or absorbs solar energy for conversion into heat for the purposes of space heating, space cooling or water heating.

Chapter 270 Section 3 Laws 2009

Section 3. ORDINANCE IMPOSING SOLAR ENERGY SPECIAL ASSESSMENT.--The board of county commissioners of a county may provide by ordinance for a solar energy improvement special assessment to be imposed on a residential or commercial property within the boundaries of the county if the owner of the property requests the assessment. The purpose of the solar energy improvement special assessment shall be to increase access to the benefits of solar technology improvements by participation in a voluntary special assessment on property, which can be used to facilitate financing arrangements for the eligible solar energy improvements.

Chapter 270 Section 4 Laws 2009

Section 4. IMPLEMENTATION OF SOLAR ENERGY IMPROVEMENT SPECIAL ASSESSMENT.--A board of county commissioners enacting an ordinance providing for a solar energy improvement special assessment shall direct the county treasurer to include the solar energy improvement special assessment in the property tax bill for property subject to the assessment and to collect the assessment at the same time and in the same manner as property taxes are levied and collected if:

A. the property owner has submitted a written application, in a format approved by the county treasurer, requesting that the solar energy improvement special assessment be applied to the owner's property for the purpose of financing an eligible solar energy improvement on the property;

B. the county assessor has verified that the property owner requesting the solar energy improvement special assessment is the owner of record of the property with respect to which the solar energy improvement special assessment will be levied and that there are no delinquent taxes on the property;

C. the property owner has submitted certification, in a format approved by the county treasurer, that the improvements to the property:

(1) are eligible solar energy improvements;

(2) comply with guidelines for photovoltaic or solar thermal systems established by the energy, minerals and natural resources department; and

(3) will be installed in compliance with the guidelines established by the energy, minerals and natural resources department for installation of photovoltaic or solar thermal systems;

D. the property owner has submitted documentation, in a format approved by the county treasurer, of the proposed financing agreement for the solar energy improvements to the property to establish:

(1) that the financing will be provided by an entity that has been certified by the financial institutions division of the regulation and licensing department as a solar energy improvement financing institution, pursuant to the provisions of Section 7 of the Solar Energy Improvement Special Assessment Act;

(2) that the financing is for an amount, including principal, interest and administrative fees to the county, that is no more than forty percent of the assessed value of the property according to current county property tax records and that the administrative fees to the county constitute no more than ten percent of the total financing amount;

(3) the annual amount of the solar energy improvement special assessment necessary to satisfy the financing agreement and the number of years the assessment shall be imposed on the property; and

(4) the conditions by which the property owner may prepay and permanently satisfy the debt owed pursuant to the financing agreement and remove the solar improvement special assessment and lien from the property.

Chapter 270 Section 5 Laws 2009

Section 5. SOLAR ENERGY IMPROVEMENT SPECIAL ASSESSMENT--
AMOUNT--COLLECTION--LIEN CREATED.--

A. The amount of the solar energy improvement special assessment on a property shall be the amount necessary to finance the eligible solar energy improvements, including payment of principal, interest and administrative fees collected by the county; provided that the administrative fees shall not exceed ten percent of the total financing amount. Agreements entered into by the owner of the property with the solar energy improvement financing institution and submitted pursuant to this section shall be conclusive regarding the amount that may be assessed against the property; provided that, when the underlying debt has been satisfied, the solar energy improvement special assessment shall be removed from the property.

B. The solar energy improvement special assessment shall be levied and collected at the same time and in the same manner as property taxes are levied and collected. Money derived from the imposition and collection of the solar energy improvement special assessment shall be kept separately from other county funds.

C. A solar energy improvement special assessment shall constitute a lien on the property, which shall be effective during the period in which the assessment is imposed and shall have priority co-equal with other property tax liens. The amount of the lien shall not exceed the annual amount of the solar energy improvement special assessment imposed on the property. The lien shall be removed immediately upon satisfaction of the underlying debt giving rise to the assessment and lien.

Chapter 270 Section 6 Laws 2009

Section 6. SOLAR ENERGY IMPROVEMENT SPECIAL ASSESSMENT--
DISBURSEMENT OF PROCEEDS.--

A. Proceeds from a solar energy improvement special assessment on a property shall be disbursed by the county treasurer solely for the purpose of financing the solar energy improvements to that property and paying the applicable administrative fees to the county.

B. The county treasurer shall enter into an agreement with the solar energy improvement financing institution providing financing to the property owner specifying the procedures by which the treasurer shall transfer the revenue from the assessment to the institution. The agreement with the solar energy improvement financing institution shall specify that the county is not liable in any way for the debt of the property owner, is not a third party obligor and is not pledging or lending its credit to the property owner or the financing institution.

Chapter 270 Section 7 Laws 2009

Section 7. SOLAR ENERGY IMPROVEMENT FINANCING INSTITUTIONS--CERTIFICATION OF QUALIFIED ENTITIES.--The financial institutions division of the regulation and licensing department shall promulgate rules for the certification of financial institutions or other entities as solar energy improvement financing institutions. The rules shall ensure that a solar energy improvement financing institution is a member institution of the federal deposit insurance corporation or the national credit union administration or is an entity that the financial institutions division finds meets generally accepted criteria for financial stability and soundness.

Chapter 270 Section 8 Laws 2009

Section 8. ADDITIONAL CRITERIA PROHIBITED.--A county shall not establish additional criteria for participation by property owners in the solar energy improvement special assessment beyond those set forth in the Solar Energy Improvement Special Assessment Act. A county shall not require, as a condition of being subject to a solar energy improvement special assessment, that a property comply with energy efficiency standards such as energy audits, appliance replacement or energy efficiency improvements.

Chapter 270 Section 9 Laws 2009

Section 9. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.

HBIC/House Bill 572, aa

Approved April 9, 2009

LAWS 2009, CHAPTER 271

AN ACT

RELATING TO TAXATION; ENACTING NEW SECTIONS OF THE INCOME TAX ACT AND THE CORPORATE INCOME AND FRANCHISE TAX ACT TO PROVIDE FOR A TAX CREDIT FOR GEOTHERMAL GROUND-COUPLED HEAT PUMPS.

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

Chapter 271 Section 1 Laws 2009

Section 1. A new section of the Income Tax Act is enacted to read:

"GEOTHERMAL GROUND-COUPLED HEAT PUMP TAX CREDIT.--

A. A taxpayer who files an individual New Mexico income tax return for a taxable year beginning on or after January 1, 2010 and who purchases and installs after January 1, 2010 but before December 31, 2020 a geothermal ground-coupled heat pump in a residence, business or agricultural enterprise in New Mexico owned by that taxpayer may apply for, and the department may allow, a tax credit of up to thirty percent of the purchase and installation costs of the system. The credit provided in this section may be referred to as the "geothermal ground-coupled heat pump tax credit". The total geothermal ground-coupled heat pump tax credit allowed to a taxpayer shall not exceed nine thousand dollars (\$9,000). The department shall allow a geothermal ground-coupled heat pump tax credit only for geothermal ground-coupled heat pumps certified by the energy, minerals and natural resources department.

B. A portion of the geothermal ground-coupled heat pump tax credit that remains unused in a taxable year may be carried forward for a maximum of ten consecutive taxable years following the taxable year in which the credit originates until the credit is fully expended.

C. Prior to July 1, 2010, the energy, minerals and natural resources department shall adopt rules establishing procedures to provide certification of geothermal ground-coupled heat pumps for purposes of obtaining a geothermal ground-coupled heat pump tax credit. The rules shall address technical specifications and requirements relating to safety, building code and standards compliance, minimum system sizes, system applications and lists of eligible components. The energy, minerals and natural resources department may modify the specifications and requirements as necessary to maintain a high level of system quality and performance.

D. The department may allow a maximum annual aggregate of two million dollars (\$2,000,000) in geothermal ground-coupled heat pump tax credits. Applications for the credit shall be considered in the order received by the department.

E. A taxpayer who otherwise qualifies and claims a geothermal ground-coupled heat pump tax credit with respect to property owned by a partnership or other business association of which the taxpayer is a member may claim a credit only in proportion to that taxpayer's interest in the partnership or association. The total credit claimed in the aggregate by all members of the partnership or association with respect to the property shall not exceed the amount of the credit that could have been claimed by a sole owner of the property.

F. A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the credit that would have been allowed on a joint return.

G. As used in this section, "geothermal ground-coupled heat pump" means a system that uses energy from the ground, water or, ultimately, the sun for distribution of heating, cooling or domestic hot water; that has either a minimum coefficient of performance of three and four-tenths or an efficiency ratio of sixteen or

greater; and that is installed by an accredited installer certified by the international ground source heat pump association."

Chapter 271 Section 2 Laws 2009

Section 2. A new section of the Corporate Income and Franchise Tax Act is enacted to read:

"GEOTHERMAL GROUND-COUPLED HEAT PUMP TAX CREDIT.--

A. A taxpayer that files a New Mexico corporate income tax return for a taxable year beginning on or after January 1, 2010 and that purchases and installs after January 1, 2010 but before December 31, 2020 a geothermal ground-coupled heat pump in a property owned by the taxpayer may claim against the taxpayer's corporate income tax liability, and the department may allow, a tax credit of up to thirty percent of the purchase and installation costs of the system. The credit provided in this section may be referred to as the "geothermal ground-coupled heat pump tax credit". The total geothermal ground-coupled heat pump tax credit allowed to a taxpayer shall not exceed nine thousand dollars (\$9,000). The department shall allow a geothermal ground-coupled heat pump tax credit only for geothermal ground-coupled heat pumps certified by the energy, minerals and natural resources department.

B. A portion of the geothermal ground-coupled heat pump tax credit that remains unused in a taxable year may be carried forward for a maximum of ten consecutive taxable years following the taxable year in which the credit originates until the credit is fully expended.

C. Prior to July 1, 2010, the energy, minerals and natural resources department shall adopt rules establishing procedures to provide certification of geothermal ground-coupled heat pumps for purposes of obtaining a geothermal ground-coupled heat pump tax credit. The rules shall address technical specifications and requirements relating to safety, building code and standards compliance, minimum system sizes, system applications and lists of eligible components. The energy, minerals and natural resources department may modify the specifications and requirements as necessary to maintain a high level of system quality and performance.

D. The department may allow a maximum annual aggregate of two million dollars (\$2,000,000) in geothermal ground-coupled heat pump tax credits. Applications for the credit shall be considered in the order received by the department.

E. As used in this section, "geothermal ground-coupled heat pump" means a reversible refrigerator device that provides space heating, space cooling, domestic hot water, processed hot water, processed chilled water or any other application where hot air, cool air, hot water or chilled water is required and that utilizes ground water or water circulating through pipes buried in the ground as a condenser in the cooling mode and an evaporator in the heating mode."

House Bill 375

Approved April 9, 2009

LAWS 2009, CHAPTER 272

AN ACT

RELATING TO SCHOOL PERSONNEL; INCREASING THE MATHEMATICS REQUIREMENT FOR PERSONS SEEKING LICENSURE OR RECIPROCITY IN ELEMENTARY EDUCATION.

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

Chapter 272 Section 1 Laws 2009

Section 1. Section 22-10A-6 NMSA 1978 (being Laws 1986, Chapter 33, Section 8, as amended) is amended to read:

"22-10A-6. EDUCATIONAL REQUIREMENTS FOR LICENSURE.--

A. The department shall require a person seeking licensure or reciprocity in elementary or secondary education to have completed the following minimum requirements in the college of arts and sciences:

- (1) twelve hours in English;
- (2) twelve hours in history, including American history and western civilization;
- (3) nine hours in mathematics for elementary education and six hours in mathematics for secondary education;
- (4) six hours in government, economics or sociology;
- (5) twelve hours in science, including biology, chemistry, physics, geology, zoology and botany; and
- (6) six hours in fine arts.

B. In addition to the requirements specified in Subsections A and C of this section, the department shall require that a person seeking standard or alternative elementary licensure shall have completed six hours of reading courses, and a person seeking standard or alternative secondary licensure shall have completed three hours of

reading courses in subject matter content. The department shall establish requirements that provide a reasonable period of time to comply with the provisions of this subsection.

C. Except for licensure by reciprocity, the department shall require, prior to initial licensure, no less than fourteen weeks of student teaching, a portion of which shall occur in the first thirty credit hours taken in the college of education and shall be under the direct supervision of a teacher and a portion of which shall occur in the student's senior year with the student teacher being directly responsible for the classroom.

D. Nothing in this section shall preclude the department from establishing or accepting equivalent requirements for purposes of reciprocal licensure or minimum requirements for alternative licensure.

E. Vocational teacher preparatory programs may be exempt from Subsections A through C of this section upon a determination by the department that other licensure requirements are more appropriate for vocational teacher preparatory programs."

House Bill 322

Approved April 9, 2009

LAWS 2009, CHAPTER 273

AN ACT

RELATING TO PUBLIC SCHOOL FINANCE; ESTABLISHING PROGRESSIVE SANCTIONS AGAINST SCHOOL DISTRICTS AND CHARTER SCHOOLS FOR NOT SUBMITTING TIMELY AUDIT REPORTS TO THE DEPARTMENT; REQUIRING THE STATE AUDITOR TO NOTIFY THE PUBLIC EDUCATION DEPARTMENT OF FAILURE TO SUBMIT AN AUDIT; PROVIDING PENALTIES.

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

Chapter 273 Section 1 Laws 2009

Section 1. Section 12-6-3 NMSA 1978 (being Laws 1969, Chapter 68, Section 3, as amended) is amended to read:

"12-6-3. ANNUAL AND SPECIAL AUDITS.--

A. The financial affairs of every agency shall be thoroughly examined and audited each year by the state auditor, personnel of the state auditor's office designated

by the state auditor or independent auditors approved by the state auditor. The comprehensive annual financial report for the state shall be thoroughly examined and audited each year by the state auditor, personnel of the state auditor's office designated by the state auditor or independent auditors approved by the state auditor. The audits shall be conducted in accordance with generally accepted auditing standards and rules issued by the state auditor.

B. In addition to the annual audit, the state auditor may cause the financial affairs and transactions of an agency to be audited in whole or in part.

C. Annual financial and compliance audits of agencies under the oversight of the financial control division of the department of finance and administration shall be completed and submitted by an agency and independent auditor to the state auditor no later than sixty days after the state auditor receives notification from the financial control division to the effect that an agency's books and records are ready and available for audit.

D. In order to comply with United States department of housing and urban development requirements, the financial affairs of a public housing authority that is determined to be a component unit in accordance with generally accepted accounting principles, other than a housing department of a local government or a regional housing authority, at the public housing authority's discretion, may be audited separately from the audit of its local primary government entity. If a separate audit is made, the public housing authority audit shall be included in the local primary government entity audit and need not be conducted by the same auditor who audits the financial affairs of the local primary government entity.

E. The state auditor shall notify the public education department within ten days when a school district, charter school or regional education cooperative fails to submit a required audit report within ninety days of the due date specified by the state auditor."

Chapter 273 Section 2 Laws 2009

Section 2. A new section of the Public School Finance Act is enacted to read:

"SCHOOL DISTRICT AND CHARTER SCHOOL AUDITS--SANCTIONS FOR NOT SUBMITTING TIMELY AUDIT REPORTS.--

A. Each school district and charter school shall have an annual audit as required by the Audit Act and rules of the state auditor that shall be completed and submitted to the state auditor by the date specified in rules of the state auditor. At the completion of the annual or any special audit, the school district or charter school shall submit a copy of the audit report to the department.

B. School districts and charter schools shall comply with due dates for annual audits specified by rule of the state auditor. Failure to submit a timely audit report shall subject a school district or charter school to progressive sanctions. A school district or charter school that does not submit an annual audit report:

(1) within ninety days from the due date, shall be required to submit monthly financial reports to the department until the department is satisfied that the school district or charter school is in compliance with all financial and audit requirements;

(2) after ninety days but within one hundred eighty days from the due date, may be withheld temporarily in an amount up to five percent of its current-year state equalization guarantee distribution;

(3) after one hundred eighty days but within two hundred seventy days, may be withheld temporarily in an amount up to seven percent of its current-year state equalization guarantee distribution and may be required to submit a corrective action plan to the secretary; and

(4) after two hundred seventy days, may be withheld temporarily in an amount up to seven percent of its current-year state equalization guarantee distribution and may be subject to the secretary's suspension of the local school board or governing body acting as a board of finance."

Chapter 273 Section 3 Laws 2009

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2010.

House Bill 321, aa

Approved April 9, 2009

LAWS 2009, CHAPTER 274

AN ACT

RELATING TO ELECTIONS; PROVIDING FOR ABSENTEE VOTING IN LIEU OF ESTABLISHING A POLLING PLACE IN SMALL, ISOLATED PRECINCTS.

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

Chapter 274 Section 1 Laws 2009

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

"MAIL BALLOT ELECTION PRECINCT--ABSENTEE VOTING IN LIEU OF POLLING PLACE.--

A. Notwithstanding the provisions of Section 1-1-11 NMSA 1978, 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 fifty voters and the nearest polling place for an adjoining precinct is more than thirty miles driving distance from the polling place designated 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 registered mail all voters in that precinct at least forty 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, the voter should return the card before the date the county clerk is scheduled to mail out absentee ballots. The card 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.

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 if a voter from that precinct does not receive an absentee ballot before election day, the voter may vote on an absentee ballot in the office of the county clerk on election day in lieu of voting on the missing ballot."

Chapter 274 Section 2 Laws 2009

Section 2. Section 1-3-2 NMSA 1978 (being Laws 1969, Chapter 240, Section 51, as amended) is amended to read:

"1-3-2. PRECINCTS--DUTIES OF COUNTY COMMISSIONERS.--

A. Not later than the first Monday in November of each odd-numbered year, the board of county commissioners shall by resolution:

(1) designate the polling place of each precinct that shall provide individuals with physical mobility limitations an unobstructed access to at least one voting machine;

(2) create additional precincts to meet the requirements of Section 1-3-1 NMSA 1978 or upon petition pursuant to Section 4-38-21 NMSA 1978;

(3) create additional polling places in existing precincts as necessary pursuant to Section 1-3-7.1 NMSA 1978;

(4) divide any precincts as necessary to meet legal and constitutional requirements for redistricting; and

(5) designate any mail ballot election precincts.

B. The county clerk shall notify the secretary of state in writing of any proposed changes in precincts or the designation of polling places made by the board of county commissioners and shall furnish a copy of the map showing the current geographical boundaries, designation and word description of each new polling place and each new or changed precinct.

C. The secretary of state shall review all new or changed precinct maps submitted pursuant to this section for compliance under the Precinct Boundary Adjustment Act. Any necessary precinct boundary adjustments shall be made and submitted to the secretary of state no later than the first Monday in December of each odd-numbered year. Upon approval of the new or changed precincts by the secretary of state, the precincts and polling places as changed by the resolution of the boards of county commissioners and approved by the secretary of state shall be the official precincts and polling places for the next succeeding primary and general elections."

Chapter 274 Section 3 Laws 2009

Section 3. Section 1-3-7 NMSA 1978 (being Laws 1969, Chapter 240, Section 57, as amended) is amended to read:

"1-3-7. POLLING PLACES.--

A. No less than one polling place shall be provided for each precinct that is not a mail ballot election precinct.

B. The board of county commissioners shall designate as the polling place or places, as the case may be, in each precinct, other than a mail ballot election precinct, the most convenient and suitable public building or public school building in the precinct that can be obtained.

C. If no public building or public school building is available, the board of county commissioners shall provide some other suitable place, which shall be the most convenient and appropriate place obtainable in the precinct, considering the purpose for which it is to be used pursuant to the Election Code.

D. If, in a precinct that is not a mail ballot election precinct, there is no public building or public school building available in the precinct, and there is no other suitable place obtainable in the precinct, the board of county commissioners may designate as a polling place for the precinct the most convenient and suitable building or public school building nearest to that precinct that can be obtained. No polling place shall be designated outside the boundary of the precinct as provided in this subsection until such designated polling place is approved by written order of the district court of the county in which the precinct is located.

E. Upon application of the board of county commissioners, the governing board of any school district shall permit the use of any school building or a part thereof for registration purposes and the conduct of any election, provided that the building or the part used for the election complies with the standards set out in the federal Voting Accessibility for the Elderly and Handicapped Act.

F. Public schools may be closed for elections at the discretion of local school boards."

Chapter 274 Section 4 Laws 2009

Section 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.

House Bill 583, aa

Approved April 9, 2009

LAWS 2009, CHAPTER 275

AN ACT

RELATING TO ECONOMIC DEVELOPMENT; ENACTING THE GREEN JOBS ACT; PROVIDING FOR GREEN JOBS TRAINING PROGRAMS; CREATING A FUND; PROVIDING PROCEDURES FOR IMPLEMENTING GRANTS TO HIGHER EDUCATION INSTITUTIONS FOR GREEN JOBS TRAINING PROGRAMS.

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

Chapter 275 Section 1 Laws 2009

Section 1. SHORT TITLE.--This act may be cited as the "Green Jobs Act".

Chapter 275 Section 2 Laws 2009

Section 2. DEFINITIONS.--As used in the Green Jobs Act:

A. "department" means the higher education department;

B. "fund" means the green jobs fund;

C. "green industries" means industries that contribute directly to preserving or enhancing environmental quality by reducing waste and pollution or producing sustainable products using sustainable processes and materials and that provide opportunities for advancement along a career track of increasing skills and wages. Green industries include:

(1) energy system retrofits to increase energy efficiency and conservation;

(2) production and distribution of biofuels, including vehicle retrofits for biofuels;

(3) building design and construction that meet the equivalent of best available technology in energy and environmental design standards;

(4) organic and community food production;

(5) manufacture of products from nontoxic, environmentally certified or recycled materials;

(6) manufacture and production of sustainable technologies, including solar panels, wind turbines and fuel cells;

(7) solar technology installation and maintenance;

(8) recycling, green composting and large-scale reuse of construction and demolition materials and debris; and

(9) water retrofits to increase water efficiency and conservation;

D. "green jobs training programs" means those programs implemented by educational institutions related to training individuals to work in green industries and to ensure that appropriate support services are provided;

E. "support services" means those services that provide trainees with the opportunity to participate in green jobs training programs, including:

(1) child care;

(2) tuition;

- (3) materials needed for training programs;
- (4) counseling and mentoring services;
- (5) internships; or
- (6) job placement programs; and

F. "target populations" means disadvantaged individuals, including:

- (1) low-income individuals;
- (2) veterans;
- (3) formerly incarcerated, nonviolent offenders;
- (4) tribal and rural constituencies;
- (5) workers adversely affected by changing national or state energy policy;
- (6) at-risk youth;
- (7) unemployed youth and adults;
- (8) high school dropouts; or
- (9) single mothers.

Chapter 275 Section 3 Laws 2009

Section 3. STATE PLAN FOR GREEN JOBS TRAINING PROGRAMS.--

A. The department, in coordination with existing apprenticeship programs administered by the department and the public education department, shall develop a state plan for the development of green jobs training programs with a focus on rural and tribal communities no later than the end of fiscal year 2010. This plan is intended to complement existing apprenticeship programs and in no way replace such programs currently funded with state money. The plan shall include a schedule for funding and implementation that gives priority to programs directed at target populations. The department shall develop the plan:

- (1) for coordination of a state research program with the workforce solutions department in which labor market data shall be collected and analyzed to track work force trends from renewable energy and energy-efficiency industries and energy-related initiatives;

(2) for a municipal and tribal energy training partnership program in which the department shall award competitive grants to higher education institutions in partnerships with cities, towns, counties and tribes to administer green jobs training programs; and

(3) for a pathways out of poverty program in which the department shall award competitive grants to higher education institutions in partnerships to administer green jobs training programs directed specifically at disadvantaged target populations.

B. The plan shall be followed by interested higher education institutions in New Mexico, and the institutions shall cooperate with the department in the development and the implementation of the plan.

Chapter 275 Section 4 Laws 2009

Section 4. GREEN JOBS FUND CREATED.--

A. The "green jobs fund" is created in the state treasury and shall consist of money transferred to the fund pursuant to the provisions of the federal Green Jobs Act of 2007 and other transfers, appropriations, distributions, gifts, grants and donations to the fund made for the purpose of funding green jobs training programs. Earnings of the fund shall be credited to the fund. Balances in the fund at the end of any fiscal year shall remain in the fund.

B. Money in the fund shall be administered by the department of finance and administration and shall be used only for the purpose of making grants for the administration of green jobs training programs pursuant to the Green Jobs Act.

C. Payments shall be made from the green jobs fund upon warrants drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of higher education or the secretary's designated representative. Such payments shall be made for the costs and administration of the Green Jobs Act. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the general fund.

Chapter 275 Section 5 Laws 2009

Section 5. ANNUAL REPORT REQUIRED.--No later than December 1 of each year, the department shall report to the legislature and to the governor on its activities during the previous fiscal year in administering the provisions of the Green Jobs Act. The report shall include:

A. details concerning all grants made for the administration of green jobs training programs;

B. details concerning all expenditures made in administering the provisions of the Green Jobs Act;

C. a list of all higher education institutions in which green jobs training programs were developed and funded;

D. an analysis of whether the green jobs training programs have been cost-effective;

E. a report showing progress made in complying with the state plan developed pursuant to the Green Jobs Act, and, if in noncompliance, a plan for achieving compliance in the future;

F. a summary of activities being conducted during the present fiscal year;
and

G. any additional information that will assist the legislature and the governor in evaluating the program.

Chapter 275 Section 6 Laws 2009

Section 6. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.

H AFC/House Bill 622

Approved April 9, 2009

LAWS 2009, CHAPTER 276

AN ACT

RELATING TO PUBLIC SCHOOLS; CLARIFYING THE SCHOOL YEAR AND LENGTH OF SCHOOL DAY.

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

Chapter 276 Section 1 Laws 2009

Section 1. Section 22-2-8.1 NMSA 1978 (being Laws 1986, Chapter 33, Section 2, as amended) is amended to read:

"22-2-8.1. SCHOOL YEAR--LENGTH OF SCHOOL DAY--MINIMUM.--

A. A school year consists of at least one hundred eighty full instructional days for a regular school year calendar, exclusive of any release time for in-service training. A school year consists of at least one hundred fifty full instructional days for a variable school year calendar, exclusive of any release time for in-service training. Except as provided in Subsection D of this section, days or parts of days that are lost to weather, in-service training or other events that are not school-directed programs shall be made up so that students are given a full instructional school year.

B. Except as otherwise provided in this section, regular students shall be in school-directed programs, exclusive of lunch, for a minimum of the following:

(1) kindergarten, for half-day programs, two and one-half hours per day or, for full-day programs, five and one-half hours per day;

(2) grades one through six, five and one-half hours per day; and

(3) grades seven through twelve, six hours per day.

C. The department shall provide for the length and number of school days for variable school year calendars in accordance with the Variable School Calendar Act.

D. Up to thirty-three hours of the full-day kindergarten program may be used for home visits by the teacher or for parent-teacher conferences. Up to twenty-two hours of grades one through six programs may be used for home visits by the teacher or for parent-teacher conferences. Up to twelve hours of grades seven through twelve programs may be used to consult with parents to develop next step plans for students and for parent-teacher conferences.

E. Nothing in this section precludes a local school board from setting a school year or the length of school days in excess of the minimum requirements established by Subsections A and B of this section.

F. The secretary may waive the minimum length or number of school days in those districts where such minimums would create undue hardships as defined by the department as long as the school year is adjusted to ensure that students in those school districts receive the same total instructional time as other students in the state."

Chapter 276 Section 2 Laws 2009

Section 2. Section 22-8-9 NMSA 1978 (being Laws 1967, Chapter 16, Section 63, as amended) is amended to read:

"22-8-9. BUDGETS--MINIMUM REQUIREMENTS.--

A. A budget for a school district shall not be approved by the department that does not provide for:

(1) a school year and school day as provided in Section 22-2-8.1 NMSA 1978; and

(2) a pupil-teacher ratio or class or teaching load as provided in Section 22-10A-20 NMSA 1978.

B. The department shall, by rule, establish the requirements for an instructional day, the standards for an instructional hour and the standards for a full-time teacher and for the equivalent thereof."

Chapter 276 Section 3 Laws 2009

Section 3. APPLICABILITY.--The provisions of this act apply to the 2010-2011 and subsequent school years.

House Bill 691, aa

Approved April 9, 2009

LAWS 2009, CHAPTER 277

AN ACT

AMENDING LAWS 2006, CHAPTER 111, SECTION 67 TO EXPAND THE USE OF THE GENERAL FUND APPROPRIATION RETROACTIVELY; AUTHORIZING NECESSARY BUDGET ADJUSTMENTS FOR CURRENT OR ANY PREVIOUS FISCAL YEAR.

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

Chapter 277 Section 1 Laws 2009

Section 1. Laws 2006, Chapter 111, Section 67 is amended to read:

"Section 67. VOTING MACHINES--SECRETARY OF STATE--GENERAL FUND.--Notwithstanding the provisions of Sections 1-9-8 and 1-9-17 through 1-9-19 NMSA 1978, eleven million dollars (\$11,000,000) is appropriated from the general fund to the secretary of state for expenditure in fiscal years 2006 through 2008 for the purchase and installation of voting systems for counties statewide, including the requisite number of voting booths, to meet the requirements of Section 1-9-7.1 NMSA 1978 contingent on an amendment to that section by the second session of the forty-seventh legislature to require the use of voting systems that use paper ballots becoming law. In addition to the purchase and installation of voting systems statewide, the general

fund appropriation in this section may also be expended for election-related advertising and other voter education and, notwithstanding the 2008 limit on the expenditure period for this appropriation, may also be expended to reimburse San Juan county in the amount of thirty-six thousand five hundred forty dollars (\$36,540) for costs incurred by San Juan county in calendar year 2000 related to implementing the voter registration and election management system. Subject to review and approval by the department of finance and administration pursuant to Sections 6-3-23 through 6-3-25 NMSA 1978 and notwithstanding any provision in those sections to the contrary, the secretary of state may request such budget adjustments for the current or any previous fiscal year as are necessary to effectuate the provisions of this section. Any unexpended or unencumbered balance remaining on January 1, 2008 shall revert to the general fund."

House Bill 864, w/o ec, w/cc

Approved April 9, 2009

LAWS 2009, CHAPTER 278

AN ACT

RELATING TO MUNICIPAL ELECTIONS; MODIFYING AND UPDATING CERTAIN PROCEDURES IN THE MUNICIPAL ELECTION CODE; REMOVING REFERENCES TO EMERGENCY PAPER BALLOTS; RECONCILING CONFLICTING AMENDMENTS TO THE SAME SECTION OF LAW BY REPEALING LAWS 1995, CHAPTER 98, SECTION 3; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Chapter 278 Section 1 Laws 2009

Section 1. Section 3-8-2 NMSA 1978 (being Laws 1985, Chapter 208, Section 10, as amended) is amended to read:

"3-8-2. DEFINITIONS.--

A. The definitions in Section 3-1-2 NMSA 1978 shall apply to the Municipal Election Code in addition to those definitions set forth in the Municipal Election Code.

B. As used in the Municipal Election Code:

(1) "absentee voter list" means the list prepared by the municipal and county clerks of those persons who have been issued an absentee ballot;

(2) "ballot" means a system for arranging and designating for the voter the names of candidates and questions to be voted on and for the marking, casting or otherwise recording of such votes. "Ballot" includes paper ballots, absentee ballots, ballot sheets and paper ballots used in lieu of voting machines;

(3) "ballot sheet" means the material placed on the front of the voting machine containing the names of the candidates, the offices the candidates are seeking and a statement of the proposed questions to be voted upon;

(4) "consolidated precinct" means the combination of two or more precincts pursuant to the Municipal Election Code;

(5) "county clerk" means the clerk of the county or the county clerk's designee within which the municipality is located;

(6) "election returns" means all certificates of the precinct board, including the certificate showing the total number of votes cast for each candidate, if any, and for or against each question, if any, and shall include statements of canvass, signature rosters, registered voter lists, machine-printed returns, paper ballots used in lieu of voting machines, absentee ballots, absentee ballot registers and absentee voter lists or absent voter machine-printed returns;

(7) "municipal clerk" means the municipal clerk or any deputy or assistant municipal clerk;

(8) "municipal clerk's office" means the office of the municipal clerk or any other room used in the process of absentee voting, counting and tallying of absentee ballots or canvassing the election results within the confines of the building where the municipal clerk's office is located;

(9) "paper ballot" means a ballot manually marked by the voter and counted by hand without the assistance of a machine or optical-scan vote tabulating device;

(10) "precinct" means a portion of a county situated entirely in or partly in a municipality that has been designated by the county as a precinct for election purposes and that is entitled to a polling place and a precinct board. If a precinct includes territory both inside and outside the boundaries of a municipality, "precinct", for municipal elections, shall mean only that portion of the precinct lying within the boundaries of the municipality;

(11) "precinct board" means the appointed election officials serving a single or consolidated precinct;

(12) "qualified elector" means any person whose affidavit of voter registration has been filed by the county clerk, who is registered to vote in a general

election precinct established by the board of county commissioners that is wholly or partly within the municipal boundaries and who is a resident of the municipality. Persons who would otherwise be qualified electors if land on which they reside is annexed to a municipality shall be deemed to be qualified electors:

(a) upon the effective date of the municipal ordinance effectuating the terms of the annexation as certified by the board of arbitration pursuant to Section 3-7-10 NMSA 1978;

(b) upon thirty days after the filing of an order of annexation by the municipal boundary commission pursuant to Sections 3-7-15 and 3-7-16 NMSA 1978, if no appeal is filed or, if an appeal is filed, upon the filing of a nonappealable court order effectuating the annexation; or

(c) upon thirty days after the filing of an ordinance pursuant to Section 3-7-17 NMSA 1978, if no appeal is filed or, if an appeal is filed, upon the filing of a nonappealable court order effectuating the annexation;

(13) "recheck" pertains to voting machines and means a verification procedure where the counter compartment of the voting machine is opened and the results of the balloting as shown on the counters of the machine are compared with the results shown on the official returns;

(14) "recount" pertains to ballots and absentee ballots and means a retabulation and retallying of individual ballots;

(15) "voter" means a qualified elector of the municipality; and

(16) "voting machine" means any electronic recording and tabulating voting system as tested and approved by the secretary of state."

Chapter 278 Section 2 Laws 2009

Section 2. Section 3-8-11 NMSA 1978 (being Laws 1985, Chapter 208, Section 19) is amended to read:

"3-8-11. POLLING PLACES.--

A. The governing body shall designate within the municipal boundaries a polling place, in each precinct or consolidated precinct, that is the most convenient and suitable public building or public school building in the precinct that can be obtained and that provides suitable access for handicapped persons as required by law.

B. If no public building or public school building is available, the governing body shall provide some other suitable place, which shall be the most convenient and

appropriate place obtainable within the municipal boundaries and in the precinct, considering the purpose for which it is to be used.

C. If no public building or public school building is available in the precinct and if there is no other suitable place obtainable in the precinct, the governing body may designate as a polling place for the precinct the most convenient and suitable building or public school building nearest to that precinct that can be obtained; provided, no polling place shall be designated outside the boundaries of the municipality and of the precinct as provided in this subsection until such designated polling place is approved by written order of the district court of the county in which the precinct is located.

D. Upon application of the governing body or municipal clerk, the governing board of any school district shall permit the use of any school buildings or a part thereof for the conduct of any municipal election.

E. If only one candidate files a declaration of candidacy for each position to be filled at an election and no declared write-in candidate files for a position and there are no questions or bond issues on the ballot, the municipal clerk may designate a single polling place for the election."

Chapter 278 Section 3 Laws 2009

Section 3. Section 3-8-13 NMSA 1978 (being Laws 1985, Chapter 208, Section 21) is amended to read:

"3-8-13. VOTING MACHINES--PAPER BALLOTS.--Voting machines shall be used in all municipal elections, except paper ballots may be used in lieu of voting machines for the recording of votes cast in a municipal special or regular election in municipalities of less than one thousand five hundred population. A decision to use paper ballots shall be made by the governing body at the time the election resolution is adopted. Nothing in this section shall prevent the use of absentee ballots as allowed by law."

Chapter 278 Section 4 Laws 2009

Section 4. Section 3-8-14 NMSA 1978 (being Laws 1985, Chapter 208, Section 22, as amended) is amended to read:

"3-8-14. VOTING MACHINES--ORDERING--PREPARATION--CERTIFICATION--DELIVERY.--

A. If voting machines are to be used, the municipal clerk shall order the machines from the county clerk within fifteen days of the adoption of the election resolution, and the county clerk shall supply such voting machines pursuant to Section 1-9-6 NMSA 1978. The county shall provide voting machine technicians, voting machine programming and voting machine transportation. The municipality shall pay the

reasonable fee charged by the county for such services and the use of the voting machines, but in no case in an amount that exceeds the actual cost to the county pursuant to Section 1-9-12 NMSA 1978.

B. If voting machines are to be used, the municipal clerk shall order at least one voting machine for every polling place; provided that the municipal clerk shall order a sufficient number of voting machines to ensure that the eligible voters in that polling place shall be able to vote in a timely manner.

C. Programming of electronic machines shall be performed under the supervision of the municipal clerk and the county clerk. The machines shall be programmed so that votes will be counted in accordance with specifications for electronic voting machines adopted by the secretary of state.

D. Immediately upon receipt of the notice of date, time and place of inspection and certification, the municipal clerk shall post such notice in the office of the municipal clerk and attempt to contact the candidates using the information listed on the declaration of candidacy to give each candidate notice of the date, time and place of inspection and certification.

E. Inspection and certification shall occur not later than seven days prior to the election and shall be open to the public. If voting machines are to be used for absentee voting, inspection and certification shall occur not later than seven days prior to the beginning of absentee voting and shall be open to the public.

F. At the date, time and place for inspection and certification, in the presence of the county clerk and those municipal candidates present, if any, the municipal clerk shall:

(1) ensure that the correct ballot sheet has been installed on each voting machine, if ballot sheets are to be installed;

(2) test each counter for accuracy by casting votes upon it until it correctly registers each vote cast;

(3) test each voting machine to ensure that it has been correctly programmed; and

(4) inform the county clerk when each machine is satisfactory and ready to be certified.

G. If the municipal clerk informs the county clerk that a machine is satisfactory and ready to be certified:

(1) the county clerk shall reset each counter at zero;

(2) the voting machine shall be immediately sealed with a numbered seal so as to prevent operation of the machine or its registering counters without breaking the seal;

(3) the municipal clerk shall prepare a certificate in triplicate for each machine that shall:

(a) show the serial number of the voting machine;

(b) state that the voting machine has all of its resettable registering counters set at zero;

(c) state that the voting machine has been tested by voting on each registered counter to prove the counter is in perfect condition;

(d) state that the correct ballot sheet has been installed on the voting machine, if ballot sheets are to be installed;

(e) show the number of the seal that has sealed the machine; and

(f) show the number registered on the protective counter;

(4) a copy of the certificate shall be delivered to the county clerk, the original certificate shall be filed in the office of the municipal clerk and one copy shall be posted on the voting machine; and

(5) if the voting machine requires keys, the keys to the voting machine shall be enclosed in a sealed envelope on which shall be written:

(a) the number of the precinct and polling place to which the machine is assigned;

(b) the serial number of the voting machine;

(c) the number of the seal that has sealed the voting machine;

(d) the number registered on the protective counter; and

(e) the signatures of the county clerk, the municipal clerk and all candidates present, if any, at the inspection and certification.

H. After certification of the voting machines, if the voting machines require keys, the county clerk shall keep the keys to the voting machines in the county clerk's custody and shall deliver the keys to the municipal clerk when the voting machines are

delivered for election. The municipal clerk shall secure in the office of the municipal clerk all the envelopes containing the keys to the voting machines until delivered to the presiding judge of the election.

I. An objection to the use of a particular voting machine shall be filed in the district court within two days after the machine has been certified. Any objection so filed shall specify the number of the voting machine objected to and the reason for the objection. Each voting machine shall be conclusively presumed to be properly prepared for the election if it has been certified unless a timely objection has been filed.

J. Voting machines certified in accordance with this section shall be delivered to the assigned precinct polling place no earlier than five days prior to the election and no later than noon on the day prior to the election, provided that any voting machines to be used for absentee voting shall be delivered to the municipal clerk no earlier than five days prior to the beginning of absentee voting and no later than noon on the day prior to the beginning of absentee voting in person in the office of the municipal clerk.

K. The municipal clerk shall refuse to certify any voting machine that the municipal clerk determines is not programmed properly, is not working properly or will not fairly or accurately record votes. Only voting machines that have been certified by the municipal clerk shall be used in the election."

Chapter 278 Section 5 Laws 2009

Section 5. Section 3-8-16 NMSA 1978 (being Laws 1985, Chapter 208, Section 24, as amended) is amended to read:

"3-8-16. PAPER BALLOTS IN LIEU OF VOTING MACHINES--FORM--GENERAL REQUIREMENTS.--As used in this section, "paper ballots" means paper ballots used in lieu of voting machines. Paper ballots shall be in the form prescribed by the municipal clerk, which shall conform to the following rules:

A. paper ballots shall:

(1) be numbered consecutively beginning with number one. The number shall be printed with a perforated line appropriately placed so that the portion of the ballot bearing the number may be readily and easily detached from the ballot;

(2) be uniform in size;

(3) be printed on good quality paper;

(4) be printed in plain black type;

(5) have all words and phrases printed correctly and in their proper places; and

(6) have district and precinct, if applicable;

B. the following heading shall be printed on each paper ballot used in all municipal elections:

"OFFICIAL ELECTION BALLOT

Election held (insert date)";

C. if the election is a regular municipal election, the paper ballot shall be prepared consistent with the requirements of Section 3-8-29 NMSA 1978. In addition, next to each candidate's name shall appear an empty box to be used when voting for that candidate. Where space is allowed on a paper ballot for entering the name of a declared write-in candidate, that space shall be clearly designated by the use of the heading "Write-in Candidate". Below the heading shall appear one line, with a box to the right of the line, for each individual office holder to be elected. Below the last candidate's name shall appear any question presented, in the order designated by the governing body;

D. if the election is a special municipal election, questions presented shall be placed on the paper ballot in the order designated by the governing body;

E. next to each question presented on a paper ballot shall appear two empty boxes, one labeled "FOR" and the other labeled "AGAINST"; and

F. at the bottom of all paper ballots shall be printed: "OFFICIAL ELECTION BALLOT", followed by a facsimile signature of the municipal clerk."

Chapter 278 Section 6 Laws 2009

Section 6. Section 3-8-18 NMSA 1978 (being Laws 1985, Chapter 208, Section 26, as amended) is amended to read:

"3-8-18. ELECTION SUPPLIES.--

A. No later than 5:00 p.m. on the fifty-third day preceding the day of the election, the municipal clerk shall:

(1) order absentee ballots;

(2) order ballots and sample voting machine ballots; and

(3) order all other election supplies necessary for the conduct of the election.

B. Ballots and sample voting machine ballots shall be delivered to the municipal clerk not less than thirty-five days prior to the day of the election."

Chapter 278 Section 7 Laws 2009

Section 7. Section 3-8-20 NMSA 1978 (being Laws 1971, Chapter 306, Section 9, as amended) is amended to read:

"3-8-20. PRECINCT BOARD--DUTIES.--

A. The precinct board shall:

(1) conduct the municipal election in the manner provided for the conduct of elections in the Municipal Election Code; and

(2) at the close of the polls, count the votes cast on each question, if any, and for each candidate, if any, and perform all duties as required by the Municipal Election Code.

B. A member of the precinct board shall not disclose the name of any candidate for whom any voter has voted.

C. No person shall serve on a precinct board unless that person has attended election training conducted by the municipal clerk in the previous four years."

Chapter 278 Section 8 Laws 2009

Section 8. Section 3-8-21 NMSA 1978 (being Laws 1985, Chapter 208, Section 29, as amended) is amended to read:

"3-8-21. MUNICIPAL CLERK--PRECINCT BOARD--ELECTION TRAINING.--

A. The municipal clerk shall conduct or cause to be conducted election training not less than five days prior to the election. All major details of the conduct of elections shall be covered at the training, with special emphasis given to recent changes in the Municipal Election Code. The training session shall be open to the public, with notice published not less than four days prior to the training.

B. Notice of the training shall be mailed to each precinct board member and alternate not less than seven days prior to the training.

C. Two or more municipalities may jointly conduct election training.

D. The governing body may authorize payment of mileage to precinct board members who attend election training."

Chapter 278 Section 9 Laws 2009

Section 9. Section 3-8-22 NMSA 1978 (being Laws 1985, Chapter 208, Section 30, as amended) is amended to read:

"3-8-22. CONDUCT OF ELECTION--ELIGIBILITY FOR ASSISTANCE--ORAL ASSISTANCE FOR LANGUAGE MINORITY VOTERS--AID OR ASSISTANCE TO VOTER MARKING BALLOT--WHO MAY ASSIST VOTER--TYPE OF ASSISTANCE.--

A. A voter may request assistance in voting only if the voter is:

(1) visually impaired;

(2) a person with a physical disability;

(3) unable to read or write;

(4) a member of a language minority who is unable to read well enough to exercise the elective franchise; or

(5) not able to operate a voting machine or mark a ballot without assistance.

B. When a voter who is eligible for assistance requires assistance in marking a ballot or recording a vote on a voting machine, the voter shall announce this fact before receiving the ballot or before entering the voting machine.

C. The voter's request for assistance shall be noted next to the voter's name in the signature roster and shall be initialed by the presiding judge.

D. After noting the voter's request for assistance in the signature roster, the voter shall be allowed to receive assistance in marking a ballot or recording a vote on a voting machine. The name of the person providing assistance to a voter pursuant to this section shall be recorded on the signature roster.

E. A person who swears falsely in order to secure assistance with voting is guilty of perjury.

F. If a voter who has requested assistance in marking a ballot has a visual impairment or physical disability, is unable to read or write or is a member of a language minority who has requested assistance, the voter may be accompanied into the voting machine by a person of the voter's own choice; provided that the person shall not be the voter's employer, an agent of that employer, an officer or agent of the voter's union or a

candidate whose name appears on the ballot in the election. A member of the precinct board may assist a voter, if requested to do so by that voter.

G. A person who accompanies the voter into the voting booth or voting machine may assist the voter in marking a ballot or recording a vote on the voting machine. A member of the precinct board who assists a voter shall not disclose the name of any candidate or questions for whom any voter voted.

H. Oral assistance shall be made available to assist language minority voters who cannot read sufficiently well to exercise the elective franchise. As used in this subsection, "language minority" means a person who is Native American or of Spanish heritage, and "inability to read well enough to exercise the elective franchise" means inability to read the languages in which the ballot is printed or the inability to understand instructions for operating the voting machine.

I. The position of election translator is created. The election translator shall be an additional member of the regular precinct board, unless oral assistance to language minorities can otherwise be rendered by a member of the regular precinct board. The election translator shall be appointed by the municipal clerk in the same manner as other precinct board members are appointed, except that the municipal clerk in appointing Native American election translators shall seek the advice of the pueblo or tribal officials residing in that municipality. The election translator shall take the oath required of precinct board members and shall meet the same qualifications as other precinct board members.

J. Each municipal clerk shall compile and maintain a list of standby election translators to serve in those precincts on election day when the appointed election translator is unavailable for such service."

Chapter 278 Section 10 Laws 2009

Section 10. Section 3-8-27 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-8-8, as amended) is amended to read:

"3-8-27. REGULAR MUNICIPAL ELECTION--DECLARATION OF CANDIDACY--WITHDRAWING NAME FROM BALLOT--PENALTY FOR FALSE STATEMENT.--

A. Candidate filing day shall be between the hours of 8:00 a.m. and 5:00 p.m. on the fifty-sixth day preceding the day of election. On candidate filing day, a candidate for municipal office shall personally appear at the office of the municipal clerk to file all documents required by law in order to cause a person to be certified as a candidate. Alternatively, on candidate filing day, a person acting solely on the candidate's behalf, by virtue of a written affidavit of authorization signed by the candidate, notarized and presented to the municipal clerk by such person, shall file in the office of the municipal clerk all documents required by law in order to cause a person to be certified as a candidate.

B. On candidate filing day, each candidate shall cause to be filed in the office of the municipal clerk a declaration of candidacy; a certified copy of the candidate's current affidavit of voter registration that is on file with the county clerk and that has been certified by the office of the county clerk on a date not earlier than the adoption of the election resolution; and, in a home rule or charter municipality that requires a nominating petition to be submitted by a candidate for municipal office, a nominating petition that has the required number of signatures.

C. All candidates shall cause their affidavits of voter registration to show their address as a street address or rural route number and not as a post office box.

D. The municipal clerk shall provide a form for the declaration of candidacy and shall accept only those declarations of candidacy that contain:

(1) the identical name and the identical resident street address as shown on the affidavit of registration of the candidate submitted with the declaration of candidacy;

(2) the office and term to which the candidate seeks election and district designation, if appropriate;

(3) a statement that the candidate is eligible and legally qualified to hold the office for which the candidate is filing;

(4) a statement that the candidate has not been convicted of a felony or, if the candidate has been convicted of a felony, a statement that the candidate's elective franchise has been restored and that the candidate has been granted a pardon or a certificate by the governor restoring the candidate's full rights of citizenship;

(5) a statement that the candidate or the candidate's authorized representative shall contact the office of the municipal clerk during normal business hours on the fifty-fourth day before the election to ascertain whether the municipal clerk has certified the declaration of candidacy as valid;

(6) the contact information for how the candidate or the candidate's authorized representative can be reached for purposes of giving notice;

(7) a statement to the effect that the declaration of candidacy is an affidavit under oath and that any false statement knowingly made in the declaration of candidacy constitutes a fourth degree felony under the laws of New Mexico; and

(8) the notarized signature of the candidate on the declaration of candidacy.

E. The municipal clerk shall not accept a declaration of candidacy for more than one municipal elected office per candidate, so that each candidate declares for only one municipal elected office.

F. Once filed, the declaration of candidacy is a public record.

G. Not later than the fifty-fifth day preceding the day of the election, the municipal clerk shall determine whether the declaration of candidacy shall be certified. In order to be certified as a candidate, the documents submitted to the municipal clerk shall prove that the individual is a qualified elector as defined in Subsection K of Section 3-1-2 NMSA 1978 and, if appropriate, that the individual resides in and is registered to vote in the municipal election district from which the individual seeks election. In the event that an individual fails to submit to the municipal clerk on candidate filing day the documents listed in Subsection B of this section in the form and with the contents as required by this section, the municipal clerk shall not certify that individual as a candidate for municipal office.

H. The municipal clerk shall post in the clerk's office a list of the names of those individuals who have been certified as candidates. The municipal clerk shall also post in the clerk's office the names of those individuals who have not been certified as candidates, along with the reasons therefor. The posting shall occur no later than 9:00 a.m. on the fifty-fourth day preceding the election.

I. Not later than 5:00 p.m. on the forty-ninth day before the day of the election, a candidate for municipal office may file an affidavit on the form provided by the municipal clerk in the office of the municipal clerk stating that the candidate is no longer a candidate for municipal office. A municipal clerk shall not place on the ballot the name of any person who has filed an affidavit as provided in this subsection.

J. Not later than 10:00 a.m. on the forty-eighth day preceding the election, the municipal clerk shall confirm with the printer on contract with the municipality and the county clerk the names of the candidates and their position on the ballot.

K. Any person knowingly making a false statement in the declaration of candidacy is guilty of a fourth degree felony.

L. No person shall be elected to municipal office as a write-in candidate unless that person has been certified as a declared write-in candidate by the municipal clerk, as follows:

(1) write-in candidates filing day shall be on the forty-ninth day preceding the election between the hours of 8:00 a.m. and 5:00 p.m.;

(2) write-in candidates shall file a declaration of write-in candidacy with the same documents and satisfy the same requirements as established in this section for candidates;

(3) the municipal clerk shall, on the forty-eighth day preceding the election, certify those individuals who have satisfied the requirements of this section as declared write-in candidates;

(4) not later than 9:00 a.m. on the forty-seventh day preceding the election, the municipal clerk shall, in the office of the municipal clerk:

(a) post the names of those individuals who have been certified as declared write-in candidates; and

(b) post the names of those individuals who have not been certified as declared write-in candidates along with the reasons; and

(5) not later than 5:00 p.m. on the thirty-fifth day preceding the election, a declared write-in candidate may file an affidavit that the candidate is no longer a write-in candidate for municipal office. In the event that a declared write-in candidate files an affidavit of withdrawal, votes for that candidate shall not be counted and canvassed."

Chapter 278 Section 11 Laws 2009

Section 11. Section 3-8-41 NMSA 1978 (being Laws 1985, Chapter 208, Section 49) is amended to read:

"3-8-41. CONDUCT OF ELECTION--VOTER'S NAME, ADDRESS, SIGNATURE-ENTRIES BY PRECINCT BOARD.--

A. When a person goes to the polls to vote, the person shall announce the person's name and address in an audible tone of voice and locate the person's name and number in the registered voter list posted for such purpose. An election clerk shall locate the person's name and number in the signature roster. The person shall then sign the person's name in the signature roster or, if the person is unable to write, the election clerk shall sign the person's name in the signature roster, which shall be initialed by an election judge in the signature roster. Thereupon, a challenge may be interposed as provided in the Municipal Election Code.

B. If no challenge is interposed, an election clerk shall issue a voting machine permit to the person, upon which shall be written the person's voter registration list number. The person shall present the voting machine permit to the precinct board member monitoring the machine or issuing ballots, and the person shall be allowed to vote. The precinct board member shall enter the public counter number onto the voting machine permit as shown on the voting machine after the person has voted. All voting machine permits shall be retained in consecutive order and made part of the election returns."

Chapter 278 Section 12 Laws 2009

Section 12. Section 3-8-43 NMSA 1978 (being Laws 1985, Chapter 208, Section 51, as amended) is amended to read:

"3-8-43. CONDUCT OF ELECTION--CHALLENGES--REQUIRED CHALLENGES--ENTRIES--DISPOSITION.--

A. A challenge may be interposed by a member of the precinct board or by a challenger for the following reasons, which shall be stated in an audible tone by the person making the challenge:

- (1) the person offering to vote is not registered;
- (2) the person offering to vote is listed among those persons in the precinct to whom an absentee ballot was issued;
- (3) the person offering to vote is not a qualified elector;
- (4) the person offering to vote is not listed on the signature roster or voter registration list;
- (5) in the case of an absentee ballot, the official mailing envelope containing an absentee ballot has been opened prior to delivery of absentee ballots to the absent voter precinct board; or
- (6) the person offering to vote is a qualified elector of the municipality but does not reside in the district where the person is offering to vote.

B. When a person has offered to vote and a challenge is interposed and the person's name appears in the signature roster or the person's name has been entered in the signature roster pursuant to Subsection C of Section 3-8-40 NMSA 1978, the election clerk shall write the word "challenged" above the person's signature in the signature roster and:

- (1) if the challenge is unanimously affirmed by the election judges:
 - (a) the election clerk shall write the word "affirmed" above the person's signature next to the challenge notation in the signature roster;
 - (b) the person shall nevertheless be furnished a paper ballot, whether or not voting machines are being used at the polling place, and the election clerk shall write the number of the ballot so furnished next to the person's signature in the signature roster;
 - (c) the person shall be allowed to mark and prepare the ballot. The person shall return the paper ballot to an election judge who shall announce the person's name in an audible tone and in the person's presence place the challenged

ballot in an envelope marked "rejected", which shall be sealed and the person's name shall be written on the envelope; and

(d) the envelope containing the rejected ballot shall then be deposited in the ballot box and shall not be counted; or

(2) if the challenge is not unanimously affirmed by the election judges:

(a) the election clerks shall write the words "not affirmed" above the person's signature next to the challenge notation in the signature roster; and

(b) the person shall be allowed to vote in the manner allowed by law as if the challenge had not been interposed.

C. A required challenge shall be interposed by the precinct board when a person attempts to offer to vote and demands to vote and the person's name does not appear on the signature roster and cannot be entered pursuant to Subsection B of Section 3-8-40 NMSA 1978. A required challenge shall be interposed by the precinct board as follows:

(1) the election judge shall cause the election clerks to enter the person's name and address under the heading "name and address" in the signature roster in the first blank space immediately below the last name and address that appears in the signature roster;

(2) the election clerk shall immediately write the words "required challenge" above the space provided for the person's signature in the signature roster;

(3) the person shall sign the person's name in the signature roster;

(4) the person shall nevertheless be furnished a paper ballot, whether or not voting machines are being used at the polling place, and the election clerk shall write the number of the ballot so furnished next to the person's signature in the signature roster; and

(5) the person shall be allowed to mark and prepare the ballot. The person shall return the paper ballot to an election judge who shall announce the person's name in an audible tone and in the person's presence place the required challenge ballot in an envelope marked "rejected--required challenge" that shall be sealed. The person's name shall be written on the envelope and the envelope containing the rejected ballot shall then be deposited in the ballot box and shall not be counted."

Chapter 278 Section 13 Laws 2009

Section 13. Section 3-8-44 NMSA 1978 (being Laws 1985, Chapter 208, Section 52, as amended) is amended to read:

"3-8-44. CONDUCT OF ELECTION--VOTING MACHINES--INSTRUCTIONS--INSPECTION OF VOTING MACHINE FACE AFTER VOTE--ENTRY INTO MACHINE.--

A. Before each person votes, a member of the precinct board shall, at the request of the voter and so far as possible, instruct the person on how to operate the voting machine, illustrate its operation on the model and call attention to the posted sample ballot. If any person, before voting, asks for further information regarding the machine's operation, an election judge shall give the person the necessary information prior to the person's casting a vote.

B. The member of the precinct board attending the voting machine shall inspect the face of the machine after each person has voted to see that the ballot labels are in their proper places and have not been defaced.

C. After a person has announced the person's name and address, had voter registration confirmed, signed the signature roster and has had no challenge affirmed against casting a ballot, the person may vote. No more than one voter shall be permitted at the voting machine at one time unless the voter is being assisted."

Chapter 278 Section 14 Laws 2009

Section 14. Section 3-8-46 NMSA 1978 (being Laws 1985, Chapter 208, Section 54, as amended) is amended to read:

"3-8-46. CONDUCT OF ELECTIONS--CLOSING POLLS--LOCKING VOTING MACHINES--OPENING VOTING MACHINES--VERIFICATION OF VOTES--ADMITTANCE OF WATCHERS AND CANDIDATES--PROCLAMATION OF RESULTS--COMPLETION OF LOCKING--DURATION OF LOCKING AND SEALING.--

A. When the last person has voted, the precinct board, in the presence of all persons lawfully permitted to be present, shall immediately lock and, if required by the county clerk, seal the voting machine against further voting. The precinct board shall release the machine-printed returns from the machine. The precinct board shall then sign a certificate stating that the machine was locked; giving the exact time; stating the number of voters shown on the public counters, which shall be the total number of votes cast on the machine in that precinct; stating the number on the seal; and stating the number registered on the protective counter.

B. The precinct board shall verify that the counter settings registered on the machine-printed returns are legible. The machine-printed returns shall show the number of votes cast for each candidate and the number of votes cast for and against any other question submitted, and the return shall be signed by each member of the precinct board and the challengers and watchers, if there be such.

C. If the machine-printed returns are not legible, or if the precinct officials are unable to obtain the returns from the voting machine, the precinct officials shall call the municipal clerk, who shall immediately contact the county clerk, who shall dispatch a voting machine technician to that polling place to help the precinct officials obtain the returns from the voting machine.

D. A write-in vote shall be cast by writing in the name of a declared write-in candidate on the ballot or, on voting machines, write-ins shall be written in the slot provided for each designated office. A write-in vote shall be counted and canvassed only if:

(1) the name written in is the name of a declared write-in candidate and shows two initials and last name; first name, middle initial or name and last name; first and last name; or the full name as it appears on the declaration of write-in candidacy of the declared write-in candidate and misspellings of the above combinations that can be reasonably determined by a majority of the members of the precinct board to identify the declared write-in candidate;

(2) the name is written in the proper slot on the voting machine or on the proper line for write-in votes provided on an absentee ballot or paper ballot used in lieu of voting machines;

(3) the name written in is not a vote for a person who is on the ballot for that office; and

(4) the name written in is not imprinted by rubber stamp or similar device or by the use of preprinted stickers or labels.

E. Only the members of the precinct board, candidates or their representatives, representatives of the news media, certified challengers, watchers and observers and the municipal clerk may be present while the votes are being counted and tallied. Only members of the precinct board shall handle ballots, machine-printed returns and signature rosters or take part in the counting and tallying.

F. The proclamation of the results of the votes cast shall be distinctly announced by an election judge who shall read the name of each candidate and the total number of votes cast for each candidate shown on the printed returns. An election judge shall also read the total number of votes cast for and against each question submitted. During the proclamation, ample opportunity shall be given to any person lawfully present to compare the result so proclaimed with the printed returns. The precinct board may make corrections then and there.

G. When the precinct board is satisfied that the election results have been correctly tallied, an election judge shall complete a separate election return certificate in triplicate on which is recorded the total number of votes cast in that polling place for each candidate and for and against each question. The certificate shall be signed by all

the members of the precinct board. One copy shall be posted at the door of the polling place, one copy mailed to the district court in the envelope provided and the original returned to the municipal clerk in the envelope provided.

H. Before adjourning, the precinct board shall complete the locking procedures on the voting machine.

I. On the voting machine, the machine return sheet is the official vote tally for that machine and the separate election return certificate is the official vote tally for that precinct or consolidated precinct.

J. If in the district court's opinion a contest is likely to develop, the court may order a voting machine to remain locked and sealed for such time as it deems necessary.

K. The county clerk shall break the seal for purposes of lawful investigation when ordered to do so by a court of competent jurisdiction. When the investigation is completed, the voting machine shall again be sealed and across the envelope containing the keys shall be written the signature of the county clerk, unless other provisions for the use of the voting machine are ordered by the court."

Chapter 278 Section 15 Laws 2009

Section 15. Section 3-8-47 NMSA 1978 (being Laws 1985, Chapter 208, Section 55, as amended) is amended to read:

"3-8-47. CONDUCT OF ELECTIONS--DISPOSITION OF SIGNATURE ROSTER--MACHINE-PRINTED RETURNS--BALLOT BOXES--ELECTION RETURN CERTIFICATE--AFFIDAVITS--OTHER ELECTION MATERIALS.--

A. After all certificates have been executed, the precinct board shall place the voter checklist and one copy of the machine-printed returns in the stamped, addressed envelope provided for that purpose by the municipal clerk and immediately mail it to the district court.

B. The following election returns and materials shall not be placed in the ballot box and shall be returned by the precinct board to the municipal clerk in the envelope or other container provided by the municipal clerk for such purpose:

- (1) all ballot box keys;
- (2) the signature roster;
- (3) one voter registration list;

(4) the election returns certificate, if separate from the signature roster;

(5) one copy of the machine-printed returns;

(6) a machine cartridge or memory card for any voting machine, if required by the county clerk;

(7) voting machine permits; and

(8) all unused election supplies.

C. All materials listed in Subsection B of this section, along with the locked ballot box containing any paper ballots cast in the election, including spoiled and challenged ballots, shall be returned by the precinct board to the municipal clerk within twenty-four hours after the polls close.

D. After receipt of ballot boxes and election returns and materials but not later than twenty-four hours after the polls close, the municipal clerk shall ascertain whether the locked ballot box and all the election returns and materials enumerated in Subsection B of this section have been returned to the municipal clerk as provided in Subsection C of this section. If the locked ballot box or all such election returns and materials are not timely returned by each precinct board, the municipal clerk shall immediately issue a summons requiring the delinquent precinct board to appear and produce the missing ballot box or election returns or materials within twenty-four hours. The summons shall be served by a sheriff or state police officer without cost to the municipality, and the members of the precinct board shall not be paid for their service on election day unless the delay was unavoidable. If delivery pursuant to the summons is not timely made, the vote in the precinct shall not be canvassed or made a part of the final election results except upon order of the district court after finding that the delay in the delivery of materials was due to forces beyond the control of the precinct board.

E. Once the ballot box is locked, it shall not be opened prior to canvassing by the municipal clerk."

Chapter 278 Section 16 Laws 2009

Section 16. Section 3-8-48 NMSA 1978 (being Laws 1985, Chapter 208, Section 56, as amended) is amended to read:

"3-8-48. CONDUCT OF ELECTIONS--PAPER BALLOTS--ONE TO A VOTER--RECEIPT OR DELIVERY--OCCUPATION OF VOTING MACHINES.--

A. Only one paper ballot shall be given to each qualified elector entitled to vote. The ballots shall be delivered to qualified electors entitled to vote in consecutive order, beginning with the lowest numbered ballot.

B. No qualified elector entitled to vote shall receive a ballot from any person other than from an election judge at the polling place where the person is authorized to vote. No person other than an election judge shall deliver a ballot to any qualified elector entitled to vote.

C. Unless otherwise provided by law, when voting machines are used as voting booths to mark paper ballots, they shall not be occupied by more than one person at a time. A person shall not remain in or occupy such voting machine longer than is necessary to mark and prepare the paper ballot.

D. The ballot shall be completed and returned to the presiding judge who shall place it in a locked ballot box to be counted when the machine is repaired or replaced or at the time the polls close."

Chapter 278 Section 17 Laws 2009

Section 17. Section 3-8-49 NMSA 1978 (being Laws 1985, Chapter 208, Section 57) is amended to read:

"3-8-49. CONDUCT OF ELECTION--PAPER BALLOTS--MARKING--USE OF PEN OR OTHER WRITING IMPLEMENT--IDENTIFICATION MARKS.--

A. In order to vote for a candidate, the person voting shall mark a cross (X) or a check (V) in the box next to the name of that candidate or write in the name of the person for whom the voter desires to vote in the space for write-in candidates and mark a cross (X) or a check (V) in the box next to the line upon which the write-in vote is cast. Such write-in vote shall be cast in accordance with the provisions of Subsection D of Section 3-8-46 NMSA 1978. Notwithstanding the requirements of this subsection, if a different mark, other than a cross or check, is required for proper counting of the ballot, then the person voting shall make such mark on the ballot in the place so designated on the ballot utilizing the required writing implement pursuant to the instructions of the precinct board.

B. If a question is included on the paper ballot, the person voting shall mark the paper ballot by marking a cross (X) or a check (V) in the box for or against the question submitted or otherwise marking the ballot in accordance with Subsection A of this section.

C. All crosses, checks or other proper marks on the ballot shall be made only with pen or other writing implement and in the manner required for the proper counting of the ballot. The cross used in marking ballots shall be two lines intersecting at any angle within the circle or box. The check shall be a "V"-shaped mark with it being permissible for either side of the "V" to be longer than the other side. Any mark discernible either as a cross or a check, whether or not any of the lines extends outside the circle or box, shall be counted as a valid marking of the ballot when crosses or checks are required.

D. A vote shall be counted if:

(1) the ballot is marked in accordance with the instructions for that ballot type;

(2) the preferred candidate's name or answer to a ballot question is circled;

(3) there is a cross or check within the voting response area for the preferred candidate or answer to the ballot question; or

(4) the presiding judge and election judges for the precinct unanimously agree that the voter's intent is clearly discernable.

E. A person voting shall not place any mark on the ballot by which it may be afterwards identified as one voted by that person."

Chapter 278 Section 18 Laws 2009

Section 18. Section 3-8-50 NMSA 1978 (being Laws 1985, Chapter 208, Section 58) is amended to read:

"3-8-50. CONDUCT OF ELECTION--PAPER BALLOTS--PROCEDURE AFTER MARKING--DELIVERY OF TWO OR MORE BALLOTS--PERSON AUTHORIZED TO RECEIVE BALLOTS--SPOILED OR DEFACED BALLOTS.--

A. After marking and preparing the paper ballot, the person voting:

(1) shall not show it to any person in such a way as to reveal its contents; and

(2) shall deliver it to an election judge who shall then remove any visible number on the ballot, hand the detached number to the person voting and deposit the paper ballot in the ballot box in the presence of the person voting.

B. Only an election judge shall receive a ballot from a person voting. No person shall examine or solicit a person to reveal or show the contents of the person's paper ballot.

C. The election judge shall not deposit in the ballot box any paper ballot from which the slip containing the number of the paper ballot has not been removed by the election judge and handed to the person voting.

D. A person who accidentally spoils or erroneously prepares the ballot may return the spoiled or erroneously prepared ballot to the election judge and receive a new ballot.

E. The election judge in delivering the new ballot shall announce the name of the person voting in an audible tone and the number of the new ballot.

F. Upon the announcement of the election judge, the election clerks shall cross out the number of the spoiled or erroneously prepared ballot in the signature roster with a single line and shall insert in lieu thereof the number of the new ballot.

G. The election judge shall mark the spoiled or erroneously prepared ballot with the word "SPOILED" and shall place it in a separate envelope marked "SPOILED BALLOTS", which shall be returned to the municipal clerk.

H. Any person who knowingly hands to the election judge two or more ballots folded together is guilty of a fourth degree felony."

Chapter 278 Section 19 Laws 2009

Section 19. Section 3-8-51 NMSA 1978 (being Laws 1985, Chapter 208, Section 59, as amended) is amended to read:

"3-8-51. CONDUCT OF ELECTION--PAPER BALLOTS--UNUSED BALLOTS--DESTRUCTION OF UNUSED BALLOTS--COUNTING AND TALLYING.--

A. Immediately upon closing of the polls, the election judge shall prepare a certificate of destruction, which shall state the number of the last ballot that was used for voting, the numbers of the ballots that were destroyed and the fact that all unused ballots were destroyed.

B. Immediately after preparation of the certificate of destruction and before any ballot box is unlocked, the precinct board shall destroy all unused ballots in the presence of the candidates, if present, the municipal clerk, if present, certified challengers and watchers, if any, and representatives of the news media, if any.

C. On the day of the election, immediately upon the arrival of the hour when the polls are required by law to be closed, the municipal clerk shall publicly, in the clerk's office, proceed to destroy every unused ballot that remains in the clerk's control and make and file an affidavit in writing as to the number of ballots so destroyed.

D. The precinct board shall count and tally the ballots and certify the results of the election on the form provided on the cover of the signature roster by writing opposite the name of each candidate in words and figures the total number of votes cast for the candidate and shall set forth in the spaces provided therefor in words and figures the total number of votes cast for or against each question submitted. Ballots not marked as required by the Municipal Election Code shall not be counted.

E. Only the members of the precinct board, candidates, municipal clerk, representatives of the news media and certified challengers and watchers may be

present while the votes are being counted and tallied. Only members of the precinct board shall handle ballots and signature rosters or take part in the counting and tallying.

F. The proclamation of the results of the votes cast shall be distinctly announced by the election judge who shall read the name of each candidate and the total vote cast for each candidate. The election judge shall also read the total vote cast for and against each question submitted. The election judge shall thereupon complete an election return certificate on which is recorded the total number of votes cast for each candidate and for and against each question. The certificate shall be signed by all the members of the precinct board."

Chapter 278 Section 20 Laws 2009

Section 20. Section 3-8-52 NMSA 1978 (being Laws 1985, Chapter 208, Section 60, as amended) is amended to read:

"3-8-52. CONDUCT OF ELECTION--PAPER BALLOTS--SIGNATURE ROSTERS--DISPOSITION.--

A. After the counting and tallying of ballots is completed and after all certificates have been executed, the precinct board shall place the voter checklist and one copy of all certificates and tally sheets in the stamped, addressed envelope provided for that purpose by the municipal clerk and immediately mail it to the district court.

B. The signature roster, all certificates, tally sheets and all ballot box keys shall be returned to the municipal clerk. The signature roster, certificates, tally sheets and ballot box key shall not be placed in the ballot box.

C. After paper ballots used in lieu of voting machines are counted and tallied, the precinct board shall place the following in the ballot box:

(1) the bundles of counted paper ballots used in lieu of voting machines;

(2) the envelopes containing spoiled ballots; and

(3) the envelopes containing rejected ballots.

D. After the required items have been placed in the ballot box, the ballot box shall be closed and locked.

E. The locked ballot box containing those materials required by law, the election returns and all other election materials shall be delivered to the municipal clerk by the precinct board within twenty-four hours after the polls are closed. If such delivery is not timely made, then the vote in the precinct shall not be canvassed or made a part

of the final election results except upon order of the district court after finding that the delay in the delivery of materials was due to forces beyond the control of the precinct board.

F. Once the ballot box is locked, it shall not be opened prior to canvassing."

Chapter 278 Section 21 Laws 2009

Section 21. Section 3-8-58 NMSA 1978 (being Laws 1985, Chapter 208, Section 66, as amended) is amended to read:

"3-8-58. POST-ELECTION DUTIES--CANVASS--VOTING MACHINE RECHECK.--

A. Prior to completion of the official canvass of an election, the municipal clerk, upon written request of any candidate in the election, if any, or upon receipt of a written petition of five percent of the people who voted in the election, shall, in the presence of the district judge, conduct a recheck and comparison of the results shown on the official returns being canvassed with the results of each voting machine used in the election.

B. For the purpose of making the recheck and comparison, the municipal clerk may request the county clerk to:

- (1) unlock the voting machine;
- (2) check the figures shown by the counter on the voting machine;
- (3) insert the cartridge or memory card into the voting machine; and
- (4) rerun the printed returns from the voting machine.

C. At the conclusion of the recheck and comparison, the voting machine shall again be secured.

D. The necessary corrections, if any, shall be made on the returns and the results of the election, as shown by the recheck and comparison, shall be declared."

Chapter 278 Section 22 Laws 2009

Section 22. Section 3-8-65 NMSA 1978 (being Laws 1985, Chapter 208, Section 73, as amended) is amended to read:

"3-8-65. CONTEST OF ELECTIONS--PRESERVATION OF BALLOTS--BALLOTS DEFINED--APPLICATION FOR ORDER--DEPOSIT.--

A. Either the contestant or contestee, within the time provided by the Municipal Election Code for the preservation of ballots, shall give notice by certified mail to the municipal clerk that a contest is pending in a designated court, and it is the duty of the municipal clerk to preserve the ballots of all precincts named in the notice of contest and to notify the county clerk to impound the ballot sheets and voting machines used in all of the precincts named in the notice of contest until the contest has been finally determined.

B. "Ballots", as used in Subsection A of this section, includes signature rosters, registered voter lists, machine-printed returns, voting machine permits, paper ballots, absentee ballots, absentee ballot outer envelopes, statements of canvass, absentee ballot applications, absentee ballot registers and absentee voter lists.

C. Any contestant or contestee may petition the district court for an order impounding ballots in one or more precincts or consolidated precincts. The petition shall state what specific items of ballots are requested to be impounded. Upon receipt of the petition, along with a cash deposit of twenty-five dollars (\$25.00) per precinct or consolidated precinct, the court may issue an order of impoundment."

Chapter 278 Section 23 Laws 2009

Section 23. Section 3-8-68 NMSA 1978 (being Laws 1985, Chapter 208, Section 76, as amended) is amended to read:

"3-8-68. RECOUNT--RECHECK--APPLICATION--COSTS.--

A. Whenever any candidate for any office for which the municipal clerk issues a certificate of election believes that any error or fraud has been committed by any precinct board in counting or tallying the ballots or absentee ballots, in the verification of the votes cast on the voting machines or in the certifying of the results of any election whereby the results of the election in the precinct have not been correctly determined, declared or certified, the candidate, within six days after completion of the canvass by the municipal canvassing board, may have a recount of the ballots or absentee ballots, or a recheck of the voting machine and the voting machine cartridge or memory card that contains the number of total votes that were cast in the precinct.

B. In the case of any office for which the municipal clerk issues a certificate of election, application for recount or recheck shall be filed with the municipal clerk.

C. Any applicant for a recount shall deposit with the municipal clerk fifty dollars (\$50.00) in cash or a sufficient surety bond in an amount equal to fifty dollars (\$50.00) for each precinct or consolidated precinct for which a recount is demanded. Any applicant for a recheck shall deposit with the municipal clerk ten dollars (\$10.00) in cash or a sufficient surety bond in an amount equal to ten dollars (\$10.00) for each voting machine to be rechecked.

D. The deposit or surety bond shall be security for the payment of the costs and expenses of the recount or recheck in case the results of the recount or recheck are not sufficient to change the results of the election.

E. If it appears that error or fraud sufficient to change the winner of the election has been committed, the costs and expenses of the recount or recheck shall be paid by the municipality upon warrant of the municipal clerk from the general fund of the municipality.

F. If no error or fraud appears to be sufficient to change the winner, the costs and expenses for the recount or recheck shall be paid by the applicant. Costs shall consist of any docket fees, mileage of a sheriff or state police officer in serving summons and fees and mileage of precinct board members, at the same rates allowed witnesses in civil actions. If fraud has been committed by a precinct board, it shall not be entitled to such mileage or fees."

Chapter 278 Section 24 Laws 2009

Section 24. Section 3-8-69 NMSA 1978 (being Laws 1985, Chapter 208, Section 77, as amended) is amended to read:

"3-8-69. RECOUNT--RECHECK--PROCEEDINGS.--

A. Immediately after filing of the application for recount or recheck, the municipal clerk shall issue a summons directed to the precinct board of each precinct or consolidated precinct specified in the application commanding it to appear at the office of the municipal clerk on a day fixed in the summons, which date shall not be more than ten days after the filing of the application for recount or recheck. A copy of the summons shall be forwarded to the county clerk of the concerned county.

B. The municipal clerk shall deliver the summons to a sheriff or state police officer who shall forthwith personally serve it upon each of the precinct board members. The municipal clerk shall send notices by registered mail of the date, time and place fixed for recount or recheck to the district judge and county clerk.

C. The precinct board, district judge or the district court judge's designee, county clerk and the municipal clerk shall meet on the date, time and place fixed for the recount or recheck, and the ballot boxes or voting machines of the precinct or consolidated precinct involved in the recount or recheck shall be opened. The precinct boards shall recount and retally the ballots or recheck the votes cast on the voting machine, as the case may be, and recount and retally the absentee ballots for the office in question in the presence of the municipal clerk, the county clerk, district judge or person designated to act for the judge and any other person who may desire to be present.

D. During the recount or recheck, the precinct board of a precinct or consolidated precinct where paper ballots used in lieu of voting machines or absentee ballots were used shall recount and retally only the ballots that the election judge accepted and placed in the ballot box at the time they were cast or received, as the case may be.

E. After completion of the recount or recheck, the precinct board shall replace the ballots or absentee ballots in the ballot box and lock it, or the voting machines shall be locked and resealed, and the precinct board shall certify to the municipal clerk the results of the recount or recheck. The district judge or the person designated to act for the judge, the county clerk and the municipal clerk shall also certify that the recount or recheck was made in their presence."

Chapter 278 Section 25 Laws 2009

Section 25. Section 3-8-71 NMSA 1978 (being Laws 1985, Chapter 208, Section 79, as amended) is amended to read:

"3-8-71. PRESERVATION OF ELECTION INFORMATION.--

A. The municipal clerk shall retain for two years after each municipal election:

(1) the absentee ballot register, application for absentee ballots, absentee voter lists and affidavits of destruction;

(2) signature roster and registered voter list;

(3) the machine-printed returns;

(4) oaths of office of the precinct board;

(5) declarations of candidacy and withdrawals;

(6) copies of all election material required to be published or posted;

(7) a copy of all sample ballots and ballot sheets;

(8) voting machine permits;

(9) certificates submitted by voters;

(10) copies of all affidavits and certificates prepared in connection with the election;

(11) all results of recounts, rechecks, contests and recanvass; and

(12) all other significant election materials.

B. The district court shall retain for forty-five days after each municipal election all election materials sent by the precinct board. Thereafter, the material may be destroyed unless needed by the court in connection with a contest or other case or controversy.

C. The municipal clerk shall destroy election records two years after the election by shredding, burning or otherwise destroying."

Chapter 278 Section 26 Laws 2009

Section 26. Section 3-8-75 NMSA 1978 (being Laws 1985, Chapter 208, Section 83, as amended) is amended to read:

"3-8-75. FALSE VOTING--FALSIFYING ELECTION DOCUMENTS--FALSE SWEARING--PENALTY.--

A. False voting consists of:

(1) voting or offering to vote with the knowledge of not being a qualified elector;

(2) voting or offering to vote in the name of any other person;

(3) knowingly voting or offering to vote in any precinct except that in which one is registered;

(4) voting or offering to vote more than once in the same election;

(5) inducing, abetting or procuring or attempting to induce, abet or procure a person known not to be a qualified elector to vote; or

(6) inducing, abetting or procuring or attempting to induce, abet or procure a person who has voted once in any election to vote or attempt to vote again at the same election.

B. A person who commits false voting is guilty of a fourth degree felony.

C. Falsifying election documents consists of performing any of the following acts willfully and with knowledge and intent to deceive or mislead any voter, precinct board, municipal clerk or other election official:

(1) printing, causing to be printed, distributing or displaying false or misleading instructions pertaining to voting or the conduct of the election;

(2) printing, causing to be printed, distributing or displaying any official ballot, absentee ballot, sample ballot, facsimile diagram, ballot sheet or pretended ballot that includes the name of any person not entitled by law to be on the ballot or omits or defaces the name of any person entitled by law to be on the ballot or otherwise contains false or misleading information or headings;

(3) defacing, altering, forging, making false entries in or changing any election document, including election returns, a certificate of election registration record or signature rosters, affidavits, certificates or any other election document except as authorized in the Municipal Election Code;

(4) withholding any certificate of election, registered voter list, signature roster, election return or any other election document required by or prepared and issued pursuant to the Municipal Election Code; or

(5) preparing or submitting any false certificate of election, signature roster, registered voter list, election return or any other election document.

D. A person who falsifies election documents is guilty of a fourth degree felony.

E. False swearing consists of knowingly taking or giving any oath required by the Municipal Election Code with the knowledge that the thing or matter sworn to is not a true and correct statement.

F. A person who falsely swears is guilty of a fourth degree felony."

Chapter 278 Section 27 Laws 2009

Section 27. Section 3-9-1 NMSA 1978 (being Laws 1973, Chapter 375, Section 2, as amended) is amended to read:

"3-9-1. DEFINITIONS.--As used in Chapter 3, Article 9 NMSA 1978:

A. "absent uniformed services voter" means:

(1) a member of a uniformed service on active duty who, by reason of such active duty, is absent from the place of residence where the member is otherwise qualified to vote;

(2) a member of the merchant marine who, by reason of service in the merchant marine, is absent from the place of residence where the member is otherwise qualified to vote; or

(3) a spouse or dependent of a member described in Paragraph (1) or (2) of this subsection who, by reason of the active duty or service of the member, is absent from the place of residence where the spouse or dependent is otherwise qualified to vote;

B. "absentee voting" means the casting of a vote by a qualified elector for any candidate or question prior to election day;

C. "early voter" means a voter who votes in person before election day, and not by mail;

D. "election" means a regular or special municipal election;

E. "federal qualified elector" means:

(1) an absent uniformed services voter; or

(2) an absent uniformed services voter who, by reason of active duty or service, is absent from the United States on the date of the election involved;

F. "immediate family" means a person's spouse, children, parents, brothers and sisters;

G. "member of the merchant marine" means an individual other than a member of a uniformed service or an individual employed, enrolled or maintained on the great lakes or the inland waterways who:

(1) is employed as an officer or crew member of a vessel documented under the laws of the United States, a vessel owned by the United States or a vessel of a foreign-flag registry under charter to or control of the United States; or

(2) is enrolled with the United States for employment or training for employment or is maintained by the United States for emergency relief service as an officer or crew member of a vessel described in Paragraph (1) of this subsection;

H. "overseas voter" means:

(1) an absent uniformed services voter who, by reason of active duty or service, is absent from the United States on the date of the election involved;

(2) a person who resides outside the United States and is qualified to vote in the last place in which the person was domiciled before leaving the United States; or

(3) a person who resides outside the United States and, but for such residence, would be qualified to vote in the last place in which the person was domiciled before leaving the United States;

I. "uniformed services" means the army, navy, air force, marine corps and coast guard and the commissioned corps of the national oceanic and atmospheric administration; and

J. "voter" means a qualified elector of the municipality."

Chapter 278 Section 28 Laws 2009

Section 28. Section 3-9-2 NMSA 1978 (being Laws 1973, Chapter 375, Section 4) is amended to read:

"3-9-2. CERTAIN APPLICATIONS CONSTITUTE REGISTRATION.--An application from a federal qualified elector or overseas voter shall, when received by the municipal clerk, constitute a registration for purposes of that election."

Chapter 278 Section 29 Laws 2009

Section 29. Section 3-9-3 NMSA 1978 (being Laws 1973, Chapter 375, Section 1, as amended) is amended to read:

"3-9-3. ABSENTEE VOTING--REGULAR OR SPECIAL MUNICIPAL ELECTIONS--RIGHT TO VOTE.--

A. Any voter or any overseas voter or federal qualified elector entitled to vote in the municipal election may vote by absentee ballot for all candidates and on all questions appearing on the ballot at such regular or special election at the voter's assigned polling place, as if the voter were able to cast a ballot in person at such polling place.

B. The provisions of this section shall also apply to a regular or special municipal election held in conjunction with any other political subdivision."

Chapter 278 Section 30 Laws 2009

Section 30. Section 3-9-4 NMSA 1978 (being Laws 1973, Chapter 375, Section 3, as amended) is amended to read:

"3-9-4. ABSENTEE BALLOT APPLICATION--REJECTION--ACCEPTANCE--ISSUANCE OF ABSENTEE BALLOT.--

A. Application by a federal qualified elector or overseas voter shall be made on the federal postcard application form to the municipal clerk.

B. The municipal clerk shall prescribe the form of the absentee ballot application.

C. An application for an absentee ballot may be obtained from the municipal clerk.

D. Upon receipt of a properly completed and delivered application for an absentee ballot, the municipal clerk shall contact the county clerk to determine if the applicant is a qualified elector of the municipality.

E. The municipal clerk shall reject an absentee ballot application for any of the following reasons:

(1) the application is not made on the form provided by the municipal clerk;

(2) the application does not set forth the applicant's full name and address;

(3) the application does not set forth the applicant's date of birth;

(4) the application is not signed by the applicant; or

(5) the applicant:

(a) has no valid affidavit of registration on file with the county clerk and is not a federal qualified elector or overseas voter;

(b) has a valid affidavit of registration on file with the county clerk, but is not a resident of the municipality; or

(c) is a federal qualified elector or overseas voter, but is not entitled to vote in the municipal election; and

(d) cannot comply with Subparagraph (a), (b) or (c) of this paragraph pursuant to Subsection B of Section 3-8-40 NMSA 1978.

F. If the municipal clerk rejects an absentee ballot application pursuant to Subsection E of this section, the municipal clerk shall mark the application "rejected", enter "rejected" in the absentee ballot register and file the application in a separate file. The municipal clerk shall, within twenty-four hours of rejection of the application, notify the applicant in writing of the reasons for rejection of the application. If the application is incomplete, the municipal clerk shall immediately mail a new application for an absentee ballot.

G. If the application for absentee ballot is accepted, the municipal clerk shall:

(1) mark the application "accepted";

(2) enter the required information in the absentee ballot register;

and

(3) issue to the applicant an absentee ballot.

H. The municipal clerk shall deliver the absentee ballot to the applicant in the office of the municipal clerk if the application for absentee ballot has been accepted and if the application is submitted in person by the applicant or mail an absentee ballot to any qualified elector, federal qualified elector or overseas voter whose application for an absentee ballot was received by mail and has been accepted. The municipal clerk shall notify the county clerk who shall write "absentee ballot" on the signature line of the signature roster next to the name of the person who has been sent an absentee ballot. Names of individuals that have been labeled "absentee ballot" shall appear on a separate list called the "absentee voter list". This list shall be submitted to the municipal clerk by the county clerk in the same manner as provided in Subsection B of Section 3-8-7 NMSA 1978.

I. It is the duty of the municipal clerk to verify the signature roster and absentee voter list to ensure that all names of individuals who have been issued absentee ballots have been labeled "absentee ballot" on the signature roster and their names listed on the absentee voter list. If not, the municipal clerk shall write "absentee ballot" on the signature line of the signature roster next to the name of the person who has been sent an absentee ballot. The municipal clerk shall then enter the name and all required information on the absentee voter list.

J. If the application for an absentee ballot is delivered in person to the municipal clerk during regular hours and days of business and is accepted, the municipal clerk shall issue the voter the absentee ballot and it shall be marked by the applicant in a voting booth in the municipal clerk's office, sealed in the proper envelopes and otherwise properly executed and returned to the municipal clerk or the clerk's authorized representative before the applicant leaves the office of the municipal clerk.

K. The act of marking the absentee ballot in the office of the municipal clerk shall be a convenience to the voter in the delivery of the absentee ballot and does not make the office of the municipal clerk a polling place subject to the requirements of a polling place in the Municipal Election Code other than as provided in this subsection. During the period of time between the date a person may first apply in person for an absentee ballot and the final date for such application and marking of the ballot in the office of the municipal clerk, it is unlawful to solicit votes or display or otherwise make accessible any posters, signs or other forms of campaign literature whatsoever in the clerk's office.

L. Absentee ballots shall be mailed to federal qualified electors and overseas voters whose applications have been accepted not earlier than thirty-five days prior to the election and not later than 5:00 p.m. on the Friday immediately prior to the date of the election.

M. Absentee ballots shall be issued to voters whose applications have been approved not earlier than thirty-five days prior to the election and not later than 5:00 p.m. on the Friday immediately prior to the date of the election.

N. No absentee ballot shall be delivered or mailed by the municipal clerk to any person other than the applicant for such ballot."

Chapter 278 Section 31 Laws 2009

Section 31. A new section of the Municipal Election Code is enacted to read:

"EARLY VOTING--USE OF ABSENTEE VOTING PROCEDURES.--

A. An early voter may vote in person on a voting machine beginning at 8:00 a.m. on the twentieth day before the election at the municipal clerk's office during regular hours and days of business until 5:00 p.m. on the Friday immediately before the date of the election.

B. Upon receipt of a properly completed application for an absentee ballot, the municipal clerk shall contact the county clerk to determine if the applicant is a qualified elector of the municipality.

C. If the application is accepted, the municipal clerk shall:

(1) mark the application accepted; and

(2) enter the required information in the absentee ballot register.

D. Upon acceptance of the application, the voter shall be allowed to vote.

E. The municipal clerk shall notify the county clerk, who shall make an appropriate designation on the signature roster next to the voter's name indicating that the voter has voted early."

Chapter 278 Section 32 Laws 2009

Section 32. Section 3-9-5 NMSA 1978 (being Laws 1973, Chapter 375, Section 6, as amended) is amended to read:

"3-9-5. ABSENTEE BALLOT REGISTER.--

A. For each election, the municipal clerk shall keep an "absentee ballot register" in which the clerk shall enter:

- (1) in numerical sequence, the name and municipal address of each absentee ballot applicant;
- (2) the date and time of receipt of the application;
- (3) whether the application was accepted or rejected;
- (4) the date of delivery to the voter in person in the office of the municipal clerk, or mailing of an absentee ballot to the applicant, the method of delivery and, if mailed, the address to which the ballot was mailed;
- (5) the applicant's precinct and district number, if applicable;
- (6) whether the applicant is a voter, an overseas voter or a federal qualified elector;
- (7) affidavits of voters who did not receive absentee ballots; and
- (8) the date and time the completed ballot was received from the applicant by the municipal clerk.

B. The absentee ballot register is a public record open to public inspection in the municipal clerk's office during regular office hours and shall be preserved for two years after the date of the election. The municipal clerk shall have an updated absentee ballot register available for public inspection Monday through Friday during regular office hours."

Chapter 278 Section 33 Laws 2009

Section 33. Section 3-9-6 NMSA 1978 (being Laws 1973, Chapter 375, Section 7, as amended) is amended to read:

"3-9-6. FORM OF ABSENTEE BALLOT--FORM OF ABSENTEE BALLOT ENVELOPES.--

A. The form of the absentee ballot shall be, as nearly as practicable, in the same form as prescribed by the municipal clerk for other ballots. However, to reduce weight and bulk for transport of absentee ballots, the size and weight of the paper for envelopes, ballots and instructions shall be reduced as much as is practicable. The ballots shall provide for sequential numbering.

B. Absentee ballots and envelopes shall be delivered by the printer to the municipal clerk not later than thirty-five days prior to the date of the election to be held.

C. The municipal clerk shall prescribe the form of:

- (1) official inner envelopes for use in sealing the completed absentee ballot;
- (2) official mailing envelopes for use in returning the official inner envelope to the municipal clerk;
- (3) absentee ballot instructions, describing proper methods for completion of the ballot and returning it; and
- (4) official transmittal envelopes for use by the municipal clerk in mailing absentee ballot materials.

D. Official transmittal envelopes and official mailing envelopes for transmission of absentee ballot materials to and from the municipal clerk and overseas voters and federal qualified electors shall be printed in black in the form prescribed by postal regulations and the federal Uniformed and Overseas Citizens Absentee Voting Act. Official transmittal envelopes and official mailing envelopes for transmission of absentee ballot materials to and from the municipal clerk shall be printed in green in substantially similar form. All official inner envelopes shall be printed in green.

E. The reverse of each official mailing envelope shall contain a form to be signed by the person completing the absentee ballot. The form shall identify the person and shall contain the following statement: "I will not vote in this election other than by the enclosed ballot. I will not receive or offer any compensation or reward for giving or withholding any vote."."

Chapter 278 Section 34 Laws 2009

Section 34. Section 3-9-7 NMSA 1978 (being Laws 1973, Chapter 375, Section 8, as amended) is amended to read:

"3-9-7. MANNER OF VOTING--USE OF AN ELECTRONIC VOTING DEVICE.--

A. Any person voting an absentee ballot under the provisions of the Municipal Election Code shall secretly mark the ballot as instructed on the ballot, place the marked ballot in the official inner envelope and securely seal the envelope. The voter shall then place the official inner envelope inside the official mailing envelope and securely seal the envelope. The voter shall then complete the form on the reverse of the official mailing envelope.

B. Overseas voters and federal qualified electors shall either deliver their ballots in person or mail the official mailing envelope to the municipal clerk of their municipality of residence or deliver it to a person designated by federal authority to receive executed ballots for transmission to the municipal clerk of the municipality of

residence. A voter, caregiver to that voter or member of that voter's immediate family may deliver that voter's absentee ballot to the municipal clerk in person or by mail, provided that the voter has subscribed the outer envelope of the absentee ballot.

C. When an electronic voting device is used by the voter to cast an absentee vote, the municipal clerk shall ensure that each absentee voting machine is located within the office of the municipal clerk. The area shall be secured by lock and key. Each day during the time the absentee voting machine is used for absentee voting, the municipal clerk shall, in the presence of one other employee of the municipality, unlock the office where the voting machine is located. Each day, at the close of regular office hours, the municipal clerk shall, in the presence of one other municipal employee, secure the office where the voting machine is located. Each day immediately after unlocking or locking the office where the voting machine is located, the municipal clerk and the employee present shall sign or initial the absentee voting daily report. The municipal clerk shall prescribe the form of the absentee voting daily report, which shall include the following information:

- (1) the voting machine serial number;
- (2) the beginning and ending public counter number for the day;
- (3) the beginning and ending protective counter number for the day;
- (4) the closing seal number, if any;
- (5) the total number of voters for the day; and
- (6) a place for the date and signature of the municipal clerk and the municipal employee.

D. Voting shall be conducted substantially in the manner provided in the Municipal Election Code. The absentee voting daily report shall be submitted to the absent voter precinct on election day, along with any voting machines used."

Chapter 278 Section 35 Laws 2009

Section 35. Section 3-9-8 NMSA 1978 (being Laws 1973, Chapter 375, Section 9, as amended) is amended to read:

"3-9-8. CARE OF ABSENTEE BALLOTS--DESTRUCTION OF UNUSED BALLOTS BY MUNICIPAL CLERK.--

A. The municipal clerk shall mark on each completed official outer envelope the date and time of receipt in the municipal clerk's office, record this information in the absentee ballot register and safely and securely keep the official outer envelope unopened until it is delivered on election day to the proper precinct board or

until it is canceled and destroyed in accordance with law. Once a ballot is officially accepted by the municipal clerk and recorded in the absentee ballot register, it cannot be returned to the voter for any reason.

B. The municipal clerk shall accept completed official outer envelopes received by mail or delivered in person to the municipal clerk's office by the voter signing the official outer envelope, by a member of the voter's immediate family or by the caregiver to the voter until 7:00 p.m. on election day. Any completed outer envelope received after that time and date shall be marked as to the time and date received, shall not be delivered to the precinct board and shall be preserved until the time for election contests has expired. In the absence of a court order, after the expiration of the time for election contests, the municipal clerk shall destroy all late official mailing envelopes without opening or permitting the contents to be examined, cast, counted or canvassed. Before their destruction, the municipal clerk shall count the numbers of late ballots from voters, overseas voters and federal qualified electors and record the number from each category in the absentee ballot register.

C. After 5:00 p.m. and not later than 8:00 p.m. on the Friday immediately preceding the date of the election, the municipal clerk shall record the numbers of the unused absentee ballots and shall publicly destroy in the municipal clerk's office all unused ballots. The municipal clerk shall execute a certificate of such destruction, which shall include the numbers on the ballots destroyed, and the certificate shall be placed within the absentee ballot register.

D. At 7:00 p.m. on the day of the election, the municipal clerk shall determine the number of ballots that were mailed and have not been received and execute a "certificate of unreceived absentee ballots". The certificate shall be placed in the absentee ballot register and shall become an official part of the register. The municipal clerk shall determine the form of the certificate of unreceived absentee ballots."

Chapter 278 Section 36 Laws 2009

Section 36. Section 3-9-11 NMSA 1978 (being Laws 1985, Chapter 208, Section 99, as amended by Laws 1995, Chapter 98, Section 3 and also by Laws 1995, Chapter 200, Section 10) is amended to read:

"3-9-11. HANDLING ABSENTEE BALLOTS BY ABSENT VOTER PRECINCT BOARDS.--

A. Before opening any official mailing envelope, an election judge shall determine that the required signature has been executed on the reverse side of the official mailing envelope.

B. If the signature is missing, an election judge shall write "rejected" on the front of the official mailing envelope. The election clerks shall write the notation "rejected

- missing signature" in the "notations" column on the absentee voter list. An election judge shall place the official mailing envelope unopened in an envelope provided for rejected ballots, seal the envelope, write the voter's name on the front of the envelope and deposit it in the locked ballot box.

C. Declared challengers certified by the municipal clerk may examine the official mailing envelope and may challenge the ballot of any absent voter for the following reasons:

(1) the official mailing envelope has been opened prior to being received by the absent voter precinct board; or

(2) the person offering to vote is not an overseas voter, federal qualified elector or voter as provided in the Municipal Election Code.

Upon the challenge of an absentee ballot, an election judge shall generally follow the same procedure as when ballots are challenged when a person offers to vote in person. If a challenged ballot is not to be counted, it shall not be opened and shall be placed in an envelope provided for challenged ballots.

D. If the official mailing envelopes have properly executed signatures and the voters have not been challenged:

(1) an election judge shall open the official mailing envelopes and deposit the ballots in their still sealed official inner envelopes in the locked ballot box; and

(2) the election clerks shall mark the notation "AB" opposite the voter's name in the "notations" column of the absentee voter list.

E. Prior to the closing of the polls, an election judge may remove the absentee ballots from the official inner envelopes and either count and tally the results of absentee balloting by hand or register the results of each absentee ballot on a voting machine the same as if the absent voter had been present and voted in person. It shall be unlawful for any person to disclose the results of such count and tally or such registration on a voting machine of absentee ballots prior to the closing of the polls.

F. The municipal clerk shall, prior to the opening of the polls on election day, notify the absent voter precinct board in writing whether absentee ballots are to be counted and tallied or registered on a voting machine. The procedures shall be such as to ensure the secrecy of the ballot.

G. Absent voter precinct polls shall be closed at 7:00 p.m. on the day of the election by the absent voter precinct board."

Chapter 278 Section 37 Laws 2009

Section 37. Section 3-9-12 NMSA 1978 (being Laws 1985, Chapter 208, Section 100) is amended to read:

"3-9-12. CANVASS--RECOUNT OR RECHECK--DISPOSITION.--Where no voting machines are used to register absentee ballots, such ballots shall be canvassed, recounted and disposed of in the manner provided by the Municipal Election Code for the canvassing, recounting and disposition of paper ballots. Where voting machines are used to register absentee ballots, such ballots shall be canvassed and rechecked in the manner provided by the Municipal Election Code for the canvassing and recheck of ballots cast on a voting machine; provided, in the event of a contest, voting machines used to register absentee ballots shall not be rechecked, but the absentee ballots shall be recounted in the manner provided by the Municipal Election Code."

Chapter 278 Section 38 Laws 2009

Section 38. Section 3-9-13.1 NMSA 1978 (being Laws 2003, Chapter 244, Section 19) is amended to read:

"3-9-13.1. ABSENTEE BALLOT--CONDUCT OF ELECTION--WHEN NOT TIMELY RECEIVED--EMERGENCY PROCEDURE FOR VOTING AND COUNTING.--

A. A voter who has submitted an application for an absentee ballot that was accepted by the municipal clerk but who has not received the absentee ballot by mail as of the date of the election may go to the assigned polling place and, after executing an affidavit of nonreceipt of absentee ballot, shall be issued a ballot in lieu of an absentee ballot by the presiding judge, and shall be allowed to mark the ballot.

B. The voter shall place the completed ballot issued in lieu of an absentee ballot in an official inner envelope, substantially in the form prescribed pursuant to Section 3-9-6 NMSA 1978, which shall be sealed by the voter. The official inner envelope shall then be placed by the voter, in the presence of the presiding judge, in an official outer envelope substantially as prescribed for a transmittal envelope or mailing envelope pursuant to Section 3-9-6 NMSA 1978. The presiding judge shall fill in the information on the back of the envelope that identifies the voter by name and signature roster number and contains the printed affidavit that the voter made application for an absentee ballot, which the voter believes to have been accepted by the municipal clerk, that the voter swears an absentee ballot had not been received as of the date of the election and that the voter was issued a ballot in lieu of an absentee ballot, and that the ballot was marked by the voter and submitted to the presiding judge.

C. The presiding judge shall place all ballots issued in lieu of absentee ballots in a special envelope provided for that purpose by the municipal clerk, seal the envelope and return it to the municipal clerk along with the machine tally sheets after the closing of the polls. The sealed envelope shall not be placed in the locked ballot box.

D. The municipal clerk shall, upon receipt of the envelope containing ballots in lieu of absentee ballots, and no later than forty-eight hours after the close of the polls for the election, remove the transmittal envelopes and without removing or opening the inner envelopes, determine:

(1) if the voter did in fact make application for an absentee ballot that was accepted by the municipal clerk;

(2) if an absentee ballot was mailed by the municipal clerk to the voter; and

(3) whether an absentee ballot was received by the municipal clerk from the voter by 7:00 p.m. on election day.

E. If the municipal clerk determines that the ballot in lieu of absentee ballot is valid, that an absentee ballot was mailed to the voter and that no absentee ballot was received from the voter by the municipal clerk, the municipal clerk shall remove the inner envelope without opening it, retain the transmittal envelope with the other election returns and place the inner envelope, unopened, in a secure and locked container to be transmitted to the canvassing board to be tallied and included in the canvass of the election returns for the municipality.

F. If the municipal clerk determines that the ballot in lieu of absentee ballot is not valid because the application for absentee ballot was rejected and no ballot was mailed to the voter, or that a ballot was received from the voter by the municipal clerk not later than 7:00 p.m. on election day, the municipal clerk shall write "rejected invalid ballot" on the front of the transmittal envelope and the transmittal envelope shall not be sent to the canvassing board for counting and tallying. The municipal clerk shall retain the unopened transmittal envelope in a safe and secure manner and shall notify the district attorney in writing of the alleged violation of the Municipal Election Code. A copy of the notification to the district attorney shall be sent by first class mail to the voter and to the secretary of state.

G. The municipal clerk shall furnish and shall prescribe the form of the necessary envelopes to be used in accordance with the purposes of this section, and shall take steps to preserve the secrecy of any ballots cast pursuant to this section."

Chapter 278 Section 39 Laws 2009

Section 39. Section 3-9-16 NMSA 1978 (being Laws 1973, Chapter 375, Section 14, as amended) is amended to read:

"3-9-16. PENALTIES.--

A. A person who knowingly votes or offers to vote an absentee ballot to which the person is not lawfully entitled to vote or offer to vote is guilty of a fourth degree felony.

B. A municipal official or employee or any other person who knowingly furnishes absentee ballots to persons who are not entitled to such ballots under the provisions of the Municipal Election Code is guilty of a fourth degree felony.

C. A municipal official or employee, precinct board member or any other person who knowingly destroys or otherwise disposes of an absentee ballot other than in the manner provided by the Municipal Election Code is guilty of a fourth degree felony.

D. A person who knowingly or willfully makes any false statement in any application for an absentee ballot or in the absentee ballot register or in any certificate required by the Municipal Election Code is guilty of a fourth degree felony.

E. A person who knowingly possesses an executed or unexecuted absentee ballot outside the physical confines of the municipal clerk's office when the ballot is not the personal ballot of that person or who otherwise knowingly authorizes, aids or abets the unlawful removal of an executed or unexecuted absentee ballot from the physical confines of the municipal clerk's office is guilty of a fourth degree felony.

F. A municipal clerk who knowingly possesses an executed or unexecuted absentee ballot outside the physical confines of the municipal clerk's office when that ballot is not the personal ballot of the municipal clerk, or who otherwise knowingly authorizes, aids or abets the unlawful removal of an executed or unexecuted absentee ballot that is not the personal ballot of the municipal clerk from the physical confines of the municipal clerk's office, is guilty of a fourth degree felony."

Chapter 278 Section 40 Laws 2009

Section 40. REPEAL.--

A. Laws 1995, Chapter 98, Section 3 is repealed.

B. Sections 3-8-15 and 3-8-40.1 NMSA 1978 (being Laws 1985, Chapter 208, Section 23 and Laws 1999, Chapter 278, Section 45, as amended) are repealed.

House Bill 647, aa

Approved April 9, 2009

LAWS 2009, CHAPTER 279

AN ACT

RELATING TO TAXATION; PROVIDING INCOME TAX CREDITS FOR INTERESTS IN GEOTHERMAL, SOLAR THERMAL, SOLAR PHOTOVOLTAIC AND COAL-BASED ELECTRIC GENERATING FACILITIES; CREATING THE ADVANCED ENERGY TAX CREDITS FOR PERSONS WITH LEASEHOLD OR PARTIAL INTERESTS IN CERTAIN ADVANCED ENERGY GENERATING FACILITIES.

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

Chapter 279 Section 1 Laws 2009

Section 1. A new section of the Income Tax Act is enacted to read:

"ADVANCED ENERGY INCOME TAX CREDIT.--

A. The tax credit that may be claimed pursuant to this section may be referred to as the "advanced energy income tax credit".

B. A taxpayer who holds an interest in a qualified generating facility located in New Mexico and who files an individual New Mexico income tax return may claim an advanced energy income tax credit in an amount equal to six percent of the eligible generation plant costs of a qualified generating facility, subject to the limitations imposed in this section. The tax credit claimed shall be verified and approved by the department.

C. An entity that holds an interest in a qualified generating facility may request a certificate of eligibility from the department of environment to enable the requester to apply for an advanced energy income tax credit. The department of environment:

(1) shall determine if the facility is a qualified generating facility;

(2) shall require that the requester provide the department of environment with the information necessary to assess whether the requester's facility meets the criteria to be a qualified generating facility;

(3) shall issue a certificate to the requester stating that the facility is or is not a qualified generating facility within one hundred eighty days after receiving all information necessary to make a determination;

(4) shall:

(a) issue a schedule of fees in which no fee exceeds one hundred fifty thousand dollars (\$150,000); and

(b) deposit fees collected pursuant to this paragraph in the state air quality permit fund created pursuant to Section 74-2-15 NMSA 1978; and

(5) shall report annually to the appropriate interim legislative committee information that will allow the legislative committee to analyze the effectiveness of the advanced energy tax credits, including the identity of qualified generating facilities, the energy production means used, the amount of emissions identified in this section reduced and removed by those qualified generating facilities and whether any requests for certificates of eligibility could not be approved due to program limits.

D. A taxpayer who holds an interest in a qualified generating facility may be allocated the right to claim the advanced energy income tax credit without regard to the taxpayer's relative interest in the qualified generating facility if:

(1) the business entity making the allocation provides notice of the allocation and the taxpayer's interest in the qualified generating facility to the department on forms prescribed by the department;

(2) allocations to the taxpayer and all other taxpayers allocated a right to claim the advanced energy tax credit shall not exceed one hundred percent of the advanced energy tax credit allowed for the qualified generating facility; and

(3) the taxpayer and all other taxpayers allocated a right to claim the advanced energy tax credits collectively own at least a five percent interest in the qualified generating facility.

E. To claim the advanced energy income tax credit, a taxpayer shall submit with the taxpayer's New Mexico income tax return a certificate of eligibility from the department of environment stating that the taxpayer may be eligible for advanced energy tax credits. The taxation and revenue department shall provide credit claims forms. A credit claim form shall accompany any return in which the taxpayer wishes to apply for an approved credit, and the claim shall specify the amount of credit intended to apply to each return. The taxation and revenue department shall determine the amount of advanced energy income tax credit for which the taxpayer may apply.

F. Upon receipt of the notice of an allocation of the right to claim all or a portion of the advanced energy income tax credit, the department shall verify the allocation due to the recipient.

G. A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the advanced energy income tax credit that would have been allowed on a joint return.

H. The total amount of all advanced energy tax credits claimed shall not exceed the total amount determined by the department to be allowable pursuant to this section, the Corporate Income and Franchise Tax Act and Section 7-9G-2 NMSA 1978.

I. Any balance of the advanced energy income tax credit that the taxpayer is approved to claim may be claimed by the taxpayer as an advanced energy combined reporting tax credit allowed pursuant to Section 7-9G-2 NMSA 1978. If the advanced energy income tax credit exceeds the amount of the taxpayer's tax liabilities pursuant to the Income Tax Act and Section 7-9G-2 NMSA 1978 in the taxable year in which it is claimed, the balance of the unpaid credit may be carried forward for ten years and claimed as an advanced energy income tax credit or an advanced energy combined reporting tax credit. The advanced energy income tax credit is not refundable.

J. A taxpayer claiming the advanced energy income tax credit pursuant to this section is ineligible for credits pursuant to the Investment Credit Act or any other credit that may be taken pursuant to the Income Tax Act or credits that may be taken against the gross receipts tax, compensating tax or withholding tax for the same expenditures.

K. The aggregate amount of all advanced energy tax credits that may be claimed with respect to a qualified generating facility shall not exceed sixty million dollars (\$60,000,000).

L. As used in this section:

(1) "advanced energy tax credit" means the advanced energy income tax credit, the advanced energy corporate income tax credit and the advanced energy combined reporting tax credit;

(2) "coal-based electric generating facility" means a new or repowered generating facility and an associated coal gasification facility, if any, that uses coal to generate electricity and that meets the following specifications:

(a) emits the lesser of: 1) what is achievable with the best available control technology; or 2) thirty-five thousandths pound per million British thermal units of sulfur dioxide, twenty-five thousandths pound per million British thermal units of oxides of nitrogen and one hundredth pound per million British thermal units of total particulates in the flue gas;

(b) removes the greater of: 1) what is achievable with the best available control technology; or 2) ninety percent of the mercury from the input fuel;

(c) captures and sequesters or controls carbon dioxide emissions so that by the later of

January 1, 2017 or eighteen months after the commercial operation date of the coal-based electric generating facility, no more than one thousand one hundred pounds per megawatt-hour of carbon dioxide is emitted into the atmosphere;

(d) all infrastructure required for sequestration is in place by the later of January 1, 2017 or eighteen months after the commercial operation date of the coal-based electric generating facility;

(e) includes methods and procedures to monitor the disposition of the carbon dioxide captured and sequestered from the coal-based electric generating facility; and

(f) does not exceed a name-plate capacity of seven hundred net megawatts;

(3) "eligible generation plant costs" means expenditures for the development and construction of a qualified generating facility, including permitting; site characterization and assessment; engineering; design; carbon dioxide capture, treatment, compression, transportation and sequestration; site and equipment acquisition; and fuel supply development used directly and exclusively in a qualified generating facility;

(4) "entity" means an individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, limited liability company, limited liability partnership, joint venture, syndicate or other association or a gas, water or electric utility owned or operated by a county or municipality;

(5) "geothermal electric generating facility" means a facility with a name-plate capacity of one megawatt or more that uses geothermal energy to generate electricity, including a facility that captures and provides geothermal energy to a preexisting electric generating facility using other fuels in part;

(6) "interest in a qualified generating facility" means title to a qualified generating facility; a leasehold interest in a qualified generating facility; an ownership interest in a business or entity that is taxed for federal income tax purposes as a partnership that holds title to or a leasehold interest in a qualified generating facility; or an ownership interest, through one or more intermediate entities that are each taxed for federal income tax purposes as a partnership, in a business that holds title to or a leasehold interest in a qualified generating facility;

(7) "name-plate capacity" means the maximum rated output of the facility measured as alternating current or the equivalent direct current measurement;

(8) "qualified generating facility" means a facility that begins construction not later than December 31, 2015 and is:

(a) a solar thermal electric generating facility that begins construction on or after July 1, 2007 and that may include an associated renewable energy storage facility;

(b) a solar photovoltaic electric generating facility that begins construction on or after July 1, 2009 and that may include an associated renewable energy storage facility;

(c) a geothermal electric generating facility that begins construction on or after July 1, 2009;

(d) a recycled energy project if that facility begins construction on or after July 1, 2007; or

(e) a new or repowered coal-based electric generating facility and an associated coal gasification facility;

(9) "recycled energy" means energy produced by a generation unit with a name-plate capacity of not more than fifteen megawatts that converts the otherwise lost energy from the exhaust stacks or pipes to electricity without combustion of additional fossil fuel;

(10) "sequester" means to store, or chemically convert, carbon dioxide in a manner that prevents its release into the atmosphere and may include the use of geologic formations and enhanced oil, coalbed methane or natural gas recovery techniques;

(11) "solar photovoltaic electric generating facility" means an electric generating facility with a name-plate capacity of one megawatt or more that uses solar photovoltaic energy to generate electricity; and

(12) "solar thermal generating facility" means an electric generating facility with a name-plate capacity of one megawatt or more that uses solar thermal energy to generate electricity, including a facility that captures and provides solar energy to a preexisting electric generating facility using other fuels in part."

Chapter 279 Section 2 Laws 2009

Section 2. A new section of the Corporate Income and Franchise Tax Act is enacted to read:

"ADVANCED ENERGY CORPORATE INCOME TAX CREDIT.--

A. The tax credit that may be claimed pursuant to this section may be referred to as the "advanced energy corporate income tax credit".

B. A taxpayer that holds an interest in a qualified generating facility located in New Mexico and that files a New Mexico corporate income tax return may claim an advanced energy corporate income tax credit in an amount equal to six percent of the eligible generation plant costs of a qualified generating facility, subject to the limitations imposed in this section. The tax credit claimed shall be verified and approved by the department.

C. An entity that holds an interest in a qualified generating facility may request a certificate of eligibility from the department of environment to enable the requester to apply for an advanced energy corporate income tax credit. The department of environment:

(1) shall determine if the facility is a qualified generating facility;

(2) shall require that the requester provide the department of environment with the information necessary to assess whether the requester's facility meets the criteria to be a qualified generating facility;

(3) shall issue a certificate to the requester stating that the facility is or is not a qualified generating facility within one hundred eighty days after receiving all information necessary to make a determination;

(4) shall:

(a) issue a schedule of fees in which no fee exceeds one hundred fifty thousand dollars (\$150,000); and

(b) deposit fees collected pursuant to this paragraph in the state air quality permit fund created pursuant to Section 74-2-15 NMSA 1978; and

(5) shall report annually to the appropriate interim legislative committee information that will allow the legislative committee to analyze the effectiveness of the advanced energy tax credits, including the identity of qualified generating facilities, the energy production means used, the amount of emissions identified in this section reduced and removed by those qualified generating facilities and whether any requests for certificates of eligibility could not be approved due to program limits.

D. A taxpayer that holds an interest in a qualified generating facility may be allocated the right to claim the advanced energy corporate income tax credit without regard to the taxpayer's relative interest in the qualified generating facility if:

(1) the business entity making the allocation provides notice of the allocation and the taxpayer's interest in the qualified generating facility to the department on forms prescribed by the department;

(2) allocations to the taxpayer and all other taxpayers allocated a right to claim the advanced energy tax credit shall not exceed one hundred percent of the advanced energy tax credit allowed for the qualified generating facility; and

(3) the taxpayer and all other taxpayers allocated a right to claim the advanced energy tax credits collectively own at least a five percent interest in the qualified generating facility.

E. Upon receipt of the notice of an allocation of the right to claim all or a portion of the advanced energy corporate income tax credit, the department shall verify the allocation due to the recipient.

F. To claim the advanced energy corporate income tax credit, a taxpayer shall submit with the taxpayer's New Mexico corporate income tax return a certificate of eligibility from the department of environment stating that the taxpayer may be eligible for advanced energy tax credits. The taxation and revenue department shall provide credit claim forms. A credit claim form shall accompany any return in which the taxpayer wishes to apply for an approved credit, and the claim shall specify the amount of credit intended to apply to each return. The taxation and revenue department shall determine the amount of advanced energy corporate income tax credit for which the taxpayer may apply.

G. The total amount of all advanced energy tax credits claimed shall not exceed the total amount determined by the department to be allowable pursuant to this section, the Income Tax Act and Section 7-9G-2 NMSA 1978.

H. Any balance of the advanced energy corporate income tax credit that the taxpayer is approved to claim may be claimed by the taxpayer as an advanced energy combined reporting tax credit allowed pursuant to Section 7-9G-2 NMSA 1978. If the advanced energy corporate income tax credit exceeds the amount of the taxpayer's tax liabilities pursuant to the Corporate Income and Franchise Tax Act and Section 7-9G-2 NMSA 1978 in the taxable year in which it is claimed, the balance of the unpaid credit may be carried forward for ten years and claimed as an advanced energy corporate income tax credit or an advanced energy combined reporting tax credit. The advanced energy corporate income tax credit is not refundable.

I. A taxpayer claiming the advanced energy corporate income tax credit pursuant to this section is ineligible for credits pursuant to the Investment Credit Act or any other credit that may be taken pursuant to the Corporate Income and Franchise Tax Act or credits that may be taken against the gross receipts tax, compensating tax or withholding tax for the same expenditures.

J. The aggregate amount of all advanced energy tax credits that may be claimed with respect to a qualified generating facility shall not exceed sixty million dollars (\$60,000,000).

K. As used in this section:

(1) "advanced energy tax credit" means the advanced energy income tax credit, the advanced energy corporate income tax credit and the advanced energy combined reporting tax credit;

(2) "coal-based electric generating facility" means a new or repowered generating facility and an associated coal gasification facility, if any, that uses coal to generate electricity and that meets the following specifications:

(a) emits the lesser of: 1) what is achievable with the best available control technology; or 2) thirty-five thousandths pound per million British thermal units of sulfur dioxide, twenty-five thousandths pound per million British thermal units of oxides of nitrogen and one hundredth pound per million British thermal units of total particulates in the flue gas;

(b) removes the greater of: 1) what is achievable with the best available control technology; or 2) ninety percent of the mercury from the input fuel;

(c) captures and sequesters or controls carbon dioxide emissions so that by the later of January 1, 2017 or eighteen months after the commercial operation date of the coal-based electric generating facility, no more than one thousand one hundred pounds per megawatt-hour of carbon dioxide is emitted into the atmosphere;

(d) all infrastructure required for sequestration is in place by the later of January 1, 2017 or eighteen months after the commercial operation date of the coal-based electric generating facility;

(e) includes methods and procedures to monitor the disposition of the carbon dioxide captured and sequestered from the coal-based electric generating facility; and

(f) does not exceed a name-plate capacity of seven hundred net megawatts;

(3) "eligible generation plant costs" means expenditures for the development and construction of a qualified generating facility, including permitting; site characterization and assessment; engineering; design; carbon dioxide capture, treatment, compression, transportation and sequestration; site and equipment acquisition; and fuel supply development used directly and exclusively in a qualified generating facility;

(4) "entity" means an individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, limited liability company,

limited liability partnership, joint venture, syndicate or other association or a gas, water or electric utility owned or operated by a county or municipality;

(5) "geothermal electric generating facility" means a facility with a name-plate capacity of one megawatt or more that uses geothermal energy to generate electricity, including a facility that captures and provides geothermal energy to a preexisting electric generating facility using other fuels in part;

(6) "interest in a qualified generating facility" means title to a qualified generating facility; a leasehold interest in a qualified generating facility; an ownership interest in a business or entity that is taxed for federal income tax purposes as a partnership that holds title to or a leasehold interest in a qualified generating facility; or an ownership interest, through one or more intermediate entities that are each taxed for federal income tax purposes as a partnership, in a business that holds title to or a leasehold interest in a qualified generating facility;

(7) "name-plate capacity" means the maximum rated output of the facility measured as alternating current or the equivalent direct current measurement;

(8) "qualified generating facility" means a facility that begins construction not later than December 31, 2015 and is:

(a) a solar thermal electric generating facility that begins construction on or after July 1, 2007 and that may include an associated renewable energy storage facility;

(b) a solar photovoltaic electric generating facility that begins construction on or after July 1, 2009 and that may include an associated renewable energy storage facility;

(c) a geothermal electric generating facility that begins construction on or after July 1, 2009;

(d) a recycled energy project if that facility begins construction on or after July 1, 2007; or

(e) a new or repowered coal-based electric generating facility and an associated coal gasification facility;

(9) "recycled energy" means energy produced by a generation unit with a name-plate capacity of not more than fifteen megawatts that converts the otherwise lost energy from the exhaust stacks or pipes to electricity without combustion of additional fossil fuel;

(10) "sequester" means to store, or chemically convert, carbon dioxide in a manner that prevents its release into the atmosphere and may include the

use of geologic formations and enhanced oil, coalbed methane or natural gas recovery techniques;

(11) "solar photovoltaic electric generating facility" means an electric generating facility with a name-plate capacity of one megawatt or more that uses solar photovoltaic energy to generate electricity; and

(12) "solar thermal electric generating facility" means an electric generating facility with a name-plate capacity of one megawatt or more that uses solar thermal energy to generate electricity, including a facility that captures and provides solar energy to a preexisting electric generating facility using other fuels in part."

Chapter 279 Section 3 Laws 2009

Section 3. Section 7-9G-2 NMSA 1978 (being Laws 2007, Chapter 229, Section 1) is amended to read:

"7-9G-2. ADVANCED ENERGY COMBINED REPORTING TAX CREDIT--
GROSS RECEIPTS TAX--COMPENSATING TAX--WITHHOLDING TAX.--

A. Except as otherwise provided in this section, a taxpayer that holds an interest in a qualified generating facility located in New Mexico may claim a credit to be computed pursuant to the provisions of this section. The credit provided by this section may be referred to as the "advanced energy combined reporting tax credit".

B. As used in this section:

(1) "advanced energy tax credit" means the advanced energy income tax credit, the advanced energy corporate income tax credit and the advanced energy combined reporting tax credit;

(2) "coal-based electric generating facility" means a new or repowered generating facility and an associated coal gasification facility, if any, that uses coal to generate electricity and that meets the following specifications:

(a) emits the lesser of: 1) what is achievable with the best available control technology; or

2) thirty-five thousandths pound per million British thermal units of sulfur dioxide, twenty-five thousandths pound per million British thermal units of oxides of nitrogen and one hundredth pound per million British thermal units of total particulates in the flue gas;

(b) removes the greater of: 1) what is achievable with the best available control technology; or 2) ninety percent of the mercury from the input fuel;

(c) captures and sequesters or controls carbon dioxide emissions so that by the later of January 1, 2017 or eighteen months after the commercial operation date of the coal-based electric generating facility, no more than one thousand one hundred pounds per megawatt-hour of carbon dioxide is emitted into the atmosphere;

(d) all infrastructure required for sequestration is in place by the later of January 1, 2017 or eighteen months after the commercial operation date of the coal-based electric generating facility;

(e) includes methods and procedures to monitor the disposition of the carbon dioxide captured and sequestered from the coal-based electric generating facility; and

(f) does not exceed a name-plate capacity of seven hundred net megawatts;

(3) "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;

(4) "eligible generation plant costs" means expenditures for the development and construction of a qualified generating facility, including permitting; site characterization and assessment; engineering; design; carbon dioxide capture, treatment, compression, transportation and sequestration; site and equipment acquisition; and fuel supply development used directly and exclusively in a qualified generating facility;

(5) "entity" means an individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, limited liability company, limited liability partnership, joint venture, syndicate or other association or a gas, water or electric utility owned or operated by a county or municipality;

(6) "geothermal electric generating facility" means a facility with a name-plate capacity of one megawatt or more that uses geothermal energy to generate electricity, including a facility that captures and provides geothermal energy to a preexisting electric generating facility using other fuels in part;

(7) "gross receipts tax due to the state" means the taxpayer's gross receipts liability for the reporting period that is:

(a) determined by, if the taxpayer's business location is described in Subsection A of Section 7-1-6.4 NMSA 1978, multiplying the taxpayer's taxable gross receipts for the reporting period by the difference between the gross receipts tax rate specified in Section 7-9-4 NMSA 1978 and one and two hundred twenty-five thousandths percent; or

(b) equal to, if the taxpayer's business location is not described in Subsection A of Section 7-1-6.4 NMSA 1978, the gross receipts tax rate specified in Section 7-9-4 NMSA 1978;

(8) "interest in a qualified generating facility" means title to a qualified generating facility; a leasehold interest in a qualified generating facility; an ownership interest in a business or entity that is taxed for federal income tax purposes as a partnership that holds title to or a leasehold interest in a qualified generating facility; or an ownership interest, through one or more intermediate entities that are each taxed for federal income tax purposes as a partnership, in a business that holds title to or a leasehold interest in a qualified generating facility;

(9) "name-plate capacity" means the maximum rated output of the facility measured as alternating current or the equivalent direct current measurement;

(10) "qualified generating facility" means a facility that begins construction not later than December 31, 2015 and is:

(a) a solar thermal electric generating facility that begins construction on or after July 1, 2007 and that may include an associated renewable energy storage facility;

(b) a solar photovoltaic electric generating facility that begins construction on or after July 1, 2009 and that may include an associated renewable energy storage facility;

(c) a geothermal electric generating facility that begins construction on or after July 1, 2009;

(d) a recycled energy project if that facility begins construction on or after July 1, 2007; or

(e) a new or repowered coal-based electric generating facility and an associated coal gasification facility;

(11) "recycled energy" means energy produced by a generation unit with a name-plate capacity of not more than fifteen megawatts that converts the otherwise lost energy from the exhaust stacks or pipes to electricity without combustion of additional fossil fuel;

(12) "sequester" means to store, or chemically convert, carbon dioxide in a manner that prevents its release into the atmosphere and may include the use of geologic formations and enhanced oil, coalbed methane or natural gas recovery techniques;

(13) "solar photovoltaic electric generating facility" means an electric generating facility with a name-plate capacity of one megawatt or more that uses solar photovoltaic energy to generate electricity; and

(14) "solar thermal electric generating facility" means an electric generating facility with a name-plate capacity of one megawatt or more that uses solar thermal energy to generate electricity, including a facility that captures and provides solar energy to a preexisting electric generating facility using other fuels in part.

C. A taxpayer that holds an interest in a qualified generating facility may be allocated the right to claim the advanced energy combined reporting tax credit without regard to the taxpayer's relative interest in the qualified generating facility if:

(1) the business entity making the allocation provides notice of the allocation and the taxpayer's interest in the qualified generating facility to the department on forms prescribed by the department;

(2) allocations to the taxpayer and all other taxpayers allocated a right to claim the advanced energy tax credit shall not exceed one hundred percent of the advanced energy tax credit allowed for the qualified generating facility; and

(3) the taxpayer and all other taxpayers allocated a right to claim the advanced energy tax credits collectively own at least a five percent interest in the qualified generating facility.

D. Upon receipt of the notice of an allocation of the right to claim all or a portion of the advanced energy combined reporting tax credit, the department shall verify the allocation due to the recipient.

E. Subject to the limit imposed in Subsection K of this section, the advanced energy combined reporting tax credit with respect to a qualified generating facility shall equal six percent of the eligible generation plant costs of the qualified generating facility. Taxpayers eligible to claim an advanced energy combined reporting tax credit holding less than one hundred percent of the interest in the qualified generating facility shall designate an individual to report annually to the department. That designated individual shall report the eligible generation plant costs incurred during the calendar year and the relative interest of those costs attributed to each eligible interest holder. The taxpayers shall submit a copy of the relative interests attributed to each interest holder to the department, and any change to the apportioned interests shall be submitted to the department. The designated person and the department may identify a mutually acceptable reporting schedule.

F. A taxpayer may apply for the advanced energy combined reporting tax credit by submitting to the taxation and revenue department a certificate issued by the department of environment pursuant to Subsection K of this section, documentation showing the taxpayer's interest in the qualified generating facility identified in the

certificate, documentation of all eligible generation plant costs incurred by the taxpayer prior to the date of the application by the taxpayer for the advanced energy combined reporting tax credit and any other information the taxation and revenue department requests to determine the amount of tax credit due to the taxpayer.

G. A taxpayer having applied for and been granted approval to claim an advanced energy combined reporting tax credit by the department pursuant to this section may claim an amount of available credit against the taxpayer's gross receipts tax, compensating tax or withholding tax due to the state. Any balance of the advanced energy combined reporting tax credit that the taxpayer is approved to claim after applying that tax credit against the taxpayer's gross receipts tax, compensating tax or withholding tax liabilities may be claimed by the taxpayer against the taxpayer's tax liability pursuant to the Income Tax Act by claiming an advanced energy income tax credit or against the taxpayer's tax liability pursuant to the Corporate Income and Franchise Tax Act by claiming an advanced energy corporate income tax credit. The advanced energy combined reporting tax credit is not refundable. The total amount of tax credit claimed pursuant to this section, when combined with the advanced energy tax credits claimed pursuant to the Income Tax Act and the Corporate Income and Franchise Tax Act, shall not exceed the total amount of advanced energy tax credits approved by the department for the qualified generating facility.

H. A taxpayer that is liable for the payment of gross receipts or compensating tax with respect to the ownership, development, construction, maintenance or operation of a new coal-based electric generating facility that does not meet the criteria for a qualified generating facility and that begins construction after January 1, 2007 shall not claim an advanced energy tax combined reporting credit pursuant to this section or a gross receipts tax credit, a compensating tax credit or a withholding tax credit pursuant to any other state law.

I. If the amount of the advanced energy tax credit approved by the department exceeds the taxpayer's liability, the excess may be carried forward for up to ten years.

J. The aggregate amount of advanced energy tax credit that may be claimed with respect to each qualified generating facility shall not exceed sixty million dollars (\$60,000,000).

K. An entity that holds an interest in a qualified generating facility may request a certificate of eligibility from the department of environment to enable the requester to apply for the advanced energy combined reporting tax credit. The department of environment:

(1) shall determine if the facility is a qualified generating facility;

(2) shall require that the requester provide the department of environment with the information necessary to assess whether the requester's facility meets the criteria to be a qualified generating facility;

(3) shall issue a certificate to the requester stating that the facility is or is not a qualified generating facility within one hundred eighty days after receiving all information necessary to make a determination;

(4) shall:

(a) issue rules governing the procedure for administering the provisions of this subsection and Subsection L of this section and for providing certificates of eligibility for advanced energy tax credits;

(b) issue a schedule of fees in which no fee exceeds one hundred fifty thousand dollars (\$150,000); and

(c) deposit fees collected pursuant to this paragraph in the state air quality permit fund created pursuant to Section 74-2-15 NMSA 1978; and

(5) shall report annually to the appropriate interim legislative committee information that will allow the legislative committee to analyze the effectiveness of the advanced energy tax credits, including the identity of qualified generating facilities, the energy production means used, the amount of emissions identified in this section reduced and removed by those qualified generating facilities and whether any requests for certificates of eligibility could not be approved due to program limits.

L. If the department of environment issues a certificate of eligibility to a taxpayer stating that the taxpayer holds an interest in a qualified generating facility and the taxpayer does not sequester or control carbon dioxide emissions to the extent required by this section by the later of January 1, 2017 or eighteen months after the commercial operation date of the qualified generating facility, the taxpayer's certification as a qualified generating facility shall be revoked by the department of environment and the taxpayer shall repay to the state tax credits granted pursuant to this section; provided that if the taxpayer demonstrates to the department of environment that the taxpayer made every effort to sequester or control carbon dioxide emissions to the extent feasible and the facility's inability to meet the sequestration requirements of a qualified generating facility was beyond the facility's control, in which case the department of environment shall determine, after a public hearing, the amount of the tax credit that should be repaid to the state. The department of environment, in its determination, shall consider the environmental performance of the facility and the extent to which the inability to meet the sequestration requirements of a qualified generating facility was in the control of the taxpayer. The repayment as determined by the department of environment shall be paid within one hundred eighty days following a final order by the department of environment.

M. Expenditures for which a taxpayer claims an advanced energy combined reporting tax credit pursuant to this section are ineligible for credits pursuant to the provisions of the Investment Credit Act or any other credit against personal income tax, corporate income tax, compensating tax, gross receipts tax or withholding tax.

N. A taxpayer shall apply for approval for a credit within one year following the end of the calendar year in which the eligible generation plant costs are incurred."

SCORC/SCONC/Senate Bill 237, w/cc

Approved April 9, 2009

LAWS 2009, CHAPTER 280

AN ACT

RELATING TO TAXATION; AMENDING THE SOLAR MARKET DEVELOPMENT TAX CREDIT TO PROVIDE FOR A CREDIT OF TEN PERCENT OF THE PURCHASE AND INSTALLATION COSTS IN ADDITION TO THE FEDERAL TAX CREDITS.

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

Chapter 280 Section 1 Laws 2009

Section 1. Section 7-2-18.14 NMSA 1978 (being Laws 2006, Chapter 93, Section 1) is amended to read:

"7-2-18.14. SOLAR MARKET DEVELOPMENT TAX CREDIT--RESIDENTIAL AND SMALL BUSINESS SOLAR THERMAL AND PHOTOVOLTAIC MARKET DEVELOPMENT TAX CREDIT.--

A. Except as provided in Subsection C of this section, a taxpayer who files an individual New Mexico income tax return for a taxable year beginning on or after January 1, 2006 and who purchases and installs after January 1, 2006 but before December 31, 2016 a solar thermal system or a photovoltaic system in a residence, business or agricultural enterprise in New Mexico owned by that taxpayer may apply for, and the department may allow, a solar market development tax credit of up to ten percent of the purchase and installation costs of the system.

B. The total solar market development tax credit allowed for either a photovoltaic system or a solar thermal system shall not exceed nine thousand dollars (\$9,000). The department shall allow solar market development tax credits only for solar

thermal systems and photovoltaic systems certified by the energy, minerals and natural resources department.

C. Solar market development tax credits may not be claimed or allowed for:

(1) a heating system for a swimming pool or a hot tub; or

(2) a commercial or industrial photovoltaic system other than an agricultural photovoltaic system on a farm or ranch that is not connected to an electric utility transmission or distribution system.

D. The department may allow a maximum annual aggregate of:

(1) two million dollars (\$2,000,000) in solar market development tax credits for solar thermal systems; and

(2) three million dollars (\$3,000,000) in solar market development tax credits for photovoltaic systems.

E. A portion of the solar market development tax credit that remains unused in a taxable year may be carried forward for a maximum of ten consecutive taxable years following the taxable year in which the credit originates until fully expended.

F. Prior to July 1, 2006, the energy, minerals and natural resources department shall adopt rules establishing procedures to provide certification of solar thermal systems and photovoltaic systems for purposes of obtaining a solar market development tax credit. The rules shall address technical specifications and requirements relating to safety, code and standards compliance, solar collector orientation and sun exposure, minimum system sizes, system applications and lists of eligible components. The energy, minerals and natural resources department may modify the specifications and requirements as necessary to maintain a high level of system quality and performance.

G. As used in this section:

(1) "photovoltaic system" means an energy system that collects or absorbs sunlight for conversion into electricity; and

(2) "solar thermal system" means an energy system that collects or absorbs solar energy for conversion into heat for the purposes of space heating, space cooling or water heating."

Chapter 280 Section 2 Laws 2009

Section 2. APPLICABILITY.--The provisions of this act apply to taxable years beginning on or after January 1, 2009.

Senate Bill 257

Approved April 9, 2009

LAWS 2009, CHAPTER 281

AN ACT

RELATING TO HIGHER EDUCATION; PROVIDING FOR AWARDS TO PUBLIC INSTITUTIONS OF HIGHER EDUCATION TO DEVELOP PROGRAMS FOR INSTRUCTION AND TRAINING RELATED TO ALTERNATIVE ENERGY AND ENERGY EFFICIENCY; CREATING A FUND; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

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

Chapter 281 Section 1 Laws 2009

Section 1. ALTERNATIVE ENERGY AND ENERGY EFFICIENCY PROGRAMS--FUND CREATED--AWARDS--CRITERIA.--

A. The "higher education new energy development fund" is created in the state treasury. The fund shall consist of appropriations, gifts, grants, donations and bequests made to the fund and federal grants or distributions made to the fund or to the higher education department for deposit into the fund. All income earned on investment of the fund shall be credited to the fund, and money in the fund shall not revert to any other fund at the end of a fiscal year. The fund shall be administered by the higher education department, and money in the fund is appropriated to the department to carry out the purposes of this section. Disbursements from the fund shall be by warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the secretary of higher education or the secretary's authorized representative.

B. The higher education new energy development fund shall be used to provide financial incentives to:

(1) four-year public post-secondary educational institutions to develop research programs, courses of instruction and degree programs in the fields of alternative energy and energy efficiency; and

(2) two-year public post-secondary educational institutions to provide alternative energy and energy efficiency programs and courses of instruction for

students seeking licensure or certification as electricians, plumbers, mechanics, welders and heating, ventilation and air conditioning personnel or similar professions.

C. The higher education department shall, by rule, establish criteria and procedures for making awards from the fund based on evaluation of competitive proposals submitted by public post-secondary educational institutions. The criteria shall include:

(1) a requirement that the application demonstrate how the award will be used to establish permanent educational programs in the fields of alternative energy and energy efficiency;

(2) a requirement that the application demonstrate how local resources will be utilized, including how the institution will cooperate with local employers with a potential need for interns or graduates;

(3) the commitment of matching money; and

(4) such other evaluation components as the department deems useful.

D. No more than an amount equal to five percent of the total awards made during a fiscal year shall be expended from the fund in that fiscal year for administrative costs, including project management, auditing and other oversight functions.

E. The higher education department shall report annually to the legislature and the governor on the status of the fund and programs supported by the fund.

Chapter 281 Section 2 Laws 2009

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

Senate Bill 288, aa, w/ec

Approved April 9, 2009

LAWS 2009, CHAPTER 282

AN ACT

RELATING TO JOB TRAINING; PROVIDING THAT DEVELOPMENT TRAINING FUNDS MAY BE USED FOR GREEN JOBS; MAKING AN APPROPRIATION.

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

Chapter 282 Section 1 Laws 2009

Section 1. Section 21-19-13 NMSA 1978 (being Laws 2005, Chapter 102, Section 3) is amended to read:

"21-19-13. DISTRIBUTIONS OF DEVELOPMENT TRAINING FUNDS.--

A. Of appropriations made in any fiscal year for development training, up to two-thirds shall be expended in urban communities in the state. At least one-third of the appropriations made in any fiscal year for development training shall be expended in nonurban communities.

B. Of money available in the development training fund, the economic development department may use in any fiscal year:

(1) up to fifty thousand dollars (\$50,000) to generally administer the development training program; and

(2) in addition to the general administration funding allowed in Paragraph (1) of this subsection, up to fifty thousand dollars (\$50,000) to administer the provisions of Section 21-19-7.1 NMSA 1978.

C. Up to two million dollars (\$2,000,000) of development training funds may be used to reimburse film and multimedia production companies and to provide preemployment training for that industry pursuant to the provisions of Section 21-19-7.1 NMSA 1978.

D. Up to one million dollars (\$1,000,000) disbursed annually from the development training program may be dedicated to development training in green industries.

E. As used in this section:

(1) "green industries" means industries that contribute directly to preserving or enhancing environmental quality by reducing waste and pollution or by producing sustainable products using sustainable processes and materials. Green industries provide opportunities for advancement along a career track of increasing skills and wages. Green industries include:

(a) energy system retrofits to increase energy efficiency and conservation;

(b) production and distribution of biofuels and vehicle retrofits for biofuels;

(c) building design and construction that meet the equivalent of best available technology in energy and environmental design standards;

(d) organic and community food production;

(e) manufacture of products from non-toxic, environmentally certified or recycled materials;

(f) manufacture and production of sustainable technologies, including solar panels, wind turbines and fuel cells;

(g) solar technology installation and maintenance;

(h) recycling, green composting and large-scale reuse of construction and demolition materials and debris; and

(i) water system retrofits to increase water efficiency and conservation;

(2) "nonurban community" means a municipality that is not an urban community or is the unincorporated area of a county; and

(3) "urban community" means a municipality with a population of forty thousand or more according to the most recent federal decennial census."

Senate Bill 318, aa

Approved April 9, 2009

LAWS 2009, CHAPTER 283

AN ACT

RELATING TO PUBLIC FINANCE; PROVIDING A TIERED SYSTEM OF FINANCIAL REPORTING FOR MUTUAL DOMESTIC WATER CONSUMERS ASSOCIATIONS, LAND GRANTS, INCORPORATED MUNICIPALITIES AND SPECIAL DISTRICTS; ALLOWING A THREE-YEAR RETROACTIVE APPLICATION OF THE TIERED SYSTEM.

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

Chapter 283 Section 1 Laws 2009

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 but not limited to 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 administering agency, of less than ten thousand dollars (\$10,000), 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 283 Section 2 Laws 2009

Section 2. Section 12-6-2 NMSA 1978 (being Laws 1969, Chapter 68, Section 2, as amended) is amended to read:

"12-6-2. DEFINITIONS.--As used in the Audit Act:

A. "agency" means:

(1) any department, institution, board, bureau, court, commission, district or committee of the government of the state, including district courts, magistrate or metropolitan courts, district attorneys and charitable institutions for which appropriations are made by the legislature;

(2) any political subdivision of the state, created under either general or special act, that receives or expends public money from whatever source derived, including counties, county institutions, boards, bureaus or commissions; municipalities; drainage, conservancy, irrigation or other special districts; and school districts;

(3) any entity or instrumentality of the state specifically provided for by law, including the New Mexico finance authority, the New Mexico mortgage finance authority and the New Mexico lottery authority; and

(4) every office or officer of any entity listed in Paragraphs (1) through (3) of this subsection; and

B. "local public body" means a mutual domestic water consumers association, a land grant, an incorporated municipality or a special district."

Chapter 283 Section 3 Laws 2009

Section 3. Section 12-6-3 NMSA 1978 (being Laws 1969, Chapter 68, Section 3, as amended) is amended to read:

"12-6-3. ANNUAL AND SPECIAL AUDITS--FINANCIAL EXAMINATIONS.--

A. Except as otherwise provided in Subsection B of this section, the financial affairs of every agency shall be thoroughly examined and audited each year by the state auditor, personnel of the state auditor's office designated by the state auditor or independent auditors approved by the state auditor. The comprehensive annual financial report for the state shall be thoroughly examined and audited each year by the state auditor, personnel of the state auditor's office designated by the state auditor or independent auditors approved by the state auditor. The audits shall be conducted in accordance with generally accepted auditing standards and rules issued by the state auditor.

B. The examination of the financial affairs of a local public body shall be determined according to its annual revenue each year. All examinations and compliance with agreed-upon procedures shall be conducted in accordance with generally accepted accounting standards and rules issued by the state auditor. If a local public body has an annual revenue, calculated on a cash basis of accounting, exclusive of capital outlay funds, federal or private grants or capital outlay funds disbursed directly by an administrating agency, of:

(1) less than ten thousand dollars (\$10,000) and does not directly expend at least fifty percent of, or the remainder of, a single capital outlay award, it is exempt from submitting and filing quarterly reports and final budgets for approval to the local government division of the department of finance and administration and from any financial reporting to the state auditor;

(2) at least ten thousand dollars (\$10,000) but less than fifty thousand dollars (\$50,000), it shall comply only with the applicable provisions of Section 6-6-3 NMSA 1978;

(3) less than fifty thousand dollars (\$50,000) and directly expends at least fifty percent of, or the remainder of, a single capital outlay award, it shall submit to the state auditor a financial report consistent with agreed-upon procedures for financial reporting that are:

(a) focused solely on the capital outlay funds directly expended;

(b) economically feasible for the affected local public body;

and

(c) determined by the state auditor after consultation with the affected local public body;

(4) at least fifty thousand dollars (\$50,000) but not more than two hundred fifty thousand dollars (\$250,000), it shall submit to the state auditor, at a minimum, a financial report that includes a schedule of cash basis comparison and that is consistent with agreed-upon procedures for financial reporting that are:

(a) narrowly tailored to the affected local public body;

(b) economically feasible for the affected local public body;

and

(c) determined by the state auditor after consultation with the affected local public body;

(5) at least fifty thousand dollars (\$50,000) but not more than two hundred fifty thousand dollars (\$250,000) and expends any capital outlay funds, it shall submit to the state auditor, at a minimum, a financial report that includes a schedule of cash basis comparison and a test sample of expended capital outlay funds and that is consistent with agreed-upon procedures for financial reporting that are:

(a) narrowly tailored to the affected local public body;

(b) economically feasible for the affected local public body;

and

(c) determined by the state auditor after consultation with the affected local public body;

(6) at least two hundred fifty thousand dollars (\$250,000) but not more than five hundred thousand dollars (\$500,000), it shall submit to the state auditor, at a minimum, a compilation of financial statements and a financial report consistent with agreed-upon procedures for financial reporting that are:

(a) economically feasible for the affected local public body;

and

(b) determined by the state auditor after consultation with the affected local public body; or

(7) five hundred thousand dollars (\$500,000) or more, it shall be thoroughly examined and audited as required by Subsection A of this section.

C. In addition to the annual audit, the state auditor may cause the financial affairs and transactions of an agency to be audited in whole or in part.

D. Annual financial and compliance audits of agencies under the oversight of the financial control division of the department of finance and administration shall be completed and submitted by an agency and independent auditor to the state auditor no later than sixty days after the state auditor receives notification from the financial control division to the effect that an agency's books and records are ready and available for audit. The local government division of the department of finance and administration shall inform the state auditor of the compliance or failure to comply by a local public body with the provisions of Section 6-6-3 NMSA 1978.

E. In order to comply with United States department of housing and urban development requirements, the financial affairs of a public housing authority that is determined to be a component unit in accordance with generally accepted accounting principles, other than a housing department of a local government or a regional housing authority, at the public housing authority's discretion, may be audited separately from the audit of its local primary government entity. If a separate audit is made, the public housing authority audit shall be included in the local primary government entity audit and need not be conducted by the same auditor who audits the financial affairs of the local primary government entity."

Chapter 283 Section 4 Laws 2009

Section 4. TEMPORARY PROVISION--LIMITED WAIVER.--Compliance of a local public body not in compliance with the Audit Act between January 1, 2007 and June 30, 2010 is waived for those years if the local public body complies with the applicable provisions of that act in effect on or after July 1, 2010, unless the local public body is required to receive a full financial and compliance audit pursuant to the provisions of that act in effect on or after July 1, 2010.

Chapter 283 Section 5 Laws 2009

Section 5. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2010.

Senate Bill 336, aa

Approved April 9, 2009

LAWS 2009, CHAPTER 284

AN ACT

RELATING TO TAXATION; PROVIDING AUTHORITY TO IMPOSE THE MUNICIPAL ENVIRONMENTAL SERVICES GROSS RECEIPTS TAX ON CERTAIN COMMUNITIES AT A MAXIMUM RATE OF ONE-HALF OF ONE PERCENT.

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

Chapter 284 Section 1 Laws 2009

Section 1. Section 7-19D-10 NMSA 1978 (being Laws 1990, Chapter 99, Section 51, as amended) is amended to read:

"7-19D-10. MUNICIPAL ENVIRONMENTAL SERVICES GROSS RECEIPTS TAX--AUTHORITY TO IMPOSE--ORDINANCE REQUIREMENTS.--

A. Except as otherwise provided in this section, the majority of the members of the governing body of a municipality may enact an ordinance imposing an excise tax on any person engaging in business in the municipality for the privilege of engaging in business. The rate of the tax shall be one-sixteenth of one percent of the gross receipts of the person engaging in business.

B. The tax imposed in accordance with Subsection A of this section may be referred to as the "municipal environmental services gross receipts tax". The imposition of a municipal environmental services gross receipts tax is not subject to referendum.

C. The governing body of a municipality shall, at the time of enacting an ordinance imposing the rate of the tax authorized in Subsection A of this section, dedicate the revenue for acquisition, construction, operation and maintenance of solid waste facilities, water facilities, wastewater facilities, sewer systems and related facilities.

D. The governing body of a municipality in a class B county with a net taxable value used for rate-setting purposes for the 2008 property tax year of greater than seven hundred fifty million dollars (\$750,000,000) and a population in the entire county according to the most recent federal decennial census of less than twenty-five thousand may enact an ordinance imposing an excise tax on any person engaging in business in the municipality for the privilege of engaging in business; provided that:

(1) the rate of the tax imposed shall not exceed one-half of one percent of the gross receipts of the person engaging in business;

(2) the tax is imposed in one-fourth of one percent increments; and

(3) the population of the municipality imposing the municipal environmental services gross receipts tax according to the most recent federal decennial census is:

(a) more than seven thousand five hundred but less than seven thousand eight hundred; or

(b) more than one thousand five hundred but less than two thousand."

SFC/Senate Bill 324, aa

Approved April 10, 2009

LAWS 2009, CHAPTER 285

AN ACT

RELATING TO RETURN TO EMPLOYMENT; PROVIDING THAT A RETIRED MEMBER OF THE PUBLIC EMPLOYEES RETIREMENT ASSOCIATION MAY RETURN TO EMPLOYMENT AS AN ELECTED OFFICIAL WITHOUT THE REQUIREMENT OF CONTRIBUTIONS BY THE MEMBER OR BY THE PUBLIC EMPLOYER AND WITHOUT A BREAK IN SERVICE; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2004 BY REPEALING LAWS 2004, CHAPTER 2, SECTION 1.

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

Chapter 285 Section 1 Laws 2009

Section 1. Section 10-11-8 NMSA 1978 (being Laws 1987, Chapter 253, Section 8, as amended by Laws 2004, Chapter 2, Section 1 and by Laws 2004, Chapter 68, Section 4) is amended to read:

"10-11-8. NORMAL RETIREMENT--RETURN TO EMPLOYMENT--BENEFITS CONTINUED--EMPLOYER CONTRIBUTIONS.--

A. A member may retire upon fulfilling the following requirements prior to the selected date of retirement:

(1) a written application for normal retirement, in the form prescribed by the association, is filed with the association;

(2) employment is terminated with all employers covered by any state system or the educational retirement system;

(3) the member selects an effective date of retirement that is the first day of a calendar month; and

(4) the member meets the age and service credit requirement for normal retirement specified in the coverage plan applicable to the member.

B. The amount of normal retirement pension is determined in accordance with the coverage plan applicable to the member.

C. Except as provided in Subsection D or E of this section, a retired member may be subsequently employed by an affiliated public employer if the following conditions apply:

(1) the member has not been employed as an employee of an affiliated public employer for at least ninety consecutive days from the date of retirement to the commencement of employment or reemployment with an affiliated public employer. If the retired member returns to employment without first completing ninety consecutive days of retirement:

(a) the retired member's pension shall be suspended immediately and the previously retired member shall become a member; and

(b) upon termination of the subsequent employment, the previously retired member's pension shall be calculated pursuant to Paragraph (2) of Subsection E of this section;

(2) effective the first day of the month following the month in which the retired member's earnings total twenty-five thousand dollars (\$25,000) during a calendar year, a retired member who returns to employment shall be required to make contributions to the fund as specified in the Public Employees Retirement Act; provided, however, that after December 31, 2006, no additional contributions shall be required pursuant to this paragraph;

(3) until the subsequent employment is terminated, the affiliated public employer that employs the retired member shall make contributions to the fund in the amount specified in the Public Employees Retirement Act or in a higher amount adjusted for full actuarial cost as determined annually by the association; and

(4) a retired member who returns to employment during retirement pursuant to this subsection is entitled to receive retirement benefits but is not entitled to acquire service credit or to acquire or purchase service credit in the future for the period of the retired member's reemployment with an affiliated public employer.

D. Except for Paragraph (4) of Subsection C of this section, the other provisions of that subsection do not apply to:

(1) a retired member who is appointed chief of police of an affiliated public employer, other than the affiliated public employer from which the retired member retired, or who is appointed undersheriff; provided that:

(a) the retired member files an irrevocable exemption from membership with the association within thirty days of appointment;

(b) each sheriff's office shall be limited to one undersheriff qualifying pursuant to this paragraph;

(c) the irrevocable exemption shall be for the chief of police's or the undersheriff's term of office; and

(d) filing an irrevocable exemption shall irrevocably bar the retired member from acquiring service credit for the period of exemption from membership;

(2) a retired member employed by the legislature for legislative session work; or

(3) a retired member who is elected to serve a term as an elected official; provided that:

(a) the retired member files an irrevocable exemption from membership with the association within thirty days of taking office; and

(b) the irrevocable exemption shall be for the elected official's term of office.

E. At any time during a retired member's subsequent employment pursuant to Subsection C of this section, the retired member may elect to suspend the pension. When the pension is suspended, the following conditions shall apply:

(1) the retired member who is subsequently employed by an affiliated public employer shall become a member. The previously retired member and the subsequent affiliated public employer shall make the required employee and employer contributions, and the previously retired member shall accrue service credit for the period of subsequent employment; and

(2) when a previously retired member terminates the subsequent employment with an affiliated public employer, the previously retired member shall retire according to the provisions of the Public Employees Retirement Act, subject to the following conditions:

(a) payment of the pension shall resume in accordance with the provisions of Subsection A of this section;

(b) unless the previously retired member accrued at least three years of service credit on account of the subsequent employment, the recalculation of pension shall: 1) employ the form of payment selected by the previously

retired member at the time of the first retirement; and 2) use the provisions of the coverage plan applicable to the member on the date of the first retirement; and

(c) the recalculated pension shall not be less than the amount of the suspended pension.

F. The pension of a member who has three or more years of service credit under each of two or more coverage plans shall be determined in accordance with the coverage plan that produces the highest pension. The pension of a member who has service credit under two or more coverage plans but who has three or more years of service credit under only one of those coverage plans shall be determined in accordance with the coverage plan in which the member has three or more years of service credit. If the service credit is acquired under two different coverage plans applied to the same affiliated public employer as a consequence of an election by the members, adoption by the affiliated public employer or a change in the law that results in the application of a coverage plan with a greater pension, the greater pension shall be paid a member retiring from the affiliated public employer under which the change in coverage plan took place regardless of the amount of service credit under the coverage plan producing the greater pension; provided the member has three or more years of continuous employment with that affiliated public employer immediately preceding or immediately preceding and immediately following the date the coverage plan changed. The provisions of each coverage plan for the purpose of this subsection shall be those in effect at the time the member ceased to be covered by the coverage plan. "Service credit", for the purposes of this subsection, shall be only personal service rendered an affiliated public employer and credited to the member under the provisions of Subsection A of Section 10-11-4 NMSA 1978. Service credited under any other provision of the Public Employees Retirement Act shall not be used to satisfy the three-year service credit requirement of this subsection."

Chapter 285 Section 2 Laws 2009

Section 2. REPEAL.--Laws 2004, Chapter 2, Section 1 is repealed.

Chapter 285 Section 3 Laws 2009

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009.

HLC/House Bill 683

Approved April 10, 2009

LAWS 2009, CHAPTER 286

AN ACT

RELATING TO EDUCATIONAL RETIREMENT; AMENDING THE EDUCATIONAL RETIREMENT ACT TO CHANGE RETIREMENT ELIGIBILITY FOR MEMBERS FIRST EMPLOYED ON OR AFTER JULY 1, 2010.

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

Chapter 286 Section 1 Laws 2009

Section 1. Section 22-11-23 NMSA 1978 (being Laws 1981, Chapter 293, Section 2, as amended) is amended to read:

"22-11-23. RETIREMENT ELIGIBILITY--INITIAL MEMBERSHIP PRIOR TO JULY 1, 2010.--

A. The retirement eligibility for a member who either was a member on June 30, 2010, or was a member at any time prior to that date and had not, on that date, been refunded all member contributions pursuant to Subsection A of Section 22-11-15 NMSA 1978, is as follows:

(1) a member shall be eligible for retirement benefits pursuant to the Educational Retirement Act when either of the following conditions occurs:

(a) the sum of the member's age and years of earned service-credit equals seventy-five; or

(b) upon completion of five years of earned service-credit and upon becoming sixty-five years of age;

(2) a member under sixty years of age eligible to retire under Paragraph (1) of this subsection may retire and receive retirement benefits pursuant to the Educational Retirement Act that the member would be eligible to receive if the member were to retire at the age of sixty years reduced by six-tenths of one percent for each one-fourth, or portion thereof, year that retirement occurs prior to the member's sixtieth birthday but after the fifty-fifth birthday, and one and eight-tenths percent for each one-fourth, or portion thereof, year that retirement occurs prior to age fifty-five; or

(3) a member under sixty years of age acquiring twenty-five or more years of earned and allowed service credit may retire and receive retirement benefits pursuant to the Educational Retirement Act computed on the same basis as if the member were sixty years of age.

B. A member shall be subject to the provisions of Paragraphs (2) and (3) of Subsection A of this section as they existed at the beginning of the member's last cumulated four quarters of earned service-credit, regardless of later amendment."

Chapter 286 Section 2 Laws 2009

Section 2. A new section of the Educational Retirement Act, Section 22-11-23.1 NMSA 1978, is enacted to read:

"22-11-23.1. RETIREMENT ELIGIBILITY--INITIAL MEMBERSHIP ON OR AFTER JULY 1, 2010.--

A. A member who initially became a member on or after July 1, 2010 or a member who was a member at any time prior to that date and had, before that date, been refunded all member contributions pursuant to Subsection A of Section 22-11-15 NMSA 1978, shall be eligible for retirement benefits pursuant to the Educational Retirement Act when one of the following conditions occurs:

(1) the member is any age and has thirty or more years of earned service credit;

(2) the member is at least sixty-seven years of age and has five or more years of earned service credit; or

(3) the sum of the member's age and years of earned service credit equals at least eighty; provided that a member who retires pursuant to this paragraph shall be subject to the benefit reductions provided in Paragraphs (1) and (2) of Subsection H of Section 22-11-30 NMSA 1978.

B. A member shall be subject to the provisions of this section as they existed at the beginning of the member's last cumulated four quarters of earned service credit, regardless of later amendment."

Chapter 286 Section 3 Laws 2009

Section 3. Section 22-11-30 NMSA 1978 (being Laws 1967, Chapter 16, Section 153, as amended) is amended to read:

"22-11-30. RETIREMENT BENEFITS.--

A. Retirement benefits for a member retired pursuant to the Educational Retirement Act on or before June 30, 1967 shall be paid monthly and shall be one-twelfth of a sum equal to one and one-half percent of the first four thousand dollars (\$4,000) of the member's average annual salary and one percent of the remainder of the member's average annual salary multiplied by the number of years of the member's total service credit.

B. Retirement benefits for a member retired pursuant to the Educational Retirement Act on or after July 1, 1967 but on or before June 30, 1971 shall be paid monthly and shall be one-twelfth of a sum equal to one and one-half percent of the first

six thousand six hundred dollars (\$6,600) of the member's average annual salary and one percent of the remainder of the member's average annual salary multiplied by the number of years of the member's total service credit.

C. Retirement benefits for a member retired pursuant to the Educational Retirement Act on or after July 1, 1971 but on or before June 30, 1974 shall be paid monthly and shall be one-twelfth of a sum equal to one and one-half percent of the member's average annual salary multiplied by the number of years of the member's total service credit.

D. Retirement benefits for a member retired pursuant to the Educational Retirement Act on or before June 30, 1974 but returning to employment on or after July 1, 1974 for a cumulation of one or more years shall be computed pursuant to Subsection E of this section. Retirement benefits for a member retired pursuant to the Educational Retirement Act on or before June 30, 1974 but returning to employment on or after July 1, 1974 for a cumulation of less than one year shall be computed pursuant to Subsection A of this section if the member's date of last retirement was on or before June 30, 1967 or pursuant to Subsection B of this section if the member's date of last retirement was on or after July 1, 1967 but not later than June 30, 1971 or pursuant to Subsection C of this section if the member's date of last retirement was on or after July 1, 1971 but not later than June 30, 1974.

E. Retirement benefits for a member age sixty or over, retired pursuant to the Educational Retirement Act on or after July 1, 1974 but not later than June 30, 1987, shall be paid monthly and shall be one-twelfth of a sum equal to:

(1) one and one-half percent of the member's average annual salary multiplied by the number of years of service credit for:

(a) prior employment; and

(b) allowed service credit for service performed prior to July 1, 1957, except United States military service credit purchased pursuant to Paragraph (3) of Subsection A of Section 22-11-34 NMSA 1978; plus

(2) two percent of the member's average annual salary multiplied by the number of years of service credit for:

(a) contributory employment;

(b) allowed service credit for service performed after July 1, 1957; and

(c) United States military service credit for service performed prior to July 1, 1957 and purchased pursuant to Paragraph (3) of Subsection A of Section 22-11-34 NMSA 1978.

F. Retirement benefits for a member age sixty or over, retired pursuant to the Educational Retirement Act on or after July 1, 1987 but not later than June 30, 1991, shall be paid monthly and shall be one-twelfth of a sum equal to two and fifteen hundredths percent of the member's average annual salary multiplied by the number of years of the member's total service credit; provided that this subsection shall not apply to any member who was retired in any of the four quarters ending on June 30, 1987 without having accumulated not less than 1.0 years earned service credit after June 30, 1987.

G. Retirement benefits for a member age sixty or over, retired pursuant to Section 22-11-23 NMSA 1978 on or after July 1, 1991, shall be paid monthly and shall be one-twelfth of a sum equal to two and thirty-five hundredths percent of the member's average annual salary multiplied by the number of years of the member's total service credit; provided that this subsection shall not apply to any member who was retired in any of the four consecutive quarters ending on June 30, 1991 without having accumulated at least one year earned service credit beginning on or after July 1, 1991.

H. Retirement benefits for a member, retired pursuant to Section 22-11-23.1 NMSA 1978, shall be paid monthly and shall be one-twelfth of a sum equal to two and thirty-five hundredths percent of the member's average annual salary multiplied by the number of years of the member's total service credit; provided that the benefit for a member retiring pursuant to Paragraph (3) of Subsection A of Section 22-11-23.1 NMSA 1978 shall be reduced by:

(1) six-tenths of one percent for each one-fourth, or portion thereof, year that retirement occurs prior to the member's sixty-fifth birthday but after the sixtieth birthday; and

(2) one and eight-tenths percent for each one-fourth, or portion thereof, year that retirement occurs prior to the member's sixtieth birthday.

I. A member's average annual salary, pursuant to this section, shall be computed on the basis of the last five years for which contribution was made or upon the basis of any consecutive five years for which contribution was made by the member, whichever is higher; provided, however, that lump-sum payments made after July 1, 2010 of accrued sick leave or annual leave shall be excluded from the calculation of salary.

J. Unless otherwise required by the provisions of the Internal Revenue Code of 1986, members shall begin receiving retirement benefits by age seventy and six months, or upon termination of employment, whichever occurs later."

Chapter 286 Section 4 Laws 2009

Section 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2010.

House Bill 631, aa

Approved April 10, 2009

LAWS 2009, CHAPTER 287

AN ACT

RELATING TO RETIREE HEALTH CARE; CONTINUING A CERTAIN TAX DISTRIBUTION TO THE RETIREE HEALTH CARE FUND; INCREASING EMPLOYER AND EMPLOYEE CONTRIBUTIONS TO THE FUND.

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

Chapter 287 Section 1 Laws 2009

Section 1. Section 7-1-6.56 NMSA 1978 (being Laws 2007, Chapter 168, Section 1) is amended to read:

"7-1-6.56. DISTRIBUTION--RETIREE HEALTH CARE FUND.--In addition to the distribution made pursuant to Section 7-1-6.30 NMSA 1978, a distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the retiree health care fund in the amount of two hundred fifty thousand dollars (\$250,000)."

Chapter 287 Section 2 Laws 2009

Section 2. Section 10-7C-15 NMSA 1978 (being Laws 1990, Chapter 6, Section 15, as amended) is amended to read:

"10-7C-15. RETIREE HEALTH CARE FUND CONTRIBUTIONS.--

A. Following completion of the preliminary contribution period, each participating employer shall make contributions to the fund pursuant to the following provisions:

(1) for participating employees who are not members of an enhanced retirement plan, the employer's contribution shall equal:

(a) one and three-tenths percent of each participating employee's salary for the period from July 1, 2002 through June 30, 2010;

(b) one and six hundred sixty-six thousandths percent of each participating employee's salary for the period from July 1, 2010 through June 30, 2011;

(c) one and eight hundred thirty-four thousandths percent of each participating employee's salary for the period from July 1, 2011 through June 30, 2012; and

(d) two percent of each participating employee's salary beginning July 1, 2012;

(2) for participating employees who are members of an enhanced retirement plan, the employer's contribution shall equal:

(a) one and three-tenths percent of each participating employee's salary for the period from July 1, 2002 through June 30, 2010;

(b) two and eighty-four thousandths percent of each participating employee's salary for the period from July 1, 2010 through June 30, 2011;

(c) two and two hundred ninety-two thousandths percent of each participating employee's salary for the period from July 1, 2011 through June 30, 2012; and

(d) two and one-half percent of each participating employee's salary beginning July 1, 2012; and

(3) each employer that chooses to become a participating employer after January 1, 1998 shall make contributions to the fund in the amount determined to be appropriate by the board.

B. Following completion of the preliminary contribution period, each participating employee, as a condition of employment, shall contribute to the fund pursuant to the following provisions:

(1) for a participating employee who is not a member of an enhanced retirement plan, the employee's contribution shall equal:

(a) sixty-five hundredths of one percent of the employee's salary for the period from July 1, 2002 through June 30, 2010;

(b) eight hundred thirty-three thousandths of one percent of the employee's salary for the period from July 1, 2010 through June 30, 2011;

(c) nine hundred seventeen thousandths of one percent of the employee's salary for the period from July 1, 2011 through June 30, 2012; and

(d) one percent of the employee's salary beginning July 1, 2012;

(2) for a participating employee who is a member of an enhanced retirement plan, the employee's contribution shall equal:

(a) sixty-five hundredths of one percent of the employee's salary for the period from July 1, 2002 through June 30, 2010;

(b) one and forty-two thousandths percent of the employee's salary for the period from July 1, 2010 through June 30, 2011;

(c) one and one hundred forty-six thousandths percent of the employee's salary for the period from July 1, 2011 through June 30, 2012; and

(d) one and one-fourth percent of the employee's salary beginning July 1, 2012; and

(3) as a condition of employment, each participating employee of an employer that chooses to become a participating employer after January 1, 1998 shall contribute to the fund an amount that is determined to be appropriate by the board. Each month, participating employers shall deduct the contribution from the participating employee's salary and shall remit it to the board as provided by any procedures that the board may require.

C. A participating employer that fails to remit before the tenth day after the last day of the month all employer and employee deposits required by the Retiree Health Care Act to be remitted by the employer for the month shall pay to the fund, in addition to the deposits, interest on the unpaid amounts at the rate of six percent per year compounded monthly.

D. The employer and employee contributions shall be paid in monthly installments based on the percent of payroll certified by the employer.

E. Except in the case of erroneously made contributions or as may be otherwise provided in Subsection D of Section 10-7C-9 NMSA 1978, contributions from participating employers and participating employees shall become the property of the fund on receipt by the board and shall not be refunded under any circumstances, including termination of employment or termination of the participating employer's operation or participation in the Retiree Health Care Act.

F. Notwithstanding any other provision in the Retiree Health Care Act and at the first session of the legislature following July 1, 2013, the legislature shall review and adjust the distributions pursuant to Section 7-1-6.1 NMSA 1978 and the employer and employee contributions to the authority in order to ensure the actuarial soundness of the benefits provided under the Retiree Health Care Act.

G. As used in this section, "member of an enhanced retirement plan" means;

(1) a member of the public employees retirement association who, pursuant to the Public Employees Retirement Act, is included in:

(a) state police member and adult correctional officer member coverage plan 1;

(b) municipal police member coverage plan 3, 4 or 5;

(c) municipal fire member coverage plan 3, 4 or 5; or

(d) municipal detention officer member coverage plan 1; or

(2) a member pursuant to the provisions of the Judicial Retirement Act."

House Bill 351

Approved April 10, 2009

LAWS 2009, CHAPTER 288

AN ACT

RELATING TO THE RETIREMENT OF PUBLIC EMPLOYEES; AMENDING THE EDUCATIONAL RETIREMENT ACT TO CHANGE RETIREMENT ELIGIBILITY REQUIREMENTS FOR NEW MEMBERS, TO REQUIRE FINANCIAL TRAINING FOR BOARD MEMBERS, TO PROVIDE A LIMIT ON THE CALCULATION OF AVERAGE ANNUAL SALARY TO PROVIDE CONDITIONS FOR ACQUIRING CERTAIN ALLOWED SERVICE CREDIT AND TO CHANGE THE REQUIREMENTS FOR RETURNING TO WORK AFTER RETIREMENT; AMENDING THE PUBLIC EMPLOYEES RETIREMENT ACT TO CHANGE RETIREMENT ELIGIBILITY REQUIREMENTS FOR CERTAIN NEW MEMBERS, TO REQUIRE FINANCIAL TRAINING FOR BOARD MEMBERS, TO PROVIDE A LIMIT ON THE CALCULATION OF FINAL AVERAGE SALARY AND TO ADJUST THE CALCULATION OF SERVICE CREDIT UNDER CERTAIN RETIREMENT PLANS; AMENDING THE RETIREE HEALTH CARE ACT TO CLARIFY A CERTAIN DEFINITION, TO INCREASE CERTAIN CONTRIBUTION RATES FROM CERTAIN MEMBERS AND TO REQUIRE ADDITIONAL CONTRIBUTIONS FROM EMPLOYEES WHO HAVE ACCRUED CERTAIN SERVICE CREDITS; CONTINUING A CERTAIN TAX DISTRIBUTION TO THE RETIREE HEALTH CARE FUND; CREATING A TASK FORCE; MAKING AN

APPROPRIATION; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTIONS OF LAW IN LAWS 2003; DECLARING AN EMERGENCY.

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

Chapter 288 Section 1 Laws 2009

Section 1. Section 7-1-6.56 NMSA 1978 (being Laws 2007, Chapter 168, Section 1) is amended to read:

"7-1-6.56. DISTRIBUTION--RETIREE HEALTH CARE FUND.--In addition to the distribution made pursuant to Section 7-1-6.30 NMSA 1978, a distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the retiree health care fund in the amount of two hundred fifty thousand dollars (\$250,000)."

Chapter 288 Section 2 Laws 2009

Section 2. Section 10-7C-4 NMSA 1978 (being Laws 1990, Chapter 6, Section 4, as amended) is amended to read:

"10-7C-4. DEFINITIONS.--As used in the Retiree Health Care Act:

A. "active employee" means an employee of a public institution or any other public employer participating in either the Educational Retirement Act, the Public Employees Retirement Act, the Judicial Retirement Act, the Magistrate Retirement Act or the Public Employees Retirement Reciprocity Act or an employee of an independent public employer;

B. "authority" means the retiree health care authority created pursuant to the Retiree Health Care Act;

C. "basic plan of benefits" means only those coverages generally associated with a medical plan of benefits;

D. "board" means the board of the retiree health care authority;

E. "current retiree" means an eligible retiree who is receiving a disability or normal retirement benefit under the Educational Retirement Act, the Public Employees Retirement Act, the Judicial Retirement Act, the Magistrate Retirement Act, the Public Employees Retirement Reciprocity Act or the retirement program of an independent public employer on or before July 1, 1990;

F. "eligible dependent" means a person obtaining retiree health care coverage based upon that person's relationship to an eligible retiree as follows:

(1) a spouse;

(2) an unmarried child under the age of nineteen who is:

(a) a natural child;

(b) a legally adopted child;

(c) a stepchild living in the same household who is primarily dependent on the eligible retiree for maintenance and support;

(d) a child for whom the eligible retiree is the legal guardian and who is primarily dependent on the eligible retiree for maintenance and support, as long as evidence of the guardianship is evidenced in a court order or decree; or

(e) a foster child living in the same household;

(3) a child described in Subparagraphs (a) through (e) of Paragraph (2) of this subsection who is between the ages of nineteen and twenty-five and is a full-time student at an accredited educational institution; provided that "full-time student" shall be a student enrolled in and taking twelve or more semester hours or its equivalent contact hours in primary, secondary, undergraduate or vocational school or a student enrolled in and taking nine or more semester hours or its equivalent contact hours in graduate school;

(4) a dependent child over nineteen who is wholly dependent on the eligible retiree for maintenance and support and who is incapable of self-sustaining employment by reason of mental retardation or physical handicap; provided that proof of incapacity and dependency shall be provided within thirty-one days after the child reaches the limiting age and at such times thereafter as may be required by the board;

(5) a surviving spouse defined as follows:

(a) "surviving spouse" means the spouse to whom a retiree was married at the time of death; or

(b) "surviving spouse" means the spouse to whom a deceased vested active employee was married at the time of death; or

(6) a surviving dependent child who is the dependent child of a deceased eligible retiree whose other parent is also deceased;

G. "eligible employer" means either:

(1) a "retirement system employer", which means an institution of higher education, a school district or other entity participating in the public school insurance authority, a state agency, state court, magistrate court, municipality, county or public entity, each of which is affiliated under or covered by the Educational Retirement

Act, the Public Employees Retirement Act, the Judicial Retirement Act, the Magistrate Retirement Act or the Public Employees Retirement Reciprocity Act; or

(2) an "independent public employer", which means a municipality, county or public entity that is not a retirement system employer;

H. "eligible retiree" means:

(1) a "nonsalaried eligible participating entity governing authority member", which means a person who is not a retiree and who:

(a) has served without salary as a member of the governing authority of an employer eligible to participate in the benefits of the Retiree Health Care Act and is certified to be such by the executive director of the public school insurance authority;

(b) has maintained group health insurance coverage through that member's governing authority if such group health insurance coverage was available and offered to the member during the member's service as a member of the governing authority; and

(c) was participating in the group health insurance program under the Retiree Health Care Act prior to July 1, 1993; or

(d) notwithstanding the provisions of Subparagraphs (b) and (c) of this paragraph, is eligible under Subparagraph (a) of this paragraph and has applied before August 1, 1993 to the authority to participate in the program;

(2) a "salaried eligible participating entity governing authority member", which means a person who is not a retiree and who:

(a) has served with salary as a member of the governing authority of an employer eligible to participate in the benefits of the Retiree Health Care Act;

(b) has maintained group health insurance through that member's governing authority, if such group health insurance was available and offered to the member during the member's service as a member of the governing authority; and

(c) was participating in the group health insurance program under the Retiree Health Care Act prior to July 1, 1993; or

(d) notwithstanding the provisions of Subparagraphs (b) and (c) of this paragraph, is eligible under Subparagraph (a) of this paragraph and has applied before August 1, 1993 to the authority to participate in the program;

(3) an "eligible participating retiree", which means a person who:

(a) falls within the definition of a retiree, has made contributions to the fund for at least five years prior to retirement and whose eligible employer during that period of time made contributions as a participant in the Retiree Health Care Act on the person's behalf, unless that person retires on or before July 1, 1995, in which event the time period required for employee and employer contributions shall become the period of time between July 1, 1990 and the date of retirement, and who is certified to be a retiree by the educational retirement director, the executive secretary of the public employees retirement board or the governing authority of an independent public employer;

(b) falls within the definition of a retiree, retired prior to July 1, 1990 and is certified to be a retiree by the educational retirement director, the executive secretary of the public employees retirement association or the governing authority of an independent public employer; but this paragraph does not include a retiree who was an employee of an eligible employer who exercised the option not to be a participating employer pursuant to the Retiree Health Care Act and did not after January 1, 1993 elect to become a participating employer; unless the retiree: 1) retired on or before June 30, 1990; and 2) at the time of retirement did not have a retirement health plan or retirement health insurance coverage available from the retiree's employer; or

(c) is a retiree who: 1) was at the time of retirement an employee of an eligible employer who exercised the option not to be a participating employer pursuant to the Retiree Health Care Act, but which eligible employer subsequently elected after January 1, 1993 to become a participating employer; 2) has made contributions to the fund for at least five years prior to retirement and whose eligible employer during that period of time made contributions as a participant in the Retiree Health Care Act on the person's behalf, unless that person retires prior to the eligible employer's election to become a participating employer or less than five years after the date participation begins when the participation date begins before July 1, 2009, in which event the time period required for employee and employer contributions shall become the period of time, if any, between the date participation begins and the date of retirement or when the participation date begins on or after July 1, 2009, in which event the person and employer shall contribute to the fund an amount equal to the full actuarial present value of the accrued benefits as determined by the authority; and 3) is certified to be a retiree by the educational retirement director, the executive director of the public employees retirement board or the governing authority of an independent public employer;

(4) a "legislative member", which means a person who is not a retiree and who served as a member of the New Mexico legislature for at least two years, but is no longer a member of the legislature and is certified to be such by the legislative council service; or

(5) a "former participating employer governing authority member", which means a person, other than a nonsalaried eligible participating entity governing authority member or a salaried eligible participating entity governing authority member, who is not a retiree and who served as a member of the governing authority of a participating employer for at least four years but is no longer a member of the governing authority and whose length of service is certified by the chief executive officer of the participating employer;

I. "fund" means the retiree health care fund;

J. "group health insurance" means coverage that includes but is not limited to life insurance, accidental death and dismemberment, hospital care and benefits, surgical care and treatment, medical care and treatment, dental care, eye care, obstetrical benefits, prescribed drugs, medicines and prosthetic devices, medicare supplement, medicare carveout, medicare coordination and other benefits, supplies and services through the vehicles of indemnity coverages, health maintenance organizations, preferred provider organizations and other health care delivery systems as provided by the Retiree Health Care Act and other coverages considered by the board to be advisable;

K. "ineligible dependents" includes:

(1) those dependents created by common law relationships;

(2) dependents while in active military service;

(3) parents, aunts, uncles, brothers, sisters, grandchildren and other family members left in the care of an eligible retiree without evidence of legal guardianship; and

(4) anyone not specifically referred to as an eligible dependent pursuant to the rules adopted by the board;

L. "participating employee" means an employee of a participating employer, which employee has not been expelled from participation in the Retiree Health Care Act pursuant to Section 10-7C-10 NMSA 1978;

M. "participating employer" means an eligible employer who has satisfied the conditions for participating in the benefits of the Retiree Health Care Act, including the requirements of Subsection M of Section 10-7C-7 NMSA 1978 and Subsection D or E of Section 10-7C-9 NMSA 1978, as applicable;

N. "public entity" means a flood control authority, economic development district, council of governments, regional housing authority, conservancy district or other special district or special purpose government; and

O. "retiree" means a person who:

(1) is receiving:

(a) a disability or normal retirement benefit or survivor's benefit pursuant to the Educational Retirement Act;

(b) a disability or normal retirement benefit or survivor's benefit pursuant to the Public Employees Retirement Act, the Judicial Retirement Act, the Magistrate Retirement Act or the Public Employees Retirement Reciprocity Act; or

(c) a disability or normal retirement benefit or survivor's benefit pursuant to the retirement program of an independent public employer to which that employer has made periodic contributions; or

(2) is not receiving a survivor's benefit but is the eligible dependent of a person who received a disability or normal retirement benefit pursuant to the Educational Retirement Act, the Public Employees Retirement Act, the Judicial Retirement Act, the Magistrate Retirement Act or the Public Employees Retirement Reciprocity Act."

Chapter 288 Section 3 Laws 2009

Section 3. Section 10-7C-15 NMSA 1978 (being Laws 1990, Chapter 6, Section 15, as amended) is amended to read:

"10-7C-15. RETIREE HEALTH CARE FUND CONTRIBUTIONS.--

A. Following completion of the preliminary contribution period, each participating employer shall make contributions to the fund pursuant to the following provisions:

(1) for participating employees who are not members of an enhanced retirement plan, the employer's contribution shall equal:

(a) one and three-tenths percent of each participating employee's salary for the period from July 1, 2002 through June 30, 2010;

(b) one and six hundred sixty-six thousandths percent of each participating employee's salary for the period from July 1, 2010 through June 30, 2011;

(c) one and eight hundred thirty-four thousandths percent of each participating employee's salary for the period from July 1, 2011 through June 30, 2012; and

(d) two percent of each participating employee's salary beginning July 1, 2012;

(2) for participating employees who are members of an enhanced retirement plan, the employer's contribution shall equal:

(a) one and three-tenths percent of each participating employee's salary for the period from July 1, 2002 through June 30, 2010;

(b) two and eighty-four thousandths percent of each participating employee's salary for the period from July 1, 2010 through June 30, 2011;

(c) two and two hundred ninety-two thousandths percent of each participating employee's salary for the period from July 1, 2011 through June 30, 2012; and

(d) two and one-half percent of each participating employee's salary beginning July 1, 2012; and

(3) each employer that chooses to become a participating employer after January 1, 1998 shall make contributions to the fund in the amount determined to be appropriate by the board.

B. Following completion of the preliminary contribution period, each participating employee, as a condition of employment, shall contribute to the fund pursuant to the following provisions:

(1) for a participating employee who is not a member of an enhanced retirement plan, the employee's contribution shall equal:

(a) sixty-five hundredths of one percent of the employee's salary for the period from July 1, 2002 through June 30, 2010;

(b) eight hundred thirty-three thousandths of one percent of the employee's salary for the period from July 1, 2010 through June 30, 2011;

(c) nine hundred seventeen thousandths of one percent of the employee's salary for the period from July 1, 2011 through June 30, 2012; and

(d) one percent of the employee's salary beginning July 1, 2012;

(2) for a participating employee who is a member of an enhanced retirement plan, the employee's contribution shall equal:

(a) sixty-five hundredths of one percent of the employee's salary for the period from July 1, 2002 through June 30, 2010;

(b) one and forty-two thousandths percent of the employee's salary for the period from July 1, 2010 through June 30, 2011;

(c) one and one hundred forty-six thousandths percent of the employee's salary for the period from July 1, 2011 through June 30, 2012; and

(d) one and one-fourth percent of the employee's salary beginning July 1, 2012; and

(3) as a condition of employment, each participating employee of an employer that chooses to become a participating employer after January 1, 1998 shall contribute to the fund an amount that is determined to be appropriate by the board. Each month, participating employers shall deduct the contribution from the participating employee's salary and shall remit it to the board as provided by any procedures that the board may require.

C. On or after July 1, 2009, no person who has obtained service credit pursuant to Subsection B of Section 10-11-6 NMSA 1978, Section 10-11-7 NMSA 1978 or Paragraph (3) or (4) of Subsection A of Section 22-11-34 NMSA 1978 may enroll with the authority unless the person makes a contribution to the fund equal to the full actuarial present value of the amount of the increase in the person's health care benefit, as determined by the authority.

D. Except for contributions made pursuant to Subsection C of this section, a participating employer that fails to remit before the tenth day after the last day of the month all employer and employee deposits required by the Retiree Health Care Act to be remitted by the employer for the month shall pay to the fund, in addition to the deposits, interest on the unpaid amounts at the rate of six percent per year compounded monthly.

E. Except for contributions made pursuant to Subsection C of this section, the employer and employee contributions shall be paid in monthly installments based on the percent of payroll certified by the employer.

F. Except in the case of erroneously made contributions or as may be otherwise provided in Subsection D of Section 10-7C-9 NMSA 1978, contributions from participating employers and participating employees shall become the property of the fund on receipt by the board and shall not be refunded under any circumstances, including termination of employment or termination of the participating employer's operation or participation in the Retiree Health Care Act.

G. Notwithstanding any other provision in the Retiree Health Care Act and at the first session of the legislature following July 1, 2013, the legislature shall review

and adjust the distributions pursuant to Section 7-1-6.1 NMSA 1978 and the employer and employee contributions to the authority in order to ensure the actuarial soundness of the benefits provided under the Retiree Health Care Act.

H. As used in this section, "member of an enhanced retirement plan" means:

(1) a member of the public employees retirement association who, pursuant to the Public Employees Retirement Act, is included in:

(a) state police member and adult correctional officer member coverage plan 1;

(b) municipal police member coverage plan 3, 4 or 5;

(c) municipal fire member coverage plan 3, 4 or 5; or

(d) municipal detention officer member coverage plan 1; or

(2) a member pursuant to the provisions of the Judicial Retirement Act."

Chapter 288 Section 4 Laws 2009

Section 4. Section 10-11-6 NMSA 1978 (being Laws 1987, Chapter 253, Section 6, as amended) is amended to read:

"10-11-6. SERVICE CREDIT--CREDIT FOR INTERVENING MILITARY AND UNITED STATES GOVERNMENT SERVICE.--

A. A member who leaves the employ of an affiliated public employer to enter a uniformed service of the United States shall be given service credit for periods of service in the uniformed services subject to the following conditions:

(1) the member is reemployed by an affiliated public employer within ninety days following termination of the period of intervening service in the uniformed service or the affiliated employer certifies in writing to the association that the member is entitled to reemployment rights under the federal Uniformed Services Employment and Reemployment Rights Act of 1994;

(2) the member retains membership in the association during the period of service in the uniformed services;

(3) free service credit shall not be given for periods of intervening service in the uniformed services following voluntary reenlistment. Service credit for such periods shall be given only after the member pays the association the sum of the

contributions that the person would have been required to contribute had the person remained continuously employed throughout the period of intervening service following voluntary reenlistment, which payment shall be made during the period beginning with the date of reemployment and whose duration is three times the period of the person's intervening service in the uniformed services following voluntary reenlistment, not to exceed five years;

(4) service credit shall not be given for periods of intervening service in the uniformed services that are used to obtain or increase a benefit from another state system or the retirement program provided under the Educational Retirement Act;

(5) the member must not have received a discharge or separation from uniformed service under other than honorable conditions; and

(6) notwithstanding any provision of this plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Internal Revenue Code of 1986, as amended.

B. For a member who is subsequently employed by the government of the United States within thirty days of leaving the employ of an affiliated public employer:

(1) that member may continue membership in the association subject to the following conditions:

(a) the member has fifteen or more years of service credit;

(b) employment by the government of the United States commences within ninety days of termination of employment with the last affiliated public employer;

(c) the member files with the association a written application for continued membership within ninety days of termination of employment with the last affiliated public employer; and

(d) the member remits to the association, at the times and in the manner prescribed by the association, the member contributions and the employer contributions that would have been made had the member continued in the employ of the last affiliated public employer;

(2) the contributions required by Paragraph (1) of this subsection shall be based on a salary equal to the member's monthly salary at time of termination of employment with the last affiliated public employer;

(3) service credit will be determined as if the employment by the government of the United States was rendered the last affiliated public employer;

(4) the employer contributions remitted by the member shall be credited to the employer's accumulation fund and shall not be paid out of the association in the event of subsequent cessation of membership; and

(5) a member receiving service credit under this subsection who enrolls in the retiree health care authority shall make contributions pursuant to Subsection C of Section 10-7C-15 NMSA 1978."

Chapter 288 Section 5 Laws 2009

Section 5. Section 10-11-7 NMSA 1978 (being Laws 1987, Chapter 253, Section 7, as amended) is amended to read:

"10-11-7. SERVICE CREDIT--PURCHASE OF SERVICE.--

A. A member who entered a uniformed service of the United States may purchase service credit for periods of active duty in the uniformed services subject to the following conditions:

(1) the member pays the association the purchase cost determined according to Subsection E of this section;

(2) the member has five or more years of service credit acquired as a result of personal service rendered in the employ of an affiliated public employer;

(3) the aggregate amount of service credit purchased pursuant to this subsection does not exceed five years reduced by any period of service credit acquired for military service pursuant to any other provision of the Public Employees Retirement Act;

(4) service credit may not be purchased for periods of service in the uniformed services that are used to obtain or increase a benefit from another retirement program; and

(5) the member must not have received a discharge or separation from uniformed service under other than honorable conditions.

B. A member who was a civilian prisoner of war captured while in service to the United States as an employee of the federal government or as an employee of a contractor with the federal government may purchase service credit for the period of internment as a civilian prisoner of war, provided that:

(1) the member provides proof of employment with the federal government or as a contractor to the federal government in a form acceptable to the association;

(2) the member provides proof of the period of internment in a form acceptable to the association;

(3) the member has at least five years of service credit acquired as a result of personal service rendered in the employ of an affiliated public employer;

(4) the aggregate amount of service credit purchased pursuant to this subsection does not exceed five years reduced by any period of service credit acquired for military service pursuant to any other provision of the Public Employees Retirement Act;

(5) service credit may not be purchased for periods of service in internment as a civilian prisoner of war if such periods are used to obtain or increase a benefit from another retirement program; and

(6) the member pays the association the purchase cost determined according to Subsection E of this section.

C. A member who was employed by a utility company, library, museum, transit company or nonprofit organization administering federally funded public service programs, which utility company, library, museum, transit company or nonprofit organization administering federally funded public service programs or federally funded public service programs administered by a nonprofit organization are subsequently taken over by an affiliated public employer, or a member who was employed by an entity created pursuant to a joint powers agreement between two or more affiliated public employers for the purpose of administering or providing drug or alcohol addiction treatment services irrespective of whether the entity is subsequently taken over by an affiliated public employer, may purchase service credit for the period of employment subject to the following conditions:

(1) the member pays the association the purchase cost determined according to Subsection E of this section;

(2) the member has five or more years of service credit acquired as a result of personal service rendered in the employ of an affiliated public employer; and

(3) the aggregate amount of service credit purchased pursuant to this subsection does not exceed five years.

D. A member who was appointed to participate in a cooperative work study training program established jointly by a state agency and a state post-secondary

educational institution may purchase service credit for the period of participation subject to the following conditions:

(1) the member pays the association the full actuarial present value of the amount of the increase in the employee's pension as a consequence of the purchase as determined by the association;

(2) the member pays the full cost of the purchase within sixty days of the date the member is informed of the amount of the payment;

(3) the member has five or more years of service credit acquired as a result of personal service rendered in the employ of an affiliated public employer; and

(4) the aggregate amount of service credit purchased pursuant to this subsection does not exceed five years.

E. Except for service to be used under a state legislator coverage plan, the purchase cost for each month of service credit purchased pursuant to the provisions of this section is equal to the member's final average salary multiplied by the sum of the member contribution rate and employer contribution rate, determined in accordance with the coverage plan applicable to the member at the time of the written election to purchase. The purchase cost for each year of service credit to be used under a state legislator coverage plan is equal to three times the normal member contribution per year of service credit under the state legislator coverage plan applicable to the member. Full payment shall be made in a single lump sum within sixty days of the date the member is informed of the amount of the payment. The portion of the purchase cost derived from the employer contribution rate shall be credited to the employer's accumulation fund and shall not be paid out of the association in the event of cessation of membership. In no case shall a member be credited with a month of service for less than the purchase cost as defined in this section.

F. A member shall be refunded, upon written request filed with the association, the portion of the purchase cost of service credit purchased pursuant to this section that the association determines to have been unnecessary to provide the member with the maximum pension applicable to the member. The association shall not pay interest on the portion of the purchase cost refunded to the member.

G. A member of the magistrate retirement system who during the member's service as a magistrate was eligible to become a member of the public employees retirement system and elected not to become a member of that system may purchase service credit pursuant to the public employees retirement system for the period for which the magistrate elected not to become a public employees retirement system member, by paying the amount of the increase in the actuarial present value of the magistrate pension as a consequence of the purchase as determined by the association. Full payment shall be made in a single lump-sum amount in accordance with procedures established by the retirement board. Except as provided in Subsection

F of this section, seventy-five percent of the purchase cost shall be considered to be employer contributions and shall not be refunded to the member in the event of cessation of membership.

H. At any time prior to retirement, any member may purchase service credit in monthly increments, subject to the following conditions:

(1) the member has at least five years of service credit acquired as a result of personal service rendered in the employ of an affiliated public employer;

(2) the aggregate amount of service credit purchased pursuant to this subsection does not exceed one year;

(3) the member pays full actuarial present value of the amount of the increase in the employee's pension as a consequence of the purchase as determined by the association;

(4) the member pays the full cost of the purchase within sixty days of the date the member is informed of the amount of the payment; and

(5) the purchase of service credit under this subsection cannot be used to determine the final average salary or the pension factor or be used to exceed the pension maximum.

I. A member receiving service credit under 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 288 Section 6 Laws 2009

Section 6. Section 10-11-26.2 NMSA 1978 (being Laws 1994, Chapter 128, Section 3) is amended to read:

"10-11-26.2. STATE GENERAL MEMBER COVERAGE PLAN 3--AGE AND SERVICE CREDIT REQUIREMENTS FOR NORMAL RETIREMENT.--

A. Under state general member coverage plan 3:

(1) for a member who is a peace officer and for a member who is not a peace officer but was a retired member or a member on June 30, 2010, the age and service credit requirements for normal retirement are:

(a) age sixty-five years or older and five or more years of service credit;

- credit; (b) age sixty-four years and eight or more years of service
- credit; (c) age sixty-three years and eleven or more years of service
- credit; (d) age sixty-two years and fourteen or more years of service
- service credit; (e) age sixty-one years and seventeen or more years of
- credit; and (f) age sixty years and twenty or more years of service
- and (g) any age and twenty-five or more years of service credit;

(2) for a member who is not a peace officer and was not a retired member or a member on June 30, 2010, the age and service requirements for normal retirement are:

- (a) age sixty-seven years or older and five or more years of service credit;
- (b) any age if the sum of the member's age and years of service credit equals at least eighty; or
- (c) any age and thirty or more years of service credit.

B. As used in this section, "peace officer" means any employee of the state with a duty to maintain public order or to make arrests for crime, whether that duty extends to all crimes or is limited to specific crimes, and who is not specifically covered by another coverage plan."

Chapter 288 Section 7 Laws 2009

Section 7. Section 10-11-45 NMSA 1978 (being Laws 1987, Chapter 253, Section 45) is amended to read:

"10-11-45. MUNICIPAL GENERAL MEMBER COVERAGE PLAN 1--AGE AND SERVICE REQUIREMENTS FOR NORMAL RETIREMENT.--Under municipal general member coverage plan 1:

A. for a member who was a retired member or a member on June 30, 2010, the age and service requirements for normal retirement are:

- credit;
- (1) age sixty-five years or older and five or more years of service credit;
 - (2) age sixty-four years and eight or more years of service credit;
 - (3) age sixty-three years and eleven or more years of service credit;
 - (4) age sixty-two years and fourteen or more years of service credit;
 - (5) age sixty-one years and seventeen or more years of service credit;
 - (6) age sixty years and twenty or more years of service credit; or
 - (7) any age and twenty-five or more years of service credit; and

B. for a member who was not a retired member or a member on June 30, 2010, the age and service requirements for normal retirement are:

- credit;
- (1) age sixty-seven years or older and five or more years of service credit;
 - (2) any age if the sum of the member's age and years of service credit equals at least eighty; or
 - (3) any age and thirty or more years of service credit."

Chapter 288 Section 8 Laws 2009

Section 8. Section 10-11-51 NMSA 1978 (being Laws 1987, Chapter 253, Section 51) is amended to read:

"10-11-51. MUNICIPAL GENERAL MEMBER COVERAGE PLAN 2--AGE AND SERVICE REQUIREMENTS FOR NORMAL RETIREMENT.--Under municipal general member coverage plan 2:

- A. for a member who was a retired member or a member on June 30, 2010, the age and service requirements for normal retirement are:
- credit;
- (1) age sixty-five years or older and five or more years of service credit;
 - (2) age sixty-four years and eight or more years of service credit;
 - (3) age sixty-three years and eleven or more years of service credit;

- (4) age sixty-two years and fourteen or more years of service credit;
- (5) age sixty-one years and seventeen or more years of service credit;
- (6) age sixty years and twenty or more years of service credit; or
- (7) any age and twenty-five or more years of service credit; and

B. for a member who was not a retired member or a member on June 30, 2010, the age and service requirements for normal retirement are:

- (1) age sixty-seven years or older and five or more years of service credit;
- (2) any age if the sum of the member's age and years of service credit equals at least eighty; or
- (3) any age and thirty or more years of service credit."

Chapter 288 Section 9 Laws 2009

Section 9. Section 10-11-55.2 NMSA 1978 (being Laws 1993, Chapter 58, Section 2) is amended to read:

"10-11-55.2. MUNICIPAL GENERAL MEMBER COVERAGE PLAN 3--AGE AND SERVICE REQUIREMENTS FOR NORMAL RETIREMENT.--Under municipal general member coverage plan 3:

A. for a member who was a retired member or a member on June 30, 2010, the age and service requirements for normal retirement are:

- (1) age sixty-five years or older and five or more years of service credit;
- (2) age sixty-four years and eight or more years of service credit;
- (3) age sixty-three years and eleven or more years of service credit;
- (4) age sixty-two years and fourteen or more years of service credit;
- (5) age sixty-one years and seventeen or more years of service credit;
- (6) age sixty years and twenty or more years of service credit; or

(7) any age and twenty-five or more years of service credit; and

B. for a member who was not a retired member or a member on June 30, 2010, the age and service requirements for normal retirement are:

(1) age sixty-seven years or older and five or more years of service credit;

(2) any age if the sum of the member's age and years of service credit equals at least eighty; or

(3) any age and thirty or more years of service credit."

Chapter 288 Section 10 Laws 2009

Section 10. Section 10-11-55.8 NMSA 1978 (being Laws 1998, Chapter 106, Section 2) is amended to read:

"10-11-55.8. MUNICIPAL GENERAL MEMBER COVERAGE PLAN 4--AGE AND SERVICE REQUIREMENTS FOR NORMAL RETIREMENT.--Under municipal general member coverage plan 4:

A. for a member who was a retired member or a member on June 30, 2010, the age and service requirements for normal retirement are:

(1) age sixty-five years or older and five or more years of service credit;

(2) age sixty-four years and eight or more years of service credit;

(3) age sixty-three years and eleven or more years of service credit;

(4) age sixty-two years and fourteen or more years of service credit;

(5) age sixty-one years and seventeen or more years of service credit;

(6) age sixty years and twenty or more years of service credit; or

(7) any age and twenty-five or more years of service credit; and

B. for a member who was not a retired member or a member on June 30, 2010, the age and service requirements for normal retirement are:

(1) age sixty-seven years or older and five or more years of service credit;

(2) any age if the sum of the member's age and years of service credit equals at least eighty; or

(3) any age and thirty or more years of service credit."

Chapter 288 Section 11 Laws 2009

Section 11. Section 10-11-133 NMSA 1978 (being Laws 1987, Chapter 253, Section 133, as amended) is amended to read:

"10-11-133. INVESTMENT OF FUNDS--PRUDENT INVESTOR STANDARD--CONDITIONS.--

A. Commissions paid for the purchase and sale of any security shall not exceed brokerage rates prescribed and approved by stock exchanges that have been approved by or are under the control of the United States securities and exchange commission or by industry practice.

B. The retirement board shall invest and manage the funds administered by the retirement board in accordance with the Uniform Prudent Investor Act.

C. The retirement board shall provide quarterly performance reports to the legislative finance committee and the department of finance and administration. Annually, the retirement board shall ratify and provide its written investment policy, including any amendments, to the legislative finance committee and the department of finance and administration.

D. Securities purchased with money from or held for any fund administered by the retirement board and for which the retirement board is trustee shall be in the custody of the state treasurer who shall, at the direction of the retirement board, deposit with a bank or trust company the securities for safekeeping or servicing.

E. The retirement board may consult with the state investment council or state investment officer and request information or advice with respect to the retirement board's overall investment plan, may utilize the services of the state investment council and state investment officer and may act on their advice concerning the plan. The state investment council and state investment officer shall render investment services to the retirement board without expense to the retirement board. The retirement board may also employ the investment management services and related management services of a trust company or national bank exercising trust powers or of an investment counseling firm or brokers for the purchase and sale of securities, commission recapture and transition services and may pay reasonable compensation for such services from funds administered by the retirement board. The terms of any such investment management services contract shall incorporate the statutory requirements for investment of funds under the retirement board's jurisdiction.

F. The retirement board shall annually provide for its members no less than eight hours of training in pension fund investing, fiduciary obligations or ethics. A member elected to the retirement board who fails to attend the training for two consecutive years shall be deemed to have resigned from the retirement board.

G. Except as provided in the Public Employees Retirement Act, a member of the retirement board, employee of the retirement board or any person connected with the retirement board in any manner shall not:

(1) have any direct or indirect interest in the gains or profits of any investment made by the retirement board;

(2) receive any direct or indirect pay or emolument for services provided to the retirement board or the association;

(3) directly or indirectly, for the member, employee or person, for themselves or as agent or partner of others, borrow any of the funds or deposits of the association or in any manner use them except to make current and necessary payments authorized by the retirement board; or

(4) become an endorser or surety or become in any manner an obligor for money of the retirement board loaned or borrowed."

Chapter 288 Section 12 Laws 2009

Section 12. A new section of the Public Employees Retirement Act is enacted to read:

"CALCULATION OF FINAL AVERAGE SALARY.--Under each coverage plan of the Public Employees Retirement Act, the final average salary is one thirty-sixth of the greatest aggregate amount of salary paid a member for thirty-six consecutive but not necessarily continuous months of service credit."

Chapter 288 Section 13 Laws 2009

Section 13. Section 22-11-13 NMSA 1978 (being Laws 1967, Chapter 16, Section 137, as amended) is amended to read:

"22-11-13. BOARD AUTHORITY TO INVEST THE FUND--PRUDENT INVESTOR STANDARD--INDEMNIFICATION OF BOARD.--

A. The board is authorized to invest or reinvest the fund in accordance with the Uniform Prudent Investor Act.

B. The board shall provide quarterly performance reports to the legislative finance committee and the department of finance and administration. Annually, the

board shall ratify and provide its written investment policy, including any amendments, to the legislative finance committee and the department of finance and administration.

C. The board or its designated agent may enter into contracts for the temporary exchange of securities for the use by broker-dealers, banks or other recognized institutional investors, for periods not to exceed one year, for a specified fee or consideration. Such a contract shall not be entered into unless the contract is fully secured by a collateralized, irrevocable letter of credit running to the board, cash or equivalent collateral of at least one hundred two percent of the market value of the securities plus accrued interest temporarily exchanged. This collateral shall be delivered to the state fiscal agent or its designee contemporaneously with the transfer of funds or delivery of the securities. Such contract may authorize the board to invest cash collateral in instruments or securities that are authorized fund investments and may authorize payment of a fee from the fund or from income generated by the investment of cash collateral to the borrower of securities providing cash as collateral. The board may apportion income derived from the investment of cash collateral to pay its agent in securities lending transactions.

D. Commissions paid for the purchase or sale of any securities pursuant to the provisions of the Educational Retirement Act shall not exceed brokerage rates prescribed and approved by national stock exchanges or by industry practice.

E. Securities purchased for the fund shall be held in the custody of the state treasurer. At the direction of the board, the state treasurer shall deposit with a bank or trust company the securities for safekeeping or servicing.

F. The board may consult with the state investment council or the state investment officer; may request from the state investment council or the state investment officer any information, advice or recommendations with respect to investment of the fund; may utilize the services of the state investment council or the state investment officer; and may act upon any advice or recommendations of the state investment council or the state investment officer. The state investment council or the state investment officer shall render investment advisory services to the board upon request and without expense to the board. The board may also employ the investment management services and related management services of a trust company or national bank exercising trust powers or of an investment counseling firm or brokers for the purchase and sale of securities, commission recapture and transitioning services and may pay reasonable compensation for those services from funds administered by the board.

G. The board shall annually provide for its members no less than eight hours of training in pension fund investing, fiduciary obligations or ethics. A member elected or appointed to the board who fails to attend the training for two consecutive years shall be deemed to have resigned from the board.

H. Members of the board, jointly and individually, shall be indemnified from the fund by the state from all claims, demands, suits, actions, damages, judgments, costs, charges and expenses, including court costs and attorney fees, and against all liability, losses and damages of any nature whatsoever that members shall or may at any time sustain by reason of any decision made in the performance of their duties pursuant to this section."

Chapter 288 Section 14 Laws 2009

Section 14. Section 22-11-23 NMSA 1978 (being Laws 1981, Chapter 293, Section 2, as amended) is amended to read:

"22-11-23. RETIREMENT ELIGIBILITY--INITIAL MEMBERSHIP PRIOR TO JULY 1, 2010.--

A. The retirement eligibility for a member who either was a member on June 30, 2010, or was a member at any time prior to that date and had not, on that date, been refunded all member contributions pursuant to Subsection A of Section 22-11-15 NMSA 1978, is as follows:

(1) a member shall be eligible for retirement benefits pursuant to the Educational Retirement Act when either of the following conditions occurs:

(a) the sum of the member's age and years of earned service-credit equals seventy-five; or

(b) upon completion of five years of earned service-credit and upon becoming sixty-five years of age;

(2) a member under sixty years of age eligible to retire under Paragraph (1) of this subsection may retire and receive retirement benefits pursuant to the Educational Retirement Act that the member would be eligible to receive if the member were to retire at the age of sixty years reduced by six-tenths of one percent for each one-fourth, or portion thereof, year that retirement occurs prior to the member's sixtieth birthday but after the fifty-fifth birthday, and one and eight-tenths percent for each one-fourth, or portion thereof, year that retirement occurs prior to age fifty-five; or

(3) a member under sixty years of age acquiring twenty-five or more years of earned and allowed service credit may retire and receive retirement benefits pursuant to the Educational Retirement Act computed on the same basis as if the member were sixty years of age.

B. A member shall be subject to the provisions of Paragraphs (2) and (3) of Subsection A of this section as they existed at the beginning of the member's last cumulated four quarters of earned service-credit, regardless of later amendment."

Chapter 288 Section 15 Laws 2009

Section 15. A new section of the Educational Retirement Act, Section 22-11-23.1 NMSA 1978, is enacted to read:

"22-11-23.1. RETIREMENT ELIGIBILITY--INITIAL MEMBERSHIP ON OR AFTER JULY 1, 2010.--

A. A member who initially became a member on or after July 1, 2010 or a member who was a member at any time prior to that date and had, before that date, been refunded all member contributions pursuant to Subsection A of Section 22-11-15 NMSA 1978, shall be eligible for retirement benefits pursuant to the Educational Retirement Act when one of the following conditions occurs:

(1) the member is any age and has thirty or more years of earned service credit;

(2) the member is at least sixty-seven years of age and has five or more years of earned service credit; or

(3) the sum of the member's age and years of earned service credit equals at least eighty; provided that a member who retires pursuant to this paragraph shall be subject to the benefit reductions provided in Paragraphs (1) and (2) of Subsection H of Section 22-11-30 NMSA 1978.

B. A member shall be subject to the provisions of this section as they existed at the beginning of the member's last cumulated four quarters of earned service credit, regardless of later amendment."

Chapter 288 Section 16 Laws 2009

Section 16. Section 22-11-25.1 NMSA 1978 (being Laws 2001, Chapter 283, Section 2, as amended by Laws 2003, Chapter 80, Section 1 and by Laws 2003, Chapter 145, Section 1) is amended to read:

"22-11-25.1. RETURN TO EMPLOYMENT--BENEFITS CONTINUED--ADMINISTRATIVE UNIT CONTRIBUTIONS.--

A. Except as provided in Subsections B and F of this section, beginning January 1, 2002 and continuing until January 1, 2022, a retired member may begin employment at a local administrative unit and shall not be required to suspend retirement benefits if the member has not rendered service to a local administrative unit for at least twelve consecutive months after the date of retirement. If the retired member returns to employment without first completing twelve consecutive months of retirement, the retired member shall remove himself or herself from retirement.

B. A retired member who was retired on or before January 1, 2001 and has not since suspended or been required to suspend retirement benefits pursuant to the Educational Retirement Act may, at any time prior to January 1, 2022, return to employment for a local administrative unit and shall not be required to suspend retirement benefits.

C. A retired member who returns to employment during retirement pursuant to Subsection A, B or F of this section is entitled to continue to receive retirement benefits but is not entitled to acquire service credit or to acquire or purchase service credit in the future for the period of the retired member's reemployment with a local administrative unit.

D. A retired member shall not be eligible to return to employment pursuant to Subsection A, B or F of this section unless an application to return to work, on a form prescribed by the board, has been submitted to, and approved by, the board and the applicant has complied with such other rules as promulgated by the board.

E. A retired member who returns to employment pursuant to Subsection A, B or F of this section shall not make contributions to the fund as specified in the Educational Retirement Act; however, the local administrative unit employing the retired member shall pay to the fund an amount equal to the total of the member contributions and the local administrative unit contributions that would be required pursuant to Section 22-11-21 NMSA 1978 if the retired member was a non-retired employee.

F. Beginning July 1, 2003 and continuing until January 1, 2022, a retired member who retired on or before January 1, 2001, who subsequently voluntarily suspended or was required to suspend retirement benefits and who has not rendered service to a local administrative unit for at least ninety days may begin employment at a local administrative unit without suspending retirement benefits if the retired member was not employed by a local administrative unit for an additional twelve or more consecutive months after the initial date of the retirement; provided that the ninety-day period shall not include any part of a summer or other scheduled break or vacation period.

G. Both the retired member who returns to employment and the local administrative unit that employs the retired member shall make contributions to the retiree health care fund in the amount specified in Subsections A and B of Section 10-7C-15 NMSA 1978.

H. As used in Subsections A and F of this section:

(1) "rendered service to a local administrative unit" includes employment by a local administrative unit, whether full or part time; substitute teaching; voluntarily performing duties for a local administrative unit that would otherwise be, or in the past have been, performed by a paid employee or independent contractor; or

performing duties for a local administrative unit as an independent contractor or an employee of an independent contractor; and

(2) "local administrative unit" includes any entity incorporated, formed or otherwise organized by, or subject to the control of a local administrative unit, whether or not the entity is created for profit or nonprofit purposes."

Chapter 288 Section 17 Laws 2009

Section 17. Section 22-11-30 NMSA 1978 (being Laws 1967, Chapter 16, Section 153, as amended) is amended to read:

"22-11-30. RETIREMENT BENEFITS.--

A. Retirement benefits for a member retired pursuant to the Educational Retirement Act on or before June 30, 1967 shall be paid monthly and shall be one-twelfth of a sum equal to one and one-half percent of the first four thousand dollars (\$4,000) of the member's average annual salary and one percent of the remainder of the member's average annual salary multiplied by the number of years of the member's total service credit.

B. Retirement benefits for a member retired pursuant to the Educational Retirement Act on or after July 1, 1967 but on or before June 30, 1971 shall be paid monthly and shall be one-twelfth of a sum equal to one and one-half percent of the first six thousand six hundred dollars (\$6,600) of the member's average annual salary and one percent of the remainder of the member's average annual salary multiplied by the number of years of the member's total service credit.

C. Retirement benefits for a member retired pursuant to the Educational Retirement Act on or after July 1, 1971 but on or before June 30, 1974 shall be paid monthly and shall be one-twelfth of a sum equal to one and one-half percent of the member's average annual salary multiplied by the number of years of the member's total service credit.

D. Retirement benefits for a member retired pursuant to the Educational Retirement Act on or before June 30, 1974 but returning to employment on or after July 1, 1974 for a cumulation of one or more years shall be computed pursuant to Subsection E of this section. Retirement benefits for a member retired pursuant to the Educational Retirement Act on or before June 30, 1974 but returning to employment on or after July 1, 1974 for a cumulation of less than one year shall be computed pursuant to Subsection A of this section if the member's date of last retirement was on or before June 30, 1967 or pursuant to Subsection B of this section if the member's date of last retirement was on or after July 1, 1967 but not later than June 30, 1971 or pursuant to Subsection C of this section if the member's date of last retirement was on or after July 1, 1971 but not later than June 30, 1974.

E. Retirement benefits for a member age sixty or over, retired pursuant to the Educational Retirement Act on or after July 1, 1974 but not later than June 30, 1987, shall be paid monthly and shall be one-twelfth of a sum equal to:

(1) one and one-half percent of the member's average annual salary multiplied by the number of years of service credit for:

(a) prior employment; and

(b) allowed service credit for service performed prior to July 1, 1957, except United States military service credit purchased pursuant to Paragraph (3) of Subsection A of Section 22-11-34 NMSA 1978; plus

(2) two percent of the member's average annual salary multiplied by the number of years of service credit for:

(a) contributory employment;

(b) allowed service credit for service performed after July 1, 1957; and

(c) United States military service credit for service performed prior to July 1, 1957 and purchased pursuant to Paragraph (3) of Subsection A of Section 22-11-34 NMSA 1978.

F. Retirement benefits for a member age sixty or over, retired pursuant to the Educational Retirement Act on or after July 1, 1987 but not later than June 30, 1991, shall be paid monthly and shall be one-twelfth of a sum equal to two and fifteen hundredths percent of the member's average annual salary multiplied by the number of years of the member's total service credit; provided that this subsection shall not apply to any member who was retired in any of the four quarters ending on June 30, 1987 without having accumulated not less than 1.0 years earned service credit after June 30, 1987.

G. Retirement benefits for a member age sixty or over, retired pursuant to Section 22-11-23 NMSA 1978 on or after July 1, 1991, shall be paid monthly and shall be one-twelfth of a sum equal to two and thirty-five hundredths percent of the member's average annual salary multiplied by the number of years of the member's total service credit; provided that this subsection shall not apply to any member who was retired in any of the four consecutive quarters ending on June 30, 1991 without having accumulated at least one year earned service credit beginning on or after July 1, 1991.

H. Retirement benefits for a member, retired pursuant to Section 22-11-23.1 NMSA 1978, shall be paid monthly and shall be one-twelfth of a sum equal to two and thirty-five hundredths percent of the member's average annual salary multiplied by the number of years of the member's total service credit; provided that the benefit for a

member retiring pursuant to Paragraph (3) of Subsection A of Section 22-11-23.1 NMSA 1978 shall be reduced by:

(1) six-tenths of one percent for each one-fourth, or portion thereof, year that retirement occurs prior to the member's sixty-fifth birthday but after the sixtieth birthday; and

(2) one and eight-tenths percent for each one-fourth, or portion thereof, year that retirement occurs prior to the member's sixtieth birthday.

I. A member's average annual salary, pursuant to this section, shall be computed on the basis of the last five years for which contribution was made or upon the basis of any consecutive five years for which contribution was made by the member, whichever is higher; provided, however, that lump-sum payments made after July 1, 2010 of accrued sick leave or annual leave shall be excluded from the calculation of salary.

J. Unless otherwise required by the provisions of the Internal Revenue Code of 1986, members shall begin receiving retirement benefits by age seventy and six months, or upon termination of employment, whichever occurs later."

Chapter 288 Section 18 Laws 2009

Section 18. 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. Payment pursuant to Paragraph (4) of Subsection A of this section may be made in installments, at the discretion of the board, over a period not to exceed one year and, if the sum paid does not equal the amount required for any full year of allowed service credit, the member shall acquire allowed service credit for that period of time that is proportionate to the payment made. Half credit may be allowed without contribution for not more than ten years of the educational service described by Subparagraph (a) of Paragraph (4) of Subsection A of this section if that service was prior to June 13, 1953 and if the member was employed in New Mexico prior to June 13, 1953 in a position covered by the Educational Retirement Act or a law repealed by

that act. No allowed service credit shall be purchased pursuant to Paragraph (4) of Subsection A of this section unless the member is currently employed by a local administrative unit.

C. No member shall be certified to have acquired allowed service credit:

(1) under any single paragraph or the combination of only Paragraphs (1) and (4) or only Paragraphs (2) and (3) of Subsection A of this section in excess of five years; or

(2) in excess of ten years for any other combination of Paragraphs (1) through (4) of Subsection A of this section.

D. 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.

E. The provisions of this section are made applicable to the services described prior to as well as after the effective date of the Educational Retirement Act."

Chapter 288 Section 19 Laws 2009

Section 19. TEMPORARY PROVISION--RETIREMENT SYSTEMS SOLVENCY TASK FORCE--CREATION--DUTIES--REPORT.--

A. The "retirement systems solvency task force" is created. The task force consists of twenty-five members as follows:

(1) the director of the public employees retirement association and a member of the public employees retirement board, selected by the board;

(2) the educational retirement director and a member of the educational retirement board, selected by the board;

(3) the director of the retiree health care authority and a member of the board of the retiree health care authority, selected by the board;

(4) one member from each of the following organizations that represent members of the public employees retirement association or members under the Educational Retirement Act:

(a) the American federation of state, county and municipal employees;

(b) the communications workers of America;

(c) the international association of firefighters;

(d) the fraternal order of police;

(e) the national education association; and

(f) the American federation of teachers;

(5) the chair and vice chair of the interim investments and pensions oversight committee; provided that, if that interim committee is not created, then the New Mexico legislative council shall appoint the chair and vice chair of the appropriate interim committee;

(6) a representative of the New Mexico municipal league;

(7) a representative of the New Mexico association of counties;

(8) two majority party members and one minority party member of the house of representatives, appointed by the New Mexico legislative council;

(9) two majority party members and one minority party member of the senate, appointed by the New Mexico legislative council; and

(10) three members appointed by the governor, at least one of whom shall be experienced in financial investing of pension funds.

B. The chair of the task force shall be elected by the task force. The task force shall meet at the call of the chair.

C. The public members of the task force shall receive per diem and mileage pursuant to the Per Diem and Mileage Act.

D. The legislative council service, with assistance from the legislative finance committee, the public employees retirement association, the educational retirement association and the retiree health care authority, shall provide staff for the task force.

E. The task force shall study the actuarial soundness and solvency of the retirement plans of the public employees retirement association and the educational retirement association and the health care plan of the retiree health care authority and prepare a solvency plan for each entity. The solvency plans shall include analyses and recommendations that address:

(1) employer and employee contributions;

(2) retirement eligibility;

- (3) the number of retirement plans;
- (4) retirement benefits;
- (5) investment policy and asset allocation;
- (6) disability retirement and benefits;
- (7) actuarial assumptions;
- (8) health insurance plan benefits and eligibility;
- (9) the costs of health insurance plans; and
- (10) member services.

F. The solvency plans and recommendations shall be submitted, no later than October 1, 2010, to the interim investments and pensions oversight committee or other appropriate interim committee, the legislative finance committee and the governor.

Chapter 288 Section 20 Laws 2009

Section 20. REPEAL.--Sections 10-11-26.4, 10-11-30, 10-11-38.4, 10-11-47, 10-11-53, 10-11-55.4, 10-11-55.10, 10-11-59, 10-11-65, 10-11-71, 10-11-77, 10-11-83, 10-11-89, 10-11-95, 10-11-101, 10-11-107, 10-11-113 and 10-11-115.4 NMSA 1978 (being Laws 1994, Chapter 128, Section 5, Laws 1987, Chapter 253, Section 30, Laws 1994, Chapter 128, Section 12, Laws 1987, Chapter 253, Sections 47 and 53, Laws 1993, Chapter 58, Section 4, Laws 1998, Chapter 106, Section 4, Laws 1987, Chapter 253, Sections 59, 65, 71, 77, 83, 89, 95, 101, 107 and 113 and Laws 2003, Chapter 268, Section 5, as amended) are repealed.

Chapter 288 Section 21 Laws 2009

Section 21. EFFECTIVE DATES.--

A. The effective date of the provisions of Sections 1 through 5, 11, 13, 16 and 18 of this act is July 1, 2009.

B. The effective date of the provisions of Sections 6 through 10, 12, 14, 15, 17 and 20 of this act is July 1, 2011.

Chapter 288 Section 22 Laws 2009

Section 22. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

HJC/HEC/House Bill 573, aa, w/ec

Approved April 10, 2009

LAWS 2009, CHAPTER 289

AN ACT

RELATING TO TAXATION; AMENDING SECTIONS OF THE NMSA 1978 CONCERNING THE NATIVE AMERICAN VETERANS' INCOME TAX SETTLEMENT FUND; MAKING APPROPRIATIONS.

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

Chapter 289 Section 1 Laws 2009

Section 1. Section 7-2H-1 NMSA 1978 (being Laws 2008, Chapter 89, Section 1) is amended to read:

"7-2H-1. LEGISLATIVE FINDINGS.--

A. Native Americans have had a long history of serving their country through active duty in the armed forces of the United States during periods of both war and peace and have made great sacrifices in serving their country through active duty in the military during periods of war and peace.

B. Native American veterans domiciled within the boundaries of their tribal lands or their spouse's tribal lands during their periods of active military service may have been exempt from paying state personal income taxes on their military income, but may have had state personal income taxes withheld from their military income.

C. Native American veterans now are barred by the state statute of limitations from claiming refunds of state personal income taxes that may have been withheld from their military income when they were domiciled within the boundaries of their tribal lands or their spouse's tribal lands during the period of their active military duty, and even if not barred by the statute of limitations, the passage of time extending to decades will make it difficult for many Native American veterans to meet strict standards of proof that they are entitled to a refund of withheld state personal income taxes.

D. It is incumbent upon the state to ensure that it was not unjustly enriched by the withholding of state personal income taxes from Native American veterans who were domiciled within the boundaries of their tribal lands or their spouse's tribal lands during the period of their active military duty, and the state should implement

a feasible means of refunding to Native American veterans any state personal income taxes that were withheld from military income while they were domiciled within the boundaries of their tribal lands or their spouse's tribal lands during the period of their active military duty."

Chapter 289 Section 2 Laws 2009

Section 2. Section 7-2H-2 NMSA 1978 (being Laws 2008, Chapter 89, Section 2) is amended to read:

"7-2H-2. DEFINITION.--As used in Chapter 7, Article 2H NMSA 1978, "fund" means the Native American veterans' income tax settlement fund."

Chapter 289 Section 3 Laws 2009

Section 3. Section 7-2H-3 NMSA 1978 (being Laws 2008, Chapter 89, Section 3) is amended to read:

"7-2H-3. NATIVE AMERICAN VETERANS' INCOME TAX SETTLEMENT FUND--CREATED--PURPOSE--APPROPRIATIONS.--

A. The "Native American veterans' income tax settlement fund" is created as a nonreverting fund in the state treasury and shall be administered by the taxation and revenue department. The fund shall consist of money that is appropriated or donated or that otherwise accrues to the fund.

B. The taxation and revenue department shall establish procedures and adopt rules as required to administer the fund and to make settlement payments from the fund as approved by the secretary of taxation and revenue.

C. Money in the fund is appropriated to the taxation and revenue department to make settlement payments to Native American veterans who were domiciled within the boundaries of their tribal lands or their spouse's tribal lands during the period of their active military duty and had state personal income taxes withheld from their military income, or to their heirs pursuant to applicable law. Settlement payments shall include the amount of state personal income taxes withheld from eligible Native American veterans that have not been previously refunded to the veterans and interest on the amount withheld from the date of withholding computed on a daily basis at the rate specified for individuals pursuant to Section 6621 of the Internal Revenue Code of 1986. No settlement payments shall be made for any taxable year for which a refund claim may be timely filed with the taxation and revenue department, or for which an application for settlement is received after December 31, 2012. Money shall be disbursed from the fund only on warrant of the secretary of finance and administration upon vouchers signed by the secretary of taxation and revenue or the secretary's authorized representative. Any unexpended or unencumbered balance remaining in the fund at the end of a fiscal year shall not revert to the general fund.

D. Beginning in fiscal year 2010 and in subsequent fiscal years, not more than five percent of the fund is appropriated from the fund to the taxation and revenue department for expenditure in the fiscal year in which it is appropriated to administer the fund. Any unexpended or unencumbered balance remaining at the end of any fiscal year shall revert to the fund.

E. Beginning in fiscal year 2010 and in subsequent fiscal years, not more than five percent of the fund is appropriated from the fund to the veterans' services department for expenditure in the fiscal year in which it is appropriated to assist in outreach and public relations and in determining eligibility for settlement payments. Any unexpended or unencumbered balance remaining at the end of any fiscal year shall revert to the fund."

Chapter 289 Section 4 Laws 2009

Section 4. Section 7-2H-4 NMSA 1978 (being Laws 2008, Chapter 89, Section 4) is amended to read:

"7-2H-4. DUTIES OF THE SECRETARY.--

A. The secretary of veterans' services shall conduct a study in cooperation with the taxation and revenue department to determine whether Native American veterans who were domiciled within the boundaries of their tribal lands or their spouse's tribal lands during the period of their active military duty had state personal income taxes withheld from their military income and if so, to determine the amount of such state personal income taxes withheld and the number and identity of Native American veterans or their survivors affected by the withholding of such state personal income taxes.

B. The secretary of taxation and revenue and the secretary of veterans' services shall promulgate rules for a state program to compensate Native American veterans or their survivors for state personal income taxes withheld from military income while on active military duty and domiciled within the boundaries of the veteran's or the veteran's spouse's tribal lands.

C. The secretary of taxation and revenue shall report to the appropriate interim legislative committee no later than October 1 of each year regarding estimates of the amount of state personal income taxes withheld from the military income of Native American veterans domiciled on their respective tribal lands, the number of Native American veterans or their survivors affected by such withholding of state personal income taxes, total expenditures from the fund for the previous fiscal year and the anticipated appropriations to the fund needed to pay for settlements to be entered into for the next fiscal year."

Senate Bill 541, aa

Approved April 10, 2009

LAWS 2009, HOUSE JOINT RESOLUTION 7

A JOINT RESOLUTION

AUTHORIZING DISPOSAL OF SURPLUS LAND IN MCKINLEY COUNTY BY THE STATE PARKS DIVISION OF THE ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT.

WHEREAS, Section 13-6-3 NMSA 1978 requires the ratification and approval of the legislature of any sale, trade or lease of real property belonging to a state agency that involves a consideration of one hundred thousand dollars (\$100,000) or more; and

WHEREAS, the energy, minerals and natural resources department owns certain real property in the county of McKinley, state of New Mexico described as A certain Tract of land situate within the North 1/2 of Section 11, Township 13 North, Range 21 West, of the New Mexico Principal Meridian, McKinley County, New Mexico, and being more particularly described as follows:

"BEGINNING at the Northeast corner of the parcel herein described, being the Section corner common to Sections 1, 2, 11 and 12, T 13 N, R 21 W, NMPM (in place);

THENCE along the easterly line of Section 11, S 00° 07' 07" W, 433.23 feet to the Southeast corner, a point on the Northerly Right of way line of Interstate Highway 40;

THENCE leaving said Section line and along said Northerly Right of way line, S 59° 56' 46" W, 4080.12 feet to the Southwest corner, being the point of intersection of the Northerly Right of way line of Interstate Highway 40 and the Southerly Right of way line of the Burlington Northern Santa Fe Railway;

THENCE leaving said Northerly Right of way line and along said Southerly Right of way line, N 31° 59' 21" E, 2953.10 feet to the Northwest corner, being a point on the Northerly line of Section 11;

THENCE leaving said Southerly Right of way line and along said Northerly line, S 89° 11' 00" E, 1968.24 feet to the point of beginning and containing 74.6250 acres, more or less"; and

WHEREAS, A certain Tract of land situate within Sections 10, 11 and 15, Township 13 North, Range 21 West, of the New Mexico Principal Meridian, McKinley County, New Mexico, and being more particularly described as follows:

"BEGINNING at the Southeast corner of the parcel herein described, being the Section corner common to Sections 11, 12, 13 and 14, T 13 N, R 21 W, NMPM (in place);

THENCE along the Southerly line of Section 11, N 89° 19' 04" W, 5165.42 feet to the Section corner common to Sections 10, 11, 14 and 15, T 13 N, R 21 W, NMPM (in place);

THENCE along the Easterly line of Section 15, S 00° 16' 00" E, 1326.60 feet;

THENCE along the Southerly line of Lot 1 in Section 15, N 90° 00' 00" W, 914.16 feet to the Southeast corner, a point on the Southerly Right of way line of the Burlington Northern Santa Fe Railway;

THENCE leaving said Southerly line and along said Southerly Right of way line, N 31° 59' 21" E, 4173.91 feet to the Northwest corner, being a point of intersection of the Burlington Northern Santa Fe Railway Right of way and the Southerly Right of way line of Interstate Highway 40;

THENCE leaving said Southerly Railway Right of way line and along said Southerly Interstate Right of way line, N 59° 56' 46" E, 4470.95 feet to the Northeast corner, being a point on the Easterly line of Section 11;

THENCE leaving said Southerly Right of way line and along said Easterly line, S 00° 07' 07" W, 1866.64 feet to the East 1/4 corner of Section 11 (in place);

THENCE continuing along said Easterly line, S 00° 05' 21" W, 2647.50 feet to the Point of beginning and containing 350.5803 acres, more or less"; and

WHEREAS, the parcels owned by the state parks division of the energy, minerals and natural resources department do not qualify for state park status under Section 16-2-11 NMSA 1978 and are not likely ever to be designated as a state park, or as part of a state park, and are therefore surplus to the state parks division;

NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO that the state parks division of the energy, minerals and natural resources department be authorized to dispose of said surplus property by donation, exchange or sale pursuant to Section 13-6-3 NMSA 1978; and

BE IT FURTHER RESOLVED that copies of this resolution be transmitted to the secretary of energy, minerals and natural resources and the director of the state parks division of the energy, minerals and natural resources department.

LAWS 2009, HOUSE JOINT RESOLUTION 16

A JOINT RESOLUTION

APPROVING THE CESSION OF CONCURRENT LEGISLATIVE JURISDICTION TO THE UNITED STATES OVER CERTAIN LANDS LOCATED IN CURRY COUNTY.

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

House Joint Resolution 16 Section 1 Laws 2009

Section 1. Pursuant to the provisions of Section 19-2-2 NMSA 1978, approval is granted to the cession of concurrent legislative jurisdiction to the United States in accordance with a like cession of concurrent jurisdiction by the United States to the state of New Mexico for real property now owned by the United States in Curry county, New Mexico, described as follows:

A tract of land in the South one-half of Section 12, Township 2 North, Range 34 East, New Mexico Principal Meridian, described as follows:

Beginning at a point 60.0 feet North 89°38' West from the East 1/4 corner of said Section 12; thence North 89°38' West 1068.0 feet; thence South 0°12' West 1846.47 feet; thence North 88°17' West 708.69 feet; thence South 0°12' West 600.00 feet to a point on the North right-of-way line of U.S. Highway No. 60 and No. 84; thence South 88°17' East 1713.19 feet; thence North 45°0' East 90.6 feet; thence North 0°12' East 2405.66 feet to the point of beginning, containing 70.00 acres, more or less; and

A tract of land in the South one-half of Section 12, Township 2 North, Range 34 East, New Mexico Principal Meridian, described as follows:

Beginning at the Southeast corner of said Section 12, thence North 0°12' East 2649.4 feet to the East 1/4 corner of said Section 12; thence North 89°38' West 60.0 feet; thence South 0°12' West 2405.66 feet; thence South 45°00' West 90.6 feet; thence North 88°17' West 1713.19 feet; thence North 0°12' East 600.0 feet; thence South 88°17' East 708.69 feet; thence North 0°12' East 1846.47 feet; thence North 89°38' West 4162.4 feet; thence South 0°13' West 1237.7 feet; thence South 89°38' East 238.7 feet; thence South 0°13' West 208.7 feet; thence North 89°38' West 238.7 feet; thence South 0°13' West 930.4 feet to the North right-of-way line of the AT&SF Railroad; thence South 85°33' East along the North right-of-way line of said railroad to the point of intersection of said right-of-way line and the South line of said Section 12, a distance of 3821.85 feet; thence South 89°37' East along the South line of Section 12 1479.74 feet to the point of beginning; containing 238.6969 acres, more or less.

House Joint Resolution 16 Section 2 Laws 2009

Section 2. As used in Section 1 of this resolution, "concurrent legislative jurisdiction" means the vesting in the state and the United States of all rights accorded a sovereign with the broad qualification that such authority is held concurrently over matters, including criminal laws, public powers and tax laws, and that it is the parallel right of both the state and the federal government to legislate with respect to such land and persons present or residing on it, subject only to the United States and state constitutional complaints.

House Joint Resolution 16

LAWS 2009, HOUSE JOINT RESOLUTION 19

A JOINT RESOLUTION

PROPOSING TO EXTEND THE LEASE FOR THE DOWNS OF ALBUQUERQUE.

WHEREAS, Section 13-6-3 NMSA 1978 requires ratification and approval by the legislature of a lease for a period exceeding twenty-five years in duration of real property belonging to a state agency, which lease shall be for a consideration of one hundred thousand dollars (\$100,000) or more; and

WHEREAS, the Downs of Albuquerque, incorporated, has, since January 11, 1985, leased from the New Mexico state fair the racetrack, grandstand and casino area of the state fairgrounds, which is operated by the lessee as the Downs of Albuquerque, incorporated, at 300 San Pedro NE, Albuquerque, New Mexico; and

WHEREAS, the consideration paid for the lease by the Downs of Albuquerque, incorporated, since January 11, 1985, has been one hundred thousand dollars (\$100,000) or more; and

WHEREAS, the parties desire to extend the current lease to January 11, 2011 with an option to extend the lease an additional year to January 11, 2012;

NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO that the current lease extension between the New Mexico state fair and the Downs of Albuquerque, incorporated, for the racetrack, grandstand and casino area of the state fairgrounds, which is operated by the lessee as the Downs of Albuquerque, incorporated, be hereby ratified and approved, that an extension of the lease until January 11, 2011 be hereby ratified and approved and that, should the parties exercise an option to extend the lease further, until January 11, 2012, that the extension be hereby ratified and approved; and

BE IT FURTHER RESOLVED that the ratification and approval of the lease extension until January 11, 2011 is contingent upon the amount due, under the lease, being increased by no less than ten percent over the amount due under the lease before that extension; and

BE IT FURTHER RESOLVED that the ratification and approval of the lease extension until January 11, 2012 is contingent upon the amount due, under the lease, being increased by no less than ten percent over the amount due under the lease before that extension; and

BE IT FURTHER RESOLVED that a copy of this resolution be transmitted to the state fair commission.

House Joint Resolution 19, aa

LAWS 2009, HOUSE JOINT RESOLUTION 21

A JOINT RESOLUTION

PROPOSING TO SELL STATE LAND ON THE FORMER WALKER AIR FORCE BASE IN CHAVES COUNTY.

WHEREAS, Section 13-6-3 NMSA 1978 requires legislative ratification and approval of any sale, trade or lease for a period exceeding twenty-five years in duration of state real property, which sale, trade or lease shall be for a consideration of one hundred thousand dollars (\$100,000) or more; and

WHEREAS, the real property and improvements described below and located on the former Walker air force base in Chaves county were transferred to the state of New Mexico by the federal government and, pursuant to a deed without warranty issued May 2, 1980, that real property and improvements would vest in fee simple to the state, without consideration, if it was continuously used for health and welfare purposes for a period of thirty years; and

WHEREAS, the real property and improvements were not continuously used for the full thirty-year period, the state's use ending in August 2002, because the property was no longer needed or suitable for its intended use; and

WHEREAS, the state owes the federal government a payment representing the value of the state's use of the real property and improvements proportional to the length of time of its use; and

WHEREAS, the property control division of the general services department has determined that the real property and improvements are surplus and not useful to the state; and

WHEREAS, the property control division proposes to sell, using a request for proposals, the real property and improvements, constituting 2.899 acres with fifteen houses, described as follows:

"A tract of land lying in Section 33, Township 11 South, Range 24 East, N.M.P.M., being more particularly described as follows:

For a tie, begin at the southwest corner of the SE1/4, SE1/4 Section 29, Township 11 South, Range 24 East, N.M.P.M.; thence, N 88°10'E, 1324.3 feet to the southeast corner of Section 29, of said Township and Range; thence, S 70°35'E, 173.0 feet; thence, S 88°51'E, 2507.1 feet; thence, S 88°51'E, 510.3 feet; thence, S 00°08'E, 770.5 feet; thence, S 44°51'W, 1115.4 feet; thence, N 44°21'W, 137.7 feet; thence, N 89°54'W, 189.9 feet; thence, due N, 571.9 feet; thence, S 89°59'W, 268.8 feet; thence, S 00°01'W, 1317.7 feet; thence, due W, 1590.0 feet; thence, N 00°05'E, 722.2 feet; thence, S 89°47'E, 203.9 feet to the point of beginning.

Thence, S 00°13'W, 90.0 feet; thence, S 89°47'E, 110.2 feet; thence, S 00°13'W, 16.7 feet; thence, S 89°47'E, 83.6 feet; thence, N 00°13'E, 106.7 feet; S 89°47'E, 117.5 feet; thence, S 00°13'W, 57.6 feet; thence, S 44°47'E, 247.4 feet; thence, S 89°47'E, 149.0 feet; thence, N 30°13'E, 146.3 feet; thence, S 89°47'E, 184.8 feet; thence, S 29°47'E, 48.5 feet; thence, N 63°28'E, 114.1 feet; thence, N 00°21'E, 96.5 feet; thence, N 89°47'W, 1019.4 feet to the point of beginning.

Containing 2.899 acres more or less together with improvements."; and

WHEREAS, this property is subject to existing easements for public roads and highways, public utilities, railroads and pipelines; and

WHEREAS, the real property and improvements shall not be sold for less than their fair market value, which is estimated to be one hundred thousand dollars (\$100,000) or more, as established by the taxation and revenue department using generally acceptable appraisal techniques for this type of real property and improvements;

NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO that the proposed sale be hereby ratified and approved pursuant to the provisions of Section 13-6-3 NMSA 1978; and

BE IT FURTHER RESOLVED that a copy of this resolution be transmitted to the property control division of the general services department.

House Joint Resolution 21

OFFICIAL ROSTER OF THE STATE OF NEW MEXICO

UNITED STATES SENATORS

Jeff Bingaman, Democrat, Silver City
Tom Udall, Democrat, Albuquerque

UNITED STATES REPRESENTATIVES

Martin T. Heinrich, Democrat, 1st Congressional District - Albuquerque
Harry Teague, Democrat, 2nd Congressional District - Albuquerque
Ben R. Lujan, Democrat, 3rd Congressional District - Santa Fe

STATE OFFICIALS

Bill Richardson, Democrat	Governor
Diane D. Denish, Democrat	Lieutenant Governor
Mary Herrera, Democrat	Secretary of State
Hector H. Balderas, Democrat	State Auditor
James B. Lewis, Democrat	State Treasurer
Gary K. King, Democrat	Attorney General
Patrick H. Lyons, Republican	Commissioner of Public Lands
Jason A. Marks, Democrat	Public Regulation Commissioner, District 1
David W. King, Republican	Public Regulation Commissioner, District 2
Jerome D. Block, Jr., Democrat	Public Regulation Commissioner,
District 3	
Carol K. Sloan, Democrat	Public Regulation Commissioner, District 4
Sandy R. Jones, Democrat	Public Regulation Commissioner, District 5

JUSTICES OF THE SUPREME COURT

Edward L. Chavez, Chief Justice
Patricio M. Serna
Petra Jimenez Maes
Richard C. Bosson
Charles W. Daniels

JUDGES OF THE COURT OF APPEALS

Jonathan B. Sutin, Chief Judge
 A. Joseph Alarid
 Lynn Pickard
 Michael D. Bustamante
 Cynthia A. Fry
 Celia Foy Castillo
 Ira Robinson
 Roderick T. Kennedy
 Michael E. Vigil
 James J. Wechsler

DISTRICT COURTS

DISTRICT JUDGES

FIRST JUDICIAL DISTRICT

Santa Fe, Los Alamos & Rio Arriba Counties

Division	I	Barbara J. Vigil	Santa Fe
Division	II	James A. Hall	Santa Fe
Division	III	Raymond Z. Ortiz	Santa Fe
Division	IV	Michael Vigil	Santa Fe
Division	V	Tim Garcia	Santa Fe
Division	VI	Stephen Pfeffer	Santa Fe
Division	VII	Daniel Sanchez	Santa Fe

SECOND JUDICIAL DISTRICT

Bernalillo County

Division	I	William E. Parnall	Albuquerque
Division	II	Stan Whitaker	Albuquerque
Division	III	M. Monica Zamora	Albuquerque
Division	IV	Linda M. Vanzi	Albuquerque
Division	V	Ted C. Baca	Albuquerque
Division	VI	Neil C. Candelaria	Albuquerque
Division	VII	John J. Romero	Albuquerque
Division	VIII	Ross C. Sanchez	Albuquerque
Division	IX	Bob Schwartz	Albuquerque
Division	X	Theresa Baca	Albuquerque
Division	XI	Ernesto J. Romero	Albuquerque
Division	XII	Clay Campbell	Albuquerque
Division	XIII	Valerie A. Huling	Albuquerque
Division	XIV	Reed S. Sheppard	Albuquerque
Division	XV	Richard J. Knowles	Albuquerque
Division	XVI	Carl Butkus	Albuquerque
Division	XVII	Nan G. Nash	Albuquerque
Division	XVIII	Denise Barela-Shepherd	Albuquerque

Division	XIX	Albert S. "Pat" Murdoch	Albuquerque
Division	XX	William F. Lang	Albuquerque
Division	XXI	Angela A. Jewell	Albuquerque
Division	XXII	Deborah Davis Walker	Albuquerque
Division	XXIII	Geraldine E. Rivera	Albuquerque
Division	XXIV	Kenneth H. Martinez	Albuquerque
Division	XXV	Elizabeth Whitefield	Albuquerque
Division	XXVI	Charles Brown	Albuquerque

THIRD JUDICIAL DISTRICT
Doña Ana County

Division	I	Manuel I. Arrieta	Las Cruces
Division	II	Stephen Bridgforth	Las Cruces
Division	III	Mike Murphy	Las Cruces
Division	IV	Jerald A. Valentine	Las Cruces
Division	V	Lisa C. Schultz	Las Cruces
Division	VI	Jim 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	Eugenio S. Mathis	Las Vegas
Division	II	Abigail Aragon	Las Vegas
Division	III	Matthew J. Sandoval	Las Vegas

FIFTH JUDICIAL DISTRICT
Lea, Eddy & Chaves Counties

Division	I	J. Richard Brown	Carlsbad
Division	II	Freddie J. Romero	Roswell
Division	III	William A. Shoobridge	Lovington
Division	IV	Don Maddox	Lovington
Division	V	Jane Shuler Gray	Carlsbad
Division	VI	Ralph D. Shamus	Roswell
Division	VII	Gary L. Clingman	Lovington
Division	VIII	Charles C. Currier, III	Roswell
Division	IX	Thomas A. Rutledge	Carlsbad
Division	X	Steven L. Bell	Chaves

SIXTH JUDICIAL DISTRICT
Grant, Hidalgo & Luna Counties

Division	I	Henry R. Quintero	Silver City
Division	II	Gary M. Jeffreys	Deming
Division	III	J. C. Robinson	Silver City
Division	IV	Daniel.Viramontes	Deming

**SEVENTH JUDICIAL DISTRICT
Catron, Sierra, Socorro & Torrance Counties**

Division	I	Edmund H. Kase, III	Socorro
Division	II	Matthew G. Reynolds	Socorro
Division	III	Kevin R. Sweaza	Estancia

**EIGHTH JUDICIAL DISTRICT
Colfax, Union & Taos Counties**

Division	I	John M. Paternoster	Taos
Division	II	Sam B. Sanchez	Raton

**NINTH JUDICIAL DISTRICT
Curry & Roosevelt Counties**

Division	I	Stephen K. Quinn	Clovis
Division	II	Drew Tatum	Clovis
Division	III	Ted Hartley	Clovis, Portales
Division	IV	Robert S. Orlik	Clovis,
Portales			
Division	V	David P. Reeb, Jr.	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	William C. Birdsall	Aztec
Division	II	Louis DePauli, Jr.	Gallup
Division	III	Sandra A. Price	Farmington
Division	IV	John Arthur Dean, Jr.	Farmington
Division	V	Grant L. Foutz	Gallup
Division	VI	Thomas J. Hynes	Aztec

Division	VII	Robert A. Aragon	Gallup
Division	VIII	Karen L. Townsend	Aztec

**TWELFTH JUDICIAL DISTRICT
Lincoln & Otero Counties**

Division	I	Jerry H. Ritter	Alamogordo
Division	II	James Waylon Counts	Alamogordo
Division	III	Karen L. Parsons	Carrizozo
Division	IV	Sandra A. Grisham	Alamogordo

**THIRTEENTH JUDICIAL DISTRICT
Cibola, Sandoval & Valencia Counties**

Division	I	John W. Pope	Los Lunas
Division	II	George P. Eichwald	Bernalillo
Division	III	William "Bill" Sanchez	Los Lunas
Division	IV	Camille Olguin	Grants
Division	V	Louis P. McDonald	Bernalillo
Division	VI	Violet C. Otero	Los Lunas
Division	VII	John F. Davis	Bernalillo

DISTRICT ATTORNEYS

First Judicial District	Angela R "Spence" Pacheco	Santa Fe, Rio Arriba & Los Alamos
Second Judicial District	Kari E. Brandenburg	Bernalillo
Third Judicial District	Susana Martinez	Doña Ana
Fourth Judicial District Mora	Richard D. Flores	San Miguel, Guadalupe &
Fifth Judicial District	Janetta B. Hicks	Chaves, Eddy & Lea
Sixth Judicial District	Mary Lynne Newell	Grant, Luna & Hidalgo
Seventh Judicial District	Clint Wellborn	Catron, Sierra, Socorro & Torrance
Eighth Judicial District	Donald A. Gallegos	Taos, Colfax & Union
Ninth Judicial District	Matthew E. Chandler	Curry & Roosevelt
Tenth Judicial District	Ronald W. Reeves	Quay, Harding & DeBaca
Eleventh Judicial District	Robert "Rick" P. Tedrow Karl R. Gillson	Division 1: San Juan Division 2: McKinley
Twelfth Judicial District	Diana A. Martwick	Otero & Lincoln
Thirteenth Judicial District	Lemuel L. Martinez	Sandoval, Valencia & Cibola

**STATE SENATORS SERVING IN THE FORTY-NINTH LEGISLATURE
STATE OF NEW MEXICO
FIRST SESSION
CONVENED JANUARY 20, 2009**

<u>District</u>	<u>County</u>	<u>Name</u>	<u>City</u>
1	San Juan Farmington	William E. Sharer	
2	San Juan	Steven P. Neville	Aztec
3	McKinley & San Juan Tohatchi	John Pinto	
4	Cibola & McKinley	George K. Munoz	Gallup
5	Los Alamos, Rio Arriba & Santa Fe Española	Richard C. Martinez	
6	Los Alamos, Rio Arriba, Santa Fe & Taos	Carlos R. Cisneros	Questa
7	Colfax, Curry, Harding, Quay, San Miguel, Taos & Union	Clinton D. Harden, Jr.	Clovis
8	Guadalupe, Mora, San Miguel, Santa Fe Las Vegas & Torraine	Pete Campos	
9	Sandoval Corrales	John M. Sapien	
10	Bernalillo & Sandoval Albuquerque	John C. Ryan	
11	Bernalillo Albuquerque	Linda M. Lopez	
12	Bernalillo Albuquerque	Gerald Ortiz y Pino	
13	Bernalillo Albuquerque	Dede Feldman	
14	Bernalillo & Valencia Albuquerque	Eric G. Griego	
15	Bernalillo Albuquerque	Tim Eichenberg	
16	Bernalillo Albuquerque	Cisco McSorley	
17	Bernalillo Albuquerque	Timothy M. Keller	
18	Bernalillo Albuquerque	Mark Boitano	
19	Bernalillo, Sandoval, Santa Fe & Torraine Park	Sue Wilson Beffort	Sandia
20	Bernalillo Albuquerque	William H. Payne	
21	Bernalillo & Sandoval Albuquerque	Kent L. Cravens	
22	Bernalillo, Cibola, McKinley, Rio Arriba Crownpoint & Sandoval	Lynda M. Lovejoy	
23	Bernalillo & Sandoval Albuquerque	Sander Rue	
24	Santa Fe Fe	Nancy Rodriguez	Santa
25	Santa Fe Fe	Peter Wirth	Santa

	26	Bernalillo Albuquerque	Bernadette M. Sanchez	
	27	Chaves, Curry, DeBaca & Roosevelt Portales	Stuart Ingle	
City	28	Catron, Grant & Socorro	Howie C. Morales	Silver
	29	Valencia	Michael S. Sanchez	Belen
	30	Cibola, Socorro & Valencia	David Ulibarri	Grants
	31	Doña Ana	Cynthia Nava	Las
Cruces	32	Chaves, Eddy, Lincoln & Otero Roswell	Timothy Z. Jennings	
	33	Chaves & Lincoln Roswell	Rod Adair	
	34	Eddy & Otero Carlsbad	Vernon D. Asbill	
	35	Hidalgo, Luna & Sierra Deming	John Arthur Smith	
Ana	36	Doña Ana	Mary Jane M. Garcia	Doña
	37	Doña Ana & Sierra Mesilla Park	Stephen H. Fischmann	
	38	Doña Ana	Mary Kay Papen	Las
Cruces	39	Los Alamos, Mora, Sandoval, San Miguel, Jose	Phil A. Griego	San
	40	Santa Fe & Taos Doña Ana & Otero Tularosa	Dianna J. Duran	
	41	Eddy & Lea	Carroll H. Leavell	Jal
	42	Chaves, Curry, Eddy, Lea & Roosevelt Hobbs	Gay G. Kernan	

**STATE REPRESENTATIVES SERVING IN THE FORTY-NINTH
LEGISLATURE
STATE OF NEW MEXICO
FIRST SESSION
CONVENED JANUARY 20, 2009**

<u>District</u>	<u>County</u>	<u>Name</u>	<u>City</u>
1	San Juan Farmington	Thomas C. Taylor	
2	San Juan Farmington	James R.J. Strickler	
3	San Juan	Paul C. Bandy	Aztec
4	San Juan Shiprock	Ray Begaye	
5	McKinley & San Juan	Sandra D. Jeff	

Crownpoint		
6	Cibola & McKinley	Eliseo Lee Alcon
7	Valencia	Andrew J. Barreras
8	Valencia	Elias Barela
9	McKinley & San Juan	Patricia A. Lundstrom
10	Bernalillo & Valencia	Henry "Kiki" Saavedra
	Albuquerque	
11	Bernalillo	Rick Miera
	Albuquerque	
12	Bernalillo	Ernest H. Chavez
	Albuquerque	
13	Bernalillo	Eleanor Chavez
	Albuquerque	
14	Bernalillo	Miguel P. Garcia
	Albuquerque	
15	Bernalillo	Bill B. O'Neill
	Albuquerque	
16	Bernalillo	Antonio "Moe" Maestas
	Albuquerque	
17	Bernalillo	Edward C. Sandoval
	Albuquerque	
18	Bernalillo	Gail Chasey
	Albuquerque	
19	Bernalillo	Sheryl Williams Stapleton
	Albuquerque	
20	Bernalillo	Richard J. Berry
	Albuquerque	
21	Bernalillo	Mimi Stewart
	Albuquerque	
22	Bernalillo, Sandoval & Santa Fe	Kathy A. McCoy
	Cedar Crest	
23	Bernalillo & Sandoval	Benjamin H. Rodefer
	Corrales	
24	Bernalillo	Janice E. Arnold-Jones
	Albuquerque	
25	Bernalillo	Danice R. Picraux
	Albuquerque	
26	Bernalillo	Al Park
	Albuquerque	
27	Bernalillo	Larry A. Larrañaga
	Albuquerque	
28	Bernalillo	Jimmie C. Hall
	Albuquerque	
29	Bernalillo	Thomas A. Anderson
	Albuquerque	
30	Bernalillo	Karen E. Giannini
	Albuquerque	
31	Bernalillo	William "Bill" R. Rehm
	Albuquerque	
32	Luna	Dona G. Irwin
	Deming	

	33	Doña Ana	Joni Marie Gutierrez	Mesilla
	34	Doña Ana	Mary Helen Garcia	Las
Cruces				
	35	Doña Ana	Antonio Lujan	Las
Cruces				
	36	Doña Ana	Andy Nuñez	Hatch
	37	Doña Ana	Jeff Steinborn	Las
Cruces				
	38	Grant, Hidalgo & Sierra Silver City	Dianne Miller Hamilton	
	39	Grant & Hidalgo	Rodolpho "Rudy" S. Martinez Bayard	
	40	Mora, Rio Arriba, San Miguel, Santa Fe Ohkay Owingeh & Taos	Nick L. Salazar	
	41	Rio Arriba, Sandoval & Taos Española	Debbie A. Rodella	
	42	Taos	Roberto "Bobby" J. Gonzales Taos	
	43	Los Alamos, Sandoval & Santa Fe	Jeannette O. Wallace	Los
Alamos				
	44	Sandoval Corrales	Jane E. Powdrell-Culbert	
	45	Santa Fe	Jim R. Trujillo	Santa
Fe				
	46	Santa Fe	Ben Lujan	Santa
Fe				
	47	Santa Fe	Brian F. Egolf, Jr.	Santa
Fe				
	48	Santa Fe Santa Fe	Luciano "Lucky" Varela	
	49	Catron, Socorro & Valencia Socorro	Don L. Tripp	
	50	Bernalillo, Santa Fe & Torrance Stanley	Rhonda S. King	
	51	Otero Alamogordo	Gloria C. Vaughn	
	52	Doña Ana	Joseph Cervantes	Las
Cruces				
	53	Doña Ana & Otero Las Cruces	Nathan P. Cote	
	54	Eddy & Otero Artesia	William J. Gray	
	55	Eddy Carlsbad	John A. Heaton	
	56	Lincoln & Otero Ruidoso	Zachary J. Cook	
	57	Chaves, Lincoln & Otero Roswell	Dennis J. Kintigh	
	58	Chaves Roswell	Candy Spence Ezzell	
	59	Chaves, Lincoln & Otero Roswell	Nora Espinoza	

60	Sandoval Rio Rancho	Jack E. Thomas	
61	Lea Lovington	Shirley A. Tyler	
62	Lea	Donald E. Bratton	Hobbs
63	DeBaca, Curry, Guadalupe & Roosevelt Santa Rosa	Jose A. Campos	
64	Curry Clovis	Anna M. Crook	
65	Bernalillo, McKinley, Rio Arriba, Jemez Pueblo & Sandoval	James Roger Madalena	
66	Chaves, Eddy, Lea & Roosevelt Roswell	Keith J. Gardner	
67	Curry, Harding, Quay, Roosevelt, Tucumcari San Miguel & Union	Dennis J. Roch	
68	Colfax, Guadalupe, Mora, San Miguel Ocate & Taos	Thomas A. Garcia	
69	Cibola, McKinley & San Juan	W. Ken Martinez	Grants
70	San Miguel & Torrance Ribera	Richard D. Vigil	