



# LAWS 2011, CONSTITUTIONAL AMENDMENT 1

## A JOINT RESOLUTION

PROPOSING AN AMENDMENT TO ARTICLE 6, SECTION 32 OF THE CONSTITUTION OF NEW MEXICO TO PROVIDE FOR TWO ADDITIONAL MEMBERS TO SIT ON THE JUDICIAL STANDARDS COMMISSION, A MUNICIPAL JUDGE AND A PUBLIC MEMBER.

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

### **Constitutional Amendment 1 Section 1 Laws 2011**

SECTION 1. It is proposed to amend Article 6, Section 32 of the constitution of New Mexico to read:

"There is created the "judicial standards commission", consisting of two justices or judges, one magistrate, one municipal judge and two lawyers selected as may be provided by law to serve for terms of four years, and seven citizens, none of whom is a justice, judge or magistrate of any court or licensed to practice law in this state, who shall be appointed by the governor for five-year staggered terms as may be provided by law. If a position on the commission becomes vacant for any reason, the successor shall be selected by the original appointing authority in the same manner as the original appointment was made and shall serve for the remainder of the term vacated. No act of the commission is valid unless concurred in by a majority of its members. The commission shall select one of the members appointed by the governor to serve as chair.

In accordance with this section, any justice, judge or magistrate of any court may be disciplined or removed for willful misconduct in office, persistent failure or inability to perform a judge's duties, or habitual intemperance, or may be retired for disability seriously interfering with the performance of the justice's, judge's or magistrate's duties that is, or is likely to become, of a permanent character. The commission may, after investigation it deems necessary, order a hearing to be held before it concerning the discipline, removal or retirement of a justice, judge or magistrate, or the commission may appoint three masters who are justices or judges of courts of record to hear and take evidence in the matter and to report their findings to the commission. After hearing or after considering the record and the findings and report of the masters, if the commission finds good cause, it shall recommend to the supreme court the discipline, removal or retirement of the justice, judge or magistrate.

The supreme court shall review the record of the proceedings on the law and facts and may permit the introduction of additional evidence, and it shall order the discipline, removal or retirement as it finds just and proper or wholly reject the recommendation. Upon an order for retirement, any justice, judge or magistrate participating in a statutory retirement program shall be retired with the same rights as if

the justice, judge or magistrate had retired pursuant to the retirement program. Upon an order for removal, the justice, judge or magistrate shall thereby be removed from office, and the justice's, judge's or magistrate's salary shall cease from the date of the order.

All papers filed with the commission or its masters, and proceedings before the commission or its masters, are confidential. The filing of papers and giving of testimony before the commission or its masters is privileged in any action for defamation, except that the record filed by the commission in the supreme court continues privileged but, upon its filing, loses its confidential character, and a writing that was privileged prior to its filing with the commission or its masters does not lose its privilege by the filing. The commission shall promulgate regulations establishing procedures for hearings under this section. No justice, judge or magistrate who is a member of the commission or supreme court shall participate in any proceeding involving the justice's, judge's or magistrate's own discipline, removal or retirement.

This section is alternative to, and cumulative with, the removal of justices, judges and magistrates by impeachment and the original superintending control of the supreme court."

## **Constitutional Amendment 1 Section 2 Laws 2011**

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.

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House Joint Resolution 18

## **LAWS 2011, CHAPTER 1**

AN ACT

RELATING TO THE LEGISLATIVE BRANCH OF GOVERNMENT; APPROPRIATING FUNDS FOR THE EXPENSE OF THE FIFTIETH LEGISLATURE, FIRST SESSION, 2011, 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 2011**

## 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 fiftieth legislature for per diem and mileage of its members, for salaries of employees and for other expenses of the legislature, eight million three hundred seventy-four thousand eight hundred dollars (\$8,374,800) or so much thereof as may be necessary for such purposes.

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

- (1) per diem for senators \$385,560;
- (2) per diem for members of the house of representatives \$642,600;
- (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 \$6,313;
- (4) mileage traveled by members of the house of representatives going to and returning from the seat of government by the usually traveled route, one round trip \$9,600;
- (5) salaries and employee benefits of senate employees \$2,675,472;
- (6) salaries and employee benefits of house of representatives employees \$2,311,767;
- (7) for expense of the senate not itemized above, six hundred twenty-five thousand four hundred fifty-five dollars (\$625,455). No part of this item may be transferred to salaries or employee benefits;
- (8) for expense of the house of representatives not itemized above, six hundred forty thousand thirty-three dollars (\$640,033). No part of this item may be transferred to salaries or employee benefits; and
- (9) for session expenses of the legislative council service, the joint billroom and mailroom and joint legislative switchboard, one million seventy-eight thousand dollars (\$1,078,000) 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 fiftieth 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 2011**

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

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

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

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

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

B. Any person not listed in Subsection A of this section may secure a complete file of the bills, resolutions, joint resolutions, memorials and joint memorials of the legislature by depositing with the legislative council service the amount of seven hundred twenty-five dollars (\$725), 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 fifty dollars (\$250) for the entire session.

## Chapter 1 Section 3 Laws 2011

SECTION 3. LEGISLATIVE COUNCIL SERVICE.--There is appropriated from the general fund to the legislative council service for fiscal year 2012 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	\$ 4,293,900
Contractual Services	203,200
Other Costs	985,000
Total	\$ 5,482,100;

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 2012, eight hundred sixty-one thousand two hundred dollars (\$861,200); 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, four hundred twenty-six thousand six hundred dollars (\$426,600); and

D. for a statewide legislative intern program, forty-two thousand six hundred dollars (\$42,600).

## Chapter 1 Section 4 Laws 2011

SECTION 4. LEGISLATIVE FINANCE COMMITTEE.--There is appropriated from the general fund to the legislative finance committee for fiscal year 2012, to be disbursed on vouchers signed by the chair of the committee or the chair's designated representative, the following:

Personal Services & Employee Benefits	\$ 3,441,700
Contractual Services	155,700
Other Costs	287,700
Total	\$ 3,885,100.

## Chapter 1 Section 5 Laws 2011

SECTION 5. LEGISLATIVE EDUCATION STUDY COMMITTEE.--There is appropriated from the general fund to the legislative education study committee for

fiscal year 2012, to be disbursed on vouchers signed by the chair of the committee or the chair's designated representative, the following:

Personal Services & Employee Benefits	\$ 1,071,600
Contractual Services	16,500
Other Costs	104,300
Total	\$ 1,192,400.

### **Chapter 1 Section 6 Laws 2011**

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 thousand five hundred dollars (\$20,500) for fiscal year 2012.

### **Chapter 1 Section 7 Laws 2011**

SECTION 7. HOUSE CHIEF CLERK.--There is appropriated from the general fund to the legislative council service for expenditure in fiscal year 2012 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	\$ 906,000
Contractual Services	127,300
Other Costs	32,000
Total	\$ 1,065,300.

### **Chapter 1 Section 8 Laws 2011**

SECTION 8. SENATE CHIEF CLERK.--There is appropriated from the general fund to the legislative council service for expenditure in fiscal year 2012 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	\$ 919,550
Contractual Services	173,750
Other Costs	23,700
Total	\$ 1,117,000.

### **Chapter 1 Section 9 Laws 2011**

SECTION 9. LEGISLATIVE INFORMATION SYSTEM.--There is appropriated from the general fund to the legislative council service for expenditure in fiscal years

2011 and 2012 for the legislative information system five hundred thirty-three thousand one hundred dollars (\$533,100).

## **Chapter 1 Section 10 Laws 2011**

SECTION 10. REDISTRICTING.--There is appropriated from the general fund to the legislative council service for expenditure in fiscal years 2011 through 2013 for legal and technical services and other expenses related to redistricting, one million five hundred thousand dollars (\$1,500,000).

## **Chapter 1 Section 11 Laws 2011**

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 2011 and 2012.

## **Chapter 1 Section 12 Laws 2011**

SECTION 12. 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 13 Laws 2011**

SECTION 13. 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 14 Laws 2011**

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

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House Bill 1, w/ec

Approved January 27, 2011



# LAWS 2011, CHAPTER 2

## AN ACT

RELATING TO UTILITIES; CREATING A TASK FORCE TO INVESTIGATE THE RECENT NATURAL GAS SHUT-DOWN AND ITS RAMIFICATIONS; DECLARING AN EMERGENCY.

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

### Chapter 2 Section 1 Laws 2011

SECTION 1. NATURAL GAS EMERGENCY INVESTIGATION TASK FORCE--  
POWERS AND DUTIES--AGENCY COOPERATION.--

A. The "natural gas emergency investigation task force" is created and shall be composed of the following members:

(1) the secretary of finance and administration or the secretary's designee;

(2) the secretary of homeland security and emergency management or the secretary's designee;

(3) the chair of the public regulation commission or another commissioner designated by the chair;

(4) the adjutant general or the adjutant general's designee;

(5) the attorney general or the attorney general's designee;

(6) the superintendent of insurance or the superintendent's designee;

(7) one majority party member and one minority party member of the house of representatives to be appointed by the speaker of the house of representatives; and

(8) one majority party member and one minority party member of the senate to be appointed by the president pro tempore of the senate.

B. The secretary of finance and administration shall serve as chair of the task force.

C. The task force shall:

(1) investigate how and why New Mexico consumers lost natural gas service in early February 2011;

(2) investigate the economic and social impacts of the loss;

(3) investigate the adequacy of the state's and local governments' response to the emergency;

(4) determine how to safeguard deliverability and operational efficiency in the natural gas pipeline system to prevent undue hardship on New Mexico natural gas consumers;

(5) invite representatives of federal agencies that regulate interstate pipelines and transportation of natural gas to assist in the task force's duties;

(6) invite a representative of the federal emergency management agency to assist in the task force's duties;

(7) invite other experts to assist the task force as necessary;

(8) recommend state or federal legislation necessary to address the task force's concerns;

(9) address other matters related to the natural gas emergency that the chair of the task force deems necessary;

(10) determine the most practicable way that gas customers can be notified of an impending outage or service interruption; and

(11) determine the best methods to prioritize shutdown decisions during emergencies.

D. State agencies and legislative committees shall assist the task force as needed.

E. The task force shall report its findings and recommendations to the governor and the appropriate interim legislative committees by August 1, 2011 and shall post its report on the public regulation commission web site upon completion.

## **Chapter 2 Section 2 Laws 2011**

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

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HENRC/House Bill 452, aa, w/ec

Approved March 16, 2011

## **LAWS 2011, CHAPTER 3**

AN ACT

RELATING TO PUBLIC MONEY; PROVIDING FOR AN ADDITIONAL DISTRIBUTION FROM THE TOBACCO SETTLEMENT PERMANENT FUND TO THE TOBACCO SETTLEMENT PROGRAM FUND IN FISCAL YEARS 2012 AND 2013; MAKING AN APPROPRIATION.

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

### **Chapter 3 Section 1 Laws 2011**

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

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

A. The "tobacco settlement permanent fund" is created in the state treasury. The fund shall consist of money distributed to the state pursuant to the master settlement agreement, entered into between tobacco product manufacturers and various states, including New Mexico, and executed November 23, 1998, or any money released to the state from a qualified escrow fund or otherwise paid to the state as authorized by Sections 6-4-12 and 6-4-13 NMSA 1978, enacted pursuant to the master settlement agreement. 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 years 2009 through 2013, 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."

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House Bill 79

Approved March 16, 2011

## **LAWS 2011, CHAPTER 4**

AN ACT

RELATING TO BOARDS; EXTENDING THE SUNSET DATE FOR THE BOARD OF THANATOPRACTICE.

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

### **Chapter 4 Section 1 Laws 2011**

SECTION 1. Section 61-32-31 NMSA 1978 (being Laws 1993, Chapter 204, Section 31, as amended) is amended to read:

"61-32-31. TERMINATION OF AGENCY LIFE--DELAYED

REPEAL.--The board of thanatopractice is terminated on July1, 2017, pursuant to the provisions of the Sunset Act. The board shall continue to operate according to the

provisions of Section 12-9-18 NMSA 1978 until July 1, 2018. Effective July 1, 2018, the Thanatopractice Act is repealed."

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House Bill 211

Approved March 16, 2011

## **LAWS 2011, CHAPTER 5**

### **AN ACT**

RELATING TO BEHAVIORAL HEALTH; PROVIDING FOR THE ESTABLISHMENT OF AN INTERAGENCY BEHAVIORAL HEALTH PURCHASING COLLABORATIVE PILOT PROJECT TO CREATE A PARTNERSHIP OF A BEHAVIORAL HEALTH PROVIDER NETWORK AND ANOTHER ENTITY TO DELIVER BEHAVIORAL HEALTH SERVICES AND MANAGE CARE IN DESIGNATED AREAS OF THE STATE.

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

### **Chapter 5 Section 1 Laws 2011**

SECTION 1. TEMPORARY PROVISION--INTERAGENCY BEHAVIORAL HEALTH PURCHASING COLLABORATIVE--STATEWIDE ENTITY PILOT PROJECT.--

A. By July 1, 2013 and contingent upon federal approval of any necessary medicaid state plan amendment or waiver, the interagency behavioral health purchasing collaborative shall consider implementing a pilot project that provides for:

(1) a network of behavioral health providers, which shall form a partnership with another entity to submit a contract with a duration of at least two years for collaborative approval pursuant to Paragraph (2) of Subsection F of Section 9-7-6.4 NMSA 1978 to provide behavioral health services and to manage care as a regional behavioral health entity pursuant to Paragraph (5) of Subsection B of Section 9-7-6.4 NMSA 1978;

(2) a partnership between the network of behavioral health providers and another entity to establish a behavioral health entity that shall entail the network of providers having at least fifty-one percent control of the behavioral health entity; and

(3) a pilot project design that establishes the behavioral health entity to meet criteria for licensure as a risk-bearing entity by the insurance division of the public regulation commission.

B. As the interagency behavioral health purchasing collaborative deems necessary, it shall coordinate with the behavioral health entity established pursuant to Subsection A of this section to designate what region or regions of the state the entity will serve and conduct a readiness review to ensure that the entity will have the staff, resources, information technology, administrative procedures and other components in place to fully implement the pilot project and successfully deliver behavioral health services in the area to be served by July 1, 2013.

C. The interagency behavioral health purchasing collaborative shall amend its existing contract with the current statewide entity to provide, during the period of the pilot project's operation, for the exclusive implementation of the pilot project in designated areas of the state.

D. If necessary, the interagency behavioral health purchasing collaborative shall seek federal approval of a state plan amendment or medicaid waiver to carry out the provisions of this section.

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House Bill 432, aa

Approved March 17, 2011

## **LAWS 2011, CHAPTER 6**

### **AN ACT**

RELATING TO EDUCATIONAL RETIREMENT; REQUIRING RETIRED MEMBERS WHO RETURN TO WORK TO MAKE CERTAIN NONREFUNDABLE PAYMENTS TO THE EDUCATIONAL RETIREMENT FUND; REDUCING THE PAYMENTS MADE TO THE FUND BY THE LOCAL ADMINISTRATIVE UNITS THAT EMPLOY RETIRED MEMBERS.

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

### **Chapter 6 Section 1 Laws 2011**

SECTION 1. Section 22-11-25.1 NMSA 1978 (being Laws 2001, Chapter 283, Section 2, as amended) 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 pay to the fund an amount equal to the member contributions that would be required pursuant to Section 22-11-21 NMSA 1978 if the retired member was a non-retired employee and the local administrative unit employing the retired member shall pay to the fund an amount equal to the local administrative unit contributions that would be required pursuant to that section. Payments made by a retired member pursuant to this subsection shall not be refunded.

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 6 Section 2 Laws 2011**

SECTION 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.

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House Bill 129, aa

Approved March 17, 2011

## **LAWS 2011, CHAPTER 7**

AN ACT

RELATING TO MOTOR VEHICLES; AUTHORIZING SPECIAL BLOOD DONOR RECOGNITION REGISTRATION PLATES; MAKING AN APPROPRIATION.

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

## **Chapter 7 Section 1 Laws 2011**

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

"SPECIAL BLOOD DONOR RECOGNITION REGISTRATION PLATE.--

A. The department shall issue a standardized special registration plate with a logo as specified in Section 66-3-424 NMSA 1978 recognizing blood donors.

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 blood donor recognition registration plate. The owner shall apply for and pay the fee each year to retain and renew the special blood donor recognition plate.



C. The revenue from the additional fee for the special blood donor recognition 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 blood donor recognition registration plate; and

(2) twenty-five dollars (\$25.00) of the additional fee collected shall be distributed to and is appropriated to the department of health for the purpose of funding blood donation outreach and education."

## **Chapter 7 Section 2 Laws 2011**

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.

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Senate Bill 140

Approved March 17, 2011

## **LAWS 2011, CHAPTER 8**

AN ACT

RELATING TO DOMESTIC AFFAIRS; ALLOWING ALLEGED VICTIMS OF DOMESTIC ABUSE TO OBTAIN RELEVANT PHOTOGRAPHS WITHOUT COST; AMENDING A SECTION OF THE FAMILY VIOLENCE PROTECTION ACT.

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

## **Chapter 8 Section 1 Laws 2011**

SECTION 1. Section 40-13-3.1 NMSA 1978 (being Laws 1995, Chapter 176, Section 1, as amended) is amended to read:

"40-13-3.1. FORBEARANCE OF COSTS ASSOCIATED WITH DOMESTIC ABUSE OFFENSES.--

A. An alleged victim of domestic abuse shall not be required to bear the cost of:

(1) the prosecution of a misdemeanor or felony offense arising out of an incident of domestic abuse, including costs associated with filing a criminal charge against the alleged perpetrator of the abuse;

(2) the filing, issuance or service of a warrant;

(3) the filing, issuance or service of a witness subpoena;

(4) the filing, issuance or service of a petition for an order of protection;

(5) the filing, issuance or service of an order of protection; or

(6) obtaining law enforcement reports or photographs or copies of photographs relating to the alleged abuse or pattern of abuse.

B. No witness fee shall be charged where prohibited by federal law."

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Senate Bill 110

Approved March 17, 2011

## **LAWS 2011, CHAPTER 9**

AN ACT

RELATING TO PUBLIC FINANCES; AUTHORIZING THE STATE INVESTMENT COUNCIL TO CONTRACT FOR LEGAL SERVICES ON A CONTINGENT FEE BASIS; CREATING A FUND; DECLARING AN EMERGENCY.

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

### **Chapter 9 Section 1 Laws 2011**

SECTION 1. Section 6-8-7 NMSA 1978 (being Laws 1957, Chapter 179, Section 7, as amended) is amended to read:

"6-8-7. POWERS AND DUTIES OF THE STATE INVESTMENT COUNCIL AND STATE INVESTMENT OFFICER--INVESTMENT POLICY--INVESTMENT MANAGERS.--

A. Subject to the limitations, conditions and restrictions contained in policymaking regulations or resolutions adopted by the council, the council may make purchases, sales, exchanges, investments and reinvestments of the assets of all funds

in accordance with the Uniform Prudent Investor Act. The state investment officer and the council are trustees of all funds under their control and shall see that money invested is at all times handled in the best interests of the state. The council may delegate administrative functions to the state investment officer.

B. The state investment officer shall formulate and recommend to the council for approval investment regulations or resolutions pertaining to the kind or nature of investments and limitations, conditions and restrictions upon the methods, practices or procedures for investment, reinvestment, purchase, sale or exchange transactions that should govern the activities of the investment office.

C. The council shall meet at least once each month, and as often as exigencies may demand, to consult with the state investment officer concerning the work of the investment office. The council shall have access to all files and records of the investment office and shall require the state investment officer to report on and provide information necessary to the performance of council functions. The council may hire one or more investment management firms to advise the council with respect to the council's overall investment plan for the investment of all funds managed by the investment office and pay reasonable compensation for such advisory services from the assets of the applicable funds, subject to budgeting and appropriation by the legislature. The terms of any such investment management services contract shall incorporate the statutory requirements for investment of funds under the council's jurisdiction.

D. The council shall provide an opportunity for public comment at meetings of the council. Advance notice of meetings shall be published on the council's web site and in a newspaper of general circulation at least ten days in advance of the meeting.

E. All funds managed by the state investment officer shall be managed in accordance with the Uniform Prudent Investor Act. The council may employ investment management services to invest the funds and may pay reasonable compensation for investment management services from the assets of the applicable funds, subject to budgeting and appropriation by the legislature.

F. The council, the state investment officer, any person providing investment advice to the council or state investment officer for a fee or other compensation and all persons exercising discretionary authority or control of funds under the management of the council are fiduciaries.

G. The council may contract for legal services for litigation on a contingent or partly contingent fee basis, subject to an expedited solicitation process devised and approved by the council; provided that:

(1) amounts recovered by the legal services contractor shall be deposited in the state investment council suspense fund;

(2) the council shall submit each proposed contract to the attorney general and the department for review of the contingency fee. The attorney general's and the department's review shall take into account the complexity of the factual and legal issues presented by the claims to be pursued under the contract. If the attorney general or the department advises the council that the proposed contingency fee is not reasonable, the council may nevertheless approve the contract and the contingency fee by a majority vote of its members; and

(3) each prospective legal services contractor seeking to represent the council on a contingent or partly contingent fee basis shall file with the council the disclosure required by Section 13-1-191.1 NMSA 1978 disclosing all campaign contributions made to the governor, attorney general, state treasurer or any member of the council, or to a political committee that is intended to aid or promote the nomination or election of any candidate to a state office if the committee is:

(a) established by any of the foregoing persons or their agents;

(b) established in consultation with or at the request of any of the foregoing persons or their agents; or

(c) controlled by one of the foregoing persons or their agents.

H. The council may select and contract for the services of one or more custodian banks for all funds under the council's management. For the purpose of this subsection, "custodian bank" means a financial institution with the general fiduciary duties to manage, control and collect the assets of an investment fund, including receiving all deposits and paying all disbursements as directed by staff, safekeeping of assets, coordination of asset transfers, timely settlement of securities transactions and accurate and timely reporting of the assets by individual account and in total.

I. For funds available for investment for more than one year, the council may contract with any state agency to provide investment advisory or investment management services, separately or through a pooled investment fund, provided the state agency enters into a joint powers agreement with the council and that state agency pays at least the direct cost of such services. Notwithstanding any statutory provision governing state agency investments, the council may invest funds available from a state agency pursuant to a joint powers agreement in any type of investment permitted for the land grant permanent funds under the prudent investor rule. In performing investment services for a state agency, the council and the state investment officer are exempt from the New Mexico Uniform Securities Act. As used in this subsection, "state agency" means any branch, agency, department, board, instrumentality, institution or political subdivision of the state, the New Mexico finance authority, the New Mexico mortgage finance authority and any tax-exempt private endowment entity whose sole beneficiary is a state agency.

J. The state investment officer shall provide quarterly performance reports to the legislative finance committee. Annually, the state investment officer shall ratify and provide written investment policies, including any amendments, to the legislative finance committee."

## **Chapter 9 Section 2 Laws 2011**

SECTION 2. A new section of Chapter 6, Article 8 NMSA 1978 is enacted to read:

"COMPENSATION UNDER CONTINGENT FEE CONTRACTS--SUSPENSE FUND CREATED.--

A. For the purpose of making disbursements and distributions pursuant to this section, the "state investment council suspense fund" is created in the state treasury.

B. When pursuing a claim and utilizing legal services on a contingent fee basis, all amounts received by the legal services contractor as satisfaction of the claim shall be transferred to the council and deposited into the state investment council suspense fund to the credit of the council. Upon the direction of the state investment officer, the contingent attorney fees due to the legal services contractor shall be disbursed from the suspense fund to the contractor.

C. After a disbursement to a contractor pursuant to Subsection B of this section, the balance of the deposit into the state investment council suspense fund shall be distributed to the appropriate permanent fund or other appropriate fund from which the loss occurred that originated the claim pursued by the legal services contractor."

## **Chapter 9 Section 3 Laws 2011**

SECTION 3. A new section of Chapter 6, Article 8 NMSA 1978 is enacted to read:

"QUI TAM PLAINTIFFS.--Nothing in this 2011 act shall prejudice or impair the rights of a qui tam plaintiff pursuant to the Fraud Against Taxpayers Act."

## **Chapter 9 Section 4 Laws 2011**

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

Approved March 17, 2011

## **LAWS 2011, CHAPTER 10**

AN ACT

RELATING TO PUBLIC SCHOOLS; ENACTING THE A-B-C-D-F SCHOOLS RATING ACT; PROVIDING FOR A RATING SYSTEM TO GRADE PUBLIC SCHOOLS IN A WAY EASILY UNDERSTANDABLE BY PARENTS, SCHOOL PERSONNEL AND THE COMMUNITY; ESTABLISHING CRITERIA FOR RATING PUBLIC SCHOOLS; PROVIDING SCHOOL OPTIONS; PROVIDING FUNDING FOR FAILING SCHOOLS TO IMPLEMENT PROGRAMS LINKED TO IMPROVED STUDENT ACHIEVEMENT; 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 10 Section 1 Laws 2011**

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 "A-B-C-D-F Schools Rating Act"."

### **Chapter 10 Section 2 Laws 2011**

SECTION 2. A new section of the Public School Code is enacted to read:

"DEFINITIONS.--As used in the A-B-C-D-F Schools Rating Act:

A. "growth" means learning a year's worth of knowledge in one year's time, which is demonstrated by a student's performance on New Mexico standards-based assessments that shows the student:

(1) moving from one performance level to a higher performance level;

(2) maintaining a proficient or advanced proficient performance level as provided by department rule; or

(3) remaining in beginning step or nearing proficient performance level but improving a number of scale score points as specified by department rule; and

B. "school options" means a right to transfer to any public school not rated an F in the state or have children continue their schooling through distance learning offered through the statewide or a local cyber academy."

## **Chapter 10 Section 3 Laws 2011**

SECTION 3. A new section of the Public School Code is enacted to read:

"RATING CERTAIN SCHOOLS.--Commencing with the 2011-2012 school year, public schools shall be subject to being rated annually by the department as provided in the A-B-C-D-F Schools Rating Act."

## **Chapter 10 Section 4 Laws 2011**

SECTION 4. A new section of the Public School Code is enacted to read:

"ANNUAL RATINGS--LETTER GRADES--RATINGS BASED ON STANDARDS-BASED TESTS--RIGHT TO SCHOOL CHOICE--DISTANCE LEARNING--RESPONSIBILITY FOR COST--USE OF FUNDS--ADDITIONAL REMEDY.--

A. All public schools shall be graded annually by the department.

B. The department shall assign a letter grade of A, B, C, D or F to each public school pursuant to criteria established by department rules, after input from the secretary's superintendents' council, that include as a minimum a combination of the following factors in a public school's grade:

(1) for elementary and middle schools:

(a) student proficiency, including achievement on the New Mexico standards-based assessments;

(b) student growth in reading and mathematics; and

(c) growth of the lowest twenty-fifth percentile of students in the public school in reading and mathematics; and

(2) for high schools:

(a) student proficiency, including achievement on the New Mexico standards-based assessments;

(b) student growth in reading and mathematics;

(c) growth of the lowest twenty-fifth percentile of students in the high school in reading and mathematics; and

(d) additional academic indicators such as high school graduation rates, growth in high school graduation rates, advanced placement and international baccalaureate courses, dual enrollment courses and SAT and ACT scores.

C. The New Mexico standards-based assessments used for rating a school are those administered annually to students in grades three, four, five, six, seven, eight, nine and eleven pursuant to Section 22-2C-4 NMSA 1978.

D. In addition to any rights a parent may have pursuant to federal law, the parent of a student enrolled in a public school rated F for two of the last four years has the right to transfer the student in the same grade to any public school in the state not rated F or the right to have the student continue schooling by means of distance learning offered through the statewide or a local cyber academy. The school district or charter school in which the student is enrolled is responsible for the cost of distance learning.

E. The department shall ensure that a local school board or governing body of a charter school is prioritizing resources of a public school rated D or F toward proven programs and methods linked to improved student achievement until the public school earns a grade of C or better for two consecutive years.

F. The school options available pursuant to the

A-B-C-D-F Schools Rating Act are in addition to any remedies provided for in the Assessment and Accountability Act for students in schools in need of improvement or any other interventions prescribed by the federal No Child Left Behind Act of 2001."

## **Chapter 10 Section 5 Laws 2011**

SECTION 5. Section 22-8-11 NMSA 1978 (being Laws 1967, Chapter 16, Section 66, as amended) is amended to read:

"22-8-11. BUDGETS--APPROVAL OF OPERATING BUDGET.--

A. The department shall:

(1) on or before July 1 of each year, approve and certify to each local school board and governing body of a state-chartered charter school an operating budget for use by the school district or state-chartered charter school;

(2) make corrections, revisions and amendments to the operating budgets fixed by the local school boards or governing bodies of state-chartered charter schools and the secretary to conform the budgets to the requirements of law and to the department's rules and procedures; and



(3) ensure that a local school board or governing body of a charter school is prioritizing resources of a public school rated D or F toward proven programs and methods that are linked to improved student achievement until the public school earns a grade of C or better for two consecutive years.

B. No school district or state-chartered charter school or officer or employee of a school district or state-chartered charter school shall make any expenditure or incur any obligation for the expenditure of public funds unless that expenditure or obligation is made in accordance with an operating budget approved by the department. This prohibition does not prohibit the transfer of funds pursuant to the department's rules and procedures.

C. The department shall not approve and certify an operating budget of any school district or state-chartered charter school that fails to demonstrate that parental involvement in the budget process was solicited."

## **Chapter 10 Section 6 Laws 2011**

SECTION 6. Section 22-8-18 NMSA 1978 (being Laws 1974, Chapter 8, Section 8, as amended by Laws 2007, Chapter 347, Section 1 and by Laws 2007, Chapter 348, Section 2 and also by Laws 2007, Chapter 365, Section 1) is amended to read:

"22-8-18. PROGRAM COST CALCULATION--LOCAL RESPONSIBILITY.--

A. The total program units for the purpose of computing the program cost shall be calculated by multiplying the sum of the program units itemized as Paragraphs (1) through (6) in this subsection by the instructional staff training and experience index and adding the program units itemized as Paragraphs (7) through (13) in this subsection. The itemized program units are as follows:

(1) early childhood education;

(2) basic education;

(3) special education, adjusted by subtracting the units derived from membership in class D special education programs in private, nonsectarian, nonprofit training centers;

(4) bilingual multicultural education;

(5) fine arts education;

(6) elementary physical education;

(7) size adjustment;

(8) at-risk program;

(9) enrollment growth or new district adjustment;

(10) special education units derived from membership in class D special education programs in private, nonsectarian, nonprofit training centers;

(11) national board for professional teaching standards certification;

(12) home school student activities; and

(13) charter school student activities.

B. The total program cost calculated as prescribed in Subsection A of this section includes the cost of early childhood, special, bilingual multicultural, fine arts and vocational education and other remedial or enrichment programs. It is the responsibility of the local school board or governing body of a charter school to determine its priorities in terms of the needs of the community served by that board. Except as otherwise provided in this section, funds generated under the Public School Finance Act are discretionary to local school boards and governing bodies of charter schools, provided that the special program needs as enumerated in this section are met; provided, however, that if a public school has been rated D or F for two consecutive years, the department shall ensure that the local school board or governing body of a charter school is prioritizing resources for the public school toward proven programs and methods linked to improved student achievement until the public school earns a C or better for two consecutive years."

## **Chapter 10 Section 7 Laws 2011**

SECTION 7. SEVERABILITY.--If any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

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Senate Bill 427, aa

Approved March 29, 2011

## **LAWS 2011, CHAPTER 11**

AN ACT

RELATING TO PUBLIC SCHOOLS; AMENDING THE PUBLIC SCHOOL CAPITAL IMPROVEMENTS ACT AND THE PUBLIC SCHOOL BUILDINGS ACT TO REQUIRE CHARTER SCHOOLS TO REPORT ANTICIPATED AND ACTUAL EXPENDITURES OF DISTRIBUTIONS MADE PURSUANT TO THOSE ACTS.

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

## **Chapter 11 Section 1 Laws 2011**

SECTION 1. A new section of the Public School Capital Improvements Act is enacted to read:

"EXPENDITURES BY CHARTER SCHOOLS--REPORTS TO DEPARTMENT.--

A. No later than December 1 of each year, each locally chartered or state-chartered charter school that expects a state distribution or a distribution of property taxes pursuant to the Public School Capital Improvements Act during the next calendar year shall submit a report to the department and its chartering authority showing the purposes for which the expected distribution will be expended. The department shall review the report and, no later than twenty days after receiving the report, shall advise the charter school if, in its opinion, the proposed expenditures are consistent with law and shall provide a copy of the advice to the local district.

B. No later than January 31 of each year, each locally chartered or state-chartered charter school that received a state distribution or a distribution of property taxes pursuant to the Public School Capital Improvements Act during the preceding calendar year shall submit a report to the department and its chartering authority showing the purposes for which the distribution was expended and the amount expended for each purpose."

## **Chapter 11 Section 2 Laws 2011**

SECTION 2. A new section of the Public School Buildings Act is enacted to read:

"EXPENDITURES BY CHARTER SCHOOLS--REPORTS TO DEPARTMENT.--

A. No later than December 1 of each year, each locally chartered or state-chartered charter school that expects a distribution of property taxes pursuant to the Public School Buildings Act during the next calendar year shall submit a report to the department and its chartering authority showing the purposes for which the expected distribution will be expended. The department shall review the report and, no later than twenty days after receiving the report, shall advise the charter school if, in its opinion, the proposed expenditures are consistent with law and shall provide a copy of the advice to the local district.

B. No later than January 31 of each year, each locally chartered or state-chartered charter school that received a distribution of property taxes pursuant to the Public School Buildings Act during the preceding calendar year shall submit a report to the department and its chartering authority showing the purposes for which the distribution was expended and the amount expended for each purpose."

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House Bill 113, aa

Approved March 30, 2011

## **LAWS 2011, CHAPTER 12**

### **AN ACT**

RELATING TO PUBLIC SCHOOL FINANCE; REQUIRING QUARTERLY FINANCIAL REPORTING TO LOCAL SCHOOL BOARDS OR GOVERNING BODIES OF CHARTER SCHOOLS; PROVIDING THE PUBLIC EDUCATION DEPARTMENT WITH THE AUTHORITY TO PROMULGATE RULES GOVERNING THE USE OF PROCUREMENT, TRAVEL AND GAS CARDS BY SCHOOL DISTRICTS AND CHARTER SCHOOLS; ENACTING NEW SECTIONS OF THE PUBLIC SCHOOL FINANCE ACT.

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

### **Chapter 12 Section 1 Laws 2011**

SECTION 1. A new section of the Public School Finance Act is enacted to read:

"FINANCIAL REPORTING.--

A. Each local superintendent or person in charge of the fiscal management of a charter school shall provide quarterly reports on the financial position of the school district or charter school, as applicable, to the local school board of the school district or the governing body of the charter school for use in reviewing the financial status of the school district or charter school. The department shall develop the forms to be used for the financial reporting required under this section. The forms shall provide for at least the following:

- (1) a report on the budget status of the local school district or charter school, including the approved operating budget for revenues and expenses compared with year-to-date actual revenue and expenses;
- (2) a statement of any budget adjustment requests;
- (3) cash reports, including revenue, expenses, temporary loans and cash balances for operational, state and federal grants, capital outlay and debt service funds;
- (4) voucher reports, including a list of issued warrants or checks;

(5) reports listing procurement, travel or gas card expenses; and

(6) investment reports.

B. School districts and charter schools shall post the reports required under Subsection A of this section on the school district's or charter school's web site.

C. As used in this section:

(1) "charter school" means a school organized as a charter school pursuant to the provisions of the Charter Schools Act; and

(2) "governing body" means the governing structure of a charter school as set forth in the school's charter."

## **Chapter 12 Section 2 Laws 2011**

SECTION 2. A new section of the Public School Finance Act is enacted to read:

"PROCUREMENT, TRAVEL AND GAS CARDS.--

A. The department shall promulgate rules governing the use of procurement, travel and gas cards by school districts and charter schools. At a minimum, the rules shall require local school boards and governing bodies to adopt policies for the use of procurement, travel or gas cards, including placing limits on the amount and types of purchases that may be made on such cards and procedures to monitor, control and report expenditures.

B. As used in this section:

(1) "charter school" means a school organized as a charter school pursuant to the provisions of the Charter Schools Act; and

(2) "governing body" means the governing structure of a charter school as set forth in the school's charter."

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House Bill 252

Approved March 30, 2011

## **LAWS 2011, CHAPTER 13**

AN ACT

RELATING TO GOVERNMENT TRANSPARENCY; AMENDING THE SUNSHINE PORTAL TRANSPARENCY ACT TO REQUIRE THAT CERTAIN PUBLIC SCHOOL INFORMATION BE AVAILABLE ON THE SUNSHINE PORTAL, TO CLARIFY CERTAIN PROVISIONS AND TO ALLOW ACCESS TO ADDITIONAL INFORMATION.

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

### **Chapter 13 Section 1 Laws 2011**

SECTION 1. Section 10-16D-1 NMSA 1978 (being Laws 2010, Chapter 34, Section 1) is amended to read:

"10-16D-1. SHORT TITLE.--Chapter 10, Article 16D NMSA 1978 may be cited as the "Sunshine Portal Transparency Act"."

### **Chapter 13 Section 2 Laws 2011**

SECTION 2. Section 10-16D-2 NMSA 1978 (being Laws 2010, Chapter 34, Section 2) is amended to read:

"10-16D-2. DEFINITIONS.--As used in the Sunshine Portal Transparency Act:

A. "contract" means an agreement with a state agency for:

- (1) the rendition of services, including professional services;
- (2) the furnishing of any material, supplies or equipment;
- (3) the construction, alteration or repair of any public building or public work;
- (4) the acquisition, sale or lease of any land or building;
- (5) a licensing arrangement;
- (6) a loan or loan guarantee; or
- (7) the purchase of financial securities or instruments;

B. "department" means the department of information technology, or its successor agency;

C. "exempt employee" means an employee of the state or a state agency who is in a policymaking or supervisory position and who serves at the discretion of the agency head or at the discretion of an appointee of the agency head;

D. "expenditure" means:

(1) for a state agency, a disbursement of state or federal funds by the state agency, whether or not the funds have been appropriated by the legislature; or

(2) for a local education provider, a disbursement of federal, state or other funds by the local education provider;

E. "federal funds" means money received by a state agency from the federal government or one of its branches, departments, agencies, offices, officers or instrumentalities;

F. "local education provider" means:

(1) a school district, including the local school board for that school district; or

(2) a locally chartered or state-chartered charter school, including the governing body of that charter school;

G. "revenue" means:

(1) for a state agency, money received by the state agency and deposited into the general fund or another state fund. "Revenue" includes money from taxes, fines, fees, royalties, federal funds and other sources but does not include money deposited into a state suspense fund; or

(2) for a local education provider, all money received by the local education provider, including federal and state grants, state distributions, property tax revenues and donations; and

H. "state agency" means the New Mexico state government or any department, division, institution, board, bureau, commission or committee of state government and includes any office or officer of any of the above."

## **Chapter 13 Section 3 Laws 2011**

SECTION 3. Section 10-16D-3 NMSA 1978 (being Laws 2010, Chapter 34, Section 3) is amended to read:

"10-16D-3. SUNSHINE PORTAL--DEPARTMENT DUTIES.--

A. The department, with the department of finance and administration, shall develop, operate and maintain a single internet web site that is free, user-friendly, searchable and accessible to the public, known as the "sunshine portal", to host the

state's financial information for the purpose of governmental transparency and accountability to taxpayers.

B. No later than October 1, 2010, the department shall create the architecture and the information exchange process for the collection and electronic publication of the state's financial information.

C. No later than July 1, 2011, the sunshine portal shall be available for public access and include updated information as required by Subsection D of this section.

D. The sunshine portal shall provide, at a minimum, access to the following information:

- (1) the state's cash balances by account or fund;
- (2) a monthly summary of the state's investment accounts;
- (3) annual operating budgets for each state agency with monthly expenditures by category;
- (4) contracts that a state agency enters into for the lease, sale or development of state land and state contracts that have a total contract price of more than twenty thousand dollars (\$20,000), naming the recipient of the contract, the purpose of the contract and the amounts expended;
- (5) the revenue that the state received in the preceding month by source, such as type of tax, fee, fine, administrative fee or other collection category;
- (6) special appropriations received outside the general appropriation act by each state agency and the purpose of those appropriations;
- (7) approved budget adjustment requests by state agency and affected budget category;
- (8) quarterly consensus revenue estimates;
- (9) reversions and cash balances by state agency and fund;
- (10) appropriations for capital projects, identified by project location, type of project and funding source;
- (11) a directory of all employee positions, other than exempt employee positions, identified only by state agency, position title and salary;



(12) a directory of all exempt employee positions, identified by state agency, position title, salary and the name of the individual that holds the position;

(13) information relating to local education providers compiled and published by the public education department pursuant to Section 10-16D-6 NMSA 1978;

(14) a link to an open meeting tracker web site upon which each state agency shall post open meetings scheduled for the current month and the next month, including the time and place of the meeting, the subject of the meeting and an agenda;

(15) a link to the web site maintained by the regulation and licensing department for the purpose of accessing information relating to occupational licenses;

(16) a link to the state auditor's web site for the purpose of accessing financial audits;

(17) a link to New Mexico's statutes;

(18) a link to the New Mexico Administrative Code;

(19) a link to the secretary of state's web sites for lobbyist regulation;

(20) an annual summary within three months after the end of the fiscal year, or as soon thereafter as the information becomes available, of the state's fiscal health, including the state budget, revenues and expenditures for the previous fiscal year and projected revenues and operating budgets for the current fiscal year; and

(21) additional information, as required by rule of the department of finance and administration, that will assist the public in understanding state government operations and the use of taxpayer dollars.

E. State agencies shall provide updated financial information as frequently as possible but at least monthly.

F. The department shall update the web site as new information is received but at least monthly, include information from the previous month or year, where relevant, for comparison purposes and maintain the web site as the primary source of public information about the activity of the state government."

## **Chapter 13 Section 4 Laws 2011**

SECTION 4. A new section of the Sunshine Portal Transparency Act, Section 10-16D-6 NMSA 1978, is enacted to read:

"10-16D-6. LOCAL EDUCATION PROVIDERS--REQUIRED INFORMATION--PUBLICATION BY PUBLIC EDUCATION DEPARTMENT ON THE SUNSHINE PORTAL.--

A. Commencing no later than July 1, 2012, and on a continuing basis thereafter, each local education provider shall provide the following information to the public education department for online publication on the sunshine portal, in a downloadable format, for free public access:

(1) the annual operating budget, commencing with the budget for fiscal year 2012;

(2) salary schedules and policies;

(3) a directory of the local education provider's employee positions by school name, title and salary;

(4) monthly expenditures by category;

(5) monthly revenue by source; and

(6) an inventory of all real property owned by the local education provider, including the location of the property, the size of the property, a description of the improvements on the property and a description of the use of the property.

B. As soon as practicable after July 1, 2011, the public education department shall begin working with the department of information technology to create a monthly data extract from applicable computer database systems. As information is received pursuant to Subsection A of this section, the public education department, working with the department of information technology, shall publish the information on the sunshine portal.

C. The public education department and each local education provider that maintains a web site shall have a link to the sunshine portal on its web site."

## **Chapter 13 Section 5 Laws 2011**

SECTION 5. TEMPORARY PROVISION--IMPLEMENTATION.--

A. The information required by Paragraph (13) of Subsection D of Section 10-16D-3 NMSA 1978 shall be available on the sunshine portal as soon as possible, but no later than October 1, 2012.

B. The information required by Paragraphs (15) and (16) of Subsection D of Section 10-16D-3 NMSA 1978 shall be available on the sunshine portal as soon as possible, but no later than January 1, 2012.

## **Chapter 13 Section 6 Laws 2011**

SECTION 6. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.

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Senate Bill 327, aa

Approved March 30, 2011

## **LAWS 2011, CHAPTER 14**

AN ACT

RELATING TO EDUCATION; AMENDING AND ENACTING SECTIONS OF THE CHARTER SCHOOLS ACT; PROVIDING FOR CHARTER SCHOOL CONTRACTS; REQUIRING CHARTER CONTRACTS BETWEEN A CHARTER SCHOOL AND THE CHARTERING AUTHORITY AND SETTING FORTH CONTRACT REQUIREMENTS; ESTABLISHING CONFLICT OF INTEREST PROCEDURES FOR A CHARTER SCHOOL GOVERNING BODY AND ADMINISTRATION; CREATING AN ANNUAL EVALUATION PROCESS FOR CHARTER SCHOOLS.

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

## **Chapter 14 Section 1 Laws 2011**

SECTION 1. Section 22-8B-4 NMSA 1978 (being Laws 1999, Chapter 281, Section 4, as amended) is amended to read:

"22-8B-4. CHARTER SCHOOLS' RIGHTS AND

RESPONSIBILITIES--OPERATION.--

A. A charter school shall be subject to all federal and state laws and constitutional provisions prohibiting discrimination on the basis of disability, physical or mental handicap, serious medical condition, race, creed, color, sex, gender identity, sexual orientation, spousal affiliation, national origin, religion, ancestry or need for special education services.

B. A charter school shall be governed by a governing body in the manner set forth in the charter contract; provided that a governing body shall have at least five members; and provided further that no member of a governing body for a charter school that is initially approved on or after July 1, 2005 or whose charter is renewed on or after July 1, 2005 shall serve on the governing body of another charter school. No member of a local school board shall be a member of a governing body for a charter school or employed in any capacity by a locally chartered charter school located within the local school board's school district during the term of office for which the member was elected or appointed.

C. A charter school shall be responsible for:

(1) its own operation, including preparation of a budget, subject to audits pursuant to the Audit Act; and

(2) contracting for services and personnel matters.

D. A charter school may contract with a school district, a university or college, the state, another political subdivision of the state, the federal government or one of its agencies, a tribal government or any other third party for the use of a facility, its operation and maintenance and the provision of any service or activity that the charter school is required to perform in order to carry out the educational program described in its charter contract. Facilities used by a charter school shall meet the standards required pursuant to Section 22-8B-4.2 NMSA 1978.

E. A conversion school chartered before July 1, 2007 may choose to continue using the school district facilities and equipment it had been using prior to conversion, subject to the provisions of Subsection F of this section.

F. The school district in which a charter school is geographically located shall provide a charter school with available facilities for the school's operations unless the facilities are currently used for other educational purposes. An agreement for the use of school district facilities by a charter school may provide for reasonable lease payments; provided that the payments do not exceed the sum of the lease reimbursement rate provided in Subparagraph (b) of Paragraph (1) of Subsection I of Section 22-24-4 NMSA 1978 plus any reimbursement for actual direct costs incurred by the school district in providing the facilities; and provided further that any lease payments received by a school district may be retained by the school district and shall not be considered to be cash balances in any calculation pursuant to Section 22-8-41 NMSA 1978. The available facilities provided by a school district to a charter school shall meet all occupancy standards as specified by the public school capital outlay council. As used in this subsection, "other educational purposes" includes health clinics, daycare centers, teacher training centers, school district administration functions and other ancillary services related to a school district's functions and operations.

G. A locally chartered charter school may pay the costs of operation and maintenance of its facilities or may contract with the school district to provide facility operation and maintenance services.

H. Locally chartered charter school facilities are eligible for state and local capital outlay funds and shall be included in the school district's five-year facilities plan.

I. A locally chartered charter school shall negotiate with a school district to provide transportation to students eligible for transportation under the provisions of the Public School Code. The school district, in conjunction with the charter school, may establish a limit for student transportation to and from the charter school site not to extend beyond the school district boundary.

J. A charter school shall be a nonsectarian, nonreligious and non-home-based public school.

K. Except as otherwise provided in the Public School Code, a charter school shall not charge tuition or have admission requirements.

L. With the approval of the chartering authority, a single charter school may maintain separate facilities at two or more locations within the same school district; but, for purposes of calculating program units pursuant to the Public School Finance Act, the separate facilities shall be treated together as one school.

M. A charter school shall be subject to the provisions of Section 22-2-8 NMSA 1978 and the Assessment and Accountability Act.

N. Within constitutional and statutory limits, a charter school may acquire and dispose of property; provided that, upon termination of the charter, all assets of the locally chartered charter school shall revert to the local school board and all assets of the state-chartered charter school shall revert to the state, except that, if all or any portion of a state-chartered charter school facility is financed with the proceeds of general obligation bonds issued by a local school board, the facility shall revert to the local school board.

O. The governing body of a charter school may accept or reject any charitable gift, grant, devise or bequest; provided that no such gift, grant, devise or bequest shall be accepted if subject to any condition contrary to law or to the terms of the charter. The particular gift, grant, devise or bequest shall be considered an asset of the charter school to which it is given.

P. The governing body may contract and sue and be sued. A local school board shall not be liable for any acts or omissions of the charter school.

Q. A charter school shall comply with all state and federal health and safety requirements applicable to public schools, including those health and safety codes relating to educational building occupancy.

R. A charter school is a public school that may contract with a school district or other party for provision of financial management, food services, transportation, facilities, education-related services or other services. The governing body shall not contract with a for-profit entity for the management of the charter school.

S. To enable state-chartered charter schools to submit required data to the department, an accountability data system shall be maintained by the department.

T. A charter school shall comply with all applicable state and federal laws and rules related to providing special education services. Charter school students with disabilities and their parents retain all rights under the federal Individuals with Disabilities Education Act and its implementing state and federal rules. Each charter school is responsible for identifying, evaluating and offering a free appropriate public education to all eligible children who are accepted for enrollment in that charter school. The state-chartered charter school, as a local educational agency, shall assume responsibility for determining students' needs for special education and related services. The division may promulgate rules to implement the requirements of this subsection."

## **Chapter 14 Section 2 Laws 2011**

SECTION 2. Section 22-8B-8 NMSA 1978 (being Laws 1999, Chapter 281, Section 8, as amended) is amended to read:

"22-8B-8. CHARTER APPLICATION--CONTENTS.--The charter school application shall include:

- A. the mission statement of the charter school;
- B. the goals, objectives and student performance outcomes to be achieved by the charter school;
- C. a description of the charter school's educational program, student performance standards and curriculum that must meet or exceed the department's educational standards and must be designed to enable each student to achieve those standards;
- D. a description of the way a charter school's educational program will meet the individual needs of the students, including those students determined to be at risk;
- E. a description of the charter school's plan for evaluating student performance, the types of assessments that will be used to measure student progress

toward achievement of the state's standards and the school's student performance outcomes, the time line for achievement of the outcomes and the procedures for taking corrective action in the event that student performance falls below the standards;

F. evidence that the plan for the charter school is economically sound, including a proposed budget for the term of the charter and a description of the manner in which the annual audit of the financial and administrative operations of the charter school is to be conducted;

G. evidence that the fiscal management of the charter school complies with all applicable federal and state laws and rules relative to fiscal procedures;

H. evidence of a plan for the displacement of students, teachers and other employees who will not attend or be employed in the conversion school;

I. a description of the governing body and operation of the charter school, including:

(1) how the governing body will be selected;

(2) qualification and terms of members, how vacancies on the governing body will be filled and procedures for changing governing body membership; and

(3) the nature and extent of parental, professional educator and community involvement in the governance and operation of the school;

J. an explanation of the relationship that will exist between the proposed charter school and its employees, including evidence that the terms and conditions of employment will be addressed with affected employees and their recognized representatives, if any;

K. the employment and student discipline policies of the proposed charter school;

L. an agreement between the charter school and the chartering authority regarding their respective legal liability and applicable insurance coverage;

M. a description of how the charter school plans to meet the transportation and food service needs of its students;

N. a description of both the discretionary waivers and the waivers provided for in Section 22-8B-5 NMSA 1978 that the charter school is requesting or that will be provided from the local school board or the department and the charter school's plan for addressing and using these waiver requests; and

O. a description of the facilities the charter school plans to use."

## **Chapter 14 Section 3 Laws 2011**

SECTION 3. Section 22-8B-9 NMSA 1978 (being Laws 1999, Chapter 281, Section 9, as amended) is amended to read:

"22-8B-9. CHARTER SCHOOL CONTRACT--CONTENTS--RULES.--

A. The chartering authority shall enter into a contract with the governing body of the applicant charter school within thirty days of approval of the charter application. The charter contract shall be the final authorization for the charter school and shall be part of the charter. If the chartering authority and the applicant charter school fail to agree upon the terms of or enter into a contract within thirty days of the approval of the charter application, either party may appeal to the secretary to finalize the terms of the contract; provided that such appeal must be provided in writing to the secretary within forty-five days of the approval of the charter application. Failure to enter into a charter contract or appeal to the secretary pursuant to this section precludes the chartering authority from chartering the school.

B. The charter contract shall include:

(1) all agreements regarding the release of the charter school from department and local school board rules and policies, including discretionary waivers and waivers provided for in Section 22-8B-5 NMSA 1978;

(2) any material term of the charter application as determined by the parties to the contract;

(3) the mission statement of the charter school and how the charter school will report on implementation of its mission;

(4) the chartering authority's duties to the charter school and liabilities of the chartering authority as provided in Section 8 of this 2011 act;

(5) a statement of admission policies and procedures;

(6) signed assurances from the charter school's governing body members regarding compliance with all federal and state laws governing organizational, programmatic and financial requirements applicable to charter schools;

(7) the criteria, processes and procedures that the chartering authority will use for ongoing oversight of operational, financial and academic performance of the charter school;



(8) a detailed description of how the chartering authority will use the withheld two percent of the school-generated program cost as provided in Section 22-8B-13 NMSA 1978;

(9) the types and amounts of insurance liability coverage to be obtained by the charter school;

(10) the term of the contract;

(11) the process and criteria that the chartering authority intends to use to annually monitor and evaluate the fiscal, overall governance and student performance of the charter school, including the method that the chartering authority intends to use to conduct the evaluation as required by Section 22-8B-12 NMSA 1978;

(12) the dispute resolution processes agreed upon by the chartering authority and the charter school, provided that the processes shall, at a minimum, include:

(a) written notice of the intent to invoke the dispute resolution process, which notice shall include a description of the matter in dispute;

(b) a time limit for response to the notice and cure of the matter in dispute;

(c) a procedure for selection of a neutral third party to assist in resolving the dispute;

(d) a process for apportionment of all costs related to the dispute resolution process; and

(e) a process for final resolution of the issue reviewed under the dispute resolution process;

(13) the criteria, procedures and time lines, agreed upon by the charter school and the chartering authority, addressing charter revocation and deficiencies found in the annual status report pursuant to the provisions of Section 22-8B-12 NMSA 1978;

(14) if the charter school contracts with a third-party provider, the criteria and procedures for the chartering authority to review the provider's contract and the charter school's financial independence from the provider;

(15) all requests for release of the charter school from department rules or the Public School Code. Within ten days after the contract is approved by the local school board, any request for release from department rules or the Public School Code shall be delivered by the local school board to the department. If the department

grants the request, it shall notify the local school board and the charter school of its decision. If the department denies the request, it shall notify the local school board and the charter school that the request is denied and specify the reasons for denial;

(16) an agreement that the charter school will participate in the public school insurance authority;

(17) if the charter school is a state-chartered charter school, a process for qualification of and review of the school as a qualified board of finance and provisions for assurance that the school has satisfied any conditions imposed by the commission; and

(18) any other information reasonably required by either party to the contract.

C. The process for revision or amendment to the terms of the charter contract shall be made only with the approval of the chartering authority and the governing body of the charter school. If they cannot agree, either party may appeal to the secretary as provided in Subsection A of this Section."

## **Chapter 14 Section 4 Laws 2011**

SECTION 4. A new section of the Charter Schools Act is enacted to read:

"PERFORMANCE FRAMEWORK.--

A. The performance provisions in the charter contract shall be based on a framework that clearly sets forth the academic and operations performance indicators, measures and metrics that will guide the chartering authority's evaluation of each charter school. The performance framework shall include indicators, measures and metrics for, at a minimum:

- (1) student academic performance;
- (2) student academic growth;
- (3) achievement gaps in both proficiency and growth between student subgroups;
- (4) attendance;
- (5) recurrent enrollment from year to year;
- (6) if the charter school is a high school, post-secondary readiness;
- (7) if the charter school is a high school, graduation rate;

(8) financial performance and sustainability; and

(9) governing body performance, including compliance with all applicable laws, rules and terms of the charter contract.

B. Annual performance targets shall be set by each chartering authority in consultation with its charter schools and shall be designed to help each charter school meet applicable federal, state and chartering authority expectations as set forth in the charter contracts to which the authority is a party.

C. The performance framework shall allow for the inclusion of additional rigorous, valid and reliable indicators proposed by a charter school to augment external evaluations of its performance, provided that the chartering authority shall approve the quality and rigor of such proposed indicators and the indicators are consistent with the purposes of the Charter Schools Act.

D. The performance framework shall require the disaggregation of all student performance data collected in compliance with this section by student subgroup, including gender, race, poverty status, special education or gifted status and English language learner.

E. The chartering authority shall collect, analyze and report all data from state assessment tests in accordance with the performance framework set forth in the charter contract for each charter school overseen by that chartering authority."

## **Chapter 14 Section 5 Laws 2011**

SECTION 5. Section 22-8B-12 NMSA 1978 (being Laws 1999, Chapter 281, Section 12, as amended) is amended to read:

"22-8B-12. CHARTER SCHOOLS--TERM--OVERSIGHT AND CORRECTIVE ACTIONS--SITE VISITS--RENEWAL OF CHARTER--GROUNDS FOR NONRENEWAL OR REVOCATION.--

A. A charter school may be approved for an initial term of six years; provided that the first year shall be used exclusively for planning and not for completing the application. A charter may be renewed for successive periods of five years each. Approvals of less than five years may be agreed to between the charter school and the chartering authority.

B. During the planning year, the charter school shall file a minimum of three status reports with the chartering authority and the department for the purpose of demonstrating that the charter school's implementation progress is consistent with the conditions, standards and procedures of its approved charter. The report content, format and schedule for submission shall be agreed to by the chartering authority and the charter school and become part of the charter contract.

C. Prior to the end of the planning year, the charter school shall demonstrate that its facilities meet the requirements of Section 22-8B-4.2 NMSA 1978.

D. A chartering authority shall monitor the fiscal, overall governance and student performance and legal compliance of the charter schools that it oversees, including reviewing the data provided by the charter school to support ongoing evaluation according to the charter contract. Every chartering authority may conduct or require oversight activities that allow the chartering authority to fulfill its responsibilities under the Charter Schools Act, including conducting appropriate inquiries and investigations; provided that the chartering authority complies with the provisions of the Charter Schools Act and the terms of the charter contract and does not unduly inhibit the autonomy granted to the charter schools that it governs.

E. As part of its performance review of a charter school, a chartering authority shall visit a charter school under its authority at least once annually to provide technical assistance to the charter school and to determine the status of the charter school and the progress of the charter school toward the performance framework goals in its charter contract.

F. If, based on the performance review conducted by the chartering authority pursuant to Subsection D of this section, a charter school's fiscal, overall governance or student performance or legal compliance appears unsatisfactory, the chartering authority shall promptly notify the governing body of the charter school of the unsatisfactory review and provide reasonable opportunity for the governing body to remedy the problem; provided that if the unsatisfactory review warrants revocation, the revocation procedures set forth in this section shall apply. A chartering authority may take appropriate corrective actions or exercise sanctions, as long as such sanctions do not constitute revocation, in response to the unsatisfactory review. Such actions or sanctions by the chartering authority may include requiring a governing body to develop and execute a corrective action plan with the chartering authority that sets forth time frames for compliance.

G. Every chartering authority shall submit an annual report to the division, including a performance report for each charter school that it oversees, in accordance with the performance framework set forth in the charter contract.

H. The department shall review the annual report received from the chartering authority to determine if the department or local school board rules and policies from which the charter school was released pursuant to the provisions of Section 22-8B-5 NMSA 1978 assisted or impeded the charter school in meeting its stated goals and objectives. The department shall use the annual reports received from the chartering authorities as part of its report to the governor, the legislative finance committee and the legislative education study committee as required by the Charter Schools Act.

I. No later than two hundred seventy days prior to the date in which the charter expires, the governing body may submit a renewal application to the chartering authority. A charter school may apply to a different chartering authority for renewal. The chartering authority shall rule in a public hearing on the renewal application no later than one hundred eighty days prior to the expiration of the charter.

J. A charter school renewal application submitted to the chartering authority shall contain:

(1) a report on the progress of meeting the academic performance, financial compliance and governance responsibilities of the charter school, including achieving the goals, objectives, student performance outcomes, state minimum educational standards and other terms of the charter contract, including the accountability requirements set forth in the Assessment and Accountability Act;

(2) a financial statement that discloses the costs of administration, instruction and other spending categories for the charter school that is understandable to the general public, that allows comparison of costs to other schools or comparable organizations and that is in a format required by the department;

(3) a copy of the charter contract executed in compliance with the provisions of Section 22-8B-9 NMSA 1978;

(4) a petition in support of the charter school renewing its charter status signed by not less than sixty-five percent of the employees in the charter school;

(5) a petition in support of the charter school renewing its charter status signed by at least seventy-five percent of the households whose children are enrolled in the charter school; and

(6) a description of the charter school facilities and assurances that the facilities are in compliance with the requirements of Section 22-8B-4.2 NMSA 1978.

K. A charter may be suspended, revoked or not renewed by the chartering authority if the chartering authority determines that the charter school did any of the following:

(1) committed a material violation of any of the conditions, standards or procedures set forth in the charter contract;

(2) failed to meet or make substantial progress toward achievement of the department's minimum educational standards or student performance standards identified in the charter contract;

(3) failed to meet generally accepted standards of fiscal management; or

(4) violated any provision of law from which the charter school was not specifically exempted.

L. The chartering authority shall develop processes for suspension, revocation or nonrenewal of a charter that:

(1) provide the charter school with timely notification of the prospect of suspension, revocation or nonrenewal of the charter and the reasons for such action;

(2) allow the charter school a reasonable amount of time to prepare and submit a response to the chartering authority's action; and

(3) require the final determination made by the chartering authority to be submitted to the department.

M. If a chartering authority suspends, revokes or does not renew a charter, the chartering authority shall state in writing its reasons for the suspension, revocation or nonrenewal.

N. A decision to suspend, revoke or not to renew a charter may be appealed by the governing body pursuant to Section 22-8B-7 NMSA 1978."

## **Chapter 14 Section 6 Laws 2011**

SECTION 6. A new section of the Charter Schools Act is enacted to read:

"CHARTER SCHOOL CLOSURE--CHARTERING AUTHORITY PROTOCOLS--CHARTERING AUTHORITY DUTIES--DISTRIBUTION OF ASSETS.--

A. Prior to any charter school closure decision, the chartering authority shall develop a charter school closure protocol to ensure timely notification to parents, orderly transition of students and student records to new schools and proper disposition of school funds, property and assets in accordance with the provisions of Subsection C of this section. The protocol shall specify tasks, time lines and responsible parties, including delineating the respective duties of the charter school, the governing body and the chartering authority.

B. If a charter school is ordered closed for any reason, prior to closure, the chartering authority shall oversee and work with the closing school to ensure a smooth and orderly closure and transition for students and parents according to the closure protocol.

C. When a charter school is closed, the assets of the school shall be distributed first to satisfy outstanding payroll obligations for employees of the school, then to creditors of the school and then to the state treasury to the credit of the current school fund. If the assets of the school are insufficient to pay all parties to whom the

schools owes compensation, the prioritization of the distribution of assets may be determined by decree of a court of law."

## **Chapter 14 Section 7 Laws 2011**

SECTION 7. A new section of the Charter Schools Act is enacted to read:

"GOVERNING BODY CONFLICTS OF INTEREST.--

A. A person shall not serve as a member of a governing body of a charter school if the person or an immediate family member of the person is an owner, agent of, contractor with or otherwise has a financial interest in a for-profit or nonprofit entity with which the charter school contracts directly, for professional services, goods or facilities. A violation of this subsection renders the contract between the person or the person's immediate family member and the charter school voidable at the option of the chartering authority, the department or the governing body. A person who knowingly violates this subsection may be individually liable to the charter school for any financial damage caused by the violation.

B. No member of a governing body or employee, officer or agent of a charter school shall participate in selecting, awarding or administering a contract with the charter school if a conflict of interest exists. A conflict of interest exists when the member, employee, officer or agent or an immediate family member of the member, employee, officer or agent has a financial interest in the entity with which the charter school is contracting. A violation of this subsection renders the contract voidable.

C. Any employee, agent or board member of the chartering authority who participates in the initial review, approval, ongoing oversight, evaluation or charter renewal process of a charter school is ineligible to serve on the governing body of the charter school chartered by the chartering authority.

D. As used in this section, "immediate family member" means spouse, father, father-in-law, mother, mother-in-law, son, son-in-law, daughter, daughter-in-law, brother, brother-in-law, sister, sister-in-law or any other relative who is financially supported."

## **Chapter 14 Section 8 Laws 2011**

SECTION 8. A new section of the Charter Schools Act is enacted to read:

"CHARTERING AUTHORITY--POWERS--DUTIES--LIABILITY.--A chartering authority shall:

A. evaluate charter applications;

B. actively pursue the utilization of charter schools to satisfy identified education needs and promote a diversity of educational choices;

C. approve charter applications that meet the requirements of the Charter Schools Act;

D. decline to approve charter applications that fail to meet the requirements of the Charter Schools Act or are otherwise inadequate;

E. negotiate and execute, in good faith, charter contracts that meet the requirements of the Charter Schools Act with each approved charter school;

F. monitor, in accordance with the requirements of the Charter Schools Act and the terms of the charter contract, the performance and legal compliance of charter schools under their authority;

G. determine whether a charter school merits suspension, revocation or nonrenewal; and

H. develop and maintain chartering policies and practices consistent with nationally recognized principles and standards for quality charter authorizing in all major areas of authorizing, including:

(1) organizational capacity and infrastructure;

(2) evaluating charter applications;

(3) performance contracting;

(4) charter school oversight and evaluation; and

(5) charter school suspension, revocation and renewal processes."

## **Chapter 14 Section 9 Laws 2011**

SECTION 9. A new section of the Charter Schools Act is enacted to read:

"DIVISION--ANNUAL REPORT.--By December 1 annually, the division shall issue to the governor, the legislative finance committee and the legislative education study committee a report on the state's charter schools for the school year ending in the preceding calendar year, drawing from the annual reports submitted by every chartering authority as well as any relevant data compiled by the division. The annual report shall include a comparison of the performance of charter school students with the performance of academically, ethnically and economically comparable groups of students in noncharter public schools. The report shall also include an assessment of the successes, challenges and areas for improvement in meeting the purposes of the



Charter Schools Act, including the division's assessment of the sufficiency of funding for charter schools, the efficacy of the state formula for chartering authority funding and any suggested changes to state law or policy necessary to strengthen the state's charter schools. The annual report shall be published on the department's web site."

## **Chapter 14 Section 10 Laws 2011**

SECTION 10. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2012.

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Senate Bill 446, aa

Approved March 30, 2011

## **LAWS 2011, CHAPTER 15**

AN ACT

RELATING TO BEHAVIORAL HEALTH; REQUIRING THE INTERAGENCY BEHAVIORAL HEALTH PURCHASING COLLABORATIVE TO ESTABLISH A STATEWIDE CLEARINGHOUSE FOR NATIVE AMERICAN SUICIDE PREVENTION AND THREE CULTURALLY BASED SUICIDE PREVENTION INITIATIVES FOR NATIVE AMERICANS.

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

## **Chapter 15 Section 1 Laws 2011**

SECTION 1. CLEARINGHOUSE FOR NATIVE AMERICAN SUICIDE PREVENTION--CULTURALLY BASED SUICIDE PREVENTION INITIATIVES.--

A. In consultation with the Indian affairs department, the interagency behavioral health purchasing collaborative, subject to available funding, shall establish:

(1) a statewide clearinghouse and technical assistance program called the "New Mexico clearinghouse for Native American suicide prevention" to provide culturally appropriate suicide prevention, intervention and post-event assistance statewide to Native American individuals, families and tribes, nations and pueblos living with suicide, attempted suicide or the risk of suicide; and

(2) three culturally based Native American youth suicide prevention initiatives, each focused on the continuum of prevention, intervention and post-event assistance to Native American individuals, families and tribes, nations and pueblos

living with suicide, attempted suicide or the risk of suicide in rural, frontier and urban communities.

B. As used in this section, "Native American" means a member of a federally recognized tribe, nation or pueblo.

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Senate Bill 417, aa

Approved March 31, 2011

## **LAWS 2011, CHAPTER 16**

AN ACT

RELATING TO CONTROLLED SUBSTANCES; AMENDING THE CONTROLLED SUBSTANCES ACT; MAKING IT A CRIME TO POSSESS AND DISTRIBUTE SYNTHETIC CANNABINOIDS AND CERTAIN OTHER SYNTHETIC DRUGS; PROVIDING PENALTIES; DECLARING AN EMERGENCY.

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

### **Chapter 16 Section 1 Laws 2011**

SECTION 1. Section 30-31-6 NMSA 1978 (being Laws 1972, Chapter 84, Section 6, as amended) is amended to read:

"30-31-6. SCHEDULE I.--The following controlled substances are included in Schedule I:

A. any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, unless specifically exempted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

- (1) acetylmethadol;
- (2) allylprodine;
- (3) alphacetylmethadol;
- (4) alphameprodine;
- (5) alphasmethadol;

- (6) benzethidine;
- (7) betacetylmethadol;
- (8) betameprodine;
- (9) betamethadol;
- (10) betaprodine;
- (11) clonitazene;
- (12) dextromoramide;
- (13) dextrorphan;
- (14) diampromide;
- (15) diethylthiambutene;
- (16) dimenoxadol;
- (17) dimepheptanol;
- (18) dimethylthiambutene;
- (19) dioxaphetyl butyrate;
- (20) dipipanone;
- (21) ethylmethylthiambutene;
- (22) etonitazene;
- (23) etoxeridine;
- (24) furethidine;
- (25) hydroxypethidine;
- (26) ketobemidone;
- (27) levomoramide;
- (28) levophenacymorphan;

- (29) morpheridine;
- (30) noracymethadol;
- (31) norlevorphanol;
- (32) normethadone;
- (33) norpipanone;
- (34) phenadoxone;
- (35) phenampromide;
- (36) phenomorphan;
- (37) phenoperidine;
- (38) piritramide;
- (39) proheptazine;
- (40) properidine;
- (41) racemoramide; and
- (42) trimeperidine;

B. any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically exempted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) acetorphine;
- (2) acetyldihydrocodeine;
- (3) benzylmorphine;
- (4) codeine methylbromide;
- (5) codeine-N-oxide;
- (6) cyprenorphine;
- (7) desomorphine;

- (8) dihydromorphine;
- (9) etorphine;
- (10) heroin;
- (11) hydromorphinol;
- (12) methyl-desorphine;
- (13) methyl-dihydromorphine;
- (14) morphine methylbromide;
- (15) morphine methylsulfonate;
- (16) morphine-N-oxide;
- (17) myrophine;
- (18) nicocodeine;
- (19) nicomorphine;
- (20) normorphine;
- (21) pholcodine; and
- (22) thebacon;

C. any material, compound, mixture or preparation that contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers, unless specifically exempted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) 3,4-methylenedioxy amphetamine;
- (2) 5-methoxy-3,4-methylenedioxy amphetamine;
- (3) 3,4,5-trimethoxy amphetamine;
- (4) bufotenine;
- (5) diethyltryptamine;
- (6) dimethyltryptamine;

- Substances Act;
- (7) 4-methyl-2,5-dimethoxy amphetamine;
  - (8) ibogaine;
  - (9) lysergic acid diethylamide;
  - (10) marijuana;
  - (11) mescaline;
  - (12) peyote, except as otherwise provided in the Controlled
  - (13) N-ethyl-3-piperidyl benzilate;
  - (14) N-methyl-3-piperidyl benzilate;
  - (15) psilocybin;
  - (16) psilocyn;
  - (17) tetrahydrocannabinols;
  - (18) hashish;
  - (19) synthetic cannabinoids, including:
    - (a) 1-[2-(4-(morpholinyl)ethyl)-3-(1-naphthoyl)indole];
    - (b) 1-butyl-3-(1-naphthoyl)indole;
    - (c) 1-hexyl-3-(1-naphthoyl)indole;
    - (d) 1-pentyl-3-(1-naphthoyl)indole;
    - (e) 1-pentyl-3-(2-methoxyphenylacetyl) indole;
    - (f) cannabicyclohexanol (CP 47, 497 and homologues: 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (CP-47,497); and 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol;
    - (g) 6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol);
    - (h) dexanabinol, (6aS,10aS)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol;

- (i) 1-pentyl-3-(4-chloro naphthoyl) indole;
- (j) (2-methyl-1-propyl-1H-indol-3-yl)-1-naphthalenyl-methanone; and
- (k) 5-(1,1-dimethylheptyl)-2-(3-hydroxy cyclohexyl)-phenol;
- (20) 3,4-methylenedioxy methcathinone;
- (21) 3,4-methylenedioxy pyrovalerone;
- (22) 4-methyl methcathinone;
- (23) 4-methoxy methcathinone;
- (24) 3-fluoro methcathinone; and
- (25) 4-fluoro methcathinone;

D. the enumeration of peyote as a controlled substance does not apply to the use of peyote in bona fide religious ceremonies by a bona fide religious organization, and members of the organization so using peyote are exempt from registration. Any person who manufactures peyote for or distributes peyote to the organization or its members shall comply with the federal Comprehensive Drug Abuse Prevention and Control Act of 1970 and all other requirements of law;

E. the enumeration of marijuana, tetrahydrocannabinols or chemical derivatives of tetrahydrocannabinol as Schedule I controlled substances does not apply to the use of marijuana, tetrahydrocannabinols or chemical derivatives of tetrahydrocannabinol by certified patients pursuant to the Controlled Substances Therapeutic Research Act or by qualified patients pursuant to the provisions of the Lynn and Erin Compassionate Use Act; and

F. controlled substances added to Schedule I by rule adopted by the board pursuant to Section 30-31-3 NMSA 1978."

## **Chapter 16 Section 2 Laws 2011**

SECTION 2. Section 30-31-22 NMSA 1978 (being Laws 1972, Chapter 84, Section 22, as amended) is amended to read:

"30-31-22. CONTROLLED OR COUNTERFEIT SUBSTANCES--DISTRIBUTION PROHIBITED.--

A. Except as authorized by the Controlled Substances Act, it is unlawful for a person to intentionally distribute or possess with intent to distribute a controlled

substance or a controlled substance analog except a substance enumerated in Schedule I or II that is a narcotic drug, a controlled substance analog of a controlled substance enumerated in Schedule I or II that is a narcotic drug or methamphetamine, its salts, isomers and salts of isomers. A person who violates this subsection with respect to:

(1) marijuana or synthetic cannabinoids is:

(a) for the first offense, guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

(b) for the second and subsequent offenses, guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

(c) for the first offense, if more than one hundred pounds is possessed with intent to distribute or distributed or both, guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(d) for the second and subsequent offenses, if more than one hundred pounds is possessed with intent to distribute or distributed or both, guilty of a second degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

(2) any other controlled substance enumerated in Schedule I, II, III or IV or a controlled substance analog of a controlled substance enumerated in Schedule I, II, III or IV except a substance enumerated in Schedule I or II that is a narcotic drug, a controlled substance analog of a controlled substance enumerated in Schedule I or II that is a narcotic drug or methamphetamine, its salts, isomers and salts of isomers, is:

(a) for the first offense, guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(b) for the second and subsequent offenses, guilty of a second degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(3) a controlled substance enumerated in Schedule V or a controlled substance analog of a controlled substance enumerated in Schedule V is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars (\$100) or more than five hundred dollars (\$500) or by imprisonment for a definite term not less than one hundred eighty days but less than one year, or both.

B. It is unlawful for a person to distribute gamma hydroxybutyric acid or flunitrazepam to another person without that person's knowledge and with intent to



commit a crime against that person, including criminal sexual penetration. For the purposes of this subsection, "without that person's knowledge" means the person is unaware that a substance with the ability to alter that person's ability to appraise conduct or to decline participation in or communicate unwillingness to participate in conduct is being distributed to that person. Any person who violates this subsection is:

(1) for the first offense, guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(2) for the second and subsequent offenses, guilty of a second degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

C. Except as authorized by the Controlled Substances Act, it is unlawful for a person to intentionally create or deliver, or possess with intent to deliver, a counterfeit substance. A person who violates this subsection with respect to:

(1) a counterfeit substance enumerated in Schedule I, II, III or IV is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(2) a counterfeit substance enumerated in Schedule V is guilty of a petty misdemeanor and shall be punished by a fine of not more than one hundred dollars (\$100) or by imprisonment for a definite term not to exceed six months, or both.

D. A person who knowingly violates Subsection A or C of this section while within a drug-free school zone with respect to:

(1) marijuana or synthetic cannabinoids is:

(a) for the first offense, guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

(b) for the second and subsequent offenses, guilty of a second degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

(c) for the first offense, if more than one hundred pounds is possessed with intent to distribute or distributed or both, guilty of a second degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(d) for the second and subsequent offenses, if more than one hundred pounds is possessed with intent to distribute or distributed or both,

guilty of a first degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

(2) any other controlled substance enumerated in Schedule I, II, III or IV or a controlled substance analog of a controlled substance enumerated in Schedule I, II, III or IV except a substance enumerated in Schedule I or II that is a narcotic drug, a controlled substance analog of a controlled substance enumerated in Schedule I or II that is a narcotic drug or methamphetamine, its salts, isomers and salts of isomers, is:

(a) for the first offense, guilty of a second degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(b) for the second and subsequent offenses, guilty of a first degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

(3) a controlled substance enumerated in Schedule V or a controlled substance analog of a controlled substance enumerated in Schedule V is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(4) the intentional creation, delivery or possession with the intent to deliver:

(a) a counterfeit substance enumerated in Schedule I, II, III or IV is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(b) a counterfeit substance enumerated in Schedule V is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or by imprisonment for a definite term not less than one hundred eighty days but less than one year, or both.

E. Notwithstanding the provisions of Subsection A of this section, distribution of a small amount of marijuana or synthetic cannabinoids for no remuneration shall be treated as provided in Paragraph (1) of Subsection B of Section 30-31-23 NMSA 1978."

## **Chapter 16 Section 3 Laws 2011**

SECTION 3. Section 30-31-23 NMSA 1978 (being Laws 1972, Chapter 84, Section 23, as amended) is amended to read:

"30-31-23. CONTROLLED SUBSTANCES--POSSESSION PROHIBITED.--

A. It is unlawful for a person intentionally to possess a controlled substance unless the substance was obtained pursuant to a valid prescription or order of a practitioner while acting in the course of professional practice or except as otherwise authorized by the Controlled Substances Act. It is unlawful for a person intentionally to possess a controlled substance analog.

B. A person who violates this section with respect to:

(1) one ounce or less of marijuana or synthetic cannabinoids is, for the first offense, guilty of a petty misdemeanor and shall be punished by a fine of not less than fifty dollars (\$50.00) or more than one hundred dollars (\$100) and by imprisonment for not more than fifteen days, and, for the second and subsequent offenses, guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars (\$100) or more than one thousand dollars (\$1,000) or by imprisonment for a definite term less than one year, or both;

(2) more than one ounce and less than eight ounces of marijuana or synthetic cannabinoids is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars (\$100) or more than one thousand dollars (\$1,000) or by imprisonment for a definite term less than one year, or both; or

(3) eight ounces or more of marijuana or synthetic cannabinoids is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

C. A minor who violates this section with respect to the substances listed in this subsection is guilty of a petty misdemeanor and, notwithstanding the provisions of Sections 32A-1-5 and 32A-2-19 NMSA 1978, shall be punished by a fine not to exceed one hundred dollars (\$100) or forty-eight hours of community service. For the third or subsequent violation by a minor of this section with respect to those substances, the provisions of Section 32A-2-19 NMSA 1978 shall govern punishment of the minor. As used in this subsection, "minor" means a person who is less than eighteen years of age. The provisions of this subsection apply to the following substances:

(1) synthetic cannabinoids;

(2) any of the substances listed in Paragraphs (20) through (25) of Subsection C of Section 30-31-6 NMSA 1978; or

(3) a substance added to Schedule I by a rule of the board adopted on or after the effective date of this 2011 act if the board determines that the pharmacological effect of the substance, the risk to the public health by abuse of the substance and the potential of the substance to produce psychic or physiological dependence liability is similar to the substances described in Paragraph (1) or (2) of this subsection.

D. Except for those substances listed in Subsection E of this section, a person who violates this section with respect to any amount of any controlled substance enumerated in Schedule I, II, III or IV or a controlled substance analog of a substance enumerated in Schedule I, II, III or IV is guilty of a misdemeanor and shall be punished by a fine of not less than five hundred dollars (\$500) or more than one thousand dollars (\$1,000) or by imprisonment for a definite term less than one year, or both.

E. A person who violates this section with respect to phencyclidine as enumerated in Schedule III or a controlled substance analog of phencyclidine; methamphetamine, its salts, isomers or salts of isomers as enumerated in Schedule II or a controlled substance analog of methamphetamine, its salts, isomers or salts of isomers; flunitrazepam, its salts, isomers or salts of isomers as enumerated in Schedule I or a controlled substance analog of flunitrazepam, including naturally occurring metabolites, its salts, isomers or salts of isomers; gamma hydroxybutyric acid and any chemical compound that is metabolically converted to gamma hydroxybutyric acid, its salts, isomers or salts of isomers as enumerated in Schedule I or a controlled substance analog of gamma hydroxybutyric acid, its salts, isomers or salts of isomers; gamma butyrolactone and any chemical compound that is metabolically converted to gamma hydroxybutyric acid, its salts, isomers or salts of isomers as enumerated in Schedule I or a controlled substance analog of gamma butyrolactone, its salts, isomers or salts of isomers; 1-4 butane diol and any chemical compound that is metabolically converted to gamma hydroxybutyric acid, its salts, isomers or salts of isomers as enumerated in Schedule I or a controlled substance analog of 1-4 butane diol, its salts, isomers or salts of isomers; or a narcotic drug enumerated in Schedule I or II or a controlled substance analog of a narcotic drug enumerated in Schedule I or II is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

F. Except for a minor as defined in Subsection C of this section, a person who violates Subsection A of this section while within a posted drug-free school zone, excluding private property residentially zoned or used primarily as a residence and excluding a person in or on a motor vehicle in transit through the posted drug-free school zone, with respect to:

(1) one ounce or less of marijuana or synthetic cannabinoids is, for the first offense, guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars (\$100) or more than one thousand dollars (\$1,000) or by imprisonment for a definite term less than one year, or both, and for the second or subsequent offense, is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

(2) more than one ounce and less than eight ounces of marijuana or synthetic cannabinoids is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

(3) eight ounces or more of marijuana or synthetic cannabinoids is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978;

(4) any amount of any other controlled substance enumerated in Schedule I, II, III or IV or a controlled substance analog of a substance enumerated in Schedule I, II, III or IV, except phencyclidine as enumerated in Schedule III, a narcotic drug enumerated in Schedule I or II or a controlled substance analog of a narcotic drug enumerated in Schedule I or II, is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978; and

(5) phencyclidine as enumerated in Schedule III, a narcotic drug enumerated in Schedule I or II, a controlled substance analog of phencyclidine or a controlled substance analog of a narcotic drug enumerated in Schedule I or II is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978."

## **Chapter 16 Section 4 Laws 2011**

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

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Senate Bill 134, aa, w/ec

Approved March 31, 2011

## **LAWS 2011, CHAPTER 17**

AN ACT

RELATING TO LAW ENFORCEMENT; REQUIRING PALM PRINTS OF PERSONS ARRESTED.

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

## **Chapter 17 Section 1 Laws 2011**

SECTION 1. Section 29-3-8 NMSA 1978 (being Laws 1978, Chapter 87, Section 1, as amended) is amended to read:

"29-3-8. FINGERPRINT AND PALM PRINT IMPRESSIONS OF PERSONS ARRESTED--DISPOSITION.--

A. A person arrested for the commission of a criminal offense amounting to a felony under the laws of this state or any other jurisdiction shall be required by the arresting peace officer or the jail to make fingerprint and palm print impressions prior to the person's release. The arresting peace officer or the jail shall obtain fingerprint and palm print impressions and a photograph each time a person is arrested. At the time of fingerprinting and palm printing, a state tracking number shall be assigned to the fingerprint and palm print records and the booking sheet.

B. A person arrested for the commission of a criminal offense not amounting to a felony but punishable by imprisonment for more than six months under the laws of this state or any political subdivision shall be required by the arresting peace officer or the jail to make fingerprint and palm print impressions prior to the person's release. The arresting peace officer or the jail shall obtain fingerprint and palm print impressions and a photograph each time a person is arrested. At the time of fingerprinting and palm printing, a state tracking number shall be assigned to the fingerprint and palm print records and the booking sheet.

C. A person arrested for violating a provision of Section 66-8-102 NMSA 1978 or committing a violation of a municipal or county ordinance prescribing criminal penalties for driving while under the influence of intoxicating liquor or drugs shall be required by the arresting peace officer or the jail to make fingerprint and palm print impressions prior to the person's release. The arresting peace officer or the jail shall obtain fingerprint and palm print impressions and a photograph each time a person is arrested. At the time of fingerprinting and palm printing, a state tracking number shall be assigned to the fingerprint and palm printing records and the booking sheet.

D. Fingerprint and palm print impressions shall be made pursuant to rules adopted by the department. Fingerprint and palm print record submission policies and a state tracking number system for fingerprint and palm print records shall be implemented pursuant to rules adopted by the department. All felony, misdemeanor and DWI arrest fingerprints and palm prints shall be made in duplicate. Both copies and a photograph of the person arrested shall be forwarded to the department within five days following the date of arrest. The department shall forward one copy to the federal bureau of investigation in Washington, D.C.

E. An inmate who is charged with a felony or misdemeanor offense while incarcerated shall be fingerprinted, palm printed and photographed, and the jail or corrections facility shall forward the offender's fingerprint and palm print records and photograph to the department.

F. The administrative office of the courts shall provide to the department the disposition of all criminal cases assigned a state tracking number. The disposition shall be provided in electronic format, promptly upon the conclusion of the case.

G. The administrative office of the district attorneys shall provide to the department the disposition of all criminal cases assigned a state tracking number, when

the district attorney decides not to file charges in the case. The disposition shall be provided in electronic format, promptly upon a district attorney's decision not to file charges in the case.

H. Law enforcement agencies, the administrative office of the courts and the administrative office of the district attorneys may allow the department access to their records for the purpose of auditing those records to ensure compliance with the provisions of this section."

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Senate Bill 102

Approved March 31, 2011

## **LAWS 2011, CHAPTER 18**

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 18 Section 1 Laws 2011**

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 health service industry project in Union county for a health and wellness facility;
2. a manufacturing industry project in San Miguel county for an aviation manufacturing facility;
3. a food processing industry project in Hidalgo county for a pecan farming and shelling facility;
4. a food processing industry project in San Miguel county to create a certified area and space for food preparation and storage;

5. a manufacturing industry project in Dona Ana county for expansion of a solar parts manufacturing facility;

6. a community development industry project in Taos county for a community development and business incubation center;

7. a hospitality industry project in Curry county for a hotel;

8. a behavioral health industry project in Catron county for a health and wellness facility;

9. a service industry project in Union county for a truck stop and restaurant;

10. a behavioral health industry project in Grant county for a facility to operate and provide service to families at risk;

11. a hospitality industry project in Union county for a hotel;

12. a manufacturing industry project in Cibola county for a facility manufacturing a type of oil filter; and

13. a community development industry project in Dona Ana county for an after-school arts program facility.

## **Chapter 18 Section 2 Laws 2011**

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

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Senate Bill 20, w/ec

Approved April 1, 2011

## **LAWS 2011, CHAPTER 19**

AN ACT

RELATING TO REAL ESTATE; AMENDING PROVISIONS RELATING TO MEMBERS OF THE REAL ESTATE APPRAISERS BOARD; 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 19 Section 1 Laws 2011**

SECTION 1. Section 61-30-5 NMSA 1978 (being Laws 1990, Chapter 75, Section 5, as amended by Laws 2003, Chapter 328, Section 3 and by Laws 2003, Chapter 408, Section 32) is amended to read:

### **"61-30-5. REAL ESTATE APPRAISERS BOARD CREATED.--**

A. There is created a "real estate appraisers board" consisting of seven members appointed by the governor. The board is administratively attached to the regulation and licensing department.

B. There shall be four real estate appraiser members of the board who shall be licensed or certified. Membership in a professional appraisal organization or association shall not be a prerequisite to serve on the board. No more than two real estate appraiser members shall be from any one licensed or certified category.

C. Board members shall be appointed to five-year terms and shall serve until their successor is appointed and qualified. Real estate appraiser members may be appointed for no more than two consecutive five-year terms.

D. No more than two members shall be from any one county within New Mexico, and at least one real estate appraiser member shall be from each congressional district.

E. One member of the board shall represent lenders or their assignees engaged in the business of lending funds secured by mortgages or in the business of appraisal management. Two members shall be appointed to represent the public. The public members shall not have been real estate appraisers or engaged in the business of real estate appraisals or have any financial interest, direct or indirect, in real estate appraisal or any real-estate-related business.

F. Vacancies on the board shall be filled by appointment by the governor for the unexpired term within sixty days of the vacancy.

G. The board is administratively attached to the regulation and licensing department."

## **Chapter 19 Section 2 Laws 2011**

SECTION 2. TEMPORARY PROVISION.--Current members of the real estate appraisers board shall continue to serve in their current term of office. One member who is a representative of an appraisal management company shall be appointed for an initial three-year term. Thereafter, appointment to that position shall be for a five-year term.

## **Chapter 19 Section 3 Laws 2011**

SECTION 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.

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SPAC/Senate Bill 54, aa

Approved April 1, 2011

## **LAWS 2011, CHAPTER 20**

AN ACT

RELATING TO COURTS; REQUIRING ONE DISTRICT JUDGE IN THE NINTH JUDICIAL DISTRICT TO MAINTAIN A PRINCIPAL OFFICE IN ROOSEVELT COUNTY PURSUANT TO RULE OF THE DISTRICT COURT.

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

## **Chapter 20 Section 1 Laws 2011**

SECTION 1. Section 34-6-12 NMSA 1978 (being Laws 1968, Chapter 69, Section 15, as amended) is amended to read:

"34-6-12. JUDGES--NINTH JUDICIAL DISTRICT.--There shall be five district judges in the ninth judicial district. At least one of the district judges shall be designated to maintain a principal office in Roosevelt county. As used in this section, "maintain a principal office" means holding court or being available to hold court no less than one hundred forty days during each calendar year."

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Senate Bill 56, aa

Approved April 1, 2011

## **LAWS 2011, CHAPTER 21**

AN ACT

RELATING TO PUBLIC SCHOOLS; ALLOWING ENROLLMENT PRIORITY TO STUDENTS WHOSE PARENTS ARE ACTIVE DUTY MILITARY PERSONNEL IN NEW MEXICO.

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

## **Chapter 21 Section 1 Laws 2011**

SECTION 1. Section 22-1-4 NMSA 1978 (being Laws 1975, Chapter 338, Section 1, as amended) is amended to read:

"22-1-4. FREE PUBLIC SCHOOLS--EXCEPTIONS--WITHDRAWING AND ENROLLING--OPEN ENROLLMENT.--

A. Except as provided by Section 24-5-2 NMSA 1978, a free public school education shall be available to any school-age person who is a resident of this state and has not received a high school diploma or its equivalent.

B. A free public school education in those courses already offered to persons pursuant to the provisions of Subsection A of this section shall be available to any person who is a resident of this state and has received a high school diploma or its equivalent if there is available space in such courses.

C. Any person entitled to a free public school education pursuant to the provisions of this section may enroll or re-enroll in a public school at any time and, unless required to attend school pursuant to the Compulsory School Attendance Law, may withdraw from a public school at any time.

D. In adopting and promulgating rules concerning the enrollment of students transferring from a home school or private school to the public schools, the local school board shall provide that the grade level at which the transferring student is placed is appropriate to the age of the student or to the student's score on a student achievement test administered according to the statewide assessment and accountability system.

E. A local school board shall adopt and promulgate rules governing enrollment and re-enrollment at public schools other than charter schools within the school district. These rules shall include:

(1) definition of the school district boundary and the boundaries of attendance areas for each public school;

(2) for each public school, definition of the boundaries of areas outside the school district boundary or within the school district but outside the public school's attendance area and within a distance of the public school that would not be served by a school bus route as determined pursuant to Section 22-16-4 NMSA 1978 if enrolled, which areas shall be designated as "walk zones";

(3) priorities for enrollment of students as follows:

(a) first, students residing within the school district and within the attendance area of a public school and students who had resided in the attendance area prior to a parent who is an active duty member of the armed forces of the United States or member of the national guard being deployed and whose deployment has required the student to relocate outside the attendance area for custodial care;

(b) second, students enrolled in a school ranked as a school that needs improvement or a school subject to corrective action;

(c) third, students who previously attended the public school;  
and

(d) fourth, all other applicants;

(4) establishment of maximum allowable class size if smaller than that permitted by law; and

(5) rules pertaining to grounds for denial of enrollment or re-enrollment at schools within the school district and the school district's hearing and appeals process for such a denial. Grounds for denial of enrollment or re-enrollment shall be limited to:

(a) a student's expulsion from any school district or private school in this state or any other state during the preceding twelve months; or

(b) a student's behavior in another school district or private school in this state or any other state during the preceding twelve months that is detrimental to the welfare or safety of other students or school employees.

F. In adopting and promulgating rules governing enrollment and re-enrollment at public schools other than charter schools within the school district, a local school board may establish additional enrollment preferences for rules admitting students in accordance with the third and fourth priorities of enrollment set forth in Subparagraphs (c) and (d) of Paragraph (3) of Subsection E of this section. The additional enrollment preferences may include:

(1) after-school child care for students;

(2) child care for siblings of students attending the public school;

(3) children of employees employed at the public school;

(4) extreme hardship;

(5) location of a student's previous school;

- (6) siblings of students already attending the public school; and
- (7) student safety.

G. As long as the maximum allowable class size established by law or by rule of a local school board, whichever is lower, is not met or exceeded in a public school by enrollment of first- and second-priority persons, the public school shall enroll other persons applying in the priorities stated in the school district rules adopted pursuant to Subsections E and F of this section. If the maximum would be exceeded by enrollment of an applicant in the second through fourth priority, the public school shall establish a waiting list. As classroom space becomes available, persons highest on the waiting list within the highest priority on the list shall be notified and given the opportunity to enroll."

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House Bill 14, aa

Approved April 1, 2011

## **LAWS 2011, CHAPTER 22**

### **AN ACT**

RELATING TO DEATH; AUTHORIZING A PERSON DESIGNATED ON A UNITED STATES DEPARTMENT OF DEFENSE RECORD OF EMERGENCY DATA FORM TO PROVIDE DISPOSITION ARRANGEMENTS FOR REMAINS OF A DECEDENT; ALLOWING A PERSON AUTHORIZED BY A UNITED STATES DEPARTMENT OF DEFENSE RECORD OF EMERGENCY DATA FORM TO DETERMINE THE DISPOSITION OF REMAINS OF A DECEDENT.

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

### **Chapter 22 Section 1 Laws 2011**

SECTION 1. Section 24-12-1 NMSA 1978 (being Laws 1973, Chapter 354, Section 1, as amended) is amended to read:

"24-12-1. NOTIFICATION OF RELATIVES OF DECEASED--AUTHORIZATION OF PERSON DESIGNATED ON RECORD OF EMERGENCY DATA FORM TO DIRECT BURIAL--UNCLAIMED DECEDENTS.--

A. State, county or municipal officials having charge or control of a body of a dead person shall use due diligence to notify the relatives of the deceased.

B. If the decedent died while serving in any branch of the United States armed forces, the United States reserve forces or the national guard, during any period of duty when the secretary of the military service concerned can provide for the recovery, care and disposition of remains, and the decedent completed a United States department of defense record of emergency data form or its successor form, the authority to direct the burial of the decedent or to provide other funeral and disposition arrangements for the decedent devolves on the person designated by the decedent pursuant to that form.

C. If no claimant is found who will assume the cost of burial, the official having charge or control of the body shall notify the medical investigator stating, when possible, the name, age, sex and cause of death of the deceased.

D. The body shall be embalmed according to rules of the state agency having jurisdiction. After the exercise of due diligence required in Subsection A of this section and the report to the medical investigator required in Subsection C of this section, the medical investigator shall be furnished detailed data demonstrating such due diligence and the fact that no claimant has been found. When the medical investigator has determined that due diligence has been exercised, that reasonable opportunity has been afforded relatives to claim the body and that the body has not been claimed, the medical investigator shall issue a certificate determining that the remains are unclaimed. In no case shall an unclaimed body be disposed of in less than two weeks from the date of the discovery of the body."

## **Chapter 22 Section 2 Laws 2011**

SECTION 2. Section 24-12A-2 NMSA 1978 (being Laws 1993, Chapter 200, Section 2, as amended) is amended to read:

"24-12A-2. NO WRITTEN INSTRUCTIONS--PRIORITY OF OTHERS TO DECIDE DISPOSITION.--

A. Except as provided in Subsection B of this section, if a decedent has left no written instructions regarding the disposition of the decedent's remains, the following persons in the order listed shall determine the means of disposition, not to be limited to cremation, of the remains of the decedent:

- (1) the surviving spouse;
- (2) a majority of the surviving adult children of the decedent;
- (3) the surviving parents of the decedent;
- (4) a majority of the surviving siblings of the decedent;

(5) an adult who has exhibited special care and concern for the decedent, who is aware of the decedent's views and desires regarding the disposition of the decedent's body and who is willing and able to make a decision about the disposition of the decedent's body; or

(6) the adult person of the next degree of kinship in the order named by New Mexico law to inherit the estate of the decedent.

B. If a decedent left no written instructions regarding the disposition of the decedent's remains, died while serving in any branch of the United States armed forces, the United States reserve forces or the national guard and completed a United States department of defense record of emergency data form or its successor form, the person authorized by the decedent to determine the means of disposition on a United States department of defense record of emergency data form shall determine the means of disposition, not to be limited to cremation."

## **Chapter 22 Section 3 Laws 2011**

SECTION 3. Section 61-32-19 NMSA 1978 (being Laws 1993, Chapter 204, Section 19, as amended) is amended to read:

"61-32-19. CREMATION--REQUIREMENTS--RIGHT TO AUTHORIZE CREMATION--DISPOSITION OF CREMAINS.--

A. No cremation shall be performed until all necessary documentation is obtained authorizing the cremation.

B. An adult person may authorize the person's own cremation and the lawful disposition of the person's cremains by:

(1) stating the person's desire to be cremated in a written statement that is signed by the person and notarized or witnessed by two other persons; or

(2) including an express statement in the person's will indicating that the testator desired that the testator's remains be cremated upon the testator's death.

C. A personal representative acting pursuant to the Uniform Probate Code or an establishment or crematory shall comply with a statement made in accordance with the provisions of this section. A statement that conforms to the provisions of this section authorizes a personal representative, establishment or crematory to cremate a decedent's remains, and the permission of next of kin or any other person shall not be required for such authorization. Statements dated prior to June 18, 1993 shall be given effect if they meet this section's requirements.

D. A personal representative, establishment or crematory acting in reliance upon a document executed pursuant to the provisions of this section, who has no actual notice of revocation or contrary indication, is presumed to be acting in good faith.

E. No establishment, crematory or employee of an establishment or crematory or other person that relies in good faith on a statement written pursuant to this section shall be subject to liability for cremating the remains in accordance with the provisions of this section. The written authorization is a complete defense to a cause of action by a person against any other person acting in accordance with that authorization.

F. Except as provided in Subsection G of this section, if a decedent has left no written instructions regarding the disposition of the decedent's remains, the following persons in the order listed shall determine the means of disposition, not to be limited to cremation, of the remains of the decedent:

(1) the surviving spouse;

(2) a majority of the surviving adult children of the decedent;

(3) the surviving parents of the decedent;

(4) a majority of the surviving siblings of the decedent;

(5) an adult person who has exhibited special care and concern for the decedent, who is aware of the decedent's views and desires regarding the disposition of the decedent's body and who is willing and able to make a decision about the disposition of the decedent's body; or

(6) the adult person of the next degree of kinship in the order named by New Mexico law to inherit the estate of the decedent.

G. If a decedent left no written instructions regarding the disposition of the decedent's remains, died while serving in any branch of the United States armed forces, the United States reserve forces or the national guard and completed a United States department of defense record of emergency data form or its successor form, the person authorized by the decedent to determine the means of disposition on a United States department of defense record of emergency data form shall determine the means of disposition, not to be limited to cremation.

H. A licensed establishment or crematory shall keep an accurate record of all cremations performed and the place of disposition of the cremains for a period of not less than seven years.



I. Cremains may be disposed of by any licensed establishment, crematory authority, cemetery or person having the right to control the disposition of the cremains, or that person's agent, in a lawful manner.

J. Legal forms for cremation authorization shall provide that persons giving the authorization will hold harmless an establishment from any liability for disposing of unclaimed cremains in a lawful manner after a period of one year following the return of the cremains to the establishment."

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House Bill 15

Approved April 1, 2011

## **LAWS 2011, CHAPTER 23**

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 23 Section 1 Laws 2011**

SECTION 1. AUTHORIZATION OF PROJECTS.--Pursuant to the provisions of Section 6-21-6 NMSA 1978, the legislature authorizes the New Mexico finance authority to make loans from the public project revolving fund for public projects as defined in Section 6-21-3 NMSA 1978. Pursuant to Section 6-21-6 NMSA 1978, loans of less than one million dollars (\$1,000,000) do not require specific authorization and need not be identified in this act. Authorization is given to the New Mexico finance authority to make loans to the following qualified entities on terms and conditions established by the authority:

1. the city of Rio Rancho in Sandoval county for building, equipment, infrastructure, debt refinancing, road, land acquisition, water, water rights, wastewater, solid waste and special assessment district projects;
2. the city of Deming in Luna county for building, equipment, infrastructure, debt refinancing, road, land acquisition, water, water rights, wastewater, solid waste and special assessment district projects;

3. Luna county for building, equipment, infrastructure, debt refinancing, road, land acquisition, water, water rights, wastewater, solid waste and special assessment district projects;

4. the city of Albuquerque in Bernalillo county for water rights, land acquisition, road, special assessment district and rail spur projects;

5. the San Juan regional medical center in San Juan county for building, infrastructure, equipment, debt refinancing and land acquisition projects;

6. the city of Alamogordo in Otero county for building, equipment, infrastructure, debt refinancing, road, land acquisition, water, water rights, wastewater, solid waste and special assessment district projects;

7. the village of Angel Fire in Colfax county for road and water rights projects;

8. the Agua Fria community water system association in Santa Fe county for building, equipment, infrastructure, debt refinancing, land acquisition, water, water rights, wastewater and solid waste projects;

9. the Alamogordo public school district in Otero county for building, equipment, infrastructure and debt refinancing projects;

10. the city of Aztec in San Juan county for road and water rights projects;

11. the Animas public school district in Hidalgo county for building, equipment, infrastructure and debt refinancing projects;

12. the Arroyo de Agua mutual domestic water consumers association in Rio Arriba county for building, equipment, infrastructure, debt refinancing, water, wastewater and water rights projects;

13. the Artesia public school district in Eddy county for building, equipment, infrastructure and debt refinancing projects;

14. the city of Artesia in Eddy county for water, wastewater and solid waste projects;

15. the city of Bayard in Grant county for building, equipment, infrastructure, debt refinancing, water, wastewater, water rights, solid waste, road and land acquisition projects;

16. the town of Bernalillo in Sandoval county for road and water rights projects;

17. the Bernalillo county metropolitan court in Bernalillo county for building, equipment, infrastructure and debt refinancing projects;
18. the Bernalillo public school district in Sandoval county for building, equipment, infrastructure, debt refinancing and land projects;
19. the Bluewater water and sanitation district in Cibola county for building, equipment, infrastructure, debt refinancing, water, wastewater and water rights projects;
20. the board of regents of New Mexico state university for debt refinancing projects;
21. the village of Bosque Farms in Valencia county for building, equipment, infrastructure, debt refinancing, road, land acquisition, water, water rights, wastewater and solid waste projects;
22. the Camino Real regional water utility authority in Dona Ana county for building, equipment, infrastructure, debt refinancing, road, land acquisition, water, water rights, wastewater and solid waste projects;
23. the village of Capitan in Lincoln county for building, equipment, infrastructure, debt refinancing, road, land acquisition, water, water rights, wastewater and solid waste projects;
24. the Capitan municipal school district in Lincoln county for building, equipment, infrastructure, debt refinancing and land projects;
25. the Carlsbad municipal school district in Eddy county for building, equipment, infrastructure, debt refinancing and land projects;
26. the village of Chama in Rio Arriba county for building, equipment, infrastructure, debt refinancing, road, land acquisition, water, water rights, wastewater and solid waste projects;
27. Chaves county for building, equipment, infrastructure, debt refinancing, road, land acquisition, water, water rights, wastewater, solid waste and special assessment district projects;
28. the city of Carlsbad in Eddy county for building, equipment, infrastructure, debt refinancing, water, wastewater, water rights, solid waste, road and land projects;
29. the Cibola general hospital in Cibola county for building, infrastructure, equipment, debt refinancing and land acquisition projects;

30. the village of Cimarron in Colfax county for building, equipment, infrastructure, debt refinancing, road, land acquisition, water, water rights, wastewater and solid waste projects;

31. the Clayton public school district in Union county for building, equipment, infrastructure, debt refinancing and land projects;

32. the village of Cloudcroft in Otero county for building, equipment, infrastructure, debt refinancing, road, land acquisition, water, water rights, wastewater and solid waste projects;

33. the Cloudcroft municipal school district in Otero county for building, equipment, infrastructure, debt refinancing and land projects;

34. the city of Clovis in Curry county for building, equipment, infrastructure, debt refinancing, road, land acquisition, water, water rights, wastewater and solid waste projects;

35. the Clovis municipal school district in Curry county for building, equipment, infrastructure, debt refinancing and land projects;

36. the village of Columbus in Luna county for building, equipment, infrastructure, debt refinancing, road, land acquisition, water, water rights, wastewater and solid waste projects;

37. the Cuba soil and water conservation district in Sandoval county for building, equipment, infrastructure, debt refinancing, water, wastewater, water rights and land projects;

38. the city of Farmington in San Juan county for building, equipment, infrastructure, debt refinancing, water, wastewater, water rights, solid waste, road and land projects;

39. the Des Moines municipal school district in Union county for building, equipment, infrastructure, debt refinancing and land projects;

40. the town of Dexter in Chaves county for building, equipment, infrastructure, debt refinancing, water, wastewater, water rights, solid waste, road and land projects;

41. the village of Eagle Nest in Colfax county for building, equipment, infrastructure, debt refinancing, water, wastewater, water rights, solid waste, road and land projects;

42. the city of Elephant Butte in Sierra county for building, equipment, infrastructure, debt refinancing, water, wastewater, water rights, solid waste, road and land projects;

43. the town of Elida in Roosevelt county for building, equipment, infrastructure, debt refinancing, water, wastewater, water rights, solid waste, road and land projects;

44. the East Rio Arriba soil and water conservation district in Rio Arriba county for building, equipment, infrastructure, debt refinancing, water, wastewater, water rights and land projects;

45. the El Rito mutual domestic water consumers association in Rio Arriba county for building, equipment, infrastructure, debt refinancing, water, wastewater, water rights and land projects;

46. El Valle de Los Ranchos water and sanitation district in Taos county for building, equipment, infrastructure, debt refinancing, water, wastewater, water rights and land projects;

47. the Eldorado water and sanitation district in Santa Fe county for building, equipment, infrastructure, debt refinancing, water, wastewater, water rights and land projects;

48. the Espanola public school district in Rio Arriba county for building, equipment, infrastructure, debt refinancing and land projects;

49. the town of Estancia in Torraine county for building, equipment, infrastructure, debt refinancing, water, wastewater, water rights, solid waste, road and land projects;

50. the village of Fort Sumner in DeBaca county for building, equipment, infrastructure, debt refinancing, water, wastewater, water rights, solid waste, road and land projects;

51. the Gadsden independent school district in Dona Ana county for building, equipment, infrastructure, debt refinancing and land projects;

52. Hidalgo county for building, equipment, infrastructure, debt refinancing, road, land acquisition, water, water rights, wastewater, solid waste and special assessment district projects;

53. the Greater Chimayo mutual domestic water consumers association in Rio Arriba and Santa Fe counties for building, equipment, infrastructure, debt refinancing, water, wastewater, water rights and land projects;

54. the town of Hagerman in Chaves county for building, equipment, infrastructure, debt refinancing, water, wastewater, water rights, solid waste, road and land projects;

55. the Hidden Valley mutual domestic water association in Sandoval county for building, equipment, infrastructure, debt refinancing, water, wastewater, water rights and land projects;

56. the city of Hobbs in Lea county for building, equipment, infrastructure, debt refinancing, water, wastewater, water rights, solid waste, road and land projects;

57. the Hondo Valley public school district in Lincoln county for building, equipment, infrastructure, debt refinancing and land projects;

58. the village of Hope in Eddy county for building, equipment, infrastructure, debt refinancing, water, wastewater, water rights, solid waste, road and land projects;

59. the village of House in Quay county for building, equipment, infrastructure, debt refinancing, water, wastewater, water rights, solid waste, road and land projects;

60. the village of Jemez Springs in Sandoval county for building, equipment, infrastructure, debt refinancing, water, wastewater, water rights, solid waste, road and land projects;

61. the Jemez Valley public school district in Sandoval county for building, equipment, infrastructure, debt refinancing and land projects;

62. the Jicarilla Apache Nation in Rio Arriba and Sandoval counties for building, equipment, infrastructure, debt refinancing, water, wastewater, water rights, solid waste, road and land projects;

63. the Lake Arthur municipal school district in Chaves county for building, equipment, infrastructure, debt refinancing and land projects;

64. the town of Lake Arthur in Chaves county for building, equipment, infrastructure, debt refinancing, water, wastewater, water rights, solid waste, road and land projects;

65. the Las Cruces public school district in Dona Ana county for building, equipment, infrastructure, debt refinancing and land projects;

66. the La Union mutual domestic water consumers association in Dona Ana county for building, equipment, infrastructure, debt refinancing, water, wastewater, water rights and land projects;

67. Lincoln county for building, equipment, infrastructure, debt refinancing, road, land acquisition, water, water rights, wastewater, solid waste, public improvement district and special assessment district projects;

68. the Lincoln county solid waste authority for building, equipment, infrastructure, debt refinancing, road, land acquisition, water, water rights, wastewater and solid waste projects;

69. the West Las Vegas public school district in San Miguel county for building, equipment, infrastructure, debt refinancing and land projects;

70. the Los Alamos public school district in Los Alamos county for building, equipment, infrastructure, debt refinancing and land projects;

71. Los Alamos county for water rights, road, public improvement district and special assessment district projects;

72. the Los Lunas public school district in Valencia county for building, equipment, infrastructure, debt refinancing and land projects;

73. the village of Los Ranchos de Albuquerque in Bernalillo county for building, equipment, infrastructure, debt refinancing, water, wastewater, water rights, solid waste, road and land projects;

74. the Magdalena municipal school district in Socorro county for building, equipment, infrastructure, debt refinancing and land projects;

75. the higher education department for Mesalands community college in Quay county for building, equipment, infrastructure, debt refinancing and land projects;

76. McKinley county for building, equipment, infrastructure, debt refinancing, road, land acquisition, water, water rights, wastewater, solid waste, public improvement district and special assessment district projects;

77. Mesquite mutual domestic water consumers and mutual sewage works association in Dona Ana county for building, equipment, infrastructure, debt refinancing, water, wastewater, water rights and land projects;

78. the village of Milan in Cibola county for debt refinancing, water rights and road projects;

79. Mora county for building, equipment, infrastructure, debt refinancing, road, water, water rights, wastewater, solid waste, public improvement district and special assessment district projects;

80. the Mora independent school district in Mora county for building, equipment, infrastructure and debt refinancing projects;

81. the town of Mountainair in Torrance county for building, equipment, infrastructure, debt refinancing, water, wastewater, water rights, solid waste, road and land projects;

82. the Navajo Nation in McKinley and San Juan counties for building, equipment, infrastructure, debt refinancing, water, wastewater, water rights, solid waste, road and land projects;

83. the higher education department for New Mexico junior college in Lea county for building, equipment, infrastructure, debt refinancing and land projects;

84. the North Central solid waste authority in Rio Arriba and Santa Fe counties for building, equipment, infrastructure, debt refinancing, road, land acquisition, water, water rights, wastewater and solid waste projects;

85. the Pecos independent school district in San Miguel county for building, equipment, infrastructure and debt refinancing projects;

86. the Penasco independent school district in Taos county for building, equipment, infrastructure and debt refinancing projects;

87. the Pojoaque Valley public school district in Santa Fe county for building, equipment, infrastructure and debt refinancing projects;

88. the Pueblo of Acoma in Cibola county for building, equipment, infrastructure, debt refinancing, water, wastewater, water rights, solid waste, road and land projects;

89. the Pueblo of Isleta in Bernalillo county for building, equipment, infrastructure, debt refinancing, water, wastewater, water rights, solid waste, road and land projects;

90. the Pueblo of Jemez in Sandoval county for building, equipment, infrastructure, debt refinancing, water, wastewater, water rights, solid waste, road and land projects;

91. the Pueblo of Picuris in Taos county for building, equipment, infrastructure, debt refinancing, water, wastewater, water rights, solid waste, road and land projects;

92. the Pueblo of San Felipe in Sandoval county for building, equipment, infrastructure, debt refinancing, water, wastewater, water rights, solid waste, road and land projects;



93. the Pueblo of San Ildefonso in Santa Fe county for building, equipment, infrastructure, debt refinancing, water, wastewater, water rights, solid waste, road and land projects;

94. the Pueblo of Santa Clara in Rio Arriba county for building, equipment, infrastructure, debt refinancing, water, wastewater, water rights, solid waste, road and land projects;

95. the Pueblo of Santo Domingo in Sandoval county for building, equipment, infrastructure, debt refinancing, water, wastewater, water rights, solid waste, road and land projects;

96. the Pueblo of Taos in Taos county for building, equipment, infrastructure, debt refinancing, water, wastewater, water rights, solid waste, road and land projects;

97. the Pueblo of Tesuque in Santa Fe county for building, equipment, infrastructure, debt refinancing, water, wastewater, water rights, solid waste, road and land projects;

98. the Pueblo of Zia in Sandoval county for building, equipment, infrastructure, debt refinancing, water, wastewater, water rights, solid waste, road and land projects;

99. the village of Questa in Taos county for building, equipment, infrastructure, debt refinancing, water, wastewater, water rights, solid waste, road and land projects;

100. the Questa independent school district in Taos county for building, equipment, infrastructure and debt refinancing projects;

101. the Ramah chapter of the Navajo Nation in Cibola county for building, equipment, infrastructure, debt refinancing, water, wastewater, water rights, solid waste, road and land projects;

102. the Raton public school district in Colfax county for building, equipment, infrastructure, land acquisition and debt refinancing projects;

103. the town of Red River in Taos county for building, equipment, infrastructure, debt refinancing, water, wastewater, water rights, solid waste, road and land projects;

104. the village of Reserve in Catron county for building, equipment, infrastructure, debt refinancing, water, wastewater, water rights, solid waste, road and land projects;

105. the Rio Grande natural gas association in Dona Ana county for building, equipment, infrastructure, debt refinancing, water, wastewater, water rights, solid waste, road and land projects;

106. the Rio Rancho public school district in Sandoval county for building, equipment, infrastructure and debt refinancing projects;

107. Roosevelt county special hospital district in Roosevelt county for building, infrastructure, equipment, debt refinancing and land acquisition projects;

108. the Roswell independent school district in Chaves county for building, equipment, infrastructure and debt refinancing projects;

109. the town of Roswell in Chaves county for building, equipment, infrastructure, debt refinancing, water, wastewater, water rights, solid waste, road and land projects;

110. Sandoval county for building, equipment, infrastructure, debt refinancing, road, land acquisition, water, water rights, wastewater, solid waste, public improvement district and special assessment district projects;

111. the village of Santa Clara in Grant county for building, equipment, infrastructure, debt refinancing, water, wastewater, water rights, solid waste, road and land projects;

112. the city of Santa Fe in Santa Fe county for building, equipment, infrastructure, debt refinancing, water, wastewater, water rights, solid waste, road, special assessment district and land projects;

113. Santa Fe county for building, equipment, infrastructure, debt refinancing, water, wastewater, water rights, solid waste, road, special assessment district, public improvement district and land projects;

114. the Santa Fe public school district in Santa Fe county for building, equipment, infrastructure and debt refinancing projects;

115. the Santa Fe solid waste management authority in Santa Fe county for building, equipment, infrastructure, debt refinancing, road, land acquisition, water, water rights, wastewater and solid waste projects;

116. the city of Santa Rosa in Guadalupe county for building, equipment, infrastructure, debt refinancing, water, wastewater, water rights, solid waste, road and land projects;

117. the village of San Ysidro in Sandoval county for building, equipment, infrastructure, debt refinancing, water, wastewater, water rights, solid waste, road and land projects;

118. the Silver consolidated public school district in Grant county for building, equipment, infrastructure and debt refinancing projects;

119. the South Central solid waste authority in Dona Ana county for building, equipment, infrastructure, debt refinancing, roads, land acquisition, water, water rights, wastewater and solid waste projects;

120. the town of Springer in Colfax county for building, equipment, infrastructure, debt refinancing, water, wastewater, water rights, solid waste, road and land projects;

121. the Taos municipal landfill in Taos county for building, equipment, infrastructure, debt refinancing, road, land acquisition, water, water rights, wastewater and solid waste projects;

122. the Texico municipal school district in Curry and Roosevelt counties for building, equipment, infrastructure and debt refinancing projects;

123. the Tierra y Montes soil and water conservation district in San Miguel county for building, equipment, infrastructure, debt refinancing, road, land acquisition, water, water rights, wastewater and solid waste projects;

124. the Timberon water and sanitation district in Otero county for building, equipment, infrastructure, debt refinancing, road, land acquisition, water, water rights, wastewater and solid waste projects;

125. the city of Truth or Consequences in Sierra county for building, equipment, infrastructure, debt refinancing, water, wastewater, water rights, solid waste, road and land projects;

126. the village of Tularosa in Otero county for building, equipment, infrastructure, debt refinancing, water, wastewater, water rights, solid waste, road and land projects;

127. the village of Virden in Hidalgo county for building, equipment, infrastructure, debt refinancing, water, wastewater, water rights, solid waste, road and land projects;

128. the village of Willard in Torraine county for building, equipment, infrastructure, debt refinancing, water, wastewater, water rights, solid waste, road and land projects;

129. the village of Williamsburg in Sierra county for building, equipment, infrastructure, debt refinancing, water, wastewater, water rights, solid waste, road and land projects;

130. the higher education department for Clovis community college in Curry county for building, equipment, infrastructure, debt refinancing, water, wastewater, water rights, solid waste, road and land projects;

131. Gila regional medical center in Grant county for building, equipment, infrastructure and land acquisition projects;

132. the village of Corrales in Sandoval county for building, equipment, infrastructure, debt refinancing, water, wastewater, water rights, solid waste, road and land projects;

133. the Melrose public school district in Curry, Roosevelt and Quay counties for building, equipment, infrastructure, debt refinancing, water, wastewater, water rights, solid waste, road and land projects;

134. the Bernalillo public school district in Sandoval county for building, equipment, infrastructure, debt refinancing, water, wastewater, solid waste, road and land projects;

135. Rehoboth McKinley Christian hospital in McKinley county for building, equipment, infrastructure, debt refinancing, water, wastewater, solid waste, road and land projects;

136. the New Mexico military institute in Chaves county for building, equipment, infrastructure, refinancing and land acquisition projects;

137. the city of Grants in Cibola county for transportation construction projects;

138. the Native American community academy charter school in Bernalillo county for building, equipment, infrastructure, land acquisition and facilities acquisition projects;

139. the New Mexico building and education congress-ACE leadership charter school in Bernalillo county for building, equipment, infrastructure, land acquisition and facilities acquisition projects;

140. the El Camino Real academy charter school in Bernalillo county for building, equipment, infrastructure, land acquisition and facilities acquisition projects;

141. the Hobbs municipal school district in Lea county for building, equipment, infrastructure, debt refinancing, water, wastewater, water rights, solid waste, road and land projects; and

142. the board of regents of eastern New Mexico university for building, equipment, infrastructure, debt refinancing, water, wastewater, solid waste, road and land projects.

## **Chapter 23 Section 2 Laws 2011**

SECTION 2. VOIDING OF AUTHORIZATION.--If a qualified entity listed in Section 1 of this act has not certified to the New Mexico finance authority by the end of fiscal year 2014 its desire to continue to pursue a loan from the public project revolving fund for a public project listed in that section, the legislative authorization granted to the New Mexico finance authority by Section 1 of this act to make a loan from the public project revolving fund to that qualified entity for that public project is void.

## **Chapter 23 Section 3 Laws 2011**

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

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House Bill 53, aa, w/ec, w/cc

Approved April 1, 2011

# **LAWS 2011, CHAPTER 24**

AN ACT

RELATING TO FINANCE; AUTHORIZING THE NEW MEXICO FINANCE AUTHORITY TO MAKE LOANS OR GRANTS FROM THE WATER PROJECT FUND FOR CERTAIN WATER PROJECTS; DECLARING AN EMERGENCY.

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

## **Chapter 24 Section 1 Laws 2011**

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 acequia del Monte del Rio Chiquito in Taos county for a flood prevention project;
2. to Los Alamos county for a flood prevention project;
3. to the village of Cimarron in Colfax county for a water conservation, treatment, recycling or reuse project;
4. to the town of Clayton in Union county for a water conservation, treatment, recycling or reuse project;
5. to the city of Clovis in Curry county for a water conservation, treatment, recycling or reuse project;
6. to the city of Hobbs in Lea county for a water conservation, treatment, recycling or reuse project;
7. to the city of Las Vegas in San Miguel county for a water conservation, treatment, recycling or reuse project;
8. to the city of Lordsburg in Hidalgo county for a water conservation, treatment, recycling or reuse project;
9. to Los Alamos county for a water conservation, treatment, recycling or reuse project;
10. to the lower Rio Grande public water works authority in Dona Ana county for a water conservation, treatment, recycling or reuse project;
11. to the city of Rio Rancho in Sandoval county for a water conservation, treatment, recycling or reuse project;
12. to the town of Taos in Taos county for a water conservation, treatment, recycling or reuse project;
13. to the Albuquerque-Bernalillo county water utility authority in Bernalillo county for a water storage, conveyance and delivery project;
14. to the Albuquerque-Bernalillo county water utility authority in Bernalillo county for a water storage, conveyance and delivery project;
15. to the Anthony water and sanitation district in Dona Ana county for a water storage, conveyance and delivery project;
16. to the city of Bloomfield in San Juan county for a water storage, conveyance and delivery project;

17. to the Cedar Crest mutual domestic water consumers and sewage works association in Bernalillo county for a water storage, conveyance and delivery project;

18. to the city of Deming in Luna county for a water storage, conveyance and delivery project;

19. to the Dona Ana mutual domestic water consumers association in Dona Ana county for a water storage, conveyance and delivery project;

20. to the eastern New Mexico water utility authority in Curry county for a water storage, conveyance and delivery project;

21. to El Valle de los Ranchos water and sanitation district in Taos county for a water storage, conveyance and delivery project;

22. to El Valle water alliance in San Miguel county for a water storage, conveyance and delivery project;

23. to the Eldorado area water and sanitation district in Santa Fe county for a water storage, conveyance and delivery project;

24. to the city of Gallup in McKinley county for a water storage, conveyance and delivery project;

25. to the Jemez Springs mutual domestic water association in Sandoval county for a water storage, conveyance and delivery project;

26. to la asociacion de Agua de Los Brazos in Rio Arriba county for a water storage, conveyance and delivery project;

27. to the city of Las Cruces in Dona Ana county for a water storage, conveyance and delivery project;

28. to the city of Las Vegas in San Miguel county for a water storage, conveyance and delivery project;

29. to the village of Los Lunas in Valencia county for a water storage, conveyance and delivery project;

30. to McKinley county for a water storage, conveyance and delivery project;

31. to the town of Mesilla in Dona Ana county for a water storage, conveyance and delivery project;

32. to the village of Questa in Taos county for a water storage, conveyance and delivery project;
33. to the Rio Embudo mutual domestic water consumers association in Rio Arriba county for a water storage, conveyance and delivery project;
34. to the village of Ruidoso in Lincoln county for a water storage, conveyance and delivery project;
35. to the village of San Ysidro in Sandoval county for a water storage, conveyance and delivery project;
36. to Santa Fe county for a water storage, conveyance and delivery project;
37. to the city of Santa Rosa in Guadalupe county for a water storage, conveyance and delivery project;
38. to the Sierra Vista mutual domestic association in Bernalillo county for a water storage, conveyance and delivery project;
39. to the town of Taos in Taos county for a water storage, conveyance and delivery project;
40. to the Thoreau water and sanitation district in McKinley county for a water storage, conveyance and delivery project;
41. to the city of Truth or Consequences in Sierra county for a water storage, conveyance and delivery project;
42. to the Canadian River soil and water conservation district in Quay county for a watershed restoration and management project;
43. to the Carrizozo soil and water conservation district in Lincoln county for a watershed restoration and management project;
44. to the Claunch-Pinto soil and water conservation district in Torrance county for a watershed restoration and management project;
45. to the Pueblo of Isleta for a watershed restoration and management project;
46. to Santa Fe county for a watershed restoration and management project;



47. to the city of Santa Fe in Santa Fe county for a watershed restoration and management project;

48. to the Upper Hondo soil and water conservation district in Lincoln county for a watershed restoration and management project; and

49. to the Ute Creek soil and water conservation district in Harding county for a watershed restoration and management project.

## **Chapter 24 Section 2 Laws 2011**

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

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House Bill 143, aa, w/ec

Approved April 1, 2011

## **LAWS 2011, CHAPTER 25**

AN ACT

RELATING TO GAME AND FISH; ESTABLISHING AN ACTIVE-DUTY MILITARY DISCOUNT FOR A TEMPORARY SMALL GAME LICENSE AND TEMPORARY FISHING LICENSE.

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

## **Chapter 25 Section 1 Laws 2011**

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.

Q. A military general hunting and fishing license may be purchased by a member of the armed forces of the United States who, for a period of not less than ninety days immediately preceding the date of application for the license, has been domiciled in New Mexico and has not claimed residency elsewhere for any purpose. A military general hunting and fishing license entitles the licensee to hunt deer, squirrel and game birds and to fish for game fish during the open seasons for each species.

R. A temporary active-duty fishing license or a temporary active-duty small game license may be purchased by a member of the armed forces of the United States or national guard who is domiciled in New Mexico and does not claim residency elsewhere for any purpose, if the member submits to the state game commission satisfactory proof that the member is a resident on active duty with the armed forces of the United States or national guard stationed outside of New Mexico and is currently on leave for thirty days or less. A temporary active-duty fishing license entitles the licensee to fish for game fish during a specific period of time indicated on the license. A temporary active-duty small game license entitles the licensee to hunt game birds, except wild turkey, and squirrel during a specific period of time indicated on the license."

## **Chapter 25 Section 2 Laws 2011**

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, military,  
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 active-duty fishing, five days	12.00
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 active-duty small game, four days	16.00
Temporary small game, four days	33.00
Second rod validation	4.00."

## **Chapter 25 Section 3 Laws 2011**

SECTION 3. EFFECTIVE DATE.--The effective date of the provisions of this act is April 1, 2012.

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House Bill 180

Approved April 1, 2011

# **LAWS 2011, CHAPTER 26**

AN ACT



RELATING TO JURIES; REQUIRING REMOVAL OF SERVICE MEMBERS KILLED OR MISSING IN ACTION FROM JURY DATABASES.

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

## **Chapter 26 Section 1 Laws 2011**

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 to form the master jury database. The master jury database shall be the database that produces the random jury list for the selection of petit or grand jurors for the state courts.

C. The secretary of veterans' services and the adjutant general of the department of military affairs shall make available, by electronic media, to the administrative office of the courts a database of service members who were killed or missing in action during military service, which shall be updated every six months. The administrative office of the courts shall remove the names of service members who were killed or missing in action during military service from the master jury database that produces the random jury list for the state courts.

D. 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.

E. 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."

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House Bill 181, aa

Approved April 1, 2011

## **LAWS 2011, CHAPTER 27**

### **AN ACT**

RELATING TO THE PUBLIC EMPLOYEES RETIREMENT ASSOCIATION;  
AUTHORIZING THE RETIREMENT BOARD TO SELECT A CUSTODIAN BANK.

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

### **Chapter 27 Section 1 Laws 2011**

SECTION 1. Section 10-11-130 NMSA 1978 (being Laws 1987, Chapter 253, Section 130, as amended) is amended to read:

"10-11-130. RETIREMENT BOARD--AUTHORITY--MEMBERSHIP.--

A. The "retirement board" is created and is the trustee of the association and the funds created by the state retirement system acts and has all the powers necessary or convenient to carry out and effectuate the purposes and provisions of the state retirement system acts, including, in addition to any specific powers provided for in the Public Employees Retirement Act but without limiting the generality of the foregoing, the power to:

(1) administer the state retirement system acts, including the management of the association and making effective the provisions of those acts, as well as to administer and manage any other employee benefit acts as provided by law;

(2) in addition to utilizing services of the attorney general and notwithstanding any other provision of law, employ or contract with and compensate competent legal counsel to handle the legal matters and litigation of the retirement

board and the association and to give advice and counsel in regard to any matter connected with the duties of the retirement board;

(3) administer oaths;

(4) adopt and use a seal for authentication of records, processes and proceedings;

(5) create and maintain records relating to all members, affiliated public employers and all activities and duties required of the retirement board;

(6) issue subpoenas and compel the production of evidence and attendance of witnesses in connection with any hearings or proceedings of the retirement board;

(7) make and execute contracts;

(8) purchase, acquire or hold land adjacent to the state capitol grounds or other suitable location and build thereon a building to house the association and its employees and, in the event additional office space is available in the building after the retirement board and its employees have been housed, to rent or lease the additional space to any public agency or private person; provided that first priority for the rental or leasing shall be to public agencies; and further provided that for the purpose of purchasing, acquiring or holding the land and the building thereon, the retirement board may use funds from the income fund and any other funds controlled by the retirement board the use of which for such purposes is not prohibited by law;

(9) after the sale of the land and building acquired pursuant to Paragraph (8) of this subsection, acquire land and build thereon a new building to house the association and its employees and hold the building and land in fee simple in the name of the association. In order to acquire the land and plan, design and construct the building, the retirement board may expend the proceeds of the sale of the land and building acquired pursuant to Paragraph (8) of this subsection or any funds controlled by the board, the use of which for such purposes is not otherwise prohibited by law;

(10) make and adopt such reasonable rules as may be necessary or convenient to carry out the duties of the retirement board and activities of the association, including any rules necessary to preserve the status of the association as a qualified pension plan under the provisions of the Internal Revenue Code of 1986, as amended, or under successor or related provisions of law;

(11) designate committees and designate committee members, including individuals who may not be members of the association; and

(12) select and contract for the services of one or more custodian banks for all funds under the retirement board's management. For the purpose of this

paragraph, "custodian bank" means a financial institution with the general fiduciary duties to manage, control and collect the assets of an investment fund, including receiving all deposits and paying all disbursements as directed by staff, safekeeping of assets, coordination of asset transfers, timely settlement of securities transactions and accurate and timely reporting of the assets by individual account and in total.

B. The retirement board consists of:

(1) the secretary of state;

(2) the state treasurer;

(3) four members under a state coverage plan to be elected by the members under state coverage plans;

(4) four members under a municipal coverage plan to be elected by the members under municipal coverage plans, provided one member shall be a municipal member employed by a county; and

(5) two retired members to be elected by the retired members of the association.

C. The results of elections of elected members of the retirement board shall be certified at the annual meeting of the association. Elections shall be conducted according to rules the retirement board adopts from time to time.

D. The regular term of office of the elected members of the retirement board is four years. The term of one retirement board member under a state coverage plan expires annually on December 31. The terms of retirement board members under a municipal coverage plan expire on December 31 of noncoinciding years in the pattern set by the retirement board. Members of the retirement board serve until their successors have qualified.

E. A member elected to the retirement board who fails to attend four consecutively scheduled meetings of the retirement board, unless in each case excused for cause by the retirement board members in attendance, is considered to have resigned from the retirement board, and the retirement board shall by resolution declare the office vacated as of the date of adoption of the resolution. A vacancy occurring on the retirement board, except in the case of an elected official, shall be filled by the remaining retirement board members, without requirement that a quorum be present. The member appointed to fill the vacancy serves for the remainder of the vacated term.

F. Members of the retirement board serve without salary for their services as retirement board members, but they shall receive those amounts authorized under the Per Diem and Mileage Act.

G. The retirement board shall hold four regular meetings each year and shall designate in advance the time and place of the meetings. Special meetings and emergency meetings of the retirement board may be held upon call of the chair or any three members of the retirement board. Written notice of special meetings shall be sent to each member of the retirement board at least seventy-two hours in advance of the special meeting. Verbal notice of emergency meetings shall be given to as many members as is feasible at least eight hours before the emergency meeting, and the meeting shall commence with a statement of the nature of the emergency. The retirement board shall adopt its own rules of procedure and shall keep a record of its proceedings. All meetings of the retirement board shall comply with the Open Meetings Act. A majority of retirement board members shall constitute a quorum. Each attending member of the retirement board is entitled to one vote on each question before the retirement board, and at least a majority of a quorum shall be necessary for a decision by the retirement board.

H. Annual meetings of the members of the association shall be held in Santa Fe at such time and place as the retirement board shall from time to time determine. Special meetings of the members of the association shall be held in Santa Fe upon call of any seven retirement board members. The retirement board shall send a written notice to the last known residence address of each member currently employed by an affiliated public employer at least ten days prior to any meeting of the members of the association. The notice shall contain the call of the meeting and the principal purpose of the meeting. All meetings of the association shall be public and shall be conducted according to procedures the retirement board shall from time to time adopt. The retirement board shall keep a record of the proceedings of each meeting of the association.

I. Neither the retirement board nor the association shall allow public inspection of, or disclosure of, information from any member or retiree file unless a prior release and consent, in the form prescribed by the association, has been executed by the member or retiree; except that applicable coverage plans, amounts of retirement plan contributions made by members and affiliated public employers, pension amounts paid and the names and addresses of public employees retirement association members or retirees requested for election purposes by candidates for election to the retirement board may be produced or disclosed without release or consent."

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House Bill 38, aa

Approved April 2, 2011

## **LAWS 2011, CHAPTER 28**

AN ACT

RELATING TO CONSTRUCTION CONTRACTS; REQUIRING LITIGATION AND DISPUTE RESOLUTION PROCEEDINGS ARISING FROM CONSTRUCTION CONTRACTS IN NEW MEXICO TO OCCUR IN NEW MEXICO.

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

## **Chapter 28 Section 1 Laws 2011**

SECTION 1. A new section of Chapter 57 NMSA 1978 is enacted to read:

"CONSTRUCTION CONTRACTS--PROVISIONS VOID.--

A. A provision of a construction contract, agreement, understanding, specification or other documentation that is made part of a construction contract for an improvement to real property in New Mexico is void, unenforceable and against the public policy of the state if the provision:

(1) makes the construction contract subject to the laws of another state; or

(2) requires any litigation arising from the construction contract to be conducted in another state.

B. Any mediation, arbitration or other dispute resolution proceeding arising from or relating to a construction contract for work performed in this state shall be conducted in this state.

C. As used in this section, "construction contract" means a public, private, foreign or domestic contract or agreement relating to construction, alteration, repair or maintenance of any real property in New Mexico and includes agreements for architectural services, demolition, design services, development, engineering services, excavation or other improvement to real property, including buildings, shafts, wells and structures, whether on, above or under real property."

## **Chapter 28 Section 2 Laws 2011**

SECTION 2. APPLICABILITY.--The provisions of this act apply to contracts entered into on or after July 1, 2011.

## **Chapter 28 Section 3 Laws 2011**

SECTION 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.

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House Bill 64

Approved April 2, 2011

## **LAWS 2011, CHAPTER 29**

AN ACT

RELATING TO GOVERNMENT ORGANIZATION; ENACTING THE ORGANIC PRODUCTION ACT; PROVIDING POWERS AND DUTIES FOR THE BOARD OF REGENTS OF NEW MEXICO STATE UNIVERSITY AND THE NEW MEXICO DEPARTMENT OF AGRICULTURE FOR ORGANIC AGRICULTURAL PRODUCT PROGRAMS; TRANSFERRING FUNCTIONS, APPROPRIATIONS, MONEY, RECORDS, PROPERTY, CONTRACTUAL OBLIGATIONS AND STATUTORY REFERENCES OF THE ORGANIC COMMODITY COMMISSION TO THE NEW MEXICO DEPARTMENT OF AGRICULTURE.

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

### **Chapter 29 Section 1 Laws 2011**

SECTION 1. SHORT TITLE.--This act may be cited as the "Organic Production Act".

### **Chapter 29 Section 2 Laws 2011**

SECTION 2. NEW MEXICO DEPARTMENT OF AGRICULTURE--POWERS.--

A. The Organic Production Act shall be administered and enforced by the New Mexico department of agriculture, under the direction of the board of regents of New Mexico state university. The New Mexico department of agriculture is authorized to regulate the production, handling and certification of organic agricultural products pursuant to rules adopted by the board of regents of New Mexico state university. In promulgating the rules, the board shall consider the requirements of the federal Organic Foods Production Act of 1990 and the national organic program rules.

B. The department may:

(1) charge fees and assessments to fund its organic certification program; and

(2) implement education and marketing programs to assist organic producers and handlers and those considering certification as organic producers or handlers.

## **Chapter 29 Section 3 Laws 2011**

### **SECTION 3. FEES AND ASSESSMENTS.--**

A. Pursuant to rules adopted by the board of regents of New Mexico state university, the New Mexico department of agriculture may impose and collect fees for certification and registration as follows:

(1) producers and handlers shall pay a fee not to exceed three hundred fifty dollars (\$350) for a new application and a fee not to exceed three hundred dollars (\$300) for annual renewal applications; and

(2) producers and handlers may be subject to late fees not to exceed five hundred dollars (\$500).

B. Pursuant to rules adopted by the board of regents of New Mexico state university, the New Mexico department of agriculture may impose and collect assessments for the basic certification process of certified organic producers and handlers at an annual rate not to exceed one percent of the total gross sales of the organically produced agricultural products based on the previous year's sales, provided that:

(1) assessments on total gross sales of over one million dollars (\$1,000,000) shall be assessed at a rate not to exceed nine thousand five hundred dollars (\$9,500) plus ninety-five thousandths percent of any amount over one million dollars (\$1,000,000) of total gross sales of organically produced agricultural products based on the previous year's sales; and

(2) after July 1, 2015, the amounts provided for in Paragraph (1) of this subsection may be increased to no more than one percent of the total gross sales of the organically produced agricultural products based on the previous year's sales.

C. The New Mexico department of agriculture shall provide a payment schedule for all assessments due to the department.

D. The board of regents of New Mexico state university may authorize an organic production inspector to charge reasonable fees not to exceed the actual costs of performing additional inspections due to noncompliance or at the request of a producer or handler.

## **Chapter 29 Section 4 Laws 2011**

SECTION 4. DISPOSITION OF FUNDS.--All money received by the New Mexico department of agriculture pursuant to the provisions of the Organic Production Act, including assessments, fees, appropriations, gifts, grants and donations, shall be expended only for the purpose of carrying out the provisions of that act.



## **Chapter 29 Section 5 Laws 2011**

### SECTION 5. APPLICABILITY TO OTHER LAWS.--

A. Any transactions involving agricultural products that bear labels stating that the agricultural products are organically produced are subject to Sections 57-15-1 through 57-15-10 NMSA 1978.

B. Any transactions involving agricultural products that are food and that bear labels stating that the agricultural products are organically produced are subject to the New Mexico Food Act.

## **Chapter 29 Section 6 Laws 2011**

### SECTION 6. TEMPORARY PROVISIONS--TRANSFERS.--

A. On July 1, 2011, all functions, appropriations, money, records, furniture, equipment and other property of the organic commodity commission are transferred to the New Mexico department of agriculture.

B. On July 1, 2011, all contractual obligations of the organic commodity commission are binding on the New Mexico department of agriculture.

C. On July 1, 2011, all money in the organic market development fund shall be transferred to the New Mexico department of agriculture.

D. On July 1, 2011, all references in the law or rule to the organic commodity commission are deemed to be references to the New Mexico department of agriculture.

E. The rules of the organic commodity commission are deemed to be the rules of the board of regents of New Mexico state university for the New Mexico department of agriculture until amended or repealed by the board of regents of New Mexico state university.

## **Chapter 29 Section 7 Laws 2011**

SECTION 7. REPEAL.--Sections 76-22-1 through 76-22-28 NMSA 1978 (being Laws 1990, Chapter 122, Sections 1 through 9 and 11 through 14, Laws 2001, Chapter 157, Section 5, Laws 1990, Chapter 122, Sections 16 and 17, Laws 1993, Chapter 330, Section 12 and Laws 1990, Chapter 122, Sections 19 through 28, as amended) are repealed.

## **Chapter 29 Section 8 Laws 2011**

SECTION 8. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.

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House Bill 87, aa

Approved April 2, 2011

## **LAWS 2011, CHAPTER 30**

AN ACT

RELATING TO BOARDS AND COMMISSIONS; EXTENDING THE SUNSET DATES FOR CERTAIN BOARDS AND COMMISSIONS.

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

### **Chapter 30 Section 1 Laws 2011**

SECTION 1. Section 60-2A-30 NMSA 1978 (being Laws 1980, Chapter 90, Section 30, as amended) is amended to read:

"60-2A-30. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The New Mexico athletic commission is terminated on July 1, 2017 pursuant to the Sunset Act. The commission shall continue to operate according to the provisions of the Professional Athletic Competition Act until July 1, 2018. Effective July 1, 2018, Chapter 60, Article 2A NMSA 1978 is repealed."

### **Chapter 30 Section 2 Laws 2011**

SECTION 2. Section 61-14-1 NMSA 1978 (being Laws 1967, Chapter 62, Section 1) is amended to read:

"61-14-1. SHORT TITLE.--Chapter 61, Article 14 NMSA 1978 may be cited as the "Veterinary Practice Act"."

### **Chapter 30 Section 3 Laws 2011**

SECTION 3. Section 61-14-20 NMSA 1978 (being Laws 1979, Chapter 76, Section 2, as amended) is amended to read:

"61-14-20. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The board of veterinary medicine is terminated on July 1, 2017 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of Chapter 61, Article 14

NMSA 1978 until July 1, 2018. Effective July 1, 2018, Chapter 61, Article 14 NMSA 1978 is repealed."

### **Chapter 30 Section 4 Laws 2011**

SECTION 4. Section 61-15-13 NMSA 1978 (being Laws 1979, Chapter 362, Section 10, as amended) is amended to read:

"61-15-13. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The board of examiners for architects is terminated on July 1, 2017 pursuant to the provisions of the Sunset Act. The board shall continue to operate according to the provisions of the Architectural Act until July 1, 2018. Effective July 1, 2018, the Architectural Act is repealed."

### **Chapter 30 Section 5 Laws 2011**

SECTION 5. Section 61-23-32 NMSA 1978 (being Laws 1987, Chapter 336, Section 32, as amended) is amended to read:

"61-23-32. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The state board of licensure for professional engineers and surveyors is terminated on July 1, 2017 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of the Engineering and Surveying Practice Act until July 1, 2018. Effective July 1, 2018, the Engineering and Surveying Practice Act is repealed."

### **Chapter 30 Section 6 Laws 2011**

SECTION 6. Section 61-24C-17 NMSA 1978 (being Laws 1993, Chapter 83, Section 5, as amended) is amended to read:

"61-24C-17. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The interior design board is terminated on July 1, 2017 pursuant to the provisions of the Sunset Act. The board shall continue to operate according to the provisions of the Interior Designers Act until July 1, 2018. Effective July 1, 2018, Chapter 61, Article 24C NMSA 1978 is repealed."

### **Chapter 30 Section 7 Laws 2011**

SECTION 7. Section 61-28B-29 NMSA 1978 (being Laws 1999, Chapter 179, Section 29, as amended) is amended to read:

"61-28B-29. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The New Mexico public accountancy board is terminated on July 1, 2017 pursuant to the provisions of the Sunset Act. The board shall continue to operate according to the

provisions of the 1999 Public Accountancy Act until July 1, 2018. Effective July 1, 2018, the 1999 Public Accountancy Act is repealed."

### **Chapter 30 Section 8 Laws 2011**

SECTION 8. Section 61-29-19 NMSA 1978 (being Laws 1978, Chapter 203, Section 2, as amended) is amended to read:

"61-29-19. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The New Mexico real estate commission is terminated on July 1, 2017 pursuant to the Sunset Act. The commission shall continue to operate according to the provisions of Chapter 61, Article 29 NMSA 1978 until July 1, 2018. Effective July 1, 2018, Chapter 61, Article 29 NMSA 1978 is repealed."

### **Chapter 30 Section 9 Laws 2011**

SECTION 9. Section 61-30-24 NMSA 1978 (being Laws 1993, Chapter 269, Section 21, as amended) is amended to read:

"61-30-24. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The real estate appraisers board is terminated effective July 1, 2017. The Real Estate Appraisers Act shall continue in effect until July 1, 2018. Chapter 61, Article 30 NMSA 1978 is repealed effective July 1, 2018."

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House Bill 106

Approved April 2, 2011

## **LAWS 2011, CHAPTER 31**

AN ACT

RELATING TO HEALTH CARE; ASSIGNING THE DUTIES OF THE NAPRAPATHIC PRACTICE BOARD TO THE NEW MEXICO MEDICAL BOARD; ENACTING THE NAPRAPATHIC PRACTICE ACT; CREATING THE NAPRAPATHIC TASK FORCE; PROVIDING FOR THE TRANSFER OF FUNCTIONS, APPROPRIATIONS, MONEY, PROPERTY, CONTRACTUAL OBLIGATIONS AND REFERENCES; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978; 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 31 Section 1 Laws 2011**

SECTION 1. Section 61-6-5 NMSA 1978 (being Laws 1973, Chapter 361, Section 2, as amended by Laws 2008, Chapter 53, Section 11 and by Laws 2008, Chapter 54, Section 11 and also by Laws 2008, Chapter 55, Section 1) is amended to read:

"61-6-5. DUTIES AND POWERS.--The board shall:

A. enforce and administer the provisions of the Medical Practice Act, the Physician Assistant Act, the Anesthesiologist Assistants Act, the Genetic Counseling Act, the Impaired Health Care Provider Act, the Polysomnography Practice Act and the Naprapathic Practice Act;

B. adopt, publish and file, in accordance with the Uniform Licensing Act and the State Rules Act, all rules for the implementation and enforcement of the provisions of the Medical Practice Act, the Physician Assistant Act, the Anesthesiologist Assistants Act, the Genetic Counseling Act, the Impaired Health Care Provider Act, the Polysomnography Practice Act and the Naprapathic Practice Act;

C. adopt and use a seal;

D. administer oaths to all applicants, witnesses and others appearing before the board, as appropriate;

E. take testimony on matters within the board's jurisdiction;

F. keep an accurate record of all its meetings, receipts and disbursements;

G. maintain records in which the name, address and license number of all licensees shall be recorded, together with a record of all license renewals, suspensions, revocations, probations, stipulations, censures, reprimands and fines;

H. grant, deny, review, suspend and revoke licenses to practice medicine and censure, reprimand, fine and place on probation and stipulation licensees and applicants in accordance with the Uniform Licensing Act for any cause stated in the Medical Practice Act, the Impaired Health Care Provider Act and the Naprapathic Practice Act;

I. hire staff and administrators as necessary to carry out the provisions of the Medical Practice Act;

J. have the authority to hire or contract with investigators to investigate possible violations of the Medical Practice Act;

K. have the authority to hire a competent attorney to give advice and counsel in regard to any matter connected with the duties of the board, to represent the

board in any legal proceedings and to aid in the enforcement of the laws in relation to the medical profession and to fix the compensation to be paid to such attorney; provided, however, that such attorney shall be compensated from the funds of the board;

L. establish continuing medical education requirements for licensed physicians and continuing education requirements for physician assistants;

M. establish committees as it deems necessary for carrying on its business;

N. hire or contract with a licensed physician to serve as medical director and fulfill specified duties of the secretary-treasurer;

O. establish and maintain rules related to the management of pain based on review of national standards for pain management; and

P. have the authority to waive licensure fees for the purpose of medical doctor recruitment and retention."

## **Chapter 31 Section 2 Laws 2011**

SECTION 2. Section 61-6-6 NMSA 1978 (being Laws 1973, Chapter 361, Section 1, as amended) is amended to read:

"61-6-6. DEFINITIONS.--As used in Chapter 61, Article 6 NMSA 1978:

A. "approved postgraduate training program" means a program approved by the accrediting council on graduate medical education of the American medical association or by the board;

B. "board" means the New Mexico medical board;

C. "licensed physician" means a medical doctor licensed under the Medical Practice Act to practice medicine in New Mexico;

D. "licensee" means a medical doctor, physician assistant, polysomnographic technologist, anesthesiologist assistant or naprapath licensed by the board to practice in New Mexico;

E. "medical college or school in good standing" means a board-approved medical college or school that has as high a standard as that required by the association of American medical colleges and the council on medical education of the American medical association;

F. "medical student" means a student enrolled in a board-approved medical college or school in good standing;

G. "physician assistant" means a health professional who is licensed by the board to practice as a physician assistant and who provides services to patients under the supervision and direction of a licensed physician;

H. "intern" means a first-year postgraduate student upon whom a degree of doctor of medicine and surgery or equivalent degree has been conferred by a medical college or school in good standing;

I. "resident" means a graduate of a medical college or school in good standing who is in training in a board-approved and accredited residency training program in a hospital or facility affiliated with an approved hospital and who has been appointed to the position of "resident" or "fellow" for the purpose of postgraduate medical training;

J. "the practice of medicine" consists of:

(1) advertising, holding out to the public or representing in any manner that one is authorized to practice medicine in this state;

(2) offering or undertaking to administer, dispense or prescribe a drug or medicine for the use of another person, except as authorized pursuant to a professional or occupational licensing statute set forth in Chapter 61 NMSA 1978;

(3) offering or undertaking to give or administer, dispense or prescribe a drug or medicine for the use of another person, except as directed by a licensed physician;

(4) offering or undertaking to perform an operation or procedure upon a person;

(5) offering or undertaking to diagnose, correct or treat in any manner or by any means, methods, devices or instrumentalities any disease, illness, pain, wound, fracture, infirmity, deformity, defect or abnormal physical or mental condition of a person;

(6) offering medical peer review, utilization review or diagnostic service of any kind that directly influences patient care, except as authorized pursuant to a professional or occupational licensing statute set forth in Chapter 61 NMSA 1978; or

(7) acting as the representative or agent of a person in doing any of the things listed in this subsection;

K. "the practice of medicine across state lines" means:

(1) the rendering of a written or otherwise documented medical opinion concerning diagnosis or treatment of a patient within this state by a physician located outside this state as a result of transmission of individual patient data by electronic, telephonic or other means from within this state to the physician or the physician's agent; or

(2) the rendering of treatment to a patient within this state by a physician located outside this state as a result of transmission of individual patient data by electronic, telephonic or other means from within this state to the physician or the physician's agent;

L. "sexual contact" means touching the primary genital area, groin, anus, buttocks or breast of a patient or allowing a patient to touch another's primary genital area, groin, anus, buttocks or breast in a manner that is commonly recognized as outside the scope of acceptable medical practice;

M. "sexual penetration" means sexual intercourse, cunnilingus, fellatio or anal intercourse, whether or not there is any emission, or introducing any object into the genital or anal openings of another in a manner that is commonly recognized as outside the scope of acceptable medical practice; and

N. "United States" means the fifty states, its territories and possessions and the District of Columbia."

## **Chapter 31 Section 3 Laws 2011**

SECTION 3. Section 61-6-31 NMSA 1978 (being Laws 1989, Chapter 269, Section 27, as amended by Laws 2008, Chapter 53, Section 13 and by Laws 2008, Chapter 54, Section 14 and also by Laws 2008, Chapter 55, Section 2) is amended to read:

"61-6-31. DISPOSITION OF FUNDS--NEW MEXICO MEDICAL BOARD FUND CREATED--METHOD OF PAYMENTS.--

A. There is created the "New Mexico medical board fund".

B. All funds received by the board and money collected under the Medical Practice Act, the Physician Assistant Act, the Anesthesiologist Assistants Act, the Genetic Counseling Act, the Polysomnography Practice Act, the Impaired Health Care Provider Act and the Naprapathic Practice Act shall be deposited with the state treasurer who shall place the same to the credit of the New Mexico medical board fund.

C. All payments out of the fund shall be made on vouchers issued and signed by the secretary-treasurer of the board or the designee of the secretary-treasurer



upon warrants drawn by the department of finance and administration in accordance with the budget approved by that department.

D. All amounts in the New Mexico medical board fund shall be subject to the order of the board and shall be used only for the purpose of meeting necessary expenses incurred in:

(1) the performance of the provisions of the Medical Practice Act, the Physician Assistant Act, the Anesthesiologist Assistants Act, the Genetic Counseling Act, the Polysomnography Practice Act, the Impaired Health Care Provider Act and the Naprapathic Practice Act and the duties and powers imposed by those acts;

(2) the promotion of medical education and standards in this state within the budgetary limits; and

(3) efforts to recruit and retain medical doctors for practice in New Mexico.

E. All funds that may have accumulated to the credit of the board under any previous law shall be transferred to the New Mexico medical board fund and shall continue to be available for use by the board in accordance with the provisions of the Medical Practice Act, the Physician Assistant Act, the Anesthesiologist Assistants Act, the Genetic Counseling Act, the Polysomnography Practice Act, the Impaired Health Care Provider Act and the Naprapathic Practice Act. All money unused at the end of the fiscal year shall not revert, but shall remain in the fund for use in accordance with the provisions of the Medical Practice Act, the Physician Assistant Act, the Anesthesiologist Assistants Act, the Genetic Counseling Act, the Polysomnography Practice Act, the Impaired Health Care Provider Act and the Naprapathic Practice Act."

## **Chapter 31 Section 4 Laws 2011**

SECTION 4. SHORT TITLE.--Sections 4 through 14 of this act may be cited as the "Naprapathic Practice Act".

## **Chapter 31 Section 5 Laws 2011**

SECTION 5. DEFINITIONS.--As used in the Naprapathic Practice Act:

A. "board" means the New Mexico medical board; and

B. "licensee" means a person licensed by the board to practice naprapathy.

## **Chapter 31 Section 6 Laws 2011**

SECTION 6. NAPRAPATHIC TASK FORCE CREATED.--

A. The "naprapathic task force" is created under the direction of the board. The naprapathic task force shall advise the board regarding licensure of naprapaths, approval of naprapathy curricula and any other matters that are necessary to ensure the training and licensure of naprapaths.

B. The naprapathic task force shall be composed of no fewer than two licensees, appointed by the board, who are residents of the state. Vacancies on the naprapathic task force shall be filled by appointment by the board.

C. The naprapathic task force shall develop guidelines for the board to consider in regard to:

(1) regulating the licensure of naprapaths and the practice of naprapathy and establishing minimum qualifications and hours of clinical experience required for licensure as a naprapath;

(2) prescribing the manner in which records of examinations and treatments shall be kept and maintained;

(3) providing standards for professional responsibility and conduct;

(4) identifying disciplinary actions and circumstances that require disciplinary action;

(5) developing a means to provide information to all licensees in the state;

(6) providing for the investigation of complaints against licensees or persons holding themselves out as practicing naprapathy in the state;

(7) providing for the publishing of information for the public about licensees and the practice of naprapathy in the state;

(8) providing for an orderly process for reinstatement of a license;

(9) establishing criteria for acceptance of naprapathy credentials or licensure from another jurisdiction;

(10) providing criteria for advertising or promotional materials; and

(11) any other matter necessary to implement the Naprapathic Practice Act.

## **Chapter 31 Section 7 Laws 2011**

### **SECTION 7. PRACTICE OF NAPRAPATHY--DESCRIPTION.--**

A. Naprapathic practice includes the diagnosis and treatment of persons with connective tissue disorders through the use of special techniques, review of case history, examination and palpation or treatment of a person by the use of connective tissue manipulation, exercise, postural counseling, nutritional counseling and the application or use of heat, cold, light, water, radiant energy, electricity, sound and air and assistive devices for the purpose of preventing, correcting or alleviating a physical disability. Naprapathic practice does not include surgery, acupuncture, Chinese herbal medicine, pharmacology or invasive diagnostic testing.

B. A naprapath treats contractures, muscle spasms, inflammations, scar tissue formation, adhesions, lesions, laxity, hypotonicity, rigidity, structural imbalances, bruises, contusions, muscular atrophy and partial separation of connective tissue fibers.

C. Naprapathic practice may require the:

- (1) performance of specialized tests and measurements;
- (2) administration of specialized treatment procedures; and
- (3) establishment and modification of naprapathic treatment programs.

D. A naprapath may advise, supervise or teach another in the performance of naprapathy.

E. A naprapath shall refer to a licensed physician any patient whose medical condition should, at the time of evaluation or treatment, be determined to be beyond the scope of practice of the naprapath.

## **Chapter 31 Section 8 Laws 2011**

### **SECTION 8. LICENSE REQUIRED--EXCEPTIONS--REGISTRATION.--**

A. A person shall not practice naprapathy in the state without a valid license issued by the board.

B. A person who is a naprapath practitioner employed by a federal government facility or agency in New Mexico is not required to be licensed pursuant to the Naprapathic Practice Act.

C. A person who is enrolled in a program approved by the board to provide training for naprapaths or a person receiving continuing educational training to practice naprapathy is not required to be licensed or registered with the board.

D. A person teaching, advising or supervising students of naprapathy or teaching continuing education for naprapaths shall not practice naprapathy in New Mexico without a license by the board unless:

- (1) that person is in the state for less than one month;
- (2) that person is registered with the board as a teacher, advisor or supervisor; and
- (3) the practice occurs in the course of that person's duties as a teacher, advisor or supervisor.

E. Nothing in the Naprapathic Practice Act shall be construed to prevent a person qualified as a member of a recognized profession, the practice of which requires a license or is regulated pursuant to the laws of New Mexico, from rendering services within the scope of the person's license or a state rule adopted to regulate the profession; provided that the person does not make a representation as being a naprapath.

## **Chapter 31 Section 9 Laws 2011**

### **SECTION 9. REQUIREMENTS FOR LICENSING.--**

A. The board shall grant a license to practice naprapathy to a person who:

- (1) is at least twenty-one years of age;
- (2) has submitted to the board:
  - (a) a completed application for licensing on a form provided by the board;
  - (b) required documentation as required by the board; and
  - (c) the required fees;
- (3) has graduated from a two-year college-level program or an equivalent program approved by the board;
- (4) 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;

(5) has passed the national board of naprapathic examiners examination or holds a valid license as a naprapath in another jurisdiction; and

(6) has met all other requirements of the board.

B. The board may require a personal interview with an applicant to evaluate that person's qualifications for a license.

## **Chapter 31 Section 10 Laws 2011**

### SECTION 10. DESIGNATION AS NAPRAPATH--DISPLAY OF LICENSE.--

A. A licensee is designated a "naprapath" and may use that title in connection with the practice of the profession of naprapathy.

B. A licensee may use the title "doctor of naprapathy" or the letters "D.N." following the licensee's name to indicate the licensee's professional status.

C. A licensee shall display the licensee's license and diplomas in the licensee's place of business in a location clearly visible to the licensee's patients.

## **Chapter 31 Section 11 Laws 2011**

### SECTION 11. LICENSE RENEWAL.--

A. The board shall review licenses for renewal annually, and all licenses to be renewed shall be renewed on July 1. Applicants for license renewal shall submit:

(1) a renewal application on a form provided by the board; and

(2) a license renewal fee.

B. The board may require proof of continuing education or other proof of competence as a requirement for renewal.

## **Chapter 31 Section 12 Laws 2011**

SECTION 12. LICENSE FEES.--The board shall establish a schedule of reasonable administrative and licensing fees, but an individual fee shall not exceed one thousand dollars (\$1,000).

## **Chapter 31 Section 13 Laws 2011**

SECTION 13. OFFENSES--CRIMINAL PENALTIES.--A person who practices naprapathy without a license is guilty of a misdemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.

### **Chapter 31 Section 14 Laws 2011**

SECTION 14. VIOLATION--CIVIL PENALTIES.--The board may fine any person who intentionally violates the provisions of the Naprapathic Practice Act up to one thousand dollars (\$1,000) or may suspend or revoke the licensee's authority to practice naprapathy in New Mexico.

### **Chapter 31 Section 15 Laws 2011**

SECTION 15. TEMPORARY PROVISION--TRANSFER OF FUNCTIONS, APPROPRIATIONS AND PROPERTY--CONTRACTUAL OBLIGATIONS--STATUTORY REFERENCES.--

A. On July 1, 2011, all functions, appropriations, money, records, furniture, equipment and other property of the naprapathic practice board shall be transferred to the New Mexico medical board.

B. On the effective date of this act, contractual obligations of the naprapathic practice board are binding on the New Mexico medical board.

C. On the effective date of this act, all references in law to the naprapathic practice board shall be deemed to be references in law to the New Mexico medical board.

### **Chapter 31 Section 16 Laws 2011**

SECTION 16. REPEAL.--Sections 61-12E-1 through 61-12E-17 NMSA 1978 (being Laws 2003, Chapter 60, Sections 1 through 17, as amended) are repealed.

### **Chapter 31 Section 17 Laws 2011**

SECTION 17. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.

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House Bill 107, aa

Approved April 2, 2011

## **LAWS 2011, CHAPTER 32**

## AN ACT

RELATING TO PUBLIC SCHOOLS; PROVIDING FOR LOCAL POLICIES AND STATE RULES RELATED TO THE PROVISION OF SUPPLEMENTAL EDUCATION SERVICES FOR TITLE 1-ELIGIBLE STUDENTS WHO ATTEND SCHOOLS IN NEED OF IMPROVEMENT.

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

### **Chapter 32 Section 1 Laws 2011**

SECTION 1. Section 22-2C-7 NMSA 1978 (being Laws 2003, Chapter 153, Section 16, as amended) is amended to read:

"22-2C-7. ADEQUATE YEARLY PROGRESS--SCHOOL IMPROVEMENT PLANS--CORRECTIVE ACTION--RESTRUCTURING.--

A. A public school that fails to make adequate yearly progress for two consecutive school years shall be identified as a school in need of improvement. A school in need of improvement shall be ranked as:

- (1) school improvement 1;
- (2) school improvement 2;
- (3) corrective action;
- (4) restructuring 1; or
- (5) restructuring 2.

B. Within ninety days of being notified that a public school within the school district has been identified as a public school in need of improvement, the school district shall submit an improvement plan for that public school to the department. In developing the improvement plan, the local superintendent, the president of the local school board and the school principal of the public school in need of improvement shall hold a public meeting to inform parents and the public of the public school's rank. The meeting shall be used to elicit suggestions from parents and the public on how to improve the public school. After the public meeting, the school district shall develop the public school's improvement plan, and the local school board shall approve the improvement plan before it is submitted to the department. The improvement plan shall be approved by the department within thirty days of its submission.

C. The improvement plan shall include:

(1) documentation of performance measures in which the public school failed to make adequate yearly progress;

(2) measurable objectives to indicate the action that will be taken to address failed measures;

(3) benchmarks to be used to indicate progress in meeting academic content and performance standards;

(4) an estimate of the time and the resources needed to achieve each objective in the improvement plan;

(5) the support services that shall be provided to students;

(6) applications that have been made for federal and state funds;  
and

(7) any other information that the public school that needs improvement, the local superintendent, the local school board or the department deems necessary.

D. A public school in need of improvement may apply to the department for financial or other assistance in accordance with the improvement plan. The public school shall make application for assistance substantially in the form required by the department. The department shall evaluate applications for assistance and may recommend changes to an application or to an improvement plan if warranted by the final application. The department shall consider innovative methods to assist the public school in meeting its improvement plan, including department or other school employees serving as a mobile assistance team to provide administrative, classroom, human resource and other assistance to the public school that needs improvement as needed and as provided in applications approved by the department.

E. If a public school has failed to make adequate yearly progress for two consecutive school years, it shall be placed in school improvement 1 and shall provide transportation or pay the cost of transportation, within available funds, for students who choose to enroll in a higher ranked public school.

F. If a public school has failed to make adequate yearly progress for three consecutive school years, it shall be placed in school improvement 2 and shall provide supplemental services, including after-school programs, tutoring and summer services to its Title I-eligible students, within available funds.

G. The department shall adopt rules that govern the priority for students for whom supplemental services shall be provided and for students for whom transportation costs are paid. The rules shall include the adoption of a sliding-fee schedule based on the educational level of tutors in New Mexico and the establishment



of a range of rates that providers may charge and the rules shall require that providers use a pre- and post-assessment instrument approved by the department to measure the gains that students achieve through supplemental services.

H. The department shall also adopt rules requiring that in its application, each provider of supplemental educational services include documentation, as prescribed by the department, that the tutoring services to be offered are consistent with the instructional program offered by the school district or charter school whose students the provider intends to serve. The department may consult with the school district or charter school to determine whether an applicant has met this requirement.

I. If a public school has failed to make adequate yearly progress for four consecutive school years, it shall be placed in corrective action and the school district, in conjunction with the department, shall take one or more of the following actions in addition to earlier improvements:

- (1) replace staff as allowed by law;
- (2) implement a new curriculum;
- (3) decrease management authority of the public school;
- (4) appoint an outside expert to advise the public school;
- (5) extend the school day or year; or
- (6) change the public school's internal organizational structure.

J. If a public school has failed to make adequate yearly progress for five consecutive school years, it shall be placed in restructuring 1 and shall continue the improvement measures implemented pursuant to Subsections B through I of this section and begin planning for restructuring of the public school if it fails to make adequate yearly progress in the sixth year.

K. If a public school has failed to make adequate yearly progress for six consecutive years, it shall be placed in restructuring 2. The school district, in conjunction with the department, shall take one or more of the following actions in addition to other improvements:

- (1) recommend reopening the public school as a state-chartered charter school as provided in Section 22-2C-7.1 NMSA 1978;
- (2) replace all or most of the staff as allowed by law;
- (3) turn over the management of the public school to the department; or

(4) make other governance changes.

L. A school district that has failed to make adequate yearly progress for two consecutive school years may be subject to the same requirements as a public school subject to corrective action, as determined by the department. A school district that fails to make adequate yearly progress for four consecutive school years shall be subject to corrective action.

M. The state, a school district or a charter school shall not enter into management contracts with private entities for the management of a public school or a school district subject to corrective action.

N. If a public school that is identified as a school in need of improvement makes adequate yearly progress in the year that it has been placed in school improvement 1, school improvement 2, corrective action or restructuring 1, it shall not move to the next school improvement rank for one year. If the public school makes adequate yearly progress for a second consecutive year, it shall be removed from the ranks of schools in need of improvement.

O. Nothing in this section shall be construed to restrict the powers and duties of the secretary or the department under the Public School Code."

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House Bill 115, aa

Approved April 2, 2011

## **LAWS 2011, CHAPTER 33**

AN ACT

RELATING TO THE NEW MEXICO RENEWABLE ENERGY TRANSMISSION AUTHORITY; TRANSFERRING FUNDS; AUTHORIZING RENEWABLE ENERGY TRANSMISSION BONDS TO BE SOLD AT, ABOVE OR BELOW PAR; PROVIDING FOR CONFIDENTIALITY OF CERTAIN PROPRIETARY INFORMATION.

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

### **Chapter 33 Section 1 Laws 2011**

SECTION 1. Section 62-16A-1 NMSA 1978 (being Laws 2007, Chapter 3, Section 1) is amended to read:

"62-16A-1. SHORT TITLE.--Chapter 62, Article 16A NMSA 1978 may be cited as the "New Mexico Renewable Energy Transmission Authority Act"."

## Chapter 33 Section 2 Laws 2011

SECTION 2. Section 62-16A-6 NMSA 1978 (being Laws 2007, Chapter 3, Section 6) is amended to read:

"62-16A-6. RENEWABLE ENERGY TRANSMISSION BONDING FUND  
CREATED--MONEY IN THE FUND PLEDGED.--

A. The "renewable energy transmission bonding fund" is created in the authority. The fund shall consist of revenues received by the authority from operating or leasing eligible facilities, fees and service charges collected and, if the authority has provided financing for eligible facilities, money from payments of principal and interest on loans. The authority may create separate accounts within the fund in connection with any issuance of renewable energy transmission bonds and may deposit in such separate accounts revenues received by the authority derived from the financing or leasing of eligible facilities. Any such separate account shall be held by a trustee acting under a trust indenture relating to those bonds. Earnings of the fund or any separate account shall be credited to the fund or the applicable separate account. 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 fund shall be deposited in a bank designated by the authority in an account or accounts as the authority may establish. Money in accounts shall be withdrawn on the order of persons whom the authority may authorize. All deposits of money shall be secured in such manner as the authority may determine. The state auditor and the state auditor's legally authorized representatives shall periodically examine the accounts and books of the authority, including its receipts, disbursements, contracts, leases, sinking funds, investments and any other records and papers relating to its financial standing. The authority shall pay a reasonable fee for the examination as determined by the state auditor.

C. Money in the renewable energy transmission bonding fund is pledged for the payment of principal and interest on bonds issued pursuant to the New Mexico Renewable Energy Transmission Authority Act. Money in any separate account may be pledged solely to payment of bonds for which the separate account was created. Money in the fund or any separate account is appropriated to the authority for the purpose of paying debt service, including redemption premiums, on the bonds and the expenses incurred in the issuance, payment and administration of the bonds.

D. On the last day of January and the last day of July of each year, the authority shall estimate the amount needed to make debt service and other payments during the next twelve months from the renewable energy transmission bonding fund or any separate account created in the bond fund on the bonds plus the amount that may be needed for any required reserves or other requirements as may be set forth in the trust indenture related to the bonds. The authority shall transfer to the renewable energy transmission authority operational fund any balance in the renewable energy

transmission bonding fund or any separate account created in the bond fund above the estimated amounts. Payments for administrative costs shall be deposited in the renewable energy transmission authority operational fund.

E. Bonds issued pursuant to the New Mexico Renewable Energy Transmission Authority Act shall be payable solely from the renewable energy transmission bonding fund or from any separate account, created within the bond 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 renewable energy transmission bonding fund, including any separate account within the fund, shall be used only for the purposes specified in this section and pledged first to pay the debt service on the bonds issued pursuant to the New Mexico Renewable Energy Transmission Authority Act. The state further pledges that any law requiring the deposit of revenues in the renewable energy transmission 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 renewable energy transmission bonding fund is dedicated as provided in this section."

## **Chapter 33 Section 3 Laws 2011**

SECTION 3. Section 62-16A-9 NMSA 1978 (being Laws 2007, Chapter 3, Section 9) is amended to read:

### **"62-16A-9. PROCEDURE FOR SALE OF RENEWABLE ENERGY TRANSMISSION BONDS.--**

A. Bonds shall be sold by the authority at such times and in such manner as the authority may elect, either at private sale for a negotiated price or to the highest bidder at public sale for cash at par, above par or below par and accrued interest.

B. In connection with any public sale of the bonds, the authority shall publish a notice of the time and place of sale in a newspaper of general circulation in the state and also in a recognized financial journal outside the state. The publication shall be made once each week for two consecutive weeks prior to the date fixed for such sale, the last publication to be two business days prior to the date of sale. The notice shall specify the amount, denomination, maturity and description of the bonds to be offered for sale and the place, day and hour at which sealed bids therefor shall be received. All bids, except those of the state, shall be accompanied by a deposit of two percent of the principal amount of the bonds. Deposits of unsuccessful bidders shall be returned upon rejection of the bid. At the time and place specified in such notice, the authority shall open the bids in public and shall award the bonds, or any part thereof, to

the bidder or bidders offering the best price. The authority may reject any or all bids and readvertise.

C. The authority may sell a bond issue, or any part thereof, to the state or to one or more investment bankers or institutional investors at private sale."

### **Chapter 33 Section 4 Laws 2011**

SECTION 4. Section 62-16A-13 NMSA 1978 (being Laws 2007, Chapter 3, Section 13) is amended to read:

"62-16A-13. RENEWABLE ENERGY TRANSMISSION AUTHORITY OPERATIONAL FUND.--The "renewable energy transmission authority operational fund" is created in the authority. The fund shall consist of money appropriated and transferred to the fund. Earnings from investment of the fund shall be credited to the fund. Money in the fund is appropriated to the authority for the purpose of carrying out the provisions of the New Mexico Renewable Energy Transmission Authority Act. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert. The authority is authorized to establish procedures required to administer the fund in accordance with the New Mexico Renewable Energy Transmission Authority Act and state law."

### **Chapter 33 Section 5 Laws 2011**

SECTION 5. A new section of the New Mexico Renewable Energy Transmission Authority Act is enacted to read:

"PROPRIETARY INFORMATION.--Information obtained by the authority that is proprietary technical or business information shall be confidential and not subject to inspection pursuant to the Inspection of Public Records Act. Proprietary confidential information includes power purchase agreements, costs of production, costs of transmission, transmission service agreements, credit reviews, detailed power models and financing statements."

### **Chapter 33 Section 6 Laws 2011**

SECTION 6. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.

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Senate Bill 60, aa

Approved April 2, 2011

# **LAWS 2011, CHAPTER 34**

## **AN ACT**

RELATING TO HEALTH INSURANCE; AMENDING AND ENACTING SECTIONS OF CHAPTER 59A, ARTICLE 23 NMSA 1978 TO PROVIDE FOR THE CREATION AND REGISTRATION OF HEALTH INSURANCE PURCHASING COOPERATIVES AMONG EMPLOYERS.

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

### **Chapter 34 Section 1 Laws 2011**

SECTION 1. Section 59A-23-3 NMSA 1978 (being Laws 1984, Chapter 127, Section 462, as amended) is amended to read:

"59A-23-3. GROUP HEALTH INSURANCE.--

A. Group health insurance is that form of health insurance covering groups of persons, with or without their dependents, and issued upon the following basis:

(1) under a policy issued to an employer, who shall be deemed the policyholder, insuring at least one employee of such employer for the benefit of persons other than the employer. The term "employees", as used in this section, includes the officers, managers and employees of the employer, the partners, if the employer is a partnership, the officers, managers and employees of subsidiary or affiliated corporations of a corporation employer, and the individual proprietors, partners and employees of individuals and firms the business of which is controlled by the insured employer through stock ownership, contract or otherwise. The term "employer", as used in this section, includes any municipal or governmental corporation, unit, agency or department thereof and the proper officers, as such, or any unincorporated municipality or department thereof, as well as private individuals, partnerships and corporations. A small employer shall also be subject to the Small Group Rate and Renewability Act. A "small employer" means any person, firm, corporation, partnership or association actively engaged in business who, on at least fifty percent of its working days during the preceding year, employed no more than fifty eligible employees. In determining the number of eligible employees, companies that are affiliated companies or that are eligible to file a combined tax return for purposes of state taxation shall be considered one employer;

(2) under a policy issued to an association, including a labor union and an agricultural association, which shall have a constitution and bylaws and which has been organized and is maintained in good faith for purposes other than that of obtaining insurance, insuring at least twenty-five members of the association for the benefit of persons other than the association or its officers or trustees, as such;

(3) under a policy issued to a cooperative; or

(4) under a policy issued to any other substantially similar group that, in the discretion of the superintendent, may be subject to the issuance of a group sickness and accident policy or contract.

B. Each policy, as provided by this section, shall contain in substance the following provisions:

(1) a provision that the policy, the application of the policyholder, if such application or copy thereof is attached to such policy, and the individual applications, if any, submitted in connection with such policy by the employees or members, shall constitute the entire contract between the parties, and that all statements, in the absence of fraud, made by any applicant or applicants shall be deemed representations and not warranties, and that no such statement shall void the insurance or reduce benefits thereunder unless contained in a written application for such insurance;

(2) a provision that the insurer will furnish to the policyholder, for delivery to each employee or member of the insured group, an individual certificate setting forth in summary form a statement of the essential features of the insurance coverage of such employee or member and to whom benefits thereunder are payable. If dependents are included in the coverage, only one certificate need be issued for each family unit; and

(3) a provision that to the group originally insured may be added from time to time eligible new employees or members or dependents, as the case may be, in accordance with the terms of the policy.

C. For purposes of this section only, the directors of a corporation shall be deemed to be employees of the corporation.

D. For the purposes of this section, "cooperative" means a private health insurance cooperative established pursuant to Section 2 of this 2011 act."

## **Chapter 34 Section 2 Laws 2011**

SECTION 2. A new section of Chapter 59A, Article 23 NMSA 1978 is enacted to read:

"PRIVATE HEALTH INSURANCE COOPERATIVES--INCORPORATION.--

A. A person may form a cooperative to purchase employer health benefit plans. A cooperative shall be organized as a nonprofit corporation and has the rights and duties provided by the Nonprofit Corporation Act.

B. Two or more large employers or small employers or any combination of large employers and small employers with an aggregate of fifty or more full-time-equivalent employees may purchase group health benefit plans pursuant to Chapter 59A, Article 23 NMSA 1978.

C. A carrier shall not form, or be a member of, a cooperative. A carrier may associate with a sponsoring entity, such as a business association, chamber of commerce or other organization representing employers or serving an analogous function, to assist the sponsoring entity in forming a cooperative.

D. A cooperative shall:

(1) arrange for group health benefit plan coverage for employer groups that participate in the cooperative by contracting with carriers pursuant to Chapter 59A, Article 23 NMSA 1978;

(2) collect premiums to cover the cost of:

(a) group health benefit plan coverage purchased through the cooperative; and

(b) the cooperative's administrative expenses;

(3) establish administrative and accounting procedures for the operation of the cooperative;

(4) establish procedures under which an applicant for or participant in group health benefit plan coverage issued through the cooperative may have a grievance reviewed by an impartial person;

(5) contract with carriers to provide services to employers covered through the cooperative; and

(6) develop and implement a plan to maintain public awareness of the cooperative and publicize the eligibility requirements for, and the procedures for enrollment in, group health benefit plan coverage through the cooperative.

E. A cooperative may negotiate the premiums paid by its members.

F. Notwithstanding the provisions of Subsections B and C of this section, a cooperative may restrict membership to employers within a single industry grouping as defined by the most recent edition of the United States census bureau's *North American Industry Classification System*.



G. A carrier shall issue health benefit plan coverage for the cooperative through a licensed agent marketing the coverage in accordance with the provisions of Chapter 59A, Article 23 NMSA 1978.

H. The members of a cooperative shall be considered a single risk pool.

I. A cooperative may make available to its members more than one group health benefit plan, but each plan shall be made available to all employees covered by the cooperative.

J. The provisions of this section do not limit or restrict a small or large employer's access to health benefit plans pursuant to the Insurance Code.

K. A group health benefit plan provided through a cooperative shall provide coverage for diabetes equipment, supplies and services.

L. A carrier may elect not to participate in a cooperative. The carrier may elect to participate in one or more cooperatives and may select the cooperatives in which the carrier will participate.

M. A cooperative shall not self-insure or self-fund any health benefit plan or portion of a plan.

N. A cooperative may contract only with a carrier that demonstrates that the carrier:

(1) is in good standing with the division;

(2) has the capacity to administer health benefit plans;

(3) is able to monitor and evaluate the quality and cost-effectiveness of care and applicable procedures;

(4) is able to conduct utilization management and establish applicable procedures and policies;

(5) is able to ensure that enrollees have adequate access to health care providers, including adequate numbers and types of providers;

(6) has a satisfactory grievance procedure and is able to respond to enrollees' calls, questions and complaints; and

(7) has financial capacity, either through satisfying financial solvency standards that the superintendent shall set or through appropriate reinsurance or other risk-sharing mechanisms.

O. A cooperative is not a carrier or an insurer, and an employee of the cooperative shall not be required to be licensed as an agent or broker pursuant to the provisions of the Insurance Code. This exemption from licensure includes a cooperative that acts to provide information about and to solicit membership in the cooperative.

P. A cooperative shall register as a cooperative with the insurance division in accordance with division rules.

Q. For the purposes of this section:

(1) "carrier" means a person that is subject to licensure by the superintendent or subject to the provisions of the Insurance Code and that provides one or more health benefit or insurance plans in the state;

(2) "large employer" means a person, firm, corporation, partnership or association actively engaged in business that, on at least fifty percent of its working days during either of the two preceding years, employed no fewer than fifty-one employees eligible for employer-sponsored coverage; provided that:

(a) in determining the number of eligible employees, the spouse or dependent of an employee may, at the employer's discretion, be counted as a separate employee;

(b) companies that are affiliated companies or that are eligible to file a combined tax return for purposes of state income taxation shall be considered one employer;

(c) in the case of an employer that was not in existence throughout a preceding calendar year, the determination of whether the employer is a small or large employer shall be based on the average number of employees that it is reasonably expected to employ on working days in the current calendar year; and

(d) the employer does not self-insure; and

(3) "small employer" means a person, firm, corporation, partnership or association actively engaged in business that, on at least fifty percent of its working days during either of the two preceding years, employed no less than two and no more than fifty employees eligible for employer-sponsored coverage; provided that:

(a) in determining the number of eligible employees, the spouse or dependent of an employee may, at the employer's discretion, be counted as a separate employee;

(b) companies that are affiliated companies or that are eligible to file a combined tax return for purposes of state income taxation shall be considered one employer;

(c) in the case of an employer that was not in existence throughout a preceding calendar year, the determination of whether the employer is a small or large employer shall be based on the average number of employees that it is reasonably expected to employ on working days in the current calendar year; and

(d) the employer does not self-insure."

## **Chapter 34 Section 3 Laws 2011**

SECTION 3. A new section of the New Mexico Insurance Code is enacted to read:

"HEALTH INSURANCE COOPERATIVE--RULEMAKING.--The superintendent shall adopt rules to govern the registration of health insurance cooperatives, including the registration of cooperative employees, pursuant to Chapter 59A, Article 23 NMSA 1978."

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SPAC/Senate Bill 89

Approved April 2, 2011

## **LAWS 2011, CHAPTER 35**

AN ACT

RELATING TO PUBLIC SCHOOLS; ENACTING A NEW SECTION OF THE PUBLIC SCHOOL CODE REQUIRING SCHOOL DISTRICTS AND CHARTER SCHOOLS TO ESTABLISH FREE BREAKFAST PROGRAMS; AMENDING THE PUBLIC SCHOOL CODE TO ALLOW SCHOOL BREAKFAST SERVICE DURING INSTRUCTIONAL TIME.

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

## **Chapter 35 Section 1 Laws 2011**

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 Subsections D and G 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 school 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.

G. Notwithstanding any other provision of this section, provided that instruction occurs simultaneously, time when breakfast is served or consumed pursuant to a state or federal program shall be deemed to be time in a school-directed program and is part of the instructional day."

## **Chapter 35 Section 2 Laws 2011**

SECTION 2. Section 22-9-2 NMSA 1978 (being Laws 1967, Chapter 16, Section 102, as amended) is amended to read:

"22-9-2. FEDERAL AID TO EDUCATION--STATE EDUCATIONAL AGENCY.--  
The department shall be the sole educational agency of the state for the administration or for the supervision of the administration of any state plan established or funds received by the state by virtue of any federal statute relating to aid for education, school construction or school breakfast or lunch programs, except as is provided in Section 21-1-26 NMSA 1978 and as may otherwise be provided by law."

### **Chapter 35 Section 3 Laws 2011**

SECTION 3. Section 22-9-4 NMSA 1978 (being Laws 1967, Chapter 16, Section 104) is amended to read:

"22-9-4. LIMITATION ON ACCEPTING GRANTS AND GIFTS.--Federal funds, gifts or grants relating to aid for education, school construction or school breakfast or lunch programs may be accepted by the state only if supervision and control of courses of instruction and the personnel of public schools is reserved to the state or its local subdivisions."

### **Chapter 35 Section 4 Laws 2011**

SECTION 4. Section 22-9-5 NMSA 1978 (being Laws 1967, Chapter 16, Section 105) is amended to read:

"22-9-5. CUSTODY OF FUNDS--BUDGETS--DISBURSEMENTS.--

A. The state treasurer shall be the custodian of all funds received by the state by virtue of a federal statute, gift or grant relating to aid for education, school construction or school breakfast or lunch programs. The state treasurer shall hold these funds in separate accounts according to the purpose of the grant or gift.

B. All federal funds, gifts or grants administered by the department shall be budgeted, accounted for and disbursed as provided by law and by the rules of the department of finance and administration."

### **Chapter 35 Section 5 Laws 2011**

SECTION 5. A new section of Chapter 22, Article 13 NMSA 1978 is enacted to read:

"BREAKFAST PROGRAM REQUIRED--WAIVER--DISTRIBUTION OF FUNDS.--

A. School districts and charter schools shall establish a school breakfast program providing free breakfast, after the instructional day has begun, to all students attending an elementary school in that school district in which eighty-five percent or more of the enrolled students at the elementary school were eligible for free or reduced-price lunch under the National School Lunch Act of 1946 during the prior school year.

B. A school district or charter school that includes an elementary school in which fewer than eighty-five percent of the enrolled students were eligible for free or reduced-price lunch during the prior school year under the National School Lunch Act of 1946 may establish a school breakfast program providing free breakfast, after the instructional day has begun, to all students attending that elementary school; provided that the program complies with all applicable department rules relating to the school breakfast program authorized by this section.

C. The school district or charter school may apply to the department for a waiver of the school breakfast program required under the provisions of Subsection A of this section if the school district or charter school can demonstrate that providing the program will result in undue financial hardship for the school district or charter school.

D. The department shall reimburse each school district or charter school that establishes a school breakfast program under the provisions of this section for costs associated with providing free breakfast to students on a per-meal basis at the federal maximum rate of reimbursement as set forth annually by the federal secretary of agriculture for educational grants awarded under the authority of the secretary. Reimbursement for the school breakfast program shall be paid in sequential order, until the state school breakfast funds are exhausted. School districts or charter schools whose elementary schools have the highest percentage of enrolled students eligible for free or reduced-price lunch under the National School Lunch Act of 1946 shall be paid first. School districts or charter schools whose elementary schools have the lowest percentage of enrolled students eligible for free or reduced-price lunch under the National School Lunch Act of 1946 shall be paid last.

E. The department shall promulgate rules necessary for implementation of this section, including:

(1) standards for school breakfast programs that meet federal school breakfast program standards;

(2) procedures for waiver requests and the award of waivers as provided for in Subsection C of this section, including what constitutes financial hardship; and

(3) procedures for reimbursement.

F. The provisions of this section shall not apply until the 2011-2012 school year."

## **Chapter 35 Section 6 Laws 2011**

SECTION 6. REPEAL.--Section 22-9-1 NMSA 1978 (being Laws 1967, Chapter 16, Section 101) is repealed.

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Senate Bill 144, aa

Approved April 2, 2011

## **LAWS 2011, CHAPTER 36**

AN ACT

RELATING TO SCHOOL PERSONNEL; ALLOWING A SUBJECT-AREA EXAMINATION AS AN ALTERNATIVE TO SUBJECT-AREA CREDIT HOURS FOR ALTERNATIVE LEVEL ONE LICENSURE.

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

### **Chapter 36 Section 1 Laws 2011**

SECTION 1. Section 22-10A-8 NMSA 1978 (being Laws 2003, Chapter 153, Section 39, as amended) is amended to read:

"22-10A-8. ALTERNATIVE LEVEL ONE LICENSE.--

A. The department shall issue an alternative level one license to a person who is at least eighteen years of age and who:

(1) has completed a baccalaureate degree at an accredited institution of higher education and has received a passing score on a state-approved subject-area examination in the subject area of instruction for which the person is applying for a license; or

(2) has completed a master's degree at an accredited institution of higher education, including completion of a minimum of twelve graduate credit hours in the subject area of instruction for which the person is applying for a license; or

(3) has completed a doctoral or law degree at an accredited institution of higher education; and

(4) has passed the New Mexico teacher assessments examination;  
and

(5) within two years of beginning teaching, completes a minimum of twelve semester hours of instruction in teaching principles in a program approved by the department; or

(6) demonstrated to the department, in conjunction with the school district or state agency, that the person has met the department-approved competencies for level one teachers that correspond to the grade level that will be taught.

B. A degree or examination referred to in Subsection A of this section shall correspond to the subject area of instruction and the particular grade level that will enable the applicant to teach in a competent manner as determined by the department.

C. An alternative level one teacher shall participate in the same mentorship, evaluation and other professional development requirements as other level one teachers.

D. A school district or state agency shall not discriminate against a teacher on the basis that the teacher holds an alternative level one license.

E. The department shall provide by rule for training and other requirements to support the use of unlicensed content area experts as resources in classrooms, team teaching, on-line instruction, curriculum development and other purposes."

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Senate Bill 361, aa

Approved April 2, 2011

## **LAWS 2011, CHAPTER 37**

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 37 Section 1 Laws 2011**

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 2011 and subsequent fiscal years to provide state matching funds for federal Safe Drinking Water Act projects and to carry out the purposes of the Drinking Water State Revolving Loan Fund Act. Any unexpended or unencumbered balance at the end of a fiscal year shall not revert to the public project revolving fund.



## **Chapter 37 Section 2 Laws 2011**

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

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House Bill 13, w/ec

Approved April 4, 2011

## **LAWS 2011, CHAPTER 38**

AN ACT

RELATING TO ELECTRIC UTILITIES; AMENDING THE RURAL ELECTRIC COOPERATIVE ACT; ALLOWING RURAL ELECTRIC COOPERATIVE MEMBERS TO VOTE BY PROXY OR MAIL.

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

## **Chapter 38 Section 1 Laws 2011**

SECTION 1. Section 62-15-10 NMSA 1978 (being Laws 1939, Chapter 47, Section 10) is amended to read:

"62-15-10. VOTING DISTRICTS.--

A. Notwithstanding any other provision of the Rural Electric Cooperative Act, the bylaws may provide that the territory in which a cooperative supplies electric energy to its members shall be divided into two or more voting districts and that, in respect of each such voting district:

(1) a designated number of trustees shall be elected by the members residing in that district;

(2) a designated number of delegates shall be elected by the members residing in that district; or

(3) both trustees and delegates shall be elected by the members residing in that district.

B. The bylaws shall prescribe the manner in which voting districts, and the members, delegates and trustees thereof, if any, elected therefrom, shall function. The

bylaws shall also set forth the powers of the delegates, which may include the power to elect trustees. No delegate at any meeting shall vote by proxy or by mail.

C. Voting by members at voting district meetings shall be in person, unless otherwise provided in the bylaws. The bylaws shall prescribe the conditions under which voting by mail shall be exercised."

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House Bill 42, aa

Approved April 4, 2011

## **LAWS 2011, CHAPTER 39**

AN ACT

RELATING TO PUBLIC SCHOOLS; ALLOWING SCHOOL DISTRICTS TO KEEP THEIR CASH BALANCES FOR EMERGENCY OR OPERATIONAL EXPENDITURES; DECLARING AN EMERGENCY.

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

### **Chapter 39 Section 1 Laws 2011**

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

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

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

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

C. In addition to the emergency account, school districts or charter schools may also budget operational fund cash balances carried forward from the previous fiscal year for operational expenditures, exclusive of salaries and payroll, upon specific prior approval of the secretary. The secretary shall notify the legislative finance committee in writing of the secretary's approval of such proposed expenditures. For fiscal years 2004 and 2005, with the approval of the secretary, a school district or charter school may budget so much of its operational cash balance as is needed for nonrecurring expenditures, including capital outlay."

## **Chapter 39 Section 2 Laws 2011**

SECTION 2. APPLICABILITY.--This act applies to cash balances realized from the appropriations in fiscal year 2011 and subsequent fiscal years.

## **Chapter 39 Section 3 Laws 2011**

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

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House Bill 47, aa, w/ec

Approved April 4, 2011

# **LAWS 2011, CHAPTER 40**

AN ACT

RELATING TO VETERANS' SERVICES; CREATING A VETERANS' ENTERPRISE FUND; MAKING AN APPROPRIATION.

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

## **Chapter 40 Section 1 Laws 2011**

SECTION 1. Section 9-22-1 NMSA 1978 (being Laws 2004, Chapter 19, Section 1) is amended to read:

"9-22-1. SHORT TITLE.--Chapter 9, Article 22 NMSA 1978 may be cited as the "Veterans' Services Department Act"."

## **Chapter 40 Section 2 Laws 2011**

SECTION 2. A new section of the Veterans' Services Department Act is enacted to read:

"VETERANS' ENTERPRISE FUND--PURPOSE--ADMINISTRATION.--The "veterans' enterprise fund" is created in the state treasury. The fund consists of appropriations, gifts, grants, donations, bequests, proceeds from the sale of publications produced by the department, fees collected by the department and public or private funds applied for and received by the department to carry out its programs, duties or services. Interest earned on money in the fund shall be credited to the fund. Money in the fund at the end of a fiscal year shall not revert to the general fund or any other fund. The department shall administer the fund, and money in the fund is appropriated to the department to carry out its programs, duties or services. Disbursements from the fund shall be made by warrant of the secretary of finance and administration pursuant to vouchers signed by the secretary of veterans' services or the secretary's authorized representative."

### **Chapter 40 Section 3 Laws 2011**

SECTION 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.

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House Bill 122, aa

Approved April 4, 2011

## **LAWS 2011, CHAPTER 41**

AN ACT

RELATING TO COURTS; CREATING AN ADDITIONAL JUDGESHIP IN THE EIGHTH JUDICIAL DISTRICT.

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

### **Chapter 41 Section 1 Laws 2011**

SECTION 1. Section 34-6-11 NMSA 1978 (being Laws 1968, Chapter 69, Section 14, as amended) is amended to read:

"34-6-11. JUDGES--EIGHTH JUDICIAL DISTRICT.--There shall be three district judges in the eighth judicial district. At least one of the judges shall maintain the judge's principal office in Colfax or Union county and at least one of the judges shall maintain the judge's principal office in Taos county.

## **Chapter 41 Section 2 Laws 2011**

### SECTION 2. TEMPORARY PROVISION--DISTRICT JUDGE--

APPOINTMENT.--The additional district judgeship provided for in this act shall be filled by appointment by the governor pursuant to the provisions of Article 6 of the constitution of New Mexico.

## **Chapter 41 Section 3 Laws 2011**

SECTION 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.

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House Bill 188, aa

Approved April 4, 2011

# **LAWS 2011, CHAPTER 42**

## AN ACT

RELATING TO VETERANS' AFFAIRS; CREATING THE VETERANS' NATIONAL CEMETERY FUND; MAKING AN APPROPRIATION.

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

## **Chapter 42 Section 1 Laws 2011**

SECTION 1. A new section of Chapter 7, Article 2 NMSA 1978 is enacted to read:

"VETERANS' NATIONAL CEMETERY FUND--CREATED.--The "veterans' national cemetery fund" is created as a nonreverting fund in the state treasury. The fund consists of appropriations, gifts, grants, donations and amounts designated pursuant to Section 7-2-28 NMSA 1978. Money in the fund at the end of a fiscal year shall not revert to any other fund. The veterans' services department shall administer the fund and money in the fund is appropriated to the veterans' services department to carry out the intent of Section 7-2-27 NMSA 1978."

## **Chapter 42 Section 2 Laws 2011**

SECTION 2. Section 7-1-6.18 NMSA 1978 (being Laws 1987, Chapter 257, Section 1) is amended to read:

"7-1-6.18. DISTRIBUTION--VETERANS' NATIONAL CEMETERY FUND.--Upon a certification by the state board of finance that the city of Santa Fe grants and conveys additional acreage for the Santa Fe national cemetery, a distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the veterans' national cemetery fund of the amounts designated pursuant to Section 7-2-28 NMSA 1978 as contributions to that fund; provided that when the sum of contributions received on or after January 1, 1988 equals one million seventy thousand dollars (\$1,070,000), any contributions received in excess of that amount shall be distributed to the substance abuse education fund."

## **Chapter 42 Section 3 Laws 2011**

SECTION 3. Section 7-2-28 NMSA 1978 (being Laws 1987, Chapter 257, Section 3) is amended to read:

"7-2-28. OPTIONAL DESIGNATION OF TAX REFUND CONTRIBUTION.--

A. Any individual whose state income tax liability 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 be paid into the veterans' national cemetery fund. In the case of a joint return, both individuals must make such designation.

B. The secretary shall revise the state income tax form to allow the designation by individual taxpayers of such contributions in substantially the following form:

"New Mexico Veterans' National Cemetery Fund--Check

if you wish to contribute a part or all

of your tax refund to the Veterans' National Cemetery

Fund. Enter here \$\_\_\_\_\_the amount

of your contribution.".

C. The provisions of this section do not apply to refund amounts intercepted under the Tax Refund Intercept Program Act, and any designation under the provisions of this section with respect to such intercepted refunds is void."

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House Bill 235

Approved April 4, 2011

# **LAWS 2011, CHAPTER 43**

AN ACT

RELATING TO LEGAL PROCEDURE; INCLUDING EL SEMANARIO DE NUEVO MEXICO IN THE LIST OF SPANISH LANGUAGE PUBLICATIONS IN WHICH LEGAL NOTICES SHALL BE PUBLISHED.

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

## **Chapter 43 Section 1 Laws 2011**

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 *Santa Fe New Mexican* and the *Santa Fe News*, both published at Santa Fe, *El Hispano* and *El Semanario de Nuevo Mexico*, both 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."

## **Chapter 43 Section 2 Laws 2011**

SECTION 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.

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House Bill 307

Approved April 4, 2011

# **LAWS 2011, CHAPTER 44**

AN ACT

RELATING TO HIGHER EDUCATION; ADDRESSING THE STANDARDS FOR INVESTMENT OF INSTITUTION ENDOWMENT FUNDS.

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

## **Chapter 44 Section 1 Laws 2011**

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 Uniform Prudent Management of Institutional Funds Act and the provisions of Section 21-1-38 NMSA 1978. The income from the investments shall be expended by the institutions in accordance with the Uniform Prudent Management of Institutional Funds Act and the provisions of Section 21-1-38 NMSA 1978 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 44 Section 2 Laws 2011**

SECTION 2. Section 21-1-38 NMSA 1978 (being Laws 1991, Chapter 69, Section 1, as amended) is amended to read:

"21-1-38. DEFINITION--REQUIREMENTS FOR ADOPTION OF INVESTMENT POLICY FOR INVESTING ENDOWMENT FUNDS.--

A. As used in this section:

(1) "endowment funds" means funds:

(a) acquired by gift by an educational institution with respect to which the donors or other outside agencies have stipulated as a condition of the gift, and the stipulation is expressed specifically in the gift instrument, that the principal is to be maintained and invested for the purpose of producing current and future income that may either be added to the principal or expended, and the maintenance of the principal may be either: 1) held in perpetuity; or 2) expended after the passage of a stated period of time or upon the happening of a specified event; and

(b) notwithstanding the source of acquisition, that the governing board of the educational institution has determined and has designated by a written instrument, either revocable or irrevocable, to be retained for long-term investment; and

(2) "educational institution" means an educational institution designated in Article 12, Section 11 of the constitution of New Mexico and any post-secondary educational institution, which term includes an academic, vocational, technical, business, professional or other school, college or university or other organization or person offering or purporting to offer courses, instruction, training or education through correspondence or in person to any individual within this state over the compulsory school attendance age, if that post-secondary educational institution is directly supported in whole or in part by state or local taxation.

B. The board of finance, as that term is defined in Section 6-10-9 NMSA 1978, for each of the educational institutions:

(1) shall adopt regulations governing the investment and distribution of endowment funds by the institution's board of finance, which regulations shall provide at least for:

(a) the application of the standard of loyalty described in Section 45-7-606 NMSA 1978 and the Uniform Prudent Management of Institutional Funds Act;

(b) the appointment of an investment advisory committee made up of individuals having demonstrated experience and skill in the field of the investment of endowment funds; and

(c) the development of a comprehensive investment policy for the investment of endowment funds by the institution, with the advice and upon the recommendation of the investment committee; and

(2) may employ an institutional endowment funds investment manager and delegate to the manager the power to make purchases, sales, exchanges, investments and reinvestments of endowment funds."

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House Bill 353

Approved April 4, 2011

## **LAWS 2011, CHAPTER 45**

AN ACT

RELATING TO GAME AND FISH; PROVIDING CERTAIN HUNTING LICENSE DISCOUNTS FOR NONRESIDENT DISABLED ACTIVE DUTY MEMBERS AND VETERANS WHO ARE UNDERGOING A REHABILITATION PROGRAM.

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

### **Chapter 45 Section 1 Laws 2011**

SECTION 1. A new section of Chapter 17, Article 3 NMSA 1978 is enacted to read:

"NONRESIDENT DISABLED MILITARY MEMBERS AND VETERANS-- HUNTING LICENSES AT RESIDENT FEE.--A nonresident disabled active duty member or veteran of the United States armed forces who is undergoing a rehabilitation program that involves hunting activities and that is sponsored by the federal government or a nonprofit organization authorized by the federal government and is under the direction of a military or federal veterans administration rehabilitation center may purchase:

- A. a deer license at the resident deer license fee;
- B. an antelope license at the resident antelope license fee;
- C. an elk license at the resident elk license fee;
- D. a javelina license at the resident javelina license fee; or
- E. a turkey license at the resident turkey license fee."

## **Chapter 45 Section 2 Laws 2011**

SECTION 2. EFFECTIVE DATE.--The effective date of the provisions of this act is April 1, 2012.

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House Bill 362

Approved April 4, 2011

## **LAWS 2011, CHAPTER 46**

AN ACT

RELATING TO LIVESTOCK; AMENDING A SECTION OF THE LIVESTOCK CODE TO INCREASE THE PENALTY FOR LEAVING A GATE OPEN.

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

## **Chapter 46 Section 1 Laws 2011**

SECTION 1. Section 77-16-15 NMSA 1978 (being Laws 1897, Chapter 39, Section 3, as amended) is amended to read:

"77-16-15. PENALTY.--In addition to the damage as provided for in Section 77-16-14 NMSA 1978, the person violating the provisions of that section is guilty of a misdemeanor, and upon conviction before any magistrate shall be fined in a sum not less than two hundred fifty dollars (\$250) nor more than one thousand dollars (\$1,000)."

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House Bill 391, aa

Approved April 4, 2011

## **LAWS 2011, CHAPTER 47**

AN ACT

RELATING TO TRAFFIC CITATIONS; REQUIRING A SPACE FOR A PHYSICAL AND MAILING ADDRESS IN THE UNIFORM TRAFFIC CITATION.

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

## **Chapter 47 Section 1 Laws 2011**

SECTION 1. Section 66-8-128 NMSA 1978 (being Laws 1978, Chapter 35, Section 536, as amended) is amended to read:

"66-8-128. UNIFORM TRAFFIC CITATION.--

A. The department shall prepare a uniform traffic citation containing at least the following information:

(1) an information section, serially numbered and containing spaces for the name, physical address and mailing address, city and state of the individual charged; the individual's physical description, age and sex; the registration number, year and state of the vehicle involved and its make and type; the state and number of the individual's driver's license; the specific section number and common name of the offense charged under the NMSA 1978 or local law; the date and time of arrest; the arresting officer's signature and identification number; and the conditions existing at the time of the violation;

(2) a notice to appear; and

(3) a penalty assessment notice with a place for the signature of the violator agreeing to pay the penalty assessment prescribed.

B. The department shall prescribe how the uniform traffic citation form may be used as a warning notice.

C. The department shall prescribe the size and number of copies of the paper version of the uniform traffic citation and the disposition of each copy. The department may also prescribe one or more electronic versions of the uniform traffic citation, and these electronic versions may be used in the issuance of citations.

D. Any entity that wishes to submit uniform traffic citations required to be submitted to the department by electronic means shall secure the prior permission of the department."

## **Chapter 47 Section 2 Laws 2011**

SECTION 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.

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HJC/House Bill 458, w/cc

Approved April 4, 2011

# **LAWS 2011, CHAPTER 48**

AN ACT

RELATING TO BOARDS; EXTENDING THE SUNSET DATE FOR THE PRIVATE INVESTIGATIONS ADVISORY BOARD.

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

## **Chapter 48 Section 1 Laws 2011**

SECTION 1. Section 61-27B-36 NMSA 1978 (being Laws 2007, Chapter 115, Section 35) is amended to read:

"61-27B-36. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The private investigations advisory board is terminated on July 1, 2017 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of the Private Investigations Act until July 1, 2018. Effective July 1, 2018, Chapter 61, Article 27B NMSA 1978 is repealed."

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House Bill 462

Approved April 4, 2011

# **LAWS 2011, CHAPTER 49**

AN ACT

RELATING TO LAW ENFORCEMENT; PROVIDING FOR CHILD ABUSE INCIDENT TRAINING FOR POLICE OFFICERS.

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

## **Chapter 49 Section 1 Laws 2011**

SECTION 1. A new section of the Law Enforcement Training Act is enacted to read:

"CHILD ABUSE INCIDENT TRAINING.--Child abuse incident training shall be included in the curriculum of each basic law enforcement training class. Child abuse incident training shall be included as a component of in-service training each year for certified police officers."

## **Chapter 49 Section 2 Laws 2011**

SECTION 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.

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Senate Bill 77

Approved April 4, 2011

## **LAWS 2011, CHAPTER 50**

AN ACT

RELATING TO PUBLIC EDUCATION; REQUIRING THE PUBLIC EDUCATION DEPARTMENT TO ESTABLISH GUIDELINES FOR SCHOOL DISTRICTS TO DEVELOP BULLYING PREVENTION POLICIES AND PROGRAMS.

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

## **Chapter 50 Section 1 Laws 2011**

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

"BULLYING PREVENTION PROGRAMS.--The department shall establish guidelines for bullying prevention policies to be promulgated by local school boards. Every local school board shall promulgate a bullying prevention policy by August 2011. Every public school shall implement a bullying prevention program by August 2012."

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Senate Bill 78

Approved April 4, 2011

## **LAWS 2011, CHAPTER 51**

AN ACT

RELATING TO THE STATE INVESTMENT OFFICER; REMOVING THE STATE INVESTMENT OFFICER FROM MEMBERSHIP ON BOARDS OF THE NEW MEXICO FINANCE AUTHORITY, THE SMALL BUSINESS INVESTMENT CORPORATION AND THE NEW MEXICO RENEWABLE ENERGY TRANSMISSION AUTHORITY AND FROM THE EDUCATION TRUST BOARD.

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

## **Chapter 51 Section 1 Laws 2011**

SECTION 1. Section 6-21-4 NMSA 1978 (being Laws 1992, Chapter 61, Section 4, as amended) is amended to read:

"6-21-4. NEW MEXICO FINANCE AUTHORITY CREATED--MEMBERSHIP--QUALIFICATIONS--QUORUM--MEETINGS--COMPENSATION--BOND.--

A. There is created a public body politic and corporate, separate and apart from the state, constituting a governmental instrumentality to be known as the "New Mexico finance authority" for the performance of essential public functions.

B. The authority shall be composed of eleven members. The secretary of finance and administration, the secretary of economic development, the secretary of energy, minerals and natural resources, the secretary of environment, the executive director of the New Mexico municipal league and the executive director of the New Mexico association of counties or their designees shall be ex-officio members of the authority with voting privileges. The governor, with the advice and consent of the senate, shall appoint to the authority the chief financial officer of a state higher educational institution and four members who are residents of the state. The appointed members shall serve at the pleasure of the governor.

C. The appointed members of the authority shall be appointed to four-year terms. The initial members shall be appointed to staggered terms of four years or less, so that the term of at least one member expires on January 1 of each year. Vacancies shall be filled by appointment by the governor for the remainder of the unexpired term. Any member of the authority shall be eligible for reappointment.

D. Each appointed member before entering upon the member's duty shall take an oath of office to administer the duties of the member's office faithfully and impartially. A record of the oath shall be filed in the office of the secretary of state.

E. The governor shall designate an appointed member of the authority to serve as chair. The authority shall elect annually one of its members to serve as vice chair. The authority shall appoint and prescribe the duties of such other officers, who need not be members, as the authority deems necessary or advisable, including chief executive officer and a secretary, who may be the same person. The authority may delegate to one or more of its members, officers, employees or agents such powers and duties as it may deem proper and consistent with the New Mexico Finance Authority Act.

F. The chief executive officer of the authority shall direct the affairs and business of the authority, subject to the policies, control and direction of the authority. The secretary of the authority shall keep a record of the proceedings of the authority



and shall be custodian of all books, documents and papers filed with the authority, the minute book or journal of the authority and its official seal. The secretary shall make copies of all minutes and other records and documents of the authority and give certificates under the official seal of the authority to the effect that the copies are true copies, and all persons dealing with the authority may rely upon the certificates.

G. Meetings of the authority shall be held at the call of the chair or whenever three members shall so request in writing. A majority of members then serving constitutes a quorum for the transaction of any business. The affirmative vote of at least a majority of a quorum present shall be necessary for any action to be taken by the authority. An ex-officio member may designate in writing another person to attend meetings of the authority and to the same extent and with the same effect act in the ex-officio member's stead. No vacancy in the membership of the authority shall impair the right of a quorum to exercise all rights and perform all duties of the authority.

H. Each member of the authority shall give bond as provided in the Surety Bond Act. All costs of the surety bonds shall be borne by the authority.

I. The authority is not created or organized, and its operations shall not be conducted, for the purpose of making a profit. No part of the revenues or assets of the authority shall benefit or be distributable to its members, officers or other private persons. The members of the authority shall receive no compensation for their services, but shall be reimbursed for actual and necessary expenses at the same rate and on the same basis as provided for public officers in the Per Diem and Mileage Act.

J. The authority shall not be subject to the supervision or control of any other board, bureau, department or agency of the state except as specifically provided in the New Mexico Finance Authority Act. No use of the terms "state agency" or "instrumentality" in any other law of the state shall be deemed to refer to the authority unless the authority is specifically referred to in the law.

K. The authority is a governmental instrumentality for purposes of the Tort Claims Act."

## **Chapter 51 Section 2 Laws 2011**

SECTION 2. Section 21-21K-4 NMSA 1978 (being Laws 1997, Chapter 259, Section 4) is amended to read:

"21-21K-4. BOARD CREATED--MEMBERS--APPOINTMENT--TERMS OF OFFICE--POWERS AND DUTIES.--

A. There is created the "education trust board". The board is administratively attached to the higher education department, and the department shall provide administrative support for the board in carrying out its duties pursuant to the Education Trust Act. The board shall consist of the following voting members:

(1) the secretary of higher education or the secretary's designee, who shall be the ex-officio chair of the board;

(2) one member appointed by the governor;

(3) one member representing institutions of higher education, appointed by the speaker of the house of representatives; and

(4) one member representing students at institutions of higher education, appointed by the president pro tempore of the senate.

B. The appointed members must possess knowledge, skill and experience in higher education, business or finance.

C. The appointed members shall serve six-year terms, with the exception of the member representing students, who shall be appointed for a two-year term. Vacancies on the board shall be filled by the respective appointing authority for the remainder of the vacating member's term.

D. Members of the board shall be subject to the provisions of the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance for their service on the board.

E. The board is authorized to adopt and promulgate rules and regulations as necessary to carry out the provisions of the Education Trust Act, protect the financial integrity of the fund, preserve the program's benefits and ensure the appropriate use of the tax benefits. The board shall also determine and adopt by regulation the cost of attendance at institutions of higher education; provided that the cost of attendance shall include the same components and allowances as are used to determine cost of attendance for the federal student financial assistance programs."

## **Chapter 51 Section 3 Laws 2011**

SECTION 3. Section 58-29-5 NMSA 1978 (being Laws 2000, Chapter 97, Section 7, as amended) is amended to read:

"58-29-5. CORPORATION BOARD OF DIRECTORS--APPOINTMENT--POWERS.--

A. The corporation shall be governed by the board. The corporation's board of directors shall consist of:

(1) the state treasurer or the state treasurer's designee; and

(2) six members appointed by the governor.

B. Each director shall hold office for the length of the director's term in office or until a successor is appointed or elected and begins service on the board.

C. The governor shall appoint, with the consent of the senate, the six public directors of the board who shall serve at the pleasure of the governor.

D. The governor's appointees to the board shall be public members who have general expertise in small business management, but they shall not be employed by or represent small businesses receiving equity investments from the corporation.

E. No two members of the board shall be employed by or represent the same company or institution.

F. The board shall annually elect a chair from among its members and shall elect those other officers it determines necessary for the performance of its duties.

G. The power to set the policies and procedures for the corporation is vested in the board. The board may perform all acts necessary or appropriate to exercise that power.

H. Public members of the board shall be reimbursed for attending meetings of the board as provided in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

I. Public members of the board are appointed public officials of the state while carrying out their duties and activities under the Small Business Investment Act. The directors and the employees of the corporation are not liable personally, either jointly or severally, for any debt or obligation created or incurred by the corporation or for any act performed or obligation entered into in an official capacity when done in good faith, without intent to defraud and in connection with the administration, management or conduct of the corporation or affairs relating to it.

J. The board shall conduct an annual audit of the books of accounts, funds and securities of the corporation to be made by a competent and independent firm of certified public accountants. A copy of the audit report shall be filed with the president. The audit shall be open to the public for inspection."

## **Chapter 51 Section 4 Laws 2011**

SECTION 4. Section 62-16A-3 NMSA 1978 (being Laws 2007, Chapter 3, Section 3) is amended to read:

"62-16A-3. NEW MEXICO RENEWABLE ENERGY TRANSMISSION  
AUTHORITY CREATED--ORGANIZATION.--

A. The "New Mexico renewable energy transmission authority" is created as a public body, politic and corporate, separate and apart from the state, constituting a governmental instrumentality for the performance of essential public functions.

B. The authority shall be composed of six members as follows:

(1) three members appointed by the governor with the advice and consent of the senate. The initial appointees shall be appointed for staggered terms of one, two and three years; thereafter, the members shall be appointed for three-year terms;

(2) the state treasurer or the state treasurer's designee;

(3) one member appointed by the speaker of the house of representatives who shall serve at the pleasure of the speaker of the house; and

(4) one member appointed by the president pro tempore of the senate who shall serve at the pleasure of the president pro tempore.

C. The qualifications of the members shall be as follows:

(1) one member appointed by the governor shall have expertise in financial matters involving the financing of major electrical transmission projects;

(2) the other four appointed members shall have:

(a) special knowledge of the public utility industry, as evidenced by college degrees or by experience, at least five years of which must be with the public utility industry; and

(b) knowledge of renewable energy development; and

(3) no member shall represent a person that owns or operates facilities.

D. The members initially appointed by the speaker of the house and the president pro tempore of the senate shall, by lot, determine one to have an initial term of two years and one to have an initial term of four years; thereafter, the appointments will be for staggered terms of four years.

E. In addition to the six voting members, the secretary of energy, minerals and natural resources shall serve as an ex-officio nonvoting member of the authority.

F. The governor shall designate an appointed member of the authority to serve as chair, and the authority may elect annually such other officers as it deems necessary.

G. The authority shall meet at the call of the chair or whenever four members shall so request in writing. A majority of members then serving constitutes a quorum for the transaction of business, but the affirmative vote of at least four members is necessary for any action to be taken by the authority.

H. The authority is not created or organized, and its operations are not conducted, for the purpose of making a profit, but it is expected to recover the costs of operating the authority. No part of the revenues or assets of the authority shall benefit or be distributable to its members, officers or other private persons. The members of the authority shall receive no compensation for their services, but the public members shall be reimbursed for actual and necessary expenses at the same rate and on the same basis as provided for public officers in the Per Diem and Mileage Act.

I. The authority is not subject to the supervision or control of any other board, bureau, department or agency of the state except as specifically provided in the New Mexico Renewable Energy Transmission Authority Act. No use of the terms "state agency" or "instrumentality" in any other law of the state shall be deemed to refer to the authority unless the authority is specifically referred to in the law.

J. The authority is a governmental instrumentality for purposes of the Tort Claims Act."

## **Chapter 51 Section 5 Laws 2011**

SECTION 5. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.

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Senate Bill 82, aa

Approved April 4, 2011

## **LAWS 2011, CHAPTER 52**

AN ACT

RELATING TO STATE SYMBOLS; ADOPTING THE NATIVE AMERICAN SQUASH BLOSSOM NECKLACE AS THE OFFICIAL NECKLACE OF NEW MEXICO; 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 52 Section 1 Laws 2011**

SECTION 1. Section 12-3-4 NMSA 1978 (being Laws 1927, Chapter 102, Section 1, as amended by Laws 2007, Chapter 10, Section 1 and by Laws 2007, Chapter 179, Section 1) is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

M. "Red and green or Christmas" is adopted as the official answer of New Mexico.

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

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

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

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

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

S. The Cumbres and Toltec scenic railroad is adopted as the official historic railroad of New Mexico.

T. The bolo tie is adopted as the official tie of New Mexico.

U. The Native American squash blossom necklace is adopted as the official necklace of New Mexico."

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Senate Bill 109, aa

Approved April 4, 2011

## **LAWS 2011, CHAPTER 53**

### AN ACT

RELATING TO LAW ENFORCEMENT; PROVIDING THAT A POST-SECONDARY EDUCATIONAL INSTITUTION MAY ENTER INTO A WRITTEN AGREEMENT WITH A MUNICIPALITY FOR ENFORCEMENT OF CAMPUS TRAFFIC REGULATIONS; PROVIDING PROCEDURES FOR THE ISSUANCE AND PAYMENT OF CITATIONS; PROVIDING FOR ADJUDICATION IN MUNICIPAL COURT; ALLOWING PENALTY ASSESSMENTS TO BE CREDITED TO THE MUNICIPALITY OR TO THE POST-SECONDARY EDUCATIONAL INSTITUTION; PROVIDING FOR COMMISSIONING OF SECURITY PERSONNEL.

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

### **Chapter 53 Section 1 Laws 2011**

SECTION 1. A new Section 29-5-4 NMSA 1978 is enacted to read:

"29-5-4. POST-SECONDARY EDUCATIONAL INSTITUTIONS--CAMPUS TRAFFIC REGULATIONS--AGREEMENT WITH MUNICIPALITY.--

A. As used in this section, "post-secondary educational institution" means a community college operating pursuant to the Community College Act or a technical and vocational institute operating pursuant to the Technical and Vocational Institute Act that does not have campus police officers created pursuant to Section 29-5-3 NMSA 1978.

B. The governing board of a post-secondary educational institution may adopt and promulgate traffic regulations to apply to areas within the exterior boundaries of the lands under the control of the board, including streets and highways. Traffic regulations may include:

(1) limiting the rates of speed;

(2) assigning parking spaces and designating parking and no parking areas and their uses;

(3) prohibiting parking;

(4) removing, disabling or booting vehicles parked in violation of campus traffic regulations at the expense of the violator, who shall pay the expense before the vehicle is released; and

(5) instituting a system of vehicle registration for the identification and regulation of vehicles regularly using campus facilities, including a reasonable charge to defray the costs of providing parking and traffic enforcement services and campus parking.

C. All areas subject to traffic regulations shall be marked with signs conforming with standards used by the department of transportation.

D. Traffic regulations adopted by a post-secondary educational institution pursuant to this section shall include a specific penalty for each type of violation that shall not exceed the penalty for the same violation under state law or municipal ordinance for the municipality where the post-secondary educational institution is located.

E. A post-secondary educational institution may enter into a written agreement with the municipality where the institution is located for municipal police enforcement of traffic regulations and for enforcement of applicable laws and ordinances within the exterior boundaries of the lands under the control of the institution. The written agreement shall outline the terms and conditions for municipal enforcement of the institution's traffic regulations, including the following:

(1) unless a warning notice or a parking citation is given at the time of making an arrest for a traffic violation, the arresting officer shall offer the alleged



violator the option of accepting a penalty assessment or appearing in municipal court for adjudication within five days after issuance of the citation;

(2) if an alleged violator elects to appear in municipal court in lieu of accepting a penalty assessment, the fine imposed upon later conviction shall not exceed the penalty assessment established for the particular penalty assessment;

(3) a violator's signature on the penalty assessment notice constitutes an acknowledgment of guilt of the offense stated in the notice;

(4) payment of a parking violation penalty assessment shall be made by mailing the payment within five days from the date the citation was issued to the municipality for processing in accordance with the written agreement. Payment of the penalty assessment is timely if postmarked within five days from the date of issuance of the citation;

(5) payment of any moving violation penalty assessment shall be made by mailing the payment within thirty days from the date the citation was issued to the municipality for processing in accordance with the written agreement. Payment of the penalty assessment is timely if postmarked within thirty days from the date of issuance of the citation;

(6) when a penalty assessment is paid by currency, a receipt shall be immediately mailed to the violator;

(7) if a penalty assessment is not paid within thirty days from the date of issuance of the citation, the violator shall be prosecuted for the violation charged on the penalty assessment notice in a manner as if a penalty assessment notice had not been issued;

(8) all penalties and fines assessed shall be paid to the municipality to defray the costs of enforcement and adjudication of citations issued at the post-secondary educational institution; and

(9) the uniform traffic citation form approved by the motor vehicle division of the taxation and revenue department shall be used as the complaint for violations of campus traffic regulations. Citations for moving violations shall be issued in the manner set forth in Sections 66-8-123 through 66-8-127 NMSA 1978.

F. A municipality enforcing campus traffic regulations pursuant to this section may, by commission, authorize campus security personnel at the post-secondary educational institution to issue citations for violations of non-moving traffic regulations on such terms and conditions as provided in the written agreement but in no event shall campus security personnel be given arrest powers.

G. In the absence of a written agreement with a municipality for the enforcement of traffic regulations, campus security personnel may enforce traffic regulations. The punishment for a violation of a campus traffic regulation shall be not more than five dollars (\$5.00) per violation. All fines collected pursuant to this subsection shall be remitted to the post-secondary educational institution and shall be used solely for the purposes of enforcing campus traffic regulations and for planning and improving movement and control of vehicles and related parking problems and for use in the operation, management and administration of the institution's security office.

H. When a traffic citation is issued by a campus security officer, the officer shall be wearing a distinctive badge and uniform issued to the officer by the post-secondary educational institution.

I. A record of a penalty assessment payment is not admissible as evidence in court in a civil action.

J. A post-secondary educational institution may withhold the issuance of grades and degrees in order to secure payment of unpaid traffic or parking assessments."

## **Chapter 53 Section 2 Laws 2011**

SECTION 2. Section 35-14-2 NMSA 1978 (being Laws 1961, Chapter 208, Section 2, as amended) is amended to read:

"35-14-2. JURISDICTION.--

A. Each municipal court has jurisdiction over all offenses and complaints under ordinances of the municipality and may issue subpoenas and warrants and punish for contempt.

B. Upon written agreement between the board of regents of a state educational institution designated in Article 12, Section 11 of the constitution of New Mexico and the governing body of a municipality contiguous to land under control of the board of regents or within which any portion of such land is located, the municipal court has jurisdiction over violations of campus traffic regulations adopted under Section 29-5-1 NMSA 1978 as to areas under control of the board of regents. Fines and forfeitures collected by the municipal court under campus traffic regulations may be credited to the state educational institution on whose campus the violation occurred.

C. Upon written agreement between a post-secondary educational institution and the governing body of a municipality contiguous to land under control of the institution or within which any portion of such land is located, the municipal court has jurisdiction over violations of campus traffic regulations adopted pursuant to Section 29-5-4 NMSA 1978 as to areas under control of the institution. Fines and forfeitures collected by the municipal court for violations of campus traffic regulations may be

credited to the municipality or to the post-secondary educational institution on whose campus the violation occurred.

D. Each municipal court's personal jurisdiction extends to any defendant who has been properly served with criminal process of the court anywhere in the state if that criminal process arises out of a charge of violation of a municipal ordinance prohibiting driving while under the influence of intoxicating liquor or drugs."

## **Chapter 53 Section 3 Laws 2011**

SECTION 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.

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Senate Bill 267, aa

Approved April 4, 2011

## **LAWS 2011, CHAPTER 54**

AN ACT

RELATING TO PUBLIC EDUCATION; AMENDING THE PUBLIC SCHOOL CODE TO ADD GRADES THREE AND FOUR TO THE REQUIRED STANDARDIZED ALPHABETIC OR NUMERIC GRADING SYSTEM ADOPTED BY THE PUBLIC EDUCATION DEPARTMENT.

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

## **Chapter 54 Section 1 Laws 2011**

SECTION 1. Section 22-2-8.13 NMSA 1978 (being Laws 2007, Chapter 255, Section 1) is amended to read:

"22-2-8.13. STANDARDIZED STATEWIDE GRADING SYSTEM.--The department shall adopt and promulgate rules to establish a standardized alphabetic or numeric grading system based on the 4.0 scale or one hundred percent scale to be used by public schools, including charter schools, for grades three through twelve that is aligned with the New Mexico academic content standards and benchmarks and performance standards. A public school shall include the results of standards-based assessments in the standardized grading system and may augment the standardized grading system with a narrative or other method that measures a student's academic, social, behavioral or other skills."

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Senate Bill 272, aa

Approved April 4, 2011

## **LAWS 2011, CHAPTER 55**

AN ACT

RELATING TO HEALTH INSURANCE; ENACTING NEW SECTIONS OF THE HEALTH CARE PURCHASING ACT, THE HEALTH MAINTENANCE ORGANIZATION LAW AND THE NEW MEXICO INSURANCE CODE TO REQUIRE COVERAGE AND LIMIT PATIENT COSTS FOR ORALLY ADMINISTERED ANTICANCER MEDICATIONS.

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

### **Chapter 55 Section 1 Laws 2011**

SECTION 1. A new section of the Health Care Purchasing Act is enacted to read:

"COVERAGE FOR ORALLY ADMINISTERED ANTICANCER MEDICATIONS--LIMITS ON PATIENT COSTS.--

A. Group health coverage, including any form of self-insurance, offered, issued or renewed under the Health Care Purchasing Act that provides coverage for cancer treatment shall provide coverage for a prescribed, orally administered anticancer medication that is used to kill or slow the growth of cancerous cells on a basis no less favorable than intravenously administered or injected cancer medications that are covered as medical benefits by the plan.

B. A group health plan shall not increase patient cost-sharing for anticancer medications in order to achieve compliance with the provisions of this section.

C. Coverage of orally administered anticancer medication shall not be subject to any prior authorization, dollar limit, copayment, deductible or coinsurance provision that does not apply to intravenously administered or injected anticancer medication used to kill or slow the growth of cancerous cells."

### **Chapter 55 Section 2 Laws 2011**

SECTION 2. A new section of Chapter 59A, Article 22 NMSA 1978 is enacted to read:

**"COVERAGE FOR ORALLY ADMINISTERED ANTICANCER MEDICATIONS--  
LIMITS ON PATIENT COSTS.--**

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 and that provides coverage for cancer treatment shall provide coverage for a prescribed, orally administered anticancer medication that is used to kill or slow the growth of cancerous cells on a basis no less favorable than intravenously administered or injected cancer medications that are covered as medical benefits by the plan.

B. An insurer shall not increase patient cost-sharing for anticancer medications in order to achieve compliance with the provisions of this section.

C. Coverage of orally administered anticancer medication shall not be subject to any prior authorization, dollar limit, copayment, deductible or coinsurance provision that does not apply to intravenously administered or injected anticancer medication used to kill or slow the growth of cancerous cells.

D. As used in this section, "insurer" or "health plan":

(1) means:

- (a) a health insurer;
- (b) a nonprofit health service provider;
- (c) a health maintenance organization;
- (d) a managed care organization; or
- (e) a provider service organization; and

(2) 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."

**Chapter 55 Section 3 Laws 2011**

SECTION 3. A new section of Chapter 59A, Article 23 NMSA 1978 is enacted to read:

**"COVERAGE FOR ORALLY ADMINISTERED ANTICANCER MEDICATIONS--  
LIMITS ON PATIENT COSTS.--**

A. A blanket or group health insurance policy or contract that is delivered, issued for delivery or renewed in this state and that provides coverage for cancer treatment shall provide coverage for a prescribed, orally administered anticancer medication that is used to kill or slow the growth of cancerous cells on a basis no less favorable than intravenously administered or injected cancer medications that are covered as medical benefits by the plan.

B. An insurer shall not increase patient cost-sharing for anticancer medications in order to achieve compliance with the provisions of this section.

C. Coverage of orally administered anticancer medication shall not be subject to any prior authorization, dollar limit, copayment, deductible or coinsurance provision that does not apply to intravenously administered or injected anticancer medication used to kill or slow the growth of cancerous cells.

D. As used in this section, "insurer" or "blanket or group health insurance plan":

(1) means:

- (a) a health insurer;
- (b) a nonprofit health service provider;
- (c) a health maintenance organization;
- (d) a managed care organization; or
- (e) a provider service organization; and

(2) does not include blanket or large group 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."

## **Chapter 55 Section 4 Laws 2011**

SECTION 4. A new section of the Health Maintenance Organization Law is enacted to read:

"COVERAGE FOR ORALLY ADMINISTERED ANTICANCER MEDICATIONS--LIMITS ON PATIENT COSTS.--

A. An individual or group health maintenance organization contract that is delivered, issued for delivery or renewed in this state and that provides coverage for cancer treatment shall provide coverage for a prescribed, orally administered anticancer

medication that is used to kill or slow the growth of cancerous cells on a basis no less favorable than intravenously administered or injected cancer medications that are covered as medical benefits by the plan.

B. A health maintenance organization shall not increase patient cost-sharing for anticancer medications in order to achieve compliance with the provisions of this section.

C. Coverage of orally administered anticancer medication shall not be subject to any prior authorization, dollar limit, copayment, deductible or coinsurance provision that does not apply to intravenously administered or injected anticancer medication used to kill or slow the growth of cancerous cells.

D. As used in this section, "health maintenance organization contract":

(1) means:

(a) a health maintenance organization; or

(b) a managed care organization; and

(2) 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."

## **Chapter 55 Section 5 Laws 2011**

SECTION 5. A new section of Chapter 59A, Article 47 NMSA 1978 is enacted to read:

**"COVERAGE FOR ORALLY ADMINISTERED ANTICANCER MEDICATIONS--LIMITS ON PATIENT COSTS.--**

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 and that provides coverage for cancer treatment shall provide coverage for a prescribed, orally administered anticancer medication that is used to kill or slow the growth of cancerous cells on a basis no less favorable than intravenously administered or injected cancer medications that are covered as medical benefits by the plan.

B. A nonprofit health care plan shall not increase patient cost-sharing for anticancer medications in order to achieve compliance with the provisions of this section.

C. Coverage of orally administered anticancer medication shall not be subject to any prior authorization, dollar limit, copayment, deductible or coinsurance provision that does not apply to intravenously administered or injected anticancer medication used to kill or slow the growth of cancerous cells.

D. As used in this section, "nonprofit health care plan":

(1) means:

- (a) a nonprofit health insurer;
- (b) a nonprofit health service provider;
- (c) a nonprofit health maintenance organization;
- (d) a nonprofit managed care organization; or
- (e) a nonprofit provider service organization; and

(2) 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."

## **Chapter 55 Section 6 Laws 2011**

SECTION 6. APPLICABILITY.--The provisions of this act apply to insurance policies that provide coverage for cancer treatment and that are delivered, issued for delivery, amended, renewed or continued in this state on or after January 1, 2012.

## **Chapter 55 Section 7 Laws 2011**

SECTION 7. EFFECTIVE DATE.--The effective date of the provisions of this act is June 17, 2011.

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SPAC/Senate Bill 385, aa

Approved April 4, 2011

# **LAWS 2011, CHAPTER 56**

AN ACT



RELATING TO COUNTIES; ELIMINATING THE ELECTED POSITION OF COUNTY SURVEYOR; AMENDING AND REPEALING SECTIONS OF THE NMSA 1978.

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

## **Chapter 56 Section 1 Laws 2011**

SECTION 1. Section 1-10-8 NMSA 1978 (being Laws 1977, Chapter 222, Section 31, as amended) is amended to read:

"1-10-8. BALLOTS--PRIMARY AND GENERAL ELECTIONS--ORDER OF OFFICES.--The ballot used in the primary and general elections shall contain, when applicable, the offices to be voted on in the following order:

- A. president and vice president;
- B. United States senator;
- C. United States representative;
- D. candidates for state offices to be voted on at large, in order prescribed by the secretary of state;
- E. state senator;
- F. state representative;
- G. other district candidates, in the order prescribed by the secretary of state;
- H. metropolitan and magistrate judges;
- I. county commissioners;
- J. county clerk;
- K. county treasurer;
- L. county assessor;
- M. county sheriff;
- N. probate judge; and
- O. other issues as prescribed by the secretary of state."

## **Chapter 56 Section 2 Laws 2011**

SECTION 2. Section 4-35-1 NMSA 1978 (being Laws 1912, Chapter 45, Section 1, as amended) is amended to read:

"4-35-1. BOUNDARIES--DISPUTE--COMMISSION TO SETTLE.--Whenever the location of the boundary line between two or more counties is in dispute, the controversy shall be settled by a boundary commission consisting of the chair of the board of county commissioners and a licensed professional surveyor appointed by the board of county commissioners of each of the counties affected by the dispute and the district attorney of the district in which the counties are situate. If such counties are in more than one judicial district, the district attorney of each district shall be a member of the commission."

## **Chapter 56 Section 3 Laws 2011**

SECTION 3. Section 4-42-1 NMSA 1978 (being Laws 1891, Chapter 33, Section 1, as amended) is amended to read:

"4-42-1. COUNTY SURVEYOR.--The elected office of county surveyor is abolished."

## **Chapter 56 Section 4 Laws 2011**

SECTION 4. Section 4-42-3 NMSA 1978 (being Laws 1891, Chapter 33, Section 4, as amended) is amended to read:

"4-42-3. LICENSED PROFESSIONAL SURVEYOR--INQUIRY AS TO BOUNDARIES--OATH TO WITNESSES--REPORT.--When a licensed professional surveyor appointed by the board of county commissioners is called upon to make any survey that is to be used in any court, the surveyor is hereby authorized and required, upon application of either party, to administer an oath or affirmation to any witness who may be brought to prove any corner or line of that survey or any natural or artificial object or mark that may be necessary to identify the same, which testimony shall be reduced to writing and subscribed by the witness and a return made thereof with the return of the surveyor."

## **Chapter 56 Section 5 Laws 2011**

SECTION 5. Section 4-42-4 NMSA 1978 (being Laws 1891, Chapter 33, Section 5, as amended) is amended to read:

"4-42-4. LICENSED PROFESSIONAL SURVEYOR--OFFICE AND RECORDS.--A licensed professional surveyor appointed by the board of county commissioners shall keep two books of records that shall be furnished the surveyor by the board of county

commissioners for that purpose, which books the surveyor shall transmit to the surveyor's successor in office. One book shall contain the calculations by latitudes and departures of all surveys made by the surveyor or the surveyor's deputies, and each calculation shall have a corresponding number with the plat and field notes to which it refers in the book of records. The other book shall be a book of records and so constituted as to have the left page for diagrams and plats and the right page for notes and remarks, and each diagram and plat shall be numbered progressively. The field notes of the survey so recorded shall contain a full statement of the surveys, with the variations of the magnetic needle, length of lines and location of corners, with description of such corners and description of all witness trees and other marks used as witness marks for such corners, with size, distance and course."

## **Chapter 56 Section 6 Laws 2011**

SECTION 6. Section 4-42-5 NMSA 1978 (being Laws 1891, Chapter 33, Section 6, as amended) is amended to read:

"4-42-5. LICENSED PROFESSIONAL SURVEYOR--LATITUDES AND DEPARTURES--FOLLOWING UNITED STATES INSTRUCTIONS.--All calculations to ascertain the contents of a tract of land by a licensed professional surveyor appointed by the board of county commissioners shall be made by latitudes and departures, and on each plat shall be laid down the variations of the magnetic needle from the true meridian. In re-establishing missing corners, the county surveyor shall establish said corners in strict accordance with the manual of instructions of the United States to the United States deputy surveyors."

## **Chapter 56 Section 7 Laws 2011**

SECTION 7. Section 4-42-6 NMSA 1978 (being Laws 1891, Chapter 33, Section 7, as amended) is amended to read:

"4-42-6. LICENSED PROFESSIONAL SURVEYOR--INTERFERENCE WITH.--If a licensed professional surveyor appointed by the board of county commissioners shall be molested or prevented from doing or performing any of the surveyor's official duties by means of threats or improper interference of any person, the surveyor shall call on the sheriff or other peace officer of the county, who shall accompany the surveyor and afford the surveyor all necessary protection against any person thus threatening or improperly interfering with the surveyor while performing official duties. The person so offending shall, on conviction thereof before any court of competent jurisdiction, be fined in a sum not less than five dollars (\$5.00) nor exceeding one hundred dollars (\$100) and be liable for all damages caused to any person by the hindrance of the surveyor and for all the expenses that may accrue in consequence of the attendance of the sheriff or officer and the delay of the surveyor."

## **Chapter 56 Section 8 Laws 2011**

SECTION 8. Section 4-42-7 NMSA 1978 (being Laws 1891, Chapter 33, Section 8, as amended) is amended to read:

"4-42-7. FEES--PURCHASE OF PLATS OF UNITED STATES SURVEYS--ADMISSIBILITY OF CERTIFIED COPIES OF SURVEYS AS EVIDENCE--FILING COPY OF SURVEYS.--The expense of the chain carriers and corner man shall be paid in advance, if required by a licensed professional surveyor appointed by the board of county commissioners or the surveyor's deputy, by the party on whose application the survey may be made, and the money so advanced shall be accounted for by the surveyor, and the amount expended to be taxed on the bill of costs. However, each surveyor may retain the return of any survey made by the surveyor until the surveyor is paid the fee established by law and may collect fees by action. The board of county commissioners of each county in this state, at its discretion, may procure copies, duly certified by the surveyor general to be correct, of the field notes and plats of the original surveys by the United States of the lands of its county, and the board shall bind the plats and field notes each substantially in book form and keep them in the county clerk's office for the benefit of the public. The certificate of the licensed professional surveyor appointed by the board of county commissioners or any of the surveyor's deputies as to the correctness or accuracy of any survey, plat or field notes made by the surveyor or any certified copy of them shall be admitted as legal evidence in any court of the state, but only when the surveyor is dead or when it is impossible to obtain the surveyor's evidence either by the surveyor's personal attendance or by means of a deposition taken according to law. This evidence may be explained or rebutted by other evidence. The licensed professional surveyors appointed by the boards of county commissioners of the different counties of this state may administer all oaths or affirmations necessary to be administered to road viewers and for all other purposes necessary to the discharge of their official duties. A copy of all surveys shall be filed with the county clerk by the surveyor."

## **Chapter 56 Section 9 Laws 2011**

SECTION 9. Section 4-42-8 NMSA 1978 (being Laws 1891, Chapter 33, Section 9, as amended) is amended to read:

"4-42-8. SURVEY OF LANDS DIVIDED BY COUNTY LINE.--Any person owning or claiming lands divided by a county line and wishing to have the lands surveyed may apply to a licensed professional surveyor appointed by the board of county commissioners of any county in which any part of the land is situate, and, on such application being made, the surveyor is authorized to make a survey, which shall be as valid as though the lands were situate entirely in one county."

## **Chapter 56 Section 10 Laws 2011**

SECTION 10. Section 4-42-9 NMSA 1978 (being Laws 1891, Chapter 33, Section 10, as amended) is amended to read:

"4-42-9. ESTABLISHING COUNTY LINE--JOINT SURVEY.--Where a boundary line between two counties is to be established, licensed professional surveyors appointed by the board of county commissioners, or their deputies, of the two counties affected by the boundaries shall together make the survey and establish the lines and erect monuments, and all corners set by the surveyors or their deputies shall be made in strict conformity with the manual of instructions of the United States."

## **Chapter 56 Section 11 Laws 2011**

SECTION 11. Section 4-42-10 NMSA 1978 (being Laws 1891, Chapter 33, Section 11, as amended) is amended to read:

"4-42-10. LICENSED PROFESSIONAL SURVEYOR TO DO ALL COUNTY WORK.--All county surveying and engineering on roads and bridges shall be performed by a licensed professional surveyor appointed by the board of county commissioners, and the surveyor shall by virtue of the surveyor's office be one of the viewers in the establishing of new roads or the location of bridges."

## **Chapter 56 Section 12 Laws 2011**

SECTION 12. Section 4-42-11 NMSA 1978 (being Laws 1891, Chapter 33, Section 12) is amended to read:

"4-42-11. LICENSED PROFESSIONAL SURVEYOR--CONTRACTING.--Private individuals may contract for the work of county surveying."

## **Chapter 56 Section 13 Laws 2011**

SECTION 13. Section 4-42-13 NMSA 1978 (being Laws 1891, Chapter 33, Section 15, as amended) is amended to read:

"4-42-13. LICENSED PROFESSIONAL SURVEYOR--NUMBERING SURVEYS--ASSESSMENT FOR TAXATION.--All surveys made by the licensed professional surveyors appointed by the board of county commissioners of the several counties in accordance with Chapter 4, Article 42 NMSA 1978, which are not government subdivisions, shall be numbered with a consecutive series of numbers, commencing with thirty-seven, and it shall be the duty of the assessor in each county to enter for taxation in the assessor's book all lands liable for taxation, referring to them by the proper number as designated by the surveyor in the surveyor's records."

## **Chapter 56 Section 14 Laws 2011**

SECTION 14. Section 4-42-14 NMSA 1978 (being Laws 1891, Chapter 33, Section 16, as amended) is amended to read:

"4-42-14. LICENSED PROFESSIONAL SURVEYOR--NOT TO CHANGE ESTABLISHED CORNERS OR SURVEY PRIVATE LANDS.--Nothing in Chapter 4, Article 42 NMSA 1978 shall be construed to empower any licensed professional surveyor appointed by the board of county commissioners to change the established lines or corners of any land owned or possessed by any person, and no private lands shall be surveyed except by the consent of the owner of the land."

## **Chapter 56 Section 15 Laws 2011**

SECTION 15. Section 4-42-15 NMSA 1978 (being Laws 1912, Chapter 34, Section 1, as amended) is amended to read:

"4-42-15. COUNTY SURVEYS.--The board of county commissioners is authorized to have the lands of the county, or any portion thereof, surveyed by a licensed land surveyor under the direction and in accordance with the instructions of the board of county commissioners. The board of county commissioners is authorized to purchase from any licensed professional surveyor any survey and the related plats, maps and field notes with payment to be made from the county general fund."

## **Chapter 56 Section 16 Laws 2011**

SECTION 16. Section 4-44-4 NMSA 1978 (being Laws 1957, Chapter 196, Section 2, as amended) is amended to read:

"4-44-4. CLASS A COUNTIES--SALARIES.--The annual salaries of elected officers of class A counties shall not exceed:

A. county commissioners, twenty-nine thousand five hundred sixty-nine dollars (\$29,569) each;

B. treasurer, sixty-five thousand five hundred one dollars (\$65,501);

C. assessor, sixty-five thousand five hundred one dollars (\$65,501);

D. sheriff, sixty-eight thousand three hundred eight dollars (\$68,308);

E. county clerk, sixty-five thousand five hundred one dollars (\$65,501);  
and

F. probate judge, twenty-eight thousand eight hundred twenty dollars (\$28,820)."

## **Chapter 56 Section 17 Laws 2011**

SECTION 17. Section 4-44-4.1 NMSA 1978 (being Laws 1986, Chapter 67, Section 2, as amended) is amended to read:

"4-44-4.1. CLASS B COUNTIES--OVER THREE HUNDRED MILLION DOLLARS (\$300,000,000) VALUATION--SALARIES.--The annual salaries of elected officers of class B counties with an assessed valuation of over three hundred million dollars (\$300,000,000) shall not exceed:

A. county commissioners, twenty-two thousand eight hundred thirty-two dollars (\$22,832) each;

B. treasurer, fifty-seven thousand two hundred sixty-five dollars (\$57,265);

C. assessor, fifty-seven thousand two hundred sixty-five dollars (\$57,265);

D. sheriff, fifty-nine thousand six hundred ninety-nine dollars (\$59,699);

E. county clerk, fifty-seven thousand two hundred sixty-five dollars (\$57,265); and

F. probate judge, twenty thousand twenty-four dollars (\$20,024)."

## **Chapter 56 Section 18 Laws 2011**

SECTION 18. Section 4-44-5 NMSA 1978 (being Laws 1957, Chapter 196, Section 3, as amended) is amended to read:

"4-44-5. CLASS B COUNTIES--SALARIES.--The annual salaries of elected officers of class B counties with an assessed valuation of over seventy-five million dollars (\$75,000,000) but under three hundred million dollars (\$300,000,000) shall not exceed:

A. county commissioners, sixteen thousand two hundred eighty-two dollars (\$16,282) each;

B. treasurer, forty-nine thousand thirty-one dollars (\$49,031);

C. county assessor, forty-nine thousand thirty-one dollars (\$49,031);

D. county sheriff, fifty-one thousand two hundred seventy-seven dollars (\$51,277);

E. county clerk, forty-nine thousand thirty-one dollars (\$49,031); and

F. probate judge, eleven thousand four hundred sixteen dollars (\$11,416)."

## **Chapter 56 Section 19 Laws 2011**

SECTION 19. Section 4-44-6 NMSA 1978 (being Laws 1957, Chapter 196, Section 4, as amended) is amended to read:

"4-44-6. CLASS C COUNTIES--SALARIES.--The annual salaries of elected officers of class C counties shall not exceed:

- A. county commissioners, sixteen thousand two hundred eighty-two dollars (\$16,282) each;
- B. county treasurer, forty-nine thousand thirty-one dollars (\$49,031);
- C. county assessor, forty-nine thousand thirty-one dollars (\$49,031);
- D. county sheriff, fifty-one thousand two hundred seventy-seven dollars (\$51,277);
- E. county clerk, forty-nine thousand thirty-one dollars (\$49,031); and
- F. probate judge, eleven thousand four hundred sixteen dollars (\$11,416)."

## **Chapter 56 Section 20 Laws 2011**

SECTION 20. Section 4-44-7 NMSA 1978 (being Laws 1957, Chapter 196, Section 5, as amended) is amended to read:

"4-44-7. FIRST CLASS COUNTIES--OVER TWENTY-SEVEN MILLION DOLLARS (\$27,000,000) VALUATION--SALARIES.--The annual salaries of elected officers of counties of the first class with an assessed valuation of over twenty-seven million dollars (\$27,000,000) but under forty-five million dollars (\$45,000,000) shall not exceed:

- A. county commissioners, fourteen thousand seven hundred eighty-four dollars (\$14,784) each;
- B. treasurer, thirty-five thousand nine hundred thirty-three dollars (\$35,933);
- C. assessor, thirty-five thousand nine hundred thirty-three dollars (\$35,933);
- D. sheriff, thirty-eight thousand seven hundred thirty-nine dollars (\$38,739);
- E. county clerk, thirty-five thousand nine hundred thirty-three dollars (\$35,933); and



F. probate judge, nine thousand five hundred forty-five dollars (\$9,545)."

## **Chapter 56 Section 21 Laws 2011**

SECTION 21. Section 4-44-8 NMSA 1978 (being Laws 1957, Chapter 196, Section 6, as amended) is amended to read:

"4-44-8. FIRST CLASS COUNTIES--UNDER TWENTY-SEVEN MILLION DOLLARS (\$27,000,000) VALUATION--SALARIES.--The annual salaries of elected officers of counties of the first class with an assessed valuation of over fourteen million dollars (\$14,000,000) but under twenty-seven million dollars (\$27,000,000) shall not exceed:

A. county commissioners, nine thousand nine hundred nineteen dollars (\$9,919) each;

B. treasurer, thirty thousand five hundred five dollars (\$30,505);

C. assessor, thirty thousand five hundred five dollars (\$30,505);

D. sheriff, thirty-eight thousand seven hundred thirty-nine dollars (\$38,739);

E. county clerk, thirty thousand five hundred five dollars (\$30,505); and

F. probate judge, eight thousand seven hundred ninety-five dollars (\$8,795)."

## **Chapter 56 Section 22 Laws 2011**

SECTION 22. Section 4-44-36 NMSA 1978 (being Laws 1953, Chapter 167, Section 1, as amended) is amended to read:

"4-44-36. ABOLISHMENT OF CERTAIN COUNTY OFFICES.--Any county of the third, fourth or fifth class and H class counties may abolish the offices of county assessor, county clerk and county treasurer and transfer the powers and duties of those offices to the board of county commissioners in the manner prescribed in Sections 4-44-37 through 4-44-45 NMSA 1978."

## **Chapter 56 Section 23 Laws 2011**

SECTION 23. Section 4-44-40 NMSA 1978 (being Laws 1953, Chapter 167, Section 5) is amended to read:

"4-44-40. ELECTION JUDGES AND CLERKS--FORM OF BALLOT.--At an election held pursuant to Chapter 4, Article 44 NMSA 1978, there shall be three election

judges and two election clerks for each polling place. Ballots shall be printed and furnished by the board of county commissioners, which ballots shall read as follows:

Shall the offices of county assessor, county clerk and county treasurer be abolished and the powers and duties of such officers be transferred to the board of county commissioners?

YES \_\_\_\_\_

NO \_\_\_\_\_."

## **Chapter 56 Section 24 Laws 2011**

SECTION 24. Section 4-44-44 NMSA 1978 (being Laws 1953, Chapter 167, Section 11) is amended to read:

"4-44-44. PETITION FOR RESTORATION OF OFFICES--ELECTION.--

A. Whenever any county has abolished the offices of county assessor, county clerk and county treasurer and transferred the powers and duties of those offices to the board of county commissioners as provided in Chapter 4, Article 44 NMSA 1978, a petition may be filed with the board of county commissioners of that county requesting that an election be held to determine whether the county offices previously abolished are to be reestablished and the powers and duties previously transferred to the board of county commissioners are to be returned to the offices from which they were transferred. The petition shall be signed by at least ten percent of the registered electors of the county.

B. Except as provided in this subsection upon the filing of the petition provided for in this section, the provisions of Sections 4-44-38 through 4-44-43 NMSA 1978 shall be applicable. Ballots for an election to reestablish county offices previously abolished and to return to those offices the powers and duties previously transferred from the offices shall read as follows:

Shall the offices of county assessor, county clerk and county treasurer be reestablished and the powers and duties of those offices previously transferred to the board of county commissioners be returned to the offices from which they were transferred?

YES \_\_\_\_\_

NO \_\_\_\_\_."

If a majority of those voting on the above question have voted "Yes", the offices shall be reestablished as of January 1 of the next odd-numbered year, and upon that date all

powers and duties previously transferred from the offices shall be returned to the office from which they had been previously transferred."

## **Chapter 56 Section 25 Laws 2011**

SECTION 25. Section 10-1-13 NMSA 1978 (being Laws 1967, Chapter 238, Section 1) is amended to read:

"10-1-13. COUNTY OFFICERS--OATH--BOND.--

A. As used in this section, "county officer" means county commissioner, county assessor, county clerk, county sheriff, county treasurer, probate judge, county flood commissioner and small claims court clerk.

B. Before assuming the duties of office, each county officer shall take and subscribe the oath of office prescribed by the constitution of New Mexico and give an official bond payable to the state and conditioned for the faithful performance of duties, during the county officer's term of office and until a successor is elected or appointed and is qualified, and that the county officer shall pay all money received in the county officer's official capacity to the person entitled to receive it. The bond shall be executed by a corporate surety company authorized to do business in this state. The amount of the bond required shall be fixed by the board of county commissioners in a sum equal to twenty percent of the public money handled by the county officer during the preceding fiscal year but not to exceed:

county commissioner	\$ 5,000
county assessor	5,000
county clerk	10,000
county sheriff	20,000
county treasurer	50,000
probate judge	5,000
county flood commissioner	10,000
small claims court clerk	10,000.

C. Each county officer shall appoint a deputy or clerk, as allowed by law, who shall take the oath of office required of the appointing county officer and shall receive salary as provided by law. In case of the death of the appointing county officer, the deputy shall continue in office and perform the duties of the county officer until a new county officer is appointed and qualified as required by law.

D. The cost of official bonds for county officers shall be paid from the county general fund, and the board of county commissioners may elect to provide a schedule or blanket corporate surety bond covering county officers and employees for any period of time not exceeding four years.

E. If any county officer fails to give bond by January 10 following the county officer's election or within ten days of appointment, the board of county commissioners shall declare the office vacant."

## **Chapter 56 Section 26 Laws 2011**

SECTION 26. Section 61-23-28 NMSA 1978 (being Laws 1987, Chapter 336, Section 28, as amended) is amended to read:

"61-23-28. REFERENCE MARKS--REMOVAL OR OBLITERATION--REPLACEMENT.--When it becomes necessary by reason of the construction of public or private works to remove or obliterate any triangulation station, benchmark, corner, monument, stake, witness mark or other reference mark, it shall be the duty of the person in charge of the work to cause to be established by a licensed surveyor one or more permanent reference marks, which shall be plainly marked as witness corners or reference marks as near as practicable to the original mark and to record a map, field notes or both with the county clerk of the county wherein located, showing clearly the position of the marks established with reference to the position of the original mark. The surveys or measurements made to connect the reference marks with the original mark shall be of at least the same order of precision as the original survey."

## **Chapter 56 Section 27 Laws 2011**

SECTION 27. Section 67-3-26 NMSA 1978 (being Laws 1917, Chapter 38, Section 7, as amended) is amended to read:

"67-3-26. DUTIES OF SECRETARY--DISBURSEMENT OF STATE ROAD FUND.--The secretary shall have charge of all records of the state transportation commission; shall keep a record of all proceedings and orders pertaining to the business of the secretary's office and of the state transportation commission; and shall keep on file copies of all plans, specifications and estimates prepared by the secretary's office. The secretary shall cause to be made and kept in the secretary's office a general highway plan of the state. The secretary shall prepare or cause to be prepared or call upon the county highway superintendent to furnish a map showing all of the main highways of the several counties of the state and shall, under the direction of the state transportation commission, select and designate the highways that should comprise a system of state roads, which shall, as nearly as practicable, be such as will best serve the traffic needs and develop the resources of the state. Upon its adoption by the state transportation commission, the system of state roads so designated shall be improved as soon thereafter as practicable under the provisions of Chapter 67 NMSA 1978 and such other provisions as the legislature may enact therefor. The system of state roads

so designated may be changed or added to from time to time by the secretary subject to the approval of the state transportation commission. The secretary shall collect information with reference to the mileage, character and condition of the highways and bridges in the several counties of the state and shall investigate and determine the methods of road construction and maintenance best adapted to the various sections of the state, having due regard to topography, natural conditions, the availability of road building materials, the prevailing traffic conditions and the ability of the counties to meet the cost of building and maintaining roads and bridges therein. The secretary may, at all reasonable times, be consulted by county and other officials having authority over highways and bridges relative to any question affecting such highways and bridges, and the secretary may in like manner call on county road officials for any information or maps relative to the location, character and condition of the highways and bridges within their jurisdiction or control. Any such official who fails to supply such information when so called upon is guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not less than ten dollars (\$10.00) nor more than one hundred dollars (\$100). The secretary shall determine the character of and have supervision over the construction, repair and maintenance of all state roads and bridges improved under the provisions of Chapter 67 NMSA 1978 and shall prepare or approve all plans and specifications and estimates therefor. The secretary shall report the proceedings of the secretary's office annually to the state transportation commission at such time as it may designate. All money in the state road fund shall be expended only upon itemized vouchers approved by the secretary, filed with the department of finance and administration, and warrants drawn by the secretary of finance and administration upon the state treasurer."

## **Chapter 56 Section 28 Laws 2011**

SECTION 28. Section 67-5-12 NMSA 1978 (being Laws 1905, Chapter 124, Section 10, as amended) is amended to read:

"67-5-12. LAYING OUT ROAD--ASSESSMENT FOR DAMAGES--SURVEY.--  
The viewers shall meet at the time and place specified in the warrant and commence at the place designated in the petition as the starting point of the road sought to be altered, widened, changed or laid out and established. The viewers shall proceed to view and mark out the road by setting stakes, blazing trees, turning a furrow or other appropriate monuments to the terminus named in the petition by the most practicable and convenient route that they in their judgment can find. They shall assess the benefits and damages accruing to all persons by reason of the alteration, widening, changing or laying out of the road and award to any person damages in excess of the benefits accruing to the person a sum equal to such excess. If the viewers or a majority of them are of the opinion that the road should be altered, widened, changed or laid out and established, they shall cause a survey and plat of the road to be made by a licensed professional surveyor or other competent person giving the courses and distances and specifying the land over which the road extends."

## **Chapter 56 Section 29 Laws 2011**

SECTION 29. REPEAL.--Section 4-42-2 NMSA 1978 (being Laws 1891, Chapter 33, Section 3, as amended) is repealed effective December 31, 2012.

## **Chapter 56 Section 30 Laws 2011**

SECTION 30. EFFECTIVE DATE.--

A. The effective date of the provisions of Sections 1, 23 and 24 of this act is July 1, 2011.

B. The effective date of the provisions of Sections 2 through 22 and 25 through 28 of this act is December 31, 2012.

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Senate Bill 429

Approved April 4, 2011

## **LAWS 2011, CHAPTER 57**

AN ACT

RELATING TO FOOD; CREATING THE NEW MEXICO CHILE ADVERTISING ACT; IDENTIFYING CERTAIN UNLAWFUL CHILE ADVERTISING PRACTICES; PROVIDING FOR ADMINISTRATION, AUDIT AND INSPECTION BY THE NEW MEXICO DEPARTMENT OF AGRICULTURE.

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

### **Chapter 57 Section 1 Laws 2011**

SECTION 1. SHORT TITLE.--This act may be cited as the "New Mexico Chile Advertising Act".

### **Chapter 57 Section 2 Laws 2011**

SECTION 2. DEFINITIONS.--As used in the New Mexico Chile Advertising Act:

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

B. "chile pepper" means the fruit from *Capsicum annuum*.

### **Chapter 57 Section 3 Laws 2011**

SECTION 3. UNLAWFUL ADVERTISING, LABELING OR SELLING OF NON-NEW MEXICO CHILE.--It is unlawful for a person to knowingly advertise, describe, label or offer for sale chile peppers as New Mexico chile, or to advertise, describe, label or offer for sale a product as containing New Mexico chile, unless the chile peppers or chile peppers in the product were grown in New Mexico.

## **Chapter 57 Section 4 Laws 2011**

### SECTION 4. ADMINISTRATION--AUDIT--INSPECTION.--

A. The board may:

(1) enforce and administer the New Mexico Chile Advertising Act through the New Mexico department of agriculture;

(2) promulgate rules, in consultation with the New Mexico chile industry, necessary for the administration of the New Mexico Chile Advertising Act; and

(3) issue an order to immediately cease and desist any activity in violation of the New Mexico Chile Advertising Act.

B. The New Mexico department of agriculture through its authorized inspectors or agents is authorized to:

(1) audit the purchase and sales records of a person dealing with the sale of chile peppers or products containing chile peppers that are advertised, described, labeled or offered for sale as New Mexico chile; and

(2) enter, on a business day during the usual hours of business, a store, market or other business or place for the limited purpose of inspecting the establishment's records related to chile peppers or products containing chile peppers being advertised, described, labeled or offered for sale as New Mexico chile or as containing New Mexico chile.

## **Chapter 57 Section 5 Laws 2011**

SECTION 5. INJUNCTION.--In addition to any other remedy under law, the board may apply to the district court for an injunction, and the district court may issue a temporary or permanent injunction, or both, restraining any person from violating or continuing to violate any of the provisions of the New Mexico Chile Advertising Act or any rule promulgated pursuant to that act by the board. In issuing an injunction on the application of the board, the court shall not require a bond.

Approved April 5, 2011

## **LAWS 2011, CHAPTER 58**

AN ACT

RELATING TO MOTOR VEHICLES; PROVIDING FOR THE ISSUANCE OF SPECIAL PERMITS TO OPERATE OVERWEIGHT VEHICLES WITH REDUCIBLE LOADS WITHIN SIX MILES OF A PORT-OF-ENTRY FACILITY ON THE BORDER WITH MEXICO; IMPOSING PENALTIES.

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

### **Chapter 58 Section 1 Laws 2011**

SECTION 1. Section 66-7-413 NMSA 1978 (being Laws 1978, Chapter 35, Section 484, as amended) is amended to read:

"66-7-413. PERMITS FOR EXCESSIVE SIZE AND WEIGHT--SPECIAL NOTIFICATION REQUIRED ON MOVEMENT OF MANUFACTURED HOMES.--

A. The department of public safety and local highway authorities may, in their discretion, upon application in writing and good cause being shown, issue a special permit in writing authorizing the applicant to operate or move a vehicle or load of a size or weight exceeding the maximum specified in Sections 66-7-401 through 66-7-416 NMSA 1978 on a highway under the jurisdiction of the state transportation commission or local authorities. Except for the movement of manufactured homes, a permit may be granted, in cases of emergency, for the transportation of loads on a certain unit or combination of equipment for a specified period of time not to exceed one year, and the permit shall contain the route to be traversed, the type of load to be transported and any other restrictions or conditions deemed necessary by the body granting the permit. In every other case, the permit shall be issued for a single trip and may designate the route to be traversed and contain any other restrictions or conditions deemed necessary by the body granting the permit. Every permit shall be carried in the vehicle to which it refers and shall be opened for inspection to any peace officer. It is a misdemeanor for a person to violate a condition or term of the special permit.

B. The department of public safety shall promulgate rules in accordance with the State Rules Act pertaining to safety practices, liability insurance and equipment for escort vehicles provided by the motor carrier and for escort vehicles provided by a private business in this state.

(1) The department of public safety shall provide the escort personnel with a copy of applicable rules and shall inspect the escort vehicles for the safety equipment required by the rules. If the escort vehicles and personnel meet the



requirements set forth in the rules, the department of public safety shall issue the special permit.

(2) The movement of vehicles upon the highways of this state requiring a special permit and required to use an escort of the type noted in Paragraph (1) of this subsection is subject to department of public safety authority and inspection at all times.

(3) The department of transportation shall conduct engineering investigations and engineering inspections to determine which four-lane highways are safe for the operation or movement of manufactured homes without an escort. After making that determination, the department of transportation shall hold public hearings in the area of the state affected by the determination, after which it may adopt rules designating those four-lane highways as being safe for the operation or movement of manufactured homes without an escort. If a portion of such a four-lane highway lies within the boundaries of a municipality, the department of transportation, after obtaining the approval of the municipal governing body, shall include such portions in its rules.

C. Except for the movement of manufactured homes, special permits may be issued for a single vehicle or combination of vehicles by the department of public safety for a period not to exceed one year for a fee of two hundred fifty dollars (\$250). The special permits may allow excessive height, length and width for a vehicle or combination of vehicles or load thereon and may include a provision for excessive weight if the weight of the vehicle or combination of vehicles is not greater than one hundred forty thousand pounds. Utility service vehicles, operating with special permits pursuant to this subsection, shall be exempt from prohibitions or restrictions relating to hours or days of operation or restrictions on movement because of poor weather conditions.

D. Special permits for a single trip for a vehicle or combination of vehicles or load thereon of excessive weight, width, length and height may be issued by the department of public safety for a single vehicle for a fee of twenty-five dollars (\$25.00) plus the product of two and one-half cents (\$.025) for each two thousand pounds in excess of eighty-six thousand four hundred pounds or major fraction thereof multiplied by the number of miles to be traveled by the vehicle or combination of vehicles on the highways of this state.

E. If a vehicle for which a permit is issued pursuant to this section is a manufactured home, the department of public safety or local highway authority issuing the permit shall furnish the following information to the property tax division of the taxation and revenue department, which shall forward the information:

(1) to the county assessor of a county from which a manufactured home is being moved, the date the permit was issued, the location being moved from, the location being moved to if within the same county, the name of the owner of the

manufactured home and the identification and registration numbers of the manufactured home;

(2) to the county assessor of any county in this state to which a manufactured home is being moved, the date the permit was issued, the location being moved from, the location being moved to, the name of the owner of the manufactured home and the registration and identification numbers of the manufactured home; and

(3) to the owner of a manufactured home having a destination in this state, notification that the information required in Paragraphs (1) and (2) of this subsection is being given to the respective county assessors and that manufactured homes are subject to property taxation.

F. Except as provided in Subsection G of this section, if the movement of a manufactured home originates in this state, a permit shall not be issued pursuant to Subsection E of this section until the owner of the manufactured home or the authorized agent of the owner obtains and presents to the department of public safety proof that a certificate has been issued by the county assessor or treasurer of the county in which the manufactured home movement originates showing that either:

(1) all property taxes due or to become due on the manufactured home for the current tax year or any past tax years have been paid, except for manufactured homes located on an Indian reservation; or

(2) liability for property taxes on the manufactured home does not exist for the current tax year or a past tax year, except for manufactured homes located on an Indian reservation.

G. The movement of a manufactured home from the lot or business location of a manufactured home dealer to its destination designated by an owner-purchaser is not subject to the requirements of Subsection F of this section if the manufactured home movement originates from the lot or business location of the dealer and the manufactured home was part of the dealer's inventory prior to the sale to the owner-purchaser; however, the movement of a manufactured home by a dealer or the dealer's authorized agent as a result of a sale or trade-in from a nondealer-owner is subject to the requirements of Subsection F of this section whether the destination is the business location of a dealer or some other destination.

H. A permit shall not be issued pursuant to this section for movement of a manufactured home whose width exceeds eighteen feet with no more than a six-inch roof overhang on the left side or twelve inches on the right side in addition to the eighteen-foot width of the manufactured home. Manufactured homes exceeding the limitations of this section shall only be moved on dollies placed on the front and the rear of the structure.

I. The secretary of public safety may by rule provide for movers of manufactured homes to self-issue permits for certain sizes of manufactured homes over specific routes. The cost of a permit shall not be less than twenty-five dollars (\$25.00).

J. The secretary of public safety may provide by rule for dealers of implements of husbandry to self-issue permits for the movement of certain sizes of implements of husbandry from the lot or business location of the dealer over specific routes with specific escort requirements, if necessary, to a destination designated by an owner-purchaser or for purposes of a working demonstration on the property of a proposed owner-purchaser. The department of public safety shall charge a fee for each self-issued permit not to exceed fifteen dollars (\$15.00).

K. A private motor carrier requesting an oversize or overweight permit shall provide proof of insurance in at least the following amounts:

(1) bodily injury liability, providing:

(a) fifty thousand dollars (\$50,000) for each person; and

(b) one hundred thousand dollars (\$100,000) for each accident; and

(2) property damage liability, providing twenty-five thousand dollars (\$25,000) for each accident.

L. A motor carrier requesting an oversize permit shall produce a copy of a warrant or a single state registration receipt as evidence that the motor carrier maintains the insurance minimums prescribed by the public regulation commission.

M. The department of public safety may provide by rule the time periods during which a vehicle or load of a size or weight exceeding the maximum specified in Sections 66-7-401 through 66-7-416 NMSA 1978 may be operated or moved by a motor carrier on a highway under the jurisdiction of the state transportation commission or local authorities.

N. An applicant for a special permit to operate a vehicle or combination of vehicles with a gross weight not exceeding ninety-six thousand pounds within six miles of a port of entry on the border with Mexico shall not be required to demonstrate to the department of public safety that the load cannot be reduced as a condition of the issuance of the permit.

O. Revenue from fees for special permits authorizing vehicles and loads of excessive size or weight to operate or move upon a highway under the jurisdiction of the state transportation commission or local authorities shall be collected for the department of transportation and transferred to the state road fund."

## Chapter 58 Section 2 Laws 2011

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

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

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

COMMON NAME OF OFFENSE	SECTION VIOLATED	PENALTY
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Permitting unlicensed

minor to drive	66-5-40	\$ 10.00
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Failure to obey sign	66-7-104	10.00
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Failure to obey signal	66-7-105	10.00
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Speeding 66-7-301

(1) up to and including

ten miles an hour

over the speed limit	15.00
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(2) from eleven up to

and including fifteen

miles an hour

over the speed limit	30.00
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(3) from sixteen up to

and including twenty

miles an hour over the

speed limit 65.00

(4) from twenty-one up to  
and including twenty-five  
miles an hour

over the speed limit 100.00

(5) from twenty-six up to  
and including thirty  
miles an hour over the

speed limit 125.00

(6) from thirty-one up to  
and including thirty-five  
miles an hour over the

speed limit 150.00

(7) more than thirty-five  
miles an hour over the

speed limit 200.00

Unfastened safety belt 66-7-372 25.00

Child not in restraint device

or seat belt 66-7-369 25.00

Minimum speed 66-7-305 10.00

Speeding 66-7-306 15.00

Improper starting 66-7-324 10.00

Improper backing 66-7-354 10.00

Improper lane	66-7-308	10.00
Improper lane	66-7-313	10.00
Improper lane	66-7-316	10.00
Improper lane	66-7-317	10.00
Improper lane	66-7-319	10.00
Improper passing	66-7-309 through 66-7-312	10.00
Improper passing	66-7-315	10.00
Controlled access		
violation	66-7-320	10.00
Controlled access		
violation	66-7-321	10.00
Improper turning	66-7-322	10.00
Improper turning	66-7-323	10.00
Improper turning	66-7-325	10.00
Following too closely	66-7-318	10.00
Failure to yield	66-7-328 through 66-7-331	10.00
Failure to yield	66-7-332	50.00
Failure to yield	66-7-332.1	25.00
Pedestrian violation	66-7-333	10.00
Pedestrian violation	66-7-340	10.00
Failure to stop	66-7-342 and 66-7-344	
	through 66-7-346	10.00
Railroad-highway grade		

crossing violation 66-7-341 and 66-7-343 150.00

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

Transport of reducible 66-7-413 100.00

load with special

permit more than six miles

from a border crossing

Improper equipment 66-3-801 10.00

Improper equipment 66-3-901 20.00

Improper emergency

signal 66-3-853 through 66-3-857 10.00

Operation interference 66-7-357 5.00

Littering 66-7-364 300.00

Improper parking 66-7-349 through 66-7-352

and 66-7-353 5.00

Improper parking 66-3-852 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).

F. Upon a second conviction for transport of a reducible load with a permit for excessive size or weight pursuant to Subsection N of Section 66-7-413 NMSA 1978 more than six miles from a port-of-entry facility on the border with Mexico, the penalty assessment shall be five hundred dollars (\$500). Upon a third or subsequent conviction, the penalty assessment shall be one thousand dollars (\$1,000)."

## **Chapter 58 Section 3 Laws 2011**

SECTION 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.

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House Bill 24, aa

Approved April 5,2011



# **LAWS 2011, CHAPTER 59**

## **AN ACT**

RELATING TO BORDER DEVELOPMENT; AMENDING THE BORDER DEVELOPMENT ACT TO PROVIDE THE BORDER AUTHORITY WITH ADDITIONAL POWERS AND DUTIES RELATING TO PROJECTS; CREATING A FUND; MAKING AN APPROPRIATION.

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

### **Chapter 59 Section 1 Laws 2011**

SECTION 1. Section 58-27-3 NMSA 1978 (being Laws 1991, Chapter 131, Section 3, as amended) is amended to read:

"58-27-3. DEFINITIONS.--As used in the Border Development Act:

- A. "authority" means the border authority;
- B. "financial assistance" means grants and loans provided for projects to a qualified entity on terms and conditions approved by the authority;
- C. "mortgage" means a mortgage or a mortgage and deed of trust or the pledge and hypothecation of any assets as collateral security;
- D. "port of entry" means an international port of entry in New Mexico at which customs services are provided by the United States customs and border protection;
- E. "project" means any land or building or any other improvements acquired as a part of a port of entry or associated with a port of entry or to aid commerce in connection with a port of entry, including all real and personal property deemed necessary in connection therewith, whether or not now in existence. A project shall be suitable for use by, or for, one or more of the following:
  - (1) a port of entry, a foreign trade zone, an inspection station, an emergency response station or any other facilities to be used by any agency or entity of the United States government, by another qualified entity or by any other foreign international state;
  - (2) an industry for the manufacturing, processing or assembling of any agricultural, mining or manufactured product;

(3) a railroad switching yard, railroad station, bus terminal, airport or other passenger, commuter or mass transportation system or freight transportation system;

(4) a commercial business or other enterprise engaged in storing, warehousing, distributing or selling products of manufacturing, agriculture, mining or related industries, not including facilities designed for the distribution to the public of electricity or gas;

(5) an enterprise in which all or part of the activities of the enterprise involve supplying services to the general public or to governmental agencies or to a specific industry or customer;

(6) any industrial, commercial, agricultural, professional or other business enterprise seeking to occupy office space;

(7) infrastructure development involving acquiring, repairing, improving or maintaining storm sewers and other drainage improvements, sanitary sewers, sewage treatment, water utilities or solid waste disposal facilities, including acquiring rights of way or water rights;

(8) infrastructure development involving reconstructing, resurfacing, maintaining, repairing or improving existing alleys, streets, roads or bridges or laying off, opening, constructing or acquiring new alleys, streets, roads or bridges, including acquiring rights of way;

(9) any industry that involves any water distribution or irrigation system, including pumps, distribution lines, transmission lines, fences, dams and similar facilities and equipment, including acquiring rights of way; or

(10) fire protection services or equipment or police protection services or equipment;

F. "property" means land, improvements to the land, buildings and improvements to the buildings, machinery and equipment of any kind necessary to the project, operating capital and any other personal properties deemed necessary in connection with the project;

G. "qualified entity" means the state or one of its agencies, instrumentalities, institutions or political subdivisions or the United States or any corporation, department, instrumentality or agency of the federal government;

H. "bond" means any bonds, notes or other obligations; and

I. "bondholder" means a person who is the owner of a bond, regardless of whether the bond is registered."

## Chapter 59 Section 2 Laws 2011

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;

(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; and

(10) administer the border project fund and projects financed with expenditures from that fund pursuant to Section 58-27-25.1 NMSA 1978.

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) enter into agreements with the federal government for the operation, improvement and expansion of federal border facilities;

(8) enter into joint ventures, partnerships or other business relationships with qualified entities and private persons for the joint funding and operation of projects;

(9) 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;

(10) 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

(11) 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."

## **Chapter 59 Section 3 Laws 2011**

SECTION 3. Section 58-27-25 NMSA 1978 (being Laws 1991, Chapter 131, Section 25, as amended) is amended to read:

"58-27-25. FUND CREATED.--

A. The "border authority fund" is created in the state treasury. Separate accounts within the fund may be created for any project. Money in the fund is appropriated to the authority for the purposes of carrying out the provisions of the Border Development Act. Money in the fund shall not revert at the end of a fiscal year.

B. Except as provided in Subsections E and F of this section, money received by the authority shall be deposited in the border authority fund, including but not limited to:

(1) the proceeds of bonds issued by the authority or from any loan to the authority made pursuant to the Border Development Act;

(2) interest earned upon money in the fund;

(3) any property or securities acquired through the use of money belonging to the fund;

(4) all earnings of such property or securities;

(5) lease or rental payments received by the authority from any project and distributed to the fund pursuant to Subsection F of this section;

(6) all other money received by the authority from any public or private source except that, if the public or private source expresses an intent that the money be used for projects pursuant to Section 58-27-25.1 NMSA 1978, then the money shall be deposited into the border project fund and not the border authority fund; and

(7) tolls, fees, rents or other charges imposed and collected by the authority and distributed to the fund pursuant to Subsection F of this section.

C. Disbursements from the border authority fund shall be made only upon warrant drawn by the secretary of finance and administration pursuant to vouchers signed by the executive director of the authority or the executive director's designee pursuant to the Border Development Act; provided that in the event the position of executive director is vacant, vouchers may be signed by the chair of the authority.

D. Earnings on the balance in the border authority fund shall be credited to the fund. In addition, in the event that the proceeds from the issuance of bonds or from money borrowed by the authority are deposited in the state treasury, interest earned on

that money during the period commencing with the deposit in the state treasury until the actual transfer of the money to the fund shall be credited to the fund.

E. All proceeds from issuing revenue bonds shall be placed in trust with a chartered bank to be dispersed by the trustee, pursuant to the terms set forth in the bonding resolution adopted by the authority.

F. Ten percent of the tolls, fees, rents, lease payments and other charges that are imposed, collected and received by the authority shall be deposited into the border project fund and the remaining ninety percent shall be deposited into the border authority fund; provided that the money deposited into the border authority fund shall be expended only as appropriated and in accordance with a budget approved by the state budget division of the department of finance and administration."

## **Chapter 59 Section 4 Laws 2011**

SECTION 4. A new section of the Border Development Act, Section 58-27-25.1 NMSA 1978, is enacted to read:

"58-27-25.1. BORDER PROJECT FUND--CREATED--PURPOSE--EXPENDITURES.--

A. The "border project fund" is created in the state treasury.

B. The border project fund shall consist of:

(1) payments of principal and interest on loans for projects;

(2) the portion of the tolls, fees, rents, lease payments or other charges imposed, collected and received by the authority and distributed to the fund pursuant to Subsection F of Section 58-27-25 NMSA 1978;

(3) money from public or private sources and deposited into the fund pursuant to Paragraph (6) of Subsection B of Section 58-27-25 NMSA 1978;

(4) money appropriated by the legislature or distributed or otherwise allocated to the fund;

(5) the proceeds of severance tax bonds appropriated to the fund for projects; and

(6) income from investment of the fund, which shall be credited to the border project fund.

C. Except for severance tax bond proceeds required to revert to the severance tax bonding fund, balances in the border project fund at the end of a fiscal year shall not revert to any other fund.

D. The border project fund may consist of subaccounts as determined to be necessary by the authority.

E. The border project fund is appropriated to the authority for the following purposes:

(1) providing financial assistance to qualified entities for projects;

(2) costs incurred in the operation of a port of entry or related project pursuant to a joint powers agreement entered into with the federal government; or

(3) costs incurred in the joint funding or operation of a project as part of a joint venture, partnership or other business relationship with a qualified entity or private person.

F. The authority may establish procedures and adopt rules as required to:

(1) administer the border project fund;

(2) originate financial assistance for projects selected by the authority; and

(3) govern the process through which qualified entities may apply for financial assistance from the border project fund."

## **Chapter 59 Section 5 Laws 2011**

SECTION 5. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.

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House Bill 322, aa

Approved April 5, 2011

## **LAWS 2011, CHAPTER 60**

AN ACT

RELATING TO TAXATION; PROVIDING A DEDUCTION FOR LOCOMOTIVE FUEL FROM GROSS RECEIPTS AND FROM COMPENSATING TAX.

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

### **Chapter 60 Section 1 Laws 2011**

SECTION 1. A new section of the Gross Receipts and Compensating Tax Act is enacted to read:

"DEDUCTION--GROSS RECEIPTS TAX--LOCOMOTIVE ENGINE FUEL.--Receipts from the sale of fuel to a common carrier to be loaded or used in a locomotive engine may be deducted from gross receipts. For the purposes of this section, "locomotive engine" means a wheeled vehicle consisting of a self-propelled engine that is used to draw trains along railway tracks."

### **Chapter 60 Section 2 Laws 2011**

SECTION 2. A new section of the Gross Receipts and Compensating Tax Act is enacted to read:

"DEDUCTION--COMPENSATING TAX--LOCOMOTIVE ENGINE FUEL.--The value of fuel to be loaded or used by a common carrier in a locomotive engine may be deducted in computing the compensating tax due. For the purposes of this section, "locomotive engine" means a wheeled vehicle consisting of a self-propelled engine that is used to draw trains along railway tracks."

### **Chapter 60 Section 3 Laws 2011**

SECTION 3. A new section of the Gross Receipts and Compensating Tax Act is enacted to read:

"PURPOSE AND REQUIREMENTS OF LOCOMOTIVE FUEL DEDUCTION.--

A. The purpose of the deduction on fuel loaded or used by a common carrier in a locomotive engine from gross receipts and from compensating tax is to encourage the construction, renovation, maintenance and operation of railroad locomotive refueling facilities and related activities in New Mexico.

B. To be eligible for the deduction on fuel loaded or used by a common carrier in a locomotive engine from compensating tax, the fuel shall be used or loaded by a common carrier that, after July 1, 2011, made a capital investment of one hundred million dollars (\$100,000,000) or more in new construction or renovations at the railroad locomotive refueling facility in which the fuel is loaded or used.



C. To be eligible for the deduction on fuel loaded or used by a common carrier in a locomotive engine from gross receipts, the sale shall be made to a common carrier that, after July 1, 2011, made a capital investment of one hundred million dollars (\$100,000,000) or more in new construction or renovations at the railroad locomotive refueling facility in which the fuel is sold, and the common carrier shall deliver an appropriate nontaxable transaction certificate to the seller.

D. The economic development department shall promulgate rules for the issuance of a certificate of eligibility for the purposes of claiming a deduction on fuel loaded or used by a common carrier in a locomotive engine from gross receipts or compensating tax. A common carrier may request a certificate of eligibility from the economic development department to provide to the taxation and revenue department to establish eligibility for a nontaxable transaction certificate for the deduction on fuel loaded or used by a common carrier in a locomotive engine from gross receipts. The taxation and revenue department shall issue nontaxable transaction certificates to a common carrier upon the presentation of a certificate of eligibility obtained from the economic development department pursuant to this subsection.

E. The economic development department shall keep a record of temporary and permanent jobs from all railroad activity at each railroad locomotive refueling facility that claims a deduction on fuel loaded or used by a common carrier in a locomotive engine from gross receipts or from compensating tax. The economic development department and the taxation and revenue department shall estimate the amount of state revenue that is attributable to all railroad activity occurring at each locomotive refueling facility that claims a deduction on fuel loaded or used by a common carrier in a locomotive engine from gross receipts or from compensating tax.

F. The economic development department and the taxation and revenue department shall compile an annual report with the number of taxpayers who claim the deduction on fuel loaded or used by a common carrier in a locomotive engine from gross receipts and from compensating tax, the number of jobs created as a result of that deduction, the amount of that deduction approved, the net revenue to the state as a result of that deduction and any other information required by the legislature to aid in evaluating the effectiveness of that deduction. A taxpayer who claims a deduction on fuel loaded or used by a common carrier in a locomotive engine from gross receipts or from compensating tax shall provide the economic development department and the taxation and revenue department with the information required to compile that report. The economic development department and the taxation and revenue department shall present that report before the legislative interim revenue stabilization and tax policy committee and the legislative finance committee by November of each year. Notwithstanding any other section of law to the contrary, the economic development department and the taxation and revenue department may disclose the number of applicants for the deduction on fuel loaded or used by a common carrier in a locomotive engine from gross receipts and from compensating tax, the amount of the deduction approved, the number of employees of the taxpayer and any other information required

by the legislature or the taxation and revenue department to aid in evaluating the effectiveness of that deduction.

G. An appropriate legislative committee shall review the effectiveness of the deduction on fuel loaded or used by a common carrier in a locomotive engine from gross receipts and from compensating tax every six years beginning in 2019."

## **Chapter 60 Section 4 Laws 2011**

SECTION 4. SEVERABILITY.--If any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

## **Chapter 60 Section 5 Laws 2011**

SECTION 5. CONTINGENT EFFECTIVE DATE--NOTIFICATION.--The effective date of the provisions of this act is July 1, 2013, provided that prior to July 1, 2012, the economic development department certifies to the taxation and revenue department that construction of a railroad locomotive refueling facility project in Dona Ana county has commenced, including land acquisition, acquisition of all necessary permits and commencement of actual construction. The taxation and revenue department shall notify the New Mexico compilation commission and the director of the legislative council service prior to July 1, 2013 as to whether the certification from the economic development department has been received.

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HTRC/House Bill 523

Approved April 5, 2011

# **LAWS 2011, CHAPTER 61**

AN ACT

RELATING TO TAXATION; PROVIDING A DEDUCTION FOR LOCOMOTIVE FUEL FROM GROSS RECEIPTS AND FROM COMPENSATING TAX.

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

## **Chapter 61 Section 1 Laws 2011**

SECTION 1. A new section of the Gross Receipts and Compensating Tax Act is enacted to read:

"DEDUCTION--GROSS RECEIPTS TAX--LOCOMOTIVE ENGINE FUEL.--  
Receipts from the sale of fuel to a common carrier to be loaded or used in a locomotive engine may be deducted from gross receipts. For the purposes of this section, "locomotive engine" means a wheeled vehicle consisting of a self-propelled engine that is used to draw trains along railway tracks."

## **Chapter 61 Section 2 Laws 2011**

SECTION 2. A new section of the Gross Receipts and Compensating Tax Act is enacted to read:

"DEDUCTION--COMPENSATING TAX--LOCOMOTIVE ENGINE FUEL.--The value of fuel to be loaded or used by a common carrier in a locomotive engine may be deducted in computing the compensating tax due. For the purposes of this section, "locomotive engine" means a wheeled vehicle consisting of a self-propelled engine that is used to draw trains along railway tracks."

## **Chapter 61 Section 3 Laws 2011**

SECTION 3. A new section of the Gross Receipts and Compensating Tax Act is enacted to read:

### **"PURPOSE AND REQUIREMENTS OF LOCOMOTIVE FUEL DEDUCTION.--**

A. The purpose of the deduction on fuel loaded or used by a common carrier in a locomotive engine from gross receipts and from compensating tax is to encourage the construction, renovation, maintenance and operation of railroad locomotive refueling facilities and related activities in New Mexico.

B. To be eligible for the deduction on fuel loaded or used by a common carrier in a locomotive engine from compensating tax, the fuel shall be used or loaded by a common carrier that, after July 1, 2011, made a capital investment of one hundred million dollars (\$100,000,000) or more in new construction or renovations at the railroad locomotive refueling facility in which the fuel is loaded or used.

C. To be eligible for the deduction on fuel loaded or used by a common carrier in a locomotive engine from gross receipts, the sale shall be made to a common carrier that, after July 1, 2011, made a capital investment of one hundred million dollars (\$100,000,000) or more in new construction or renovations at the railroad locomotive refueling facility in which the fuel is sold, and the common carrier shall deliver an appropriate nontaxable transaction certificate to the seller.

D. The economic development department shall promulgate rules for the issuance of a certificate of eligibility for the purposes of claiming a deduction on fuel loaded or used by a common carrier in a locomotive engine from gross receipts or compensating tax. A common carrier may request a certificate of eligibility from the

economic development department to provide to the taxation and revenue department to establish eligibility for a nontaxable transaction certificate for the deduction on fuel loaded or used by a common carrier in a locomotive engine from gross receipts. The taxation and revenue department shall issue nontaxable transaction certificates to a common carrier upon the presentation of a certificate of eligibility obtained from the economic development department pursuant to this subsection.

E. The economic development department shall keep a record of temporary and permanent jobs from all railroad activity at each railroad locomotive refueling facility that claims a deduction on fuel loaded or used by a common carrier in a locomotive engine from gross receipts or from compensating tax. The economic development department and the taxation and revenue department shall estimate the amount of state revenue that is attributable to all railroad activity occurring at each locomotive refueling facility that claims a deduction on fuel loaded or used by a common carrier in a locomotive engine from gross receipts or from compensating tax.

F. The economic development department and the taxation and revenue department shall compile an annual report with the number of taxpayers who claim the deduction on fuel loaded or used by a common carrier in a locomotive engine from gross receipts and from compensating tax, the number of jobs created as a result of that deduction, the amount of that deduction approved, the net revenue to the state as a result of that deduction and any other information required by the legislature to aid in evaluating the effectiveness of that deduction. A taxpayer who claims a deduction on fuel loaded or used by a common carrier in a locomotive engine from gross receipts or from compensating tax shall provide the economic development department and the taxation and revenue department with the information required to compile that report. The economic development department and the taxation and revenue department shall present that report before the legislative interim revenue stabilization and tax policy committee and the legislative finance committee by November of each year. Notwithstanding any other section of law to the contrary, the economic development department and the taxation and revenue department may disclose the number of applicants for the deduction on fuel loaded or used by a common carrier in a locomotive engine from gross receipts and from compensating tax, the amount of the deduction approved, the number of employees of the taxpayer and any other information required by the legislature or the taxation and revenue department to aid in evaluating the effectiveness of that deduction.

G. An appropriate legislative committee shall review the effectiveness of the deduction on fuel loaded or used by a common carrier in a locomotive engine from gross receipts and from compensating tax every six years beginning in 2019."

## **Chapter 61 Section 4 Laws 2011**

SECTION 4. SEVERABILITY.--If any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

## **Chapter 61 Section 5 Laws 2011**

SECTION 5. CONTINGENT EFFECTIVE DATE--NOTIFICATION.--The effective date of the provisions of this act is July 1, 2013, provided that prior to July 1, 2012, the economic development department certifies to the taxation and revenue department that construction of a railroad locomotive refueling facility project in Dona Ana county has commenced, including land acquisition, acquisition of all necessary permits and commencement of actual construction. The taxation and revenue department shall notify the New Mexico compilation commission and the director of the legislative council service prior to July 1, 2013 as to whether the certification from the economic development department has been received.

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SFC/SCORC/Senate Bill 179, aa

Approved April 5, 2011

## **LAWS 2011, CHAPTER 62**

AN ACT

MAKING AN APPROPRIATION FOR DEVELOPMENT TRAINING; DECLARING AN EMERGENCY.

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

### **Chapter 62 Section 1 Laws 2011**

SECTION 1. APPROPRIATION.--One million two hundred fifty thousand dollars (\$1,250,000) is appropriated from the general fund to the development training fund for expenditure in fiscal year 2011 and subsequent fiscal years for a development training program providing classroom and in-plant training to furnish qualified human resources for certain new or expanding industries and businesses in the state. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the general fund.

### **Chapter 62 Section 2 Laws 2011**

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

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House Bill 8, aa, w/ec

Approved April 5, 2011

## **LAWS 2011, CHAPTER 63**

AN ACT

RELATING TO GAME AND FISH; ADDING OPERATION OF AIRCRAFT TO THOSE USES OF LAND WHERE LIABILITY OF THE LAND OWNER IS LIMITED.

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

### **Chapter 63 Section 1 Laws 2011**

SECTION 1. Section 17-4-7 NMSA 1978 (being Laws 1967, Chapter 6, Section 1) is amended to read:

"17-4-7. LIABILITY OF LANDOWNER PERMITTING PERSONS TO HUNT, FISH OR USE LANDS FOR RECREATION--DUTY OF CARE--EXCEPTIONS.--

A. Any owner, lessee or person in control of lands who, without charge or other consideration, other than a consideration paid to the landowner by the state, the federal government or any other governmental agency, grants permission to any person or group to use the owner's, lessee's or land controller's lands for the purpose of hunting, fishing, trapping, camping, hiking, sightseeing, the operation of aircraft or any other recreational use does not thereby:

(1) extend any assurance that the premises are safe for such purpose;

(2) assume any duty of care to keep such lands safe for entry or use;

(3) assume responsibility or liability for any injury or damage to or caused by such person or group; or

(4) assume any greater responsibility, duty of care or liability to such person or group than if permission had not been granted and the person or group were trespassers.

B. This section shall not limit the liability of any landowner, lessee or person in control of lands that may otherwise exist by law for injuries to any person granted permission to hunt, fish, trap, camp, hike, sightsee, operate aircraft or use the land for recreation in exchange for a consideration, other than a consideration paid to the landowner by the state, the federal government or any other governmental agency."

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HJC/House Bill 12

Approved April 5, 2011

## **LAWS 2011, CHAPTER 64**

AN ACT

RELATING TO WATER PROJECT FINANCE; AMENDING DEFINITIONS IN THE WATER PROJECT FINANCE ACT TO INCREASE ELIGIBILITY FOR FUNDING; RECONCILING MULTIPLE AMENDMENTS TO SECTIONS OF LAW IN LAWS 2003.

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

### **Chapter 64 Section 1 Laws 2011**

SECTION 1. Section 72-4A-1 NMSA 1978 (being Laws 2001, Chapter 164, Section 1) is amended to read:

"72-4A-1. SHORT TITLE.--Chapter 72, Article 4A NMSA 1978 may be cited as the "Water Project Finance Act"."

### **Chapter 64 Section 2 Laws 2011**

SECTION 2. Section 72-4A-3 NMSA 1978 (being Laws 2001, Chapter 164, Section 3, as amended) is amended to read:

"72-4A-3. DEFINITIONS.--As used in the Water Project Finance Act:

A. "authority" means the New Mexico finance authority;

B. "board" means the water trust board;

C. "political subdivision" means a municipality, county, land grant-merced controlled and governed pursuant to Sections 49-1-1 through 49-1-18 or 49-4-1 through 49-4-21 NMSA 1978, regional or local public water utility authority created by statute, irrigation district, conservancy district, special district, acequia, soil and water conservation district, water and sanitation district or an association organized and existing pursuant to the Sanitary Projects Act;

D. "qualifying water project" means a water project recommended by the board for funding by the legislature; and

E. "qualifying entity" means a state agency, a political subdivision of the state, an intercommunity water or natural gas supply association or corporation

organized under Chapter 3, Article 28 NMSA 1978, a recognized Indian nation, tribe or pueblo, the boundaries of which are located wholly or partially in New Mexico or an association of such entities created pursuant to the Joint Powers Agreements Act or other authorizing legislation for the exercise of their common powers."

### **Chapter 64 Section 3 Laws 2011**

SECTION 3. Section 72-4A-5 NMSA 1978 (being Laws 2001, Chapter 164, Section 5, as amended by Laws 2003, Chapter 139, Section 3 and by Laws 2003, Chapter 365, Section 1) is amended to read:

"72-4A-5. BOARD--DUTIES.--The board shall:

A. adopt rules governing terms and conditions of grants or loans recommended by the board for appropriation by the legislature from the water project fund, giving priority to projects that have been identified as being urgent to meet the needs of a regional water planning area that has a completed regional water plan that has been accepted by the interstate stream commission; that have matching contributions from federal or local funding sources available; and that have obtained all requisite state and federal permits and authorizations necessary to initiate the project;

B. authorize qualifying water projects to the authority that are for:

(1) storage, conveyance or delivery of water to end users;

(2) implementation of federal Endangered Species Act of 1973 collaborative programs;

(3) restoration and management of watersheds;

(4) flood prevention; or

(5) water conservation or recycling,

treatment or reuse of water as provided by law; and

C. create a drought strike team to coordinate responses to emergency water shortages caused by drought conditions."

### **Chapter 64 Section 4 Laws 2011**

SECTION 4. Section 72-4A-7 NMSA 1978 (being Laws 2001, Chapter 164, Section 7, as amended by Laws 2003, Chapter 138, Section 5 and by Laws 2003, Chapter 139, Section 5 and also by Laws 2003, Chapter 365, Section 2) is amended to read:



"72-4A-7. CONDITIONS FOR GRANTS AND LOANS.--

A. Grants and loans shall be made only to qualifying entities that:

(1) agree to operate and maintain a water project so that it will function properly over the structural and material design life, which shall not be less than twenty years;

(2) require the contractor of a construction project to post a performance and payment bond in accordance with the requirements of Section 13-4-18 NMSA 1978;

(3) provide written assurance signed by an attorney or provide a title insurance policy that the qualifying entity has proper title, easements and rights of way to the property upon or through which a water project proposed for funding is to be constructed or extended;

(4) meet the requirements of the financial capability set by the board to ensure sufficient revenues to operate and maintain a water project for its useful life and to repay the loan;

(5) agree to properly maintain financial records and to conduct an audit of a project's financial records;

(6) agree to pay costs of originating grants and loans as determined by rules adopted by the board; and

(7) except in the case of an emergency,

submit a water conservation plan with its application if required to do so and one is not on file with the state engineer, pursuant to Section 72-14-3.2 NMSA 1978.

B. Plans and specifications for a water project shall be approved by the authority, after review and upon the recommendation of the state engineer and the department of environment, before grant or loan disbursements to pay for construction costs are made to a qualifying entity. Plans and specifications for a water project shall incorporate available technologies and operational design for water use efficiency.

C. Grants and loans shall be made only for eligible items, which include:

(1) to match federal and local cost shares;

(2) engineering feasibility reports;

(3) contracted engineering design;

- (4) inspection of construction;
- (5) special engineering services;
- (6) environmental or archaeological surveys;
- (7) construction;
- (8) land acquisition;
- (9) easements and rights of way; and
- (10) legal costs and fiscal agent fees."

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House Bill 16, aa

Approved April 5, 2011

## **LAWS 2011, CHAPTER 65**

AN ACT

RELATING TO MINING; AMENDING SECTIONS OF THE ABANDONED MINE RECLAMATION ACT TO CLARIFY JURISDICTION OF THAT ACT.

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

### **Chapter 65 Section 1 Laws 2011**

SECTION 1. Section 69-25B-3 NMSA 1978 (being Laws 1980, Chapter 87, Section 3, as amended) is amended to read:

"69-25B-3. DEFINITIONS.--As used in the Abandoned Mine Reclamation Act:

A. "director" means the director of the mining and minerals division of the energy, minerals and natural resources department;

B. "eligible lands and water" means all lands and water eligible for expenditures pursuant to the federal Surface Mining Control and Reclamation Act of 1977, as amended;

C. "emergency" means a sudden danger or impairment that presents a high probability of substantial physical harm to health, safety or general welfare of people before the danger can be abated under normal program procedures; and

D. "fund" means the abandoned mine reclamation fund."

## **Chapter 65 Section 2 Laws 2011**

SECTION 2. Section 69-25B-6 NMSA 1978 (being Laws 1980, Chapter 87, Section 6, as amended) is amended to read:

"69-25B-6. OBJECTIVES OF THE FUND--DUTIES OF THE DIRECTOR.--

A. Pursuant to the state reclamation plan, expenditures from the fund shall be used by the director on eligible lands and water and shall reflect the priorities and objectives in the federal Surface Mining Control and Reclamation Act of 1977, as amended.

B. The legislature declares that voids and open and abandoned tunnels, shafts and entryways resulting from any previous mining operation constitute a hazard to the public health or safety and that surface impacts of any underground or surface mining operations may degrade the environment. Notwithstanding the provisions of Subsection A of this section, the director, with the prior approval of the governor and the United States secretary of the interior, may use expenditures from the fund to fill the voids, seal the abandoned tunnels, shafts and entryways and reclaim surface impacts of underground or surface mines that could endanger life and property, constitute a hazard to the public health and safety or degrade the environment. In those instances where mine waste piles are being reworked for conservation purposes, expenditures from the fund may be used to pay the incremental costs of disposing of the wastes from those operations by filling voids and sealing tunnels if the disposal of these wastes meets the purposes of this subsection."

## **Chapter 65 Section 3 Laws 2011**

SECTION 3. Section 69-25B-8 NMSA 1978 (being Laws 1980, Chapter 87, Section 8, as amended) is amended to read:

"69-25B-8. LIENS.--

A. Within six months after the completion of projects to restore, reclaim, abate, control or prevent adverse effects of past mining practices on privately owned land, the director shall itemize the money so expended and may file a statement thereof in the office of the county clerk of the county in which the land lies, together with a notarized appraisal by an independent appraiser of the value of the land before the restoration, reclamation, abatement, control or prevention of adverse effects of past mining practices if the money so expended results in a significant increase in property

value. The statement shall constitute a lien upon the land. The lien shall not exceed the amount determined by the appraisal to be the increase in the market value of the land as a result of the restoration, reclamation, abatement, control or prevention of the adverse effects of past mining practices. No lien shall be filed against the property of any person in accordance with this subsection who neither consented to nor participated in nor exercised control over the mining operation that necessitated the reclamation performed pursuant to the provisions of the Abandoned Mine Reclamation Act.

B. The landowner may proceed to petition the district court for the county in which the land lies within sixty days of the filing of the lien to determine the increase in the market value of the land as a result of the restoration, reclamation, abatement, control or prevention of the adverse effects of past mining practices. The amount found by the court to be the increase in value of the premises shall constitute the amount of the lien and be recorded with the statement provided for in this section. Any party aggrieved by the decision of the district court may appeal to the supreme court.

C. The lien provided in this section shall be entered in the office of the county clerk of the county in which the land lies. The statement shall constitute a lien upon the land as of the date of the expenditure of the money and have priority as a lien second only to the lien of ad valorem taxes imposed upon the land."

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House Bill 40

Approved April 5, 2011

## **LAWS 2011, CHAPTER 66**

AN ACT

RELATING TO PUBLIC SCHOOLS; CLARIFYING THE ATTENDANCE PRIORITIES FOR SCHOOLS THAT ARE CONVERTED TO CHARTER SCHOOLS PURSUANT TO THE ASSESSMENT AND ACCOUNTABILITY ACT.

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

### **Chapter 66 Section 1 Laws 2011**

SECTION 1. Section 22-2C-7.1 NMSA 1978 (being Laws 2007, Chapter 309, Section 6) is amended to read:

"22-2C-7.1. FAILING SCHOOL SUBJECT TO REOPENING AS STATE-CHARTERED CHARTER SCHOOL--REQUIREMENTS.--

A. If, pursuant to Subsections I and J of Section 22-2C-7 NMSA 1978, the school district in which a public school that has failed to make adequate yearly progress for five consecutive years recommends that the public school be reopened as a state-chartered charter school, the department, after holding a public hearing in the school district, may take steps to have the public school reopened as a state-chartered charter school.

B. To reopen as a state-chartered charter school:

(1) the school's current enrollment for all grades cannot exceed ten percent of the total MEM of the school district where it is located when the school district has a total enrollment of less than one thousand three hundred students;

(2) the students enrolled at the time of its reopening as a state-chartered charter school, as well as those students' siblings, shall be given enrollment preference;

(3) the department, after obtaining information and community input during the public hearing, shall find at least five qualified persons willing to serve in an interim capacity as a governing body;

(4) the governing body shall employ a qualified school administrator within thirty days of its appointment by the department;

(5) the governing body shall qualify as a board of finance and satisfy any conditions imposed by the commission prior to commencing full operation;

(6) the governing body shall develop a written plan and proposed charter that is satisfactory to the commission and that at a minimum addresses the following issues:

(a) the employment, discharge, termination or displacement of current school employees, including the effect of employment decisions on current employment contracts and collective bargaining agreements;

(b) fiscal and records management;

(c) instructional and administrative facilities;

(d) student transportation;

(e) special education;

(f) curriculum;

(g) education-related and other services;

- (h) accreditation;
- (i) food service;
- (j) graduation requirements, if a waiver of state graduation requirements is sought;
- (k) governance turnover; and
- (l) student assessments and school accountability;

(7) the governing body and the school shall comply with any other substantive or procedural requirements imposed on them by law or rule of the department; and

(8) the department and the governing body shall have a plan to provide for an orderly transition.

C. If, within ninety days of its determination that the school should be reopened as a state-chartered charter school, the department is unable to constitute a qualified governing body or the governing body does not have its charter approved by the commission and does not find a qualified school administrator able to commence operation of the proposed state-chartered charter school, the failing school shall not be reopened as a state-chartered charter school. Failure to reopen the school as a state-chartered charter school does not affect other actions that may be taken to improve the school.

D. The provisions of the Charter Schools Act shall apply to a public school that is reopened as a state-chartered charter school."

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House Bill 97, aa

Approved April 5, 2011

## **LAWS 2011, CHAPTER 67**

AN ACT

RELATING TO TAXATION; PROVIDING FOR A NEW ELIGIBILITY PERIOD FOR THE RESEARCH AND DEVELOPMENT SMALL BUSINESS TAX CREDIT FROM 2011 UNTIL 2015 AND LIMITING THE CREDIT.

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

## **Chapter 67 Section 1 Laws 2011**

SECTION 1. Section 7-9H-1 NMSA 1978 (being Laws 2005, Chapter 104, Section 11) is amended to read:

"7-9H-1. SHORT TITLE.--Chapter 7, Article 9H NMSA 1978 may be cited as the "Research and Development Small Business Tax Credit Act"."

## **Chapter 67 Section 2 Laws 2011**

SECTION 2. Section 7-9H-3 NMSA 1978 (being Laws 2005, Chapter 104, Section 13) is amended to read:

"7-9H-3. RESEARCH AND DEVELOPMENT SMALL BUSINESS TAX CREDIT--AMOUNT--ELIGIBILITY.--

A. Until June 30, 2015, a taxpayer that is a qualified research and development small business is eligible for a credit in a reporting period in an amount equal to the sum of all gross receipts taxes or fifty percent of withholding taxes paid on behalf of employees and owners with no more than five percent ownership that are due to the state or payable by the taxpayer with respect to that business for that reporting period. The credit provided in this section may be referred to as the "research and development small business tax credit".

B. A taxpayer is not eligible for the credit with respect to a reporting period month:

(1) before July 2005 or between July 1, 2009 and June 30, 2011;

(2) that is more than thirty-five consecutive calendar months after the first month for which a claim for the credit is made by the taxpayer or by a person to whom the taxpayer is a successor, pursuant to Section 7-1-61 NMSA 1978. The time period between July 1, 2009 through June 30, 2011 shall be excluded from a determination of consecutive calendar months;

(3) after which the qualified research and development small business employs more than twenty-five employees on a full-time-equivalent basis;

(4) in a fiscal year of the qualified research and development small business after the first fiscal year in which that business has total revenues in excess of five million dollars (\$5,000,000);

(5) after the calendar month in which more than fifty percent of the qualified research and development small business' voting securities or other equity interests having the right to designate or elect the board of directors or other governing body of that business are owned directly or indirectly by another business;

(6) if the business was not a qualified research and development small business in the twelve-calendar-month period ending with that calendar month;

(7) during which the taxpayer is the beneficiary of an industrial revenue bond issued by a municipality or county; or

(8) during which the taxpayer sold any goods of which the taxpayer is not the manufacturer, unless the taxpayer has received an appropriate nontaxable transaction certificate for such sale or sales."

## **Chapter 67 Section 3 Laws 2011**

SECTION 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.

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House Bill 273, aa

Approved April 5, 2011

## **LAWS 2011, CHAPTER 68**

AN ACT

RELATING TO LAND GRANTS; AMENDING CHAPTER 49, ARTICLE 1 NMSA 1978 TO INCLUDE THE TOWN OF ATRISCO LAND GRANT-MERCED.

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

## **Chapter 68 Section 1 Laws 2011**

SECTION 1. Section 49-1-2 NMSA 1978 (being Laws 1907, Chapter 42, Section 2, as amended) is amended to read:

"49-1-2. APPLICATION.--

A. Sections 49-1-1 through 49-1-18 NMSA 1978 shall apply to all land grants-mercedes confirmed by the congress of the United States or by the court of private land claims or designated as land grants-mercedes in any report or list of land grants prepared by the surveyor general and confirmed by congress, but shall not apply to any land grant that is now managed or controlled in any manner, other than as provided in Sections 49-1-1 through 49-1-18 NMSA 1978, by virtue of any general or special act.



B. If a majority of the members of the board of trustees of a land grant-merced covered by specific legislation determines that the specific legislation is no longer beneficial to the land grant-merced, the board has the authority to petition the legislature to repeal the legislation and to be governed by its bylaws and as provided in Sections 49-1-1 through 49-1-18 NMSA 1978.

C. The town of Tome land grant-merced, situated in Valencia county, confirmed by congress in 1858 and patented by the United States to the town of Tome, shall be governed by the provisions of Sections 49-1-1 through 49-1-18 NMSA 1978.

D. The town of Atrisco land grant-merced, situated in Bernalillo county, confirmed by the court of private land claims in 1894 and patented by the United States to the town of Atrisco in 1905, shall be governed by the provisions of Sections 49-1-1 through 49-1-18 NMSA 1978; provided that the board of trustees shall not have regulatory jurisdiction over, and the provisions of Chapter 49, Article 1 NMSA 1978 shall not apply to or govern, any lands or interests in real property the title to which is held by any other person, including a public or private corporation, partnership or limited liability company."

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House Bill 278, aa

Approved April 5, 2011

## **LAWS 2011, CHAPTER 69**

### **AN ACT**

RELATING TO PUBLIC SCHOOL FACILITIES; EXEMPTING CERTAIN LEASES FROM STATE BOARD OF FINANCE APPROVAL; REQUIRING STANDARDS FOR CERTAIN CHARTER SCHOOL FACILITIES; REQUIRING APPROVAL BEFORE ENTERING INTO A LEASE-PURCHASE AGREEMENT FOR SCHOOL FACILITIES OR BEFORE APPLYING FOR A GRANT FOR LEASE PAYMENTS; PROVIDING FOR A TIME LIMIT FOR RESPONSE TO A REQUEST FOR REVIEW FROM A CHARTER APPLICANT; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTIONS OF LAW IN LAWS 2003 AND LAWS 2009.

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

### **Chapter 69 Section 1 Laws 2011**

SECTION 1. Section 13-6-2.1 NMSA 1978 (being Laws 1989, Chapter 380, Section 1, as amended by Laws 2003, Chapter 142, Section 3 and by Laws 2003, Chapter 349, Section 22) is amended to read:

"13-6-2.1. SALES, TRADES OR LEASES--STATE BOARD OF FINANCE APPROVAL.--

A. Except as provided in Section 13-6-3 NMSA 1978, for state agencies, any sale, trade or lease for a period of more than five years of real property belonging to a state agency, local public body or school district or any sale, trade or lease of such real property for a consideration of more than twenty-five thousand dollars (\$25,000) shall not be valid unless it is approved prior to its effective date by the state board of finance.

B. The provisions of this section shall not be applicable to:

(1) those institutions specifically enumerated in Article 12, Section 11 of the constitution of New Mexico;

(2) the state land office;

(3) the state transportation commission;

(4) the economic development department when disposing of property acquired pursuant to the Statewide Economic Development Finance Act; or

(5) a school district when leasing facilities to a locally chartered or state-chartered charter school."

## **Chapter 69 Section 2 Laws 2011**

SECTION 2. 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, 2011, a new charter school shall not open and an existing charter school shall not relocate unless the facilities of the new or relocated charter school, as measured by the New Mexico condition index, receive a condition rating equal to or better than the average condition for all New Mexico public schools for

that year or the charter school demonstrates, within eighteen months of occupancy or relocation of the charter, the way in which the facilities will achieve a rating equal to or better than the average New Mexico condition index.

D. 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.

E. Without the approval of the public school facilities authority pursuant to Section 22-20-1 NMSA 1978, a charter school shall not enter into a lease-purchase agreement.

F. 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, C and D 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 69 Section 3 Laws 2011**

SECTION 3. Section 22-8B-6 NMSA 1978 (being Laws 1999, Chapter 281, Section 6, as amended by Laws 2009, Chapter 6, Section 1 and by Laws 2009, Chapter 12, Section 1) is amended to read:

"22-8B-6. CHARTER SCHOOL REQUIREMENTS--APPLICATION PROCESS--  
AUTHORIZATION--STATE 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. 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 facility needs, including projected requests for capital outlay assistance that have been approved by the director of the public school facilities authority or the director's designee. The director shall respond to a written request for review from a charter applicant within forty-five days of the request.

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 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 by September 1 of the year the application was received; 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 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.

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."

## **Chapter 69 Section 4 Laws 2011**

SECTION 4. Section 22-20-1 NMSA 1978 (being Laws 1967, Chapter 16, Section 270, as amended) is amended to read:

"22-20-1. SCHOOL CONSTRUCTION--LEASE-PURCHASE AGREEMENTS--LEASE PAYMENT GRANT APPLICATIONS--APPROVAL OF THE PUBLIC SCHOOL FACILITIES AUTHORITY--COMPLIANCE WITH STATEWIDE ADEQUACY STANDARDS--STATE CONSTRUCTION AND FIRE STANDARDS APPLICABLE.--

A. Except as provided in Subsection F of this section, each local school board or governing body of a charter school shall secure the approval of the director of the public school facilities authority or the director's designee prior to:

(1) the construction or letting of contracts for construction of any school building or related school structure;

(2) entering into a lease-purchase agreement for a building to be used as a school building or a related school structure; or

(3) reopening an existing structure that was not used as a school building during the previous year.

B. A written application shall be submitted to the director requesting approval of the construction, lease-purchase agreement or reopening, and, upon receipt, the director shall forward a copy of the application to the secretary. The director shall prescribe the form of the application, which shall include the following:

(1) a statement of need;

(2) the anticipated number of students affected;

(3) the estimated cost;

(4) for approval of construction, a description of the proposed construction project;

(5) for approval of a lease-purchase agreement or a reopening of an existing structure, a description of the structure to be leased or reopened, including its location, square footage, interior layout and facilities, such as bathrooms, kitchens and handicap access, a description of the prior use of the structure and a description of how the facility and supplemental shared facilities and resources will fulfill the functions necessary to support the educational programs of the school district or charter school;

(6) a map of the area showing existing school attendance centers within a five-mile radius and any obstructions to attending the attendance centers, such as railroad tracks, rivers and limited-access highways; and

(7) other information as may be required by the director.

C. With respect to an application for the approval of construction, the director or the director's designee shall give approval to an application if the director or designee reasonably determines that:

(1) the construction will not cause an unnecessary proliferation of school construction;

(2) the construction is needed in the school district or by the charter school;

(3) the construction is feasible;

(4) the cost of the construction is reasonable;

(5) the school district or charter school has submitted a five-year facilities plan that includes:

(a) enrollment projections;

(b) a current preventive maintenance plan;

(c) the capital needs of charter schools chartered by the school district, if applicable, or the capital needs of the charter school if it is state-chartered; and

(d) projections for the facilities needed in order to maintain a full-day kindergarten program;

(6) the construction project:

(a) is in compliance with the statewide adequacy standards adopted pursuant to the Public School Capital Outlay Act; and

(b) is appropriately integrated into the school district or charter school five-year facilities plan;

(7) the school district or charter school is financially able to pay for the construction; and

(8) the secretary has certified that the construction will support the educational program of the school district or charter school.

D. With respect to an application for the approval of a lease-purchase agreement or for the reopening of an existing structure, the director or the director's designee shall give approval to an application if the director or designee reasonably determines that:

(1) the buildings to be reopened or leased for purchase meet the applicable statewide adequacy standards adopted pursuant to the Public School Capital Outlay Act or the buildings can be brought into compliance with those standards within a reasonable time and at a reasonable cost and that money or other resources will be available to the school district or charter school to bring the buildings up to those standards; and

(2) the buildings to be reopened or leased for purchase have, as measured by the New Mexico condition index, a condition rating equal to or better than the average condition for all New Mexico public schools for that year.

E. Within thirty days after the receipt of an application filed pursuant to this section, the director or the director's designee shall in writing notify the local school board or governing body of a charter school making the application and the department of approval or disapproval of the application.

F. By rule, the public school capital outlay council may:

(1) exempt classes or types of construction from the application and approval requirements of this section; or

(2) exempt classes or types of construction from the requirement of approval but, if the council determines that information concerning the construction is necessary for the maintenance of the facilities assessment database, require a description of the proposed construction project and related information to be submitted to the public school facilities authority.



G. A charter school shall not apply for a lease payment grant pursuant to Subsection I of Section 22-24-4 NMSA 1978 unless the lease-purchase agreement has been approved pursuant to this section.

H. A local school board or governing body of a charter school shall not enter into a contract for the construction of a public school facility, including contracts funded with insurance proceeds, unless the contract contains provisions requiring the construction to be in compliance with the statewide adequacy standards adopted pursuant to the Public School Capital Outlay Act, provided that, for a contract funded in whole or in part with insurance proceeds:

(1) the cost of settlement of any insurance claim shall not be increased by inclusion of the insurance proceeds in the construction contract; and

(2) insurance claims settlements shall continue to be governed by insurance policies, memoranda of coverage and rules related to them.

I. Public school facilities shall be constructed pursuant to state standards or codes promulgated pursuant to the Construction Industries Licensing Act and rules adopted pursuant to Section 59A-52-15 NMSA 1978 for the prevention and control of fires in public occupancies. Building standards or codes adopted by a municipality or county do not apply to the construction of public school facilities, except those structures constructed as a part of an educational program of a school district or charter school.

J. The provisions of Subsection I of this section relating to fire protection shall not be effective until the public regulation commission has adopted the International Fire Code and all standards related to that code.

K. As used in this section, "construction" means any project for which the construction industries division of the regulation and licensing department requires permitting and for which the estimated total cost exceeds two hundred thousand dollars (\$200,000)."

## **Chapter 69 Section 5 Laws 2011**

SECTION 5. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.

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HEC/House Bill 283, aa

Approved April 5, 2011

## **LAWS 2011, CHAPTER 70**

AN ACT

RELATING TO PUBLIC SCHOOL FINANCE; CHANGING AND CLARIFYING  
STANDARDIZED REPORTING DATES.

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

**Chapter 70 Section 1 Laws 2011**

SECTION 1. Section 22-8-13 NMSA 1978 (being Laws 1974, Chapter 8, Section 3, as amended) is amended to read:

"22-8-13. REPORTS.--

A. Each public school shall keep accurate records concerning membership in the public school.

B. The dates for which MEM is reported are as follows:

- (1) the first reporting date, the second Wednesday in October;
- (2) the second reporting date, December 1 or the first working day in December; and
- (3) the third reporting date, the second Wednesday in February.

C. The superintendent of each school district or head administrator of a state-chartered charter school shall maintain the following reports for each reporting period:

- (1) the basic program MEM by grade in each public school;
- (2) the early childhood education MEM;
- (3) the special education MEM in each public school in class C and class D programs as defined in Section 22-8-21 NMSA 1978;
- (4) the number of class A and class B programs as defined in Section 22-8-21 NMSA 1978; and
- (5) the full-time-equivalent MEM for bilingual multicultural education programs.

D. The superintendent of each school district and the head administrator of each state-chartered charter school shall furnish all reports required by law or the department to the department within ten working days of the close of each reporting

period. Failure of the department to approve timely submissions shall not cause a school district or charter school to be found noncompliant with the requirements of this section. For purposes of this section, "working day" means every calendar day excluding Saturdays, Sundays and legal holidays.

E. All information required pursuant to this section shall be on forms prescribed and furnished by the department. A copy of any report made pursuant to this section shall be kept as a permanent record of the school district or charter school and shall be subject to inspection and audit at any reasonable time.

F. The department may withhold up to one hundred percent of allotments of funds to any school district or state-chartered charter school where the superintendent or head administrator has failed to comply with the requirements of this section. Withholding may continue until the superintendent or head administrator complies with and agrees to continue complying with requirements of this section.

G. The provisions of this section may be modified or suspended by the department for any school district or school or state-chartered charter school operating under the Variable School Calendar Act. The department shall require MEM reports consistent with the calendar of operations of such school district or school or state-chartered charter school and shall calculate an equivalent MEM for use in projecting school district or charter school revenue."

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House Bill 289

Approved April 5, 2011

## **LAWS 2011, CHAPTER 71**

AN ACT

RELATING TO LICENSING; CLARIFYING THAT FACILITIES OF A WINEGROWER MAY BE USED TO PRODUCE WINE FOR OTHER WINEGROWERS.

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

### **Chapter 71 Section 1 Laws 2011**

SECTION 1. Section 60-6A-11 NMSA 1978 (being Laws 1981, Chapter 39, Section 28, as amended) is amended to read:

"60-6A-11. WINEGROWER'S LICENSE.--

A. Exempt from the procurement of any other license pursuant to the terms of the Liquor Control Act, but not from the procurement of a winegrower's license, is a person in this state who produces wine. Except during periods of shortage or reduced availability, at least fifty percent of a winegrower's overall annual production of wine shall be produced from grapes or other agricultural products grown in this state pursuant to rules adopted by the director; provided, however, that, for purposes of determining annual production and compliance with the fifty percent New Mexico grown provision of this subsection, the calculation of a winegrower's overall annual production of wine shall not include the winegrower's production of wine for out-of-state wine producer license holders.

B. A person issued a winegrower's license pursuant to this section may do any of the following:

(1) manufacture or produce wine, including blending, mixing, flavoring, coloring, bottling and labeling, whether the wine is manufactured or produced for a winegrower or an out-of-state wine producer holding a permit issued by the federal alcohol tax unit of the internal revenue service and a valid license in a state that authorizes the wine producer to manufacture, produce, store or sell wine;

(2) store, transport, import or export wines;

(3) sell wines to a holder of a New Mexico winegrower's, wine wholesaler's, wholesaler's or wine exporter's license or to a winegrower's agent;

(4) transport not more than two hundred cases of wine in a calendar year to another location within New Mexico by common carrier;

(5) deal in warehouse receipts for wine;

(6) sell wines in other states or foreign jurisdictions to the holders of a license issued under the authority of that state or foreign jurisdiction authorizing the purchase of wine;

(7) buy wine or distilled wine products from other persons, including licensees and permittees under the Liquor Control Act, for use in blending, mixing or bottling of wines;

(8) conduct wine tastings and sell, by the glass or by the bottle or sell in unbroken packages for consumption off the premises but not for resale, wine of the winegrower's own production or wine produced by another New Mexico winegrower on the winegrower's premises;

(9) at no more than three off-premises locations, conduct wine tastings, sell by the glass and sell in unbroken packages for consumption off premises, but not for resale, wine of the winegrower's own production or wine produced by another

New Mexico winegrower after the director has determined that the off-premises locations meet the requirements of the Liquor Control Act and the department rules for new liquor license locations;

(10) be deemed a manufacturer for purposes of the Gross Receipts and Compensating Tax Act; and

(11) at public celebrations on or off the winegrower's premises, after the winegrower has paid the applicable fees and been issued the appropriate permit, to conduct wine tastings, sell by the glass or the bottle or sell in unbroken packages, for consumption off premises but not for resale, wine produced by or for the winegrower.

C. Sales of wine as provided for in this section shall be permitted between the hours of 7:00 a.m. and midnight Monday through Saturday, and the holder of a winegrower's license or public celebration permit may conduct wine tastings and sell, by the glass or bottle or in unbroken packages for consumption off premises but not for resale, wine of the winegrower's own production on the winegrower's premises between the hours of 12:00 noon and midnight on Sunday.

D. At public celebrations off the winegrower's premises in any local option district permitting the sale of alcoholic beverages, the holder of a winegrower's license shall pay ten dollars (\$10.00) to the alcohol and gaming division of the regulation and licensing department for a "winegrower's public celebration permit" to be issued under rules adopted by the director. Upon request, the alcohol and gaming division of the regulation and licensing department may issue to a holder of a winegrower's license a public celebration permit for a location at the public celebration that is to be shared with other winegrowers and small brewers. As used in this subsection, "public celebration" includes any state or county fair, community fiesta, cultural or artistic event, sporting competition of a seasonal nature or activities held on an intermittent basis.

E. Every application for the issuance or annual renewal of a winegrower's license shall be on a form prescribed by the director and accompanied by a license fee to be computed as follows on the basis of total annual wine produced or blended:

(1) less than five thousand gallons per year, twenty-five dollars (\$25.00) per year;

(2) between five thousand and one hundred thousand gallons per year, one hundred dollars (\$100) per year; and

(3) over one hundred thousand gallons per year, two hundred fifty dollars (\$250) per year."

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House Bill 315, aa

Approved April 5, 2011

## **LAWS 2011, CHAPTER 72**

AN ACT

RELATING TO CONSERVANCY DISTRICTS; AMENDING REQUIREMENTS FOR CERTAIN CONSERVANCY DISTRICT ELECTIONS.

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

### **Chapter 72 Section 1 Laws 2011**

SECTION 1. Section 73-18-25 NMSA 1978 (being Laws 1955, Chapter 281, Section 1, as amended) is amended to read:

"73-18-25. CONSERVANCY DISTRICTS TO WHICH ACT APPLIES.--Sections 73-18-25 through 73-18-43 NMSA 1978 apply to conservancy districts organized under the laws of New Mexico having a contract with the United States under the reclamation laws of the United States, as provided under Chapter 73, Article 18 NMSA 1978, and having an area of land of all classes within the exterior boundaries of the district of more than one hundred thousand acres and less than one hundred forty-five thousand acres."

### **Chapter 72 Section 2 Laws 2011**

SECTION 2. Section 73-18-27 NMSA 1978 (being Laws 1955, Chapter 281, Section 3) is amended to read:

"73-18-27. CALLING OF FIRST ELECTION.--The board of directors of the conservancy district shall meet at the office of the conservancy district at 10:00 a.m. on the second Tuesday of August 1955 and shall call an election in the election precincts outside the municipality to be held on the second Tuesday in October 1955. The election shall be called by the board of directors by resolution that shall fix a voting place for each election precinct within the district outside the municipality and designate the necessary qualified electors of each election precinct to act as judges of the election in each precinct. In the discretion of the board of directors of the conservancy district, the election may be held at any place within the district. Judges of the elections shall be paid an amount to be determined by the board of directors for service. Expenses of the elections shall be paid by the district. In each odd-numbered year after 1955, elections shall be called in the same manner and at the same times as provided in Sections 73-18-25 through 73-18-43 NMSA 1978 for the election of directors to succeed any directors whose terms expire in that year."

## **Chapter 72 Section 3 Laws 2011**

SECTION 3. Section 73-18-30 NMSA 1978 (being Laws 1955, Chapter 281, Section 6, as amended) is amended to read:

"73-18-30. QUALIFICATIONS OF ELECTORS.--The board of directors of the conservancy district shall, by resolution, adopt a plan with necessary rules and regulations by which nonresident owners of land or other owners of land may vote for directors by absentee ballot."

## **Chapter 72 Section 4 Laws 2011**

SECTION 4. Section 73-18-32 NMSA 1978 (being Laws 1955, Chapter 281, Section 8, as amended) is amended to read:

"73-18-32. VOTING RIGHTS.--

A. In district precinct elections, landowners owning one acre of irrigable land five months preceding the election shall be entitled to one vote for each acre of irrigable land or major fraction of an acre owned by the landowner up to one hundred sixty acres. Landowners owning less than one acre of irrigable land have no vote. A landowner may vote in all voting precincts in which the landowner has irrigable land, entitling the landowner to vote as provided in Sections 73-18-30 and 73-18-31 NMSA 1978.

B. For director-at-large, all persons who are over the age of eighteen and who have been the owners of real estate within the district for more than two months preceding the election shall be entitled to one vote.

C. All persons who are over the age of eighteen and who have been the owners of real estate within any municipality within the district for more than two months preceding the election shall be entitled to one vote for director representing the municipal election precinct.

D. To qualify voters to vote for directors-at-large and for director representing the municipal voting precinct, the ownership of real estate by the spouse shall be considered also ownership by the other spouse."

## **Chapter 72 Section 5 Laws 2011**

SECTION 5. Section 73-18-34 NMSA 1978 (being Laws 1955, Chapter 281, Section 10) is amended to read:

"73-18-34. BECOMING A CANDIDATE FOR DIRECTOR.--Any person wishing to become a candidate for the office of director in any district shall, by the last Friday of July before the election, file in the office of the secretary of the district a declaration of

candidacy, stating the election precinct for which the person is a candidate, accompanied by a petition signed by not less than ten qualified electors of the election precinct for which the person is a candidate to represent. No declaration of candidacy shall be accepted by the secretary unless accompanied by such petition, signed by electors."

## **Chapter 72 Section 6 Laws 2011**

SECTION 6. Section 73-18-36 NMSA 1978 (being Laws 1955, Chapter 281, Section 12) is amended to read:

"73-18-36. COMPENSATION OF DIRECTORS.--Each director shall receive compensation payable out of the funds of the district in an amount to be determined by the board of directors of the district; provided that no director may receive an increase in compensation during the term for which that director was elected."

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House Bill 358, aa

Approved April 5, 2011

## **LAWS 2011, CHAPTER 73**

AN ACT

RELATING TO THE NEW MEXICO BINGO AND RAFFLE ACT; AMENDING THE DEFINITIONS OF "EDUCATIONAL ORGANIZATION" AND "FRATERNAL ORGANIZATION" AS USED IN THAT ACT.

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

## **Chapter 73 Section 1 Laws 2011**

SECTION 1. Section 60-2F-4 NMSA 1978 (being Laws 2009, Chapter 81, Section 4) is amended to read:

"60-2F-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, including recognized student organizations, 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, 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."

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House Bill 394

Approved April 5, 2011

## **LAWS 2011, CHAPTER 74**

AN ACT

RELATING TO TAXATION; EXTENDING THE SUNSET PROVISIONS FOR JET FUEL TAX CREDITS IN THE GROSS RECEIPTS AND COMPENSATING TAX ACT; AMENDING SECTIONS OF THE NMSA 1978.

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

### **Chapter 74 Section 1 Laws 2011**

SECTION 1. Section 7-9-83 NMSA 1978 (being Laws 1993, Chapter 364, Section 1, as amended) is amended to read:

"7-9-83. DEDUCTION--GROSS RECEIPTS TAX--JET FUEL.--

A. From July 1, 2003 through June 30, 2017, fifty-five percent of the receipts from the sale of fuel specially prepared and sold for use in turboprop or jet-type engines as determined by the department may be deducted from gross receipts.

B. After June 30, 2017, forty percent of the receipts from the sale of fuel specially prepared and sold for use in turboprop or jet-type engines as determined by the department may be deducted from gross receipts."

### **Chapter 74 Section 2 Laws 2011**

SECTION 2. Section 7-9-84 NMSA 1978 (being Laws 1993, Chapter 364, Section 2, as amended) is amended to read:

"7-9-84. DEDUCTION--COMPENSATING TAX--JET FUEL.--

A. From July 1, 2003 through June 30, 2017, fifty-five percent of the value of the fuel specially prepared and sold for use in turboprop or jet-type engines as determined by the department may be deducted in computing the compensating tax due.

B. After June 30, 2017, forty percent of the value of the fuel specially prepared and sold for use in turboprop or jet-type engines as determined by the department may be deducted in computing the compensating tax due."

### **Chapter 74 Section 3 Laws 2011**

SECTION 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.

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Senate Bill 84

Approved April 5, 2011

## **LAWS 2011, CHAPTER 75**

AN ACT

RELATING TO HORSE RACING; EXTENDING THE SUNSET DATE FOR THE STATE RACING COMMISSION; PROVIDING FOR A DELAYED CHANGE IN DISTRIBUTION OF A PORTION OF THE DAILY CAPITAL OUTLAY TAX FROM THE STATE FAIR COMMISSION TO THE GENERAL FUND.

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

### **Chapter 75 Section 1 Laws 2011**

SECTION 1. Section 60-1A-20 NMSA 1978 (being Laws 2007, Chapter 39, Section 20) is amended to read:

"60-1A-20. DAILY CAPITAL OUTLAY TAX--CAPITAL OUTLAY OFFSET--STATE FAIR COMMISSION DISTRIBUTION--DAILY LICENSE FEES.--

A. A "daily capital outlay tax" of two and three-sixteenths percent is imposed on the gross amount wagered each day at a racetrack where horse racing is conducted on the premises of a racetrack licensee and also on the gross amount wagered each day when a racetrack licensee is engaged in simulcasting pursuant to the Horse Racing Act. After deducting the amount of offset allowed pursuant to this section, any remaining daily capital outlay tax shall be paid by the commission to the taxation and revenue department from the retainage of a racetrack licensee from on-site wagers made on the licensed premises of the racetrack licensee for deposit in the general fund. Of the daily capital outlay tax imposed pursuant to this subsection:

(1) for a class A racetrack licensee, not more than one-half of the daily capital outlay tax imposed on the first two hundred fifty thousand dollars (\$250,000) of the daily handle may be offset by the amount that the class A racetrack licensee expends for capital improvements or for long-term financing of capital improvements at the racetrack licensee's existing facility;

(2) for a class B racetrack licensee, not more than one-half of the daily capital outlay tax imposed on the first two hundred fifty thousand dollars (\$250,000) of the daily handle may be offset:

(a) in an amount not to exceed one-half of the offset allowed, the amount expended by the class B racetrack licensee for capital improvements; and

(b) in an amount not to exceed one-half of the offset allowed, the amount expended by the class B racetrack licensee for advertising, marketing and promoting horse racing in the state;

(3) through December 31, 2014, for both class A and class B racetrack licensees, an amount equal to one-half of the daily capital outlay tax is appropriated and transferred to the state fair commission for expenditure on capital improvements at the state fairgrounds and for expenditure on debt service on negotiable bonds issued for the state fairgrounds' capital improvements; and

(4) on and after January 1, 2015, for both class A and class B racetrack licensees, an amount equal to one-half of the daily capital outlay tax is appropriated and transferred to the general fund.

B. An additional daily license fee of five hundred dollars (\$500) shall be paid to the commission by the racetrack licensee for each day of live racing on the premises of the racetrack licensee.

C. Accurate records shall be kept by the racetrack licensee to show gross amounts wagered, retainage, breakage and amounts received from interstate common pools and distributions from gross amounts wagered, retainage, breakage and amounts received from interstate common pools, as well as other information the commission may require. Records shall be open to inspection and shall be audited by the

commission, its authorized representatives or an independent auditor selected by the commission. The commission may prescribe the method in which records shall be maintained. A racetrack licensee shall keep records that are accurate, legible and easy to understand.

D. Notwithstanding any other provision of law, a political subdivision of the state shall not impose an occupational tax on a horse racetrack owned or operated by a racetrack licensee. A political subdivision of the state shall not impose an excise tax on a horse racetrack owned or operated by a racetrack licensee. Local option gross receipts taxes authorized by the state may be imposed to the extent authorized and imposed by a subdivision of the state on a horse racetrack owned or operated by a racetrack licensee."

## **Chapter 75 Section 2 Laws 2011**

SECTION 2. Section 60-1A-29 NMSA 1978 (being Laws 2007, Chapter 39, Section 29) is amended to read:

"60-1A-29. TERMINATION OF AGENCY LIFE--DELAYED REPEAL.--The state racing commission is terminated on July 1, 2017 pursuant to the Sunset Act. The commission shall continue to operate according to the provisions of Chapter 60, Article 1A NMSA 1978 until July 1, 2018. Effective July 1, 2018, Chapter 60, Article 1A NMSA 1978 is repealed."

## **Chapter 75 Section 3 Laws 2011**

SECTION 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.

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Senate Bill 114

Approved April 5, 2011

# **LAWS 2011, CHAPTER 76**

AN ACT

RELATING TO HIGHER EDUCATION; DIRECTING THE BOARD OF REGENTS OF THE UNIVERSITY OF NEW MEXICO TO FUND A STUDY REGARDING THE FEASIBILITY OF A PROGRAM ALLOWING BACHELOR OF ARTS DEGREE RECIPIENTS TO MATRICULATE DIRECTLY TO DENTAL SCHOOL FOR A DOCTOR OF DENTAL SCIENCE OR DOCTOR OF DENTAL SURGERY DEGREE.

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

## **Chapter 76 Section 1 Laws 2011**

SECTION 1. TEMPORARY PROVISION--DENTAL DEGREE STUDY--FISCAL ANALYSIS--REPORTING.--The health sciences center at the university of New Mexico shall conduct a study, including a fiscal impact analysis, of the feasibility of establishing at the university of New Mexico a program to allow qualified students to matriculate directly from a bachelor of arts degree program to dental school to obtain a doctor of dental science or doctor of dental surgery degree. The vice president of the university of New Mexico's health sciences center shall present the results of that study to the interim legislative health and human services committee and the legislative finance committee by September 1, 2011.

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Senate Bill 133, aa

Approved April 5, 2011

## **LAWS 2011, CHAPTER 77**

AN ACT

RELATING TO REAL ESTATE; AMENDING THE REAL ESTATE APPRAISERS ACT TO PROVIDE FOR ACTION BY THE REAL ESTATE APPRAISERS BOARD WITHIN ONE YEAR FOLLOWING A COMPLAINT IN ORDER TO COMPLY WITH FEDERAL LAW.

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

## **Chapter 77 Section 1 Laws 2011**

SECTION 1. Section 61-30-15 NMSA 1978 (being Laws 1990, Chapter 75, Section 15, as amended) is amended to read:

"61-30-15. REFUSAL, SUSPENSION OR REVOCATION OF REGISTRATION, LICENSE OR CERTIFICATE.--

A. The board, consistent with Section 61-30-7 NMSA 1978, shall refuse to issue or renew a registration, license or certificate or shall suspend or revoke a registration, license or certificate at any time when the applicant, state apprentice real estate appraiser, state licensed real estate appraiser or state certified real estate appraiser, in performing or attempting to perform any of the actions set forth in the Real Estate Appraisers Act, is determined by the board to have:



(1) procured or attempted to procure a registration, license or certificate by knowingly making a false statement or submitting false information or through any form of fraud or misrepresentation;

(2) refused to provide complete information in response to a question in an application for registration, a license or certificate or failed to meet the minimum qualifications established by the Real Estate Appraisers Act;

(3) paid money, other than as provided for in the Real Estate Appraisers Act, to any member or employee of the board to procure registration, a license or a certificate;

(4) been convicted of a crime that is substantially related to the qualifications, functions and duties of the person developing real estate appraisals and communicating real estate appraisals to others;

(5) committed an act involving dishonesty, fraud or misrepresentation or by omission engaged in a dishonest or fraudulent act or misrepresentation with the intent to substantially benefit the registration, license or certificate holder or another person or with the intent to substantially injure another person;

(6) willfully disregarded or violated any of the provisions of the Real Estate Appraisers Act or the rules of the board adopted pursuant to that act;

(7) accepted an appraisal assignment when the employment itself is contingent upon the real estate appraiser reporting a predetermined analysis or opinion or where the fee to be paid for the performance of the appraisal assignment is contingent upon the opinion, conclusion or valuation reached or upon the consequences resulting from the appraisal assignment; provided that a contingent fee agreement is permitted for the rendering of special services not constituting an appraisal assignment and the acceptance of a contingent fee is clearly and prominently stated on the written appraisal report;

(8) suffered the entry of a final civil judgment on the grounds of fraud, misrepresentation or deceit in the making of an appraisal; provided that the state apprentice real estate appraiser, state licensed real estate appraiser or state certified real estate appraiser shall be afforded an opportunity to present matters in mitigation and extenuation, but may not collaterally attack the civil judgment; or

(9) committed any other conduct that is related to dealings as a state apprentice real estate appraiser, state licensed real estate appraiser or state certified real estate appraiser and that constitutes or demonstrates bad faith, untrustworthiness, impropriety, fraud, dishonesty or any unlawful act.

B. The board, consistent with Section 61-30-7 NMSA 1978, shall refuse to issue or renew a registration, license or certificate and shall suspend or revoke a registration, license or certificate at any time when the board determines that the applicant or state apprentice real estate appraiser, state licensed real estate appraiser or state certified real estate appraiser, in the performance of real estate appraisal work, has:

(1) repeatedly failed to observe one or more of the standards for the development or communication of real estate appraisals set forth in the rules adopted pursuant to the Real Estate Appraisers Act;

(2) repeatedly failed or refused, without good cause, to exercise reasonable diligence in developing an appraisal, preparing an appraisal report or communicating an appraisal;

(3) repeatedly been negligent or incompetent in developing an appraisal, in preparing an appraisal report or in communicating an appraisal; or

(4) violated the confidential nature of records to which the state apprentice real estate appraiser, state licensed real estate appraiser or state certified real estate appraiser gained access through employment or engagement as such an appraiser.

C. The action of the board relating to the issuance, suspension or revocation of any registration, license or certificate shall be governed by the provisions of the Uniform Licensing Act; provided that the time limitations set forth in the Uniform Licensing Act shall not apply to the processing of administrative complaints filed with the board, which shall be governed by federal statute, regulation or policy. The board shall participate in any hearings required or conducted by the board pursuant to the provisions of the Uniform Licensing Act.

D. The provisions of the Criminal Offender Employment Act shall govern any consideration of criminal records required or permitted under the Real Estate Appraisers Act.

E. Nothing in the Real Estate Appraisers Act shall be construed to preclude any other remedies otherwise available under common law or statutes of this state."

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Senate Bill 246, aa

Approved April 5, 2011

## **LAWS 2011, CHAPTER 78**

AN ACT

RELATING TO MOTOR VEHICLES; AMENDING A SECTION OF THE MOTOR VEHICLE CODE TO CHANGE THE DEFINITION OF "ACCESS AISLE".

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

**Chapter 78 Section 1 Laws 2011**

SECTION 1. Section 66-1-4.1 NMSA 1978 (being Laws 1990, Chapter 120, Section 2, as amended) is amended to read:

"66-1-4.1. DEFINITIONS.--As used in the Motor Vehicle Code:

A. "abandoned vehicle" means a vehicle or motor vehicle that has been determined by a New Mexico law enforcement agency:

(1) to have been left unattended on either public or private property for at least thirty days;

(2) not to have been reported stolen;

(3) not to have been claimed by any person asserting ownership;

and

(4) not to have been shown by normal record-checking procedures to be owned by any person;

B. "access aisle" means a space designed to allow a person with a significant mobility limitation to safely exit and enter a motor vehicle that is immediately adjacent to a designated parking space for persons with significant mobility limitation and that may be common to two such parking spaces of at least sixty inches in width or, if the parking space is designed for van accessibility, ninety-six inches in width, and clearly marked and maintained with blue striping and, after January 1, 2011, the words "NO PARKING" in capital letters, each of which shall be at least one foot high and at least two inches wide, placed at the rear of the access aisle so as to be close to where an adjacent vehicle's rear tires would be placed;

C. "actual empty weight" means the weight of a vehicle without a load;

D. "additional place of business", for dealers and auto recyclers, means locations in addition to an established place of business as defined in Section 66-1-4.5 NMSA 1978 and meeting all the requirements of an established place of business, except Paragraph (5) of Subsection C of Section 66-1-4.5 NMSA 1978, but "additional place of business" does not mean a location used solely for storage and that is not used for wrecking, dismantling, sale or resale of vehicles;

E. "alcoholic beverages" means any and all distilled or rectified spirits, potable alcohol, brandy, whiskey, rum, gin, aromatic bitters or any similar alcoholic beverage, including all blended or fermented beverages, dilutions or mixtures of one or more of the foregoing containing more than one-half percent alcohol but excluding medicinal bitters;

F. "authorized emergency vehicle" means any fire department vehicle, police vehicle, ambulance and any emergency vehicles of municipal departments or public utilities that are designated or authorized as emergency vehicles by the director of the New Mexico state police division of the department of public safety or local authorities; and

G. "auto recycler" means a person engaged in this state in an established business that includes acquiring vehicles that are required to be registered under the Motor Vehicle Code for the purpose of dismantling, wrecking, shredding, compacting, crushing or otherwise destroying vehicles for reclaimable parts or scrap material to sell."

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Senate Bill 286

Approved April 5, 2011

## **LAWS 2011, CHAPTER 79**

AN ACT

RELATING TO ECONOMIC DEVELOPMENT; CREATING THE NEW MEXICO 9000 PROGRAM ENTERPRISE FUND; MAKING AN APPROPRIATION.

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

### **Chapter 79 Section 1 Laws 2011**

SECTION 1. NEW MEXICO 9000 PROGRAM ENTERPRISE FUND--CREATED--PURPOSE.--The "New Mexico 9000 program enterprise fund" is created in the state treasury. The fund consists of fees paid by participants for the New Mexico 9000 program, appropriations, gifts, grants and donations. Interest earned on balances in the fund shall be credited to the fund. Money in the fund at the end of a fiscal year shall not revert to the general fund. The economic development department shall administer the fund, and money in the fund is appropriated to the economic development department for the purpose of implementing and maintaining the New Mexico 9000 program.

The fund is to be used for expenses associated with the delivery of training, auditing and certification, as well as expenses associated with administering the program and supporting participating New Mexico businesses in obtaining and maintaining

international organization for standardization certification. Disbursements from the fund shall be made by warrant of the secretary of finance and administration pursuant to vouchers signed by the secretary of economic development or the secretary of economic development's designee.

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Senate Bill 424, aa

Approved April 5, 2011

## **LAWS 2011, CHAPTER 80**

### **AN ACT**

RELATING TO INDUSTRIAL REVENUE BONDS; REQUIRING THAT NOTICE BE PROVIDED TO ALL TAXING ENTITIES IN A COUNTY PRIOR TO AN ORDINANCE ISSUING INDUSTRIAL REVENUE BONDS.

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

### **Chapter 80 Section 1 Laws 2011**

SECTION 1. Section 4-59-4.1 NMSA 1978 (being Laws 1997, Chapter 216, Section 4 and Laws 1997, Chapter 226, Section 4, as amended) is amended to read:

"4-59-4.1. NOTICE.--

A. Prior to adopting an ordinance issuing county industrial revenue bonds, a county shall give notice to the county assessor and any entity located within the county authorized to levy taxes on property in the county of its intent to consider the matter. The county assessor and entities authorized to levy taxes shall be notified by certified mail, return receipt requested, at least thirty calendar days prior to the meeting at which final action is to be taken so that comments can be transmitted to the county. The notice shall include the amount, the purpose and the time period of the proposed industrial revenue bonds.

B. The county assessor and entities authorized to levy taxes shall be able to forward their comments and any concerns to the board of county commissioners, but there is no approval required from the county assessor or entities authorized to levy taxes and they do not have veto over the proposed county industrial revenue bond issuance.

C. The county and entities authorized to levy taxes shall jointly develop criteria for issuance of industrial revenue bonds; provided, however, that county

industrial revenue bonds may be authorized and issued before development of the criteria is completed.

D. The county shall notify the board of county commissioners, the county assessor and any entity levying taxes on property in the county when an industrial revenue bond has matured, expired or been replaced by a refunding bond."

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Senate Bill 523, aa

Approved April 5, 2011

## **LAWS 2011, CHAPTER 81**

AN ACT

RELATING TO TAXATION; CLARIFYING THE MEANING OF "LIVESTOCK".

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

### **Chapter 81 Section 1 Laws 2011**

SECTION 1. Section 7-9-18 NMSA 1978 (being Laws 1969, Chapter 144, Section 11, as amended) is amended to read:

"7-9-18. EXEMPTION--GROSS RECEIPTS TAX AND GOVERNMENTAL GROSS RECEIPTS TAX--AGRICULTURAL PRODUCTS.--

A. Exempted from the gross receipts tax and from the governmental gross receipts tax are the receipts from selling livestock and receipts of growers, producers, trappers or nonprofit marketing associations from selling livestock, live poultry, unprocessed agricultural products, hides or pelts. Persons engaged in the business of buying and selling wool or mohair or of buying and selling livestock on their own account are producers for the purposes of this section.

B. Receipts from selling dairy products at retail are not exempted from the gross receipts tax.

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

inspection, wild animals, poultry and birds used for human consumption shall also be included within the meaning of "animals" or "livestock"."

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Senate Bill 552, aa

Approved April 5, 2011

## **LAWS 2011, CHAPTER 82**

AN ACT

RELATING TO INDUSTRIAL REVENUE BONDS; REQUIRING THAT NOTICE BE PROVIDED TO ALL TAXING ENTITIES IN A COUNTY PRIOR TO AN ORDINANCE ISSUING INDUSTRIAL REVENUE BONDS.

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

### **Chapter 82 Section 1 Laws 2011**

SECTION 1. Section 4-59-4.1 NMSA 1978 (being Laws 1997, Chapter 216, Section 4 and Laws 1997, Chapter 226, Section 4, as amended) is amended to read:

"4-59-4.1. NOTICE.--

A. Prior to adopting an ordinance issuing county industrial revenue bonds, a county shall give notice to the county assessor and any entity located within the county authorized to levy taxes on property in the county of its intent to consider the matter. The county assessor and entities authorized to levy taxes shall be notified by certified mail, return receipt requested, at least thirty calendar days prior to the meeting at which final action is to be taken so that comments can be transmitted to the county. The notice shall include the amount, the purpose and the time period of the proposed industrial revenue bonds.

B. The county assessor and entities authorized to levy taxes shall be able to forward their comments and any concerns to the board of county commissioners, but there is no approval required from the county assessor or entities authorized to levy taxes and they do not have veto over the proposed county industrial revenue bond issuance.

C. The county and entities authorized to levy taxes shall jointly develop criteria for issuance of industrial revenue bonds; provided, however, that county industrial revenue bonds may be authorized and issued before development of the criteria is completed.

D. The county shall notify the board of county commissioners, the county assessor and any entity levying taxes on property in the county when an industrial revenue bond has matured, expired or been replaced by a refunding bond."

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House Bill 558, aa

Approved April 5, 2011

## **LAWS 2011, CHAPTER 83**

AN ACT

RELATING TO CRIMINAL HISTORY RECORDS; AUTHORIZING THE DEPARTMENT OF PUBLIC SAFETY TO PROVIDE UPDATES TO CRIMINAL HISTORY RECORD CHECKS; REQUIRING THAT AN UPDATE BE PROVIDED ONLY TO AN AGENCY AUTHORIZED BY LAW TO RECEIVE INFORMATION ON A PARTICULAR RECORD.

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

### **Chapter 83 Section 1 Laws 2011**

SECTION 1. UPDATES TO CRIMINAL HISTORY RECORDS.--The department of public safety shall maintain an electronic subscription service to provide notice of updates to criminal history records, including dispositions, for agencies authorized by law to receive particular criminal history record information. The department shall update, upon receipt, criminal history repository records and dispositions pursuant to any change in information discovered by the department. Within forty-eight hours after the department becomes aware that an individual's criminal history record information in a repository record has changed, the department shall provide notice of the updated information to any agency authorized by law to receive information on that particular record.

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House Bill 527, aa

Approved April 5, 2011

## **LAWS 2011, CHAPTER 84**

AN ACT



RELATING TO CRIMINAL LAW; REQUIRING DNA SAMPLES FROM ALL PERSONS ARRESTED FOR THE COMMISSION OF A FELONY; REQUIRING CERTAIN CONDITIONS BEFORE A DNA SAMPLE IS ANALYZED.

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

## **Chapter 84 Section 1 Laws 2011**

SECTION 1. Section 29-3-10 NMSA 1978 (being Laws 2006, Chapter 104, Section 1) is amended to read:

"29-3-10. DNA COLLECTION FROM PERSONS ARRESTED.--

A. A person eighteen years of age or over who is arrested for the commission of a felony under the laws of this state or any other jurisdiction shall provide a DNA sample to jail or detention facility personnel upon booking. A sample is not required if it is determined that a sample has previously been taken, is in the possession of the administrative center, has not been expunged pursuant to the DNA Identification Act and is sufficient for DNA identification testing.

B. Jail or detention facility personnel who collect samples pursuant to this section shall forward the samples to the administrative center. A sample shall not be analyzed and shall be destroyed unless one of the following conditions has been met:

(1) the arrest was made upon an arrest warrant for a felony;

(2) the defendant has appeared before a judge or magistrate who made a finding that there was probable cause for the arrest; or

(3) the defendant posted bond or was released prior to appearing before a judge or magistrate and then failed to appear for a scheduled hearing.

C. Samples shall be collected in accordance with rules and procedures adopted by the DNA oversight committee, shall be subject to the confidentiality and penalty provisions of the DNA Identification Act and shall be used only as authorized by that act.

D. As used in this section:

(1) "administrative center" means the law enforcement agency or unit that administers and operates the DNA identification system pursuant to the provisions of the DNA Identification Act;

(2) "DNA" means deoxyribonucleic acid; and

(3) "sample" means a sample of biological material that is sufficient for DNA testing."

## **Chapter 84 Section 2 Laws 2011**

SECTION 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.

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Senate Bill 365, aa

Approved April 6, 2011

## **LAWS 2011, CHAPTER 85**

AN ACT

RELATING TO LICENSING; CLARIFYING THE DEFINITION OF "BROKER" AND WHAT ACTIVITIES ARE EXEMPTED FROM BROKER LICENSING; EXTENDING CONTINUING EDUCATION REQUIREMENTS TO BROKERS OVER THE AGE OF SIXTY-FIVE EXCEPT FOR THOSE EXEMPT; PROVIDING FOR FINGERPRINTING AND CRIMINAL HISTORY BACKGROUND CHECKS FOR LICENSE APPLICANTS; ADJUSTING FEES; REMOVING CORPORATIONS, PARTNERSHIPS AND ASSOCIATIONS FROM BROKER LICENSING; ALLOWING FOR AND REGULATING FOREIGN AND NONRESIDENT BROKERS; AMENDING THE PENALTIES FOR UNLICENSED ACTIVITY; LOWERING THE MINIMUM BALANCE REQUIRED IN THE REAL ESTATE RECOVERY FUND; AMENDING AND REPEALING SECTIONS OF THE NMSA 1978.

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

## **Chapter 85 Section 1 Laws 2011**

SECTION 1. Section 61-29-2 NMSA 1978 (being Laws 1999, Chapter 127, Section 1, as amended) is amended to read:

"61-29-2. DEFINITIONS AND EXCEPTIONS.--

A. As used in Chapter 61, Article 29 NMSA 1978:

(1) "agency relationship" means the fiduciary relationship created solely by an express written agency agreement between a person and a brokerage, authorizing the brokerage to act as an agent for the person according to the scope of

authority granted in that express written agreement for real estate services subject to the jurisdiction of the commission;

(2) "agent" means the brokerage authorized, solely by means of an express written agreement, to act as a fiduciary for a person and to provide real estate services that are subject to the jurisdiction of the commission; in the case of an associate broker, "agent" means the person who has been authorized to act by that associate broker's qualifying broker;

(3) "associate broker" means a person who, for compensation or other valuable consideration, is associated with or engaged under contract by a qualifying broker to participate in an activity described in Paragraph (4) of this subsection or to carry on the qualifying broker's business as a whole or partial vocation;

(4) "broker" or "qualifying broker" means a person who for compensation or other consideration from another:

(a) lists, sells or offers to sell real estate; buys or offers to buy real estate; or negotiates the purchase, sale or exchange of real estate or options on real estate;

(b) is engaged in managing property for others;

(c) leases, rents or auctions or offers to lease, rent or auction real estate;

(d) advertises or makes any representation as being engaged in the business of buying, selling, exchanging, renting, leasing, auctioning or dealing with options on real estate for others as a whole or partial vocation; or

(e) engages in the business of charging an advance fee or contracting for collection of a fee in connection with a contract under which the broker or qualifying broker undertakes primarily to promote the sale of real estate through its listing in a publication issued primarily for that purpose or for the purpose of referral of information concerning real estate to brokers, qualifying brokers or associate brokers;

(5) "brokerage" means a licensed qualifying broker and the licensed real estate business represented by the qualifying broker and its affiliated licensees;

(6) "brokerage relationship" means the legal or contractual relationship between a person and a brokerage in a real estate transaction subject to the jurisdiction of the commission;

(7) "client" means a buyer, seller, landlord or tenant who has entered into an express written agreement with a brokerage for real estate services subject to the jurisdiction of the commission;

(8) "commission" means the New Mexico real estate commission;

(9) "customer" means a buyer, seller, landlord or tenant who uses real estate services without entering into an express written agreement with a brokerage subject to the jurisdiction of the commission;

(10) "license" means a qualifying broker's license or an associate broker's license issued by the commission;

(11) "licensee" means a person holding a valid qualifying broker's license or an associate broker's license subject to the jurisdiction of the commission;

(12) "real estate" means land, improvements, leaseholds and other interests in real property that are less than a fee simple ownership interest, whether tangible or intangible;

(13) "real estate salesperson" means a person who, for compensation or other valuable consideration, is associated with or engaged under contract by a broker to participate in an activity described in Paragraph (4) of this subsection or to carry on the broker's business as a whole or partial vocation; and

(14) "transaction broker" means a qualifying broker, associate broker or brokerage that provides real estate services without entering into an agency relationship.

B. A single act of a person in performing or attempting to perform an activity described in Paragraph (4) of Subsection A of this section makes the person a qualifying broker. A single act of a person in performing or attempting to perform an activity described in Paragraph (3) of Subsection A of this section makes the person an associate broker.

C. The provisions of Chapter 61, Article 29 NMSA 1978 do not apply to:

(1) a person who as owner performs any of the activities included in this section with reference to property owned by the person, except when the sale or offering for sale of the property constitutes a subdivision containing one hundred or more parcels;

(2) the employees of the owner or the employees of a qualifying broker acting on behalf of the owner, with respect to the property owned, if the acts are performed in the regular course of or incident to the management of the property and the investments, except when the sale or offering for sale of the property constitutes a subdivision containing one hundred or more parcels;

(3) isolated or sporadic transactions not exceeding two transactions annually in which a person acts as attorney-in-fact under a duly executed power of

attorney delivered by an owner authorizing the person to finally consummate and to perform under any contract the sale, leasing or exchange of real estate on behalf of the owner; and the owner or attorney-in-fact has not used a power of attorney for the purpose of evading the provisions of Chapter 61, Article 29 NMSA 1978;

(4) transactions in which a person acts as attorney-in-fact under a duly executed power of attorney delivered by an owner related to the attorney-in-fact within the fourth degree of consanguinity or closer, authorizing the person to finally consummate and to perform under any contract for the sale, leasing or exchange of real estate on behalf of the owner;

(5) the services rendered by an attorney at law in the performance of the attorney's duties as an attorney at law;

(6) a person acting in the capacity of a receiver, trustee in bankruptcy, administrator or executor, a person selling real estate pursuant to an order of any court or a trustee acting under a trust agreement, deed of trust or will or the regular salaried employee of a trustee;

(7) the activities of a salaried employee of a governmental agency acting within the scope of employment; or

(8) persons who deal exclusively in mineral leases or the sale or purchase of mineral rights or royalties in any case in which the fee to the land or the surface rights are in no way involved in the transaction."

## **Chapter 85 Section 2 Laws 2011**

SECTION 2. Section 61-29-4.1 NMSA 1978 (being Laws 1985, Chapter 89, Section 1, as amended) is amended to read:

"61-29-4.1. ADDITIONAL POWERS OF COMMISSION--CONTINUING EDUCATION PROGRAMS--MINIMUM REQUIREMENTS.--The commission shall adopt rules providing for continuing education courses in selling, leasing or managing residential, commercial and industrial property as well as courses in basic real estate law and practice and other courses prescribed by the commission. The regulations shall require that every licensee except licensees who were already exempted from continuing education requirements prior to the effective date of this 2011 act, as a condition of license renewal, successfully complete thirty classroom hours of instruction every three years in courses approved by the commission. The rules may prescribe areas of specialty or expertise and may require that part of the classroom instruction be devoted to courses in the area of a licensee's specialty or expertise."

## **Chapter 85 Section 3 Laws 2011**

SECTION 3. Section 61-29-4.4 NMSA 1978 (being Laws 2005, Chapter 35, Section 6) is amended to read:

"61-29-4.4. ADDITIONAL POWERS OF COMMISSION--FINGERPRINTING AND CRIMINAL HISTORY BACKGROUND CHECKS.--

A. All applicants for licensure as provided for in Chapter 61, Article 29 NMSA 1978 shall:

(1) be required to provide fingerprints on two fingerprint cards for submission 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;

(2) pay the cost of obtaining the fingerprints and criminal history background checks; and

(3) have the right to inspect or challenge the validity of the records resulting from the background check if the applicant is denied licensure as established by commission rule.

B. Electronic live scans may be used for conducting criminal history background checks.

C. Criminal history records obtained by the commission pursuant to the provisions of this section are confidential. The commission is authorized to use criminal history records obtained from the federal bureau of investigation and the department of public safety to conduct background checks on applicants for certification as provided for in Chapter 61, Article 29 NMSA 1978.

D. Criminal history records obtained by the commission pursuant to the provisions of this section shall not be used for any purpose other than conducting background checks. Criminal history records obtained pursuant to the provisions of this section and the information contained in those records shall not be released or disclosed to any other person or agency, except pursuant to a court order or with the written consent of the person who is the subject of the records.

E. A person who releases or discloses the criminal history records or information contained in those records in violation of the provisions of this section is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978."

## **Chapter 85 Section 4 Laws 2011**

SECTION 4. Section 61-29-8 NMSA 1978 (being Laws 1959, Chapter 226, Section 7, as amended) is amended to read:

"61-29-8. LICENSE FEES--DISPOSITION.--

A. The following fees shall be established and charged by the commission and paid into the real estate commission fund:

(1) for each examination, a fee established by the commission based on competitive bids for examination services submitted to the commission in response to a commission request for proposals, not to exceed ninety-five dollars (\$95.00);

(2) for each qualifying broker's license issued, a fee not to exceed two hundred seventy dollars (\$270) and for each renewal thereof, a fee not to exceed two hundred seventy dollars (\$270);

(3) for each associate broker's license issued, a fee not to exceed two hundred seventy dollars (\$270) and for each renewal thereof, a fee not to exceed two hundred seventy dollars (\$270);

(4) subject to the provisions of Paragraph (10) of this subsection, for each change of place of business or change of employer or contractual associate, a transfer fee not to exceed twenty dollars (\$20.00);

(5) for each duplicate license, where the license is lost or destroyed and affidavit is made thereof, a fee not to exceed twenty dollars (\$20.00);

(6) for each license history, a fee not to exceed twenty-five dollars (\$25.00);

(7) for copying of documents by the commission, a fee not to exceed one dollar (\$1.00) per copy;

(8) for each license law and rules booklet, a fee not to exceed ten dollars (\$10.00) per booklet;

(9) for each hard copy or electronic list of licensed associate brokers and qualifying brokers, a fee not to exceed actual costs up to fifty dollars (\$50.00);

(10) for each license reissued for an associate broker because of change of address of the qualifying broker's office or death of the qualifying broker when a successor qualifying broker is replacing the decedent and the associate broker remains in the office or because of a change of name of the office or the entity of the qualifying broker, a fee in an amount not to exceed twenty dollars (\$20.00) to be paid by the qualifying broker or successor qualifying broker as the case may be; but if there are eleven or more affected associate brokers in the qualifying broker's office, the total fee

paid to effect reissuance of all of those licenses shall not exceed two hundred dollars (\$200);

(11) for each application to the commission to become an approved sponsor of prelicensing and continuing education courses, a fee not to exceed five hundred dollars (\$500) and for each renewal thereof, a fee not to exceed five hundred dollars (\$500);

(12) for each application to the commission to become an approved instructor of prelicensing and continuing education courses, a fee not to exceed seventy dollars (\$70.00) per course; and

(13) for each application to the commission to renew certification as a commission-approved instructor, a fee not to exceed one hundred dollars (\$100).

B. All fees set by the commission shall be set by rule and only after all requirements have been met as prescribed by Chapter 61, Article 29 NMSA 1978. Any changes or amendments to the rules shall be filed in accordance with the State Rules Act.

C. The commission shall deposit all money received by it from fees in accordance with the provisions of Chapter 61, Article 29 NMSA 1978 with the state treasurer, who shall keep that money in a separate fund to be known as the "real estate commission fund", and money so deposited in that fund is appropriated to the commission for the purpose of carrying out the provisions of Section 61-29-4 NMSA 1978 or to maintain the real estate recovery fund as required by the Real Estate Recovery Fund Act and shall be paid out of the fund upon the vouchers of the executive secretary of the commission or the executive secretary's designee; provided that the total fees and charges collected and paid into the state treasury and any money so deposited shall be expended only for the purposes authorized by Chapter 61, Article 29 NMSA 1978."

## **Chapter 85 Section 5 Laws 2011**

SECTION 5. Section 61-29-9 NMSA 1978 (being Laws 1959, Chapter 226, Section 8, as amended) is amended to read:

"61-29-9. QUALIFICATIONS FOR LICENSE.--

A. Licenses shall be granted only to persons who meet the requirements for licensure prescribed by law and are deemed by the commission to be of good repute and competent to transact the business of a qualifying broker or an associate broker in a manner that safeguards the interests of the public.

B. An applicant for a qualifying broker's license or an associate broker's license shall be a legal resident of the United States and have reached the age of



majority. Each applicant for a qualifying broker's license or an associate broker's license shall have passed the real estate examination approved by the commission and shall:

(1) furnish the commission with a certificate that the applicant has completed successfully ninety classroom hours of instruction in basic real estate courses approved by the commission, thirty hours of which shall have been a broker basics course; or

(2) furnish the commission with a certificate that the applicant is a duly licensed real estate broker in good standing in another state; provided that the applicant has successfully completed ninety classroom hours of instruction in basic real estate courses approved by the commission, thirty hours of which shall have been a broker basics course.

C. An applicant for a qualifying broker's license shall have been actively engaged in the real estate business as an associate broker or real estate salesperson for at least two of the last five years immediately preceding application for a qualifying broker's license and furnish the commission proof that the applicant has completed successfully one hundred twenty hours of prelicensing courses, including a broker basics course, approved by the commission.

D. A licensee holding a current real estate salesperson's license on the effective date of this 2005 act shall automatically qualify for an associate broker's license without any additional requirements. However, to be eligible to apply for a qualifying broker's license, a real estate salesperson obtaining an associate broker's license pursuant to this subsection shall, in addition to meeting all other requirements for a qualifying broker's license, pass a real estate broker's examination approved by the commission.

E. The commission shall require the information it deems necessary from every applicant to determine that applicant's honesty, trustworthiness and competency."

## **Chapter 85 Section 6 Laws 2011**

SECTION 6. Section 61-29-12 NMSA 1978 (being Laws 1959, Chapter 226, Section 11, as amended) is amended to read:

"61-29-12. REFUSAL, SUSPENSION OR REVOCATION OF LICENSE FOR CAUSES ENUMERATED.--

A. The commission may refuse to issue a license or may suspend, revoke, limit or condition a license if the applicant or licensee has by false or fraudulent representations obtained a license or, in performing or attempting to perform any of the actions specified in Chapter 61, Article 29 NMSA 1978, an applicant or licensee has:

(1) made a substantial misrepresentation;

(2) pursued a continued and flagrant course of misrepresentation; made false promises through agents, salespersons, advertising or otherwise; or used any trade name or insignia of membership in any real estate organization of which the licensee is not a member;

(3) paid or received a rebate, profit, compensation or commission to or from any unlicensed person, except the licensee's principal or other party to the transaction, and then only with that principal's written consent;

(4) represented or attempted to represent a qualifying broker other than a qualifying broker with whom the licensee is associated without the express knowledge and consent of that qualifying broker;

(5) failed, within a reasonable time, to account for or to remit any money coming into the licensee's possession that belongs to others, commingled funds of others with the licensee's own or failed to keep funds of others in an escrow or trustee account or failed to furnish legible copies of all listing and sales contracts to all parties executing them;

(6) been convicted in any court of competent jurisdiction of a felony or any offense involving moral turpitude;

(7) employed or compensated, directly or indirectly, a person for performing any of the acts regulated by Chapter 61, Article 29 NMSA 1978 who is not a licensed qualifying broker or an associate broker; provided, however, that a qualifying broker may pay a commission to a qualifying broker of another state as provided in Section 61-29-16.1 NMSA 1978;

(8) failed, if a qualifying broker, to place as soon after receipt as is practicably possible, after securing signatures of all parties to the transaction, any deposit money or other money received by the qualifying broker in a real estate transaction in a custodial, trust or escrow account, maintained by the qualifying broker in a bank or savings and loan institution or title company authorized to do business in this state, in which the funds shall be kept until the transaction is consummated or otherwise terminated, at which time a full accounting of the funds shall be made by the qualifying broker. Records relative to the deposit, maintenance and withdrawal of the funds shall contain information as may be prescribed by the rules of the commission. Nothing in this paragraph prohibits a qualifying broker from depositing nontrust funds in an amount not to exceed the required minimum balance in each trust account so as to meet the minimum balance requirements of the bank necessary to maintain the account and avoid charges. The minimum balance deposit shall not be considered commingling and shall not be subject to levy, attachment or garnishment. This paragraph does not prohibit a qualifying broker from depositing any deposit money or other money received by the qualifying broker in a real estate transaction with another cooperating broker who shall in turn comply with this paragraph;

(9) failed, if an associate broker, to place as soon after receipt as is practicably possible in the custody of the associate broker's qualifying broker, after securing signatures of all parties to the transaction, any deposit money or other money entrusted to the associate broker by any person dealing with the associate broker as the representative of the qualifying broker;

(10) violated a provision of Chapter 61, Article 29 NMSA 1978 or a rule promulgated by the commission;

(11) committed an act, whether of the same or different character from that specified in this subsection, that is related to dealings as a qualifying broker or an associate broker and that constitutes or demonstrates bad faith, incompetency, untrustworthiness, impropriety, fraud, dishonesty, negligence or any unlawful act; or

(12) been the subject of disciplinary action as a licensee while licensed to practice real estate in another jurisdiction, territory or possession of the United States or another country.

B. An unlawful act or violation of Chapter 61, Article 29 NMSA 1978 by an associate broker, employee, partner or associate of a qualifying broker shall not be cause for the revocation of a license of the qualifying broker unless it appears to the satisfaction of the commission that the qualifying broker had guilty knowledge of the unlawful act or violation."

## **Chapter 85 Section 7 Laws 2011**

SECTION 7. Section 61-29-16.1 NMSA 1978 (being Laws 2005, Chapter 35, Section 15) is amended to read:

### **"61-29-16.1. FOREIGN BROKERS--NONRESIDENT LICENSEES.--**

A. A foreign associate broker or qualifying broker currently licensed by another state or licensing jurisdiction other than New Mexico may engage in real estate activity in New Mexico as a foreign broker; provided that the foreign broker enters into a transaction-specific written agreement with a New Mexico licensed qualifying broker prior to commencing such real estate activity. The foreign broker shall comply with all New Mexico laws, including those acts regulated by Chapter 61, Article 29 NMSA 1978.

B. An associate broker or qualifying broker with a license application address that is not within the state of New Mexico shall file with the commission an irrevocable consent that lawsuits and actions may be commenced against the associate broker or qualifying broker in the proper court of any county of this state in which a cause of action may arise or in which the plaintiff may reside, by service on the commission of any process or pleadings authorized by the laws of this state, the consent stipulating and agreeing that such service of process or pleadings on the commission is as valid and binding as if personal service had been made upon the

associate broker or qualifying broker in New Mexico. Service of process or pleadings shall be served in duplicate upon the commission; one shall be filed in the office of the commission and the other immediately forwarded by certified mail to the main office of the associate broker or qualifying broker against whom the process or pleadings are directed."

## **Chapter 85 Section 8 Laws 2011**

SECTION 8. Section 61-29-17 NMSA 1978 (being Laws 1965, Chapter 304, Section 8, as amended) is amended to read:

"61-29-17. PENALTY--INJUNCTIVE RELIEF.--

A. Any person who violates any provision of Chapter 61, Article 29 NMSA 1978 is guilty of a fourth degree felony and shall be punished by a fine of not more than five thousand dollars (\$5,000) or by imprisonment for a definite term of eighteen months, or both.

B. In the event any person has engaged or proposes to engage in any act or practice violative of a provision of Chapter 61, Article 29 NMSA 1978, the attorney general or the district attorney of the judicial district in which the person resides or the judicial district in which the violation has occurred or will occur shall, upon application of the commission, maintain an action in the name of the state to prosecute the violation or to enjoin the proposed act or practice.

C. In any action brought under Subsection B of this section, if the court finds that a person is engaged or has willfully engaged in any act or practice violative of a provision of Sections 61-29-1 through 61-29-18 NMSA 1978, the attorney general or the district attorney of the judicial district in which the person resides or the judicial district in which the violation has occurred or is occurring shall, upon petition to the court, recover on behalf of the state a civil penalty not exceeding five thousand dollars (\$5,000) per violation and attorney fees and costs."

## **Chapter 85 Section 9 Laws 2011**

SECTION 9. Section 61-29-17.2 NMSA 1978 (being Laws 2001, Chapter 163, Section 11) is amended to read:

"61-29-17.2. UNLICENSED ACTIVITY--CIVIL PENALTY--ADMINISTRATIVE COSTS.--The commission may impose a civil penalty on any person who is found, through a court or administrative proceeding, to have acted in violation of Chapter 61, Article 29 NMSA 1978 in an amount not to exceed one thousand dollars (\$1,000) for each violation or, if the commission can so determine, in the amount of the total commissions received by the person for the unlicensed activity. The commission may assess administrative costs for any investigation and administrative or other

proceedings against any such person. Any money collected by the commission under the provisions of this section shall be deposited into the real estate recovery fund."

## **Chapter 85 Section 10 Laws 2011**

SECTION 10. Section 61-29-22 NMSA 1978 (being Laws 1980, Chapter 82, Section 3, as amended) is amended to read:

"61-29-22. ADDITIONAL FEES.--

A. The commission shall collect an annual fee not in excess of ten dollars (\$10.00) from each real estate licensee prior to the issuance of the next license.

B. The commission shall collect from each successful applicant for an original real estate license, in addition to the original license fee, a fee not in excess of ten dollars (\$10.00).

C. The additional fees provided by this section shall be credited to the real estate recovery fund. The amount of the real estate recovery fund shall be maintained at one hundred fifty thousand dollars (\$150,000). If the real estate recovery fund falls below this amount, the commission shall have authority to adjust the annual amount of additional fees to be charged licensees or to draw on the real estate commission fund in order to maintain the fund level as required in this section. If on July 1 of any year, the balance in the fund exceeds four hundred thousand dollars (\$400,000), the amount over four hundred thousand dollars (\$400,000) shall be transferred to the real estate commission fund to be used for the purposes of carrying out the provisions of Chapter 61, Article 29 NMSA 1978."

## **Chapter 85 Section 11 Laws 2011**

SECTION 11. REPEAL.--Section 61-29-19 NMSA 1978 (being Laws 1978, Chapter 203, Section 2, as amended) is repealed.

## **Chapter 85 Section 12 Laws 2011**

SECTION 12. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.

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Senate Bill 105, aa

Approved April 6, 2011

**LAWS 2011, CHAPTER 86**

AN ACT

RELATING TO TRANSACTION FEES; ALLOWING STATE AGENCIES AND LOCAL GOVERNING BODIES TO CHARGE A UNIFORM FEE TO PERSONS MAKING PAYMENTS BY CREDIT CARD OR ELECTRONIC TRANSFER.

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

**Chapter 86 Section 1 Laws 2011**

SECTION 1. Section 6-10-1.2 NMSA 1978 (being Laws 1999, Chapter 176, Section 1, as amended) is amended to read:

"6-10-1.2. PAYMENT METHODS AUTHORIZED--FEE.--

A. 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, on the terms and conditions of accepting payments by credit card or electronic transfer.

B. A state agency or local governing body may charge a uniform convenience fee to cover the approximate costs imposed by a financial institution that are directly related to processing a credit card or electronic transfer transaction. The fee shall be charged to the person using a credit card or electronic transfer. Amounts collected pursuant to this subsection are appropriated to the state agency or local governing body to defray the cost of processing the transaction."

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Senate Bill 132, aa

Approved April 6, 2011

**LAWS 2011, CHAPTER 87**

AN ACT

RELATING TO AUDITS; REMOVING THE REQUIREMENT THAT THE PUBLIC EDUCATION DEPARTMENT APPROVE SCHOOL DISTRICT INDEPENDENT AUDITORS.

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

## **Chapter 87 Section 1 Laws 2011**

SECTION 1. Section 12-6-14 NMSA 1978 (being Laws 1969, Chapter 68, Section 14, as amended) is amended to read:

"12-6-14. CONTRACT AUDITS.--

A. The state auditor shall notify each agency designated for audit by an independent auditor, and the agency shall enter into a contract with an independent auditor of its choice in accordance with procedures prescribed by rules of the state auditor; provided, however, that a state-chartered charter school subject to oversight by the public education department or an agency subject to oversight by the higher education department shall receive approval from its oversight agency prior to submitting a recommendation for an independent auditor of its choice. The state auditor may select the auditor for an agency that has not submitted a recommendation within sixty days of notification by the state auditor to contract for the year being audited, and the agency being audited shall pay the cost of the audit. Each contract for auditing entered into between an agency and an independent auditor shall be approved in writing by the state auditor. Payment of public funds may not be made to an independent auditor unless a contract is entered into and approved as provided in this section.

B. The state auditor or personnel of the state auditor's office designated by the state auditor shall examine all reports of audits of agencies made pursuant to contract. Based upon demonstration of work in progress, the state auditor may authorize progress payments to the independent auditor by the agency being audited under contract. Final payment for services rendered by an independent auditor shall not be made until a determination and written finding that the audit has been made in a competent manner in accordance with the provisions of the contract and applicable rules by the state auditor."

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Senate Bill 141, aa

Approved April 6, 2011

## **LAWS 2011, CHAPTER 88**

AN ACT

RELATING TO PUBLIC FINANCES; CLARIFYING THE DUTIES OF THE STATE TREASURER; AMENDING DEFINITIONS.

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

## **Chapter 88 Section 1 Laws 2011**

SECTION 1. Section 6-10-1.1 NMSA 1978 (being Laws 1987, Chapter 79, Section 3, as amended) is amended to read:

"6-10-1.1. DEFINITIONS.--As used in Chapter 6, Article 10 NMSA 1978:

- A. "department" means the department of finance and administration;
- B. "deposit" includes share, share certificate and share draft;
- C. "eligible governing body" means a local governing body, the governing authority of a tribe or any other governmental or quasi-governmental body created or authorized to be created pursuant to New Mexico statutes;
- D. "finance officer" means the chief financial officer of an eligible governing body or a participating government;
- E. "local governing body" means a political subdivision of the state, including a school district or a post-secondary educational institution;
- F. "participating government" means an eligible governing body or the state treasurer on behalf of the general fund that has invested money in the participating government investment fund;
- G. "secretary" means the secretary of finance and administration;
- H. "treasury" means the master depository or cash concentration account held at the state's fiscal agent bank and administered by the office of the state treasurer, unless the context otherwise clearly indicates; and
- I. "tribe" means a federally recognized Indian nation, tribe or pueblo or a subdivision or agency of a federally recognized Indian nation, tribe or pueblo, located wholly or partially in New Mexico."

## **Chapter 88 Section 2 Laws 2011**

SECTION 2. Section 6-10-3 NMSA 1978 (being Laws 1923, Chapter 76, Section 2, as amended) is amended to read:

"6-10-3. PAYMENT OF STATE MONEY INTO TREASURY--SUSPENSE FUNDS.--All public money in the custody or under the control of any state official or agency obtained or received by any official or agency from any source, except as in Section 6-10-54 NMSA 1978 provided, shall be paid into the state treasury. It is the duty of every official or person in charge of any state agency receiving any money in cash or by check, draft or otherwise for or on behalf of the state or any agency thereof from any



source, except as in Section 6-10-54 NMSA 1978 provided, to forthwith and before the close of the next succeeding business day after the receipt of the money to deliver or remit it to the state treasurer; provided, however, that:

A. the money collected by the state parks division of the energy, minerals and natural resources department and the state monuments division of the cultural affairs department shall be deposited into the state treasury no later than ten days following collection;

B. county treasurers shall remit all money received for taxes for state purposes or that are by law required to be remitted to the department on or before the tenth day of the next succeeding month following the receipt or collection thereof;

C. every official or person in charge of any state agency receiving any money, except as in Section 6-10-54 NMSA 1978 provided, in cash or by check or draft, on deposit, in escrow or in evidence of good faith to secure the performance of any contract or agreement with the state or with any department, institution or agency of the state, which money has not yet been earned so as to become the absolute property of the state, shall deliver or remit to the state treasury within the times and in the manner as in this section provided, which money shall be deposited in a suspense account to the credit of the proper official, person, board or bureau in charge of any state agency so receiving the money; and

D. all money held by the commissioner of public lands on deposit, in escrow or in evidence of good faith to secure the performance of any contract or agreement with the state shall be delivered or remitted to the state treasury within six months from the date this act is approved and at those times, in the amounts and from the various banks in which it is deposited as may be directed by the state board of finance."

## **Chapter 88 Section 3 Laws 2011**

SECTION 3. Section 8-6-3 NMSA 1978 (being Laws 1851-1852, Page 170, as amended) is amended to read:

"8-6-3. DUTIES OF TREASURER--RECEIPTS.--The state treasurer shall receive and keep all money of the state except when otherwise specially provided; disburse the public money upon warrants drawn according to law and not otherwise; keep a just, true and comprehensive account of all money received and disbursed; render the state treasurer's accounts to the financial control division of the department of finance and administration annually, or more often if required; and report to the legislature, at the commencement of each regular session, a detailed statement of the condition of the treasury. The state treasury shall grant duplicate receipts for all money paid into the treasury, and the person receiving the duplicate receipts shall record the entry in the centralized accounting system administered by the department of finance and administration."

## **Chapter 88 Section 4 Laws 2011**

SECTION 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.

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Senate Bill 278, aa

Approved April 6, 2011

## **LAWS 2011, CHAPTER 89**

AN ACT

RELATING TO TAXATION; PROVIDING A CREDIT AGAINST PERSONAL INCOME TAX LIABILITIES FOR PHYSICIANS PARTICIPATING IN CANCER TREATMENT CLINICAL TRIALS.

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

## **Chapter 89 Section 1 Laws 2011**

SECTION 1. A new section of the Income Tax Act is enacted to read:

"CREDIT--PHYSICIAN PARTICIPATION IN CANCER TREATMENT CLINICAL TRIALS.--

A. A taxpayer who files an individual New Mexico income tax return, who is not a dependent of another taxpayer, who is an oncologist who is a physician licensed pursuant to the Medical Practice Act and whose practice is located in rural New Mexico may claim, and the department may allow, a tax credit of one thousand dollars (\$1,000) for each patient participating in a cancer clinical trial under the taxpayer's supervision for a maximum credit allowed for all cancer clinical trials conducted by that taxpayer during the taxable year of four thousand dollars (\$4,000). The tax credit provided in this section may be referred to as the "cancer clinical trial tax credit".

B. The purpose of the cancer clinical trial tax credit is to encourage physicians in New Mexico to participate as clinical trial investigators by performing cancer clinical trials of new cancer treatments in New Mexico and making cancer clinical trials more readily available to cancer patients in the state.

C. The cancer clinical trial tax credit may only be claimed for the taxable year in which the physician participates as an investigator in a clinical trial.

D. A partnership or business association in which one or more members qualifies for a cancer clinical trial tax credit may claim only one cancer clinical trial tax credit. The total cancer clinical trial tax credit allowed by the department for all the members of a partnership or business association shall not exceed the amount of cancer clinical trial tax credit that could have been claimed by one physician conducting, supervising or participating in the cancer clinical trial for which the credit is allowed.

E. A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the cancer clinical trial tax credit that would have been allowed on a joint return.

F. The department shall compile an annual report that includes the number of taxpayers approved by the department to receive a cancer clinical trial tax credit in the taxable year, the amount of cancer clinical trial tax credits allowed in the taxable year, the number of patients who participated in the taxable year in cancer clinical trials and the locations of the cancer clinical trials for which cancer clinical trial tax credits were claimed.

G. As used in this section:

(1) "cancer clinical trial" means a clinical trial:

(a) conducted 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;

(b) that is not designed exclusively to test toxicity or disease pathophysiology and has a therapeutic intent;

(c) 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: 1) specific goals; 2) a rationale and background for the study; 3) criteria for patient selection; 4) specific direction for administering the therapy or intervention and for monitoring patients; 5) a definition of quantitative measures for determining treatment response; 6) methods for documenting and treating adverse reactions; and 7) a reasonable expectation that the treatment will be at least as efficacious as standard cancer treatment;

(d) that is being conducted with approval of at least one of the following: 1) one of the federal national institutes of health; 2) a federal national institutes of health cooperative group or center; 3) the United States department of defense; 4) the federal food and drug administration in the form of an investigational new drug application; 5) the United States department of veterans affairs; or 6) a qualified research entity that meets the criteria established by the federal national institutes of health for grant eligibility;

(e) that is considered part of a cancer clinical trial;

(f) that has been reviewed and approved by an institutional review board that has an active federal-wide assurance of protection for human subjects; and

(g) in which the personnel conducting the clinical trial are working 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; and

(2) "rural New Mexico" means a class B county in which no municipality has a population of sixty thousand or more according to the most recent federal decennial census and includes the municipalities within that county."

## **Chapter 89 Section 2 Laws 2011**

SECTION 2. APPLICABILITY.--The provisions of this act apply to taxable years beginning on or after January 1, 2012 but before January 1, 2015.

## **Chapter 89 Section 3 Laws 2011**

SECTION 3. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 2012.

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Senate Bill 282, aa

Approved April 6, 2011

# **LAWS 2011, CHAPTER 90**

AN ACT

RELATING TO HEALTH CARE; REQUIRING DRUG AND ALCOHOL TESTING FOR DIRECT HEALTH CARE PROVIDERS IN STATE HEALTH CARE FACILITIES.

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

## **Chapter 90 Section 1 Laws 2011**

SECTION 1. DRUG TESTING FOR HEALTH CARE PROVIDERS IN STATE HEALTH CARE FACILITIES--GROUNDS--RULEMAKING.--

A. A health care provider hired to provide direct care to patients in a state health care facility shall be tested for illicit and prescription drug and alcohol abuse prior to employment and subject to random drug testing thereafter.

B. A health care provider providing direct care to patients in a state health care facility who is reasonably suspected of abusing illicit or prescription drugs or alcohol while working shall undergo drug testing without prior notice to the health care provider.

C. The department of health shall promulgate rules to establish:

(1) when a health care provider is reasonably suspected of abusing illicit or prescription drugs or alcohol while working;

(2) the protocol governing testing for illicit and prescription drugs and alcohol;

(3) what persons shall be considered reliable reporting parties for the purposes of this section;

(4) any disciplinary action, addiction interventions or fines pursuant to this section; and

(5) the definition of "direct care" for the purposes of this section.

D. When promulgating rules pursuant to Subsection D of this section, the department of health shall consult with representatives from:

(1) the New Mexico medical board;

(2) the board of nursing; and

(3) the New Mexico medical review commission.

E. For the purposes of this section:

(1) "health care provider" means any health care staff member who is licensed, certified or otherwise authorized or permitted by law to provide direct unsupervised health care to a patient;

(2) "illicit or prescription drug" means a substance listed in any of Schedules I through V of the Controlled Substances Act; and

(3) "state health care facility" means a hospital, an entity providing services for the developmentally disabled, a shelter care home, a free-standing hospice or a home health agency that the department of health operates.

F. Results of drug tests made pursuant to the provisions of this section shall be treated as confidential medical information, and only aggregate test data shall be subject to review by the department of health.

G. A person who in good faith reports that a health care provider has been abusing illicit or prescription drugs or alcohol while working shall not be held liable for civil damages as a result of the report; provided that the health care provider reported as abusing illicit or prescription drugs or alcohol 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.

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SPAC/Senate Bill 295, aa

Approved April 6, 2011

## **LAWS 2011, CHAPTER 91**

### **AN ACT**

RELATING TO LAW ENFORCEMENT; AMENDING A SECTION OF CHAPTER 29, ARTICLE 2 NMSA 1978 TO SUPPLEMENT THE REQUIREMENT FOR COLLEGE CREDITS AS A QUALIFICATION TO BE A MEMBER OF THE NEW MEXICO STATE POLICE.

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

### **Chapter 91 Section 1 Laws 2011**

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 or have had two years of military or law enforcement service;

(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."

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Senate Bill 476, aa

Approved April 6, 2011

## **LAWS 2011, CHAPTER 92**

### **AN ACT**

RELATING TO PUBLIC FINANCE; ELIMINATING THE REQUIREMENT THAT ALL BIDS FOR MUNICIPAL CORPORATION BONDS BE ACCOMPANIED BY DEPOSITS; REQUIRING ONLY THE BEST BIDDER TO MAKE A DEPOSIT PRIOR TO ACCEPTANCE OF THE BID.

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

### **Chapter 92 Section 1 Laws 2011**

SECTION 1. Section 6-15-5 NMSA 1978 (being Laws 1929, Chapter 201, Section 3, as amended) is amended to read:

"6-15-5. SALE OF BONDS.--

A. Before any bonds issued by a municipal corporation are offered for public sale, the corporate authorities issuing the bonds shall designate the maximum net effective interest rate the bonds shall bear, which shall not exceed the maximum permitted by the Public Securities Act. Except as provided in Subsection B 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 at the price and upon such terms and conditions as a municipal corporation and the state 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 or the United States, if one is received prior to acceptance by the governing body of the best bid, the best bidder shall make 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 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 incorporated 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."

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Senate Bill 520

Approved April 6, 2011

## **LAWS 2011, CHAPTER 93**

AN ACT

RELATED TO ELECTRIC UTILITIES; AMENDING A SECTION OF THE RENEWABLE ENERGY ACT TO PROVIDE A CAP ON ADDITIONAL COSTS TO ALL CUSTOMERS COMPLYING WITH THE RENEWABLE PORTFOLIO STANDARD.

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

### **Chapter 93 Section 1 Laws 2011**

SECTION 1. Section 62-16-4 NMSA 1978 (being Laws 2004, Chapter 65, Section 4, as amended) is amended to read:

"62-16-4. RENEWABLE PORTFOLIO STANDARD.--

A. A public utility shall meet the renewable portfolio standard requirements, as provided in this section, to include renewable energy in its electric energy supply portfolio. Requirements of the renewable portfolio standard are:

(1) for public utilities other than rural electric cooperatives and municipalities:

(a) no later than January 1, 2006, renewable energy shall comprise no less than five percent of each public utility's total retail sales to New Mexico customers;

(b) no later than January 1, 2011, renewable energy shall comprise no less than ten percent of each public utility's total retail sales to New Mexico customers;

(c) no later than January 1, 2015, renewable energy shall comprise no less than fifteen percent of each public utility's total retail sales to New Mexico customers; and

(d) no later than January 1, 2020, renewable energy shall comprise no less than twenty percent of each public utility's total retail sales to New Mexico customers;

(2) the renewable portfolio standard established by this section shall be reduced, as necessary, to provide for the following specific procurement requirements for nongovernmental customers at a single location or facility, regardless of the number of meters at that location or facility, with consumption exceeding ten million kilowatt-hours per year. On and after January 1, 2006, the kilowatt-hours of renewable energy procured for these customers shall be limited so that the additional cost of the renewable portfolio standard to each customer does not exceed the lower of one percent of that customer's annual electric charges or forty-nine thousand dollars (\$49,000). This procurement limit criteria shall increase by one-fifth percent or ten thousand dollars (\$10,000) per year until January 1, 2011, when the procurement limit criteria shall remain fixed at the lower of two percent of that customer's annual electric charges or ninety-nine thousand dollars (\$99,000). After January 1, 2012, the commission may adjust the ninety-nine-thousand-dollar (\$99,000) limit for inflation. Nothing contained in this paragraph shall be construed as affecting a public utility's right to recover all reasonable costs of complying with the renewable portfolio standard, pursuant to Section 62-16-6 NMSA 1978. The commission may authorize deferred recovery of the costs of complying with the renewable portfolio standard, including carrying charges;

(3) any customer that is a political subdivision of the state, with consumption exceeding twenty million kilowatt-hours per year at any single location or facility, and that owns renewable energy generation is exempt from all charges by the utility for renewable energy procurements in a year, regardless of the number of customer locations or meters on the system, if that customer certifies to the state auditor and notifies the commission and its serving electric utility that it will expend two and one-half percent of that year's annual electricity charges to continue to develop within twenty-four months customer-owned renewable energy generation. That customer shall also certify that it will retire all renewable energy certificates associated with the energy produced from that expenditure;

(4) the renewable portfolio shall be diversified as to the type of renewable energy resource, taking into consideration the overall reliability, availability, dispatch flexibility and cost of the various renewable energy resources made available by suppliers and generators;

(5) upon a commission motion or application by a public utility, the commission shall open a docket to provide appropriate performance-based financial or other incentives to encourage public utilities to acquire renewable energy supplies that exceed the applicable annual renewable portfolio standard set forth in this section. The commission shall initiate rules by June 1, 2008 to implement this subsection; and

(6) renewable energy resources that are in a public utility's electric energy supply portfolio on July 1, 2004 shall be counted in determining compliance with this section.

B. If a public utility finds that, in any given year, the cost of renewable energy that would need to be procured or generated for purposes of compliance with the renewable portfolio standard would be greater than the reasonable cost threshold as established by the commission pursuant to this section, the public utility shall not be required to incur that cost; provided that the existence of this condition excusing performance in any given year shall not operate to delay the annual increases in the renewable portfolio standard in subsequent years. When a public utility can generate or procure renewable energy at or below the reasonable cost threshold, it shall be required to add renewable energy resources to meet the renewable portfolio standard applicable in the year when the renewable energy resources are being added.

C. By December 31, 2004, the commission shall establish, after notice and hearing, the reasonable cost threshold above which level a public utility shall not be required to add renewable energy to its electric energy supply portfolio pursuant to the renewable portfolio standard. The commission may thereafter modify the reasonable cost threshold as changing circumstances warrant, after notice and hearing. In establishing and modifying the reasonable cost threshold, the commission shall take into account:

(1) the price of renewable energy at the point of sale to the public utility;

(2) the transmission and interconnection costs required for the delivery of renewable energy to retail customers;

(3) the impact of the cost for renewable energy on overall retail customer rates;

(4) the overall diversity, reliability, availability, dispatch flexibility, cost per kilowatt-hour and life-cycle cost on a net present value basis of renewable energy resources available from suppliers; and

(5) other factors, including public benefits, that the commission deems relevant; provided that nothing in the Renewable Energy Act shall be construed to permit regulation by the commission of the production or sale price at the point of production of the renewable energy.

D. By September 1, 2007 and July 1 of each year thereafter until 2022, and thereafter as determined necessary by the commission, a public utility shall file a report to the commission on its procurement and generation of renewable energy during the prior calendar year and a procurement plan that includes:

(1) the cost of procurement for any new renewable energy resource in the next calendar year required to comply with the renewable portfolio standard; and

(2) testimony and exhibits that demonstrate that the proposed procurement is reasonable as to its terms and conditions considering price, availability, dispatchability, any renewable energy certificate values and diversity of the renewable energy resource; or

(3) demonstration that the plan is otherwise in the public interest.

E. The commission shall approve or modify a public utility's procurement or transitional procurement plan within ninety days and may approve the plan without a hearing, unless a protest is filed that demonstrates to the commission's reasonable satisfaction that a hearing is necessary. The commission may modify a plan after notice and hearing. The commission may, for good cause, extend the time to approve a procurement plan for an additional ninety days. If the commission does not act within the ninety-day period, the procurement plan is deemed approved.

F. The commission may reject a procurement or transitional procurement plan if it finds that the plan does not contain the required information and, upon the rejection, may suspend the public utility's obligation to procure additional resources for the time necessary to file a revised plan; provided that the total amount of renewable energy to be procured by the public utility shall not change.

G. A public utility may file a transitional procurement plan requesting that the commission determine that the costs of renewable energy resources that the public utility has committed to, or may commit to, prior to the commission's establishing a reasonable cost threshold, are reasonable and recoverable pursuant to Section 62-16-6 NMSA 1978. The requirements of annual procurement plan filings shall be applicable to any transitional procurement plan filing pursuant to this section.

H. The commission shall determine if it is in the public interest for the commission to provide appropriate performance-based financial or other incentives to encourage public utilities to acquire renewable energy supplies in amounts that exceed the requirements of the renewable portfolio standard."

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Senate Bill 549, aa

Approved April 6, 2011

## **LAWS 2011, CHAPTER 94**

### AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;  
REQUIRING NOTICE OF THE EXPIRATION OF PUBLIC WORKS CONTRACTOR  
REGISTRATION; PROVIDING FOR BIENNIAL REGISTRATION.

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

### **Chapter 94 Section 1 Laws 2011**

SECTION 1. 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 a registration fee of four hundred dollars (\$400) every two years. 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. No less than thirty days before the expiration of a registration certificate, the division shall mail or electronically transmit to a registrant's address as reflected in the files of the division a reminder of the approaching expiration date.

E. Registration fees collected by the division shall be deposited in the labor enforcement fund."

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SJC/Senate Bill 617, aa

Approved April 6, 2011

## **LAWS 2011, CHAPTER 95**

### AN ACT

RELATING TO SCHOOL PERSONNEL; REQUIRING KNOWLEDGE OF THE SCIENCE OF TEACHING READING TO BE PART OF THE TEACHER ASSESSMENTS EXAMINATION FOR ELEMENTARY LICENSURE.

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

### **Chapter 95 Section 1 Laws 2011**

SECTION 1. Section 22-10A-7 NMSA 1978 (being Laws 2003, Chapter 153, Section 38, as amended) is amended to read:

"22-10A-7. LEVEL ONE LICENSURE.--

A. A level one license is a provisional five-year license for beginning teachers that requires as a condition of licensure that the licensee undergo a formal mentorship program for at least one full school year and an annual intensive performance evaluation by a school administrator for at least three full school years before applying for a level two license.

B. Each school district, in accordance with department rules, shall provide for the mentorship and evaluation of level one teachers. At the end of each year and at the end of the license period, the level one teacher shall be evaluated for competency. If the teacher fails to demonstrate satisfactory progress and competence annually, the teacher may be terminated as provided in Section 22-10A-24 NMSA 1978. If the teacher has not demonstrated satisfactory progress and competence by the end of the five-year period, the teacher shall not be granted a level two license.

C. Except in exigent circumstances defined by department rule, a level one license shall not be extended beyond the initial period.

D. The department shall issue a standard level one license to an applicant who is at least eighteen years of age who:

(1) holds a baccalaureate degree from an accredited educational institution;

(2) has successfully completed a department-approved teacher preparation program from a nationally accredited or state-approved educational institution;

(3) has passed the New Mexico teacher assessments examination, including for elementary licensure beginning January 1, 2013, a rigorous assessment of the candidate's knowledge of the science of teaching reading; and

(4) meets other qualifications for level one licensure, including clearance of the required background check.

E. The department shall issue an alternative level one license to an applicant who meets the requirements of Section 22-10A-8 NMSA 1978.

F. The department shall establish competencies and qualifications for specific grade levels, types and subject areas of level one licensure, including early childhood, elementary, middle school, secondary, special education and vocational education.

G. Beginning with the 2003-2004 school year, with the adoption by the department of a highly objective uniform statewide standard of evaluation for level one teachers, the minimum salary for a level one teacher shall be thirty thousand dollars (\$30,000) for a standard nine and one-half month contract.

H. Teachers who hold level one licenses on the effective date of the 2003 act must be evaluated by the end of the 2006-2007 school year."

## **Chapter 95 Section 2 Laws 2011**

SECTION 2. Section 22-10A-8 NMSA 1978 (being Laws 2003, Chapter 153, Section 39, as amended) is amended to read:

"22-10A-8. ALTERNATIVE LEVEL ONE LICENSE.--

A. The department shall issue an alternative level one license to a person who is at least eighteen years of age and who has:

(1) completed a baccalaureate degree at an accredited institution of higher education, including completion of a minimum of thirty credit hours at either the

undergraduate or graduate level in the subject area of instruction for which the person is applying for a license;

(2) completed a master's degree at an accredited institution of higher education, including completion of a minimum of twelve graduate credit hours in the subject area of instruction for which the person is applying for a license; or

(3) completed a doctoral or law degree at an accredited institution of higher education; and

(4) passed the New Mexico teacher assessments examination, including for elementary licensure beginning January 1, 2013, a rigorous assessment of the candidate's knowledge of the science of teaching reading; and

(5) completed a minimum of twelve semester hours of instruction in teaching principles in a program approved by the department; or

(6) demonstrated to the department, in conjunction with the school district or state agency, that the person has met the department-approved competencies for level one teachers that correspond to the grade level that will be taught.

B. A degree referred to in Subsection A of this section shall correspond to the subject area of instruction and the particular grade level that will enable the applicant to teach in a competent manner as determined by the department.

C. An alternative level one teacher shall participate in the same mentorship, evaluation and other professional development requirements as other level one teachers.

D. A school district or state agency shall not discriminate against a teacher on the basis that the teacher holds an alternative level one license.

E. The department shall provide by rule for training and other requirements to support the use of unlicensed content area experts as resources in classrooms, team teaching, on-line instruction, curriculum development and other purposes."

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House Bill 74, aa

Approved April 6, 2011

## **LAWS 2011, CHAPTER 96**



## AN ACT

RELATING TO LAND GRANTS; PROHIBITING THE COMMON LANDS OF A LAND GRANT-MERCED THAT IS A POLITICAL SUBDIVISION OF THE STATE FROM BEING CONSIDERED TO BE, DESIGNATED OR TREATED AS STATE LAND; PRESERVING THE PROPERTY RIGHTS OF CERTAIN HEIRS; AUTHORIZING BOARDS OF TRUSTEES TO ENTER INTO AGREEMENTS WITH OTHER GOVERNMENTAL ENTITIES; DECLARING AN EMERGENCY.

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

### **Chapter 96 Section 1 Laws 2011**

SECTION 1. Section 49-1-3 NMSA 1978 (being Laws 1907, Chapter 42, Section 3, as amended) is amended to read:

"49-1-3. BOARD OF TRUSTEES--MANAGEMENT OF GRANT--POWERS.--The management and control of all land grants-mercedes and tracts of land to which Sections 49-1-1 through 49-1-18 NMSA 1978 are applicable is vested in a board of trustees, to be known as the "board of trustees of the land grant-merced del pueblo de \_\_\_\_\_" (designating the name of the town, colony, pueblo or community), and the board shall have the power to:

A. control, care for and manage the land grant-merced and real estate, prescribe the terms and conditions under which the common lands may be used and enjoyed and make all necessary and proper bylaws, rules and regulations that shall be in substantial compliance with applicable statutes for the government thereof;

B. sue and be sued under the title as set forth in this section;

C. convey, lease or mortgage the common lands of the land grant-merced in accordance with the land grant-merced bylaws;

D. determine the number of animals that may be permitted to graze upon the common lands and determine other uses of the common lands that may be authorized;

E. prescribe the price to be paid for the use of the common lands and resources of the land grant-merced and prohibit a person failing or refusing to pay that amount from using a portion of the common lands while the person continues in default in those payments; provided that the amount fixed shall be in proportion to the number and kinds of livestock pasturing upon the common lands or to other authorized use of the common lands;

F. adopt and use an official seal;

G. appoint judges and clerks of election at all elections provided for in Sections 49-1-1 through 49-1-18 NMSA 1978, subsequent to the first, and canvass the votes cast in those elections;

H. make bylaws, rules and regulations, not in conflict with the constitution and laws of the United States or the state of New Mexico as may be necessary for the protection, improvement and management of the common lands and real estate and for the use and enjoyment of the common lands and of the common waters of the land grant-merced;

I. determine land use, local infrastructure and economic development of the common lands of the land grant-merced;

J. determine zoning of the common lands of the land grant-merced pursuant to a comprehensive plan approved by the local government division of the department of finance and administration that considers the health, safety and general welfare of the residents of the land grant-merced. The department of finance and administration shall act as arbitrator for zoning conflicts between land grants-mercedes and neighboring municipalities and counties; and

K. enter into memoranda of understanding, contracts and other agreements with a local, state or federal government or a government of a federally recognized Indian nation, tribe or pueblo, including but not limited to agreements concerning the protection and maintenance of cultural resources."

## **Chapter 96 Section 2 Laws 2011**

SECTION 2. Section 49-1-11.1 NMSA 1978 (being Laws 2004, Chapter 124, Section 2, as amended) is amended to read:

"49-1-11.1. RIGHTS OF LESSEES AND PURCHASERS--RIGHTS TO USE OF COMMON LANDS.--

A. A person who is not an heir and who has purchased or leased property within the limits of a land grant-merced shall only have a right to the lands acquired through the purchase or lease but not to any common lands within the land grant-merced.

B. The provisions of Chapter 49, Article 1 NMSA 1978 shall not diminish, extinguish or otherwise impair any private property interest located within the boundaries of a land grant-merced or be construed to grant the board of trustees of a land grant-merced regulatory authority over such property interests or lands other than the common lands. As used in this subsection, "property interest" includes valid easements and rights of access, but does not include use rights to the common lands of the land grant-merced.

C. The designation of land grants-mercedes as political subdivisions of the state shall not alter the property rights of the heirs in the common lands. The common lands owned or controlled by a land grant-merced shall not be considered to be, designated or treated as state land."

## **Chapter 96 Section 3 Laws 2011**

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

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House Bill 81, aa, w/ec

Approved April 6, 2011

## **LAWS 2011, CHAPTER 97**

AN ACT

RELATING TO PUBLIC SCHOOLS; PROHIBITING CORPORAL PUNISHMENT AS A DISCIPLINARY SANCTION.

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

## **Chapter 97 Section 1 Laws 2011**

SECTION 1. Section 22-5-4.3 NMSA 1978 (being Laws 1986, Chapter 33, Section 9, as amended) is amended to read:

"22-5-4.3. SCHOOL DISCIPLINE POLICIES--STUDENTS MAY SELF-ADMINISTER CERTAIN MEDICATIONS.--

A. Local school boards shall establish student discipline policies and shall file them with the department. The local school board shall involve parents, school personnel and students in the development of these policies, and public hearings shall be held during the formulation of these policies in the high school attendance areas within each school district or on a district-wide basis for those school districts that have no high school.

B. Each school district discipline policy shall establish rules of conduct governing areas of student and school activity, detail specific prohibited acts and activities and enumerate possible disciplinary sanctions, which sanctions may include in-school suspension, school service, suspension or expulsion. Corporal punishment

shall be prohibited by each local school board and each governing body of a charter school.

C. An individual school within a school district may establish a school discipline policy, provided that parents, school personnel and students are involved in its development and a public hearing is held in the school prior to its adoption. If an individual school adopts a discipline policy in addition to the local school board's school district discipline policy, it shall submit its policy to the local school board for approval.

D. No school employee who in good faith reports any known or suspected violation of the school discipline policy or in good faith attempts to enforce the policy shall be held liable for any civil damages as a result of such report or of the employee's efforts to enforce any part of the policy.

E. All public school and school district discipline policies shall allow students to carry and self-administer asthma medication and emergency anaphylaxis medication that has been legally prescribed to the student by a licensed health care provider under the following conditions:

(1) the health care provider has instructed the student in the correct and responsible use of the medication;

(2) the student has demonstrated to the health care provider and the school nurse or other school official the skill level necessary to use the medication and any device that is necessary to administer the medication as prescribed;

(3) the health care provider formulates a written treatment plan for managing asthma or anaphylaxis episodes of the student and for medication use by the student during school hours or school-sponsored activities, including transit to or from school or school-sponsored activities; and

(4) the student's parent has completed and submitted to the school any written documentation required by the school or the school district, including the treatment plan required in Paragraph (3) of this subsection and other documents related to liability.

F. The parent of a student who is allowed to carry and self-administer asthma medication and emergency anaphylaxis medication may provide the school with backup medication that shall be kept in a location to which the student has immediate access in the event of an asthma or anaphylaxis emergency.

G. Authorized school personnel who in good faith provide a person with backup medication as provided in this section shall not be held liable for civil damages as a result of providing the medication."

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House Bill 172, aa

Approved April 6, 2011

## **LAWS 2011, CHAPTER 98**

AN ACT

RELATING TO JUDICIAL AND ADMINISTRATIVE PROCEEDINGS; ENACTING THE UNIFORM CHILD WITNESS PROTECTIVE MEASURES ACT.

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

### **Chapter 98 Section 1 Laws 2011**

SECTION 1. SHORT TITLE.--This act may be cited as the "Uniform Child Witness Protective Measures Act".

### **Chapter 98 Section 2 Laws 2011**

SECTION 2. DEFINITIONS.--As used in the Uniform Child Witness Protective Measures Act:

A. "alternative method" means:

(1) in a criminal proceeding in which a child witness does not give testimony in an open forum in full view of the finder of fact, a videotaped deposition of the child witness that complies with the following requirements:

- (a) the deposition was presided over by a district judge;
- (b) the defendant was represented by counsel at the deposition or waived counsel;
- (c) the defendant was present at the deposition; and
- (d) the defendant was given an adequate opportunity to cross-examine the child witness, subject to such protection of the child witness as the judge deemed necessary;

(2) in a criminal proceeding in which a child witness does not give testimony face-to-face with the defendant, a videotaped deposition of the child witness that complies with the following requirements:

- (a) the deposition was presided over by a district judge;

(b) the defendant was represented by counsel at the deposition or waived counsel;

(c) the defendant was able to view the deposition, including the child witness, through closed-circuit television or equivalent technology, and the defendant and counsel were able to communicate with each other during the deposition through headsets and microphones or equivalent technology; and

(d) the defendant was given an adequate opportunity to cross-examine the child witness, subject to such protection of the child witness as the judge deemed necessary; or

(3) in a noncriminal proceeding, testimony by closed-circuit television, deposition, testimony in a closed forum or any other method of testimony that does not include one or more of the following:

(a) having the child testify in person in an open forum;

(b) having the child testify in the presence and full view of the finder of fact and presiding officer; and

(c) allowing all of the parties to be present, to participate and to view and be viewed by the child;

B. "child witness" means:

(1) an individual under the age of sixteen who has been or will be called to testify in a noncriminal proceeding; or

(2) an alleged victim under the age of sixteen who has been or will be called to testify in a criminal proceeding;

C. "criminal proceeding" means a trial or hearing before a court in a prosecution of a person charged with violating a criminal law of New Mexico or a delinquency proceeding pursuant to the Delinquency Act involving conduct that if engaged in by an adult would constitute a violation of a criminal law of New Mexico;

D. "noncriminal proceeding" means a trial or hearing before a court or an administrative agency of New Mexico having judicial or quasi-judicial powers in a civil case, an administrative proceeding or any other case or proceeding other than a criminal proceeding; and

E. "presiding officer" means the person under whose supervision and jurisdiction the proceeding is being conducted. "Presiding officer" includes a judge in whose court a case is being heard, a quasi-judicial officer or an administrative law judge or hearing officer.

## **Chapter 98 Section 3 Laws 2011**

### SECTION 3. APPLICABILITY.--

A. The Uniform Child Witness Protective Measures Act applies to the testimony of a child witness in a criminal or noncriminal proceeding. However, the Uniform Child Witness Protective Measures Act does not preclude, in a criminal or noncriminal proceeding, any other procedure permitted by law:

(1) for a child witness to testify by an alternative method, however denominated; or

(2) for protecting the interests of or reducing mental or emotional harm to a child witness.

B. The supreme court may adopt rules of procedure and evidence to implement the provisions of the Uniform Child Witness Protective Measures Act.

## **Chapter 98 Section 4 Laws 2011**

### SECTION 4. HEARING WHETHER TO ALLOW TESTIMONY BY ALTERNATIVE METHOD.--

A. The presiding officer in a criminal or noncriminal proceeding may order a hearing to determine whether to allow a child witness to testify by an alternative method. The presiding officer, for good cause shown, shall order the hearing upon motion of a party, a child witness or an individual determined by the presiding officer to have sufficient standing to act on behalf of the child.

B. A hearing to determine whether to allow a child witness to testify by an alternative method shall be conducted on the record after reasonable notice to all parties, to any nonparty movant and to any other person the presiding officer specifies. The child's presence is not required at the hearing unless ordered by the presiding officer.

## **Chapter 98 Section 5 Laws 2011**

### SECTION 5. STANDARDS FOR DETERMINING WHETHER A CHILD WITNESS MAY TESTIFY BY ALTERNATIVE METHOD.--

A. In a criminal proceeding, the presiding officer may allow a child witness to testify by an alternative method in the following situations:

(1) the child may testify otherwise than in an open forum in the presence and full view of the finder of fact upon a showing that the child witness may be

unable to testify without suffering unreasonable and unnecessary mental or emotional harm; and

(2) the child may testify other than face-to-face with the defendant if the presiding officer makes specific findings that the child witness would be unable to testify face-to-face with the defendant without suffering unreasonable and unnecessary mental or emotional harm.

B. In a noncriminal proceeding, the presiding officer may allow a child witness to testify by an alternative method if the presiding officer finds that allowing the child to testify by an alternative method is necessary to serve the best interests of the child or enable the child to communicate with the finder of fact. In making this finding, the presiding officer shall consider:

- (1) the nature of the proceeding;
- (2) the age and maturity of the child;
- (3) the relationship of the child to the parties in the proceeding;
- (4) the nature and degree of mental or emotional harm that the child may suffer in testifying; and
- (5) any other relevant factor.

## **Chapter 98 Section 6 Laws 2011**

SECTION 6. FACTORS FOR DETERMINING WHETHER TO PERMIT ALTERNATIVE METHOD.--If the presiding officer determines that a standard pursuant to Section 5 of the Uniform Child Witness Protective Measures Act has been met, the presiding officer shall determine whether to allow a child witness to testify by an alternative method and in doing so shall consider:

- A. alternative methods reasonably available for protecting the interests of or reducing mental or emotional harm to the child;
- B. available means for protecting the interests of or reducing mental or emotional harm to the child without resort to an alternative method;
- C. the nature of the case;
- D. the relative rights of the parties;
- E. the importance of the proposed testimony of the child;



F. the nature and degree of mental or emotional harm that the child may suffer if an alternative method is not used; and

G. any other relevant factor.

## **Chapter 98 Section 7 Laws 2011**

### **SECTION 7. ORDER REGARDING TESTIMONY BY ALTERNATIVE METHOD.-**

A. An order allowing or disallowing a child witness to testify by an alternative method shall state the findings of fact and conclusions of law that support the presiding officer's determination.

B. An order allowing a child witness to testify by an alternative method shall:

(1) state the method by which the child is to testify;

(2) list any individual or category of individuals allowed to be in, or required to be excluded from, the presence of the child during the testimony;

(3) state any special conditions necessary to facilitate a party's right to examine or cross-examine the child;

(4) state any condition or limitation upon the participation of individuals present during the testimony of the child; and

(5) state any other condition necessary for taking or presenting the testimony.

C. The alternative method ordered by the presiding officer shall be no more restrictive of the rights of the parties than is necessary under the circumstances to serve the purposes of the order and shall be subject to the other provisions of the Uniform Child Witness Protective Measures Act.

## **Chapter 98 Section 8 Laws 2011**

SECTION 8. RIGHT OF PARTY TO EXAMINE CHILD WITNESS.--An alternative method ordered by the presiding officer shall permit a full and fair opportunity for examination or cross-examination of the child witness by each party, subject to such protection of the child witness as the presiding officer deems necessary.

## **Chapter 98 Section 9 Laws 2011**

SECTION 9. UNIFORMITY OF APPLICATION AND CONSTRUCTION.--In applying and construing the Uniform Child Witness Protective Measures 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 98 Section 10 Laws 2011**

SECTION 10. SEVERABILITY.--If any part or application of the Uniform Child Witness Protective Measures Act is held invalid, the remainder or its application to other situations or persons shall not be affected.

### **Chapter 98 Section 11 Laws 2011**

SECTION 11. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2012.

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House Bill 196

Approved April 6, 2011

## **LAWS 2011, CHAPTER 99**

AN ACT

RELATING TO THE INTERSTATE STREAM COMMISSION; CREATING THE "NEW MEXICO UNIT FUND" FOR THE DEPOSIT OF FEDERAL MONEY MADE AVAILABLE TO THE INTERSTATE STREAM COMMISSION TO COMPLY WITH PROVISIONS OF THE FEDERAL ARIZONA WATER SETTLEMENTS ACT AND THE COLORADO RIVER BASIN PROJECT ACT OF 1968 AND IN REGARD TO THE CENTRAL ARIZONA PROJECT AND THE GILA RIVER, ITS TRIBUTARIES AND UNDERGROUND WATER SOURCES; PROVIDING THE PURPOSE FOR THE NEW MEXICO UNIT FUND; MAKING AN APPROPRIATION.

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

### **Chapter 99 Section 1 Laws 2011**

SECTION 1. A new section of Chapter 72, Article 14 NMSA 1978 is enacted to read:

"NEW MEXICO UNIT FUND--PURPOSE--APPROPRIATION.--

A. The "New Mexico unit fund" is created in the state treasury. The fund shall consist of money distributed to the state pursuant to Paragraphs (2)(D)(i) and (ii) of Section 403(f) of the federal Colorado River Basin Project Act of 1968, as amended by Section 107(a) of the federal Arizona Water Settlements Act, Public Law 108-451, December 10, 2004; other money made available to the fund pursuant to Section 212 of the federal Arizona Water Settlements Act, Public Law 108-451, December 10, 2004; appropriations; grants; and donations or bequests to the fund.

B. Income from the fund shall be credited to the fund. Any unexpended or unencumbered balance remaining in the fund at the end of a fiscal year shall not revert to the general fund. Money in the fund shall not be transferred, other than through an intra-agency transfer, to any other fund.

C. Money in the fund shall be administered by the interstate stream commission and is appropriated to the interstate stream commission for expenditure in fiscal year 2012 and subsequent fiscal years to comply with the provisions of the federal laws cited in Subsection A of this section. Those provisions of federal law establish that the purpose of money in the fund is to pay the costs of the New Mexico unit or other water utilization alternatives to meet water supply demands in the southwest water planning region of New Mexico, as determined by the interstate stream commission in consultation with the southwest New Mexico water study group or its successor, including costs associated with planning and environmental compliance activities and environmental mitigation and restoration. Money in the fund shall not be expended for any purpose other than the purpose provided in this section. The interstate stream commission may adopt rules it deems necessary to carry out the purpose of this section.

D. On or before November 15 of each year, the interstate stream commission shall report to the appropriate legislative interim committee dealing with water and natural resources and to the legislative finance committee on:

- (1) the status of the New Mexico unit fund;
- (2) the distribution of money from the New Mexico unit fund to implement the purpose of the fund pursuant to Subsection C of this section; and
- (3) proposed uses and levels of funding projected for the following fiscal year.

E. Expenditures from the fund shall be made on warrants signed by the secretary of finance and administration pursuant to vouchers signed by the director of the interstate stream commission upon the delegation of authority by the interstate stream commission."

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House Bill 301, aa

Approved April 6, 2011

## **LAWS 2011, CHAPTER 100**

AN ACT

RELATING TO FLOOD CONTROL DISTRICTS; AMENDING THE EASTERN SANDOVAL COUNTY ARROYO FLOOD CONTROL ACT TO EXCLUDE CERTAIN LAND FROM THE EASTERN SANDOVAL COUNTY ARROYO FLOOD CONTROL AUTHORITY; CONTINUING PROPERTY TAX LEVIES ON THE EXCLUDED LAND AS NECESSARY TO MEET EXISTING OBLIGATIONS; PROVIDING FOR THE ELECTION OF DIRECTORS FROM SINGLE-MEMBER DISTRICTS; DECLARING AN EMERGENCY.

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

### **Chapter 100 Section 1 Laws 2011**

SECTION 1. Section 72-20-1 NMSA 1978 (being Laws 2007, Chapter 99, Section 1) is amended to read:

"72-20-1. SHORT TITLE.--Chapter 72, Article 20 NMSA 1978 may be cited as the "Eastern Sandoval County Arroyo Flood Control Act"."

### **Chapter 100 Section 2 Laws 2011**

SECTION 2. Section 72-20-6 NMSA 1978 (being Laws 2007, Chapter 99, Section 6) is amended to read:

"72-20-6. BOUNDARIES OF AUTHORITY.--

A. Except as provided in Subsections B and C of this section, the authority consists of all land within the following boundaries: a portion of southern Sandoval county bounded on the east by a line following the eastern boundary of range 5 east of the New Mexico principal meridian, on the south by the Pueblo of Sandia and the Cibola national forest, on the west by the Rio Grande and on the north by a line following the northern boundary of township 13 north of the New Mexico principal meridian. The boundary is more particularly described as follows: beginning at the southeast corner of projected section 1, township 12 north, range 5 east of the New Mexico principal meridian, that point also being the southeast corner of herein described boundary; thence proceeding in a westerly direction along a line coincident with the northern boundary of the Cibola national forest and of the Pueblo of Sandia to a point along the west bank of the Rio Grande within projected section 1, township 12 north, range 3 east

of the New Mexico principal meridian; thence in a northeasterly direction along the west bank of the Rio Grande to a point in the northwest corner of section 1, township 13 north, range 4 east of the New Mexico principal meridian; thence east along a line following the northern boundary of township 13 north of the New Mexico principal meridian for approximately seven miles to a point in the northeast corner of section 1, township 13 north, range 5 east of the New Mexico principal meridian; thence in a southerly direction approximately seven miles to the southeast corner of projected section 1, township 12 north, range 5 east of the New Mexico principal meridian, which point is the southeast corner and point of beginning of the district.

B. All lands held in trust or ownership by the federal government or an Indian pueblo located within the boundaries identified in Subsection A of this section shall be excluded from the authority.

C. On the first day of the first month immediately following the effective date of this 2011 act, all land within Sandoval county precincts 5, 28, 55 and 56 and precinct 6 east of interstate 25, as those precinct designations and boundaries were revised and approved by the secretary of state as of August 31, 2001 pursuant to the Precinct Boundary Adjustment Act, shall be excluded from the authority."

## **Chapter 100 Section 3 Laws 2011**

SECTION 3. Section 72-20-8 NMSA 1978 (being Laws 2007, Chapter 99, Section 8) is amended to read:

"72-20-8. BOARD OF DIRECTORS.--

A. The governing body of the authority is a board of directors consisting of three qualified electors of the authority; provided that, after single-member districts are created pursuant to Subsection B of Section 72-20-10 NMSA 1978 and after the expiration of the terms of any directors-at-large who are serving at the time that single-member districts are created:

(1) each director shall reside within and represent a specified district; and

(2) if a director no longer resides within the district that the director represents, the director's position shall be deemed vacant and a successor shall be appointed to serve the unexpired term pursuant to Section 72-20-12 NMSA 1978.

B. All powers, rights, privileges and duties vested in or imposed upon the authority are exercised and performed by and through the board of directors; provided that the exercise of any executive, administrative and ministerial powers may be, by the board, delegated and redelegated to officers and employees of the authority or to any officer or employee contracted by agreement to manage and administer the operations of the authority. Except for the first directors appointed as provided for in Section 72-20-

9 NMSA 1978 or elected as provided in Section 72-20-10 NMSA 1978 and except for any director chosen to fill an unexpired term, and except for the first directors serving after the authority is divided into single-member districts, the term of each director commences on the first day of January next following a general election in the state and runs for six years. Each director, subject to such exceptions, shall serve a six-year term ending on the first day of January next following a general election, and each director shall serve until a successor has been duly chosen and qualified."

## **Chapter 100 Section 4 Laws 2011**

SECTION 4. Section 72-20-10 NMSA 1978 (being Laws 2007, Chapter 99, Section 10) is amended to read:

### "72-20-10. ELECTION OF DIRECTORS--SINGLE-MEMBER DISTRICTS.--

A. At the time that a proposal to incur debt is first submitted to the qualified electors or at the first general election following March 30, 2007, whichever occurs first, the qualified electors of the authority shall elect five qualified directors, two to serve a term ending January 1, 2011, two to serve a term ending January 1, 2013 and one to serve a term ending January 1, 2015. At the first election, the five candidates receiving the highest number of votes shall be elected as directors. The terms of the directors shall be determined by lot at their organizational meeting.

B. Upon the exclusion of land pursuant to Subsection C of Section 72-20-6 NMSA 1978, the two directors elected in the 2010 general election shall be deemed to have resigned, and, notwithstanding the provisions of Section 72-20-12 NMSA 1978, their positions shall not be filled. Thereafter, the board shall consist of three directors. The board shall divide the authority into three single-member districts. The following provisions shall govern the procedure for converting to single-member districts:

(1) the districts shall be as contiguous, compact and as equal in population as is practicable;

(2) remaining terms for the three incumbent directors shall be chosen by lot so that one term expires on January 1, 2013, one term expires on January 1, 2015 and one term expires on January 1, 2017;

(3) if, as a result of the division of the authority into districts, two or more incumbent directors reside within the same district, the board shall determine, by lot, one of the directors to represent the district, and the other directors residing within that district shall represent the authority at large until their terms expire;

(4) if, as a result of the exclusion of land pursuant to Subsection C of Section 72-20-6 NMSA 1978, one or more incumbent directors reside outside of any district, the directors shall represent the authority at large until their terms expire; and

(5) if more than one director represents the authority at large pursuant to Paragraph (3) or (4) of this subsection, the board shall determine by lot the district that will elect a resident to succeed a director-at-large as the term of each director-at-large expires.

C. At the 2012 and each subsequent general election, for the single-member district in which the term of the incumbent director or the term of a director-at-large assigned by lot pursuant to Paragraph (2) of Subsection B of this section will expire on the first day of the January immediately following the election, a director who is a qualified elector and a resident of the district shall be elected by the qualified electors who are residents of that district to serve a six-year term.

D. Nothing in this section shall be construed as preventing qualified electors of the authority from being elected or reelected as directors to succeed themselves; provided that they reside in the district from which they are elected.

E. As soon as feasible after each federal decennial census, the board shall assess the existing districts to determine if the districts remain as equal in population as is practicable and, if necessary, shall redistrict the authority into districts that remain contiguous, compact and as equal in population as is practicable; provided that:

(1) a redistricting shall be effective at the next following general election; and

(2) an incumbent director whose residence is redistricted out of the district represented by the director shall serve until the next general election, at which a qualified elector who resides within the district shall be elected to fill the unexpired term."

## **Chapter 100 Section 5 Laws 2011**

SECTION 5. Section 72-20-11 NMSA 1978 (being Laws 2007, Chapter 99, Section 11) is amended to read:

"72-20-11. NOMINATION OF DIRECTORS.--Not later than forty-five days before a proposal to incur debt is first submitted to the qualified electors or at the first general election following March 30, 2007, whichever occurs first, written nominations of any candidate as director may be filed with the secretary of the board. Each nomination of any candidate shall be signed by not less than fifty qualified electors, regardless of whether or not nominated therein, shall designate therein the name of the candidates thereby nominated and shall recite that the subscribers thereto are qualified electors and that the candidate or candidates designated therein are qualified electors of the authority. No written nomination may designate more qualified electors as candidates than there are vacancies. No qualified elector may nominate more than one candidate for any vacancy. If a candidate does not withdraw the candidate's name before the first

publication of the notice of election, the candidate's name shall be placed on the ballot. For any election held after November 2010, nominations shall be made by qualified electors in accordance with the procedures and limitations of this section, except that:

A. such nominations shall be filed with the secretary of the board not later than the fourth Tuesday in June preceding the general election;

B. each nomination shall designate only one candidate;

C. all of the qualified electors signing each nomination and the person nominated shall reside within the district for which the candidate has been nominated; and

D. each nomination shall recite that the subscribers thereto are qualified electors who reside in the district for which the candidate is nominated and that the person nominated is a qualified elector who resides in the district for which the person is nominated."

## **Chapter 100 Section 6 Laws 2011**

SECTION 6. Section 72-20-12 NMSA 1978 (being Laws 2007, Chapter 99, Section 12) is amended to read:

"72-20-12. FILLING VACANCIES ON THE BOARD.--Upon a vacancy occurring in the board by reason of death, change of residence or resignation or for any other reason, the governor shall appoint a qualified elector of the authority as successor to serve the unexpired term; provided that if the vacancy occurs after the single-member districts are created pursuant to Subsection B of Section 72-20-10 NMSA 1978, the qualified elector appointed shall reside within the district in which the vacancy exists."

## **Chapter 100 Section 7 Laws 2011**

SECTION 7. TEMPORARY PROVISION--LIMITATION ON PROPERTY TAXES ON EXCLUDED LAND--EXCEPTIONS FOR CERTAIN AUTHORIZED DEBT OBLIGATIONS--APPROVAL OF DEPARTMENT OF FINANCE AND ADMINISTRATION.--

A. On or after the effective date of this act, no property taxes shall be levied by the eastern Sandoval county arroyo flood control authority on land excluded from the authority pursuant to Subsection C of Section 72-20-6 NMSA 1978; provided that:

(1) subject to the provisions of Subsection B of this section, the authority may levy taxes on the excluded land that are necessary to make debt service and other payments, including any amounts needed for required reserves, on bonds of the authority:



(a) authorized in the 2008 general election, including bonds authorized but not yet issued; or

(b) issued for the purpose of refunding the bonds specified in Subparagraph (a) of this paragraph;

(2) nothing in this act affects property taxes levied by the authority on the excluded land for the 2011 tax year; provided that the property tax levy for operational purposes on the excluded land for that tax year shall not exceed fifty cents (\$.50) for each one thousand dollars (\$1,000) of net taxable value; and

(3) the provisions of the Eastern Sandoval County Arroyo Flood Control Act and other state statutes relating to the levying, collection and enforcement of property taxes shall continue to apply to the excluded land to the extent necessary to ensure payment of the property taxes authorized in this subsection.

B. For the 2012 and subsequent tax years, the authority shall not certify a property tax on land excluded pursuant to Subsection C of Section 72-20-6 NMSA 1978 unless the local government division of the department of finance and administration determines that the proposed tax is in compliance with the provisions of Subsection A of this section.

## **Chapter 100 Section 8 Laws 2011**

SECTION 8. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

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HVEC/House Bill 306, aa, w/ec

Approved April 6, 2011

## **LAWS 2011, CHAPTER 101**

AN ACT

RELATING TO COMMERCIAL MOTOR CARRIER VEHICLES; PROVIDING FOR FIELD ENFORCEMENT INSPECTIONS OF COMMERCIAL MOTOR CARRIER VEHICLES.

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

## **Chapter 101 Section 1 Laws 2011**

SECTION 1. Section 65-1-6 NMSA 1978 (being Laws 1967, Chapter 97, Section 8, as amended) is amended to read:

"65-1-6. FIELD ENFORCEMENT OF MOTOR TRANSPORTATION ACT AND MOTOR CARRIER ACT AND RULES.--The department shall:

A. enforce in the field the provisions of the Motor Transportation Act and the Motor Carrier Act and the rules promulgated by the public regulation commission pursuant to the Motor Carrier Act; and

B. maintain sufficient personnel in the field to enforce the provisions of the Motor Transportation Act and the Motor Carrier Act and the rules promulgated by the public regulation commission pursuant to the Motor Carrier Act."

## **Chapter 101 Section 2 Laws 2011**

SECTION 2. Section 65-5-1 NMSA 1978 (being Laws 1943, Chapter 125, Section 8, as amended) is amended to read:

"65-5-1. VEHICLES TO STOP AT PORTS OF ENTRY--FIELD ENFORCEMENT--INFORMATION--INSPECTION.--

A. All commercial motor carrier vehicles shall enter, leave or travel through the state on designated highways and shall stop at every port of entry as designated by the division for manifesting and clearance stickers, except as provided in Subsection H of this section.

B. An officer may enforce in the field the provisions of the Motor Transportation Act and the Motor Carrier Act and perform inspections as provided in this section whenever the officer stops a commercial motor carrier vehicle after observing that the vehicle is in, or is being operated in, violation of those acts, the Motor Vehicle Code or the Criminal Code.

C. The operator of a commercial motor carrier vehicle shall:

(1) upon request, make out and deliver to the agent of the division at a port of entry or to an officer conducting field enforcement a manifest showing that part of the following information requested:

- (a) the point of origin of the shipment;
- (b) the ultimate destination of the shipment; and
- (c) the gross vehicle weight of the vehicle and cargo;

(2) sign the manifest and present it to the agent at the port of entry or to the officer conducting field enforcement; and

(3) present for inspection to the agent at the port of entry or the officer conducting field enforcement a copy of the billing or invoice describing the contents of the cargo and the weight of the cargo.

D. The agent at the port of entry or the officer conducting field enforcement may verify the information contained upon the billing or invoice and shall:

(1) check the license, permit, engine and serial numbers, weight and description of the vehicle; and

(2) inspect the vehicle and ascertain whether it is in safe and road-worthy condition and properly equipped with all lights, brakes and other appliances required by law.

E. The agent at the port of entry or officer conducting field enforcement may confirm the contents and weight of the cargo of a commercial motor carrier vehicle and interview the operator about the cargo and, if in doubt as to the declared gross weight, may order the cargo weighed before issuing any clearance certificate for the vehicle.

F. The agent at the port of entry or the officer conducting field enforcement may inspect the contents of a commercial motor carrier vehicle to determine whether all taxes on gasoline and motor fuel and excise taxes on alcoholic liquors and all taxes on any other property have been fully paid.

G. The agent at the port of entry or the officer conducting field enforcement may inspect a commercial motor carrier vehicle and its contents to determine whether they are in compliance with laws and rules regarding public safety, health, welfare and comfort.

H. An agricultural product transport vehicle is excluded from the requirements of Subsection A of this section if the agricultural product transport vehicle has cleared the port of entry at least once and has successfully passed a commercial vehicle safety alliance level 1 inspection during the current harvest season.

I. As used in this section, "agricultural product transport vehicle" means a motor vehicle, freight trailer or utility trailer or a combination thereof used exclusively for hauling agricultural products harvested by a farmer from the place of harvesting to market, storage or a processing plant."

Approved April 6, 2011

## **LAWS 2011, CHAPTER 102**

AN ACT

RELATING TO TAXATION; PROVIDING A PROPERTY TAX EXEMPTION FOR VETERANS' ORGANIZATIONS CONSISTENT WITH THE CONSTITUTION OF NEW MEXICO.

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

### **Chapter 102 Section 1 Laws 2011**

SECTION 1. A new section of Chapter 7, Article 37 NMSA 1978 is enacted to read:

"VETERANS' ORGANIZATION EXEMPTION.--The property of a veterans' organization chartered by the United States congress and that is used primarily for the benefit of veterans and their families is exempt from property taxation. The exemption provided by this section may be referred to as the "veterans' organization exemption". The veterans' organization exemption shall be applied only if claimed and allowed pursuant to Section 7-38-17 NMSA 1978 and the rules of the department. The veterans' services department shall assist the taxation and revenue department and the county assessors in determining which veterans' organizations qualify for the veterans' organization exemption."

### **Chapter 102 Section 2 Laws 2011**

SECTION 2. Section 7-38-17 NMSA 1978 (being Laws 1973, Chapter 258, Section 57, as amended) is amended to read:

"7-38-17. CLAIMING EXEMPTIONS--REQUIREMENTS--PENALTIES.--

A. Subject to the requirements of Subsection E of this section, head-of-family exemptions, veteran exemptions, disabled veteran exemptions or veterans' organization exemptions claimed and allowed in a tax year need not be claimed for subsequent tax years if there is no change in eligibility for the exemption nor any change in ownership of the property against which the exemption was claimed. Head-of-family, veteran and veterans' organization exemptions allowable under this subsection shall be applied automatically by county assessors in the subsequent tax years.

B. Other exemptions of real property specified under Section 7-36-7 NMSA 1978 for nongovernmental entities shall be claimed in order to be allowed. Once

such exemptions are claimed and allowed for a tax year, they need not be claimed for subsequent tax years if there is no change in eligibility. Exemptions allowable under this subsection shall be applied automatically by county assessors in subsequent tax years.

C. Except as set forth in Subsection H of this section, an exemption required to be claimed under this section shall be applied for no later than thirty days after the mailing of the county assessor's notices of valuation pursuant to Section 7-38-20 NMSA 1978 in order for it to be allowed for that tax year.

D. A person who has had an exemption applied to a tax year and subsequently becomes ineligible for the exemption because of a change in the person's status or a change in the ownership of the property against which the exemption was applied shall notify the county assessor of the loss of eligibility for the exemption by the last day of February of the tax year immediately following the year in which loss of eligibility occurs.

E. Exemptions may be claimed by filing proof of eligibility for the exemption with the county assessor. The proof shall be in a form prescribed by regulation of the department. Procedures for determining eligibility of claimants for any exemption shall be prescribed by regulation of the department, and these regulations shall include provisions for requiring the veterans' services department to issue certificates of eligibility for veteran and veterans' organization exemptions in a form and with the information required by the department. The regulations shall also include verification procedures to assure that veteran exemptions in excess of the amount authorized under Section 7-37-5 NMSA 1978 are not allowed as a result of multiple claiming in more than one county or claiming against more than one property in a single tax year.

F. The department shall consult and cooperate with the veterans' services department in the development, adoption and promulgation of regulations under Subsection E of this section. The veterans' services department shall comply with the promulgated regulations. The veterans' services department shall collect a fee of five dollars (\$5.00) for the issuance of a duplicate certificate of eligibility to a veteran or to a veterans' organization.

G. A person who violates the provisions of this section by intentionally claiming and receiving the benefit of an exemption to which the person is not entitled or who fails to comply with the provisions of Subsection D of this section is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars (\$1,000). A county assessor or the assessor's employee who knowingly permits a claimant for an exemption to receive the benefit of an exemption to which the claimant is not entitled is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars (\$1,000) and shall also be automatically removed from office or dismissed from employment upon conviction under this subsection.

H. A veteran or the veteran's unmarried surviving spouse who became eligible to receive a property tax exemption due to the expansion of the class of eligible veterans resulting from approval by the electorate in November 2004 of an amendment to Article 8, Section 5 of the constitution of New Mexico shall apply at the time the veteran or the veteran's unmarried surviving spouse applies for the 2005 veteran exemption, to the county assessor of the county in which the property of the veteran or the veteran's unmarried surviving spouse is located to have the veteran exemptions for the 2004 and 2005 property tax years applied to the 2005 taxable value of the property. The same form of documentation required for a veteran's property exemption for property tax year 2005 is required to be presented to the county assessor for property tax year 2004."

## **Chapter 102 Section 3 Laws 2011**

SECTION 3. APPLICABILITY.--The provisions of Section 1 of this act apply to taxable years beginning on or after January 1, 2012.

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House Bill 437

Approved April 6, 2011

## **LAWS 2011, CHAPTER 103**

AN ACT

RELATING TO UTILITIES; CLARIFYING NOTIFICATION PROCEDURES TO PREVENT EXCAVATION DAMAGE TO PIPELINE AND UNDERGROUND FACILITIES.

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

## **Chapter 103 Section 1 Laws 2011**

SECTION 1. Section 62-14-2 NMSA 1978 (being Laws 1973, Chapter 252, Section 2, as amended) is amended to read:

"62-14-2. DEFINITIONS.--As used in Chapter 62, Article 14 NMSA 1978:

- A. "advance notice" means two working days;
- B. "blasting" means the use of an explosive to excavate;

C. "cable television lines and related facilities" means the facilities of any cable television system or closed-circuit coaxial cable communications system or other similar transmission service used in connection with any cable television system or other similar closed-circuit coaxial cable communications system;

D. "commission" means the public regulation commission;

E. "emergency excavation" means an excavation that must be performed due to circumstances beyond the excavator's control and that affects public safety, health or welfare;

F. "excavate" means the movement or removal of earth using mechanical excavating equipment or blasting and includes augering, backfilling, digging, ditching, drilling, grading, plowing in, pulling in, ripping, scraping, trenching, tunneling and directional boring;

G. "excavator" means a person that excavates;

H. "master meter system and operators" means a pipeline system that distributes natural gas or liquid propane gas within a public place, such as a mobile home park, housing project, apartment complex, school, university or hospital where the operator of the master meter system purchases gas from a distributor through a single large meter and resells the gas through a gas distribution pipeline system. The resale may occur as a payment included in a rental payment or association dues or as a separately metered system;

I. "means of location" means a mark such as a stake, a flag, whiskers or paint that is conspicuous in nature and that is designed to last at least ten working days if not disturbed;

J. "mechanical excavating equipment" means all equipment powered by any motor, engine or hydraulic or pneumatic device used for excavating and includes trenchers, bulldozers, backhoes, power shovels, scrapers, draglines, clam shells, augers, drills, cable and pipe plows or other plowing-in or pulling-in equipment;

K. "one-call notification system" means a communication system in which an operation center provides telephone services or other reliable means of communication for the purpose of receiving excavation notice and damage reporting information and distributing that information to owners and operators of pipelines and other underground facilities;

L. "person" means the legal representative of or an individual, partnership, corporation, joint venture, state, subdivision or instrumentality of the state or an association;

M. "pipeline" means a pipeline or system of pipelines and appurtenances for the transportation or movement of any oil or gas, or oil or gas products and their byproducts subject to the jurisdiction of federal law or regulation, with the exception of master meter systems and operators;

N. "reasonable efforts" means notifying the appropriate one-call notification center or underground facility owner or operator of planned excavation;

O. "underground facility" means any tangible property described in Subsections C, M and P of this section that is underground, but does not include residential sprinklers or low-voltage lighting; and

P. "underground utility line" means an underground conduit or cable, including fiber optics, and related facilities for transportation and delivery of electricity, telephonic or telegraphic communications or water, sewer and fire protection lines, with the exception of master meter systems and operators."

## **Chapter 103 Section 2 Laws 2011**

SECTION 2. Section 62-14-3 NMSA 1978 (being Laws 1973, Chapter 252, Section 3, as amended) is amended to read:

"62-14-3. EXCAVATION.--A person who prepares engineering plans for excavation or who engages in excavation shall:

A. determine the location of any underground facility in or near the area where the excavation is to be conducted, including a request to the owner or operator of the underground facility to locate the underground facility pursuant to Section 62-14-5 NMSA 1978;

B. plan the excavation to avoid or minimize interference or damage to underground facilities in or near the excavation area;

C. provide telephonic advance notice of the commencement, extent and duration of the excavation work to the one-call notification system operating in the intended excavation area, and to the owners or operators of any existing underground facility in and near the excavation area that are not members of the local one-call notification center, in order to allow the owners to locate and mark the location of the underground facility as described in Section 62-14-5 NMSA 1978 prior to the commencement of work in the excavation area, and shall request reaffirmation of line location every ten working days after the initial request to locate;

D. prior to initial exposure of the underground facility, maintain at least an estimated clearance of eighteen inches between existing underground facilities for which the owners or operators have previously identified the location and the cutting



edge or point of any mechanical excavating equipment utilized in the excavation and continue excavation in a manner necessary to prevent damage;

E. provide such support for existing underground facilities in or near the excavation area necessary to prevent damage to them;

F. backfill all excavations in a manner and with materials as may be necessary to prevent damage to and provide reliable support during and following backfilling activities for preexisting underground facilities in or near the excavation area;

G. immediately notify the one-call notification system operating in the area in the form and format required by the commission and by telephone the owner of any underground facilities that may have been damaged or dislocated during the excavation work; and

H. not move or obliterate markings made pursuant to Chapter 62, Article 14 NMSA 1978 or fabricate markings in an unmarked location for the purpose of concealing or avoiding liability for a violation of or noncompliance with the provisions of Chapter 62, Article 14 NMSA 1978."

### **Chapter 103 Section 3 Laws 2011**

SECTION 3. Section 62-14-4 NMSA 1978 (being Laws 1973, Chapter 252, Section 4, as amended) is amended to read:

"62-14-4. EMERGENCY EXCAVATION.--Every person who engages in emergency excavation shall take all necessary and reasonable precaution to avoid or minimize interference with or damage to existing underground facilities in and near the excavation area and shall notify as promptly as possible the owners of underground facilities located in and near the emergency excavation area and the one-call notification system operating in the area in the form and format required by the commission. In the event of any damage to or dislocation of any underground facility caused by the emergency excavation work, the person responsible for the excavation shall immediately notify the owner of the underground facility and the one-call notification system operating in the area in the form and format required by the commission."

### **Chapter 103 Section 4 Laws 2011**

SECTION 4. Section 62-14-5 NMSA 1978 (being Laws 1973, Chapter 252, Section 5, as amended) is amended to read:

"62-14-5. MARKING OF FACILITIES.--

A. A person owning or operating an underground facility shall, upon the request of a person intending to commence an excavation and upon advance notice,

locate and mark on the surface the actual horizontal location, within twelve inches by some means of location, of the underground facilities in or near the area of the excavation so as to enable the person engaged in excavation work to locate the facilities in advance of and during the excavation work.

B. If the owner or operator of the underground facility finds that the owner or operator has no underground facilities in the proposed area of excavation, the owner or operator shall contact the appropriate one-call notification center or mark in the appropriate color code as specified in Section 62-14-5.1 NMSA 1978, marking the area as "Clear" or "No Underground Facilities". If the area is not marked as "Clear" or "No Underground Facilities", the excavator shall contact the one-call notification system operating in the region in order to verify the area as "Clear" or "No Underground Facilities".

C. If the owner or operator fails to correctly mark the underground facility after being given advance notice and such failure to correctly mark the facility results in additional costs to the person doing the excavating, then the owner or operator shall reimburse the person engaging in the excavation for the reasonable costs incurred.

D. An owner of an underground facility shall not move or obliterate markings made pursuant to Chapter 62, Article 14 NMSA 1978 or fabricate markings in an unmarked location for the purpose of concealing or avoiding liability for a violation of or noncompliance with the provisions of Chapter 62, Article 14 NMSA 1978."

## **Chapter 103 Section 5 Laws 2011**

SECTION 5. Section 62-14-5.1 NMSA 1978 (being Laws 2001, Chapter 150, Section 4) is amended to read:

"62-14-5.1. UNIFORM COLOR CODE FOR LOCATION OF UNDERGROUND FACILITIES.--In marking an excavation site and the location of underground facilities, both the excavator and the owner or operator shall use the following uniform color code:

- A. blue for water;
- B. green for sewer;
- C. orange for communications or coaxial cable;
- D. pink for survey;
- E. purple for reclaimed water;
- F. red for electric;
- G. white for proposed excavation area; and

H. yellow for gas."

## **Chapter 103 Section 6 Laws 2011**

SECTION 6. Section 62-14-7.1 NMSA 1978 (being Laws 1997, Chapter 30, Section 1, as amended) is amended to read:

"62-14-7.1. ONE-CALL NOTIFICATION SYSTEM.--

A. An owner or operator of an underground facility subject to Chapter 62, Article 14 NMSA 1978 shall be a member of a one-call notification system operating in the region with the exception of private underground facilities owned by a homeowner and operated and located on residential property. A one-call notification system may be for a region of the state or statewide in scope, unless federal law provides otherwise.

B. Each one-call notification system shall be operated by:

(1) an owner or operator of pipeline facilities;

(2) a private contractor;

(3) a state or local government agency; or

(4) a person who is otherwise eligible under state law to operate a one-call notification system.

C. If the one-call notification system is operated by owners or operators of pipeline facilities, it shall be established as a nonprofit entity governed by a board of directors that shall establish the operating processes, procedures and technology needed for a one-call notification system. The board shall further establish a procedure or formula to determine the equitable share of each member for the costs of the one-call notification system. The board may include representatives of excavators or other persons deemed eligible to participate in the system who are not owners or operators.

D. Excavators shall give advance notice to the one-call notification system operating in the intended excavation area and provide information established by rule of the commission, except when excavations are by or for a person that:

(1) owns or leases or owns a mineral leasehold interest in the real property on which the excavation occurs; and

(2) operates all underground facilities located in the intended excavation area.

E. The one-call notification system shall promptly transmit excavation notice information to owners or operators of pipeline facilities and other underground facilities in the intended excavation area.

F. After receiving advance notice, owners and operators of pipeline facilities and other underground facilities shall locate and mark their facilities in the intended excavation area.

G. The one-call notification system shall provide a toll-free telephone number or another comparable and reliable means of communication to receive advance notice of excavation. Means of communication to distribute excavation notice to owners or operators of pipeline facilities and other underground facilities shall be reliable and capable of coordination with one-call notification systems operating in other regions of the state.

H. Operators of one-call notification systems shall notify the commission of its members and the name and telephone number of the contact person for each member and make available to the commission appropriate records in investigations of alleged violations of Chapter 62, Article 14 NMSA 1978.

I. One-call notification systems and owners and operators of pipeline facilities shall promote public awareness of the availability and operation of one-call notification systems and work with state and local governmental agencies charged with issuing excavation permits to provide information concerning and promoting awareness by excavators of one-call notification systems.

J. The commission may prescribe reasonable maximum rates for the provision of one-call services in New Mexico, provided that if the reasonableness of such rates is contested in the manner provided by commission rule, the burden of proof to show the unreasonableness of such rates shall be upon the person contesting their reasonableness."

## **Chapter 103 Section 7 Laws 2011**

SECTION 7. Section 62-14-8 NMSA 1978 (being Laws 1973, Chapter 252, Section 8, as amended) is amended to read:

"62-14-8. PENALTIES.--In addition to any other liability imposed by law, an excavator, after a formal hearing and upon a finding, who has failed to comply with Subsection C of Section 62-14-3 NMSA 1978 is subject to an administrative penalty of up to five thousand dollars (\$5,000) for a first offense as assessed by the commission. Thereafter, the commission may assess an administrative penalty of up to a maximum of twenty-five thousand dollars (\$25,000) for subsequent violations of Subsection C of Section 62-14-3 NMSA 1978. In addition to any other penalty imposed by law, an operator of underground pipeline facilities or underground utilities, excavator or operator of a one-call notification system, after formal hearing and upon a finding, who has

willfully failed to comply with Chapter 62, Article 14 NMSA 1978 shall be subject to an administrative penalty of up to five thousand dollars (\$5,000) for a first offense as assessed by the commission. Thereafter, upon finding that a violation of Chapter 62, Article 14 NMSA 1978 has occurred, the commission may, upon consideration of the nature, circumstances, gravity of the violation, history of prior violations, effect on public health, safety or welfare and good faith on the part of the person in attempting to remedy the cause of the violation, assess an administrative penalty up to a maximum of twenty-five thousand dollars (\$25,000) per violation consistent with federal law. No offense occurring more than five years prior to the current offense charged shall be considered for any purpose. All actions to recover the penalties provided for in this section shall be brought by the commission. All penalties recovered in any such action shall be paid into the state general fund."

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HJC/House Bill 500, aa

Approved April 6, 2011

## **LAWS 2011, CHAPTER 104**

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE; ENACTING THE EMERGENCY GAS PILOT RELIGHTING ACT.

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

### **Chapter 104 Section 1 Laws 2011**

SECTION 1. SHORT TITLE.--This act may be cited as the "Emergency Gas Pilot Relighting Act".

### **Chapter 104 Section 2 Laws 2011**

SECTION 2. DEFINITIONS.--As used in the Emergency Gas Pilot Relighting Act:

A. "gas pilot relighting technician" means an individual who has successfully completed a program pursuant to Section 3 of the Emergency Gas Pilot Relighting Act;

B. "natural gas" means any combustible vapor composed chiefly of hydrocarbons occurring naturally; and

C. "program" means a program for training and certifying persons to relight pilot lights for residential equipment and appliances pursuant to Section 3 of the Emergency Gas Pilot Relighting Act.

## **Chapter 104 Section 3 Laws 2011**

SECTION 3. CERTIFICATION PROGRAM.--The higher education department and the regulation and licensing department shall recommend to appropriate institutions of higher learning a program for training and certifying individuals to relight pilot lights for residential equipment and appliances. Upon satisfactory completion of such a program, an individual shall be certified as a gas pilot relighting technician and be issued a certificate attesting to the person's completion of the program, which certificate shall expire after five years. The regulation and licensing department shall adopt rules specifying the content of the training program, requirements for successful completion of the program and the process for certification of an individual as a gas pilot relighting technician.

## **Chapter 104 Section 4 Laws 2011**

SECTION 4. DECLARATION OF EMERGENCY OR DISASTER--  
EMPLOYMENT OF GAS PILOT RELIGHTING TECHNICIANS--REIMBURSEMENT.--

A. Upon a declaration by the governor of an emergency or disaster, a person certified as a journeyman plumber or journeyman gas fitter pursuant to the Construction Industries Licensing Act may employ no more than five gas pilot relighting technicians during the period of the declared emergency or disaster.

B. A gas pilot relighting technician employed by a journeyman plumber or journeyman gas fitter pursuant to Subsection A of this section shall be an employee of the journeyman plumber or journeyman gas fitter and shall be covered by liability insurance provided by the journeyman plumber or journeyman gas fitter.

C. The duties of a gas pilot relighting technician employed by a journeyman plumber or journeyman gas fitter pursuant to Subsection A of this section shall be limited to work directly related to the relighting of pilot lights for residential equipment and appliances serving residences with not more than four dwelling units.

D. If authorized in the declaration of emergency or disaster issued by the governor and subject to funds being made available pursuant to such a declaration, the secretary of homeland security and emergency management may adopt rules permitting state funds to be used to pay the cost of journeyman plumbers, journeyman gas fitters or gas pilot relighting technicians for services rendered during the declared period of the emergency or disaster to restore natural gas service to residences within the area covered by the declaration of emergency or disaster.

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HLC/House Bill 652, w/cc

Approved April 6, 2011

## **LAWS 2011, CHAPTER 105**

AN ACT

RELATING TO FINANCIAL INSTITUTIONS; AMENDING THE NEW MEXICO SMALL LOAN ACT OF 1955; REQUIRING LICENSEES TO FILE ANNUAL REPORTS; PROVIDING PENALTIES; REQUIRING THE FINANCIAL INSTITUTIONS DIVISION OF THE REGULATION AND LICENSING DEPARTMENT TO PREPARE AN ANNUAL REPORT.

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

### **Chapter 105 Section 1 Laws 2011**

SECTION 1. A new section of the New Mexico Small Loan Act of 1955 is enacted to read:

"LICENSEE REPORTING REQUIREMENTS--PENALTIES.--

A. Licensees shall file with the director each year a report containing at least the following information for the preceding calendar year in an aggregated, nonidentifying consumer manner:

(1) a description of each loan product offered by the licensee, including:

(a) all fees;

(b) the minimum, maximum and average annual interest rate as disclosed pursuant to 12 C.F.R. 226, known as "Regulation Z";

(c) the frequency of periodic payments;

(d) the term of the loan; and

(e) any other standard conditions of the loan product;

(2) the total number of transactions entered into for each loan product in the following amounts:

(a) five hundred dollars (\$500) or less;

(b) five hundred one dollars (\$501) to one thousand dollars (\$1,000);

(c) one thousand one dollars (\$1,001) to three thousand dollars (\$3,000);

(d) three thousand one dollars (\$3,001) to five thousand dollars (\$5,000); and

(e) greater than five thousand dollars (\$5,000);

(3) the total number of loans and the total dollar amount of loan principal for each loan product;

(4) the average principal loan amount for each loan product;

(5) the total number of loans for which the loan principal and accrued interest was not paid in full;

(6) the total dollar amount of principal loaned;

(7) the total dollar amount of loan principal repaid;

(8) the total dollar amount of interest received;

(9) the total dollar amount and description of fees received;

(10) the total number of loans that were secured by collateral of some type and the total number of such loans in which the security was foreclosed upon or repossessed;

(11) the total amount of loan principal and the total amount of accrued interest written-off or charged-off;

(12) the percent of consumers who were new consumers;

(13) the number of loans that were renewed, refinanced or extended prior to being repaid in full; and

(14) procedures the licensee follows as a standard practice to establish each consumer's ability to repay a loan.

B. The report required pursuant to Subsection A of this section shall be submitted to the director on or before the thirty-first day of March each year.



C. The report required pursuant to Subsection A of this section shall be accompanied by a sworn statement by the licensee under penalty of perjury that the report is complete and accurate.

D. A licensee that fails to timely submit a complete and accurate report as required pursuant to Subsection A of this section shall:

(1) be fined an amount not to exceed one thousand five hundred dollars (\$1,500) per day for each day after the thirty-first day of March a complete and accurate report is not filed; and

(2) have a license required pursuant to the New Mexico Small Loan Act of 1955 suspended pursuant to Section 58-15-8 NMSA 1978 if a complete and accurate report has not been filed by the thirty-first day of March.

E. The information required to be submitted by licensees pursuant to the provisions of this section shall not include information concerning payday loans or loans or loan products with an annual interest rate of one hundred seventy-five percent or less as disclosed pursuant to 12 C.F.R. 226, known as "Regulation Z".

## **Chapter 105 Section 2 Laws 2011**

SECTION 2. Section 58-15-39 NMSA 1978 (being Laws 2007, Chapter 86, Section 21) is amended to read:

"58-15-39. DUTIES OF DIVISION.--

A. The division shall:

(1) maintain a list of licensees, which list shall be available to interested persons and the public; and

(2) establish a complaint process whereby an aggrieved consumer or other person may file a complaint against a licensee.

B. The division shall annually provide a report to the legislature detailing statistics, including data adequate to obtain an accurate understanding of the practices, demographics and legal compliance of all licensees licensed in the state. The division shall compile an annual report by October 1 of each year containing, at a minimum, data regarding all payday loan products entered into in the preceding calendar year on an aggregate basis. Annual reports shall be made available to interested parties and the general public and published on the division's web site. Consistent with state law, the report shall include, at a minimum, nonidentifying consumer data from the preceding year, including:

(1) the total number and dollar amount of payday loan products entered into in the calendar year ending December 31 of the previous year;

(2) the total number and dollar amount of payday loan products outstanding as of December 31 of the previous year;

(3) the effective annualized percentage rate and the average number of days of a payday loan during the calendar year ending December 31 of the previous year;

(4) the number of payday loan products entered into in the amount of one hundred dollars (\$100) or less, the number of payday loan products entered into in the amount of one hundred one dollars (\$101) to five hundred dollars (\$500), the number of payday loan products entered into in the amount of five hundred one dollars (\$501) to one thousand dollars (\$1,000), the number of payday loan products entered into in the amount of one thousand one dollars (\$1,001) to one thousand five hundred dollars (\$1,500), the number of payday loan products in an amount greater than one thousand five hundred dollars (\$1,500) and the percentage of total payday loan products entered into in each of those ranges;

(5) an estimate of the total dollar amount of fees collected for payday loan products;

(6) the total number of payday loan products entered into and the total dollar amount of the net charge-offs or write-offs and of the net recoveries of licensees;

(7) the minimum, maximum and average dollar amounts of payday loan products entered into in the calendar year ending December 31 of the previous year;

(8) the average payday loan product amount, average number of transactions and average aggregate payday loan product amount entered into per consumer each year;

(9) the average number of days a consumer is engaged in a payday loan product each year;

(10) an estimate of the average total fees paid by a payday loan product consumer;

(11) the number of consumers who are eligible for payment plans and the number of consumers who enter into payment plans pursuant to Section 58-15-35 NMSA 1978; and

(12) the number of consumers who are subject to the restrictions of the waiting period pursuant to Section 8-15-36 NMSA 1978.

C. The division shall compile from reports filed by licensees pursuant to Section 1 of this 2011 act an annual report by October 1 of each year containing, at a minimum, data regarding all loans, other than payday loan products or loans or loan products with an annual interest rate of one hundred seventy-five percent or less as disclosed pursuant to 12 C.F.R. 226, known as "Regulation Z", entered into in the preceding calendar year on an aggregate basis. Annual reports shall be made available to interested parties and the general public and published on the division's web site. Consistent with state law, the report shall include, at a minimum, nonidentifying consumer data from the preceding calendar year, including:

(1) a general description of loan products offered by licensees during the preceding calendar year and the minimum, maximum and average annual interest rate for each loan product;

(2) the number of loans entered into in the amount of five hundred dollars (\$500) or less, the number of loans entered into in the amount of five hundred one dollars (\$501) to one thousand dollars (\$1,000), the number of loans entered into in the amount of one thousand one dollars (\$1,001) to three thousand dollars (\$3,000), the number of loans entered into in the amount of three thousand one dollars (\$3,001) to five thousand dollars (\$5,000), the number of loans in an amount greater than five thousand dollars (\$5,000) and the number of loans listed by licensee entered into in each of those ranges;

(3) the total number and dollar amount of loans entered into in the previous calendar year for each loan product;

(4) the average principal loan amount for each loan product;

(5) the total number of loans for which the loan principal and accrued interest was not paid in full;

(6) the total dollar amount of loan principal repaid and of interest and fees received;

(7) the total number of loans secured by collateral of some type and the total number of such loans in which the security was foreclosed upon or repossessed;

(8) the total amount of loan principal and the total amount of accrued interest written-off or charged-off;

(9) the percent of customers who were new customers;

(10) the number of loans renewed, refinanced or extended prior to being repaid in full; and

(11) procedures followed by licensees to establish consumers' ability to repay loans."

### **Chapter 105 Section 3 Laws 2011**

SECTION 3. TEMPORARY PROVISION--LICENSEE AND DIVISION REPORTS.--The reports required to be prepared pursuant to Section 1 of this act and Subsection C of Section 58-15-39 NMSA 1978 shall, for the reports required to be filed in 2011, cover only the last six months of the preceding calendar year.

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HBIC/House Bill 337, aa

Approved April 6, 2011

## **LAWS 2011, CHAPTER 106**

AN ACT

RELATING TO PUBLIC MONEY; REQUIRING NOTIFICATIONS TO THE SECRETARY OF FINANCE AND ADMINISTRATION OF THE FAILURE TO TIMELY SUBMIT CERTAIN AUDITS OR CERTAIN FINANCIAL REPORTS; PROVIDING FOR PECUNIARY SANCTIONS AGAINST STATE AGENCIES AND STATE INSTITUTIONS FOR FAILING TO TIMELY SUBMIT AUDITS; PROVIDING FOR PECUNIARY SANCTIONS AGAINST MUNICIPALITIES AND COUNTIES FOR FAILING TO TIMELY SUBMIT AUDITS OR FINANCIAL REPORTS; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2009.

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

### **Chapter 106 Section 1 Laws 2011**

SECTION 1. Section 6-3-6 NMSA 1978 (being Laws 1957, Chapter 253, Section 7, as amended) is amended to read:

"6-3-6. STATE BUDGET DIVISION--PERIODIC ALLOTMENTS.--

A. The state budget division, subject to the approval of the secretary of finance and administration, is authorized to provide rules for the periodic allotment of funds that may be expended by any state agency.

B. The expenditures of any state agency as defined in Section 6-3-1 NMSA 1978, for the first six-month period of each odd-numbered fiscal year shall be limited to one-half of the appropriation or approved budget, whichever is less, for that fiscal year. This restriction does not apply to those agencies whose operations are more efficiently measured by periods other than a fiscal year, including but not limited to the New Mexico legislative council, legislative committees, the intertribal ceremonial and the New Mexico state fair. Expenditures of the intertribal ceremonial office and the New Mexico state fair shall be governed by regulation of the department of finance and administration. The department of finance and administration may also allow expenditure of more than one-half of the appropriation or approved budget for those agencies planning major expenditures for capital outlay in the first six months of the fiscal year, which would result in over-expenditure of the first six-month allocation.

C. Upon the direction of the secretary of finance and administration pursuant to Section 9-6-5.2 NMSA 1978, the state budget division shall temporarily withhold an allotment to a state agency or state institution that has failed to submit an audit report required by the Audit Act. The amount withheld and the number of periodic allotments subject to the withholding shall be as directed by the secretary."

## **Chapter 106 Section 2 Laws 2011**

SECTION 2. Section 6-6-2 NMSA 1978 (being Laws 1957, Chapter 250, Section 2, as amended) is amended to read:

"6-6-2. LOCAL GOVERNMENT DIVISION--POWERS AND DUTIES.--The local government division of the department of finance and administration has the power and duty in relation to local public bodies to:

A. require each local public body to furnish and file with the division, on or before June 1 of each year, a proposed budget for the next fiscal year;

B. examine each proposed budget and, on or before July 1 of each year, approve and certify to each local public body an operating budget for use pending approval of a final budget;

C. hold public hearings on proposed budgets;

D. make corrections, revisions and amendments to the proposed budgets as may be necessary to meet the requirements of law;

E. certify a final budget for each local public body to the appropriate governing body prior to the first Monday in September of each year. The budgets, when approved, are binding upon all tax officials of the state;

F. require periodic financial reports, at least quarterly, of local public bodies. The reports shall contain the pertinent details regarding applications for federal

money or federal grants-in-aid or regarding federal money or federal grants-in-aid received, including details of programs, matching funds, personnel requirements, salary provisions and program numbers, as indicated in the catalog of federal domestic assistance, of the federal funds applied for and of those received;

G. notify the secretary of finance and administration if a municipality or county has failed to submit two consecutive financial reports required by Subsection F of this section;

H. upon the approval of the secretary of finance and administration, authorize the transfer of funds from one budget item to another when the transfer is requested and a need exists meriting the transfer and the transfer is not prohibited by law. In case of a need necessitating the expenditure for an item not provided for in the budget, upon approval of the secretary of finance and administration, the budget may be revised to authorize the expenditures;

I. with written approval of the secretary of finance and administration, increase the total budget of any local public body in the event the local public body undertakes an activity, service, project or construction program that was not contemplated at the time the final budget was adopted and approved and which activity, service, project or construction program will produce sufficient revenue to cover the increase in the budget or the local public body has surplus funds on hand not necessary to meet the expenditures provided for in the budget with which to cover the increase in the budget; provided, however, that the attorney general shall review legal questions identified by the secretary arising in connection with such budget increase requests;

J. supervise the disbursement of funds to the end that expenditures will not be made in excess of budgeted items or for items not budgeted and that there will not be illegal expenditures;

K. prescribe the form for all budgets, books, records and accounts for local public bodies; and

L. with the approval of the secretary of finance and administration, make rules relating to budgets, records, reports, handling and disbursement of public funds or in any manner relating to the financial affairs of the local public bodies."

## **Chapter 106 Section 3 Laws 2011**

SECTION 3. Section 7-1-6.15 NMSA 1978 (being Laws 1983, Chapter 211, Section 20, as amended) is amended to read:

"7-1-6.15. ADJUSTMENTS OF DISTRIBUTIONS OR TRANSFERS TO MUNICIPALITIES OR COUNTIES.--

A. The provisions of this section apply to:

(1) any distribution to a municipality of gross receipts taxes pursuant to Section 7-1-6.4 NMSA 1978 or of interstate telecommunications gross receipts tax pursuant to Section 7-1-6.36 NMSA 1978;

(2) any transfer to a municipality with respect to any local option gross receipts tax imposed by that municipality;

(3) any transfer to a county with respect to any local option gross receipts tax imposed by that county;

(4) any distribution to a county pursuant to Section 7-1-6.16 NMSA 1978;

(5) any distribution to a municipality or a county of gasoline taxes pursuant to Section 7-1-6.9 NMSA 1978;

(6) any transfer to a county with respect to any tax imposed in accordance with the Local Liquor Excise Tax Act;

(7) any distribution to a municipality or a county of cigarette taxes pursuant to Sections 7-1-6.11, 7-12-15 and 7-12-16 NMSA 1978;

(8) any distribution to a county from the county government road fund pursuant to Section 7-1-6.26 NMSA 1978;

(9) any distribution to a municipality of gasoline taxes pursuant to Section 7-1-6.27 NMSA 1978; and

(10) any distribution to a municipality of compensating taxes pursuant to Section 7-1-6.55 NMSA 1978.

B. If the secretary determines that any prior distribution or transfer to a political subdivision was erroneous, the secretary shall increase or decrease the next distribution or transfer amount for that political subdivision after the determination, except as provided in Subsection C, D or E of this section, by the amount necessary to correct the error. Subject to the provisions of Subsection E of this section, the secretary shall notify the political subdivision of the amount of each increase or decrease.

C. No decrease shall be made to current or future distributions or transfers to a political subdivision for any excess distribution or transfer made to that political subdivision more than one year prior to the calendar year in which the determination of the secretary was made.

D. The secretary, in lieu of recovery from the next distribution or transfer amount, may recover an excess distribution or transfer of one hundred dollars (\$100) or more to the political subdivision in installments from current and future distributions or

transfers to that political subdivision pursuant to an agreement with the officials of the political subdivision whenever the amount of the distribution or transfer decrease for the political subdivision exceeds ten percent of the average distribution or transfer amount for that political subdivision for the twelve months preceding the month in which the secretary's determination is made; provided that for the purposes of this subsection, the "average distribution or transfer amount" shall be the arithmetic mean of the distribution or transfer amounts within the twelve months immediately preceding the month in which the determination is made.

E. Except for the provisions of this section, if the amount by which a distribution or transfer would be adjusted pursuant to Subsection B of this section is one hundred dollars (\$100) or less, no adjustment or notice need be made.

F. The secretary is authorized to decrease a distribution to a municipality or county upon being directed to do so by the secretary of finance and administration pursuant to the State Aid Intercept Act or to redirect a distribution to the New Mexico finance authority pursuant to an ordinance or a resolution passed by the county or municipality and a written agreement of the municipality or county and the New Mexico finance authority. Upon direction to decrease a distribution or notice to redirect a distribution to a municipality or county, the secretary shall decrease or redirect the next designated distribution, and succeeding distributions as necessary, by the amount of the state distributions intercept authorized by the secretary of finance and administration pursuant to the State Aid Intercept Act or by the amount of the state distribution intercept authorized pursuant to an ordinance or a resolution passed by the county or municipality and a written agreement with the New Mexico finance authority. The secretary shall transfer the state distributions intercept amount to the municipal or county treasurer or other person designated by the secretary of finance and administration or to the New Mexico finance authority pursuant to written agreement to pay the debt service to avoid default on qualified local revenue bonds or meet other local revenue bond, loan or other debt obligations of the municipality or county to the New Mexico finance authority.

G. Upon the direction of the secretary of finance and administration pursuant to Section 9-6-5.2 NMSA 1978, the secretary shall temporarily withhold a distribution to a municipality or county that has failed to submit an audit report required by the Audit Act or a financial report required by Subsection F of Section 6-6-2 NMSA 1978. The amount to be withheld, the source of the withheld distribution and the number of months that the distribution is to be withheld shall be as directed by the secretary of finance and administration. A distribution withheld pursuant to this subsection shall remain in the tax administration suspense fund until distributed to the municipality or county and shall not be distributed to the general fund."

## **Chapter 106 Section 4 Laws 2011**

SECTION 4. Section 9-6-1 NMSA 1978 (being Laws 1977, Chapter 247, Section 1) is amended to read:



"9-6-1. SHORT TITLE.--Sections 9-6-1 through 9-6-5.2 and 9-6-15 NMSA 1978 may be cited as the "Department of Finance and Administration Act"."

## **Chapter 106 Section 5 Laws 2011**

SECTION 5. A new section of the Department of Finance and Administration Act, Section 9-6-5.2 NMSA 1978, is enacted to read:

"9-6-5.2. FAILURE TO TIMELY SUBMIT AUDIT REPORTS OR FINANCIAL REPORTS--ENFORCEMENT POWERS OF SECRETARY.--

A. Upon notification by the state auditor pursuant to Subsection G of Section 12-6-3 NMSA 1978 that a state agency, state institution, municipality or county has failed to submit an audit report as required by the Audit Act, the secretary of finance and administration shall order the agency, institution, municipality or county to submit monthly financial reports to the department of finance and administration until all past-due audit reports have been submitted to the state auditor and the secretary is satisfied that the agency, institution, municipality or county is in compliance with all financial and audit requirements.

B. If, ninety days after an order has been issued pursuant to Subsection A of this section to a state agency or state institution subject to periodic allotments, the agency or institution has not submitted all past-due reports or has not otherwise made progress, satisfactory to the state auditor, toward compliance with the Audit Act, the secretary may direct the state budget division to temporarily withhold periodic allotments to the agency or institution pursuant to Section 6-3-6 NMSA 1978. The amounts withheld and the period of time for which the allotments are to be withheld shall be determined by the secretary subject to the following guidelines:

(1) the initial amount withheld shall not exceed five percent of the allotment and shall be for a period of no more than three months;

(2) every three months, the secretary shall determine if the agency or institution has submitted all past-due audit reports or has otherwise made progress, satisfactory to the state auditor, toward compliance with the Audit Act. If the secretary determines that past-due reports have not been submitted and that there has been inadequate progress, the secretary may direct that the amount being currently withheld be increased by an additional amount, up to another five percent of the allotment, for an additional period of up to three months; and

(3) upon a determination that all past-due audit reports have been submitted or that the agency or institution is otherwise making progress, satisfactory to the state auditor, toward compliance with the Audit Act, the secretary shall direct that all withheld amounts be distributed to the agency or institution and that future allotments shall be made in full.

C. If, ninety days after an order has been issued pursuant to Subsection A of this section to a municipality or county, the municipality or county has not submitted all past-due reports or has not otherwise made progress, satisfactory to the state auditor, toward compliance with the Audit Act, the secretary may direct the secretary of taxation and revenue to temporarily withhold distributions to the municipality or county pursuant to Section 7-1-6.15 NMSA 1978. The amounts withheld, the source of the amounts and the period of time for which the distributions are to be withheld shall be determined by the secretary of finance and administration subject to the following guidelines:

(1) transfers to a county or municipality of receipts from any local option gross receipts tax or from a tax imposed pursuant to the Local Liquor Excise Tax Act shall not be withheld;

(2) the source and amount of a withheld distribution shall be determined in a manner that will not:

(a) impair any outstanding bonds or other obligations of the municipality or county; or

(b) interrupt a redirected distribution to the New Mexico finance authority pursuant to an ordinance or a resolution passed by the county or municipality and a written agreement of the municipality or county and the New Mexico finance authority;

(3) the initial amount withheld shall not exceed five percent of the amount that would otherwise be distributed to the municipality or county pursuant to the Tax Administration Act and shall be for a period of no more than three months;

(4) every three months, the secretary of finance and administration shall determine if the municipality or county has submitted all past-due audit reports or has otherwise made progress, satisfactory to the state auditor, toward compliance with the Audit Act. If the secretary determines that past-due reports have not been submitted and that there has been inadequate progress, the secretary may direct that the amount being currently withheld be increased by an additional amount, up to another five percent of the amount that would otherwise be distributed, for an additional period of up to three months; and

(5) upon a determination that all past-due audit reports have been submitted or that the municipality or county is otherwise making progress, satisfactory to the state auditor, toward compliance with the Audit Act, the secretary shall direct that all withheld amounts be distributed to the municipality or county and that future distributions shall be made in full.

D. After receiving notice from the local government division of the department of finance and administration required by Subsection G of Section 6-6-2

NMSA 1978 that a municipality or county has failed to submit two consecutive financial reports pursuant to Subsection F of that section, the secretary may direct the secretary of taxation and revenue to temporarily withhold distributions to the municipality or county pursuant to Section 7-1-6.15 NMSA 1978. The amounts withheld, the source of the amounts and the period of time for which the distributions are to be withheld shall be determined by the secretary of finance and administration subject to the following guidelines:

(1) transfers to a county or municipality of receipts from any local option gross receipts tax or from a tax imposed pursuant to the Local Liquor Excise Tax Act shall not be withheld;

(2) the source and amount of a withheld distribution shall be determined in a manner that will not:

(a) impair any outstanding bonds or other obligations of the municipality or county; or

(b) interrupt a redirected distribution to the New Mexico finance authority pursuant to an ordinance or a resolution passed by the county or municipality and a written agreement of the municipality or county and the New Mexico finance authority;

(3) the initial amount withheld shall not exceed five percent of the amount that would otherwise be distributed to the municipality or county pursuant to the Tax Administration Act and shall be for a period of no more than three months;

(4) every three months, the secretary of finance and administration shall determine if the municipality or county has submitted all past-due financial reports or has otherwise made progress, satisfactory to the local government division, toward compliance with the law. If the secretary determines that past-due reports have not been submitted and that there has been inadequate progress, the secretary may direct that the amount being currently withheld be increased by an additional amount, up to another five percent of the amount that would otherwise be distributed, for an additional period of up to three months; and

(5) upon a determination that all past-due financial reports have been submitted or that the municipality or county is otherwise making progress, satisfactory to the local government division, toward compliance with the law, the secretary shall direct that all withheld amounts be distributed to the municipality or county and that future distributions shall be made in full."

## **Chapter 106 Section 6 Laws 2011**

SECTION 6. Section 12-6-3 NMSA 1978 (being Laws 1969, Chapter 68, Section 3, as amended by Laws 2009, Chapter 273, Section 1 and by Laws 2009, Chapter 283, Section 3) 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 auditing 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.

F. The state auditor shall notify the legislative finance committee and the public education department if:

(1) a school district, charter school or regional education cooperative has failed to submit a required audit report within ninety days of the due date specified by the state auditor; and

(2) the state auditor has investigated the matter and attempted to negotiate with the school district, charter school or regional education cooperative but the school district, charter school or regional education cooperative has not made satisfactory progress toward compliance with the Audit Act.

G. The state auditor shall notify the legislative finance committee and the secretary of finance and administration if:

(1) a state agency, state institution, municipality or county has failed to submit a required audit report within ninety days of the due date specified by the state auditor; and

(2) the state auditor has investigated the matter and attempted to negotiate with the state agency, state institution, municipality or county but the state agency, state institution, municipality or county has not made satisfactory progress toward compliance with the Audit Act."

## **Chapter 106 Section 7 Laws 2011**

SECTION 7. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2012.

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House Bill 411

Approved April 6, 2011

## **LAWS 2011, CHAPTER 107**

AN ACT

RELATING TO ATTORNEYS; PROVIDING PRIVATE REMEDIES AND PENALTIES FOR THE UNAUTHORIZED PRACTICE OF LAW.

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

### **Chapter 107 Section 1 Laws 2011**

SECTION 1. A new section of Chapter 36, Article 2 NMSA 1978 is enacted to read:

"UNAUTHORIZED PRACTICE OF LAW--PRIVATE REMEDIES.--

A. A person likely to be damaged by an unauthorized practice of law in violation of Section 36-2-27 NMSA 1978 may bring an action for an injunction against the alleged violator. An injunction shall be granted pursuant to the principles of equity and on terms that the court considers reasonable. Proof of monetary damage or loss of profit is not required for an injunction to be granted pursuant to this subsection.

B. A person who suffers a loss of money or other property as a result of an unauthorized practice of law in violation of Section 36-2-27 NMSA 1978 may bring an action for the greater of actual damages or one thousand dollars (\$1,000) and for the restitution of any money or property received by the alleged violator, provided that if the court finds that the alleged violator willfully engaged in the unauthorized practice of law, the court may award up to three times the actual damages or three thousand dollars (\$3,000), whichever is greater.

C. A person bringing an action pursuant to Subsection A or B of this section shall, if the person prevails, also be awarded attorney fees and costs.

D. The relief provided by this section is in addition to other remedies available at law or equity."

## **Chapter 107 Section 2 Laws 2011**

SECTION 2. A new section of Chapter 36, Article 2 NMSA 1978 is enacted to read:

"UNAUTHORIZED PRACTICE OF LAW--ACTION BY ATTORNEY GENERAL OR BAR ASSOCIATION.--

A. Whenever the attorney general, the state bar of New Mexico or a local bar association authorized by the state bar of New Mexico to prosecute actions related to the unauthorized practice of law has reason to believe that a person has engaged in the unauthorized practice of law in violation of Section 36-2-27 NMSA 1978 or has aided or abetted another person in the unauthorized practice of law and the initiation of legal proceedings would be in the public interest, the attorney general or bar association may bring an action in the name of the state against the alleged violator. The action may be brought in the district court for the county in which the alleged violator resides or has a principal place of business or in the district court for a county in which the alleged violation took place. In an action brought pursuant to this section, in addition to civil penalties, the attorney general or bar association may petition the court for a temporary or permanent injunction and restitution and, if seeking a temporary or permanent injunction, the attorney general or bar association shall not be required to post bond.

B. In lieu of filing or continuing an action pursuant to this section, the attorney general or bar association may accept a written assurance of discontinuance of the unauthorized practice of law from the alleged violator. The assurance may contain an agreement by the alleged violator that restitution of money or property received from them in any transaction related to the unauthorized practice will be made to all persons, provided that a person harmed by the unauthorized practice is not required to accept restitution. If the offer of restitution is accepted, the person accepting the restitution is barred from recovering damages from the alleged violator in an action based upon the same unauthorized practice.

C. In an action brought by the attorney general or bar association pursuant to this section, if the court finds the alleged violator engaged in the unauthorized practice of law, the court may impose a civil penalty not to exceed five thousand dollars (\$5,000) per violation. In addition, if the court finds that a person has aided or abetted another to engage in the unauthorized practice of law, the court may impose a civil penalty not to exceed one thousand dollars (\$1,000) for the first violation and a civil penalty not to exceed five thousand dollars (\$5,000) for each subsequent violation."

## **Chapter 107 Section 3 Laws 2011**

SECTION 3. REPEAL.--Section 36-2-28 NMSA 1978 (being Laws 1925, Chapter 100, Section 12) is repealed.

## **Chapter 107 Section 4 Laws 2011**



SECTION 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.

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House Bill 413

Approved April 6, 2011

## **LAWS 2011, CHAPTER 108**

AN ACT

RELATING TO TAXATION; AMENDING THE ALTERNATIVE ENERGY PRODUCT MANUFACTURERS TAX CREDIT ACT TO INCLUDE A PRODUCT EXTRACTED FROM OR SECRETED BY A SINGLE CELL PHOTOSYNTHETIC ORGANISM AS AN ELIGIBLE ALTERNATIVE ENERGY PRODUCT.

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

### **Chapter 108 Section 1 Laws 2011**

SECTION 1. Section 7-9J-2 NMSA 1978 (being Laws 2007, Chapter 204, Section 12) is amended to read:

"7-9J-2. DEFINITIONS.--As used in the Alternative Energy Product Manufacturers Tax Credit Act:

A. "alternative energy product" means an alternative energy vehicle, fuel cell system, renewable energy system or any component of an alternative energy vehicle, fuel cell system or renewable energy system; components for integrated gasification combined cycle coal facilities and equipment related to the sequestration of carbon from integrated gasification combined cycle plants; or, beginning in taxable year 2011 and ending in taxable year 2019, a product extracted from or secreted by a single cell photosynthetic organism;

B. "alternative energy vehicle" means a motor vehicle manufactured by an original equipment manufacturer that fully warrants and certifies that the motor vehicle meets the federal motor vehicle safety standards and is designed to be propelled in whole or in part by electricity; "alternative energy vehicle" includes a gasoline-electric hybrid motor vehicle exempt from the motor vehicle excise tax pursuant to Subsection G of Section 7-14-6 NMSA 1978;

C. "component" means a part, assembly of parts, material, ingredient or supply that is incorporated directly into an end product;

D. "department" means the taxation and revenue department, the secretary of taxation and revenue or an employee of the department exercising authority lawfully delegated to that employee by the secretary;

E. "fuel cell system" means a system that converts hydrogen, natural gas or waste gas to electricity without combustion, including:

(1) a fuel cell or a system used to generate or reform hydrogen for use in a fuel cell; or

(2) a system used to generate or reform hydrogen for use in a fuel cell, including:

(a) electrolyzers that use renewable energy; and

(b) reformers that use natural gas as the feedstock;

F. "manufacturing" means combining or processing components or materials to increase their value for sale in the ordinary course of business, but "manufacturing" does not include construction, farming, power generation or processing natural resources;

G. "manufacturing equipment" means an essential machine, mechanism or tool or a component of an essential machine, mechanism or tool used directly and exclusively in a taxpayer's manufacturing operation and that is subject to depreciation pursuant to the Internal Revenue Code of 1986 by the taxpayer carrying on the manufacturing; provided that "manufacturing equipment" does not include a vehicle that leaves the site of a manufacturing operation for the purpose of transporting persons or property, including property for which the taxpayer claims a credit pursuant to Section 7-9-79 NMSA 1978;

H. "manufacturing operation" means a plant employing personnel to perform production tasks, in conjunction with manufacturing equipment not previously existing at the site, to produce alternative energy products;

I. "modified combined tax liability" means the total liability for the reporting period for the gross receipts tax imposed by Section 7-9-4 NMSA 1978 together with any tax collected at the same time and in the same manner as that gross receipts tax, such as the compensating tax, the withholding tax, the interstate telecommunications gross receipts tax, the surcharge imposed by Section 63-9D-5 NMSA 1978 and the surcharge imposed by Section 63-9F-11 NMSA 1978, minus the amount of any credit other than the alternative energy product manufacturers tax credit applied against any or all of those taxes or surcharges; provided that "modified combined tax liability" excludes all amounts collected with respect to local option gross receipts taxes;

J. "pass-through entity" means a business association other than:

(1) a sole proprietorship;

(2) an estate or trust;

(3) a corporation, limited liability company, partnership or other entity that is not a sole proprietorship taxed as a corporation for federal income tax purposes for the taxable year; or

(4) a partnership that is organized as an investment partnership in which the partner's income is derived solely from interest, dividends and sales of securities;

K. "qualified expenditure" means an expenditure for the purchase of manufacturing equipment made after July 1, 2006 by a taxpayer approved by the department;

L. "renewable energy" means energy from solar heat, solar light, wind, geothermal energy, landfill gas or biomass either singly or in combination that produces low or zero emissions and has substantial long-term production potential;

M. "renewable energy system" means a system using only renewable energy to produce hydrogen or to generate electricity, including related cogeneration systems that create mechanical energy or that produce heat or steam for space or water heating and agricultural or small industrial processes and includes a:

(1) photovoltaic energy system;

(2) solar-thermal energy system;

(3) biomass energy system;

(4) wind energy system;

(5) hydrogen production system; or

(6) battery cell energy system; and

N. "taxpayer" means a person, including a shareholder, member, partner or other owner of a pass-through entity, that is liable for payment of a tax or to whom an assessment has been made if the assessment remains unabated or the amount thereof has not been paid."

Approved April 6, 2011

## **LAWS 2011, CHAPTER 109**

### **AN ACT**

RELATING TO ALCOHOLIC BEVERAGES; CREATING A DIRECT WINE SHIPMENT PERMIT; ESTABLISHING A PERMIT FEE; PROVIDING LIMITS ON THE DIRECT SHIPMENT OF WINE; SUBJECTING PERMITTEES TO TAXATION; REQUIRING LABELING OF A SHIPPED CONTAINER OF WINE.

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

### **Chapter 109 Section 1 Laws 2011**

SECTION 1. A new section of the Liquor Control Act, Section 60-6A-11.1 NMSA 1978, is enacted to read:

"60-6A-11.1. DIRECT WINE SHIPMENT PERMIT--AUTHORIZATION--RESTRICTIONS.--

A. A licensee with a winegrower's license or a person licensed in a state other than New Mexico that holds a winery license may apply to the director for and the director may issue to the applicant a direct wine shipment permit. An application for a direct wine shipment permit shall include:

(1) contact information for the applicant in a form required by the department;

(2) an annual application fee of fifty dollars (\$50.00) if the applicant does not hold a winegrower's license;

(3) the number of the applicant's winegrower's license if the applicant is located in New Mexico or a copy of the applicant's winery license if the applicant is located in a state other than New Mexico; and

(4) any other information or documents required by the director. Upon approval of an applicant for a permit, the director shall forward to the taxation and revenue department the name of each permittee and the contact information for the permittee.

B. A direct wine shipment permit shall be valid for a permit year. A permittee shall renew a direct wine shipment permit annually as required by the department to continue making direct shipments of wine to New Mexico residents.

C. A permittee may ship:

(1) not more than two nine-liter cases of wine monthly to a New Mexico resident who is twenty-one years of age or older for the recipient's personal consumption or use, but not for resale; and

(2) wine directly to a New Mexico resident only in containers that are conspicuously labeled with the words:

"CONTAINS ALCOHOL

SIGNATURE OF PERSON 21 YEARS OR OLDER REQUIRED

FOR DELIVERY".

D. A permittee shall:

(1) register with the taxation and revenue department for the payment of liquor excise tax and gross receipts taxes due on the sales of wine pursuant to the permittee's activities in New Mexico;

(2) submit to the jurisdiction of New Mexico courts to resolve legal actions that arise from the shipping by the permittee of wine into New Mexico to New Mexico residents;

(3) monthly, by the twenty-fifth day of each month following the month in which the permittee was issued a direct wine shipment permit, pay to the taxation and revenue department the liquor excise tax due and the gross receipts tax due; and

(4) submit to an audit by an agent of the taxation and revenue department of the permittee's records of the wine shipped pursuant to this section to New Mexico residents upon notice and during usual business hours.

E. As used in this section:

(1) "permit year" means the period between July 1 and June 30 of a year; and

(2) "permittee" means a person that is the holder of a direct wine shipment permit."

## **Chapter 109 Section 2 Laws 2011**

SECTION 2. Section 60-7A-3 NMSA 1978 (being Laws 1981, Chapter 39, Section 49, as amended) is amended to read:

"60-7A-3. TRANSPORTATION INTO STATE WITHOUT PERMIT--  
EXPORTATION OF ALCOHOLIC BEVERAGES WITHOUT PERMIT--IMPORTATION  
FOR PRIVATE USE--RECIPROCAL SHIPPING--WHEN UNLAWFUL.--

A. Except as provided in Subsections E and F of this section, it is a violation of the Liquor Control Act for a registered common carrier to knowingly deliver a shipment of alcoholic beverages from another state to a person in this state without receiving at the time of delivery a permit issued by the department covering the quantity and class of alcoholic beverages to be delivered and requiring the shipment be transported from the shipper designated in the permit to the designated consignee and from the designated point of origin to the destination designated in the permit.

B. Except as provided in Subsections D through F of this section, it is a violation of the Liquor Control Act for a person other than a registered common carrier to knowingly transport from another state and deliver in this state alcoholic beverages, unless the person has in the person's possession on entering New Mexico a permit from the department for the quantity and class of alcoholic beverages to be delivered, designating the name of the shipper and consignee and the point of origin and destination of the alcoholic beverages.

C. Except as provided in Subsections D and E of this section, it is a violation of the Liquor Control Act for a person to transport out of state alcoholic beverages on which the excise tax has not been paid, unless the shipment is accompanied by a permit issued by the department for the exact quantity and class transported, showing the consignee's federal and state license numbers and the point of origin and destination of the alcoholic beverages.

D. An individual not a minor may transport into or out of the state a reasonable amount of alcoholic beverages for the exclusive purpose of the individual's private use or consumption, and nothing in the Liquor Control Act limits or applies to such private actions.

E. An individual or licensee, except for a person holding a winery license, in a state that affords New Mexico licensees or individuals an equal reciprocal shipping privilege may ship for personal use and not for resale not more than two cases of wine, each case containing no more than nine liters, per month to an individual not a minor in this state. Delivery of a shipment pursuant to this subsection shall not be deemed to constitute a sale in this state and nothing in the Liquor Control Act limits or applies to such shipments. The shipping container of wine sent into or out of this state under this subsection shall be labeled clearly to indicate that the package cannot be delivered to a minor or to an intoxicated person.

F. The holder of a direct wine shipment permit issued pursuant to Section 60-6A-11.1 NMSA 1978 may ship no more than two nine-liter cases of wine per month to a person living in New Mexico who is twenty-one years of age or older for the person's personal consumption and not for resale.

G. As used in this section, "in this state" means within the exterior boundaries of the state."

## **Chapter 109 Section 3 Laws 2011**

SECTION 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.

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Senate Bill 445, aa

Approved April 6, 2011

## **LAWS 2011, CHAPTER 110**

AN ACT

RELATING TO ALCOHOLIC BEVERAGES; PROVIDING FOR A CRAFT DISTILLER'S LICENSE; AMENDING THE DOMESTIC WINERY AND SMALL BREWERY ACT; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 1998.

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

### **Chapter 110 Section 1 Laws 2011**

SECTION 1. Section 60-6A-21 NMSA 1978 (being Laws 1983, Chapter 280, Section 2, as amended) is amended to read:

"60-6A-21. SHORT TITLE.--Sections 60-6A-21 through 60-6A-28 NMSA 1978 may be cited as the "Domestic Winery, Small Brewery and Craft Distillery Act"."

### **Chapter 110 Section 2 Laws 2011**

SECTION 2. Section 60-6A-22 NMSA 1978 (being Laws 1983, Chapter 280, Section 3, as amended) is amended to read:

"60-6A-22. DEFINITIONS.--As used in the Domestic Winery, Small Brewery and Craft Distillery Act:

A. "brandy" means an alcoholic liquor distilled from wine or from fermented fruit juice;

B. "beer" means any fermented beverage containing more than one-half percent alcohol obtained by the fermentation of any infusion or decoction of barley, malt and hops or other cereal in water, and includes porter, beer, ale and stout;

C. "craft distiller" means a person licensed as a craft distiller who owns or operates a business for the manufacture of spirituous liquors but who does not manufacture more than one hundred fifty thousand proof gallons per license year;

D. "small brewer" means any person who owns or operates a business for the manufacture of beer but does not manufacture more than two hundred thousand barrels of beer per year;

E. "proof gallon" means a gallon of liquid at sixty degrees Fahrenheit that contains fifty percent ethyl alcohol by volume or its equivalent;

F. "public celebration" means any state fair, county fair, community fiesta or cultural or artistic performance;

G. "wine" means the product obtained from normal alcoholic fermentation of the juice of sound ripe grapes or other agricultural products containing natural or added sugar, or any such alcoholic beverage to which is added grape brandy, fruit brandy or spirits of wine that is distilled from the particular agricultural products of which the wine is made, and other rectified wine products by whatever name that do not contain more than fifteen percent added flavoring, coloring and blending material and that contain not more than twenty-four percent alcohol by volume, and includes vermouth;

H. "wine blender" means a person authorized to operate a bonded wine cellar pursuant to a permit issued for that purpose under the internal revenue laws of the United States but who does not have facilities or equipment for the conversion of grapes, berries or other fruit into wine and does not engage in the production of wine in commercial quantities; provided that any person who produces or blends not to exceed three hundred gallons of wine per year shall not, because of such production or blending, be considered a wine blender; and

I. "winer" means a person licensed as a winegrower."

## **Chapter 110 Section 3 Laws 2011**

SECTION 3. A new section of the Domestic Winery, Small Brewery and Craft Distillery Act is enacted to read:

"CRAFT DISTILLER'S LICENSE.--

A. In any local option district, a person qualified under the provisions of the Liquor Control Act, except as otherwise provided in the Domestic Winery, Small



Brewery and Craft Distillery Act, may apply for and be issued a craft distiller's license subject to the following conditions:

(1) the applicant submits evidence to the department that the applicant has a valid and appropriate permit issued by the federal government to be a craft distiller;

(2) renewal of the license shall be conditioned upon:

(a) no less than sixty percent of the gross receipts from the sale of spirituous liquors for the preceding twelve months of the licensee's operation being derived from the sale of spirituous liquors produced by the licensee;

(b) the manufacture of no less than one thousand proof gallons of spirituous liquors per license year at the licensee's premises; and

(c) submission to the department by the licensee of a report showing the number of proof gallons of spirituous liquors manufactured by the licensee at the licensee's premises and the annual gross receipts from the sale of spirituous liquors produced by the licensee and from the licensee's sale of distilled spirituous liquors produced by other New Mexico licensed craft distillers;

(3) a craft distiller's license shall not be transferred from person to person or from one location to another;

(4) the provisions of Section 60-6A-18 NMSA 1978 shall not apply to a craft distiller's license; and

(5) nothing in this section shall prevent a craft distiller from receiving other licenses pursuant to the Liquor Control Act.

B. A person to whom a craft distiller's license is issued pursuant to this section may do any of the following:

(1) manufacture or produce spirituous liquors, including aging, filtering, blending, mixing, flavoring, coloring, bottling and labeling;

(2) store, transport, import or export spirituous liquors;

(3) sell only spirituous liquors that are packaged by or for the craft distiller to a person holding a wholesaler's license, a craft distiller's license or a manufacturer's license;

(4) deal in warehouse receipts for spirituous liquors;

(5) buy spirituous liquors from other persons, including licensees and permittees under the Liquor Control Act, for use in blending, flavoring, mixing or bottling of spirituous liquors;

(6) be deemed a manufacturer for purposes of the Gross Receipts and Compensating Tax Act;

(7) conduct spirituous liquor tastings and sell, by the glass or by the bottle, or in unbroken packages for consumption off the premises but not for resale, spirituous liquors of the craft distiller's own production or spirituous liquors produced by another New Mexico craft distiller or New Mexico manufacturer on the craft distiller's premises; and

(8) at no more than two other locations off the craft distiller's premises, after the craft distiller has paid the applicable fee for a craft distiller's off-premises permit, after the director has determined that the off-premises locations meet the requirements of the Liquor Control Act and department rules for new liquor license locations and after the director has issued a craft distiller's off-premises permit for each off-premises location, conduct spirituous liquor tastings and sell by the glass, or in unbroken packages for consumption and not for resale, spirituous liquors produced and bottled by or for the craft distiller or spirituous liquors produced and bottled by or for another New Mexico craft distiller or manufacturer.

C. For a public celebration off the craft distiller's premises in any local option district permitting the sale of alcoholic beverages, a craft distiller shall pay ten dollars (\$10.00) to the department for a "craft distiller's public celebration permit" to be issued under rules adopted by the director. Upon request, the department may issue to a craft distiller a public celebration permit for a location at the public celebration that is to be shared with other craft distillers, small brewers and winegrowers. As used in this subsection, "public celebration" includes any state or county fair, community fiesta, cultural or artistic event, sporting competition of a seasonal nature or other activity held on an intermittent basis.

D. Sales and tastings of spirituous liquors authorized in this section shall be permitted during the hours set forth in Subsection A of Section 60-7A-1 NMSA 1978 and between the hours of noon and midnight on Sunday and shall conform to the limitations regarding Christmas day sales and the expansion of Sunday sales hours to 2:00 a.m. on January 1, when December 31 falls on a Sunday as set forth in Section 60-7A-1 NMSA 1978."

## **Chapter 110 Section 4 Laws 2011**

SECTION 4. Section 60-6A-27 NMSA 1978 (being Laws 1983, Chapter 280, Section 8, as amended by Laws 1998, Chapter 109, Section 5 and also by Laws 1998, Chapter 111, Section 2) is amended to read:

"60-6A-27. LICENSE FEES.--Every application for the issuance or annual renewal of the following licenses and permits shall be accompanied by a license fee or permit fee in the following specified amounts:

- A. brandy manufacturer's license, seven hundred fifty dollars (\$750);
- B. small brewer's license, seven hundred fifty dollars (\$750);
- C. wine blender's license, seven hundred fifty dollars (\$750);
- D. wine exporter's license, five hundred dollars (\$500);
- E. small brewer's public celebrations permit, ten dollars (\$10.00) for each public celebration;
- F. small brewer's off-premises permit, two hundred dollars (\$200) for each off-premises location;
- G. craft distiller's license, seven hundred fifty dollars (\$750); and
- H. craft distiller's off-premises permit, two hundred dollars (\$200) for each off-premises location."

## **Chapter 110 Section 5 Laws 2011**

### **SECTION 5. TEMPORARY PROVISION--APPLICATIONS FOR LICENSE.--**

A. If a person has submitted an application for a manufacturer's license as a distiller to the director of the alcohol and gaming division of the regulation and licensing department and, on July 1, 2011, the application has not yet been approved, the person may submit a request in writing to the director no later than July 31, 2011 to convert the application from a manufacturer's license as a distiller to an application for a craft distiller's license in accordance with procedures adopted by the director.

B. If, within one hundred twenty days prior to or subsequent to July 1, 2011, a person obtains approval for a manufacturer's license as a distiller, the person may submit a request in writing to the director of the alcohol and gaming division of the regulation and licensing department to convert the manufacturer's license as a distiller to a craft distiller's license pursuant to procedures adopted by the director and upon payment of licensing fees as provided in Section 60-6A-27 NMSA 1978. There shall be no refunds of application or licensing fees unless otherwise provided by law.

## **Chapter 110 Section 6 Laws 2011**

SECTION 6. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.

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SCORC/Senate Bill 546

Approved April 6, 2011

## **LAWS 2011, CHAPTER 111**

AN ACT

RELATING TO TRADE PRACTICES; AMENDING SECTIONS OF CHAPTER 57, ARTICLE 16 NMSA 1978 TO PROVIDE FOR COMPENSATION FOR PARTS UNDER WARRANTY CLAIMS; PROVIDING A TIME PERIOD FOR AN AUDIT OF A WARRANTY CLAIM.

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

### **Chapter 111 Section 1 Laws 2011**

SECTION 1. Section 57-16-7 NMSA 1978 (being Laws 1973, Chapter 6, Section 7, as amended) is amended to read:

"57-16-7. WARRANTY CLAIMS--PAYMENT.--

A. Each manufacturer shall specify in its franchise agreement, or in a separate written agreement, with each of its dealers licensed in this state, the dealer's obligation to perform warranty work or service on the manufacturer's products. Each manufacturer shall provide each of its dealers with a schedule of compensation to be paid to the dealer for any warranty work or service, including parts, labor and diagnostic work, required of the dealer by the manufacturer in connection with the manufacturer's products. The schedule of compensation for a warranty claim shall not be less than the rates charged by the dealer for similar service to retail customers for nonwarranty service and repairs and shall not be less than the schedule of compensation for an existing dealer as of July 1, 2011.

B. The rates charged by the dealer for nonwarranty service or work for parts means the price paid by the dealer for those parts, including all shipping and other charges, increased by the franchisee's average percentage markup. A dealer shall establish and declare the dealer's average percentage markup by submitting to the manufacturer one hundred sequential customer-paid service repair orders or ninety days of customer-paid service repair orders, whichever is less, covering repairs made no more than one hundred eighty days before the submission. A change in a dealer's established average percentage markup takes effect thirty days following the submission. A manufacturer shall not require a dealer to establish average percentage markup by another methodology. A manufacturer shall not require information that the

dealer believes is unduly burdensome or time-consuming to provide, including, but not limited to, part-by-part or transaction-by-transaction calculations.

C. A manufacturer shall compensate a dealer for labor and diagnostic work at the rates charged by the dealer to its retail customers for such work. If a manufacturer can demonstrate that the rates unreasonably exceed those of all other franchised motor vehicle dealers in the same relevant market area offering the same or a competitive motor vehicle line, the manufacturer is not required to honor the rate increase proposed by the dealer. If the manufacturer is not required to honor the rate increase proposed by the dealer, the dealer is entitled to resubmit a new proposed rate for labor and diagnostic work.

D. A dealer shall not be granted an increase in the average percentage markup or labor and diagnostic work rate more than twice in one calendar year.

E. All claims for warranty work for parts and labor made by dealers under this section shall be submitted to the manufacturer within one year of the date the work was performed. All claims submitted must be paid by the manufacturer within thirty days following receipt, provided that the claim has been approved by the manufacturer. The manufacturer has the right to audit claims for warranty work and to charge the dealer for any unsubstantiated, incorrect or false claims for a period of six months following payment. However, the manufacturer may audit and charge the dealer for any fraudulent claims during any period for which an action for fraud may be commenced under applicable state law.

F. All claims submitted by dealers on the forms and in the manner specified by the manufacturer shall be either approved or disapproved within thirty days following their receipt. The manufacturer shall notify the dealer in writing of any disapproved claim and shall set forth the reasons why the claim was not approved. Any claim not specifically disapproved in writing within thirty days following receipt is approved, and the manufacturer is required to pay that claim within thirty days of receipt of the claim.

G. A manufacturer may not otherwise recover all or any portion of its costs for compensating its dealers licensed in this state for warranty parts and service either by reduction in the amount due to the dealer or by separate charge, surcharge or other imposition.

H. The provisions of this section shall not apply to recreational travel trailers or to parts of systems, fixtures, appliances, furnishings, accessories and features of motor homes."

## **Chapter 111 Section 2 Laws 2011**

SECTION 2. Section 57-16-7.1 NMSA 1978 (being Laws 1997, Chapter 14, Section 2) is amended to read:

"57-16-7.1. SALES AND SERVICE INCENTIVES--AUDIT.--A manufacturer or distributor may audit a claim for sales and service incentives only during the six-month period immediately following payment or credit issued for the claim; however, this limitation shall not apply if there is a reasonable suspicion of fraud."

## **Chapter 111 Section 3 Laws 2011**

SECTION 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.

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HBIC/House Bill 123

Approved April 7, 2011

## **LAWS 2011, CHAPTER 112**

AN ACT

RELATING TO LAND GRANT ELECTIONS; ALLOWING STAGGERED TERMS FOR MEMBERS OF BOARDS OF TRUSTEES; REQUIRING A PLURALITY OF THE VOTE FOR ELECTION TO A BOARD OF TRUSTEES; DECLARING AN EMERGENCY.

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

## **Chapter 112 Section 1 Laws 2011**

SECTION 1. Section 49-1-7 NMSA 1978 (being Laws 1907, Chapter 42, Section 7, as amended) is amended to read:

"49-1-7. ELECTION--VOTES REQUIRED--CANVASSING VOTES.--

A. The candidates receiving the most votes cast for the open seats on the board of trustees shall be elected to the board.

B. The election judges and board of trustees shall meet not later than seven days following the election and canvass the votes cast and issue to each candidate duly elected to a seat on the board a certificate of election."

## **Chapter 112 Section 2 Laws 2011**

SECTION 2. Section 49-4-8 NMSA 1978 (being Laws 2007, Chapter 145, Section 7) is amended to read:

"49-4-8. ELECTION--VOTES REQUIRED--CANVASSING VOTES.--

A. The candidates receiving the most votes cast for the open seats on the board of trustees shall be elected to the board.

B. The election judges and board of trustees shall meet not later than seven days following the election and canvass the votes cast and issue to each candidate duly elected to a seat on the board a certificate of election."

**Chapter 112 Section 3 Laws 2011**

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

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House Bill 170, w/ec

Approved April 7, 2011

**LAWS 2011, CHAPTER 113**

AN ACT

RELATING TO HEALTH CARE; AMENDING THE NEW MEXICO DRUG, DEVICE AND COSMETIC ACT AND THE DENTAL HEALTH CARE ACT TO PROVIDE FOR EXPANDED-FUNCTION DENTAL AUXILIARIES AND COMMUNITY DENTAL HEALTH COORDINATORS; 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 113 Section 1 Laws 2011**

SECTION 1. Section 26-1-2 NMSA 1978 (being Laws 1967, Chapter 23, Section 2, as amended) is amended to read:

"26-1-2. DEFINITIONS.--As used in the New Mexico Drug, Device and Cosmetic Act:

A. "board" means the board of pharmacy or its duly authorized agent;

B. "person" includes an individual, partnership, corporation, association, institution or establishment;

C. "biological product" means a virus, therapeutic serum, toxin, antitoxin or analogous product applicable to the prevention, treatment or cure of diseases or injuries of 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, following the injection of nonfatal doses into an animal, having the property of 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 "drug" 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, dental hygienist 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", "certified nurse-midwife" or "dental hygienist" 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 113 Section 2 Laws 2011**

SECTION 2. Section 61-5A-2 NMSA 1978 (being Laws 1994, Chapter 55, Section 2, as amended) is amended to read:

"61-5A-2. PURPOSE.--

A. In the interest of the public health, safety and welfare and to protect the public from the improper, unprofessional, incompetent and unlawful practice of dentistry and dental hygiene, it is necessary to provide laws and rules controlling the granting and use of the privilege to practice dentistry and dental hygiene and to establish a board of dental health care and a dental hygienists committee to implement and enforce those laws and rules.

B. The primary duties of the New Mexico board of dental health care are:

(1) to issue licenses to qualified dentists and owners of dental practices;

(2) to certify qualified dental assistants, expanded-function dental auxiliaries and community dental health coordinators;

(3) to issue licenses to dental hygienists through the dental hygienists committee;

(4) to discipline incompetent or unprofessional dentists, dental assistants, owners of dental practices and, through the dental hygienists committee, dental hygienists; and

(5) to aid in the rehabilitation of impaired dentists and dental hygienists for the purpose of protecting the public."

## **Chapter 113 Section 3 Laws 2011**

SECTION 3. Section 61-5A-3 NMSA 1978 (being Laws 1994, Chapter 55, Section 3, as amended) is amended to read:

"61-5A-3. DEFINITIONS.--As used in the Dental Health Care Act:

A. "assessment" means the review and documentation of the oral condition, and the recognition and documentation of deviations from the healthy condition, without a diagnosis to determine the cause or nature of disease or its treatment;

B. "board" means the New Mexico board of dental health care;

C. "certified dental assistant" means an individual certified by the dental assisting national board;

D. "collaborative dental hygiene practice" means a New Mexico licensed dental hygienist practicing according to Subsections D through G of Section 61-5A-4 NMSA 1978;

E. "committee" means the New Mexico dental hygienists committee;

F. "community dental health coordinator" means a dental assistant, a dental hygienist or other trained personnel certified by the board as a community dental health coordinator to provide educational, preventive and limited palliative care and assessment services working collaboratively under the general supervision of a licensed dentist in settings other than traditional dental offices and clinics;

G. "consulting dentist" means a dentist who has entered into an approved agreement to provide consultation and create protocols with a collaborating dental hygienist and, when required, to provide diagnosis and authorization for services, in accordance with the rules of the board and the committee;

H. "dental hygiene-focused assessment" means the documentation of existing oral and relevant system conditions and the identification of potential oral disease to develop, communicate, implement and evaluate a plan of oral hygiene care and treatment;

I. "dental assistant certified in expanded functions" means a dental assistant who meets specific qualifications set forth by rule of the board;

J. "dental hygienist" means an individual who has graduated and received a degree from a dental hygiene educational program that is accredited by the commission on dental accreditation, that provides a minimum of two academic years of dental hygiene curriculum and that is an institution of higher education; and "dental hygienist" means, except as the context otherwise requires, an individual who holds a license to practice dental hygiene in New Mexico;

K. "dental laboratory" means any place where dental restorative, prosthetic, cosmetic and therapeutic devices or orthodontic appliances are fabricated, altered or repaired by one or more persons under the orders and authorization of a dentist;

L. "dental technician" means an individual, other than a licensed dentist, who fabricates, alters, repairs or assists in the fabrication, alteration or repair of dental restorative, prosthetic, cosmetic and therapeutic devices or orthodontic appliances under the orders and authorization of a dentist;

M. "dentist" means an individual who has graduated and received a degree from a school of dentistry that is accredited by the commission on dental accreditation and, except as the context otherwise requires, who holds a license to practice dentistry in New Mexico;

N. "direct supervision" means the process under which an act is performed when a dentist licensed pursuant to the Dental Health Care Act:

(1) is physically present throughout the performance of the act;

(2) orders, controls and accepts full professional responsibility for the act performed; and

(3) evaluates and approves the procedure performed before the patient departs the care setting;

O. "expanded-function dental auxiliary" means a dental assistant, dental hygienist or other dental practitioner that has received education beyond that required for licensure or certification in that individual's scope of practice and that has been certified by the board as an expanded-function dental auxiliary who works under the direct supervision of a dentist;

P. "general supervision" means the authorization by a dentist of the procedures to be used by a dental hygienist, dental assistant or dental student and the execution of the procedures in accordance with a dentist's diagnosis and treatment plan at a time the dentist is not physically present and in facilities as designated by rule of the board;

Q. "indirect supervision" means that a dentist, or in certain settings a dental hygienist or dental assistant certified in expanded functions, is present in the treatment facility while authorized treatments are being performed by a dental hygienist, dental assistant or dental student;

R. "non-dentist owner" means an individual not licensed as a dentist in New Mexico or a corporate entity not owned by a majority interest of a New Mexico licensed dentist that employs or contracts with a dentist or dental hygienist to provide dental or dental hygiene services;

S. "palliative procedures" means nonsurgical, reversible procedures that are meant to alleviate pain and stabilize acute or emergent problems; and

T. "teledentistry" means a dentist's use of health information technology in real time to provide limited diagnostic and treatment planning services in cooperation with another dentist, a dental hygienist, a community dental health coordinator or a student enrolled in a program of study to become a dental assistant, dental hygienist or dentist."

## **Chapter 113 Section 4 Laws 2011**

SECTION 4. A new section of the Dental Health Care Act is enacted to read:

"EXPANDED-FUNCTION DENTAL AUXILIARY--CERTIFICATION.--

A. The board shall establish academic standards and criteria for certifying dental assistants, dental hygienists or other dental personnel to practice as expanded-function dental auxiliaries. Those standards and criteria shall include a formal curriculum and a certifying examination.

B. The board shall promulgate rules relating to the certification of expanded-function dental auxiliaries pursuant to the State Rules Act."

## **Chapter 113 Section 5 Laws 2011**

SECTION 5. Section 61-5A-4 NMSA 1978 (being Laws 1994, Chapter 55, Section 4, as amended) is amended to read:

"61-5A-4. SCOPE OF PRACTICE.--

A. As used in the Dental Health Care Act, "practice of dentistry" means:

(1) the diagnosis, treatment, correction, change, relief, prevention, prescription of remedy, surgical operation and adjunctive treatment for any disease, pain, deformity, deficiency, injury, defect, lesion or physical condition involving both the functional and aesthetic aspects of the teeth, gingivae, jaws and adjacent hard and soft tissue of the oral and maxillofacial regions, including the prescription or administration of any drug, medicine, biologic, apparatus, brace, anesthetic or other therapeutic or diagnostic substance or technique by an individual or the individual's agent or employee gratuitously or for any fee, reward, emolument or any other form of compensation whether direct or indirect;

(2) representation of an ability or willingness to do any act mentioned in Paragraph (1) of this subsection;

(3) the review of dental insurance claims for therapeutic appropriateness of treatment, including but not limited to the interpretation of radiographs, photographs, models, periodontal records and narratives;



(4) the offering of advice or authoritative comment regarding the appropriateness of dental therapies, the need for recommended treatment or the efficacy of specific treatment modalities for other than the purpose of consultation to another dentist; or

(5) with specific reference to the teeth, gingivae, jaws or adjacent hard or soft tissues of the oral and maxillofacial region in living persons, to propose, agree or attempt to do or make an examination or give an estimate of cost with intent to, or undertaking to:

(a) perform a physical evaluation of a patient in an office or in a hospital, clinic or other medical or dental facility prior to, incident to and appropriate to the performance of any dental services or oral or maxillofacial surgery;

(b) perform surgery, an extraction or any other operation or to administer an anesthetic in connection therewith;

(c) diagnose or treat a condition, disease, pain, deformity, deficiency, injury, lesion or other physical condition;

(d) correct a malposition;

(e) treat a fracture;

(f) remove calcareous deposits;

(g) replace missing anatomy with an artificial substitute;

(h) construct, make, furnish, supply, reproduce, alter or repair an artificial substitute or restorative or corrective appliance or place an artificial substitute or restorative or corrective appliance in the mouth or attempt to adjust it;

(i) give interpretations or readings of dental radiographs;

(j) provide limited diagnostic and treatment planning via teledentistry; or

(k) do any other remedial, corrective or restorative work.

B. As used in the Dental Health Care Act, "the practice of dental hygiene" means the application of the science of the prevention and treatment of oral disease through the provision of educational, assessment, preventive, clinical and other therapeutic services under the general supervision of a dentist. A dental hygienist in a collaborative practice may perform the procedures listed in this section without general supervision while the hygienist is in a cooperative working relationship with a consulting

dentist, pursuant to rules promulgated by the board and the committee. "The practice of dental hygiene" includes:

(1) prophylaxis, which is the removal of plaque, calculus and stains from the tooth structures as a means to control local irritational factors;

(2) removing diseased crevicular tissue and related nonsurgical periodontal procedures;

(3) except in cases where a tooth exhibits cavitation of the enamel surface, assessing without a dentist's evaluation whether the application of pit and fissure sealants is indicated;

(4) except in cases where a tooth exhibits cavitation of the enamel surface, applying pit and fissure sealants without mechanical alteration of the tooth;

(5) applying fluorides and other topical therapeutic and preventive agents;

(6) exposing and assessing oral radiographs for abnormalities;

(7) screening to identify indications of oral abnormalities;

(8) performing dental hygiene-focused assessments;

(9) assessing periodontal conditions; and

(10) such other closely related services as permitted by the rules of the committee and the board.

C. In addition to performing dental hygiene as defined in Subsection B of this section, a dental hygienist may apply preventive topical fluorides and remineralization agents without supervision in public and community medical facilities, schools, hospitals, long-term care facilities and such other settings as the committee may determine by rule ratified by the board, so long as the dental hygienist's license is not restricted pursuant to the Impaired Dentists and Dental Hygienists Act.

D. In addition to performing dental hygiene as defined in Subsection B of this section, dental hygienists who have met the criteria as the committee shall establish and the board shall ratify may administer local anesthesia under indirect supervision of a dentist.

E. The board may certify a dental hygienist to administer local anesthetic under the general supervision of a dentist if the dental hygienist, in addition to performing dental hygiene as defined in Subsection B of this section:

(1) has administered local anesthesia under the indirect supervision of a dentist for at least two years, during which time the dental hygienist has competently administered at least twenty cases of local anesthesia and can document this with a signed affirmation by the supervising dentist;

(2) administers local anesthetic under the written prescription or order of a dentist; and

(3) emergency medical services are available in accordance with rules promulgated by the board.

F. A dental hygienist:

(1) may prescribe, administer and dispense a fluoride supplement, topically applied fluoride or topically applied antimicrobial only when the prescribing, administering or dispensing is performed:

(a) under the supervision of a dentist;

(b) pursuant to rules the board and the committee have adopted;

(c) within the parameters of a drug formulary approved by the board in consultation with the board of pharmacy;

(d) within the parameters of guidelines established pursuant to Section 61-5A-10 NMSA 1978; and

(e) in compliance with state laws concerning prescription packaging, labeling and recordkeeping requirements; and

(2) shall not otherwise dispense dangerous drugs or controlled substances.

G. A New Mexico licensed dental hygienist may be certified for collaborative dental hygiene practice in accordance with the educational and experience criteria established collaboratively by the committee and the board.

H. An expanded-function dental auxiliary may perform the following procedures under the direct supervision of a dentist:

(1) placing and shaping direct restorations;

(2) taking final impressions, excluding those for fixed or removable prosthetics involving multiple teeth;

(3) cementing indirect and provisional restorations for temporary use;

(4) applying pit and fissure sealants without mechanical alteration of the tooth;

(5) placing temporary and sedative restorative material in hand-excavated carious lesions and unprepared tooth fractures;

(6) removal of orthodontic bracket cement; and

(7) fitting and shaping of stainless steel crowns to be cemented by a dentist.

I. An expanded-function dental auxiliary may re-cement temporary or permanent crowns with temporary cement under the general supervision of a dentist in a situation that a dentist deems to be an emergency.

J. An expanded-function dental auxiliary may perform other related functions for which the expanded-function dental auxiliary meets the training and educational standards established by the board and that are not expressly prohibited by the board.

K. For the purpose of this section, "collaborative dental hygiene practice" means the application of the science of the prevention and treatment of oral disease through the provision of educational, assessment, preventive, clinical and other therapeutic services as specified in Subsection B of this section in a cooperative working relationship with a consulting dentist, but without general supervision as set forth by the rules established and approved by both the board and the committee."

## **Chapter 113 Section 6 Laws 2011**

SECTION 6. Section 61-5A-5 NMSA 1978 (being Laws 1994, Chapter 55, Section 5, as amended) is amended to read:

"61-5A-5. LICENSE REQUIRED--EXEMPTIONS.--

A. Unless licensed to practice as a dentist under the Dental Health Care Act, no person shall:

(1) practice dentistry;

(2) use the title "dentist", "dental surgeon", "oral surgeon" or any other title, abbreviation, letters, figures, signs or devices that indicate the person is a licensed dentist; or

(3) perform any of the acts enumerated under the definition of the practice of dentistry as defined in the Dental Health Care Act.

B. The following, under the stipulations described, may practice dentistry or an area of dentistry without a New Mexico dental license:

(1) regularly licensed physicians or surgeons are not prohibited from extracting teeth or treating any disease coming within the province of the practice of medicine;

(2) New Mexico licensed dental hygienists and community dental health coordinators may provide those services within their scope of practice that are also within the scope of the practice of dentistry;

(3) any dental student duly enrolled in an accredited school of dentistry recognized by the board, while engaged in educational programs offered by the school in private offices, public clinics or educational institutions within the state of New Mexico under the indirect supervision of a licensed dentist;

(4) any dental hygiene or dental assisting student duly enrolled in an accredited school of dental hygiene or dental assisting engaged in procedures within or outside the scope of dental hygiene that are part of the curriculum of that program in the school setting and under the indirect supervision of a faculty member of the accredited program who is a licensed dentist, dental hygienist or dental assistant certified in the procedures being taught;

(5) unlicensed persons performing for a licensed dentist merely mechanical work upon inert matter in the construction, making, alteration or repairing of any artificial dental substitute, dental restorative or corrective appliance, when the casts or impressions for the work have been furnished by a licensed dentist and where the work is prescribed by a dentist pursuant to a written authorization by that dentist;

(6) commissioned dental officers of the uniformed forces of the United States and dentists providing services to the United States public health service, the United States department of veterans affairs or within federally controlled facilities in the discharge of their official duties, provided that such persons who hold dental licenses in New Mexico shall be subject to the provisions of the Dental Health Care Act; and

(7) dental assistants performing adjunctive services to the provision of dental care, under the indirect supervision of a dentist, as determined by rule of the board if such services are not within the practice of dental hygiene as specifically listed in Subsection B of Section 61-5A-4 NMSA 1978, unless allowed in Subsection E of this section.

C. Unless licensed to practice as a dental hygienist under the Dental Health Care Act, no person shall:

(1) practice as a dental hygienist;

(2) use the title "dental hygienist" or abbreviation "R.D.H." or any other title, abbreviation, letters, figures, signs or devices that indicate the person is a licensed dental hygienist; or

(3) perform any of the acts defined as the practice of dental hygiene in the Dental Health Care Act.

D. The following, under the stipulations described, may practice dental hygiene or the area of dental hygiene outlined without a New Mexico dental hygiene license:

(1) students enrolled in an accredited dental hygiene program engaged in procedures that are part of the curriculum of that program and under the indirect supervision of a licensed faculty member of the accredited program;

(2) dental assistants and community dental health coordinators working under general supervision who:

(a) expose dental radiographs after being certified in expanded functions by the board;

(b) perform rubber cup coronal polishing, which is not represented as a prophylaxis, having satisfied the educational requirements as established by rules of the board;

(c) apply fluorides as established by rules of the board; and

(d) perform those other dental hygienist functions as recommended to the board by the committee and set forth by rule of the board; and

(3) dental assistants certified in expanded functions, working under the indirect supervision of a dental hygienist certified for collaborative practice and under the protocols established in a collaborative practice agreement with a consulting dentist.

E. Dental assistants working under the indirect supervision of a dentist and in accordance with the rules and regulations established by the board may:

(1) expose dental radiographs;

(2) perform rubber cup coronal polishing that is not represented as a prophylaxis;

(3) apply fluoride and pit and fissure sealants without mechanical alteration of the tooth;

(4) perform those other dental hygienist functions as recommended to the board by the committee and set forth by rule of the board; and

(5) perform such other related functions that are not expressly prohibited by statute or rules of the board.

F. A community dental health coordinator working under the general supervision of a dentist and in accordance with the rules established by the board may:

(1) place temporary and sedative restorative material in unexcavated carious lesions and unprepared tooth fractures;

(2) collect and transmit diagnostic data and images via telemetric connection;

(3) dispense and apply medications on the specific order of a dentist;

(4) provide limited palliative procedures for dental emergencies in consultation with a supervising dentist as allowed by the rules the board has promulgated; and

(5) perform other related functions for which the community dental health coordinator meets training and educational standards established by the board and that are not expressly prohibited by statute or rules promulgated by the board.

G. Unless licensed as a dentist or non-dentist owner, or as otherwise exempt from the licensing requirements of the Dental Health Care Act, no individual or corporate entity shall:

(1) employ or contract with a dentist or dental hygienist for the purpose of providing dental or dental hygiene services as defined by their respective scopes of practice; or

(2) enter into a managed care or other agreement to provide dental or dental hygiene services in New Mexico.

H. The following, under stipulations described, may function as a non-dentist owner without a New Mexico license:

(1) government agencies providing dental services within affiliated facilities;

(2) government agencies engaged in providing public health measures to prevent dental disease;

(3) spouses of deceased licensed dentists or dental hygienists for a period of one year following the death of the licensee;

(4) accredited schools of dentistry, dental hygiene and dental assisting providing dental services solely in an educational setting;

(5) dental hygienists licensed in New Mexico or corporate entities with a majority interest owned by a dental hygienist licensed in New Mexico;

(6) federally qualified health centers, as designated by the United States department of health and human services, providing dental services;

(7) nonprofit community-based entities and organizations that use public funds to provide dental and dental hygiene services for indigent persons; and

(8) hospitals licensed by the department of health."

## **Chapter 113 Section 7 Laws 2011**

SECTION 7. Section 61-5A-6 NMSA 1978 (being Laws 1994, Chapter 55, Section 6) is amended to read:

"61-5A-6. CERTIFICATION OF DENTAL ASSISTANTS, EXPANDED-FUNCTION DENTAL AUXILIARIES AND COMMUNITY DENTAL HEALTH COORDINATORS.--

A. A certified dental assistant, an expanded-function dental auxiliary, a community dental health coordinator or a dental assistant certified in expanded functions shall be required to adhere to the educational requirements, examinations, recertification criteria and fees as established by rules and regulations of the board. The fee shall be the same for one or more expanded functions.

B. Certificates granted by the board may be revoked, suspended, stipulated or otherwise limited, and a certificate holder may be fined or placed on probation if found guilty of violation of the Dental Health Care Act.

C. No individual shall use the title "C.D.A." unless granted certification by the dental assistant national board.



D. Unless certified to practice as a dental assistant certified in expanded functions or an expanded-function dental auxiliary, no person shall:

(1) practice as a dental assistant certified in expanded functions as defined by rules of the board; or

(2) use the title or represent oneself as an assistant certified in expanded functions or an expanded-function dental auxiliary or use any title, abbreviation, letters, figures, signs or devices that indicate the person is a dental assistant certified in expanded functions or an expanded-function dental auxiliary."

## **Chapter 113 Section 8 Laws 2011**

SECTION 8. Section 61-5A-10 NMSA 1978 (being Laws 1994, Chapter 55, Section 10, as amended by Laws 2003, Chapter 408, Section 6 and by Laws 2003, Chapter 409, Section 8) is amended to read:

"61-5A-10. POWERS AND DUTIES OF THE BOARD AND COMMITTEE.--In addition to any other authority provided by law, the board and the committee, when designated, shall:

A. enforce and administer the provisions of the Dental Health Care Act;

B. adopt, publish, file and revise, in accordance with the Uniform Licensing Act and the State Rules Act, all rules as may be necessary to:

(1) regulate the examination and licensure of dentists and, through the committee, regulate the examination and licensure of dental hygienists;

(2) provide for the examination and certification of dental assistants by the board;

(3) provide for the regulation of dental technicians by the board;

(4) regulate the practice of dentistry, dental assisting and, through the committee, regulate the practice of dental hygiene; and

(5) provide for the regulation and licensure of non-dentist owners by the board;

C. adopt and use a seal;

D. administer oaths to all applicants, witnesses and others appearing before the board or the committee, as appropriate;

E. keep an accurate record of all meetings, receipts and disbursements;

F. grant, deny, review, suspend and revoke licenses and certificates to practice dentistry, dental assisting and, through the committee, dental hygiene and censure, reprimand, fine and place on probation and stipulation dentists, dental assistants and, through the committee, dental hygienists, in accordance with the Uniform Licensing Act for any cause stated in the Dental Health Care Act;

G. grant, deny, review, suspend and revoke licenses to own dental practices and censure, reprimand, fine and place on probation and stipulation non-dentist owners, in accordance with the Uniform Licensing Act, for any cause stated in the Dental Health Care Act;

H. maintain records of the name, address, license number and such other demographic data as may serve the needs of the board of licensees, together with a record of license renewals, suspensions, revocations, probations, stipulations, censures, reprimands and fines. The board shall make available composite reports of demographic data but shall limit public access to information regarding individuals to their names, addresses, license numbers and license actions or as required by statute;

I. hire and contract for services from persons as necessary to carry out the board's duties;

J. establish ad hoc committees whose members shall be appointed by the chair with the advice and consent of the board or committee and shall include at least one member of the board or committee as it deems necessary for carrying on its business;

K. have the authority to pay per diem and mileage to individuals who are appointed by the board or the committee to serve on ad hoc committees;

L. have the authority to hire or contract with investigators to investigate possible violations of the Dental Health Care Act;

M. have the authority to issue investigative subpoenas prior to the issuance of a notice of contemplated action for the purpose of investigating complaints against dentists, dental assistants and, through the committee, dental hygienists licensed under the Dental Health Care Act;

N. have the authority to sue or be sued and to retain the services of an attorney at law for counsel and representation regarding the carrying out of the board's duties;

O. have the authority to create and maintain a formulary, in consultation with the board of pharmacy, of medications that a dental hygienist may prescribe, administer or dispense in accordance with rules the board has promulgated; and

P. establish continuing education or continued competency requirements for dentists, certified dental assistants in expanded functions, dental technicians and, through the committee, dental hygienists."

## **Chapter 113 Section 9 Laws 2011**

SECTION 9. Section 61-5A-12 NMSA 1978 (being Laws 1994, Chapter 55, Section 12, as amended) is amended to read:

"61-5A-12. DENTISTS--REQUIREMENTS FOR LICENSURE--SPECIALTY LICENSE.--

A. All applicants for licensure as a dentist shall have graduated and received a degree from a school of dentistry that is accredited by the commission on dental accreditation and shall have passed the written portion of the dental examination administered by the joint commission on national dental examinations of the American dental association or, if the test is not available, another written examination determined by the board.

B. Applicants for a general license to practice dentistry by examination shall be required, in addition to the requirements set forth in Subsection A of this section, to pass a test covering the laws and rules for the practice of dentistry in New Mexico. Written examinations shall be supplemented by the board or its agents by administering to each applicant a practical or clinical examination that reasonably tests the applicant's qualifications to practice general dentistry. These examinations shall include examinations offered by the central regional dental testing service, northeast regional board of dental examiners, southern regional testing agency or western regional examining board or any other comparable practical clinical examination the board approves; provided, however, that the board may disapprove any examination after it considers compelling evidence to support disapproval. Upon an applicant passing the written and clinical examinations and payment in advance of the necessary fees, the board shall issue a license to practice dentistry.

C. The board may issue a general license to practice dentistry, by credentials, without a practical or clinical examination to an applicant who is duly licensed by a clinical examination as a dentist under the laws of another state or territory of the United States; provided that license is active and that all dental licenses that individual possesses have been in good standing for five years prior to application. The credentials must show that no dental board actions have been taken during the five years prior to application; that no proceedings are pending in any states in which the applicant has had a license in the five years prior to application; and that a review of public records, the national practitioner data bank or other nationally recognized data resources that record actions against a dentist in the United States does not reveal any activities or unacquitted civil or criminal charges that could reasonably be construed to constitute evidence of danger to patients, including acts of moral turpitude.

D. The board may issue a general license to practice dentistry by credentials to an applicant who meets the requirements, including payment of appropriate fees and the passing of an examination covering the laws and rules of the practice of dentistry in New Mexico, of the Dental Health Care Act and rules promulgated pursuant to that act, and who:

(1) has maintained a uniform service practice in the United States military or public health service for three years immediately preceding the application; or

(2) is duly licensed by examination as a dentist pursuant to the laws of another state or territory of the United States.

E. The board may issue a specialty license by examination to an applicant who has passed a clinical and written examination given by the board or its examining agents that covers the applicant's specialty. The applicant shall have a postgraduate degree or certificate from an accredited dental college, school of dentistry of a university or other residency program that is accredited by the commission on dental accreditation in one of the specialty areas of dentistry recognized by the American dental association. The applicant shall also meet all other requirements as established by rules of the board, which shall include an examination covering the laws and rules of the practice of dentistry in New Mexico. A specialty license limits the licensee to practice only in that specialty area.

F. The board may issue a specialty license, by credentials, without a practical or clinical examination to an applicant who is duly licensed by a clinical examination as a dentist under the laws of another state or territory of the United States and who has a postgraduate degree or certificate from an accredited dental college, school of dentistry of a university or other residency program that is accredited by the commission on dental accreditation in one of the specialty areas of dentistry recognized by the American dental association; provided that license is active and that all dental licenses that individual possesses have been in good standing for five years prior to application. The credentials must show that no dental board actions have been taken during the five years prior to application; that no proceedings are pending in any states in which the applicant has had a license in the five years prior to application; and that a review of public records, the national practitioner data bank or other nationally recognized data resources that record actions against a dentist in the United States does not reveal any activities or unacquitted civil or criminal charges that could reasonably be construed to constitute evidence of danger to patients, including acts of moral turpitude. The applicant shall also meet all other qualifications as deemed necessary by rules of the board, which shall include an examination covering the laws and rules of the practice of dentistry in New Mexico. A specialty license limits the licensee to practice only in that specialty area."

## **Chapter 113 Section 10 Laws 2011**

SECTION 10. A new section of the Dental Health Care Act is enacted to read:

"PUBLIC-SERVICE LICENSURE.--The board or the committee may issue a temporary public-service license to practice dentistry or dental hygiene to an applicant who is licensed to practice dentistry or dental hygiene in another state or territory of the United States or who is enrolled as a dental resident in a residency program in this state and the commission on dental accreditation has accredited that program. That applicant shall be otherwise qualified to practice dentistry or dental hygiene in this state. The following provisions shall apply:

A. the applicant for public-service licensure shall hold a valid license in good standing in another state or territory of the United States or be enrolled as a dental resident in a residency program in the state that the commission on dental accreditation has accredited;

B. a temporary public-service license issued to a dental residency student who has not taken and passed a clinical examination accepted by the board shall not be renewed after the student has completed the residency program;

C. the applicant shall practice dentistry or dental hygiene under the sponsorship of or in association with a licensed New Mexico dentist or dental hygienist;

D. the public-service license may be issued for those activities as stipulated by the board or committee in the rules of the board. It may be issued upon written application of the applicant when accompanied by such proof of qualifications as the secretary-treasurer of the board or committee, in the secretary-treasurer's discretion, may require. Public-service licensees shall engage in only those activities specified on the public-service license for the time designated, and the public-service license shall identify the licensed New Mexico dentist or dental hygienist who will sponsor or associate with the applicant during the time the applicant practices dentistry or dental hygiene in New Mexico;

E. the sponsoring or associating dentist or dental hygienist shall submit an affidavit attesting to the qualifications of the applicant and the activities the applicant will perform;

F. the public-service license shall be issued for a period not to exceed twelve months and may be renewed upon application and payment of required fees;

G. the application for a public-service license under this section shall be accompanied by a license fee;

H. the public-service licensee shall be required to comply with the Dental Health Care Act and all rules promulgated pursuant to that act; and

I. a dentist or dental hygienist providing dental care services to a charitable dental care project may provide dental care pursuant to a presumptive temporary public-service license valid for a period of no longer than three days. The

dentist or dental hygienist shall be otherwise subject to the provisions of this section and board rules governing public-service licensure. This presumptive temporary public-service license is only valid when:

- (1) the dentist or dental hygienist receives no compensation;
- (2) the project is sponsored by an entity that meets the board's definition of "entity" and that the board has approved to undertake the charitable project;
- (3) the dental care is performed within the limits of the license that the dentist or dental hygienist holds in another jurisdiction;
- (4) upon request, the out-of-state dentist or dental hygienist produces any document necessary to verify the dentist's or dental hygienist's credentials; and
- (5) the out-of-state dentist or dental hygienist works under the indirect supervision of a dentist or dental hygienist licensed in this state."

## **Chapter 113 Section 11 Laws 2011**

SECTION 11. Section 61-5A-16 NMSA 1978 (being Laws 1994, Chapter 55, Section 16, as amended) is amended to read:

### **"61-5A-16. LICENSE AND CERTIFICATE RENEWALS.--**

- A. Except as provided in Subsection I of this section, all licensees shall be required to renew their licenses triennially as established by rules of the board.
- B. All dental assistants certified in expanded functions, expanded-function dental auxiliaries and community dental health coordinators shall be required to renew their certificates triennially as established by rules of the board.
- C. The board or committee may establish a method to provide for staggered triennial terms and may prorate triennial renewal fees and impaired dentist and dental hygienist fees until staggered triennial renewal is established. The fact that a licensee has not received a renewal form from the board or committee shall not relieve the licensee of the duty to renew the license or certificate nor shall such omission on the part of the board or committee operate to exempt the licensee from the penalties for failure to renew the licensee's license or certificate.
- D. All licensees shall pay a triennial renewal fee and an impaired dentist and dental hygienist fee, and all licensees shall return a completed renewal application form that includes proof of continuing education or continued competency.

E. Each application for triennial renewal of license shall state the licensee's full name, business address, the date and number of the license and all other information requested by the board or committee.

F. A licensee who fails to submit an application for triennial renewal on or before July 1 but who submits an application for triennial renewal within thirty days thereafter shall be assessed a late fee.

G. A licensee who fails to submit application for triennial renewal between thirty and sixty days of the July 1 deadline may have the licensee's license or certificate suspended. If the licensee renews by that time, the licensee shall be assessed a cumulative late fee.

H. The board or the committee may summarily revoke, for nonpayment of fees or failure to comply with continuing education or continued competency requirements, the license or certificate of a licensee or certificate holder who has failed to renew the license or certificate on or before August 31.

I. A license for a non-dentist owner shall be renewed triennially as established by rules. An application for renewal of a non-dentist owner license shall state the name, business address, date and number of the license and all other information as required by rule of the board. If a non-dentist owner fails to submit the application for renewal of the license by July 1, the board may assess a late fee. If the non-dentist owner fails to submit the application for a renewal license within sixty days of the July 1 renewal deadline, the board may suspend the license. The license of a non-dentist owner may be summarily revoked by the board for nonpayment of fees.

J. Assessment of fees pursuant to this section is not subject to the Uniform Licensing Act."

## **Chapter 113 Section 12 Laws 2011**

SECTION 12. Section 61-5A-20 NMSA 1978 (being Laws 1994, Chapter 55, Section 20, as amended) is amended to read:

"61-5A-20. FEES.--The board and the committee shall establish a schedule of reasonable fees not to exceed the following:

	<u>Dentists</u>	<u>Dental Hygienists</u>
Insurance by examination	\$1,500	\$1,000
Specialty credential	\$3,000	\$1,500

C. specialty license by

examination \$1,500

D. specialty license by

credential \$3,000

E. temporary license

48 hours \$ 50 \$ 50

six months \$ 300 \$ 200

12 months \$ 450 \$ 300

F. application for

certification in local

anesthesia \$ 40

G. examination in local

anesthesia \$ 150

license renewal \$ 600 \$ 450

I. late renewal \$ 100 \$ 100

J. reinstatement of license \$ 450 \$ 300

\$ 300 \$ 300

L. impaired dentist or

dental hygienist \$ 150 \$ 75

M. assistant, expanded-function

dental auxiliary or

community dental health

coordinator certificate \$ 100

N. application for certification for



collaborative practice		\$ 150
O. annual renewal for		
collaborative practice		\$ 50
P. application for inactive		
status	\$ 50	\$ 50
Q. triennial renewal of		
inactive license	\$ 90	\$ 90

Non-dentist Owners

R. non-dentist owners license (initial)		\$ 300
S. non-dentist owners license triennial renewal		\$ 150."

House Bill 187, w/cc

Approved April 7, 2011

## LAWS 2011, CHAPTER 114

### AN ACT

RELATING TO INSTRUCTIONAL MATERIALS; REQUIRING PUBLISHERS OF INSTRUCTIONAL MATERIALS ON THE MULTIPLE LIST TO PROVIDE INSTRUCTIONAL MATERIALS IN ELECTRONIC FORMAT FOR ELECTRONIC READERS BY THE 2013-2014 SCHOOL YEAR; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 1993.

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

### **Chapter 114 Section 1 Laws 2011**

SECTION 1. Section 22-15-13 NMSA 1978 (being Laws 1967, Chapter 16, Section 217, as amended by Laws 1993, Chapter 156, Section 6 and also by Laws 1993, Chapter 226, Section 44) is amended to read:

"22-15-13. CONTRACTS WITH PUBLISHERS.--

A. The department may enter into a contract with a publisher or a publisher's authorized agent for the purchase and delivery of instructional material selected from the multiple list adopted by the department.

B. Payment for instructional material purchased by the department shall be made only upon performance of the contract and the delivery and receipt of the instructional material.

C. Each publisher or publisher's authorized agent contracting with the state for the sale of instructional material shall agree:

(1) to file a copy of each item of instructional material to be furnished under the contract with the department with a certificate attached identifying it as an exact copy of the item of instructional material to be furnished under the contract;

(2) that the instructional material furnished pursuant to the contract shall be of the same quality in regard to paper, binding, printing, illustrations, subject matter and authorship as the copy filed with the department; and

(3) that if instructional material under the contract is sold elsewhere in the United States for a price less than that agreed upon in the contract with the state, the price to the state shall be reduced to the same amount.

D. Each contract executed for the acquisition of instructional material shall include the right of the department to transcribe and reproduce instructional material in media appropriate for the use of students with visual impairment who are unable to use instructional material in conventional print and form. Publishers of adopted textbooks also shall be required to provide those materials to the department or its designated agent in an electronic format specified by the department that is readily translatable into Braille and also can be used for large print or speech access within a time period specified by the department.

E. Beginning with instructional material for the 2013-2014 school year, publishers of instructional material on the multiple list shall be required to provide those materials in both written and electronic formats."

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House Bill 310, aa, w/cc

Approved April 7, 2011

## **LAWS 2011, CHAPTER 115**

AN ACT

RELATING TO TAXATION; PROVIDING AN ADVANCED ENERGY DEDUCTION FOR THE LEASING OF TANGIBLE PERSONAL PROPERTY; ESTABLISHING THE PERIOD OF ALLOWABLE DEDUCTIONS FOR LEASES AS TWENTY-FIVE YEARS.

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

## **Chapter 115 Section 1 Laws 2011**

SECTION 1. Section 7-9-114 NMSA 1978 (being Laws 2010, Chapter 77, Section 1 and Laws 2010, Chapter 78, Section 1) is amended to read:

"7-9-114. ADVANCED ENERGY DEDUCTION--GROSS RECEIPTS AND COMPENSATING TAXES.--

A. Receipts from selling or leasing tangible personal property or services that are eligible generation plant costs to a person that holds an interest in a qualified generating facility may be deducted from gross receipts if the holder of the interest delivers an appropriate nontaxable transaction certificate to the seller or lessor. The department shall issue nontaxable transaction certificates to a person that holds an interest in a qualified generating facility upon presentation to the department of a certificate of eligibility obtained from the department of environment pursuant to Subsection G of this section for the deduction created in this section or a certificate of eligibility pursuant to Section 7-2-18.25, 7-2A-25 or 7-9G-2 NMSA 1978. The deduction created in this section may be referred to as the "advanced energy deduction".

B. The purpose of the advanced energy deduction is to encourage the construction and development of qualified generating facilities in New Mexico and to sequester or control carbon dioxide emissions.

C. The value of eligible generation plant costs from the sale or lease of tangible personal property to a person that holds an interest in a qualified generating facility for which the department of environment has issued a certificate of eligibility pursuant to Subsection G of this section may be deducted in computing the compensating tax due.

D. The maximum tax benefit allowed for all eligible generation plant costs from a qualified generating facility shall be sixty million dollars (\$60,000,000) total for eligible generation plant costs deducted or claimed pursuant to this section or Section 7-2-18.25, 7-2A-25 or 7-9G-2 NMSA 1978.

E. Deductions taken pursuant to this section shall be reported separately on a form approved by the department. The nontaxable transaction certificates used to obtain tax-deductible tangible personal property or services shall display clearly a notice to the taxpayer that the deduction shall be reported separately from any other deductions claimed from gross receipts. A taxpayer deducting eligible generation plant

costs from the costs on which compensating tax is imposed shall report those eligible generation plant costs that are being deducted.

F. The deductions allowed for a qualified generating facility pursuant to this section shall be available for a ten-year period for purchases and a twenty-five-year period for leases from the year development of the qualified generating facility begins and expenditures are made for which nontaxable transaction certificates authorized pursuant to this section are submitted to sellers or lessors for eligible generation plant costs or deductions from the costs on which compensating tax are calculated are first taken for eligible generation plant costs.

G. 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 obtain a nontaxable transaction certificate for the advanced energy deduction. The department of environment shall:

(1) determine if the facility is a qualified generating facility;

(2) 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) issue a certificate from sequentially numbered certificates 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) issue:

(a) rules governing the procedures for administering the provisions of this subsection; and

(b) a schedule of fees in which no fee exceeds one hundred fifty thousand dollars (\$150,000);

(5) deposit fees collected pursuant to this subsection in the state air quality permit fund created pursuant to Section 74-2-15 NMSA 1978; and

(6) report annually to the appropriate interim legislative committee information that will allow the legislative committee to analyze the effectiveness of the advanced energy deduction, 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.

H. The economic development department shall keep a record of temporary and permanent jobs at all qualified generating facilities in New Mexico. The

economic development department and the taxation and revenue department shall measure the amount of state revenue that is attributable to activity at each qualified generating facility in New Mexico. The economic development department shall coordinate with the department of environment to report annually to the appropriate interim legislative committee on the effectiveness of the advanced energy deduction. A taxpayer who claims an advanced energy deduction shall provide the economic development department, the department of environment and the taxation and revenue department with the information required to compile the report required by this section. Notwithstanding any other section of law to the contrary, the economic development department, the department of environment and the taxation and revenue department may disclose the number of applicants for the advanced energy deduction, the amount of the deduction approved, the number of employees of the taxpayer and any other information required by the legislature or the taxation and revenue department to aid in evaluating the effectiveness of that deduction.

I. 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 deductions 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, the department of environment shall determine, after a public hearing, the amount of tax deduction 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.

J. The advanced energy deduction allowed pursuant to this section shall not be claimed for the same qualified expenses for which a taxpayer claims a credit pursuant to Section 7-2-18.25, 7-2A-25 or 7-9G-2 NMSA 1978 or a deduction pursuant to Section 7-9-54.3 NMSA 1978.

K. An appropriate legislative committee shall review the effectiveness of the advanced energy deduction every four years beginning in 2015.

L. As used in this section:

(1) "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 particulate 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;

(2) "eligible generation plant costs" means expenditures for the development and construction of a qualified generating facility, including permitting; lease payments; 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;

(3) "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;

(4) "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;

(5) "interest in a qualified generating facility" means title to a qualified generating facility; a lessee's interest in a qualified generating facility; and a county or municipality's interest in a qualified generating facility when the county or municipality issues an industrial revenue bond for construction of the qualified generating facility;

(6) "name-plate capacity" means the maximum rated output of the facility measured as alternating current or the equivalent direct current measurement;

(7) "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, 2010 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, 2010 and that may include an associated renewable energy storage facility;

(c) a geothermal electric generating facility that begins construction on or after July 1, 2010;

(d) a recycled energy project if that facility begins construction on or after July 1, 2010; or

(e) a new or repowered coal-based electric generating facility and an associated coal gasification facility;

(8) "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;

(9) "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;

(10) "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

(11) "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 thermal energy to a preexisting electric generating facility using other fuels in part."

## **Chapter 115 Section 2 Laws 2011**

SECTION 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.

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HTRC/House Bill 440

Approved April 7, 2011

## **LAWS 2011, CHAPTER 116**

AN ACT

RELATING TO TAXATION; INCREASING THE THRESHOLD BEFORE THE PENALTY FOR UNDERPAYMENT OF ESTIMATED TAX DUE IS APPLIED.

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

## **Chapter 116 Section 1 Laws 2011**

SECTION 1. Section 7-2-12.2 NMSA 1978 (being Laws 1996, Chapter 17, Section 1, as amended) is amended to read:

"7-2-12.2. ESTIMATED TAX DUE--PAYMENT OF ESTIMATED TAX--PENALTY.--

A. Except as otherwise provided in this section, an individual who is required to file an income tax return under the Income Tax Act shall pay the required annual payment in installments through either withholding or estimated tax payments.

B. For the purposes of this section:

(1) "required annual payment" means the lesser of:

(a) ninety percent of the tax shown on the return of the taxable year or, if no return is filed, ninety percent of the tax for the taxable year; or

(b) one hundred percent of the tax shown on the return for the preceding taxable year if the preceding taxable year was a taxable year of twelve



months and the taxpayer filed a New Mexico tax return for that preceding taxable year; and

(2) "tax" means the tax imposed under Section 7-2-3 NMSA 1978 less any amount allowed for applicable credits and rebates provided by the Income Tax Act.

C. There shall be four required installments for each taxable year. If a taxpayer is not liable for estimated tax payments on March 31, but becomes liable for estimated tax at some point after March 31, the taxpayer must make estimated tax payments as follows:

(1) if the taxpayer becomes required to pay estimated tax after March 31 and before June 1, fifty percent of the required annual payment must be paid on or before June 15, twenty-five percent on September 15 and twenty-five percent on or before January 15 of the following taxable year;

(2) if the taxpayer becomes required to pay estimated tax after May 31, but before September 1, the taxpayer must pay seventy-five percent of the required annual payment on or before September 15 and twenty-five percent on or before January 15 of the following taxable year; and

(3) if the taxpayer becomes required to pay estimated tax after August 31, the taxpayer must pay one hundred percent of the required annual payment on or before January 15 of the following taxable year.

D. Except as otherwise provided in this section, for taxpayers reporting on a calendar year basis, estimated payments of the required annual payment are due on or before April 15, June 15 and September 15 of the taxable year and January 15 of the following taxable year. For taxpayers reporting on a fiscal year other than a calendar year, the due dates for the installments are the fifteenth day of the fourth, sixth and ninth months of the fiscal year and the fifteenth day of the first month following the fiscal year.

E. A rancher or farmer who expects to receive at least two-thirds of the rancher's or farmer's gross income for the taxable year from ranching or farming, or who has received at least two-thirds of the rancher's or farmer's gross income for the previous taxable year from ranching or farming, may:

(1) pay the required annual payment for the taxable year in one installment on or before January 15 of the following taxable year; or

(2) on or before March 1 of the following taxable year, file a return for the taxable year and pay in full the amount computed on the return as payable.

A penalty under Subsection G of this section shall not be imposed unless the rancher or farmer underpays the tax by more than one-third. If a joint return is filed, a

rancher or farmer must consider the rancher's or farmer's spouse's gross income in determining whether at least two-thirds of gross income is from ranching or farming.

F. For the purposes of this section, the amount of tax deducted and withheld with respect to a taxpayer under the Withholding Tax Act or the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act shall be deemed a payment of estimated tax. An equal part of the amount of withheld tax shall be deemed paid on each due date for the applicable taxable year unless the taxpayer establishes the dates on which all amounts were actually withheld. In that case, the amounts withheld shall be deemed payments of estimated tax on the dates on which the amounts were actually withheld. The taxpayer may apply the provisions of this subsection separately to wage withholding and any other amounts withheld under the Withholding Tax Act or the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act. Amounts of tax paid by taxpayers pursuant to Section 7-3A-3 NMSA 1978 shall not be deemed a payment of estimated tax.

G. Except as otherwise provided in this section, in the case of an underpayment of the required annual payment by a taxpayer, there shall be added to the tax a penalty determined by applying the rate specified in Subsection B of Section 7-1-67 NMSA 1978 to the amount of the underpayment for the period of the underpayment, provided:

(1) the amount of the underpayment shall be the excess of the amount of the required annual payment over the amount, if any, paid on or before the due date for the installment;

(2) the period of the underpayment runs from the due date for the installment to whichever of the following dates is earlier:

(a) the fifteenth day of the fourth month following the close of the taxable year; or

(b) with respect to any portion of the underpayment, the date on which the portion was paid; and

(3) a payment of estimated tax shall be credited against unpaid or underpaid installments in the order in which the installments are required to be paid.

H. No penalty shall be imposed under Subsection G of this section for any taxable year if:

(1) the difference between the following is less than one thousand dollars (\$1,000):

(a) the tax shown on the return for the taxable year or, when no return is filed, the tax for the taxable year; and

(b) any amount withheld under the provisions of the Withholding Tax Act or the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act for that taxpayer for that taxable year;

(2) the taxpayer's preceding taxable year was a taxable year of twelve months, the taxpayer did not have a tax liability for the preceding taxable year and the taxpayer was a resident of New Mexico for the entire taxable year;

(3) through either withholding or estimated tax payments, the taxpayer paid the required annual payment as defined in Subsection B of this section; or

(4) the secretary determines that the underpayment was not due to fraud, negligence or disregard of rules and regulations.

I. If on or before January 31 of the following taxable year the taxpayer files a return for the taxable year and pays in full the amount computed on the return as payable, then a penalty under Subsection G of this section shall not be imposed on an underpayment of the fourth required installment for the taxable year.

J. This section applies to taxable years of less than twelve months and to taxpayers reporting on a fiscal year other than a calendar year in the manner determined by regulation or instruction of the secretary.

K. Except as otherwise provided in Subsection L of this section, this section applies to any estate or trust.

L. This section does not apply to any trust that is subject to the tax imposed by Section 511 of the Internal Revenue Code or that is a private foundation. For a taxable year that ends before the date two years after the date of the decedent's death, this section does not apply to:

(1) the estate of the decedent; or

(2) any trust all of which was treated under Subpart E of Part I of Subchapter J of Chapter 1 of the Internal Revenue Code as owned by the decedent and to which the residue of the decedent's estate will pass under the decedent's will or, if no will is admitted to probate, that is the trust primarily responsible for paying debts, taxes and expenses of administration.

M. The provisions of this section do not apply to first-year residents."

## **Chapter 116 Section 2 Laws 2011**

SECTION 2. APPLICABILITY.--The provisions of this act shall apply to taxable years beginning on or after January 1, 2012.

## **Chapter 116 Section 3 Laws 2011**

SECTION 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.

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House Bill 470, aa

Approved April 7, 2011

## **LAWS 2011, CHAPTER 117**

AN ACT

RELATING TO MUNICIPALITIES; AMENDING SECTIONS OF THE MUNICIPAL CODE TO PROVIDE FOR PAYMENTS AND LIENS FOR CERTAIN WATER UTILITIES.

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

## **Chapter 117 Section 1 Laws 2011**

SECTION 1. Section 3-23-1 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-22-1, as amended) is amended to read:

"3-23-1. MUNICIPAL UTILITY--SERVICE CHARGES--DEPOSITS--DISCONTINUANCE OF WATER SERVICE FOR NONPAYMENT OF CHARGES--SUPPLEMENTAL METHOD.--

A. A municipality, including an entity established pursuant to Section 72-1-10 NMSA 1978, may require a reasonable payment in advance or a reasonable deposit for water, electricity, gas, sewer service, geothermal energy, refuse collection service or street maintenance.

B. If payment of any price, rent, fee or other charge for water, sewer service, refuse collection or street maintenance is not made within thirty days from the date the payment is due, the water service may be discontinued and shall not be again supplied to the person liable for the payment until the arrears with interest and penalties have been fully paid.

C. The provisions of this section are intended to afford an additional method of enforcing payment of charges for water, sewer service, refuse collection or street maintenance furnished by the municipality."

## **Chapter 117 Section 2 Laws 2011**

SECTION 2. Section 3-23-6 NMSA 1978 (being Laws 1965, Chapter 300, Section 14-22-6, as amended) is amended to read:

"3-23-6. CHARGE FOR SERVICE OF MUNICIPAL UTILITY BECOMES A LIEN AGAINST THE PROPERTY SERVED--EXCEPTION.--

A. Any charge imposed by ordinance for service rendered by a municipal utility, including an entity established pursuant to Section 72-1-10 NMSA 1978, except as indicated in Subsection C of this section, shall be:

(1) payable by the owner, personally, at the time the charge accrues and becomes due; and

(2) a lien upon the tract or parcel of land being served from such time.

B. The lien shall be enforced in the manner provided in Sections 3-36-1 through 3-36-5 NMSA 1978. In any proceedings where pleadings are required, it shall be sufficient to declare generally for the municipal utility service. Notice of the lien shall be filed in the manner provided in Section 3-36-1 NMSA 1978, and the effect of such filing shall be governed by Section 3-36-2 NMSA 1978.

C. Subsection A of this section shall not apply if an owner notifies the municipality that utility charges that may be incurred by a renter will not be the responsibility of the owner. Such notification shall be given in writing prior to the initiation of the debt and shall include the location of the rental property."

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HJC/House Bill 478

Approved April 7, 2011

## **LAWS 2011, CHAPTER 118**

AN ACT

RELATING TO TRADE PRACTICES; AMENDING SECTIONS OF CHAPTER 57, ARTICLE 16 NMSA 1978 TO PROVIDE FOR COMPENSATION FOR PARTS UNDER WARRANTY CLAIMS; PROVIDING A TIME PERIOD FOR AN AUDIT OF A WARRANTY CLAIM.

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

## Chapter 118 Section 1 Laws 2011

SECTION 1. Section 57-16-7 NMSA 1978 (being Laws 1973, Chapter 6, Section 7, as amended) is amended to read:

### "57-16-7. WARRANTY CLAIMS--PAYMENT.--

A. Each manufacturer shall specify in its franchise agreement, or in a separate written agreement, with each of its dealers licensed in this state, the dealer's obligation to perform warranty work or service on the manufacturer's products. Each manufacturer shall provide each of its dealers with a schedule of compensation to be paid to the dealer for any warranty work or service, including parts, labor and diagnostic work, required of the dealer by the manufacturer in connection with the manufacturer's products. The schedule of compensation for a warranty claim shall not be less than the rates charged by the dealer for similar service to retail customers for nonwarranty service and repairs and shall not be less than the schedule of compensation for an existing dealer as of July 1, 2011.

B. The rates charged by the dealer for nonwarranty service or work for parts means the price paid by the dealer for those parts, including all shipping and other charges, increased by the franchisee's average percentage markup. A dealer shall establish and declare the dealer's average percentage markup by submitting to the manufacturer one hundred sequential customer-paid service repair orders or ninety days of customer-paid service repair orders, whichever is less, covering repairs made no more than one hundred eighty days before the submission. A change in a dealer's established average percentage markup takes effect thirty days following the submission. A manufacturer shall not require a dealer to establish average percentage markup by another methodology. A manufacturer shall not require information that the dealer believes is unduly burdensome or time-consuming to provide, including, but not limited to, part-by-part or transaction-by-transaction calculations.

C. A manufacturer shall compensate a dealer for labor and diagnostic work at the rates charged by the dealer to its retail customers for such work. If a manufacturer can demonstrate that the rates unreasonably exceed those of all other franchised motor vehicle dealers in the same relevant market area offering the same or a competitive motor vehicle line, the manufacturer is not required to honor the rate increase proposed by the dealer. If the manufacturer is not required to honor the rate increase proposed by the dealer, the dealer is entitled to resubmit a new proposed rate for labor and diagnostic work.

D. A dealer shall not be granted an increase in the average percentage markup or labor and diagnostic work rate more than twice in one calendar year.

E. All claims for warranty work for parts and labor made by dealers under this section shall be submitted to the manufacturer within one year of the date the work was performed. All claims submitted must be paid by the manufacturer within thirty days

following receipt, provided that the claim has been approved by the manufacturer. The manufacturer has the right to audit claims for warranty work and to charge the dealer for any unsubstantiated, incorrect or false claims for a period of six months following payment. However, the manufacturer may audit and charge the dealer for any fraudulent claims during any period for which an action for fraud may be commenced under applicable state law.

F. All claims submitted by dealers on the forms and in the manner specified by the manufacturer shall be either approved or disapproved within thirty days following their receipt. The manufacturer shall notify the dealer in writing of any disapproved claim and shall set forth the reasons why the claim was not approved. Any claim not specifically disapproved in writing within thirty days following receipt is approved, and the manufacturer is required to pay that claim within thirty days of receipt of the claim.

G. A manufacturer may not otherwise recover all or any portion of its costs for compensating its dealers licensed in this state for warranty parts and service either by reduction in the amount due to the dealer or by separate charge, surcharge or other imposition.

H. The provisions of this section shall not apply to recreational travel trailers or to parts of systems, fixtures, appliances, furnishings, accessories and features of motor homes."

## **Chapter 118 Section 2 Laws 2011**

SECTION 2. Section 57-16-7.1 NMSA 1978 (being Laws 1997, Chapter 14, Section 2) is amended to read:

"57-16-7.1. SALES AND SERVICE INCENTIVES--AUDIT.--A manufacturer or distributor may audit a claim for sales and service incentives only during the six-month period immediately following payment or credit issued for the claim; however, this limitation shall not apply if there is a reasonable suspicion of fraud."

## **Chapter 118 Section 3 Laws 2011**

SECTION 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.

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SJC/Senate Bill 36, aa

Approved April 7, 2011

# LAWS 2011, CHAPTER 119

## AN ACT

RELATING TO PRESCRIPTION DRUGS; PROVIDING FOR PRESCRIPTION DRUG DONATION; ENACTING A NEW SECTION OF THE NEW MEXICO DRUG, DEVICE AND COSMETIC ACT.

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

### Chapter 119 Section 1 Laws 2011

SECTION 1. A new section of the New Mexico Drug, Device and Cosmetic Act is enacted to read:

"PRESCRIPTION DRUG DONATION.--

A. As used in this section:

(1) "clinic" means a facility licensed pursuant to Section 61-11-14 NMSA 1978 in which one or more licensed practitioners diagnose and treat patients and in which drugs are stored, dispensed or administered for the diagnosis and treatment of the facility's patients; provided that "clinic" does not include the privately owned practice of a licensed practitioner or group of licensed practitioners exempt under Section 61-11-22 NMSA 1978;

(2) "donor" means an individual who donates unused prescription drugs to a clinic or a participating practitioner for the purpose of redistribution to established patients of that clinic or practitioner;

(3) "participating practitioner" means a licensed practitioner who is authorized to prescribe drugs and who registers with the board, and is subject to rules promulgated by the board, to participate in the collection of donated drugs, prescribed for use by established patients of that practitioner and donated for the purpose of redistribution to established patients of that practitioner;

(4) "recipient" means an individual who voluntarily receives donated prescription drugs; and

(5) "tamper-evident" means a device or process that makes unauthorized access to protected pharmaceutical packaging easily detected.

B. Unused prescription drugs may be donated to a clinic or a participating practitioner and a clinic or a participating practitioner may accept and redistribute the donated prescription drugs in accordance with rules promulgated by the board.



C. The board shall promulgate rules to establish:

(1) procedures to allow the donation and redistribution of certain prescription drugs, including refrigerated drugs, that:

(a) ensure that the redistribution process is consistent with public health and safety standards; and

(b) exclude controlled substances.

(2) standards and procedures for accepting, storing, labeling and redistributing donated prescription drugs;

(3) standards and procedures for inspecting donated prescription drugs to determine that the packaging is tamper-evident and that the donated prescription drugs are unadulterated, safe and suitable for redistribution;

(4) a form to be signed by the recipient specifying:

(a) knowledge that the donor is not a pharmacist and took reasonable care of the donated prescription drug;

(b) knowledge that the donor is known to the clinic or the participating practitioner and that there is no reason to believe that the donated prescription drug was improperly handled or stored;

(c) that any person who exercises reasonable care in donating, accepting or redistributing pursuant to this section shall be immune from civil or criminal liability or professional disciplinary action of any kind for any related injury, death or loss; and

(d) that the immunity provided by this section shall not decrease or increase the civil or criminal liability of a drug manufacturer, distributor or dispenser that would have existed but for the donation;

(5) a form to be signed by the donor verifying that:

(a) the donated prescription drug has been properly stored and the container has not been opened or tampered with;

(b) the donated prescription drug has not been adulterated or misbranded; and

(c) the donor is voluntarily donating the prescription drug;

(6) a handling fee not to exceed twenty dollars (\$20.00) that may be charged to the recipient by the clinic or the participating practitioner to cover the costs of inspecting, storing, labeling and redistributing the donated prescription drug; and

(7) any other standards deemed necessary by the board.

D. The board shall maintain and publish a current listing of clinics and participating practitioners.

E. Before redistributing donated prescription drugs, the clinic or the participating practitioner shall:

(1) comply with all applicable federal laws and the laws of the state that deal with the inspection, storage, labeling and redistribution of donated prescription drugs; and

(2) examine the donated prescription drug to determine that it has not been adulterated or misbranded and certify that the drug has been stored in compliance with the requirements of the product label.

F. Any person who exercises reasonable care in donating, accepting or redistributing prescription drugs pursuant to this section shall be immune from civil or criminal liability or professional disciplinary action of any kind for any related injury, death or loss.

G. The immunity provided by this section shall not decrease or increase the civil or criminal liability of a drug manufacturer, distributor or dispenser that would have existed but for the donation.

H. A manufacturer shall not be liable for failure to transfer or communicate product consumer information or the expiration date of the donated prescription drug pursuant to this section.

I. This section does not restrict the authority of an appropriate governmental agency to regulate or ban the use of any prescription drugs."

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SPAC/Senate Bill 37, aa

Approved April 7, 2011

## **LAWS 2011, CHAPTER 120**

AN ACT

RELATING TO EDUCATION; AMENDING A SECTION OF THE PUBLIC SCHOOL INSURANCE AUTHORITY ACT TO PROVIDE FOR LIABILITY INSURANCE COVERAGE FOR HEALTH CARE STUDENT INTERNS.

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

**Chapter 120 Section 1 Laws 2011**

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. provide public liability coverage for health care liability of health care student interns currently enrolled in health care instructional programs provided by any member;
- H. 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;

I. 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;

J. 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

K. purchase, renovate, equip and furnish a building for the board."

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Senate Bill 41

Approved April 7, 2011

## **LAWS 2011, CHAPTER 121**

AN ACT

RELATING TO CONFIDENTIALITY OF RECORDS; REQUIRING HEALTH CARE REVIEW ORGANIZATIONS TO RESPOND TO NEW MEXICO MEDICAL BOARD SUBPOENAS.

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

### **Chapter 121 Section 1 Laws 2011**

SECTION 1. Section 41-9-5 NMSA 1978 (being Laws 1979, Chapter 169, Section 5) is amended to read:

"41-9-5. CONFIDENTIALITY OF RECORDS OF REVIEW ORGANIZATION.--

A. Except as provided in Subsection B of this section, all data and information acquired by a review organization in the exercise of its duties and functions

shall be held in confidence and shall not be disclosed to anyone except to the extent necessary to carry out one or more of the purposes of the review organization or in a judicial appeal from the action of the review organization. No person described in Section 41-9-4 NMSA 1978 shall disclose what transpired at a meeting of a review organization except to the extent necessary to carry out one or more of the purposes of the review organization, in a judicial appeal from the action of the review organization or when subpoenaed by the New Mexico medical board. Information, documents or records otherwise available from original sources shall not be immune from discovery or use in any civil action merely because they were presented during proceedings of a review organization, nor shall any person who testified before a review organization or who is a member of a review organization be prevented from testifying as to matters within the person's knowledge, but a witness cannot be asked about opinions formed by the witness as a result of the review organization's hearings.

B. Information, documents or records that were not generated exclusively for, but were presented during, proceedings of a review organization shall be produced to the New Mexico medical board by the review organization or any other person possessing the information, documents or records in response to an investigative subpoena issued pursuant to Section 61-6-23 NMSA 1978 and shall be held in confidence by the New Mexico medical board pursuant to 61-6-34 NMSA 1978. Nothing in this section shall be construed to permit the New Mexico medical board to issue subpoenas requesting that any person appear to testify regarding what transpired at a meeting of a review organization or opinions formed as a result of review organization proceedings."

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Senate Bill 101, aa

Approved April 7, 2011

## **LAWS 2011, CHAPTER 122**

### **AN ACT**

RELATING TO PUBLIC EMPLOYEE RETIREMENT; AMENDING THE PUBLIC EMPLOYEES RETIREMENT ACT AND THE EDUCATIONAL RETIREMENT ACT TO ALLOW A RETIRED MEMBER TO DESIGNATE ANOTHER BENEFICIARY UPON THE DEATH OF THE INITIAL DESIGNATED BENEFICIARY; AMENDING THE EDUCATIONAL RETIREMENT ACT TO ALLOW A DESELECTION AND A DESIGNATION OF ANOTHER BENEFICIARY UNDER CERTAIN CIRCUMSTANCES.

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

**Chapter 122 Section 1 Laws 2011**

SECTION 1. Section 10-11-116 NMSA 1978 (being Laws 1987, Chapter 253, Section 116, as amended) is amended to read:

"10-11-116. ELECTION OF FORM OF PAYMENT OF A PENSION.--

A. Except as otherwise provided in Section 10-11-136 NMSA 1978, a member may elect to have pension payments made under any one of the forms of payment provided in Section 10-11-117 NMSA 1978. The election of form of payment and naming of survivor pension beneficiary shall be made on a form furnished by and filed with the association prior to the date the first pension payment is made. An election of form of payment may not be changed after the date the first pension payment is made. If the member is married, the association shall obtain the consent of the member's spouse to the election of the form of payment and any designation of survivor pension beneficiary before the election or designation is effective. Except as provided in Subsection C, D or E of this section, a named survivor pension beneficiary may not be changed after the date the first pension payment is made if form of payment B or C is elected. Except as otherwise provided in Section 10-11-136 NMSA 1978, payment shall be made:

(1) under form of payment A if the member is not married at the time of retirement and if there is not a timely election of another form of payment; or

(2) under form of payment C with the member's spouse as survivor pension beneficiary if the member is married at the time of retirement and there is not a timely election of another form of payment.

B. The amount of pension under forms of payment B, C and D shall have the same actuarial present value, computed as of the effective date of the pension, as the amount of pension under form of payment A.

C. A retired member who is being paid a pension under form of payment B or C with the member's spouse as the designated survivor pension beneficiary may, upon becoming divorced from the named spouse and subject to an order of a court as provided for in Section 10-11-136 NMSA 1978, elect to have future payments made under form of payment A.

D. A retired member who was previously being paid a pension under form of payment B or C but, because of the death of the designated survivor pension beneficiary, is currently receiving a pension under form of payment A may exercise a one-time irrevocable option to designate another individual as the survivor pension beneficiary and may select either form of payment B or form of payment C; provided that:

(1) the amount of the pension under the form of payment selected shall be recalculated and have the same actuarial present value, computed on the effective date of the designation, as the amount of pension under form of payment A;

(2) the designation and the amount of the pension shall be subject to a court order as provided for in Section 10-11-136 NMSA 1978; and

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

E. A retired member who is being paid a pension under form of payment B or C with a living designated survivor pension beneficiary other than the retired member's spouse or former spouse may exercise a one-time irrevocable option to deselect the designated beneficiary and elect to:

(1) designate another survivor pension beneficiary, provided that:

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

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

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

(2) have future payments made under form of payment A."

## **Chapter 122 Section 2 Laws 2011**

SECTION 2. Section 22-11-29 NMSA 1978 (being Laws 1967, Chapter 16, Section 152, as amended) is amended to read:

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

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

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

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

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

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

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

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

(2) beginning on July 1, 1987 applicable to an annuity received by a retiree who retired prior to

July 1, 1987 and otherwise qualifies for the adjustment; provided, however, no adjustment shall be made retroactively.

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

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

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

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

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



(1) designate another beneficiary, provided that:

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

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

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

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

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

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

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

I. In the case of death of a member with less than five years' earned service credit or death of a member who has filed with the director a notice rejecting the provisions of Subsection F of this section, which notice shall be revocable by the member at any time prior to retirement, the member's contributions to the fund plus interest at the rate set by the board shall be paid to the beneficiary designated in writing to the director by the member or, if no beneficiary was designated, to the estate of the member.

J. Any elections of either Option B or C of Subsection A of this section on file with the director on June 30, 1984 by members who have not retired prior to June 30, 1984 are void."

## **Chapter 122 Section 3 Laws 2011**

SECTION 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.

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Senate Bill 119, aa

Approved April 7, 2011

## **LAWS 2011, CHAPTER 123**

AN ACT

RELATING TO EARLY CHILDHOOD EDUCATION; ENACTING THE EARLY CHILDHOOD CARE AND EDUCATION ACT; CREATING THE STATE EARLY LEARNING ADVISORY COUNCIL AND SETTING FORTH ITS DUTIES; CREATING A FUND.

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

## **Chapter 123 Section 1 Laws 2011**

SECTION 1. SHORT TITLE.--This act may be cited as the "Early Childhood Care and Education Act".

## **Chapter 123 Section 2 Laws 2011**

SECTION 2. DEFINITIONS.--As used in the Early Childhood Care and Education Act:

A. "council" means the state early learning advisory council;

- B. "department" means the children, youth and families department;
- C. "early childhood" means from prenatal to the age of five years;
- D. "fund" means the early childhood care and education fund;
- E. "pre-kindergarten" means a voluntary developmental readiness program for children who have attained their fourth birthday prior to September 1; and
- F. "secretary" means the secretary of children, youth and families.

## **Chapter 123 Section 3 Laws 2011**

### SECTION 3. FINDINGS AND PURPOSE.--

A. The legislature finds that an early childhood care and education system is vital in ensuring that every New Mexico child is eager to learn and ready to succeed by the time that child enters kindergarten, that high-quality early learning experiences have been proven to prepare children for success in school and later in life and that cost-benefit research demonstrates a high return on investment for money spent on early childhood care and education for at-risk children.

B. The legislature further finds that, to be successful, an early childhood care and education system should be:

(1) developmentally, culturally and linguistically appropriate and include the implementation of program models, standards and curriculum based on research and best practices;

(2) data-driven, including the identification and prioritization of communities most at risk while striving to make the system universally available to all those who wish to participate;

(3) accountable through developmentally appropriate methods of measuring, reporting and tracking a child's growth and development and the improvement of the system's programs;

(4) accessible, especially to those children most at risk for school failure;

(5) of the highest possible quality through the utilization of qualified practitioners who have completed specialized training in early childhood growth, development and learning that is specific to the practitioner's role in the system and the maintenance of quality rating methods for the programs in the system;

(6) fully aligned within each community to ensure the most efficient and effective use of resources by combining funding sources and supporting seamless transitions for children within the system and for children transitioning into kindergarten;

(7) family-centered by recognizing that parents are the first and most important teachers of their children and providing the support and referrals necessary for parents to assume this critical role in their child's development; and

(8) a partnership between the state and private individuals or institutions with an interest or expertise in early childhood care and education.

C. The purpose of the Early Childhood Care and Education Act is to establish a comprehensive early childhood care and education system through an aligned continuum of state and private programs, including home visitation, early intervention, child care, early head start, head start, early childhood special education, family support and pre-kindergarten, and to maintain or establish the infrastructure necessary to support quality in the system's programs.

## **Chapter 123 Section 4 Laws 2011**

### **SECTION 4. STATE EARLY LEARNING ADVISORY COUNCIL CREATED--MEMBERSHIP.--**

A. The "state early learning advisory council" is created. The council is attached to the department.

B. The council consists of fifteen members. The secretary of public education or the secretary's designee, the secretary of children, youth and families or the secretary's designee and the director of the head start state collaboration office of the department shall serve ex officio. The remaining members shall be qualified electors and, if appointment is not otherwise provided in this subsection, shall be appointed by the governor for four-year terms expiring on January 1 of the appropriate year. Council members appointed by the governor shall serve staggered terms as determined by the governor at the time of their initial appointment, and no more than five of the governor's appointees shall be from the same political party. Along with the ex-officio members, the council shall consist of the following members:

(1) one representative of an institution of higher education;

(2) one representative of a local educational agency;

(3) one representative from a head start or early head start organization;

(4) two providers of early care and education services, at least one of whom shall represent a privately owned provider;

(5) one representative of a state agency responsible for programs under Section 619 or Part C of the federal Individuals with Disabilities Education Act;

(6) one representative of the state agency responsible for children's health or mental health care issues;

(7) three members of the New Mexico business roundtable for educational excellence, appointed by and whose terms shall be set by the roundtable's board of directors; and

(8) two public members with knowledge and experience in early childhood care and education.

C. Annually, the members shall designate a chair and vice chair from the members of the council.

D. A majority of the members constitutes a quorum for the conduct of business. The council shall meet at the call of the chair, and the chair shall coordinate the activities of the council.

E. The council may form subcommittees or task forces needed to make recommendations to the council. Task force members may include individuals who are not members of the council but have an interest or expertise in early childhood education, health care or related matters.

F. Members of the council shall not be removed except for incompetence, neglect of duty or malfeasance in office. A vacancy in the membership of the council occurring other than by expiration of term shall be filled in the same manner as the original appointment, but for the unexpired term only.

G. Council members shall not be paid nor shall they receive per diem and mileage as provided in the Per Diem and Mileage Act.

## **Chapter 123 Section 5 Laws 2011**

### **SECTION 5. COUNCIL AND DEPARTMENT DUTIES.--**

A. The council is designated as the council required pursuant to the federal Improving Head Start for School Readiness Act of 2007. The council shall fulfill all the duties required under the federal act for early childhood care and education. The council shall also lead the development or enhancement of a high-quality, comprehensive system of early childhood development and care that ensures statewide coordination and collaboration among the wide range of early childhood programs and services within the state, including child care, early head start, head start, federal Individuals with Disabilities Education Act programs for preschool, infants and families and pre-kindergarten programs and services.

B. The council and department may apply for and accept gifts, grants, donations or bequests for the fund from any source, public or private, and enter into contracts or other transactions with any federal or state agency, any private organization or any other source in furtherance of the purpose of the Early Childhood Care and Education Act.

C. In addition to the duties assigned to the council under federal law, the council shall:

(1) make recommendations to the department and the legislature on the most efficient and effective way to leverage state and federal funding for early childhood care and education, including on grant applications made by the department to benefit the fund; and

(2) make recommendations to the department and the legislature on how to coordinate and align an early childhood care and education system to include child care, pre-kindergarten, home visitation, early head start, head start, early childhood special education, early intervention and family support and to provide New Mexico families with consistent access to appropriate care and education services. In developing recommendations, the council shall:

(a) consider how to consolidate and coordinate resources and public funding streams for early childhood care and education and ensure the accountability and coordinated development of all early childhood care and education services;

(b) consider a system of seamless transition from prenatal to early childhood programs to kindergarten;

(c) take into account a parent's decisive role in the planning, operation and evaluation of programs that aid families in the care and education of children;

(d) examine ways to provide consumer education and accessibility to early childhood care and education resources;

(e) consider the advancement of quality early childhood care and education programs in order to support the healthy development of children and preparation for their success in school;

(f) consider the development of a seamless service delivery system with local points of entry for early childhood care and education programs administered by local, state and federal agencies;

(g) ensure effective collaboration with state and local child welfare programs and early childhood health and behavioral health programs;

(h) consider how to develop and manage effective data collection systems to support the necessary functions of a coordinated system of early childhood care and education and track children through the education system from prenatal to early childhood to kindergarten to higher education, in order to enable accurate evaluation of the impact of early childhood care and education;

(i) focus on the diversity, cultural heritage and strengths of the families and communities of the state;

(j) consider the development of an aligned system of professional development for professionals providing early childhood care and education; and

(k) consider the establishment of an administrative framework to promote the development of high-quality early childhood care and education services that are staffed by well-qualified professionals and are available in every community for all families that express a need for them.

## **Chapter 123 Section 6 Laws 2011**

### **SECTION 6. EARLY CHILDHOOD CARE AND EDUCATION FUND--CREATED-- -PURPOSE--ADMINISTRATION--GRANT APPLICATIONS.--**

A. The "early childhood care and education fund" is created as a nonreverting fund in the state treasury. The fund shall be administered by the department and shall consist of gifts, grants, donations and bequests made to the fund.

B. Money in the fund is subject to appropriation by the legislature to the department for awarding grants to the council and early childhood care and education providers for carrying out the provisions of the Early Childhood Care and Education Act.

C. The department shall adopt rules on qualifications for grants and specify the format, procedure and deadlines for grant applications. For grants to early childhood care and education providers, the council shall review all grant applications and submit those applications recommended for final approval to the secretary.

D. Disbursements from the fund shall be made upon vouchers issued and signed by the secretary or the secretary's designee upon warrants drawn by the secretary of finance and administration.

## **Chapter 123 Section 7 Laws 2011**

### **SECTION 7. TERMINATION OF AGENCY LIFE--DELAYED**

REPEAL.--The council is terminated on July 1, 2017 pursuant to the provisions of the Sunset Act. The council shall continue to operate pursuant to the provisions of Sections

4 and 5 of the Early Childhood Care and Education Act until July 1, 2018. Effective July 1, 2018, Section 4 of the Early Childhood Care and Education Act is repealed.

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Senate Bill 120, aa

Approved April 7, 2011

## **LAWS 2011, CHAPTER 124**

### **AN ACT**

RELATING TO PROPERTY INTERESTS; UPDATING AND MAKING TECHNICAL REVISIONS TO THE UNIFORM PROBATE CODE, THE UNIFORM TRUST CODE AND THE UNIFORM PRINCIPAL AND INCOME ACT; ENACTING THE UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT; REPEALING SECTIONS OF THE NMSA 1978 THAT CONSTITUTE THE UNIFORM FIDUCIARIES ACT; AMENDING, REPEALING, ENACTING AND RECOMPILING SECTIONS OF THE NMSA 1978.

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

### **Chapter 124 Section 1 Laws 2011**

SECTION 1. Section 45-1-102 NMSA 1978 (being Laws 1975, Chapter 257, Section 1-102) is amended to read:

"45-1-102. RULE OF CONSTRUCTION--PURPOSES OF ACT.--

A. The Uniform Probate Code shall be liberally construed and applied to promote its underlying purposes and policies.

B. The underlying purposes and policies of the Uniform Probate Code are:

(1) to simplify, clarify and modernize certain laws concerning the affairs of decedents, missing persons, protected persons, minors and incapacitated persons;

(2) to discover and make effective the intent of a decedent in distribution of the decedent's property;

(3) to promote a speedy and efficient system for the settlement and distribution of the estate of the decedent;



(4) to facilitate survivorship and related accounts and similar property interests in New Mexico;

(5) to provide a comprehensive system of methods of disclaiming interests in property;

(6) to facilitate the use and enforcement of governing instruments;

(7) to apportion taxes on estates; and

(8) to make uniform the law among the states."

## **Chapter 124 Section 2 Laws 2011**

SECTION 2. Section 45-1-104 NMSA 1978 (being Laws 1975, Chapter 257, Section 1-104) is amended to read:

"45-1-104. SEVERABILITY.--If any provision of the Uniform Probate Code or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of that code that can be given effect without the invalid provision or application, and to this end, the provisions of the code are severable."

## **Chapter 124 Section 3 Laws 2011**

SECTION 3. Section 45-1-107 NMSA 1978 (being Laws 1993, Chapter 174, Section 3) is amended to read:

"45-1-107. EVIDENCE OF DEATH OR STATUS.--In addition to the rules of evidence in courts of general jurisdiction, the following rules relating to a determination of death and status apply:

A. in accordance with Subsection A of Section 12-2-4 NMSA 1978, death occurs when an individual has sustained either:

(1) irreversible cessation of circulatory and respiratory functions; or

(2) irreversible cessation of all functions of the entire brain, including the brain stem.

A determination of death must be made in accordance with accepted medical standards;

B. an authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie evidence of the fact, place, date and time of death and the identity of the decedent;

C. an authenticated copy of a record or report of a governmental agency, domestic or foreign, that an individual is missing, detained, dead or alive is prima facie evidence of the status and of the dates, circumstances and places disclosed by the record or report;

D. in the absence of prima facie evidence of death pursuant to Subsections B or C of this section, the fact of death may be established by clear and convincing evidence, including circumstantial evidence;

E. an individual whose death is not established pursuant to Subsection A, B, C or D of this section who is absent for a continuous period of five years, during which the person has not been heard from and whose absence is not satisfactorily explained after diligent search or inquiry is presumed to be dead. The person's death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier; and

F. in the absence of evidence disputing the time of death stated on a document described in Subsection B or C of this section, a document described in Subsection B or C of this section that states a time of death one hundred twenty hours or more after the time of death of another individual, however the time of death of the other individual is determined, establishes by clear and convincing evidence that the individual survived the other individual by one hundred twenty hours."

## **Chapter 124 Section 4 Laws 2011**

SECTION 4. Section 45-1-110 NMSA 1978 (being Laws 1995, Chapter 210, Section 1) is amended to read:

"45-1-110. TIME OF TAKING EFFECT--PROVISIONS FOR TRANSITION.-- Except as provided elsewhere in the Uniform Probate Code, on the effective date of this code or of any amendment to this code:

A. the code or the amendment applies to governing instruments executed by decedents dying thereafter;

B. the code or the amendment applies to any proceedings in court then pending or thereafter commenced regardless of the time of the death of decedent except to the extent that in the opinion of the court the former procedure should be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedure of this code or the amendment;

C. every personal representative or other fiduciary holding an appointment under this code on that date continues to hold the appointment but has only the powers conferred by this code or the amendment and is subject to the duties imposed with respect to any act occurring or done thereafter;

D. an act done before the effective date in any proceeding and any accrued right is not impaired by this code or the amendment. If a right is acquired, extinguished or barred upon the expiration of a prescribed period of time that has commenced to run by the provisions of any statute before the effective date, the provisions shall remain in force with respect to that right; and

E. any rule of construction or presumption provided in this code or the amendment applies to governing instruments executed before the effective date unless there is a clear indication of a contrary intent in the governing instrument."

## **Chapter 124 Section 5 Laws 2011**

SECTION 5. 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, except as provided in Subsection B of this section and 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 a court for an order of informal probate or appointment pursuant to Chapter 45, Article 3 NMSA 1978;

(3) "authenticated", with reference to copies, means certified or exemplified;

(4) "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;

(5) "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;

(6) "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;

(7) "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;

(8) "conservator" has the same meaning as set forth in Section 45-5-101 NMSA 1978;

(9) "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;

(10) "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;

(11) "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;

(12) "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;

(13) "electronic" means relating to technology having electronic, digital, magnetic, wireless, optical, electromagnetic or similar capabilities;

(14) "emancipated minor" means a person sixteen years of age or older who:

(a) has entered into a valid marriage, whether or not the marriage was terminated by dissolution;

(b) is a member of the active or reserve components of the army, navy, air force, marine corps or coast guard of the United States who is on active duty or a member of the national guard who is on activated status; or

(c) has received a declaration of emancipation pursuant to the Emancipation of Minors Act;

(15) "estate" includes the property of the decedent, trust or other person whose affairs are subject to the Uniform Probate Code as the property was originally constituted and as it exists from time to time during administration;

(16) "exempt property" means that property of a decedent's estate that is described in Sections 45-2-402 and 45-2-403 NMSA 1978;

(17) "fiduciary" includes a personal representative, guardian, guardian ad litem, conservator and trustee;

(18) "foreign personal representative" means a personal representative appointed by another jurisdiction;

(19) "formal proceedings" means proceedings conducted before a district judge with notice to interested persons;

(20) "governing instrument" means a deed, will, trust, insurance or annuity policy, account with POD designation, security registered in beneficiary form (TOD), transfer on death (TOD) deed, 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;

(21) "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 parental or court appointment. "Guardian" includes a limited, emergency and temporary guardian but not a guardian ad litem;

(22) "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;

(23) "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;

(24) "incapacitated person" means an individual described in Section 45-5-101 NMSA 1978;

(25) "informal proceedings" means those proceedings conducted without notice to interested persons before the court for probate of a will or appointment of a personal representative, except as provided for in Section 45-3-306 NMSA 1978;

(26) "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 shall be determined according to the particular purposes of, and matter involved in, a proceeding;

(27) "issue" of an individual means the individual's descendants;

(28) "lease" includes an oil, gas or other mineral lease;

(29) "letters" includes letters testamentary, letters of guardianship, letters of administration and letters of conservatorship;

(30) "minor" means an unemancipated individual who has not reached eighteen years of age;

(31) "mortgage" means any conveyance, agreement or arrangement in which property is encumbered or used as security;

(32) "nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of death;

(33) "organization" means a corporation, business trust, limited liability company, estate, trust, partnership, joint venture, association, government or governmental subdivision or agency or any other legal or commercial entity;

(34) "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;

(35) "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;

(36) "person" means an individual or an organization;

(37) "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;

(38) "petition" means a written motion or other request to the district court for an order after notice;

(39) "proceeding" includes action at law and suit in equity;

(40) "property" includes both real and personal property or any right or interest therein and means anything that may be the subject of ownership;

(41) "protected person" has the same meaning as set forth in Section 45-5-101 NMSA 1978;

(42) "protective proceeding" means a conservatorship proceeding pursuant to Section 45-5-401 NMSA 1978;

(43) "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;

(44) "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;

(45) "settlement", in reference to a decedent's estate, includes the full process of administration, distribution and closing;

(46) "sign" means with present intent to authenticate or adopt a record other than a will:

(a) to execute or adopt a tangible symbol; or

(b) to attach to or logically associate with the record an electronic symbol, sound or process;

(47) "special administrator" means a personal representative as described by Sections 45-3-614 through 45-3-618 NMSA 1978;

(48) "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. "State" also includes any Indian nation, tribe, pueblo or band located within the United States and recognized by federal law or formally acknowledged by a state of the United States;

(49) "successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative;

(50) "successors" means persons, other than creditors, who are entitled to property of a decedent under the decedent's will or the Uniform Probate Code;

(51) "supervised administration" refers to the proceedings described in Article 3, Part 5 of the Uniform Probate Code;

(52) "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";

(53) "testacy proceeding" means a proceeding to establish a will or determine intestacy;

(54) "testator" includes an individual of either gender;

(55) "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 6 of the Uniform Probate Code, custodial arrangements, including those created under the Uniform Transfers 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;



(56) "trustee" includes an original, additional or successor trustee, whether or not appointed or confirmed by court; and

(57) "will" includes a 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, parts or sections."

## **Chapter 124 Section 6 Laws 2011**

SECTION 6. Section 45-1-301 NMSA 1978 (being Laws 1975, Chapter 257, Section 1-301) is amended to read:

"45-1-301. APPLICATION.--

A. Except as otherwise provided in the Uniform Probate Code, the code applies to:

(1) the affairs and estates of decedents, missing persons and protected persons domiciled in New Mexico;

(2) the property of nonresidents located in New Mexico or property coming into the control of a fiduciary who is subject to the laws of New Mexico;

(3) incapacitated persons, minors and protected persons in New Mexico;

(4) survivorship and related accounts and similar property interests in New Mexico;

(5) the disclaimer of property interests by persons in New Mexico;

(6) certain kinds of governing instruments that are governed by the laws of New Mexico; and

(7) the apportionment of taxes on estates subject to tax by New Mexico.

B. The Uniform Probate Code does not create, enlarge, modify or diminish parental rights or duties pursuant to the New Mexico Uniform Parentage Act, the Adoption Act, the Children's Code or other law of New Mexico. The definition or use of

terms in the Uniform Probate Code shall not be used to interpret, by analogy or otherwise, the same or other terms in the New Mexico Uniform Parentage Act, the Adoption Act, the Children's Code or other law of New Mexico."

## **Chapter 124 Section 7 Laws 2011**

SECTION 7. Section 45-1-302 NMSA 1978 (being Laws 1975, Chapter 257, Section 1-302, as amended) is amended to read:

"45-1-302. SUBJECT MATTER JURISDICTION OF DISTRICT AND PROBATE COURTS.--

A. The district court has exclusive original jurisdiction over all subject matter relating to:

(1) formal proceedings with respect to the estates of decedents, including determinations of testacy, appointment of personal representatives, constructions of wills, administration and expenditure of funds of estates, determination of heirs and successors of decedents and distribution and closing of estates;

(2) estates of missing and protected persons;

(3) protection of incapacitated persons and minors;

(4) survivorship and related accounts and similar property interests;

(5) disclaimer of interests in property;

(6) apportionment of taxes on estates; and

(7) governing instruments except wills.

B. The district court in formal proceedings shall have jurisdiction to determine title to and value of real or personal property as between the estate and any interested person, including strangers to the estate claiming adversely thereto. The district court has full power to make orders, judgments and decrees and to take all other action necessary and proper to administer justice in matters that come before it.

C. The probate court and the district court have original jurisdiction over informal proceedings for probate of a will or appointment of a personal representative."

## **Chapter 124 Section 8 Laws 2011**

SECTION 8. Section 45-1-303 NMSA 1978 (being Laws 1975, Chapter 257, Section 1-303, as amended) is amended to read:

"45-1-303. VENUE--MULTIPLE PROCEEDINGS--TRANSFER.--

A. Subject to the provisions of Sections 45-1-302 and 45-3-201 NMSA 1978 and Chapter 45, Article 5 NMSA 1978 and the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, if 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 having jurisdiction 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 having jurisdiction, 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 having jurisdiction, the court making the finding may transfer the proceeding or file to the other court."

## **Chapter 124 Section 9 Laws 2011**

SECTION 9. Section 45-1-403 NMSA 1978 (being Laws 1975, Chapter 257, Section 1-403, as amended) is amended to read:

"45-1-403. PLEADINGS--WHEN PARTIES BOUND BY OTHERS--NOTICE.--In formal proceedings involving trusts, or estates of decedents, minors, protected persons or incapacitated persons, and in judicially supervised settlements, the following rules 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 another appropriate manner;

B. a person is bound by an order binding another in the following cases:

(1) an order 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, binds 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) an order binding a conservator binds the person whose estate the conservator controls;

(b) an order binding a guardian binds the protected person if no conservator of the protected person's estate has been appointed;

(c) an order binding a trustee binds beneficiaries of the trust in proceedings to probate a will establishing or adding to a trust, to review the acts or accounts of a former fiduciary and in proceedings involving creditors or other third parties;

(d) an order binding a personal representative binds persons interested in the undistributed assets of a decedent's estate in actions or proceedings by or against the estate; and

(e) an order binding the sole holder or all co-holders of a general testamentary power of appointment binds other persons to the extent their interests as objects, takers in default or otherwise are subject to the power; and

(3) unless otherwise represented, a minor or an incapacitated, unborn or unascertained person is bound by an order to the extent the minor's or the incapacitated, unborn or unascertained person's interest is adequately represented by another party having a substantially identical interest in the proceeding;

C. if no conservator or guardian has been appointed, a parent may represent a minor child;

D. notice is required as follows:

(1) the notice prescribed by Section 45-1-401 NMSA 1978 shall be given to every person having an interest in the subject of the hearing or to one who can bind an interested person as described in Paragraph (1) or (2) of Subsection B of this section. Notice may be given both to an interested 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

E. 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 state its reasons for appointing a guardian ad litem as a part of the record of the proceeding."

## **Chapter 124 Section 10 Laws 2011**

SECTION 10. Section 45-2-103 NMSA 1978 (being Laws 1993, Chapter 174, Section 6) is amended to read:

"45-2-103. SHARE OF HEIRS OTHER THAN SURVIVING SPOUSE.--

A. Any part of the intestate estate not passing to a decedent's surviving spouse pursuant to Section 45-2-102 NMSA 1978, or the entire intestate estate if there is no surviving spouse, passes in the following order to the individuals who survive the decedent:

(1) to the decedent's descendants by representation;

(2) if there is no surviving descendant, to the decedent's parents equally if both survive, or to the surviving parent if only one survives;

(3) if there is no surviving descendant or parent, to the descendants of the decedent's parents or either of them by representation;

(4) if there is no surviving descendant, parent or descendant of a parent, but the decedent is survived on both the paternal and maternal sides by one or more grandparents or descendants of grandparents:

(a) half to the decedent's paternal grandparents equally if both survive, to the surviving paternal grandparent if only one survives, or to the descendants of the decedent's paternal grandparents or either of them if both are deceased, the descendants taking by representation; and

(b) half to the decedent's maternal grandparents equally if both survive, to the surviving maternal grandparent if only one survives, or to the descendants of the decedent's maternal grandparents or either of them if both are deceased, the descendants taking by representation; and

(5) if there is no surviving descendant parent, or descendant of a parent, but the decedent is survived by one or more grandparents or descendants of grandparents on the paternal but not the maternal side, or on the maternal but not the paternal side, to the decedent's relatives on the side with one or more surviving members in the manner described in Paragraph (4) of this subsection.

B. If there is no taker under Subsection A of this section, but the decedent has:

(1) one deceased spouse who has one or more descendants who survive the decedent, the estate or part thereof passes to that spouse's descendants by representation; or

(2) more than one deceased spouse who has one or more descendants who survive the decedent, an equal share of the estate or part thereof passes to each set of descendants by representation.

C. For purposes of Subsection B of this section, the term "deceased spouse" means an individual to whom the decedent was married at the individual's death, and does not include a spouse who was divorced from, or treated pursuant to Section 45-2-802 or Section 45-2-804 NMSA 1978 as divorced from, the decedent at the time of the decedent's death."

## **Chapter 124 Section 11 Laws 2011**

SECTION 11. Section 45-2-104 NMSA 1978 (being Laws 1993, Chapter 174, Section 7) is amended to read:

"45-2-104. REQUIREMENT OF SURVIVAL BY ONE HUNDRED TWENTY HOURS--INDIVIDUAL IN GESTATION.--

A. For purposes of intestate succession and allowances, and except as otherwise provided in Subsection B of this section, the following rules apply:

(1) an individual born before a decedent's death who fails to survive the decedent by one hundred twenty hours is deemed to have predeceased the decedent. If it is not established by clear and convincing evidence that an individual born before the decedent's death survived the decedent by one hundred twenty hours, it is deemed that the individual failed to survive for the required period; and

(2) an individual in gestation at a decedent's death is deemed to be living at the decedent's death if the individual lives one hundred twenty hours after birth. If it is not established by clear and convincing evidence that an individual in gestation at the decedent's death lived one hundred twenty hours after birth, it is deemed that the individual failed to survive for the required period.

B. This section does not apply if its application would cause the estate to pass to the state under Section 45-2-105 NMSA 1978."

## **Chapter 124 Section 12 Laws 2011**

SECTION 12. Section 45-2-114 NMSA 1978 (being Laws 1993, Chapter 174, Section 16, as amended) is amended to read:

"45-2-114. PARENT BARRED FROM INHERITING IN CERTAIN CIRCUMSTANCES.--

A. A parent is barred from inheriting from or through a child of the parent if:

(1) the parent's parental rights were terminated and the parent-child relationship was not judicially reestablished; or

(2) the child died before reaching eighteen years of age and there is clear and convincing evidence that immediately before the child's death the parental rights of the parent could have been terminated under law of New Mexico other than the Uniform Probate Code on the basis of nonsupport, abandonment, abuse, neglect or other actions or inactions of the parent toward the child.

B. For the purpose of intestate succession from or through the deceased child, a parent who is barred from inheriting under this section is treated as if the parent predeceased the child."

## **Chapter 124 Section 13 Laws 2011**

SECTION 13. A new Section 45-2-115 NMSA 1978 is enacted to read:

"45-2-115. DEFINITIONS.--As used in Subpart 2 of Part 1 of Article 2 of the Uniform Probate Code:

A. "adoptee" means an individual who is adopted;

B. "assisted reproduction" means a method of causing pregnancy other than sexual intercourse;

C. "divorce" includes an annulment, dissolution and declaration of invalidity of a marriage;

D. "functioned as a parent of the child" means behaving toward a child in a manner consistent with being the child's parent and performing functions that are customarily performed by a parent, including fulfilling parental responsibilities toward the child, recognizing or holding out the child as the individual's child, materially participating in the child's upbringing and residing with the child in the same household as a regular member of that household;

E. "genetic father" means the man whose sperm fertilized the egg of a child's genetic mother. If the father-child relationship is established under the presumption of paternity pursuant to Paragraph (1), (2) or (3) of Subsection B of Section 40-11A-201 NMSA 1978, the term means only the man for whom that relationship is established;

F. "genetic mother" means the woman whose egg was fertilized by the sperm of a child's genetic father;

G. "genetic parent" means a child's genetic father or genetic mother;

H. "incapacity" means the inability of an individual to function as a parent of a child because of the individual's physical or mental condition; and

I. "relative" means a grandparent or a descendant of a grandparent."

### **Chapter 124 Section 14 Laws 2011**

SECTION 14. A new Section 45-2-116 NMSA 1978 is enacted to read:

"45-2-116. EFFECT OF PARENT-CHILD RELATIONSHIP.--Except as otherwise provided in Subsections B through E of Section 45-2-119 NMSA 1978, if a parent-child relationship exists or is established pursuant to Subpart 2 of Part 1 of Article 2 of the Uniform Probate Code, the parent is a parent of the child and the child is a child of the parent for the purpose of intestate succession."

### **Chapter 124 Section 15 Laws 2011**

SECTION 15. A new Section 45-2-117 NMSA 1978 is enacted to read:

"45-2-117. NO DISTINCTION BASED ON MARITAL STATUS.--Except as otherwise provided in Section 45-2-114, 45-2-119, 45-2-120 or 45-2-121 NMSA 1978, a parent-child relationship exists between a child and the child's genetic parents, regardless of the parents' marital status."

### **Chapter 124 Section 16 Laws 2011**

SECTION 16. A new Section 45-2-118 NMSA 1978 is enacted to read:

"45-2-118. ADOPTEE AND ADOPTEE'S ADOPTIVE PARENT OR PARENTS.--

A. A parent-child relationship exists between an adoptee and the adoptee's adoptive parent or parents.

B. For purposes of Subsection A of this section:

(1) an individual who is in the process of being adopted by a married couple when one of the spouses dies is treated as adopted by the deceased spouse if the adoption is subsequently granted to the decedent's surviving spouse; and

(2) a child of a genetic parent who is in the process of being adopted by a genetic parent's spouse when the spouse dies is treated as adopted by the deceased spouse if the genetic parent survives the deceased spouse by one hundred twenty hours.

C. If, after a parent-child relationship is established between a child of assisted reproduction and a parent pursuant to Section 45-2-120 NMSA 1978 or



between a gestational child and a parent pursuant to Section 45-2-121 NMSA 1978, the child is in the process of being adopted by the parent's spouse when that spouse dies, the child is treated as adopted by the deceased spouse for the purpose of Paragraph (2) of Subsection B of this section."

## **Chapter 124 Section 17 Laws 2011**

SECTION 17. A new Section 45-2-119 NMSA 1978 is enacted to read:

"45-2-119. ADOPTEE AND ADOPTEE'S GENETIC PARENTS.--

A. Except as otherwise provided in Subsections B through E of this section, a parent-child relationship does not exist between an adoptee and the adoptee's genetic parents.

B. A parent-child relationship exists between an individual who is adopted by the spouse of either genetic parent and:

(1) the genetic parent whose spouse adopted the individual; and

(2) the other genetic parent, but only for the purpose of the right of the adoptee or a descendant of the adoptee to inherit from or through the other genetic parent.

C. A parent-child relationship exists between both genetic parents and an individual who is adopted by a relative of a genetic parent or by the spouse or surviving spouse of a relative of a genetic parent, but only for the purpose of the right of the adoptee or a descendant of the adoptee to inherit from or through either genetic parent.

D. A parent-child relationship exists between both genetic parents and an individual who is adopted after the death of both genetic parents, but only for the purpose of the right of the adoptee or a descendant of the adoptee to inherit through either genetic parent.

E. If, after a parent-child relationship is established between a child of assisted reproduction and a parent or parents pursuant to Section 45-2-120 NMSA 1978 or between a gestational child and a parent or parents pursuant to Section 45-2-121 NMSA 1978, the child is adopted by another or others, the child's parent or parents pursuant to Section 45-2-120 or 45-2-121 NMSA 1978 are treated as the child's genetic parent or parents for the purpose of this section."

## **Chapter 124 Section 18 Laws 2011**

SECTION 18. A new Section 45-2-120 NMSA 1978 is enacted to read:

"45-2-120. CHILD CONCEIVED BY ASSISTED REPRODUCTION OTHER THAN CHILD BORN TO GESTATIONAL CARRIER.--

A. As used in this section:

(1) "birth mother" means a woman, other than a gestational carrier pursuant to Section 45-2-121 NMSA 1978, who gives birth to a child of assisted reproduction. The term is not limited to a woman who is the child's genetic mother;

(2) "child of assisted reproduction" means a child conceived by means of assisted reproduction by a woman other than a gestational carrier pursuant to Section 45-2-121 NMSA 1978; and

(3) "third-party donor" means an individual who produces eggs or sperm used for assisted reproduction, whether or not for consideration. The term does not include:

(a) a husband who provides sperm or a wife who provides eggs that are used for assisted reproduction by the wife;

(b) the birth mother of a child of assisted reproduction; or

(c) an individual who has been determined pursuant to Subsection E or F of this section to have a parent-child relationship with a child of assisted reproduction.

B. A parent-child relationship does not exist between a child of assisted reproduction and a third-party donor.

C. A parent-child relationship exists between a child of assisted reproduction and the child's birth mother.

D. Except as otherwise provided in Subsections I and J of this section, a parent-child relationship exists between a child of assisted reproduction and the husband of the child's birth mother if the husband provided the sperm that the birth mother used during his lifetime for assisted reproduction.

E. A birth certificate identifying an individual other than the birth mother as the other parent of a child of assisted reproduction presumptively establishes a parent-child relationship between the child and that individual.

F. Except as otherwise provided in Subsections G, I and J of this section, and unless a parent-child relationship is established pursuant to Subsection D or E of this section, a parent-child relationship exists between a child of assisted reproduction and an individual other than the birth mother who consented to assisted reproduction by the birth mother with intent to be treated as the other parent of the child. Consent to

assisted reproduction by the birth mother with intent to be treated as the other parent of the child is established if the individual:

(1) before or after the child's birth, signed a record that, considering all the facts and circumstances, evidences the individual's consent; or

(2) in the absence of a signed record pursuant to Paragraph (1) of this subsection:

(a) functioned as a parent of the child no later than two years after the child's birth;

(b) intended to function as a parent of the child no later than two years after the child's birth but was prevented from carrying out that intent by death, incapacity or other circumstances; or

(c) intended to be treated as a parent of a posthumously conceived child if that intent is established by clear and convincing evidence.

G. For the purpose of Paragraph (1) of Subsection F of this section, neither an individual who signed a record more than two years after the birth of the child nor a relative of that individual who is not also a relative of the birth mother inherits from or through the child unless the individual functioned as a parent of the child before the child reached eighteen years of age.

H. For the purpose of Paragraph (2) of Subsection F of this section, the following rules apply:

(1) if the birth mother is married and no divorce proceeding is pending, in the absence of clear and convincing evidence to the contrary, her spouse satisfies Subparagraph (a) or (b) of Paragraph (2) of Subsection F of this section; and

(2) if the birth mother is a surviving spouse and at her deceased spouse's death no divorce proceeding was pending, in the absence of clear and convincing evidence to the contrary, her deceased spouse satisfies Subparagraph (b) or (c) of Paragraph (2) of Subsection F of this section.

I. If a married couple is divorced before placement of eggs, sperm or embryos, a child resulting from the assisted reproduction is not a child of the birth mother's former spouse, unless the former spouse consented in a record that if assisted reproduction were to occur after divorce, the child would be treated as the former spouse's child.

J. If, in a record, an individual withdraws consent to assisted reproduction before placement of eggs, sperm or embryos, a child resulting from the assisted

reproduction is not a child of that individual, unless the individual subsequently satisfies Subsection F of this section.

K. If, pursuant to this section, an individual is a parent of a child of assisted reproduction who is conceived after the individual's death, the child is treated as in gestation at the individual's death for purposes of Paragraph (2) of Subsection A of Section 45-2-104 NMSA 1978 if the child is:

(1) in utero not later than thirty-six months after the individual's death; or

(2) born not later than forty-five months after the individual's death."

## **Chapter 124 Section 19 Laws 2011**

SECTION 19. A new Section 45-2-121 NMSA 1978 is enacted to read:

"45-2-121. CHILD BORN TO GESTATIONAL CARRIER.--

A. As used in this section:

(1) "gestational agreement" means an enforceable or unenforceable agreement for assisted reproduction in which a woman agrees to carry a child to birth for an intended parent, intended parents or an individual described in Subsection E of this section;

(2) "gestational carrier" means a woman who is not an intended parent who gives birth to a child pursuant to a gestational agreement. The term is not limited to a woman who is the child's genetic mother;

(3) "gestational child" means a child born to a gestational carrier pursuant to a gestational agreement; and

(4) "intended parent" means an individual who entered into a gestational agreement providing that the individual will be the parent of a child born to a gestational carrier by means of assisted reproduction. The term is not limited to an individual who has a genetic relationship with the child.

B. A parent-child relationship is conclusively established by a court order designating the parent or parents of a gestational child.

C. A parent-child relationship between a gestational child and the child's gestational carrier does not exist unless the gestational carrier is:

(1) designated as a parent of the child in a court order described in Subsection B of this section; or

(2) the child's genetic mother and a parent-child relationship does not exist pursuant to this section with an individual other than the gestational carrier.

D. In the absence of a court order pursuant to Subsection B of this section, a parent-child relationship exists between a gestational child and an intended parent who:

(1) functioned as a parent of the child no later than two years after the child's birth; or

(2) died while the gestational carrier was pregnant if:

(a) there were two intended parents and the other intended parent functioned as a parent of the child no later than two years after the child's birth;

(b) there were two intended parents, the other intended parent also died while the gestational carrier was pregnant and a relative of either deceased intended parent or the spouse or surviving spouse of a relative of either deceased intended parent functioned as a parent of the child no later than two years after the child's birth; or

(c) there was no other intended parent and a relative of or the spouse or surviving spouse of a relative of the deceased intended parent functioned as a parent of the child no later than two years after the child's birth.

E. In the absence of a court order pursuant to Subsection B of this section, a parent-child relationship exists between a gestational child and an individual whose sperm or eggs were used after the individual's death or incapacity to conceive a child pursuant to a gestational agreement entered into after the individual's death or incapacity if the individual intended to be treated as the parent of the child. The individual's intent may be shown by:

(1) a record signed by the individual that, considering all the facts and circumstances, evidences the individual's intent; or

(2) other facts and circumstances establishing the individual's intent by clear and convincing evidence.

F. Except as otherwise provided in Subsection G of this section, and unless there is clear and convincing evidence of a contrary intent, an individual is deemed to have intended to be treated as the parent of a gestational child for purposes of Paragraph (2) of Subsection E of this section if:

(1) the individual, before death or incapacity, deposited the sperm or eggs that were used to conceive the child;

(2) when the individual deposited the sperm or eggs, the individual was married and no divorce proceeding was pending; and

(3) the individual's spouse or surviving spouse functioned as a parent of the child no later than two years after the child's birth.

G. The presumption pursuant to Subsection F of this section does not apply if there is:

(1) a court order pursuant to Subsection B of this section; or

(2) a signed record that satisfies Paragraph (1) of Subsection E of this section.

H. If, pursuant to this section, an individual is a parent of a gestational child who is conceived after the individual's death, the child is treated as in gestation at the individual's death for purposes of Paragraph (2) of Subsection A of Section 45-2-104 NMSA 1978 if the child is:

(1) in utero not later than thirty-six months after the individual's death; or

(2) born not later than forty-five months after the individual's death.

I. This section shall apply only for the purposes of determining inheritance rights and does not affect any law of New Mexico other than the Uniform Probate Code regarding the enforceability or validity of a gestational agreement.

J. Subject to Subsection I of this section, the Uniform Probate Code does not authorize or prohibit a gestational agreement."

## **Chapter 124 Section 20 Laws 2011**

SECTION 20. A new Section 45-2-122 NMSA 1978 is enacted to read:

"45-2-122. EQUITABLE ADOPTION.--Subpart 2 of Part 1 of Article 2 of the Uniform Probate Code does not affect the doctrine of equitable adoption."

## **Chapter 124 Section 21 Laws 2011**

SECTION 21. Section 45-2-403 NMSA 1978 (being Laws 1993, Chapter 174, Section 21, as amended) is amended to read:

"45-2-403. PERSONAL PROPERTY ALLOWANCE.--In addition to the family allowance, the decedent's surviving spouse is entitled from the estate to a value, not exceeding fifteen thousand dollars (\$15,000) in excess of any security interests therein,

in household furniture, automobiles, furnishings, appliances and personal effects. If there is no surviving spouse, the decedent's children who are devisees under the will, who are entitled to a share of the estate pursuant to Section 45-2-302 NMSA 1978 or, if there is no will, who are intestate heirs are entitled jointly to the same value. If encumbered chattels are selected and the value in excess of security interests plus that of other exempt property is less than fifteen thousand dollars (\$15,000) or if there is not fifteen thousand dollars (\$15,000) worth of exempt property in the estate, the spouse or children are entitled to other assets of the estate, if any, to the extent necessary to make up the fifteen thousand dollar (\$15,000) value. Rights to specific property for the personal property allowance and assets needed to make up a deficiency in the property have priority over all claims against the estate, but the right to any assets to make up a deficiency of exempt property abates as necessary to permit earlier payment of the family allowance. These rights are in addition to any benefit or share passing to the surviving spouse or children by intestate succession or by the decedent's will, unless otherwise provided by the decedent in the will or other governing instrument."

## **Chapter 124 Section 22 Laws 2011**

SECTION 22. Section 45-2-501 NMSA 1978 (being Laws 1993, Chapter 174, Section 25) is amended to read:

"45-2-501. WHO MAY MAKE WILL.--An individual eighteen or more years of age who is of sound mind or an emancipated minor who is of sound mind may make a will."

## **Chapter 124 Section 23 Laws 2011**

SECTION 23. Section 45-2-507 NMSA 1978 (being Laws 1993, Chapter 174, Section 30) is amended to read:

"45-2-507. REVOCATION BY WRITING OR BY ACT.--

A. A will or any part thereof is revoked:

(1) by executing a subsequent will that revokes the previous will or part expressly or by inconsistency;

(2) by executing another subsequent document in the manner provided for in Section 45-2-502 or 45-2-504 NMSA 1978, or both, that expressly revokes the previous will or part thereof; or

(3) by performing a revocatory act on the will if the testator performed the act with the intent and for the purpose of revoking the will or part or if another individual performed the act in the testator's conscious presence and by the testator's direction. For purposes of this paragraph, "revocatory act on the will" includes burning, tearing, canceling, obliterating or destroying the will or any part of it. A burning,

tearing or canceling is a "revocatory act on the will", whether or not the burn, tear or cancellation touched any of the words on the will.

B. If a subsequent will does not expressly revoke a previous will, the execution of the subsequent will wholly revokes the previous will by inconsistency if the testator intended the subsequent will to replace rather than supplement the previous will.

C. The testator is presumed to have intended a subsequent will to replace rather than supplement a previous will if the subsequent will makes a complete disposition of the testator's estate. If this presumption arises and is not rebutted by clear and convincing evidence, the previous will is revoked; only the subsequent will is operative on the testator's death.

D. The testator is presumed to have intended a subsequent will to supplement rather than replace a previous will if the subsequent will does not make a complete disposition of the testator's estate. If this presumption arises and is not rebutted by clear and convincing evidence, the subsequent will revokes the previous will only to the extent that the subsequent will is inconsistent with the previous will; each will is fully operative on the testator's death to the extent that the wills are not inconsistent."

## **Chapter 124 Section 24 Laws 2011**

SECTION 24. Section 45-2-603 NMSA 1978 (being Laws 1993, Chapter 174, Section 42, as amended) is amended to read:

"45-2-603. ANTILAPSE--DECEASED DEVISEE--CLASS GIFTS.--

A. As used in this section:

(1) "alternative devise" means a devise that is expressly created by the will and, under the terms of the will, can take effect instead of another devise on the happening of one or more events, including survival of the testator or failure to survive the testator, whether an event is expressed in condition-precedent, condition-subsequent or any other form. A residuary clause constitutes an alternative devise with respect to a nonresiduary devise only if the will specifically provides that, upon lapse or failure, the nonresiduary devise, or nonresiduary devises in general, pass under the residuary clause;

(2) "class member" includes an individual who fails to survive the testator but who would have taken under a devise in the form of a class gift had the class member survived the testator;

(3) "descendant of a grandparent", as used in Subsection B of this section, means an individual who qualifies as a descendant of a grandparent of the testator or of the donor of a power of appointment pursuant to:



(a) rules of construction applicable to a class gift created in the testator's will if the devise or exercise of the power is in the form of a class gift; or

(b) rules for intestate succession if the devise or exercise of the power is not in the form of a class gift;

(4) "descendants", as used in the phrase "surviving descendants" of a deceased devisee or class member in Paragraphs (1) and (2) of Subsection B of this section, means the descendants of a deceased devisee or class member who would take under a class gift created in the testator's will;

(5) "devise" includes an alternative devise, a devise in the form of a class gift and an exercise of a power of appointment;

(6) "devisee" includes:

(a) a class member if the devise is in the form of a class gift;

(b) an individual or class member who was deceased at the time the testator executed the testator's will as well as an individual or class member who was then living but who failed to survive the testator; and

(c) an appointee under a power of appointment exercised by the testator's will;

(7) "stepchild" means a child of the surviving, deceased or former spouse of the testator or of the donor of a power of appointment and not of the testator or donor;

(8) "surviving", as used in the phrase "surviving devisees" or "surviving descendants", means devisees or descendants who neither predeceased the testator nor are deemed to have predeceased the testator pursuant to the provisions of Section 45-2-702 NMSA 1978; and

(9) "testator" includes the donee of a power of appointment if the power is exercised in the testator's will.

B. If a devisee fails to survive the testator and is a grandparent, a descendant of a grandparent or a stepchild of either the testator or the donor of a power of appointment exercised by the testator's will, the following apply:

(1) except as provided in Paragraph (4) of this subsection, if the devise is not in the form of a class gift and the deceased devisee leaves surviving descendants, a substitute gift is created in the devisee's surviving descendants. They take by representation the property to which the devisee would have been entitled had the devisee survived the testator;

(2) except as provided in Paragraph (4) of this subsection, if the devise is in the form of a class gift, other than a devise to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives" or "family" or a class described by language of similar import, a substitute gift is created in the surviving descendants of any deceased devisee. The property to which the devisees would have been entitled had all of them survived the testator passes to the surviving devisees and the surviving descendants of the deceased devisees. Each surviving devisee takes the share to which the surviving devisee would have been entitled had the deceased devisees survived the testator. Each deceased devisee's surviving descendants who are substituted for the deceased devisee take by representation the share to which the deceased devisee would have been entitled had the deceased devisee survived the testator. For the purposes of this paragraph, "deceased devisee" means a class member who failed to survive the testator and left one or more surviving descendants;

(3) for the purposes of Section 45-2-601 NMSA 1978, words of survivorship, such as in a devise to an individual "if he survives me" or in a devise to "my surviving children" are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section;

(4) if the will creates an alternative devise with respect to a devise for which a substitute gift is created by Paragraph (1) or (2) of this subsection, the substitute gift is superseded by the alternative devise if:

(a) the alternative devise is in the form of a class gift and one or more members of the class is entitled to take under the will; or

(b) the alternative devise is not in the form of a class gift and the expressly designated devisee of the alternative devise is entitled to take under the will; and

(5) unless the language creating a power of appointment expressly excludes the substitution of the descendants of an appointee for the appointee, a surviving descendant of a deceased appointee of a power of appointment can be substituted for the appointee pursuant to the provisions of this section whether or not the descendant is an object of the power.

C. If, pursuant to the provisions of Subsection B of this section, substitute gifts are created and not superseded with respect to more than one devise and the devises are alternative devises, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:

(1) except as provided in Paragraph (2) of this subsection, the devised property passes under the primary substitute gift;

(2) if there is a younger-generation devise, the devised property passes under the younger-generation substitute gift and not under the primary substitute gift; and

(3) as used in this subsection:

(a) "primary devise" means the devise that would have taken effect had all the deceased devisees of the alternative devises who left surviving descendants survived the testator;

(b) "primary substitute gift" means the substitute gift created with respect to the primary devise;

(c) "younger-generation devise" means a devise that: 1) is to a descendant of a devisee of the primary devise; 2) is an alternative devise with respect to the primary devise; 3) is a devise for which a substitute gift is created; and 4) would have taken effect had all the deceased devisees who left surviving descendants survived the testator except the deceased devisee or devisees of the primary devise; and

(d) "younger-generation substitute gift" means the substitute gift created with respect to the younger-generation devise."

## **Chapter 124 Section 25 Laws 2011**

SECTION 25. Section 45-2-606 NMSA 1978 (being Laws 1993, Chapter 174, Section 45) is amended to read:

"45-2-606. NONADEMPTION OF SPECIFIC DEVICES--UNPAID PROCEEDS OF SALE, CONDEMNATION OR INSURANCE--SALE BY CONSERVATOR OR AGENT.--

A. A specific devisee has a right to specifically devised property in the testator's estate at the testator's death and:

(1) any balance of the purchase price, together with any security agreement, owed by a purchaser at the testator's death by reason of sale of the property;

(2) any amount of a condemnation award for the taking of the property unpaid at death;

(3) any proceeds unpaid at death on fire or casualty insurance on or other recovery for injury to the property;

(4) any property owned by the testator at death and acquired as a result of foreclosure or obtained in lieu of foreclosure of the security interest for specifically devised obligation;

(5) any real property or tangible personal property owned by the testator at death that the testator acquired as a replacement for specifically devised real property or tangible personal property; and

(6) if not covered by Paragraphs (1) through (5) of this subsection, a pecuniary devise equal to the value as of its date of disposition of other specifically devised property disposed of during the testator's lifetime but only to the extent it is established that ademption would be inconsistent with the testator's manifested plan of distribution or that at the time the will was made, the date of disposition or otherwise, the testator did not intend ademption of the devise.

B. If specifically devised property is sold or mortgaged by a conservator or by an agent acting within the authority of a durable power of attorney for an incapacitated person or if a condemnation award, insurance proceeds or recovery for injury to the property is paid to a conservator or to an agent acting within the authority of a durable power of attorney for an incapacitated person, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the amount of the unpaid loan, the condemnation award, the insurance proceeds or the recovery.

C. The right of a specific devisee pursuant to Subsection B of this section is reduced by any right the devisee has pursuant to Subsection A of this section.

D. Subsection B of this section does not apply if, after the sale, mortgage, condemnation, casualty or recovery, it is adjudicated that the testator's incapacity has ceased and the testator survives the adjudication for at least one year.

E. For the purposes of the references in Subsection B of this section to an agent acting within the authority of a durable power of attorney for an incapacitated person:

(1) no adjudication of incapacity before death is necessary; and

(2) the acts of an agent within the authority of a durable power of attorney are presumed to be for the incapacitated person."

## **Chapter 124 Section 26 Laws 2011**

SECTION 26. Section 45-2-705 NMSA 1978 (being Laws 1993, Chapter 174, Section 53) is amended to read:

"45-2-705. CLASS GIFTS CONSTRUED TO ACCORD WITH INTESTATE SUCCESSION--EXCEPTIONS.--

A. As used in this section:

- (1) "adoptee" has the meaning set forth in Section 45-2-115 NMSA 1978;
- (2) "child of assisted reproduction" has the meaning set forth in Section 45-2-120 NMSA 1978;
- (3) "distribution date" means the date when an immediate or postponed class gift takes effect in possession or enjoyment;
- (4) "functioned as a parent of the adoptee" has the meaning set forth in Section 45-2-115 NMSA 1978, substituting "adoptee" for "child" in that definition;
- (5) "functioned as a parent of the child" has the meaning set forth in Section 45-2-115 NMSA 1978;
- (6) "genetic parent" has the meaning set forth in Section 45-2-115 NMSA 1978;
- (7) "gestational child" has the meaning set forth in Section 45-2-121 NMSA 1978; and
- (8) "relative" has the meaning set forth in Section 45-2-115 NMSA 1978.

B. A class gift that uses a term of relationship to identify the class members includes a child of assisted reproduction, a gestational child and, except as otherwise provided in Subsections E and F of this section, an adoptee and a child born to parents who are not married to each other and their respective descendants if appropriate to the class in accordance with the rules for intestate succession regarding parent-child relationships. For the purpose of determining whether a contrary intent exists pursuant to Section 45-2-701 NMSA 1978, a provision in a governing instrument that relates to the inclusion or exclusion in a class gift of a child born to parents who are not married to each other but that does not specifically refer to a child of assisted reproduction or a gestational child does not apply to a child of assisted reproduction or a gestational child.

C. Terms of relationship in a governing instrument that do not differentiate relationships by blood from those by marriage, such as uncles, aunts, nieces or nephews, are construed to exclude relatives by marriage, unless:

- (1) when the governing instrument was executed, the class was then and foreseeably would be empty; or

(2) the language or circumstances otherwise establish that relatives by marriage were intended to be included.

D. Terms of relationship in a governing instrument that do not differentiate relationships by the half blood from those by the whole blood, such as brothers, sisters, nieces or nephews, are construed to include both types of relationships.

E. In construing a dispositive provision of a transferor who is not the genetic parent, a child of a genetic parent is not considered the child of the genetic parent unless the genetic parent, a relative of the genetic parent, or the spouse or surviving spouse of the genetic parent or of a relative of the genetic parent functioned as a parent of the child before the child reached eighteen years of age.

F. In construing a dispositive provision of a transferor who is not the adoptive parent, an adoptee is not considered the child of the adoptive parent unless:

(1) the adoption took place before the adoptee reached eighteen years of age;

(2) the adoptive parent was the adoptee's stepparent or foster parent; or

(3) the adoptive parent functioned as a parent of the adoptee before the adoptee reached eighteen years of age.

G. The following rules apply for purposes of the class-closing rules:

(1) a child in utero at a particular time is treated as living at that time if the child lives one hundred twenty hours after birth;

(2) if a child of assisted reproduction or a gestational child is conceived posthumously and the distribution date is the deceased parent's death, the child is treated as living on the distribution date if the child lives one hundred twenty hours after birth and was in utero not later than thirty-six months after the deceased parent's death or born not later than forty-five months after the deceased parent's death; and

(3) an individual who is in the process of being adopted when the class closes is treated as adopted when the class closes if the adoption is subsequently granted."

## **Chapter 124 Section 27 Laws 2011**

SECTION 27. Section 45-2-706 NMSA 1978 (being Laws 1993, Chapter 174, Section 54, as amended) is amended to read:

"45-2-706. LIFE INSURANCE--RETIREMENT PLAN--ACCOUNT WITH POD DESIGNATION--TRANSFER-ON-DEATH REGISTRATION--DECEASED BENEFICIARY.--

A. As used in this section:

(1) "alternative beneficiary designation" means a beneficiary designation that is expressly created by the governing instrument and, under the terms of the governing instrument, can take effect instead of another beneficiary designation on the happening of one or more events, including a person's survival of the decedent or failure to survive the decedent, whether an event is expressed in condition-precedent, condition-subsequent or any other form;

(2) "beneficiary" means the beneficiary of a beneficiary designation under which the beneficiary must survive the decedent and includes:

(a) a class member if the beneficiary designation is in the form of a class gift; and

(b) an individual or class member who was deceased at the time the beneficiary designation was executed as well as an individual or class member who was then living but who failed to survive the decedent, but excludes a joint tenant of a joint tenancy with the right of survivorship and a party to a joint and survivorship account;

(3) "beneficiary designation" includes an alternative beneficiary designation and a beneficiary designation in the form of a class gift;

(4) "class member" includes an individual who fails to survive the decedent but who would have taken under a beneficiary designation in the form of a class gift had the individual survived the decedent;

(5) "descendant of a grandparent", as used in Subsection B of this section, means an individual who qualifies as a descendant of a grandparent of the decedent pursuant to:

(a) rules of construction applicable to a class gift created in the decedent's beneficiary designation if the beneficiary designation is in the form of a class gift; or

(b) rules for intestate succession if the beneficiary designation is not in the form of a class gift;

(6) "descendants", as used in the phrase "surviving descendants" of a deceased beneficiary or class member in Paragraphs (1) and (2) of Subsection B of

this section, means the descendants of a deceased beneficiary or class member who would take under a class gift created in the beneficiary designation;

(7) "stepchild" means a child of the decedent's surviving, deceased or former spouse and not of the decedent; and

(8) "surviving", as used in the phrase "surviving beneficiaries" or "surviving descendants", means beneficiaries or descendants who neither predeceased the decedent nor are deemed to have predeceased the decedent pursuant to the provisions of Section 45-2-702 NMSA 1978.

B. If a beneficiary fails to survive the decedent and is a grandparent, a descendant of a grandparent or a stepchild of the decedent, the following apply:

(1) except as provided in Paragraph (4) of this subsection, if the beneficiary designation is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's surviving descendants. They take by representation the property to which the beneficiary would have been entitled had the beneficiary survived the decedent;

(2) except as provided in Paragraph (4) of this subsection, if the beneficiary designation is in the form of a class gift, other than a beneficiary designation to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives" or "family" or a class described by language of similar import, a substitute gift is created in the surviving descendants of any deceased beneficiary. The property to which the beneficiaries would have been entitled had all of them survived the decedent passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes the share to which the surviving beneficiary would have been entitled had the deceased beneficiaries survived the decedent. Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary take by representation the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the decedent. For the purposes of this paragraph, "deceased beneficiary" means a class member who failed to survive the decedent and left one or more surviving descendants;

(3) for the purposes of Section 45-2-701 NMSA 1978, words of survivorship, such as in a beneficiary designation to an individual "if he survives me" or in a beneficiary designation to "my surviving children", are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section; and

(4) if a governing instrument creates an alternative beneficiary designation with respect to a beneficiary designation for which a substitute gift is created by Paragraph (1) or (2) of this subsection, the substitute gift is superseded by the alternative beneficiary designation if:



(a) the alternative beneficiary designation is in the form of a class gift and one or more members of the class is entitled to take; or

(b) the alternative beneficiary designation is not in the form of a class gift and the expressly designated beneficiary of the alternative beneficiary designation is entitled to take.

C. If, pursuant to the provisions of Subsection B of this section, substitute gifts are created and not superseded with respect to more than one beneficiary designation and the beneficiary designations are alternative beneficiary designations, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:

(1) except as provided in Paragraph (2) of this subsection, the property passes under the primary substitute gift;

(2) if there is a younger-generation beneficiary designation, the property passes under the younger-generation substitute gift and not under the primary substitute gift; and

(3) as used in this subsection:

(a) "primary beneficiary designation" means the beneficiary designation that would have taken effect had all the deceased beneficiaries of the alternative beneficiary designations who left surviving descendants survived the decedent;

(b) "primary substitute gift" means the substitute gift created with respect to the primary beneficiary designation;

(c) "younger-generation beneficiary designation" means as a beneficiary designation that: 1) is to a descendant of a beneficiary of the primary beneficiary designation; 2) is an alternative beneficiary designation with respect to the primary beneficiary designation; 3) is a beneficiary designation for which a substitute gift is created; and 4) would have taken effect had all the deceased beneficiaries who left surviving descendants survived the decedent except the deceased beneficiary or beneficiaries of the primary beneficiary designation; and

(d) "younger-generation substitute gift" means the substitute gift created with respect to the younger-generation beneficiary designation.

D. A payor is protected from liability in making payments under the terms of the beneficiary designation until the payor has received written notice of a claim to a substitute gift under this section. Payment made before the receipt of written notice of a claim to a substitute gift under this section discharges the payor, but not the recipient, from all claims for the amounts paid. A payor is liable for a payment made after the

payor has received written notice of the claim. A recipient is liable for a payment received whether or not written notice of the claim is given.

The written notice of the claim shall be mailed to the payor's main office or home by registered or certified mail, return receipt requested, or served upon the payor in the same manner as a summons in a civil action. Upon receipt of written notice of the claim, a payor may pay any amount owed by it to the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds and, upon its determination under this section, shall order disbursement in accordance with the determination. Payment made to the court discharges the payor from all claims for the amounts paid.

E. A person who purchases property for value and without notice or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated pursuant to the provisions of this section to return the payment, item of property or benefit nor liable pursuant to the provisions of this section for the amount of the payment or the value of the item of property or benefit. But a person who, not for value, receives a payment, item of property or any other benefit to which the person is not entitled pursuant to the provisions of this section is obligated to return the payment, item of property or benefit or is personally liable for the amount of the payment or the value of the item of property or benefit to the person who is entitled to it pursuant to the provisions of this section.

F. If this section or any part of this section is preempted by federal law with respect to a payment, an item of property or any other benefit covered by this section, a person who, not for value, receives the payment, item of property or any other benefit to which the person is not entitled pursuant to the provisions of this section is obligated to return the payment, item of property or benefit or is personally liable for the amount of the payment or the value of the item of property or benefit to the person who would have been entitled to it were this section or part of this section not preempted."

## **Chapter 124 Section 28 Laws 2011**

SECTION 28. Section 45-2-707 NMSA 1978 (being Laws 1993, Chapter 174, Section 55, as amended) is amended to read:

"45-2-707. SURVIVORSHIP WITH RESPECT TO FUTURE INTERESTS UNDER TERMS OF TRUST--SUBSTITUTE TAKERS.--

A. As used in this section:

(1) "alternative future interest" means an expressly created future interest that can take effect in possession or enjoyment instead of another future interest on the happening of one or more events, including survival of an event or failure

to survive an event, whether an event is expressed in condition-precedent, condition-subsequent or any other form. A residuary clause in a will does not create an alternative future interest with respect to a future interest created in a nonresiduary devise in the will, whether or not the will specifically provides that lapsed or failed devises are to pass under the residuary clause;

(2) "beneficiary" means the beneficiary of a future interest and includes a class member if the future interest is in the form of a class gift;

(3) "class member" includes an individual who fails to survive the distribution date but who would have taken under a future interest in the form of a class gift had the individual survived the distribution date;

(4) "descendants", as used in the phrase "surviving descendants" of a deceased beneficiary or class member in Paragraphs (1) and (2) of Subsection B of this section, means the descendants of a deceased beneficiary or class member who would take under a class gift created in the trust;

(5) "distribution date", with respect to a future interest, means the time when the future interest is to take effect in possession or enjoyment. The distribution date need not occur at the beginning or end of a calendar day, but can occur at a time during the course of a day;

(6) "future interest" includes an alternative future interest and a future interest in the form of a class gift;

(7) "future interest under the terms of a trust" means a future interest that was created by a transfer creating a trust or to an existing trust or by an exercise of a power of appointment to an existing trust, directing the continuance of an existing trust, designating a beneficiary of an existing trust or creating a trust; and

(8) "surviving", as used in the phrase "surviving beneficiaries" or "surviving descendants", means beneficiaries or descendants who neither predeceased the distribution date nor are deemed to have predeceased the distribution date pursuant to the provisions of Section 45-2-702 NMSA 1978.

B. A future interest under the terms of a trust is contingent on the beneficiary's surviving the distribution date. If a beneficiary of a future interest under the terms of a trust fails to survive the distribution date, the following apply:

(1) except as provided in Paragraph (4) of this subsection, if the future interest is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's surviving descendants. They take by representation the property to which the beneficiary would have been entitled had the beneficiary survived the distribution date;

(2) except as provided in Paragraph (4) of this subsection, if the future interest is in the form of a class gift, other than a future interest to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives" or "family" or a class described by language of similar import, a substitute gift is created in the surviving descendants of any deceased beneficiary. The property to which the beneficiaries would have been entitled had all of them survived the distribution date passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes the share to which the surviving beneficiary would have been entitled had the deceased beneficiaries survived the distribution date. Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary take by representation the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the distribution date. For the purposes of this paragraph, "deceased beneficiary" means a class member who failed to survive the distribution date and left one or more surviving descendants;

(3) for the purposes of Section 45-2-701 NMSA 1978, words of survivorship attached to a future interest are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section. Words of survivorship include words of survivorship that relate to the distribution date or to an earlier or an unspecified time, whether those words of survivorship are expressed in condition-precedent, condition-subsequent or any other form; and

(4) if a governing instrument creates an alternative future interest with respect to a future interest for which a substitute gift is created by Paragraph (1) or (2) of this subsection, the substitute gift is superseded by the alternative future interest if:

(a) the alternative future interest is in the form of a class gift and one or more members of the class is entitled to take in possession or enjoyment; or

(b) the alternative future interest is not in the form of a class gift and the expressly designated beneficiary of the alternative future interest is entitled to take in possession or enjoyment.

C. If, pursuant to the provisions of Subsection B of this section, substitute gifts are created and not superseded with respect to more than one future interest and the future interests are alternative future interests, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:

(1) except as provided in Paragraph (2) of this subsection, the property passes under the primary substitute gift;

(2) if there is a younger-generation future interest, the property passes under the younger-generation substitute gift and not under the primary substitute gift; and

(3) as used in this subsection:

(a) "primary future interest" means the future interest that would have taken effect had all the deceased beneficiaries of the alternative future interests who left surviving descendants survived the distribution date;

(b) "primary substitute gift" means the substitute gift created with respect to the primary future interest;

(c) "younger-generation future interest" means a future interest that: 1) is to a descendant of a beneficiary of the primary future interest; 2) is an alternative future interest with respect to the primary future interest; 3) is a future interest for which a substitute gift is created; and 4) would have taken effect had all the deceased beneficiaries who left surviving descendants survived the distribution date except the deceased beneficiary or beneficiaries of the primary future interest; and

(d) "younger-generation substitute gift" means the substitute gift created with respect to the younger-generation future interest.

D. Except as provided in Subsection E of this section, if after the application of Subsections B and C of this section there is no surviving taker, the property passes in the following order:

(1) if the trust was created in a nonresiduary devise in the transferor's will or in a codicil to the transferor's will, the property passes under the residuary clause in the transferor's will; for purposes of this section, the residuary clause is treated as creating a future interest under the terms of a trust; and

(2) if no taker is produced by the application of Paragraph (1) of this subsection, the property passes to the transferor's heirs pursuant to the provisions of Section 45-2-711 NMSA 1978.

E. If, after the application of Subsections B and C of this section, there is no surviving taker and if the future interest was created by the exercise of a power of appointment:

(1) the property passes under the donor's gift-in-default clause, if any, which clause is treated as creating a future interest under the terms of a trust; and

(2) if no taker is produced by the application of Paragraph (1) of this subsection, the property passes as provided in Subsection D of this section. For purposes of Subsection D of this section, "transferor" means the donor if the power was a nongeneral power and means the donee if the power was a general power."

## **Chapter 124 Section 29 Laws 2011**

SECTION 29. Section 45-2-709 NMSA 1978 (being Laws 1993, Chapter 174, Section 57, as amended) is amended to read:

"45-2-709. REPRESENTATION--PER CAPITA AT EACH GENERATION--PER STIRPES.--

A. As used in this section:

(1) "deceased child" or "deceased descendant" means a child or a descendant who either predeceased the distribution date or is deemed to have predeceased the distribution date pursuant to the provisions of Section 45-2-702 NMSA 1978;

(2) "distribution date", with respect to an interest, means the time when the interest is to take effect in possession or enjoyment. The distribution date need not occur at the beginning or end of a calendar day, but can occur at a time during the course of a day; and

(3) "surviving ancestor", "surviving child" or "surviving descendant" means an ancestor, a child or a descendant who neither predeceased the distribution date nor is deemed to have predeceased the distribution date pursuant to the provisions of Section 45-2-702 NMSA 1978.

B. If an applicable statute or a governing instrument calls for property to be distributed "by representation" or "per capita at each generation", the property is divided into as many equal shares as there are:

(1) surviving descendants in the generation nearest to the designated ancestor that contains one or more surviving descendants; and

(2) deceased descendants in the same generation who left surviving descendants, if any.

Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the distribution date.

C. If a governing instrument calls for property to be distributed "per stirpes", the property is divided into as many equal shares as there are:

(1) surviving children of the designated ancestor; and

(2) deceased children who left surviving descendants.

Each surviving child, if any, is allocated one share. The share of each deceased child with surviving descendants is divided in the same manner, with subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants.

D. For the purposes of Subsections B and C of this section, an individual who is deceased and left no surviving descendant is disregarded and an individual who leaves a surviving ancestor who is a descendant of the designated ancestor is not entitled to a share."

## **Chapter 124 Section 30 Laws 2011**

SECTION 30. Section 45-2-803 NMSA 1978 (being Laws 1993, Chapter 174, Section 62, as amended) is amended to read:

"45-2-803. EFFECT OF HOMICIDE ON INTESTATE SUCCESSION, WILLS, TRUSTS, JOINT ASSETS, LIFE INSURANCE AND BENEFICIARY DESIGNATIONS.--

A. As used in this section:

(1) "disposition or appointment of property" includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument; and

(2) "revocable", with respect to a disposition, appointment, provision or nomination, means one under which the decedent, at the time of or immediately before death, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the killer, whether or not the decedent was then empowered to designate the decedent's own self in place of the decedent's killer and the decedent then had capacity to exercise the power.

B. An individual who feloniously and intentionally kills the decedent forfeits all benefits pursuant to the provisions of Chapter 45, Article 2 NMSA 1978 with respect to the decedent's estate, including an intestate share, an omitted spouse's or child's share, a family allowance and a personal property allowance. If the decedent died intestate, the decedent's intestate estate passes as if the killer disclaimed the killer's intestate share.

C. The felonious and intentional killing of the decedent:

(1) revokes any revocable:

(a) disposition or appointment of property made by the decedent to the killer in a governing instrument;

(b) provision in a governing instrument executed by the decedent conferring a general or nongeneral power of appointment on the killer; and

(c) nomination of the killer in a governing instrument executed by the decedent, nominating or appointing the killer to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee or agent; and

(2) severs the interests of the decedent and killer in property held by them at the time of the killing as joint tenants with the right of survivorship, transforming the interests of the decedent and killer into equal tenancies in common.

D. A severance pursuant to the provisions of Paragraph (2) of Subsection C of this section does not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the killer unless a writing declaring the severance has been noted, registered, filed or recorded in records appropriate to the kind and location of the property that are relied upon in the ordinary course of transactions involving such property as evidence of ownership.

E. Provisions of a governing instrument executed by the decedent are given effect as if the killer disclaimed all provisions revoked by this section or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the killer predeceased the decedent.

F. An acquisition of property or interest by a killer not covered by this section shall be treated in accordance with the principle that a killer cannot profit from the killer's wrong.

G. After all right to appeal has been exhausted, a judgment of conviction establishing criminal accountability for the felonious and intentional killing of the decedent conclusively establishes the convicted individual as the decedent's killer for purposes of this section. In the absence of a conviction, the court upon the petition of an interested person shall determine whether under the preponderance of evidence standard the individual would be found criminally accountable for the felonious and intentional killing of the decedent. If the court determines that under that standard the individual would be found criminally accountable for the felonious and intentional killing of the decedent, the determination conclusively establishes that individual as the decedent's killer for purposes of this section.

H. A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument executed by the decedent affected by an intentional and felonious killing or for having taken any other action in good faith reliance on the validity of the governing instrument executed by the decedent upon request and satisfactory proof of the decedent's death before the payor or other third party received written notice of a claimed forfeiture or revocation under this section. A payor or other third party is liable



for a payment made or other action taken after the payor or other third party received written notice of a claimed forfeiture or revocation under this section.

Written notice of a claimed forfeiture or revocation pursuant to the provisions of this section shall be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of a claimed forfeiture or revocation pursuant to the provisions of this section, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination pursuant to the provisions of this section, shall order disbursement in accordance with the determination. Payments, transfers or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

I. A person who purchases property for value and without notice or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated pursuant to the provisions of this section to return the payment, item of property or benefit nor liable pursuant to the provisions of this section for the amount of the payment or the value of the item of property or benefit. But a person who, not for value, receives a payment, item of property or any other benefit to which the person is not entitled pursuant to the provisions of this section is obligated to return the payment, item of property or benefit or is personally liable for the amount of the payment or the value of the item of property or benefit to the person who is entitled to it pursuant to the provisions of this section.

J. If this section or any part of this section is preempted by federal law with respect to a payment, an item of property or any other benefit covered by this section, a person who, not for value, receives the payment, item of property or any other benefit to which the person is not entitled pursuant to the provisions of this section is obligated to return the payment, item of property or benefit or is personally liable for the amount of the payment or the value of the item of property or benefit to the person who would have been entitled to it were this section or part of this section not preempted."

## **Chapter 124 Section 31 Laws 2011**

SECTION 31. Section 45-2-804 NMSA 1978 (being Laws 1993, Chapter 174, Section 63, as amended) is amended to read:

"45-2-804. REVOCATION OF PROBATE AND NONPROBATE TRANSFERS BY DIVORCE--NO REVOCATION BY OTHER CHANGES OF CIRCUMSTANCES.--

A. As used in this section:

(1) "disposition or appointment of property" includes a transfer of an item of property or any other benefit to a beneficiary designated in a revocable trust or other governing instrument;

(2) "divorce or annulment" means a divorce or annulment, a dissolution or declaration of invalidity of a marriage that would exclude the spouse as a surviving spouse within the meaning of Section 45-2-802 NMSA 1978 or the commencement of a valid proceeding concluded either before or after an individual's death by an order purporting to terminate all marital property rights, including a property division judgment entered pursuant to the provisions of Section 40-4-20 NMSA 1978. A decree of separation that does not terminate the status of husband and wife is not a divorce for purposes of this section;

(3) "divorced individual" includes an individual whose marriage has been annulled;

(4) "governing instrument" means a governing instrument executed by the divorced individual before the divorce or annulment of the divorced individual's marriage to the former spouse;

(5) "relative of the divorced individual's former spouse" means an individual who is related to the divorced individual's former spouse by blood, adoption or affinity and who, after the divorce or annulment, is not related to the divorced individual by blood, adoption or affinity; and

(6) "revocable", with respect to a disposition, appointment, provision or nomination, means one under which the divorced individual, at the time of the divorce or annulment, was alone empowered by law or under the governing instrument to cancel the designation in favor of the former spouse or former spouse's relative whether or not the divorced individual was then empowered to designate the divorced individual's own self in place of the former spouse or in place of the former spouse's relative and whether or not the divorced individual then had the capacity to exercise the power.

B. Except as provided by the express terms of a governing instrument, a court order or a contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce or annulment, the divorce or annulment of a marriage:

(1) revokes any revocable:

(a) disposition or appointment of property made by a divorced individual to the former spouse in a governing instrument and any disposition

or appointment created by law or in a governing instrument to a relative of the divorced individual's former spouse;

(b) provision in a governing instrument conferring a general or nongeneral power of appointment on the divorced individual's former spouse or on a relative of the divorced individual's former spouse; and

(c) nomination in a governing instrument, nominating a divorced individual's former spouse or a relative of the divorced individual's former spouse to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, conservator, agent or guardian; and

(2) severs the interests of the former spouses in property held by them at the time of the divorce or annulment as joint tenants with the right of survivorship, transforming the interests of the former spouses into equal tenancies in common.

C. A severance pursuant to the provisions of Paragraph (2) of Subsection B of this section does not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the survivor of the former spouses unless a writing declaring the severance has been noted, registered, filed or recorded in records appropriate to the kind and location of the property that are relied upon in the ordinary course of transactions involving such property as evidence of ownership.

D. Provisions of a governing instrument are given effect as if the former spouse and relatives of the former spouse disclaimed all provisions revoked by this section or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the former spouse and relatives of the former spouse died immediately before the divorce or annulment.

E. Provisions revoked solely by this section are revived by the divorced individual's remarriage to the former spouse or by a nullification of the divorce or annulment.

F. No change of circumstances other than as described in this section and in Section 45-2-803 NMSA 1978 effects a revocation.

G. A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by a divorce, annulment or remarriage or for having taken any other action in good faith reliance on the validity of the governing instrument before the payor or other third party received written notice of the divorce, annulment or remarriage. A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed forfeiture or revocation pursuant to the provisions of this section.

Written notice of the divorce, annulment or remarriage pursuant to the provisions of this section shall be mailed to the payor's or other third party's main office or home by registered or certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of the written notice of the divorce, annulment or remarriage, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination pursuant to the provisions of this section, shall order disbursement or transfer in accordance with the determination. Payments, transfers or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

H. A person who purchases property from a former spouse, relative of a former spouse or any other person for

value and without notice or who receives from a former spouse,

relative of a former spouse or any other person a payment or other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated pursuant to the provisions of this section to return the payment, item of property or benefit nor is liable pursuant to the provisions of this section for the amount of the payment or the value of the item of property or benefit. But a former spouse, relative of a former spouse or other person who, not for value, received a payment, item of property or any other benefit to which that person is not entitled pursuant to the provisions of this section is obligated to return the payment, item of property or benefit or is personally liable for the amount of the payment or the value of the item of property or benefit to the person who is entitled to it pursuant to the provisions of this section.

I. If this section or any part of this section is preempted by federal law with respect to a payment, an item of property or any other benefit covered by this section, a former spouse, relative of the former spouse or any other person who, not for value, received a payment, item of property or any other benefit to which that person is not entitled pursuant to the provisions of this section is obligated to return that payment, item of property or benefit or is personally liable for the amount of the payment or the value of the item of property or benefit to the person who would have been entitled to it were this section or part of this section not preempted."

## **Chapter 124 Section 32 Laws 2011**

SECTION 32. Section 45-2-805 NMSA 1978 (being Laws 1975, Chapter 257, Section 2-804, as amended) is recompiled as Section 45-2-807 NMSA 1978 and a new Section 45-2-805 NMSA 1978 is enacted to read:

"45-2-805. REFORMATION TO CORRECT MISTAKES.--The district court may reform the terms of a governing instrument, even if unambiguous, to conform the terms to the transferor's intention if it is proved by clear and convincing evidence what the transferor's intention was and that the terms of the governing instrument were affected by a mistake of fact or law, whether in expression or inducement."

### **Chapter 124 Section 33 Laws 2011**

SECTION 33. Section 45-2-806 NMSA 1978 (being Laws 1973, Chapter 276, Section 8) is recompiled as Section 45-2-808 NMSA 1978 and a new Section 45-2-806 NMSA 1978 is enacted to read:

"45-2-806. MODIFICATION TO ACHIEVE TRANSFEROR'S TAX OBJECTIVES.-  
-To achieve the transferor's tax objectives, the district court may modify the terms of a governing instrument in a manner that is not contrary to the transferor's probable intention. The district court may provide that the modification has retroactive effect."

### **Chapter 124 Section 34 Laws 2011**

SECTION 34. Section 45-2-901 NMSA 1978 (being Laws 1992, Chapter 66, Section 1) is amended to read:

"45-2-901. STATUTORY RULE AGAINST PERPETUITIES.--

A. A nonvested property interest is invalid unless:

(1) when the interest is created, it is certain to vest or terminate no later than twenty-one years after the death of an individual then alive; or

(2) the interest either vests or terminates within ninety years after its creation.

B. A general power of appointment not presently exercisable because of a condition precedent is invalid unless:

(1) when the power is created, the condition precedent is certain to be satisfied or to become impossible to satisfy no later than twenty-one years after the death of an individual then alive; or

(2) the condition precedent either is satisfied or becomes impossible to satisfy within ninety years after its creation.

C. A nongeneral power of appointment or a general testamentary power of appointment is invalid unless:

(1) when the power is created, it is certain to be irrevocably exercised or otherwise to terminate no later than twenty-one years after the death of an individual then alive; or

(2) the power is irrevocably exercised or otherwise terminates within ninety years after its creation.

D. In determining whether a nonvested property interest or a power of appointment is valid under each Paragraph (1) of Subsections A, B and C of this section, the possibility that a child will be born to an individual after the individual's death shall be disregarded.

E. If, in measuring a period from the creation of a trust or other property arrangement, language in a governing instrument (i) seeks to disallow the vesting or termination of any interest or trust beyond, (ii) seeks to postpone the vesting or termination of any interest or trust until or (iii) seeks to operate in effect in any similar fashion upon, the later of (1) the expiration of a period of time not exceeding twenty-one years after the death of the survivor of specified lives in being at the creation of the trust or other property arrangement or (2) the expiration of a period of time that exceeds or might exceed twenty-one years after the death of the survivor of lives in being at the creation of the trust or other property arrangement, that language is inoperative to the extent it produces a period of time that exceeds

twenty-one years after the death of the survivor of the specified lives."

## **Chapter 124 Section 35 Laws 2011**

SECTION 35. A new section of the Uniform Probate Code, Section 45-2-908 NMSA 1978, is enacted to read:

"45-2-908. DEFINITIONS.--As used in Sections 45-2-909 through 45-2-914 NMSA 1978:

A. "nonvested easement in gross" means a nonvested easement that is not created to benefit or that does not benefit the possessor of any real property in the possessor's use of it as the possessor;

B. "option in gross with respect to an interest in real property" means an option in which the holder of the option does not own any leasehold or other interest in the real property that is the subject of the option; and

C. "preemptive right in the nature of a right of first refusal in gross with respect to an interest in real property" means a preemptive right in which the holder of the preemptive right does not own any leasehold or other interest in the real property that is the subject of the preemptive right."

## **Chapter 124 Section 36 Laws 2011**

SECTION 36. A new section of the Uniform Probate Code, Section 45-2-909 NMSA 1978, is enacted to read:

"45-2-909. INTEREST IN REAL PROPERTY.--An option in gross with respect to an interest in real property or a preemptive right in the nature of a right of first refusal in gross with respect to an interest in real property becomes invalid if it is not actually exercised within thirty years after its creation."

## **Chapter 124 Section 37 Laws 2011**

SECTION 37. A new section of the Uniform Probate Code, Section 45-2-910 NMSA 1978, is enacted to read:

"45-2-910. LEASE TO COMMENCE IN THE FUTURE.--A lease of real property to commence at a time certain or upon the occurrence or nonoccurrence of a future event becomes invalid if its term does not actually commence in possession within thirty years after its execution."

## **Chapter 124 Section 38 Laws 2011**

SECTION 38. A new section of the Uniform Probate Code, Section 45-2-911 NMSA 1978, is enacted to read:

"45-2-911. NONVESTED EASEMENT.--A nonvested easement in gross becomes invalid if it does not actually vest within thirty years after its creation."

## **Chapter 124 Section 39 Laws 2011**

SECTION 39. A new section of the Uniform Probate Code, Section 45-2-912 NMSA 1978, is enacted to read:

"45-2-912. POSSIBILITY OF REVERTER, RIGHT OF ENTRY, EXECUTORY INTEREST.--A possibility of reverter preceded by a fee simple determinable, a right of entry preceded by a fee simple subject to a condition subsequent or an executory interest preceded by either a fee simple determinable or a fee simple subject to an executory limitation becomes invalid, and the preceding fee simple becomes a fee simple absolute, if the right to vest in possession of the possibility of reverter, right of entry or executory interest depends on an event or events affecting the use of real property and if the possibility of reverter, right of entry or executory interest does not actually vest in possession within thirty years after its creation."

## **Chapter 124 Section 40 Laws 2011**

SECTION 40. A new section of the Uniform Probate Code, Section 45-2-913 NMSA 1978, is enacted to read:

"45-2-913. EXCLUSIONS.--

A. Section 45-2-912 NMSA 1978 does not apply to a possibility of reverter, right of entry or executory interest that is held by a charity, a government or governmental agency or subdivision excluded from the provisions of Section 45-2-901 NMSA 1978 by Subsection E of Section 45-2-904 NMSA 1978.

B. Sections 45-2-909 and 45-2-910 NMSA 1978 do not apply to an option, a preemptive right in the nature of a right of first refusal or a lease that relates solely to an interest in oil, gas or other minerals."

### **Chapter 124 Section 41 Laws 2011**

SECTION 41. A new section of the Uniform Probate Code, Section 45-2-914 NMSA 1978, is enacted to read:

"45-2-914. APPLICATION.--Sections 45-2-908 through 45-2-913 NMSA 1978 apply only to a property interest or arrangement affecting real property that is created on or after January 1, 2012."

### **Chapter 124 Section 42 Laws 2011**

SECTION 42. Section 45-3-101 NMSA 1978 (being Laws 1975, Chapter 257, Section 3-101) is amended to read:

"45-3-101. DEVOLUTION OF ESTATE AT DEATH--ADMINISTRATION ON DEATHS OF HUSBAND AND WIFE.--

A. The power of a person to leave property by will and the rights of creditors, devisees and heirs to the person's property are subject to the restrictions and limitations contained in Chapter 45, Article 3 NMSA 1978 to facilitate the prompt settlement of estates.

B. Upon the death of a person, the person's separate property and the person's share of community property devolves:

(1) to the persons to whom the property is devised by the person's last will;

(2) to those indicated as substitutes for them in cases involving revocation, lapse, disclaimer or other circumstances pursuant to Chapter 45, Article 2 NMSA 1978 affecting the devolution of testate estates; or



(3) in the absence of testamentary disposition, to the person's heirs or to those indicated as substitutes for them in cases involving revocation, lapse, disclaimer or other circumstances pursuant to Chapter 45, Article 2, Parts 3, 4, 10 and 11 NMSA 1978 affecting the devolution of intestate estates.

C. The devolution of separate property and the decedent's share of community property is subject to rights to the family allowance and personal property allowance, to rights of creditors and to administration as provided in Chapter 45, Article 3 NMSA 1978. The surviving spouse's share of the community property is subject to administration until the time for presentation of claims has expired, and thereafter only to the extent necessary to pay community claims."

## **Chapter 124 Section 43 Laws 2011**

SECTION 43. Section 45-3-108 NMSA 1978 (being Laws 1975, Chapter 257, Section 3-108, as amended) is amended to read:

"45-3-108. PROBATE, TESTACY AND APPOINTMENT PROCEEDINGS--  
ULTIMATE TIME LIMIT.--

A. No informal probate or appointment proceeding or formal testacy or appointment proceeding, other than a proceeding to probate a will previously probated at the testator's domicile or appointment proceedings relating to an estate in which there has been a prior appointment, may be commenced more than three years after the decedent's death, except:

(1) if a previous proceeding was dismissed because of doubt about the fact of the decedent's death, then appropriate probate, appointment or testacy proceedings may be maintained at any time thereafter upon a finding that the decedent's death occurred before the initiation of the previous proceeding and the applicant or petitioner has not delayed unduly in initiating the subsequent proceeding;

(2) appropriate probate, appointment or testacy proceedings may be maintained in relation to the estate of an absent, disappeared or missing person for whose estate a conservator has been appointed at any time within three years after the conservator becomes able to establish the death of the protected person;

(3) a proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful may be commenced within the later of twelve months from the informal probate or three years from the decedent's death;

(4) an informal appointment in an intestate proceeding or a formal testacy or appointment proceeding may be commenced thereafter if no proceedings concerning the succession or estate administration has occurred within the three-year period after the decedent's death, but the personal representative has no right to

possess estate assets as provided in Section 45-3-709 NMSA 1978 beyond that necessary to confirm title thereto in the successors to the estate and claims other than expenses of administration may not be presented against the estate; and

(5) a formal testacy proceeding may be commenced at any time after three years from the decedent's death for the purpose of establishing an instrument to direct or control the ownership of property passing or distributable after the decedent's death from one other than the decedent when the property is to be appointed by the terms of the decedent's will or is to pass or be distributed as a part of the decedent's estate or its transfer is otherwise to be controlled by the terms of the decedent's will.

B. The limitations set out in Subsection A of this section do not apply to proceedings to construe probated wills or determine heirs of an intestate.

C. In cases pursuant to the provisions of Paragraph (1) or (2) of Subsection A of this section, the date on which a testacy or appointment proceeding is properly commenced shall be deemed to be the date of the decedent's death for purposes of other limitation provisions of the Uniform Probate Code that relate to the date of death."

## **Chapter 124 Section 44 Laws 2011**

SECTION 44. Section 45-3-203 NMSA 1978 (being Laws 1975, Chapter 257, Section 3-203, as amended) is amended to read:

"45-3-203. PRIORITY AMONG PERSONS SEEKING APPOINTMENT AS PERSONAL REPRESENTATIVE.--

A. Whether the proceedings are formal or informal, persons who are not disqualified have priority for appointment in the following order:

(1) the person with priority as determined by a probated will, including a person nominated by a power conferred in a will;

(2) the surviving spouse of the decedent who is a devisee of the decedent;

(3) other devisees of the decedent;

(4) the surviving spouse of the decedent;

(5) other heirs of the decedent; and

(6) 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 allowances and costs of administration but inadequate to discharge anticipated unsecured claims, the court, on petition of creditors, may appoint any qualified person; and

(2) in case of objection to appointment of a person other than one whose priority is determined by will by an heir or devisee appearing to have a substantial interest in the estate, the court may appoint a person who is acceptable to heirs and devisees whose interests in the estate appear to be worth in total more than half of the probable distributable value of the estate or, in default of this accord, any suitable person.

C. A person entitled to letters under Paragraphs (2) through (5) of Subsection A of this section or a person who has not reached the age of majority and who might be entitled to letters but for the person's age may nominate a qualified person to act as personal representative by an appropriate writing filed with the court and thereby confer the person's relative priority for appointment on the person's nominee. Any person who has reached the age of majority may renounce the right to nominate or to an appointment by an appropriate writing filed with the court. When two or more persons entitled to letters under Paragraphs (2) through (5) of Subsection A of this section share a priority, all those who do not renounce shall concur in nominating another to act for them or in applying for appointment by an appropriate writing filed with the court. The person so nominated shall have the same priority as those who nominated the person.

A nomination or renunciation shall be signed by each person making it, the person's attorney or the person's representative authorized by Subsection D of this section.

D. Conservators of the estates of protected persons or, if there is no conservator, any guardian except a guardian ad litem of a minor or incapacitated person may exercise the same right to nominate, to object to another's appointment or to participate in determining the preference of a majority in interest of the heirs and devisees that the protected person would have if qualified for appointment.

E. Appointment of one who does not have 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 124 Section 45 Laws 2011**

SECTION 45. Section 45-3-309 NMSA 1978 (being Laws 1975, Chapter 257, Section 3-309, as amended) is amended to read:

"45-3-309. INFORMAL APPOINTMENT PROCEEDINGS--COURT NOT SATISFIED.--The probate or the district court may decline an application for informal appointment of a personal representative for any reason. A declination of informal appointment is not an adjudication and does not preclude appointment in formal proceedings."

## **Chapter 124 Section 46 Laws 2011**

SECTION 46. Section 45-3-703 NMSA 1978 (being Laws 1975, Chapter 257, Section 3-703) is amended to read:

"45-3-703. GENERAL DUTIES--RELATION AND LIABILITY TO PERSONS INTERESTED IN ESTATE--STANDING TO SUE.--

A. A personal representative is a fiduciary who shall observe the same standards of care applicable to trustees. A personal representative is under a duty to settle and distribute the estate of a decedent in accordance with the terms of any probated and effective will and the Uniform Probate Code and as expeditiously and efficiently as is consistent with the best interests of the estate. The personal representative shall use the authority conferred upon the personal representative by the Uniform Probate Code, the terms of the will, if any, and any order in proceedings to which the personal representative is party for the best interests of successors to the estate.

B. A personal representative may not be surcharged for acts of administration or distribution if the conduct in question was authorized at the time. Subject to other obligations of administration, an informally probated will authorizes a personal representative to administer and distribute the estate according to its terms.

C. An order of appointment of a personal representative, whether issued in informal or formal proceedings, authorizes a personal representative to distribute apparently intestate assets to the heirs of the decedent if, at the time of distribution, the personal representative is not aware of:

(1) a pending testacy proceeding;

(2) a proceeding to vacate an order entered in an earlier testacy proceeding;

(3) a formal proceeding questioning the personal representative's appointment or fitness to continue; or

(4) a supervised administration proceeding.

D. This section does not affect the duty of the personal representative to administer and distribute the estate in accordance with the rights of claimants whose claims have been allowed, the surviving spouse, any minor and dependent children and any pretermitted child of the decedent.

E. Except as to proceedings that do not survive the death of the decedent, a personal representative of a decedent domiciled in New Mexico at the decedent's death has the same standing to sue and be sued in the courts of New Mexico and the courts of any other jurisdiction as the decedent had immediately prior to death."

## **Chapter 124 Section 47 Laws 2011**

SECTION 47. Section 45-3-803 NMSA 1978 (being Laws 1975, Chapter 257, Section 3-803, as amended) is amended to read:

"45-3-803. LIMITATIONS ON PRESENTATION OF CLAIMS.--

A. All claims against a decedent's estate that arose before the death of the decedent, including claims of the state and any political subdivision of the state, whether due or to become due, absolute or contingent, liquidated or unliquidated or founded on contract, tort or other legal basis, if not barred earlier by another statute of limitations or nonclaim statute, are barred against the estate, the personal representative and the heirs, devisees and nonprobate transferees of the decedent unless presented within the earlier of the following:

(1) one year after the decedent's death; or

(2) the time provided by Subsection A of Section 45-3-801 NMSA 1978 for creditors who are given actual notice and the time provided in Subsection B of Section 45-3-801 NMSA 1978 for all creditors barred by publication.

B. A claim described in Subsection A of this section that is barred by the nonclaim statute of the decedent's domicile before the giving of notice to creditors in this state is barred in this state.

C. All claims against a decedent's estate that arise at or after the death of the decedent, including claims of the state and any political subdivision of the state, whether due or to become due, absolute or contingent, liquidated or unliquidated or founded on contract, tort or other legal basis, are barred against the estate, the personal representative and the heirs and devisees of the decedent unless presented as follows:

(1) a claim based on a contract with the personal representative within four months after performance by the personal representative is due; or

(2) any other claim within the later of four months after it arises or the time specified in Paragraph (1) of this subsection.

D. Nothing in this section affects or prevents:

(1) any proceeding to enforce any mortgage, pledge or other lien upon property of the estate;

(2) to the limits of the insurance protection only, a proceeding to establish liability of the decedent or the personal representative for which the decedent or personal representative is protected by liability insurance; or

(3) collection of compensation for services rendered and reimbursement for expenses advanced by the personal representative or by the attorney or accountant for the personal representative of the estate."

## **Chapter 124 Section 48 Laws 2011**

SECTION 48. Section 45-3-913 NMSA 1978 (being Laws 1975, Chapter 257, Section 3-913, as amended) is amended to read:

"45-3-913. DISTRIBUTIONS TO TRUSTEE.--

A. Before distributing to a trustee, the personal representative may require that the trust be registered if the state in which it is to be administered provides for registration and that the trustee inform the beneficiaries as provided in Section 46A-8-813 NMSA 1978.

B. If the trust instrument does not excuse the trustee from giving bond, the personal representative may petition the appropriate court to require that the trustee post bond if the personal representative apprehends that distribution might jeopardize the interests of persons who are not able to protect themselves, and the personal representative may withhold distribution until the court has acted.

C. No inference of negligence on the part of the personal representative shall be drawn from the personal representative's failure to exercise the authority conferred by Subsections A and B of this section."

## **Chapter 124 Section 49 Laws 2011**

SECTION 49. Section 45-3-915 NMSA 1978 (being Laws 1975, Chapter 257, Section 3-915, as amended) is amended to read:

"45-3-915. DISTRIBUTION TO PERSON UNDER DISABILITY.--

A. A personal representative may discharge an obligation to distribute to a minor or person under other disability by distributing in a manner expressly provided in the will or other governing instrument.

B. Unless contrary to an express provision in the will or other governing instrument, the personal representative may discharge an obligation to distribute to a minor or person under other disability as authorized by Section 45-5-103 NMSA 1978 or any other statute. If the personal representative knows that a conservator has been appointed or that a proceeding for appointment of a conservator is pending, the personal representative is authorized to distribute only to the conservator.

C. If the heir or devisee is under disability other than minority, the personal representative is authorized to distribute to:

(1) an agent who has authority under a power of attorney to receive property for that person; or

(2) the spouse, parent or other close relative with whom the person under disability resides if the distribution is of amounts not exceeding ten thousand dollars (\$10,000) a year or property not exceeding fifty thousand dollars (\$50,000) in value unless the court authorizes a larger amount or greater value.

D. Persons receiving money or property for the disabled person are obligated to apply the money or property to the support of the disabled person. Persons may not pay themselves except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the support of the disabled person. Excess sums must be preserved for future support of the disabled person. The personal representative is not responsible for the proper application of money or property distributed pursuant to this subsection."

## **Chapter 124 Section 50 Laws 2011**

SECTION 50. Section 45-3-1201 NMSA 1978 (being Laws 1975, Chapter 257, Section 3-1201, as amended) is amended to read:

"45-3-1201. COLLECTION OF PERSONAL PROPERTY BY AFFIDAVIT.--

A. Thirty days after the death of a decedent, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action to a person claiming to be the successor of the decedent upon being presented an affidavit made by or on behalf of the successor stating that:

(1) the value of the entire estate, wherever located, less liens and encumbrances, does not exceed fifty thousand dollars (\$50,000);

(2) thirty days have elapsed since the death of the decedent;

(3) no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction; and

(4) the claiming successor is entitled to payment or delivery of the property.

B. A transfer agent of any security shall change the registered ownership on the books of a corporation from the decedent to the successor or successors upon the presentation of an affidavit as provided in Subsection A of this section.

C. The affidavit made pursuant to this section may not be used to perfect title to real estate."

## **Chapter 124 Section 51 Laws 2011**

SECTION 51. Section 45-3-1205 NMSA 1978 (being Laws 1985, Chapter 12, Section 1 and Laws 1985, Chapter 132, Section 1) is amended to read:

"45-3-1205. TRANSFER OF TITLE TO HOMESTEAD TO SURVIVING SPOUSE BY AFFIDAVIT.--

A. Where a husband and wife own a homestead as community property and when either the husband or wife dies intestate or dies testate and by the husband's or wife's will devises the husband's or wife's interest in the homestead to the surviving spouse, the homestead passes to the survivor and no probate or administration is necessary.



B. Six months after the death of a decedent, the surviving spouse may record with the county clerk in the county in which the homestead is located an affidavit describing the real property and stating that:

(1) six months have elapsed since the death of the decedent as shown on the death certificate;

(2) the affiant and the decedent were at the time of the death of the decedent married and owned the homestead as community property;

(3) a copy of the deed with a legal description of the homestead is attached to the affidavit;

(4) but for the homestead, the decedent's estate need not be subject to any judicial probate proceeding either in district court or probate court;

(5) no application or petition for appointment of a personal representative or for admittance of a will to probate is pending or has been granted in any jurisdiction;

(6) funeral expenses, expenses of last illness and all unsecured debts of the decedent have been paid;

(7) the affiant is the surviving spouse of the decedent and is entitled to title to the homestead by intestate succession as provided in Section 45-2-102 NMSA 1978 or by devise under a valid last will of the decedent, the original of which is attached to the affidavit;

(8) no other person has a right to the interest of the decedent in the described property;

(9) no federal or state tax is due on the decedent's estate; and

(10) the affiant affirms that all statements in the affidavit are true and correct and further acknowledges that any false statement may subject the person to penalties relating to perjury and subornation of perjury.

C. As used in this section, "homestead" means the principal place of residence of the decedent or surviving spouse or the last principal place of residence if neither the decedent nor the surviving spouse is residing in that residence because of illness or incapacitation and that consists of one or more dwellings together with appurtenant structures, the land underlying both the dwellings and the appurtenant structures and a quantity of land reasonably necessary for parking and other uses that facilitates the use of the dwellings and appurtenant structures, and provided the full value of this property as assessed for property taxation purposes does not exceed five hundred thousand dollars (\$500,000)."

## Chapter 124 Section 52 Laws 2011

SECTION 52. 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 or unless otherwise specifically defined in other sections that are applicable to specific articles, parts or sections of the Uniform Probate Code, as used in Chapter 45, Article 5 NMSA 1978:

A. "conservator" means a person who is appointed by a court to manage the property or financial affairs or both of a protected person;

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" has the same meaning as set forth in Section 45-1-201 NMSA 1978;

E. "guardian ad litem" has the same meaning as set forth 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 pursuant to Chapter 45, Article 5 NMSA 1978;

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" has the same meaning as set forth 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" has the same meaning as set forth 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. "parent" means a parent whose parental rights have not been terminated or relinquished;

S. "protective proceeding" means a conservatorship proceeding under Section 45-5-401 NMSA 1978;

T. "protected person" means a minor or other person for whom a guardian or conservator has been appointed or other protective order has been made;

U. "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

V. "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 124 Section 53 Laws 2011**

SECTION 53. Section 45-5-102 NMSA 1978 (being Laws 1975, Chapter 257, Section 5-102) is amended to read:

"45-5-102. JURISDICTION OF SUBJECT MATTER--CONSOLIDATION OF PROCEEDINGS.--

A. Chapter 45, Article 5 NMSA 1978 applies to guardianship and protective proceedings for individuals over whom the court has jurisdiction and to property coming into the control of a guardian or conservator who is subject to the laws of New Mexico.

B. The court has exclusive jurisdiction over protective proceedings for minors domiciled in or having property located in New Mexico. Except to the extent that the guardianship is subject to the Uniform Child-Custody Jurisdiction and Enforcement Act, the court has exclusive jurisdiction over guardianship proceedings for minors domiciled or present in New Mexico.

C. The court has exclusive jurisdiction over guardianship and protective proceedings for an adult individual as provided in the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

D. When both guardianship and protective proceedings as to the same person are commenced or pending in the same court, the proceedings may be consolidated."

## **Chapter 124 Section 54 Laws 2011**

SECTION 54. Section 45-5-103 NMSA 1978 (being Laws 1975, Chapter 257, Section 5-103) is amended to read:

"45-5-103. FACILITY OF PAYMENT OR DELIVERY.--

A. A person under a duty to pay or deliver money or personal property to a minor may perform this duty, in amounts not exceeding ten thousand dollars (\$10,000) per year, by paying or delivering the money or property to:

(1) a person having the care and custody of the minor and with whom the minor resides;

(2) a guardian of the minor;

(3) a financial institution for deposit in a federally insured savings account in the sole name of the minor and giving notice of the deposit to the minor; or

(4) a custodian for the minor pursuant to the Uniform Transfers to Minors Act.

B. This section does not apply if the person making payment or delivery has actual knowledge that a conservator has been appointed or proceedings for appointment of a conservator of the estate of the minor are pending. The persons, other than the minor or any financial institution under Paragraph (4) of Subsection A of this section, receiving money or property for a minor are obligated to apply the money to the support and education of the minor but shall not pay themselves except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the minor's support. Any excess sums shall be preserved for future support of the minor, and any balance not so used and any property received for the minor shall be turned over to the minor when the minor ceases to be a minor. Persons who pay or deliver in accordance with provisions of this section are not responsible for the proper application of such payments."

## **Chapter 124 Section 55 Laws 2011**

SECTION 55. Section 45-5-208 NMSA 1978 (being Laws 1975, Chapter 257, Section 5-208) is amended to read:

"45-5-208. CONSENT TO SERVICE BY ACCEPTANCE OF APPOINTMENT--NOTICE.--By accepting a parental or court appointment as guardian, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person. Notice of a proceeding shall be delivered to the guardian or mailed to the guardian at the address listed in the court records and to the address then known to the petitioner. Letters of guardianship shall indicate whether the guardian was appointed by parental appointment or by court order."

## **Chapter 124 Section 56 Laws 2011**

SECTION 56. Section 45-5-210 NMSA 1978 (being Laws 1975, Chapter 257, Section 5-210, as amended) 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, emancipation, 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 124 Section 57 Laws 2011**

SECTION 57. Section 45-5-313 NMSA 1978 (being Laws 1975, Chapter 257, Section 5-313, as amended) 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. Subject to the transfer provisions of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, 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 124 Section 58 Laws 2011**

SECTION 58. Section 45-5-417 NMSA 1978 (being Laws 1975, Chapter 257, Section 5-417) is amended to read:

"45-5-417. GENERAL DUTY OF CONSERVATOR.--In the exercise of a conservator's powers, a conservator shall act as a fiduciary and shall observe the standards of care applicable to trustees as described by Sections 46A-8-801 through 46A-8-807 NMSA 1978."

## **Chapter 124 Section 59 Laws 2011**

SECTION 59. A new Section 45-5-434 NMSA 1978 is enacted to read:

"45-5-434. REGISTRATION OF GUARDIANSHIP ORDERS.--If a guardian has been appointed in another state and a petition for the appointment of a guardian is not pending in New Mexico, the guardian appointed in the other state, after giving notice to the appointing court of an intent to register, may register the guardianship order in New

Mexico by filing as a foreign judgment in a district court, in any appropriate county of New Mexico, certified copies of the order and letters of office."

### **Chapter 124 Section 60 Laws 2011**

SECTION 60. A new Section 45-5-435 NMSA 1978 is enacted to read:

"45-5-435. REGISTRATION OF PROTECTIVE ORDERS.--If a conservator has been appointed in another state and a petition for a protective order is not pending in New Mexico, the conservator appointed in the other state, after giving notice to the appointing court of an intent to register, may register the protective order in New Mexico by filing as a foreign judgment in a district court in New Mexico, in any county in which property belonging to the protected person is located, certified copies of the order and letters of office and of any bond."

### **Chapter 124 Section 61 Laws 2011**

SECTION 61. A new Section 45-5-436 NMSA 1978 is enacted to read:

"45-5-436. EFFECT OF REGISTRATION.--

A. Upon registration of a guardianship or protective order from another state, the guardian or conservator may exercise in New Mexico all powers authorized in the order of appointment except as prohibited under the laws of New Mexico, including maintaining actions and proceedings in New Mexico and, if the guardian or conservator is not a resident of New Mexico, subject to any conditions imposed upon nonresident parties.

B. A court of New Mexico may grant any relief available under Chapter 45, Article 5 NMSA 1978 and other law of this state to enforce a registered order."

### **Chapter 124 Section 62 Laws 2011**

SECTION 62. A new Section 45-5A-101 NMSA 1978 is enacted to read:

"45-5A-101. SHORT TITLE.--Chapter 45, Article 5A NMSA 1978 may be cited as the "Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act"."

### **Chapter 124 Section 63 Laws 2011**

SECTION 63. A new Section 45-5A-102 NMSA 1978 is enacted to read:

"45-5A-102. DEFINITIONS.--As used in the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act:

- A. "adult" means an individual who has attained eighteen years of age;
- B. "conservator" means a person appointed by the court to administer the property of an adult, as provided in Chapter 45, Article 5 NMSA 1978;
- C. "court" means the district court;
- D. "guardian" means a person appointed by the court to make decisions regarding the person of an adult, as provided in Chapter 45, Article 5 NMSA 1978;
- E. "guardianship order" means an order appointing a guardian;
- F. "guardianship proceeding" means a judicial proceeding in which an order for the appointment of a guardian is sought or has been issued;
- G. "incapacitated person" means an adult for whom a guardian has been appointed;
- H. "party" means the respondent, petitioner, guardian, conservator or any other person allowed by the court to participate in a guardianship or protective proceeding;
- I. "protected person" means an adult for whom a protective order has been issued;
- J. "protective order" means an order appointing a conservator or other order related to management of an adult's property;
- K. "protective proceeding" means a judicial proceeding in which a protective order is sought or has been issued; and
- L. "respondent" means an adult for whom a protective order or the appointment of a guardian is sought."

## **Chapter 124 Section 64 Laws 2011**

SECTION 64. A new Section 45-5A-103 NMSA 1978 is enacted to read:

"45-5A-103. INTERNATIONAL APPLICATION OF THE UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT.--A New Mexico court may treat a foreign country as if it were a state for the purpose of applying Parts 1, 2, 3 and 5 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act."

## **Chapter 124 Section 65 Laws 2011**



SECTION 65. A new Section 45-5A-104 NMSA 1978 is enacted to read:

"45-5A-104. COMMUNICATION BETWEEN COURTS.--

A. A New Mexico court may communicate with a court in another state concerning a proceeding arising pursuant to the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act. The court may allow the parties to participate in the communication. Except as otherwise provided in Subsection B of this section and except as otherwise provided by rules adopted by the New Mexico supreme court, the court shall make a record of the communication. The record may be limited to the fact that the communication occurred.

B. Except as otherwise provided by rules adopted by the New Mexico supreme court, courts may communicate concerning schedules, calendars, court records and other administrative matters without making a record."

## **Chapter 124 Section 66 Laws 2011**

SECTION 66. A new Section 45-5A-105 NMSA 1978 is enacted to read:

"45-5A-105. COOPERATION BETWEEN COURTS.--

A. Except as otherwise provided by rules adopted by the New Mexico supreme court, in a guardianship or protective proceeding in New Mexico, a New Mexico court may request the appropriate court of another state to do any of the following:

- (1) hold an evidentiary hearing;
- (2) order a person in that state to produce evidence or give testimony pursuant to procedures of that state;
- (3) order that an evaluation or assessment be made of the respondent;
- (4) order any appropriate investigation of a person involved in a proceeding;
- (5) forward to the New Mexico court a certified copy of the transcript or other record of a hearing pursuant to Paragraph (1) of this subsection or any other proceeding, any evidence otherwise produced pursuant to Paragraph (2) of this subsection and any evaluation or assessment prepared in compliance with an order pursuant to Paragraph (3) or (4) of this subsection;

(6) issue any order necessary to assure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the respondent or the incapacitated or protected person; and

(7) issue an order authorizing the release of medical, financial, criminal or other relevant information in that state, including protected health information as defined in 45 C.F.R. Section 164.504, as amended.

B. If a court of another state in which a guardianship or protective proceeding is pending requests assistance of the kind provided in Subsection A of this section, a New Mexico court has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request."

## **Chapter 124 Section 67 Laws 2011**

SECTION 67. A new Section 45-5A-106 NMSA 1978 is enacted to read:

"45-5A-106. TAKING TESTIMONY IN ANOTHER STATE.--

A. In a guardianship or protective proceeding, in addition to other procedures that may be available, testimony of a witness who is located in another state may be offered by deposition or other means allowable in New Mexico for testimony taken in another state. The court on its own motion may order that the testimony of a witness be taken in another state and may prescribe the manner in which, and the terms upon which, the testimony is to be taken.

B. In a guardianship or protective proceeding, a New Mexico court may permit a witness located in another state to be deposed or to testify by telephone or audiovisual or other electronic means. A New Mexico court shall cooperate with the court of the other state in designating an appropriate location for the deposition or testimony.

C. Except as otherwise provided by rules adopted by the New Mexico supreme court, documentary evidence transmitted from another state to a New Mexico court by technological means that do not produce an original writing shall not be excluded from evidence on an objection based on the best evidence rule."

## **Chapter 124 Section 68 Laws 2011**

SECTION 68. A new Section 45-5A-201 NMSA 1978 is enacted to read:

"45-5A-201. DEFINITIONS--SIGNIFICANT-CONNECTION FACTORS.--

A. As used in Part 2 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act:

(1) "emergency" means a circumstance that likely will result in substantial harm to a respondent's health, safety or welfare and for which the appointment of a guardian is necessary because no other person has authority and is willing to act on the respondent's behalf;

(2) "home state" means the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months immediately before the filing of a petition for a protective order or the appointment of a guardian; or, if none, the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months ending within the six months prior to the filing of the petition; and

(3) "significant-connection state" means a state, other than the home state, with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available.

B. In determining pursuant to Section 45-5A-203 and Subsection E of Section 45-5A-301 NMSA 1978 whether a respondent has a significant connection with a particular state, the court shall consider:

(1) the location of the respondent's family and other persons required to be notified of the guardianship or protective proceeding;

(2) the length of time the respondent at any time was physically present in the state and the duration of any absence;

(3) the location of the respondent's property; and

(4) the extent to which the respondent has ties to the state, such as voting registration, state or local tax return filing, vehicle registration, driver's license, social relationship and receipt of services."

## **Chapter 124 Section 69 Laws 2011**

SECTION 69. A new Section 45-5A-202 NMSA 1978 is enacted to read:

"45-5A-202. EXCLUSIVE BASIS.--Part 2 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act provides the exclusive jurisdictional basis for a New Mexico court to appoint a guardian or issue a protective order for an adult."

## **Chapter 124 Section 70 Laws 2011**

SECTION 70. A new Section 45-5A-203 NMSA 1978 is enacted to read:

"45-5A-203. JURISDICTION.--A New Mexico court has jurisdiction to appoint a guardian or issue a protective order for a respondent if:

A. New Mexico is the respondent's home state;

B. on the date the petition is filed, New Mexico is a significant-connection state and:

(1) the respondent does not have a home state or a court of the respondent's home state has declined to exercise jurisdiction because New Mexico is a more appropriate forum; or

(2) the respondent has a home state, a petition for an appointment or order is not pending in a court of that state or another significant-connection state and, before the court makes the appointment or issues the order:

(a) a petition for an appointment or order is not filed in the respondent's home state;

(b) an objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding; and

(c) the court in New Mexico concludes that it is an appropriate forum pursuant to the factors set forth in Section 45-5A-206 NMSA 1978;

C. New Mexico does not have jurisdiction pursuant either to Subsection A or B of this section, the respondent's home state and all significant-connection states have declined to exercise jurisdiction because New Mexico is the more appropriate forum and jurisdiction in New Mexico is consistent with the constitutions of New Mexico and the United States; or

D. the requirements for special jurisdiction pursuant to Section 45-5A-204 NMSA 1978 are met."

## **Chapter 124 Section 71 Laws 2011**

SECTION 71. A new Section 45-5A-204 NMSA 1978 is enacted to read:

"45-5A-204. SPECIAL JURISDICTION.--

A. A New Mexico court lacking jurisdiction pursuant to Section 45-5A-203 NMSA 1978 has special jurisdiction to do any of the following:

(1) appoint a guardian in an emergency for a term not exceeding ninety days for a respondent who is physically present in New Mexico;

(2) issue a protective order with respect to real or tangible personal property located in New Mexico; and

(3) appoint a guardian or conservator for an incapacitated or protected person for whom a provisional order to transfer the proceeding from another state has been issued pursuant to procedures similar to Section 45-5A-301 NMSA 1978.

B. If a petition for the appointment of a guardian in an emergency is brought in New Mexico and New Mexico was not the respondent's home state on the date the petition was filed, the court shall dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is requested before or after the emergency appointment."

## **Chapter 124 Section 72 Laws 2011**

SECTION 72. A new Section 45-5A-205 NMSA 1978 is enacted to read:

"45-5A-205. EXCLUSIVE AND CONTINUING JURISDICTION.--Except as otherwise provided in Section 45-5A-204 NMSA 1978, a court that has appointed a guardian or issued a protective order consistent with the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act has exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the appointment or order expires by its own terms."

## **Chapter 124 Section 73 Laws 2011**

SECTION 73. A new Section 45-5A-206 NMSA 1978 is enacted to read:

"45-5A-206. APPROPRIATE FORUM.--

A. A New Mexico court having jurisdiction pursuant to Section 45-5A-203 NMSA 1978 to appoint a guardian or issue a protective order may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.

B. If a New Mexico court declines to exercise its jurisdiction pursuant to Subsection A of this section, it shall either dismiss or stay the proceeding. The court may impose any condition the court considers just and proper, including the condition that a petition for the appointment of a guardian or issuance of a protective order be filed promptly in another state.

C. In determining whether it is an appropriate forum, the court shall consider all relevant factors, including:

(1) any expressed preference of the respondent;

(2) whether abuse, neglect or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect or exploitation;

(3) the length of time the respondent was physically present in or was a legal resident of New Mexico or another state;

(4) the distance of the respondent from the court in each state;

(5) the financial circumstances of the respondent's estate;

(6) the nature and location of the evidence;

(7) the ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence;

(8) the familiarity of the court of each state with the facts and issues in the proceeding; and

(9) if an appointment of a guardian or conservator were to be made, the court's ability to monitor the conduct of the guardian or conservator."

## **Chapter 124 Section 74 Laws 2011**

SECTION 74. A new Section 45-5A-207 NMSA 1978 is enacted to read:

"45-5A-207. JURISDICTION DECLINED BY REASON OF CONDUCT.--

A. If at any time a New Mexico court determines that it acquired jurisdiction to appoint a guardian or issue a protective order because of unjustifiable conduct, the court may:

(1) decline to exercise jurisdiction;

(2) exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to:

(a) ensure the health, safety and welfare of the respondent or the protection of the respondent's property; or

(b) prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a guardian or issuance of a protective order is filed in a court of another state having jurisdiction; or

(3) continue to exercise jurisdiction after considering:

(a) the extent to which the respondent and all persons required to be notified of the proceedings have acquiesced in the exercise of the court's jurisdiction;

(b) whether it is a more appropriate forum than the court of any other state pursuant to the factors set forth in Subsection C of Section 45-5A-206 NMSA 1978; and

(c) whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of Section 45-5A-203 NMSA 1978.

B. If a New Mexico court determines that it acquired jurisdiction to appoint a guardian or to issue a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may assess against that party necessary and reasonable expenses, including attorney fees, investigative fees, court costs, communication expenses, witness fees and expenses and travel expenses. The court shall not assess fees, costs or expenses of any kind against New Mexico or a governmental subdivision, agency or instrumentality of New Mexico unless authorized by law other than the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act."

## **Chapter 124 Section 75 Laws 2011**

SECTION 75. A new Section 45-5A-208 NMSA 1978 is enacted to read:

"45-5A-208. NOTICE OF PROCEEDING.--If a petition for the appointment of a guardian or issuance of a protective order is brought in New Mexico and New Mexico was not the respondent's home state on the date the petition was filed, in addition to complying with the notice requirements of New Mexico, notice of the petition shall be given to those persons who would be entitled to notice of the petition if a proceeding were brought in the respondent's home state. The notice shall be given in the same manner as notice is required to be given in New Mexico."

## **Chapter 124 Section 76 Laws 2011**

SECTION 76. A new Section 45-5A-209 NMSA 1978 is enacted to read:

"45-5A-209. PROCEEDINGS IN MORE THAN ONE STATE.--Except for a petition for the appointment of a guardian in an emergency or issuance of a protective order limited to property located in New Mexico pursuant to Paragraph (1) or (2) of Subsection A of Section 45-5A-204 NMSA 1978, if a petition for the appointment of a guardian or issuance of a protective order is filed in New Mexico and in another state and neither petition has been dismissed or withdrawn, the following rules apply:

A. if the New Mexico court has jurisdiction pursuant to Section 45-5A-203 NMSA 1978, it may proceed with the case unless a court in another state acquires jurisdiction pursuant to provisions similar to Section 45-5A-203 NMSA 1978 before the appointment of the guardian or issuance of the protective order; and

B. if the New Mexico court does not have jurisdiction pursuant to Section 45-5A-203 NMSA 1978, whether at the time the petition is filed or at any time before the appointment of the guardian or issuance of the protective order, the court shall stay the proceeding and communicate with the court in the other state. If the court in the other state has jurisdiction, the New Mexico court shall dismiss the petition unless the court in the other state determines that the New Mexico court is a more appropriate forum."

## **Chapter 124 Section 77 Laws 2011**

SECTION 77. A new Section 45-5A-301 NMSA 1978 is enacted to read:

"45-5A-301. TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP TO ANOTHER STATE.--

A. A guardian or conservator appointed in New Mexico may petition the court to transfer the guardianship or conservatorship to another state.

B. Notice of a petition pursuant to Subsection A of this section shall be given to the persons that would be entitled to notice of a petition in New Mexico for the appointment of a guardian or conservator.

C. On the court's own motion, or on request of the guardian or conservator, the incapacitated or protected person or other person required to be notified of the petition, the court shall hold a hearing on a petition filed pursuant to Subsection A of this section.

D. The court shall issue an order provisionally granting a petition to transfer a guardianship and shall direct the guardian to petition for guardianship in the other state if the court is satisfied that the guardianship will be accepted by the court in the other state and the court finds that:

(1) the incapacitated person is physically present in or is reasonably expected to move permanently to the other state;

(2) an objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the incapacitated person; and

(3) plans for care and services for the incapacitated person in the other state are reasonable and sufficient.



E. The court shall issue a provisional order granting a petition to transfer a conservatorship and shall direct the conservator to petition for conservatorship in the other state if the court is satisfied that the conservatorship will be accepted by the court of the other state and the court finds that:

(1) the protected person is physically present in or is reasonably expected to move permanently to the other state, or the protected person has a significant connection to the other state considering the factors set forth in Subsection B of Section 45-5A-201 NMSA 1978;

(2) an objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the protected person; and

(3) adequate arrangements will be made for management of the protected person's property.

F. The court shall issue a final order confirming the transfer and terminating the guardianship or conservatorship upon its receipt of:

(1) a provisional order accepting the proceeding from the court to which the proceeding is to be transferred that is issued pursuant to provisions similar to those set forth in Section 45-5A-302 NMSA 1978; and

(2) the documents required to terminate a guardianship or conservatorship in New Mexico."

## **Chapter 124 Section 78 Laws 2011**

SECTION 78. A new Section 45-5A-302 NMSA 1978 is enacted to read:

"45-5A-302. ACCEPTING GUARDIANSHIP OR CONSERVATORSHIP TRANSFERRED FROM ANOTHER STATE.--

A. To confirm transfer of a guardianship or conservatorship transferred to New Mexico pursuant to provisions similar to Section 45-5A-301 NMSA 1978, the guardian or conservator shall petition the New Mexico court to accept the guardianship or conservatorship. The petition shall include a certified copy of the other state's provisional order of transfer.

B. Notice of a petition pursuant to Subsection A of this section shall be given to those persons that would be entitled to notice if the petition were a petition for the appointment of a guardian or issuance of a protective order in both the transferring state and New Mexico. The notice shall be given in the same manner as notice is required to be given in New Mexico.

C. On the court's own motion, or on request of the guardian or conservator, the incapacitated or protected person or other person required to be notified of the proceeding, the court shall hold a hearing on a petition filed pursuant to Subsection A of this section.

D. The court shall issue an order provisionally granting a petition filed pursuant to Subsection A of this section unless:

(1) an objection is made and the objector establishes that transfer of the proceeding would be contrary to the interests of the incapacitated or protected person; or

(2) the guardian or conservator is ineligible for appointment in New Mexico.

E. The court shall issue a final order accepting the proceeding and appointing the guardian or conservator as guardian or conservator in New Mexico upon its receipt from the court from which the proceeding is being transferred of a final order issued pursuant to provisions similar to Section

45-5A-301 NMSA 1978 transferring the proceeding to New Mexico.

F. Not later than ninety days after issuance of a final order accepting transfer of a guardianship or conservatorship, the court shall determine whether the guardianship or conservatorship needs to be modified to conform to the laws of New Mexico.

G. In granting a petition pursuant to this section, the court shall recognize a guardianship or conservatorship order from the other state, including the determination of the incapacitated or protected person's incapacity and the appointment of the guardian or conservator.

H. The denial by a New Mexico court of a petition to accept a guardianship or conservatorship transferred from another state does not affect the ability of the guardian or conservator to seek appointment as guardian or conservator in New Mexico pursuant to Sections 45-5-301 and 45-5-401 NMSA 1978 if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer."

## **Chapter 124 Section 79 Laws 2011**

SECTION 79. A new Section 45-5A-401 NMSA 1978 is enacted to read:

"45-5A-401. REGISTRATION OF GUARDIANSHIP ORDERS.--If a guardian has been appointed in another state and a petition for the appointment of a guardian is not pending in New Mexico, the guardian appointed in the other state, after giving notice to the appointing court of an intent to register, may register the guardianship order in New

Mexico by filing as a foreign judgment in a court, in any appropriate county of New Mexico, certified copies of the order and letters of office."

### **Chapter 124 Section 80 Laws 2011**

SECTION 80. A new Section 45-5A-402 NMSA 1978 is enacted to read:

"45-5A-402. REGISTRATION OF PROTECTIVE ORDERS.--If a conservator has been appointed in another state and a petition for a protective order is not pending in New Mexico, the conservator appointed in the other state, after giving notice to the appointing court of an intent to register, may register the protective order in New Mexico by filing as a foreign judgment in a New Mexico court, in any county in which property belonging to the protected person is located, certified copies of the order and letters of office and of any bond."

### **Chapter 124 Section 81 Laws 2011**

SECTION 81. A new Section 45-5A-403 NMSA 1978 is enacted to read:

"45-5A-403. EFFECT OF REGISTRATION.--

A. Upon registration of a guardianship or protective order from another state, the guardian or conservator may exercise in New Mexico all powers authorized in the order of appointment except as prohibited pursuant to the laws of New Mexico, including maintaining actions and proceedings in New Mexico and, if the guardian or conservator is not a resident of New Mexico, subject to any conditions imposed upon nonresident parties.

B. A New Mexico court may grant any relief available pursuant to the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act and other law of New Mexico to enforce a registered order."

### **Chapter 124 Section 82 Laws 2011**

SECTION 82. A new Section 45-5A-501 NMSA 1978 is enacted to read:

"45-5A-501. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.--The Uniform Adult Guardianship and Protective Proceedings Jurisdiction 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 124 Section 83 Laws 2011**

SECTION 83. A new Section 45-5A-502 NMSA 1978 is enacted to read:

"45-5A-502. TRANSITIONAL PROVISION.--

A. Parts 1, 3 and 4 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act and Section 45-5A-501 NMSA 1978 apply to proceedings begun before January 1, 2012, regardless of whether a guardianship or

protective order has been issued.

B. The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act applies to guardianship and protective proceedings begun on or after January 1, 2012."

## **Chapter 124 Section 84 Laws 2011**

SECTION 84. Section 45-6-205 NMSA 1978 (being Laws 1992, Chapter 66, Section 22) is amended to read:

"45-6-205. DESIGNATION OF AGENT.--

A. By a writing signed by all parties, the parties may designate as agent of all parties on an account a person other than a party.

B. Unless the terms of an agency designation provide that the authority of the agent terminates on disability or incapacity of a party, the agent's authority survives disability and incapacity. The agent may act for a disabled or incapacitated party until the authority of the agent is terminated.

C. Death of the sole party or last surviving party terminates the authority of an agent."

## **Chapter 124 Section 85 Laws 2011**

SECTION 85. Section 45-6-216 NMSA 1978 (being Laws 1992, Chapter 66, Section 29, as amended) is amended to read:

"45-6-216. COMMUNITY PROPERTY.--

A. A deposit of community property in an account does not alter the community character of the property or community rights in the property, if any, but a right of survivorship between parties married to each other arising from the express terms of the account or Section 45-6-212 NMSA 1978 may not be altered by will or other governing instrument.

B. This section does not affect or limit the right of a financial institution to make payments pursuant to Sections 45-6-211 through 45-6-227 NMSA 1978 and the deposit agreement."

## **Chapter 124 Section 86 Laws 2011**

SECTION 86. Section 46-3A-101 NMSA 1978 (being Laws 2001, Chapter 113, Section 101) is amended to read:

"46-3A-101. SHORT TITLE.--Chapter 46, Article 3A NMSA 1978 may be cited as the "Uniform Principal and Income Act"."

## **Chapter 124 Section 87 Laws 2011**

SECTION 87. Section 46-3A-409 NMSA 1978 (being Laws 2001, Chapter 113, Section 409) is amended to read:

"46-3A-409. DEFERRED COMPENSATION, ANNUITIES AND SIMILAR PAYMENTS.--

A. As used in this section:

(1) "payment" means a payment that a trustee may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payer in exchange for future payments. The term includes a payment made in money or property from the payer's general assets or from a separate fund created by the payer. For purposes of Subsections D, E, F and G of this section, "payment" also includes any payment from any separate fund, regardless of the reason for the payment; and

(2) "separate fund" includes a private or commercial annuity, an individual retirement account and a pension, profit-sharing, stock-bonus or stock-ownership plan.

B. To the extent that a payment is characterized as interest or a dividend or a payment made in lieu of interest or a dividend, a trustee shall allocate the payment to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend or an equivalent payment.

C. If no part of a payment is characterized as interest, a dividend or an equivalent payment, and all or part of the payment is required to be made, a trustee shall allocate to income ten percent of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of this subsection, a

payment is not "required to be made" to the extent that it is made because the trustee exercises a right of withdrawal.

D. Except as otherwise provided in Subsection E of this section, Subsections F and G of this section apply and Subsections B and C of this section do not apply in determining the allocation of a payment made from a separate fund to:

(1) a trust to which an election to qualify for a marital deduction pursuant to Section 2056(b)(7) of the Internal Revenue Code of 1986, as amended, has been made; or

(2) a trust that qualifies for the marital deduction pursuant to Section 2056(b)(5) of the Internal Revenue Code of 1986, as amended.

E. Subsections D, F and G of this section do not apply if, and to the extent that, the series of payments would, without the application of Subsection D of this section, qualify for the marital deduction pursuant to Section 2056(b)(7)(C) of the Internal Revenue Code of 1986, as amended.

F. A trustee shall determine the internal income of each separate fund for the accounting period as if the separate fund were a trust subject to the Uniform Principal and Income Act. Upon request of the surviving spouse, the trustee shall demand that the person administering the separate fund distribute the internal income to the trust. The trustee shall allocate a payment from the separate fund to income to the extent of the internal income of the separate fund and distribute that amount to the surviving spouse. The trustee shall allocate the balance of the payment to principal. Upon request of the surviving spouse, the trustee shall allocate principal to income to the extent the internal income of the separate fund exceeds payments made from the separate fund to the trust during the accounting period.

G. If a trustee cannot determine the internal income of a separate fund but can determine the value of the separate fund, the internal income of the separate fund is deemed to equal four percent of the fund's value according to the most recent statement of value preceding the beginning of the accounting period. If the trustee can determine neither the internal income of the separate fund nor the fund's value, the internal income of the fund is deemed to equal the product of the interest rate and the present value of the expected future payments as determined pursuant to Section 7520 of the Internal Revenue Code of 1986, as amended, for the month preceding the accounting period for which the computation is made.

H. This section does not apply to a payment to which Section 46-3A-410 NMSA 1978 applies."

## **Chapter 124 Section 88 Laws 2011**

SECTION 88. Section 46-3A-505 NMSA 1978 (being Laws 2001, Chapter 113, Section 505) is amended to read:

"46-3A-505. INCOME TAXES.--

A. A tax required to be paid by a trustee based on receipts allocated to income must be paid from income.

B. A tax required to be paid by a trustee based on receipts allocated to principal must be paid from principal, even if the tax is called an income tax by the taxing authority.

C. A tax required to be paid by a trustee on the trust's share of an entity's taxable income must be paid:

(1) from income to the extent that receipts from the entity are allocated only to income;

(2) from principal to the extent that receipts from the entity are allocated only to principal;

(3) proportionately from principal and income to the extent that receipts from the entity are allocated to both income and principal; and

(4) from principal to the extent that the tax exceeds the total receipts from the entity.

D. After applying Subsections A through C of this section, the trustee shall adjust income or principal receipts to the extent that the trust's taxes are reduced because the trust receives a deduction for payments made to a beneficiary."

## **Chapter 124 Section 89 Laws 2011**

SECTION 89. Section 46-10-1 NMSA 1978 (being Laws 2001, Chapter 290, Section 1) is recompiled as Section 45-2-1101 NMSA 1978 and is amended to read:

"45-2-1101. SHORT TITLE.--Chapter 45, Article 2, Part 11 NMSA 1978 may be cited as the "Uniform Disclaimer of Property Interests Act"."

## **Chapter 124 Section 90 Laws 2011**

SECTION 90. Section 46-10-2 NMSA 1978 (being Laws 2001, Chapter 290, Section 2) is recompiled as Section 45-2-1102 NMSA 1978 and is amended to read:

"45-2-1102. DEFINITIONS.--As used in the Uniform Disclaimer of Property Interests Act:

A. "disclaimant" means the person to whom a disclaimed interest or power would have passed had the disclaimer not been made;

B. "disclaimed interest" means the interest that would have passed to the disclaimant had the disclaimer not been made;

C. "disclaimer" means the refusal to accept an interest in or power over property;

D. "fiduciary" means a personal representative, trustee, agent acting under a power of attorney or other person authorized to act as a fiduciary with respect to the property of another person;

E. "jointly held property" means property held in the name of two or more persons under an arrangement in which all holders have concurrent interests and under which the last surviving holder is entitled to the whole of the property; and

F. "trust" means:

(1) an express trust, charitable or noncharitable, with additions thereto, whenever and however created; and

(2) a trust created pursuant to a statute, judgment or decree that requires the trust to be administered in the manner of an express trust."

## **Chapter 124 Section 91 Laws 2011**

SECTION 91. Section 46-10-6 NMSA 1978 (being Laws 2001, Chapter 290, Section 6) is recompiled as Section 45-2-1106 NMSA 1978 and is amended to read:

"45-2-1106. DISCLAIMER OF INTEREST IN PROPERTY.--

A. As used in this section:

(1) "future interest" means an interest that takes effect in possession or enjoyment, if at all, later than the time of its creation; and

(2) "time of distribution" means the time when a disclaimed interest would have taken effect in possession or enjoyment.

B. Except for a disclaimer governed by Section 45-2-1107 or 45-2-1108 NMSA 1978, the following rules apply to a disclaimer of an interest in property:

(1) The disclaimer takes effect as of the time the instrument creating the interest becomes irrevocable, or, if the interest arose under the law of intestate succession, as of the time of the intestate's death.



(2) The disclaimed interest passes according to any provision in the instrument creating the interest providing for the disposition of the interest, should it be disclaimed, or of disclaimed interests in general.

(3) If the instrument does not contain a provision described in Paragraph (2) of this subsection, the following rules apply:

(a) If the disclaimant is not an individual, the disclaimed interest passes as if the disclaimant did not exist.

(b) If the disclaimant is an individual, except as otherwise provided in Subparagraphs (c) and (d) of this paragraph, the disclaimed interest passes as if the disclaimant had died immediately before the time of distribution.

(c) If, by law or under the instrument, the descendants of the disclaimant would share in the disclaimed interest by any method of representation had the disclaimant died before the time of distribution, the disclaimed interest passes only to the descendants of the disclaimant who survive the time of distribution.

(d) If the disclaimed interest would pass to the disclaimant's estate had the disclaimant died before the time of distribution, the disclaimed interest instead passes by representation to the descendants of the disclaimant who survive the time of distribution. If no descendant of the disclaimant survives the time of distribution, the disclaimed interest passes to those persons, including the state but excluding the disclaimant, and in such shares as would succeed to the transferor's intestate estate under the intestate succession law of the transferor's domicile had the transferor died at the time of distribution. However, if the transferor's surviving spouse is living but is remarried at the time of distribution, the transferor is deemed to have died unmarried at the time of distribution.

(4) Upon the disclaimer of a preceding interest, a future interest held by a person other than the disclaimant takes effect as if the disclaimant had died or ceased to exist immediately before the time of distribution, but a future interest held by the disclaimant is not accelerated in possession or enjoyment."

## **Chapter 124 Section 92 Laws 2011**

SECTION 92. Section 46-10-12 NMSA 1978 (being Laws 2001, Chapter 290, Section 12) is recompiled as Section 45-2-1112 NMSA 1978 and is amended to read:

"45-2-1112. DELIVERY OR FILING.--

A. As used in this section, "beneficiary designation" means an instrument, other than an instrument creating a trust, naming the beneficiary of:

(1) an annuity or insurance policy;

- (2) an account with a designation for payment on death;
- (3) a security registered in beneficiary form;
- (4) a pension, profit-sharing, retirement or other employment-related benefit plan; or
- (5) any other nonprobate transfer at death.

B. Subject to Subsections C through L of this section, delivery of a disclaimer may be effected by personal delivery, first-class mail or any other method likely to result in its receipt.

C. In the case of an interest created under the law of intestate succession or an interest created by will, other than an interest in a testamentary trust:

(1) a disclaimer must be delivered to the personal representative of the decedent's estate; or

(2) if no personal representative is then serving, it must be filed with a court having jurisdiction to appoint the personal representative.

D. In the case of an interest in a testamentary trust:

(1) a disclaimer must be delivered to the trustee then serving or, if no trustee is then serving, to the personal representative of the decedent's estate; or

(2) if no personal representative is then serving, it must be filed with a court having jurisdiction to enforce the trust.

E. In the case of an interest in an inter vivos trust:

(1) a disclaimer must be delivered to the trustee then serving;

(2) if no trustee is then serving, it must be filed with a court having jurisdiction to enforce the trust; or

(3) if the disclaimer is made before the time the instrument creating the trust becomes irrevocable, it must be delivered to the settlor of a revocable trust or the transferor of the interest.

F. In the case of an interest, created by a beneficiary designation, that is disclaimed before the designation becomes irrevocable, the disclaimer must be delivered to the person making the beneficiary designation.

G. In the case of an interest, created by a beneficiary designation, that is disclaimed after the designation becomes irrevocable:

(1) the disclaimer of an interest in personal property must be delivered to the person obligated to distribute the interest; and

(2) the disclaimer of an interest in real property must be recorded in the office of the county clerk of each county where the real property that is the subject of the disclaimer is located.

H. In the case of a disclaimer by a surviving holder of jointly held property, the disclaimer must be delivered to the person to whom the disclaimed interest passes.

I. In the case of a disclaimer by an object or taker in default of exercise of a power of appointment at any time after the power was created:

(1) the disclaimer must be delivered to the holder of the power or to the fiduciary acting under the instrument that created the power; or

(2) if no fiduciary is then serving, it must be filed with a court having authority to appoint the fiduciary.

J. In the case of a disclaimer by an appointee of a nonfiduciary power of appointment:

(1) the disclaimer must be delivered to the holder, the personal representative of the holder's estate or to the fiduciary under the instrument that created the power; or

(2) if no fiduciary is then serving, it must be filed with a court having authority to appoint the fiduciary.

K. In the case of a disclaimer by a fiduciary of a power over a trust or estate, the disclaimer must be delivered as provided in Subsection C, D or E of this section, as if the power disclaimed were an interest in property.

L. In the case of a disclaimer of a power by an agent, the disclaimer must be delivered to the principal or the principal's representative."

## **Chapter 124 Section 93 Laws 2011**

SECTION 93. Section 46-10-15 NMSA 1978 (being Laws 2001, Chapter 290, Section 15) is recompiled as Section 45-2-1115 NMSA 1978 and is amended to read:

"45-2-1115. RECORDING OF DISCLAIMER.--If an instrument transferring an interest in or power over property subject to a disclaimer is required or permitted by law

to be filed, recorded or registered, the disclaimer may be so filed, recorded or registered. Except as otherwise provided in Paragraph (2) of Subsection G of Section 45-2-1112 NMSA 1978, failure to file, record or register the disclaimer does not affect its validity as between the disclaimant and persons to whom the property interest or power passes by reason of the disclaimer."

## **Chapter 124 Section 94 Laws 2011**

SECTION 94. Section 46A-1-107 NMSA 1978 (being Laws 2003, Chapter 122, Section 1-107, as amended) is amended to read:

"46A-1-107. GOVERNING LAW.--The meaning and effect of the terms of a trust are determined by:

A. the law of the jurisdiction designated in the terms unless the designation of that jurisdiction's law is contrary to a strong public policy of the jurisdiction having the most significant relationship to the matter at issue; or

B. in the absence of a controlling designation in the terms of the trust, the law of the jurisdiction having the most significant relationship to the matter at issue."

## **Chapter 124 Section 95 Laws 2011**

SECTION 95. A new section of the Uniform Trust Code, Section 46A-1-113 NMSA 1978, is enacted to read:

"46A-1-113. INSURABLE INTEREST OF TRUSTEE.--

A. In this section, "settlor" means a person, including a person for which a fiduciary or agent is acting, that executes a trust instrument.

B. A trustee of a trust has an insurable interest in the life of an individual insured under a life insurance policy owned by the trust or the trustee of the trust acting in a fiduciary capacity if, on the date the policy is issued:

(1) the insured is:

(a) a settlor of the trust; or

(b) an individual in whom a settlor of the trust has, or would have had if living at the time the policy was issued, an insurable interest; and

(2) the life insurance proceeds are primarily for the benefit of trust beneficiaries that have:

(a) an insurable interest in the life of the insured; or

(b) a substantial interest engendered by love and affection in the continuation of the life of the insured and, if not already included under Subparagraph (a) of this paragraph, who are: 1) related within the third degree or closer, as measured by the civil law system of determining degrees of relation, either by blood or law, to the insured; or 2) stepchildren of the insured."

## **Chapter 124 Section 96 Laws 2011**

SECTION 96. Section 46A-11-1104 NMSA 1978 (being Laws 2003, Chapter 122, Section 11-1104) is amended to read:

"46A-11-1104. APPLICATION TO EXISTING RELATIONSHIPS.--

A. Except as otherwise provided in the Uniform Trust Code, on the effective date of the Uniform Trust Code or of any amendment to that code:

(1) the Uniform Trust Code or the amendment applies to all trusts created before, on or after its effective date;

(2) the Uniform Trust Code or the amendment applies to all judicial proceedings concerning trusts commenced on or after its effective date;

(3) the Uniform Trust Code or the amendment applies to judicial proceedings concerning trusts commenced before its effective date, unless the court finds that application of a particular provision of the Uniform Trust Code or the amendment would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision of the Uniform Trust Code or the amendment does not apply and the superseded law applies;

(4) any rule of construction or presumption provided in the Uniform Trust Code or the amendment applies to trust instruments executed before the effective date of the Uniform Trust Code or any amendment to that code unless there is a clear indication of a contrary intent in the terms of the trust; and

(5) an act done before the effective date of the Uniform Trust Code or any amendment to that code is not affected by the Uniform Trust Code or the amendment.

B. If a right is acquired, extinguished or barred upon the expiration of a prescribed period that has commenced to run under any other statute before the effective date of the Uniform Trust Code or any amendment to that code, that statute continues to apply to the right even if it has been repealed or superseded.

C. The Uniform Trust Code or any amendment to that code does not apply to the trust created by the Enabling Act for New Mexico of June 20, 1910, 36 Stat. 557, Ch. 310."

## **Chapter 124 Section 97 Laws 2011**

SECTION 97. REPEAL.--Sections 45-2-108, 45-5-301.2, 45-5-432, 45-9A-12, 45-9A-13, 46-1-1 through 46-1-11 and 46-10-17 NMSA 1978 (being Laws 1993, Chapter 174, Section 10, Laws 1993, Chapter 301, Section 24, Laws 1975, Chapter 257, Section 5-432, Laws 2005, Chapter 143, Sections 16 and 17, Laws 1923, Chapter 26, Sections 1, 2 and 4 through 12 and Laws 2001, Chapter 290, Section 17) are repealed.

## **Chapter 124 Section 98 Laws 2011**

SECTION 98. TEMPORARY PROVISION--COMPILATION INSTRUCTIONS.--

A. Sections 45-2-101 through 45-2-114 NMSA 1978 shall be compiled as Subpart 1, General Provisions, of Part 1 of Article 2 of the Uniform Probate Code.

B. Sections 45-2-115 through 45-2-122 NMSA 1978 shall be compiled as Subpart 2, Parent-Child Relationship, of Part 1 of Article 2 of the Uniform Probate Code.

C. Sections 45-2-901 through 45-2-914 NMSA 1978 shall be compiled as Part 9, Uniform Statutory Rule Against Perpetuities; Honorary Trusts; Trusts For Pets; Time Limits On Options In Gross And Certain Other Interests In Real Property, of Article 2 of the Uniform Probate Code.

D. Sections 45-2-901 through 45-2-906 NMSA 1978 shall be compiled as Subpart 1, Uniform Statutory Rule Against Perpetuities, of Part 9 of Article 2 of the Uniform Probate Code.

E. Section 45-2-907 NMSA 1978 shall be compiled as Subpart 2, Honorary Trusts; Trusts For Pets, of Part 9 of Article 2 of the Uniform Probate Code.

F. Sections 45-2-908 through 45-2-914 NMSA 1978 shall be compiled as Subpart 3, Time Limits On Options In Gross And Certain Other Interests In Real Property, of Part 9 of Article 2 of the Uniform Probate Code.

## **Chapter 124 Section 99 Laws 2011**

SECTION 99. TEMPORARY PROVISION--RECOMPILATION.--Sections 45-9A-1 through 45-9A-11 NMSA 1978 (being Laws 2005, Chapter 143, Sections 5 through 15) are recompiled as Sections 45-3-920 through 45-3-930 NMSA 1978 and shall be compiled as Part 9A, the Uniform Estate Tax Apportionment Act, of Article 3 of the Uniform Probate Code.

## **Chapter 124 Section 100 Laws 2011**

### SECTION 100. TEMPORARY PROVISION--COMPILATION INSTRUCTIONS.--

A. Sections 62 through 83 of this act shall be compiled as Article 5A, the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, of the Uniform Probate Code.

B. Sections 62 through 67 of this act shall be compiled as Part 1, General Provisions, of Article 5A of the Uniform Probate Code.

C. Sections 68 through 76 of this act shall be compiled as Part 2, Jurisdiction, of Article 5A of the Uniform Probate Code.

D. Sections 77 and 78 of this act shall be compiled as Part 3, Transfer of Guardianship or Conservatorship, of Article 5A of the Uniform Probate Code.

E. Sections 79 through 81 of this act shall be compiled as Part 4, Registration and Recognition of Orders from Other States, of Article 5A of the Uniform Probate Code.

F. Sections 82 and 83 of this act shall be compiled as Part 5, Miscellaneous Provisions, of Article 5A of the Uniform Probate Code.

## **Chapter 124 Section 101 Laws 2011**

SECTION 101. TEMPORARY PROVISION--RECOMPILATION.--Sections 46-10-3 through 46-10-5 NMSA 1978 (being Laws 2001, Chapter 290, Sections 3 through 5) are recompiled as Sections 45-2-1103 through 45-2-1105 NMSA 1978. Sections 46-10-7 through 46-10-11 NMSA 1978 (being Laws 2001, Chapter 290, Sections 7 through 11) are recompiled as Sections 45-2-1107 through 45-2-1111 NMSA 1978. Sections 46-10-13, 46-10-14 and 46-10-16 (being Laws 2001, Chapter 290, Sections 13, 14 and 16) are recompiled as Sections 45-2-1113, 45-2-1114 and 45-2-1116 NMSA 1978.

## **Chapter 124 Section 102 Laws 2011**

### SECTION 102. TEMPORARY PROVISION--RECOMPILATION.--

A. Sections 46B-1-101 through 46B-1-123 NMSA 1978 (being Laws 2007, Chapter 135, Sections 101 through 123) are recompiled as Sections 45-5B-101 through 45-5B-123 NMSA 1978.

B. Sections 46B-1-201 through 46B-1-217 NMSA 1978 (being Laws 2007, Chapter 135, Sections 201 through 217) are recompiled as Sections 45-5B-201 through 45-5B-217 NMSA 1978.

C. Sections 46B-1-301 and 46B-1-302 (being Laws 2007, Chapter 135, Sections 301 and 302) are recompiled as Sections 45-5B-301 and 45-5B-302 NMSA 1978.

D. Sections 46B-1-401 through 46B-1-403 NMSA 1978 (being Laws 2007, Chapter 135, Sections 401 through 403) are recompiled as Sections 45-5B-401 through 45-5B-403 NMSA 1978.

## **Chapter 124 Section 103 Laws 2011**

SECTION 103. APPLICABILITY.--The provisions of Section 87 of this act apply to a trust described in Subsection D of Section 46-3A-409 NMSA 1978 on and after the following dates:

A. if the trust is not funded as of January 1, 2012, the date of the decedent's death;

B. if the trust is initially funded in the calendar year beginning January 1, 2012, the date of the decedent's death; or

C. if the trust is not described in Subsection A or B of this section, January 1, 2012.

## **Chapter 124 Section 104 Laws 2011**

SECTION 104. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 2012.

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Senate Bill 146, aa

Approved April 7, 2011

# **LAWS 2011, CHAPTER 125**

AN ACT

RELATING TO THE ENVIRONMENT; AMENDING A SECTION OF THE SOLID WASTE ACT TO PROVIDE FOR TERM OF PERMITS FOR PRIVATE LANDFILLS.

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

## **Chapter 125 Section 1 Laws 2011**



SECTION 1. Section 74-9-24 NMSA 1978 (being Laws 1990, Chapter 99, Section 24, as amended) is amended to read:

"74-9-24. SOLID WASTE FACILITY PERMIT--ISSUANCE AND DENIAL--  
GROUNDS--NOTIFICATION OF DECISION--PERMIT RECORDING REQUIREMENT.-

A. The director, within one hundred eighty days after the application is deemed complete and after a public hearing, shall issue a permit, issue a permit with terms and conditions or deny a permit application. The director may deny a permit application on the basis of information in the application or evidence presented at the hearing, or both, if the director makes a finding that granting the permit would be contradictory to or in violation of the Solid Waste Act or any regulation adopted pursuant to the provisions of that act. The director may also deny a permit application if the applicant fails to meet the financial responsibility requirements established by the board pursuant to the provisions of Subsection A of Section 74-9-8 NMSA 1978 and Section 74-9-35 NMSA 1978.

B. The director may deny any permit application or revoke an existing permit if the director has reasonable cause to believe that a person required to be listed on the application pursuant to Section 74-9-20 NMSA 1978 has:

(1) knowingly misrepresented a material fact in application for a permit;

(2) refused to disclose or failed to disclose the information required pursuant to the provisions of Section 74-9-21 NMSA 1978;

(3) been convicted of a felony or other crime involving moral turpitude within ten years immediately preceding the date of the submission of the permit application;

(4) been convicted of a felony, within ten years immediately preceding the date of the submission of the permit application, in any court for any crime defined by state or federal statutes as involving or being restraint of trade, price-fixing, bribery or fraud;

(5) exhibited a history of willful disregard for environmental laws of any state or the United States; or

(6) had any permit revoked or permanently suspended for cause under the environmental laws of any state or the United States.

C. In making a finding under Subsection B of this section, the director may consider aggravating and mitigating factors presented by any party at the hearing.

D. If an applicant whose permit is being considered for denial or revocation on any basis provided in this section has submitted an affirmative action plan that has been approved in writing by the director and plan approval includes a period of operation under a conditional permit or license that will allow the applicant a reasonable opportunity to affirmatively demonstrate its rehabilitation, the director may issue a conditional license for a reasonable period of time of operation. In approving an affirmative action plan intended to affirmatively demonstrate rehabilitation, the director may consider the following factors:

- (1) implementation by the applicant of formal policies;
- (2) training programs and management control to minimize and prevent the occurrence of future violations;
- (3) installation by the applicant of internal environmental auditing programs;
- (4) the discharge of individuals convicted of any crimes set forth in Subsection B of this section; and
- (5) such other factors as the director may deem relevant.

E. Within sixty days of the date of the closing of the hearing on a permit application, the director shall notify the applicant by certified mail of the issuance, denial or issuance with conditions of a permit and the reasons for it. Any person who has made a written request to the director to be notified of the action taken on the application shall be given written notice of the director's action.

F. No permit for the operation of a solid waste facility shall be valid until the permit or a notice of the permit and a legal description of the property on which the facility is located are filed and recorded in the office of the county clerk in each county in which the facility is located.

G. Except as otherwise provided by law:

(1) each permit issued for a publicly owned and publicly or privately operated new or re-permitted existing landfill, transfer station, recycling facility or composting facility shall remain in effect throughout the active life of the landfill, transfer station, recycling facility or composting facility as described in the approved permit or for twenty years, whichever is less. Each permit issued for a publicly owned landfill, transfer station, recycling facility or composting facility that is privately operated pursuant to a contract of no more than four years duration entered into in accordance with the state or local procurement code shall remain in effect throughout the active life of the landfill, transfer station, recycling facility or composting facility as described in the approved permit or for twenty years, whichever is less. Each time the contract is renewed, the director shall review the contract to determine whether the term of the permit shall be

governed by this paragraph or Paragraph (2) of this subsection. Each permit shall be reviewed by the department of environment at least once every ten years. The review shall address the operation, compliance history, financial assurance and technical requirements for the landfill, transfer station, recycling facility or composting facility. At the time of the review there shall be public notice in the manner prescribed by Section 74-9-22 NMSA 1978. If the secretary of environment determines that there is significant public interest, a nonadjudicatory hearing shall be held as part of the review. The secretary may require appropriate modifications of the permit, including modifications necessary to make the permit terms and conditions consistent with statutes, regulations or judicial decisions;

(2) each permit issued for a privately owned new or repermited existing landfill, transfer station, recycling facility or composting facility shall remain in effect throughout the active life of the facility as described in the approved permit or for twenty years, whichever is less. Owners of privately owned facilities permitted prior to July 1, 2011 shall submit in writing to the division no later than September 1, 2011 their decision to opt into the twenty-year permit cycle and provide information that demonstrates that such period is less than the remaining active life of the facility. If a privately owned facility opts into the twenty-year permit cycle, the twenty-year permit term shall be reduced by the number of years the facility has operated under its current permit. For privately owned facilities that opt into the twenty-year permit term, the facility owners shall adjust financial assurance coverage to accommodate requirements pursuant to the solid waste management regulations. Each permit shall be reviewed at least every five years by the department of environment. Interested parties may petition the department for review, in addition to the five-year review, provided that the director has discretion to determine whether there is good cause for such an additional review. The review shall address the operation, compliance history, financial assurance and technical requirements for the landfill, transfer station, recycling facility or composting facility. At the time of the review there shall be public notice in the manner prescribed by Section 74-9-22 NMSA 1978. If the secretary of environment determines that there is significant public interest, a nonadjudicatory hearing shall be held as part of the review. The secretary may require appropriate modifications of the permit, including modifications necessary to make the permit terms and conditions consistent with statutes, regulations or judicial decisions; and

(3) the term of permits for facilities not specified by this subsection shall be governed by existing or amended regulations adopted by the board.

H. The director shall issue separate special waste permits for all solid waste facilities that transfer, process, transform, recycle or dispose of special waste pursuant to regulations adopted by the board."

Approved April 7, 2011

## **LAWS 2011, CHAPTER 126**

AN ACT

RELATING TO CHILDREN; PROVIDING FOR EQUAL DIVISION OF APPROPRIATIONS FOR PRE-KINDERGARTEN PROGRAMS.

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

### **Chapter 126 Section 1 Laws 2011**

SECTION 1. A new section of the Pre-Kindergarten Act is enacted to read:

"EQUAL DIVISION OF APPROPRIATIONS.--Any money appropriated for pre-kindergarten programs shall be divided equally between the public education department and the children, youth and families department."

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Senate Bill 167

Approved April 7, 2011

## **LAWS 2011, CHAPTER 127**

AN ACT

RELATING TO INSURANCE; AMENDING SECTIONS OF THE NEW MEXICO INSURANCE CODE; PROVIDING FOR CERTAIN FEES; MAKING AN APPROPRIATION.

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

### **Chapter 127 Section 1 Laws 2011**

SECTION 1. Section 59A-4-5 NMSA 1978 (being Laws 1984, Chapter 127, Section 49, as amended) is amended to read:

"59A-4-5. EXAMINATION OF INSURERS.--

A. For the purpose of determining financial condition, fulfillment of contractual obligations, methods of doing business, treatment accorded policyholders and compliance with law, the superintendent shall, as often as the superintendent

deems advisable, examine or investigate the affairs, transactions, accounts, records and assets of each authorized insurer and of any other person as to any matter that the superintendent in the superintendent's sole discretion has determined to be relevant to the financial affairs of the insurer or to the examination. Except as expressly otherwise provided, the superintendent shall so examine each domestic insurer not less frequently than every five years. In scheduling and determining the nature, scope and frequency of the examinations, the superintendent may consider such matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants, evidence of market practices, policyholder complaints and other criteria as set forth in the handbooks for financial or market conduct examiners adopted by the national association of insurance commissioners in effect when the superintendent exercises discretion under this section.

B. For like purposes, the superintendent shall examine each insurer, or proposed insurer, applying for an initial certificate of authority to transact insurance in this state. The initial examination shall be completed prior to issuance of a certificate of authority.

C. Whenever the superintendent examines the affairs of a domestic insurer, the superintendent may invite the representative of the insurance supervisory agency of at least one other state, if any, in which the insurer is an authorized insurer, to participate in the examination.

D. Until January 1, 1994, in lieu of making the superintendent's own examination of a foreign or alien insurer, the superintendent may accept a full report of an examination of the insurer made by competent examiners as of a date not more than one year prior and participated in by at least two states in which the insurer was authorized to transact insurance. The report shall be certified by the insurance supervisory official of the state under whose jurisdiction the examination was conducted. The superintendent may, at the superintendent's discretion, so accept the report of examination as of a date more than one year but not more than three years prior; and with respect to an alien insurer, the superintendent may at the superintendent's discretion so accept a report of recent examination made by the insurance supervisory official of the port of entry state of the insurer into the United States without participation therein of another state.

E. After January 1, 1994, examination reports prepared by examiners employed by other state insurance departments may be accepted only if:

(1) made as of a date not more than five years prior to acceptance and the examiner in charge was employed by and under the direction of the insurance commissioners of the insurer's state of domicile or port of entry, which insurance department was at the time of the examination accredited under the financial regulation standards and accreditation program of the national association of insurance commissioners; or

(2) made as of a date not more than three years prior to acceptance and the examination was performed under the supervision of an accredited insurance department or with the participation of one or more examiners who were employed by an accredited state insurance department and who, after a review of the examination work papers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by their insurance department.

F. As far as practical the superintendent shall conduct examination of a foreign or alien insurer in cooperation with the insurance supervisory officials of other states in which the insurer is authorized to transact business."

## **Chapter 127 Section 2 Laws 2011**

SECTION 2. Section 59A-4-6 NMSA 1978 (being Laws 1984, Chapter 127, Section 50, as amended) is amended to read:

"59A-4-6. EXAMINERS AND SPECIALISTS.--

A. The superintendent may appoint one or more competent individuals, sufficiently knowledgeable in applicable accounting and operations, as examiners to represent the superintendent in an examination and shall fix the reasonable compensation of the examiners.

B. The superintendent may also employ and fix reasonable compensation of independently contracting accountants knowledgeable of insurance accounting principles and practices, actuaries, attorneys, appraisers and other specialists not otherwise part of the insurance department staff, as the superintendent deems necessary for the examination, the cost of which shall be borne by the company which is the subject of the examination. All specialists shall be under the direction and control of the superintendent."

## **Chapter 127 Section 3 Laws 2011**

SECTION 3. Section 59A-4-15 NMSA 1978 (being Laws 1984, Chapter 127, Section 59, as amended) is amended to read:

"59A-4-15. HEARINGS--IN GENERAL.--

A. The superintendent may hold a hearing, without request by others, for any purpose within the scope of the Insurance Code.

B. The superintendent shall hold a hearing:

(1) if required by any other provision of the Insurance Code; or

(2) upon written request for a hearing by a person aggrieved by any act, threatened act or failure of the superintendent to act or by any report, rule or order of the superintendent, other than an order for the holding of a hearing or order on hearing or pursuant to such an order on a hearing of which the person had notice.

C. The request for a hearing shall briefly state the respects in which the applicant is so aggrieved, the relief to be sought and the grounds to be relied upon as basis for relief. The request shall be received by the superintendent no later than thirty days from the date of the act, threatened act or failure of the superintendent to act or the date of the superintendent's report, rule or order.

D. If the superintendent finds that the request is made in good faith, that the applicant would be so aggrieved if the stated grounds are established and that such grounds otherwise justify the hearing, the superintendent shall commence the hearing within ninety days after filing of the request, unless postponed by mutual consent.

E. Pending the hearing and decision thereon, the superintendent may suspend or postpone the effective date of the action as to which the hearing is requested. If upon request the superintendent refuses to grant such suspension or postponement, the person requesting the hearing may apply to the district court of Santa Fe county for a stay of the superintendent's action or proposed action pending the hearing and the superintendent's order thereon.

F. Except as otherwise expressly provided, this section does not apply to hearings relative to matters arising under Chapter 59A, Article 17 NMSA 1978."

## **Chapter 127 Section 4 Laws 2011**

SECTION 4. Section 59A-6-1 NMSA 1978 (being Laws 1984, Chapter 127, Section 101, as amended) is amended to read:

"59A-6-1. FEE SCHEDULE.--The superintendent shall collect the following fees:

A. insurer's certificate of authority -

(1) filing application for certificate of authority, and issuance of certificate of authority, if issued, including filing of all charter documents, financial statements, service of process, power of attorney, examination reports and other documents included with and part of the application \$1,000.00

(2) annual continuation of certificate of authority, per kind of insurance 200.00

(3) reinstatement of certificate of authority (Section 59A-5-23 NMSA 1978) 150.00

(4) amendment to certificate of authority 200.00

B. charter documents - filing amendment to any charter document (as defined in Section 59A-5-3 NMSA 1978) 10.00

C. annual statement of insurer, filing 200.00

D. service of process, acceptance by superintendent and issuance of certificate of service, where issued 10.00

E. agents' licenses and appointments -

(1) filing application for original agent license and issuance of license, if issued 30.00

(2) appointment of agent -

(a) filing appointment, per kind of insurance, each insurer 20.00

(b) annual continuation of appointment, each insurer 20.00

(3) variable annuity agent's license -

(a) filing application for license and issuance of license, if issued 30.00

(b) annual continuation of appointment 20.00

(4) temporary license -

(a) as to life and health insurance or both 30.00

(b) as to property insurance 30.00

(c) as to casualty/surety insurance 30.00

(d) as to vehicle insurance 30.00

F. agency license and affiliations -

(1) filing application for original agency business entity license and issuance of license, if issued 30.00

(2) filing of individual affiliation, per kind of insurance 20.00



(3) annual continuation of individual affiliation 20.00

G. solicitor license -

issued (1) filing application for original license and issuance of license, if 30.00

(2) annual continuation of appointment, per kind of insurance 20.00

H. broker license -

issued (1) filing application for license and issuance of original license, if 30.00

(2) annual continuation of license 30.00

I. insurance vending machine license -

issued, each machine (1) filing application for original license and issuance of license, if 25.00

(2) annual continuation of license, each machine 25.00

J. examination for license, application for examination conducted directly by superintendent, each grouping of kinds of insurance to be covered by the examination as provided by the superintendent's rules, and payable as to each instance of examination 50.00

K. surplus lines insurer - filing application for qualification as eligible surplus lines insurer 1,000.00

L. surplus lines broker license -

issued (1) filing application for original license and issuance of license, if 100.00

(2) annual continuation of license 100.00

M. surplus lines broker license and affiliations -

(1) filing application for original surplus lines brokerage business entity license and issuance of license, if issued 100.00

(2) filing of individual affiliation per kind of insurance 20.00

(3) annual continuation of individual affiliation  
20.00

N. adjuster license -

issued (1) filing application for original license and issuance of license, if  
30.00

(2) annual continuation of license 30.00

O. insurance consultant license -

issued (1) filing application for original license and issuance of license, if  
50.00

(2) application examination 10.00

(3) biennial continuation of license 100.00

P. viatical settlements license -

(1) providers -

license, if issued (a) filing application for original license and issuance of  
1,000.00

(b) annual continuation of license 200.00

(2) brokers -

license, if issued (a) filing application for original license and issuance of  
100.00

(b) annual continuation of license 100.00

(3) brokerages -

license, if issued (a) filing application for original license and issuance of  
100.00

(b) annual continuation of license 20.00

(c) filing of individual affiliation, per kind of insurance 20.00

(d) annual continuation of individual affiliation 20.00

Q. rating organization or rating advisory organization license -

100.00 (1) filing application for license and issuance of license, if issued

(2) annual continuation of license 100.00

R. nonprofit health care plans -

issued (1) filing application for preliminary permit and issuance of permit, if  
100.00

(2) certificate of authority, application, issuance, continuation,  
reinstatement, charter documents - same as for insurers

(3) annual statement, filing 200.00

(4) agents and solicitors -

license, if issued (a) filing application for original license and issuance of  
30.00

(b) examination for license conducted directly by  
superintendent, each instance of examination 50.00

(c) annual continuation of appointment 20.00

S. prepaid dental plans -

(1) certificate of authority, application, issuance, continuation,  
reinstatement, charter documents - same as for insurers

(2) annual report, filing 200.00

(3) agents and solicitors -

license, if issued (a) filing application for original license and issuance of  
30.00

(b) examination for license conducted directly by  
superintendent, each instance of examination 50.00

(c) annual continuation of license 20.00

T. prearranged funeral insurance - application for certificate of authority, issuance, continuation, reinstatement, charter documents, filing annual statement, licensing of sales representatives - same as for insurers

U. premium finance companies -

issued (1) filing application for original license and issuance of license, if 100.00  
(2) annual renewal of license 100.00

V. motor clubs -

(1) certificate of authority -  
(a) filing application for original certificate of authority and issuance of certificate of authority, if issued 200.00

100.00 (b) annual continuation of certificate of authority

(2) sales representatives -

(a) filing application for registration or license and issuance of registration or license, if issued, each representative 20.00

representative (b) annual continuation of registration or license, each 20.00

W. bail bondsmen -

(1) filing application for original license as bail bondsman or solicitor, and issuance of license, if issued 30.00

(2) examination for license conducted directly by superintendent, each instance of examination 50.00

(3) annual continuation of appointment 20.00

X. securities salesperson license -

25.00 (1) filing application for license and issuance of license, if issued

(2) annual renewal of license 25.00

Y. required filing of forms or rates - by all lines of business other than property or casualty -

(1) rates 50.00

(2) major form - each new policy and each package submission, which can include multiple policy forms, application forms, rider forms, endorsement forms or amendment forms 30.00

(3) incidental forms and rates - forms filed for informational purposes; riders, applications, endorsements and amendments filed individually; rate service organization reference filings; rates filed for informational purposes 15.00

Z. health maintenance organizations -

(1) filing an application for a certificate of authority 1,000.00

(2) annual continuation of certificate of authority 200.00

(3) filing each annual report . . . . 200.00

(4) filing an amendment to organizational documents requiring approval 200.00

(5) filing informational amendments 50.00

(6) agents and solicitors -

(a) filing application for original license and issuance of license, if issued 30.00

(b) examination for license, each instance of examination 50.00

(c) annual continuation of appointment 20.00

AA. purchasing groups and foreign risk retention groups -

(1) original registration 500.00

(2) annual continuation of registration 200.00

(3) agent or broker fees - same as for authorized insurers

BB. third party administrators -

license (1) filing application for original individual insurance administrator 30.00

insurance administrator license (2) filing application for original officer, manager or partner 30.00

(3) annual continuation or renewal of license 30.00

(4) examination for license conducted directly by the superintendent, each examination 75.00

(5) filing of annual report 50.00

CC. miscellaneous fees -

(1) duplicate license 30.00

(2) name change 30.00

instrument (3) for each signature and seal of superintendent affixed to any 10.00.

An insurer shall be subject to additional fees or charges, termed retaliatory or reciprocal requirements, whenever form or rate-filing fees in excess of those imposed by state law are charged to insurers in New Mexico doing business in another state or whenever a condition precedent to the right to issue policies in another state is imposed by the laws of that state over and above the conditions imposed upon insurers by the laws of New Mexico; in those cases, the same form or rate-filing fees may be imposed upon an insurer from another state transacting or applying to transact business in New Mexico so long as the higher fees remain in force in the other state. If an insurer does not comply with the additional retaliatory or reciprocal requirement charges imposed under this subsection, the superintendent may refuse to grant or may withdraw approval of the tendered form or rate filing.

All fees are earned when paid and are not refundable."

## Chapter 127 Section 5 Laws 2011

SECTION 5. Section 59A-10-5 NMSA 1978 (being Laws 1984, Chapter 127, Section 165) is amended to read:

"59A-10-5. DEPOSITORIES DESIGNATED BY TREASURER.--The state treasurer may designate any solvent trust company or other solvent financial institution having trust powers and with offices located in this state, as the state treasurer's depository to receive and hold any general, special or excess deposit of an insurer under Chapter 59A, Article 10 NMSA 1978. The deposit shall be so handled at the

expense, if any, of the insurer, and the state of New Mexico shall not be responsible for safekeeping thereof."

## **Chapter 127 Section 6 Laws 2011**

SECTION 6. Section 59A-11-8 NMSA 1978 (being Laws 1984, Chapter 127, Section 187, as amended) is amended to read:

"59A-11-8. ISSUANCE, REFUSAL OF LICENSE.--If the superintendent finds that the application is complete, that the applicant has passed all required examinations and is otherwise qualified for the license applied for, the superintendent shall promptly issue, or permit the issuance of, the license. Otherwise, the superintendent shall refuse to issue, or to permit the issuance of, the license and shall promptly notify the applicant and the appointing insurer, employer or principal, where applicable, of the refusal and state the grounds for refusal."

## **Chapter 127 Section 7 Laws 2011**

SECTION 7. Section 59A-11A-3 NMSA 1978 (being Laws 1989, Chapter 97, Section 3) is amended to read:

"59A-11A-3. INSURANCE CONSULTANT LICENSE--APPLICATION--REQUIREMENTS FOR ISSUANCE--FEE--RENEWAL.--

A. The superintendent shall issue a license as an insurance consultant to a person who:

- (1) has reached the age of majority;
- (2) files a written application in the manner and form prescribed by the superintendent, stating the lines of insurance for which the applicant desires a license;
- (3) passes an examination as provided in Subsection B of this section;
- (4) pays an application fee and an examination fee as specified in Section 59A-6-1 NMSA 1978; and
- (5) satisfies the superintendent that the person is competent, financially responsible and of good moral character.

B. The superintendent shall examine all initial applicants for a license as an insurance consultant in the manner and form that the superintendent prescribes. The examination shall be of sufficient scope to demonstrate a broad knowledge of insurance contracts and the practices of the insurance industry in the lines of insurance for which

the applicant desires a license. However, the superintendent may waive the requirement for the examination for:

(1) property and casualty insurance in the case of an applicant who has been awarded the professional designation of chartered property and casualty underwriter or certified insurance counselor in the property and casualty line;

(2) life and accident insurance in the case of an applicant who has been awarded the professional designation of chartered life underwriter; and

(3) all lines of insurance in the case of an applicant who has been awarded the professional designations of chartered property and casualty underwriter and chartered life underwriter.

C. If an applicant fails an examination, the applicant may be reexamined upon payment of a ten-dollar (\$10.00) examination fee for each reexamination.

D. The license as an insurance consultant shall be issued for two years. The license may, at the discretion of the superintendent, be renewed biennially upon application and payment of a fee as specified in Section 59A-6-1 NMSA 1978."

## **Chapter 127 Section 8 Laws 2011**

SECTION 8. Section 59A-13-2 NMSA 1978 (being Laws 1984, Chapter 127, Section 230, as amended) is amended to read:

"59A-13-2. DEFINITIONS.--

A. For the purposes of the Insurance Code:

(1) "adjuster" is a person that:

(a) investigates, negotiates, settles or adjusts a loss or claim arising under an insurance contract on behalf of an insurer, insured or self-insurer, for a fee, commission or other compensation; however, an adjuster acting on behalf of an insured shall not investigate, negotiate, settle or adjust a claim involving personal injury to the insured; and

(b) advises the insured of the insured's rights to settlement and the insured's rights to settle, arbitrate and litigate the dispute;

(2) "staff adjuster" is an adjuster individual who is a salaried employee of an insurer or affiliates of the employer insurer, representing and adjusting claims solely under policies of the employer insurer;



(3) "independent adjuster" is an adjuster who is not a staff adjuster and includes a representative and an employee of an independent adjuster; and

(4) "resident adjuster" is an adjuster who resides principally in New Mexico and who conducts business primarily in New Mexico.

B. Except as otherwise provided, "adjuster" does not include:

(1) an attorney-at-law who adjusts insurance losses or claims from time to time incidental to practice of law and who does not advertise or represent as an adjuster;

(2) a licensed agent or general agent of an authorized insurer or an employee of an agent or general agent who adjusts claims or losses under specific authority from the insurer and solely under policies issued by the insurer;

(3) an agent or employee of a life or health insurer who adjusts claims or losses under the insurer's policies or contracts to administer policies or benefits of that type; or

(4) a salaried or part-time claims agent or investigator employed by a self-insured person."

## **Chapter 127 Section 9 Laws 2011**

SECTION 9. Section 59A-13-9 NMSA 1978 (being Laws 1984, Chapter 127, Section 237, as amended) is amended to read:

"59A-13-9. PLACE OF BUSINESS.--

A. A resident adjuster shall have and maintain a principal place of business in this state that is easily accessible to the public and is the place where the adjuster principally conducts transactions under the license. The address of the principal place of business shall appear on the application for license and on the license.

B. An adjuster shall promptly notify the superintendent of a change of address. Failure to notify the superintendent of a change of address within twenty days shall subject the licensee to a penalty in the amount of fifty dollars (\$50.00)."

## **Chapter 127 Section 10 Laws 2011**

SECTION 10. Section 59A-14-1 NMSA 1978 (being Laws 1984, Chapter 127, Section 239, as amended) is amended to read:

"59A-14-1. SCOPE OF ARTICLE--PURPOSE--NECESSITY FOR REGULATION.--

A. Chapter 59A, Article 14 NMSA 1978 governs the placing of insurance of New Mexico risks, through licensed surplus lines brokers, in insurers not otherwise authorized to transact insurance in this state and subject to the conditions for such placing as stated in that article; qualifications, licensing and duties and responsibilities of surplus lines brokers; and other provisions as to such surplus lines business and brokers. As to unauthorized insurers in general, and in respects other than as to surplus lines, refer to Chapter 59A, Article 15 NMSA 1978.

B. Chapter 59A, Article 14 NMSA 1978 shall not apply as to reinsurance or to the following insurances:

(1) wet marine and transportation insurance, as defined in Section 59A-7-5 NMSA 1978;

(2) insurance of subjects located, resident or to be performed wholly outside this state or on vehicles or aircraft owned and principally garaged outside this state;

(3) insurance of property and operations of railroads engaged in interstate commerce;

(4) insurance of aircraft of common carriers, or cargo of such aircraft, or against liability, other than employer's liability, arising out of ownership, maintenance or use of such aircraft;

(5) insurance of automobile bodily injury and property damage liability risks when written in Mexican insurers and covering in Mexico and not in the United States; or

(6) insurance independently procured.

C. Chapter 59A, Article 14 NMSA 1978 shall be liberally construed and applied to promote its underlying purposes, which include:

(1) protecting insureds and persons seeking insurance in this state;

(2) permitting surplus lines insurance to be placed with reputable and financially sound unauthorized insurers, but only pursuant to Chapter 59A, Article 14 NMSA 1978;

(3) establishing a system of regulation that will permit controlled access to surplus lines insurance in this state; and

(4) assuring collection of revenues and other amounts due to this state."

## **Chapter 127 Section 11 Laws 2011**

SECTION 11. Section 59A-14-7 NMSA 1978 (being Laws 1984, Chapter 127, Section 245, as amended by Laws 1999, Chapter 272, Section 19 and also by Laws 1999, Chapter 289, Section 21) is amended to read:

"59A-14-7. SURPLUS LINES BROKER LICENSE REQUIRED--  
QUALIFICATIONS FOR LICENSE.--

A. No person shall in New Mexico be, act as or hold out to be, a surplus lines broker, or place insurance of risks resident, located or to be performed in New Mexico in any unauthorized insurer on behalf of others and for compensation as an independent contractor in any form, unless licensed as a surplus lines broker under Chapter 59A, Article 14 NMSA 1978.

B. The superintendent shall, upon due application and payment of the license fee, issue a license as surplus lines broker to a person qualified as follows:

(1) if the applicant is an individual, the individual must have had experience or special training or education sufficient in duration and character to render the applicant, in the opinion of the superintendent, reasonably competent to engage in business as a surplus lines broker; and

(2) if the applicant is a firm or corporation, all individuals to represent it as a surplus lines broker in this state must be licensed surplus lines brokers.

C. Licensing procedure, duration and related matters are as provided in Chapter 59A, Article 11 NMSA 1978, and license fee is as specified in Section 59A-6-1 NMSA 1978."

## **Chapter 127 Section 12 Laws 2011**

SECTION 12. Section 59A-14-14 NMSA 1978 (being Laws 1991, Chapter 125, Section 18) is amended to read:

"59A-14-14. EVIDENCE OF INSURANCE--POLICY CHANGES--PENALTIES.--

A. Upon placing surplus lines insurance, the surplus lines broker shall promptly deliver to the insured evidence of the insurance consisting either of the policy or, if the policy is not then available, a certificate complying with Subsection D of this section, a cover note, a binder or other evidence of insurance. The certificate, cover note, binder or other evidence of insurance shall be completed and signed by the surplus lines broker and shall set forth the description and location of the subject of the

insurance, the coverage limits, the name and address of the insured, the name and address of the surplus lines insurer and the name, address and telephone number of the surplus lines broker.

B. No surplus lines broker shall issue or deliver any evidence of insurance or purport to insure or represent that insurance will be or has been written by any eligible surplus lines insurer without the insurer's prior written authorization, via telefax or otherwise, to cause the risk to be insured or documentation from the insurer in the regular course of business that such insurance has been granted.

C. If, after delivery of any evidence of insurance, there is any change in the identity of the insurer, in the proportion of the risk assumed by any insurer or in the coverage, terms or conditions stated in the original evidence of insurance, the surplus lines broker shall promptly issue and deliver to the insured, either directly or through the producing broker, an appropriate substitute for or endorsement of the original document, accurately showing the current status of the coverage and responsible insurers.

D. As soon as reasonably possible after the placement of any surplus lines insurance, and in no event later than thirty days after coverage commences, the surplus lines broker shall deliver a complete copy of the policy or, if the policy is not then available, a certificate of insurance to the insured to replace any evidence of insurance previously issued. Each policy of insurance shall contain or have attached thereto a complete record of all policy declarations and limits, insuring agreements, deductible amounts, conditions, exclusions, clauses, endorsements and all other material terms and conditions.

E. Any surplus lines broker who fails to comply with the requirements of this section shall be subject to the penalties provided in Section 59A-1-18 NMSA 1978 or to any greater applicable penalty otherwise provided by law."

## **Chapter 127 Section 13 Laws 2011**

SECTION 13. Section 59A-17-34 NMSA 1978 (being Laws 1984, Chapter 127, Section 329, as amended) is amended to read:

"59A-17-34. HEARING AND REVIEW AS TO SUPERINTENDENT'S ACTIONS.--

A. Any person aggrieved by any action, threatened action, or failure to act of the superintendent or otherwise under Chapter 59A, Article 17 NMSA 1978 shall have the same right to a hearing before the superintendent with respect thereto as provided for in general under Section 59A-4-15 NMSA 1978. Notice of hearing shall be given, the hearing conducted, rights and powers exercised and the superintendent's order on hearing made and given as provided as to hearings in general under the applicable provisions of Chapter 59A, Article 4 NMSA 1978.

B. Any person aggrieved by the superintendent's order issued pursuant to this section or by the superintendent's refusal to hold the hearing may request a review by the public regulation commission in the manner set forth by rule of the commission. The request for review shall be filed no later than thirty days after the issuance of the order of the superintendent or the superintendent's refusal to hold a hearing."

## **Chapter 127 Section 14 Laws 2011**

SECTION 14. Section 59A-18-1 NMSA 1978 (being Laws 1984, Chapter 127, Section 331, as amended) is amended to read:

"59A-18-1. SCOPE OF ARTICLE.--Chapter 59A, Article 18 NMSA 1978 applies as to all insurance policies and annuity contracts of authorized insurers covering individuals resident, or risks located, or insurance protection to be rendered in this state, other than:

A. reinsurance;

B. policies or contracts not issued for delivery in this state nor delivered in this state, except for contracts for or endorsements of workers' compensation insurance when the workers' compensation risk insured arises from the employment of a worker performing work for an employer in New Mexico and that employer is not domiciled in New Mexico;

C. wet marine and transportation insurance, as defined in Section 59A-7-5 NMSA 1978; or

D. surplus lines insurance contracts, unless such contracts are specifically included by rule."

## **Chapter 127 Section 15 Laws 2011**

SECTION 15. Section 59A-20A-3 NMSA 1978 (being Laws 1999, Chapter 246, Section 3, as amended) is amended to read:

"59A-20A-3. LICENSE REQUIREMENTS--FEES.--

A. A person shall not operate as a provider or broker without a license from the superintendent.

B. Application for a provider or broker license shall be made to the superintendent by the applicant on a form prescribed by the superintendent.

C. An application or renewal shall be accompanied by the applicable fee as specified in Section 59A-6-1 NMSA 1978.

D. Licenses may be renewed from year to year on the anniversary date of licensure upon payment of the annual renewal fee. Failure to pay the fee by the renewal date shall result in revocation of the license.

E. The applicant shall provide information on forms required by the superintendent. The superintendent may require the applicant to fully disclose the identity of all stockholders, partners, officers, members and employees and representatives, and the superintendent may refuse to issue a license if not satisfied that a stockholder, partner, officer, member, employee or representative who may materially influence the applicant's conduct meets the standards of the Viatical Settlements Act.

F. A license issued to an applicant authorizes all members, officers, representatives and designated employees to act as providers or brokers, as applicable, under the license, and all those persons shall be named in the application and any supplements to the application.

G. Upon the filing of an application and the payment of the license fee, the superintendent may make an investigation of each applicant and issue a license if the superintendent finds that the applicant:

(1) has provided a detailed plan of operation;

(2) is competent and trustworthy and intends to act in good faith in the capacity provided by the license applied for;

(3) has a good business reputation and has had experience, training or education so as to be qualified in the business for which licensure is sought; and

(4) if not a natural person, provides a certificate of good standing from the state of its domicile.

H. The superintendent shall not issue a license to an applicant unless a written designation of an agent for service of process is filed and maintained with the superintendent or the applicant has filed with the superintendent the applicant's written irrevocable consent that any action against the applicant may be commenced by service of process on the superintendent."

## **Chapter 127 Section 16 Laws 2011**

SECTION 16. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.

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Senate Bill 198, aa

Approved April 7, 2011

## **LAWS 2011, CHAPTER 128**

AN ACT

RELATING TO INSURANCE; ENACTING A NEW SECTION OF THE NEW MEXICO INSURANCE CODE TO PROHIBIT A DENTAL INSURANCE PLAN FROM REQUIRING A DENTIST TO ACCEPT A FEE SET BY THE PLAN FOR SERVICES NOT COVERED BY THE PLAN; DECLARING AN EMERGENCY.

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

### **Chapter 128 Section 1 Laws 2011**

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

"DENTAL INSURANCE PLAN--DENTAL FEES NOT COVERED--  
SEVERABILITY.--

A. As used in this section:

(1) "covered services" means dental care services for which a reimbursement is available under an enrollee's plan contract or for which a reimbursement would be available but for the application of contractual limitations such as deductibles, copayments, coinsurance, waiting periods, annual or lifetime maximums, frequency limitations, alternative benefit payments or any other limitation; and

(2) "dental insurance plan" means any policy of insurance that is issued by a health care service contractor that provides for coverage of dental services not in connection with a medical plan.

B. No contract of any health care service contractor that covers any dental services and no contract or participating provider agreement with a dentist shall require, directly or indirectly, that a dentist who is a participating provider provide services to an enrolled participant at a fee set by, or at a fee subject to the approval of, the health care service contractor unless the dental services are covered services.

C. A health care service contractor or other person providing third party administrator services shall not make available any providers in its dentist network to a plan that sets dental fees for any services except covered services.

D. 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."

## **Chapter 128 Section 2 Laws 2011**

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

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Senate Bill 260, w/ec

Approved April 7, 2011

## **LAWS 2011, CHAPTER 129**

AN ACT

RELATING TO MUNICIPAL INSPECTORS; AMENDING SECTIONS OF THE NMSA 1978 TO CHANGE THE CONSTRUCTION INDUSTRIES COMMISSION AUTHORITY OVER MUNICIPAL INSPECTORS.

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

## **Chapter 129 Section 1 Laws 2011**

SECTION 1. Section 60-13-41 NMSA 1978 (being Laws 1967, Chapter 199, Section 49, as amended) is amended to read:

"60-13-41. INSPECTORS--DESIGNATED INSPECTION AGENCIES.--

A. State inspectors shall be employed by the director.

B. Qualifications and job descriptions for inspectors for the state, municipalities and all other political subdivisions shall be prescribed by the commission.

C. The division may appoint inspection agencies to inspect the construction, installation, alteration or repair of manufactured commercial units, modular homes and premanufactured homes, including those manufacturers whose business premises are without the state, to ensure that the New Mexico standards of construction and installation are adhered to and that the quality of construction meets all New Mexico codes and standards. If the inspection agency has no place of business within the state, it shall file a written statement with the secretary of state setting forth its name and business address and designating the secretary of state as its agent for the service of process.



D. The division may enter into reciprocal agreements with other jurisdictions having comparable codes, standards and inspection requirements for the inspection of the construction, alteration or repair of modular homes, premanufactured homes and manufactured commercial units.

E. The division may, with the approval of the commission, establish qualifications for inspectors certified to inspect in more than one bureau's jurisdiction."

## **Chapter 129 Section 2 Laws 2011**

SECTION 2. Section 60-13-42 NMSA 1978 (being Laws 1967, Chapter 199, Section 50, as amended) is amended to read:

"60-13-42. AUTHORITY OF INSPECTORS--LIMITATION.--

A. A state certified inspector may, during reasonable hours, enter any building or go upon any premises in the discharge of the inspector's official duties for the purpose of making an inspection of work performed or for the purpose of testing any installation authorized within the jurisdiction of the inspector's trade certification. The inspector may cut or disconnect, or have cut or disconnected in cases of emergency, an installation or device when necessary for safety to life or property or where the installation may interfere with the work of a fire department.

B. The inspector may disconnect or order the discontinuance of service to any installation, device, appliance or equipment found to be dangerous to life or property because it is defective or is incorrectly installed, until the installation, device, appliance or equipment is made safe and is approved by the inspector.

C. The inspector may order the correction of any defects or any incorrect installation that prompted the disconnection and discontinuance of service.

D. In all cases where disconnection is made, a notice shall be attached by the inspector to the installation, device, appliance or equipment disconnected, which notice shall state that the same has been disconnected by or on order of the inspector and the reason for the disconnection. It is unlawful for a person to remove the notice or to use the installation, device, appliance or equipment without authorization of an inspector.

E. The division shall by regulation adopt official inspection stickers or medallions for the purpose of identifying those modular homes and premanufactured homes that have been inspected and found to comply with all requirements of the state codes and standards. State inspection and acceptance for use of modular homes and premanufactured homes shall exclusively apply to the use and occupancy of such dwellings in the state and in any of its political subdivisions, subject to the requirements of local planning and zoning ordinances and ordinances requiring permits and

inspections for foundations, electrical and mechanical hookups or other safety or sanitary requirements."

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Senate Bill 262, aa

Approved April 7, 2011

## **LAWS 2011, CHAPTER 130**

### **AN ACT**

RELATING TO CHILD PLACEMENT AGENCIES AND FOSTER HOMES; CLARIFYING RESPONSIBILITIES OF CHILD PLACEMENT AGENCIES; CLARIFYING REVOCATIONS, SUSPENSIONS, DENIALS AND NONRENEWALS OF LICENSES TO OPERATE A CHILD PLACEMENT AGENCY OR A FOSTER HOME; AMENDING SECTIONS OF THE CHILD PLACEMENT AGENCY LICENSING ACT.

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

### **Chapter 130 Section 1 Laws 2011**

SECTION 1. Section 40-7A-1 NMSA 1978 (being Laws 1981, Chapter 171, Section 1) is amended to read:

"40-7A-1. SHORT TITLE.--Chapter 40, Article 7A NMSA 1978 may be cited as the "Child Placement Agency Licensing Act"."

### **Chapter 130 Section 2 Laws 2011**

SECTION 2. Section 40-7A-3 NMSA 1978 (being Laws 1981, Chapter 171, Section 3) is amended to read:

"40-7A-3. DEFINITIONS.--As used in the Child Placement Agency Licensing Act:

- A. "child" means an individual under the age of eighteen years;
- B. "child placement agency" means any individual, partnership, unincorporated association or corporation undertaking to place a child in a home in this or any other state for the purpose of foster care or adoption of the child;
- C. "department" means the children, youth and families department;
- D. "division" means the protective services division of the department;

E. "foster home" means a home maintained by an individual having the care and control, for periods exceeding twenty-four hours, of a child who is not placed for adoption;

F. "person" means any individual, partnership, unincorporated association or corporation; and

G. "secretary" means the secretary of children, youth and families."

## **Chapter 130 Section 3 Laws 2011**

SECTION 3. Section 40-7A-4 NMSA 1978 (being Laws 1981, Chapter 171, Section 4, as amended) is amended to read:

### "40-7A-4. LICENSING--RULES--APPLICATION FOR LICENSE.--

A. An application for a license to operate a child placement agency shall be made to the division on forms provided and in the manner prescribed by the division. A child placement agency may be licensed either to place children in foster homes or in homes for adoption, or both. The division shall investigate the applicant to ascertain whether the applicant qualifies under the rules promulgated by the division. If qualified, the division shall issue a license valid for one year from date of issuance. A license shall be renewed for successive periods of time not to exceed three years, as determined by the division, if the division is satisfied that the child placement agency is in compliance with the division's rules. No fee shall be charged for a license.

B. No person shall operate a child placement agency without first being licensed to operate the agency by the division. An individual desiring to operate a foster home shall obtain a license from the division or the child placement agency under which it will operate. The child placement agency shall notify the division when the individual is licensed to operate a foster home. The notification shall be on a form provided by the division and shall contain such information as the division requires. No foster home shall be licensed by more than one child placement agency. A license shall be renewed for successive one- or two-year periods if the child placement agency is satisfied that the foster home is in compliance with the division's rules.

C. Upon licensure to operate a foster home, the child placement agency may place a child for foster care in the licensed foster home.

D. The division shall prescribe and publish minimum standards and other rules for licensing of child placement agencies and licensing of foster homes. The prescribed minimum standards and other rules shall be promulgated by the division and shall be restricted to:

(1) the responsibility assumed by the foster home or child placement agency for the shelter, health, diet, safety and education of the child served;

(2) the character, suitability and qualifications of the applicant for a license and of other persons directly responsible for the health and safety of the child served;

(3) the general financial ability of the applicant for a license to provide care for the child served;

(4) the maintenance of records pertaining to the admission, progress, health and discharge of the child served;

(5) the maintenance of records concerning agency personnel, foster parents and foster parent applicants; and

(6) the filing of reports with the division.

E. The regulations shall not proscribe or interfere with the religious beliefs or religious training of child placement agencies and foster homes, except when the beliefs or training endanger the child's health or safety.

F. The division may inspect child placement agencies and foster homes as necessary to ensure that they are in compliance with the rules of the division.

G. Any person licensed to operate a child placement agency under the provisions of the Child Placement Agency Licensing Act has the right to appeal any rule that the person believes has been improperly applied by representatives of the division or that exceeds the authority granted to the division by the Child Placement Agency Licensing Act. The secretary shall designate a hearing officer or officers from the department to hear an appeal. The hearing officer or officers shall make a written recommendation to the secretary for resolution of the appeal. The secretary's decision shall be in writing and shall be the final administrative determination of the matter.

H. Any individual licensed to operate a foster home under the provisions of the Child Placement Agency Licensing Act has the right to appeal a decision by the division or by a child placement agency to revoke, suspend or not renew a license and has the right to request an administrative review of a denial of a license."

## **Chapter 130 Section 4 Laws 2011**

SECTION 4. Section 40-7A-5 NMSA 1978 (being Laws 1981, Chapter 171, Section 5) is amended to read:

"40-7A-5. VARIANCES.--Upon written application from a child placement agency, the division in exercise of its sole discretion may issue a variance that permits a noncompliance with the division's rules. The variance shall be in writing and may be temporary or permanent. No variance shall be issued that is contrary to the Child Placement Agency Licensing Act. There shall be no right to a variance."

## Chapter 130 Section 5 Laws 2011

SECTION 5. Section 40-7A-6 NMSA 1978 (being Laws 1981, Chapter 171, Section 6, as amended) is amended to read:

"40-7A-6. REVOCATION OR SUSPENSION OF LICENSE--NOTICE--REINSTATEMENT--APPEAL.--

A. The division may deny, revoke, suspend, place on probation or refuse to renew the license of any child placement agency for failure to comply with the division's rules. The holder of the license that is to be denied, revoked, suspended or placed on probation or that is not renewed shall be given notice in writing of the proposed action and the reason therefor and shall, at a date and place to be specified in the notice, be given a hearing before a hearing officer appointed by the secretary with an opportunity to produce testimony in the holder's behalf and to be assisted by counsel. The hearing shall be held no earlier than twenty days after service of notice thereof unless the time limitations are waived or a child safety or health issue is present. A person whose license has been denied, revoked, suspended, placed on probation or not renewed may, on application to the division, have the license issued, reinstated or reissued upon proof that the noncompliance with the rules has ceased.

B. A child placement agency adversely affected by a decision of the division denying, revoking, suspending, placing on probation or refusing to renew a license may obtain a review by appealing to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

C. The division or a child placement agency may deny, revoke, suspend or refuse to renew the license of any foster home for failure to comply with the division's rules. The holder of a license that is to be revoked or suspended or that is not renewed shall be given notice in writing of the proposed action and the reason for the proposed action and shall be given the opportunity to appeal the decision. A foster home that is denied a license shall be given the opportunity to request an administrative review of the reasons for the denial of the license.

D. When any foster home license is denied, suspended, revoked or not renewed, the care and control of any child placed pursuant to the Child Placement Agency Licensing Act shall be transferred to the child placement agency or the division."

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Senate Bill 285, aa

Approved April 7, 2011

**LAWS 2011, CHAPTER 131**

AN ACT

RELATING TO ELECTIONS; ALLOWING THE CONSOLIDATION OF PRECINCTS FOR PRIMARY AND GENERAL ELECTIONS; PROVIDING PROCEDURES FOR CONSOLIDATING PRECINCTS.

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

**Chapter 131 Section 1 Laws 2011**

SECTION 1. Section 1-1-12 NMSA 1978 (being Laws 1969, Chapter 240, Section 11, as amended) is amended to read:

"1-1-12. CONSOLIDATED PRECINCT.--

A. As used in the Election Code, "consolidated precinct" means the combination of two or more precincts into one polling place pursuant to the provisions of Section 1-3-4 NMSA 1978.

B. When consolidated precincts are used, references to "precincts" in the voting process shall be applicable to consolidated precincts."

**Chapter 131 Section 2 Laws 2011**

SECTION 2. Section 1-3-2 NMSA 1978 (being Laws 1969, Chapter 240, Section 51, as amended by Laws 2009, Chapter 251, Section 3 and by Laws 2009, Chapter 274, Section 2) 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) consolidate any precincts pursuant to Section 1-3-4 NMSA 1978;

(5) divide any precincts as necessary to meet legal and constitutional requirements for redistricting; and

(6) 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 131 Section 3 Laws 2011**

SECTION 3. Section 1-3-4 NMSA 1978 (being Laws 1975, Chapter 255, Section 30) is amended to read:

### "1-3-4. CONSOLIDATION OF PRECINCTS.--

A. Precincts may be consolidated by the board of county commissioners for the following elections:

(1) primary and general elections;

(2) statewide special elections;

(3) countywide special elections; and

(4) elections to fill vacancies in the office of the United States house of representatives.

B. Precincts may be consolidated by the governing body of a municipality for municipal candidate and bond elections, unless otherwise prohibited.

C. Precincts may be consolidated by the local school board for school district candidate and bond elections, unless otherwise prohibited.

D. When precincts are consolidated for a primary and general election, the resolution required by Section 1-3-2 NMSA 1978, in addition to the other matters required by law, shall state therein which precincts have been consolidated and the designation of the polling place. In addition, when consolidating precincts for primary and general elections:

(1) any voter of the county shall be allowed to vote in any consolidated precinct polling location in the county;

(2) each consolidated precinct shall be comprised of no more than ten precincts;

(3) each consolidated precinct shall comply with the provisions of Section 1-3-7 NMSA 1978;

(4) each consolidated precinct polling location shall have a broadband internet connection and real-time access to the statewide voter registration electronic management system;

(5) the county clerk may maintain any alternative voting locations previously used in the same election open for voting on election day for any voter in the county, in addition to the polling location established in each consolidated precinct; and

(6) the board of county commissioners may permit rural precincts to be exempted from operating as or being a part of a consolidated precinct; provided that if the precinct is not designated as a mail ballot election precinct pursuant to Section 1-6-22.1 NMSA 1978 and the polling place for the rural precinct does not have real-time access to the statewide voter registration electronic management system, voters registered in a rural precinct as described in this paragraph are permitted to vote in any consolidated precinct polling location on election day only by use of a provisional paper ballot, which shall be counted after the county clerk confirms that the voter did not also vote in the rural precinct.

E. When precincts are consolidated for a municipal election, school election or special county election, the proclamation, in addition to the other matters required by law, shall state which precincts have been consolidated and the designation of the polling place. Precincts consolidated for a municipal election, school election or special county election may allow any voter to vote in any consolidated precinct in the county, which shall be stated in the proclamation.

F. When precincts are consolidated for a statewide special election or for a special election to fill a vacancy in the office of the United States house of representatives, within twenty-one days after the proclamation of election is issued by the governor, the board of county commissioners shall pass a resolution that, in addition to other matters required by law, shall state which precincts have been consolidated and the designation of the polling place. Precincts consolidated for a statewide special



election or for a special election to fill a vacancy in the office of the United States house of representatives may allow any voter to vote in any consolidated precinct in the county, which shall be stated in the resolution.

G. Unless the county clerk receives a written waiver from the secretary of state specifying the location and specific provision being waived, each consolidated precinct polling location shall:

(1) have ballots available for voters from every precinct that is able to vote in the consolidated precinct;

(2) have at least one optical scan tabulator programmed to read every ballot style able to be cast in the consolidated precinct;

(3) have at least one voting system available to assist disabled voters to cast and record their votes;

(4) have sufficient spaces for at least five voters to simultaneously and privately mark their ballots, with at least one of those spaces wheelchair-accessible;

(5) have a secure area for storage of preprinted ballots or for storage of paper ballot stock and a system designed to print ballots at a polling location;

(6) issue a ballot to voters who have provided the required voter identification after the voter has signed a signature roster or an electronic equivalent approved by the voting system certification committee or after the voter has subscribed an application to vote on a form approved by the secretary of state; and

(7) be in a location that is accessible and compliant with the requirements of the federal Americans with Disabilities Act of 1990.

H. As a prerequisite to consolidation, the authorizing resolution must find that consolidation will make voting more convenient and accessible to voters of the consolidated precinct and does not result in delays for voters in the voting process and the consolidated precinct voting location will be centrally located within the consolidated precinct."

## **Chapter 131 Section 4 Laws 2011**

SECTION 4. Section 1-3-7 NMSA 1978 (being Laws 1969, Chapter 240, Section 57, as amended by Laws 2009, Chapter 251, Section 4 and by Laws 2009, Chapter 274, Section 3) 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 or a consolidated 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 131 Section 5 Laws 2011**

SECTION 5. Section 1-3-18 NMSA 1978 (being Laws 1989, Chapter 199, Section 1) is amended to read:

"1-3-18. POLLING PLACES--BUILDING REQUIREMENTS--INSPECTION.--

A. No building used as a polling place for the conduct of an election in any class A county shall house:

(1) more than four precinct polling places in the conduct of any single election; and

(2) more than two precinct polling places in any single room.

B. The restrictions set forth in Subsection A of this section may be waived with the approval of the director of the bureau of elections and do not apply to precincts that are consolidated pursuant to the provisions of Section 1-3-4 NMSA 1978.

C. The location of each precinct polling place within the building shall be clearly designated by appropriate signs, prominently and clearly displayed at a height no less than six feet from the floor. Signs for each precinct polling place shall also be clearly displayed outside the building where polling takes place.

D. Not less than thirty days prior to any election at which the building is intended for use as a polling place, the county clerk or the clerk's designated representative shall physically inspect each such facility to determine its suitability for precinct polling places and its capability of handling heavy voter traffic in the most expeditious manner with a maximum efficiency and minimum discomfort of the voter. In the event the building is found to meet these standards, the county clerk shall certify for the record its acceptability.

E. Each polling place shall be furnished and have available equipment necessary to assist voters in reading the ballot."

## **Chapter 131 Section 6 Laws 2011**

SECTION 6. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.

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Senate Bill 337, aa

Approved April 7, 2011

## **LAWS 2011, CHAPTER 132**

AN ACT

RELATING TO PUBLIC RECORDS; AMENDING THE PUBLIC RECORDS ACT TO ALLOW DONATIONS FROM PRIVATE SOURCES.

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

## **Chapter 132 Section 1 Laws 2011**

SECTION 1. Section 14-3-5 NMSA 1978 (being Laws 1959, Chapter 245, Section 5) is amended to read:

"14-3-5. GIFTS, DONATIONS AND LOANS.--

A. The commission may receive from private sources financial or other donations to assist in building, enlarging, maintaining or equipping a records center or for the acquisition by purchase of documentary material, in accordance with plans made and agreed upon by the commission and the administrator. The commission may also receive from private sources financial or other donations for support of specific agency functions if the donations are so designated. Funds thus received shall be administered by the commission separately from funds supplied by the state for the execution of the Public Records Act but shall be audited by the state. Such funds shall not be subject to reversion to the general fund if unexpended at the close of the fiscal year. Although all material acquired by expenditure of such donated funds and all such donated material shall become the unqualified and unrestricted property of the state, permanent public acknowledgment of the names of the donors may, in each case, be made in an appropriate manner.

B. The commission may receive either as donations or loans from private sources, other state agencies, counties, municipalities, the federal government and other states or countries documentary materials of any physical form or characteristics that are deemed to be of value to the state and the general public for historical reference or research purposes. Acceptance of both donations and loans shall be at the discretion of the commission upon advice of the administrator. Accepted donations shall become, without qualification or restriction, the property of the state of New Mexico. Loans shall be accepted only after a written agreement covering all terms and conditions of each loan shall have been signed by the lender and the administrator and approved by the commission."

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Senate Bill 349

Approved April 7, 2011

## **LAWS 2011, CHAPTER 133**

AN ACT

RELATING TO THE INVESTMENT OF PUBLIC MONEY; ALLOWING ADDITIONAL INVESTMENTS FOR CERTAIN LOCAL GOVERNMENT PERMANENT FUNDS.

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

### **Chapter 133 Section 1 Laws 2011**

SECTION 1. Section 6-6-19 NMSA 1978 (being Laws 1989, Chapter 276, Section 3, as amended) is amended to read:

"6-6-19. LOCAL GOVERNMENT PERMANENT FUND.--

A. The local governing body of a county or municipality may by ordinance establish a local government permanent fund and a local government income fund.

B. The local government permanent fund shall constitute a fund in the treasury of the county or municipality into which may be deposited at the end of a fiscal year an amount of the unappropriated general fund surplus. The amount that may be deposited into the local government permanent fund is any portion of the unappropriated general fund surplus that is in excess of fifty percent of the prior fiscal year's budget of the county or municipality. Money in the permanent fund may be appropriated or expended only pursuant to approval of the voters of the county or municipality as provided in Subsection E of this section.

C. Money in the local government permanent fund may be invested by the local board of finance for the county or municipality in the types of investments specified in Section 6-10-10 NMSA 1978 and as specified in Sections 6-10-36 and 6-10-44 NMSA 1978, except as provided in Paragraph (2) of Subsection D of this section. Earnings from the investment of the permanent fund shall be deposited in the local government income fund in the treasury of the county or municipality. Money in the income fund may be budgeted and appropriated by the local governing body for expenditure for any purpose of the county or municipality or may be deposited in the permanent fund.

D. Investment authority for a local government permanent fund shall be as follows:

(1) if the fund is less than forty million dollars (\$40,000,000), it shall be invested as other funds of the local government; and

(2) if the fund is forty million dollars (\$40,000,000) or over, it may be invested as funds of class A counties are invested and, if the fund is managed by an investment advisor that is registered with the federal securities and exchange commission and that currently manages assets with a value of at least five hundred million dollars (\$500,000,000), the fund may also be invested in the following:

(a) corporate debt securities, provided that: 1) the total amount invested in securities issued by the same corporation or related corporate affiliates shall not exceed five percent of the market value of the permanent fund; 2) the securities shall be denominated in United States currency; 3) the securities shall be rated AA- or higher by a nationally recognized statistical rating organization; 4) the final maturity of the securities may not exceed five years; and 5) the total amount invested pursuant to this subparagraph and Subparagraph (b) of this paragraph in the aggregate shall not exceed thirty percent of the market value of the permanent fund;

(b) commercial paper, provided that: 1) the total amount invested in securities issued by the same corporation or related corporate affiliates shall not exceed five percent of the market value of the permanent fund; 2) the securities shall be denominated in United States currency; 3) the securities shall be rated in the highest rating category by a nationally recognized statistical rating organization; 4) the final maturity of the securities may not exceed two hundred seventy days; and 5) the total amount invested pursuant to this subparagraph and Subparagraph (a) of this paragraph in the aggregate shall not exceed thirty percent of the market value of the permanent fund; and

(c) asset-backed securities, mortgage-backed securities, collateralized mortgage obligations or commercial mortgage-backed securities, provided that: 1) the total amount invested pursuant to this subparagraph shall not exceed five percent of the market value of the permanent fund; 2) the securities shall be denominated in United States currency; 3) the securities shall be rated AAA by a nationally recognized statistical rating organization; and 4) the final stated maturity of the securities may not exceed ten years.

E. The governing body of a county or municipality may adopt a resolution calling for an election on the question of expenditure of any amount of the local government permanent fund for a specified county or municipal purpose. The election shall be held within sixty days after the action of the governing body. The election shall be called, conducted, counted and canvassed substantially in the manner provided by law for general elections within the county or special municipal elections under the Municipal Election Code. If a majority of the registered voters of the county or municipality voting on the question vote for the expenditure of a specified amount of the local government permanent fund for a specified county or municipal purpose, then that amount of money shall be available for appropriation and expenditure by the county or municipality for that purpose. If a majority of the registered voters of the county or municipality voting on the question vote against the expenditure of a specified amount of the local government permanent fund for a specified county or municipal purpose, then money in the local government permanent fund shall not be expended or appropriated for that purpose. Following an election at which the question was not approved, the question shall not again be submitted to the voters of that county or municipality within one year of the date of that election."

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Senate Bill 367

Approved April 7, 2011

## **LAWS 2011, CHAPTER 134**

AN ACT

RELATING TO PUBLIC RECORDS; REORGANIZING CERTAIN PROVISIONS RELATED TO THE INSPECTION OF PUBLIC RECORDS AND RECORDING; PROVIDING FOR THE PROTECTION OF CERTAIN PERSONAL IDENTIFYING INFORMATION; UPDATING AND CLARIFYING RECORDING PROCEDURES AND FEES; PROVIDING PROCEDURES FOR THE INSPECTION OF PUBLIC RECORDS IN THE OFFICE OF THE COUNTY CLERK; ELIMINATING A PENALTY PROVISION; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

### **Chapter 134 Section 1 Laws 2011**

SECTION 1. Section 4-40-5 NMSA 1978 (being Laws 1876, Chapter 1, Section 30, as amended) is amended to read:

"4-40-5. COUNTY CLERK--DUTY REGARDING ACCOUNTS.--It shall be the duty of the county clerk to designate upon every account, which shall be audited and approved and allowed by the board of county commissioners, the amount so allowed."

### **Chapter 134 Section 2 Laws 2011**

SECTION 2. Section 14-2-1 NMSA 1978 (being Laws 1947, Chapter 130, Section 1, as amended) is amended to read:

"14-2-1. RIGHT TO INSPECT PUBLIC RECORDS--EXCEPTIONS.--

A. Every person has a right to inspect public records of this state except:

(1) records pertaining to physical or mental examinations and medical treatment of persons confined to an institution;

(2) letters of reference concerning employment, licensing or permits;

(3) letters or memoranda that are matters of opinion in personnel files or students' cumulative files;

(4) law enforcement records that reveal confidential sources, methods, information or individuals accused but not charged with a crime. Law enforcement records include evidence in any form received or compiled in connection with a criminal investigation or prosecution by a law enforcement or prosecuting agency, including inactive matters or closed investigations to the extent that they contain the information listed in this paragraph;

(5) as provided by the Confidential Materials Act;

(6) trade secrets, attorney-client privileged information and long-range or strategic business plans of public hospitals discussed in a properly closed meeting;

(7) tactical response plans or procedures prepared for or by the state or a political subdivision of the state, the publication of which could reveal specific vulnerabilities, risk assessments or tactical emergency security procedures that could be used to facilitate the planning or execution of a terrorist attack; and

(8) as otherwise provided by law.

B. Protected personal identifier information contained in public records may be redacted by a public body before inspection or copying of a record. The presence of protected personal identifier information on a record does not exempt the record from inspection. Unredacted records that contain protected personal identifier information shall not be made available on publicly accessible web sites operated by or managed on behalf of a public body."

## **Chapter 134 Section 3 Laws 2011**

SECTION 3. Section 14-2-6 NMSA 1978 (being Laws 1993, Chapter 258, Section 3) is amended to read:

"14-2-6. DEFINITIONS.--As used in the Inspection of Public Records Act:

A. "custodian" means any person responsible for the maintenance, care or keeping of a public body's public records, regardless of whether the records are in that person's actual physical custody and control;

B. "inspect" means to review all public records that are not excluded in Section 14-2-1 NMSA 1978;

C. "person" means any individual, corporation, partnership, firm, association or entity;

D. "protected personal identifier information" means:

(1) all but the last four digits of a:

(a) taxpayer identification number;

(b) financial account number; or

(c) driver's license number;

(2) all but the year of a person's date of birth; and



(3) a social security number;

E. "public body" means the executive, legislative and judicial branches of state and local governments and all advisory boards, commissions, committees, agencies or entities created by the constitution or any branch of government that receives any public funding, including political subdivisions, special taxing districts, school districts and institutions of higher education; and

F. "public records" means all documents, papers, letters, books, maps, tapes, photographs, recordings and other materials, regardless of physical form or characteristics, that are used, created, received, maintained or held by or on behalf of any public body and relate to public business, whether or not the records are required by law to be created or maintained."

### **Chapter 134 Section 4 Laws 2011**

SECTION 4. Section 14-8-1 NMSA 1978 (being Laws 1855-1856, Chapter 18, Section 1, as amended) is amended to read:

"14-8-1. COUNTY CLERKS TO BE RECORDERS.--The county clerks of the different counties of this state shall be ex officio recorders in their respective counties."

### **Chapter 134 Section 5 Laws 2011**

SECTION 5. Section 14-8-2 NMSA 1978 (being Laws 1855-1856, Section 2, as amended) is amended to read:

"14-8-2. COUNTY CLERK--DUTY AS RECORDER.--It is the duty of the county clerk to maintain permanently all documents that by law should be recorded."

### **Chapter 134 Section 6 Laws 2011**

SECTION 6. Section 14-8-3 NMSA 1978 (being Laws 1963, Chapter 52, Section 1) is amended to read:

"14-8-3. RECORDING BOOKS.--When used in Chapter 14, Articles 1 through 5 and 8 through 10 NMSA 1978, "book" includes microfilm and digitized documents."

### **Chapter 134 Section 7 Laws 2011**

SECTION 7. Section 14-8-4 NMSA 1978 (being Laws 1901, Chapter 62, Section 18, as amended) is amended to read:

"14-8-4. ACKNOWLEDGMENT NECESSARY FOR RECORDING--EXCEPTIONS.--

A. Any instrument of writing duly acknowledged may be filed and recorded. Any instrument of writing not duly acknowledged may not be filed and recorded or considered of record, though so entered.

B. For purposes of this section, "acknowledged" means notarized by a person empowered to perform notarial acts pursuant to the Notary Public Act or the Uniform Law on Notarial Acts.

C. Notwithstanding Subsection A of this section, the following documents need not be acknowledged but may be filed and recorded:

(1) court-certified copies of a court order, judgment or other judicial decree;

(2) court-certified transcripts of any money judgment obtained in a court of this state or, pursuant to Section 14-9-9 NMSA 1978, in the United States district court for the district of New Mexico;

(3) land patents and land office receipts;

(4) mining location notices and amended or additional notices made pursuant to Section 69-3-1 or 69-3-12 NMSA 1978 if properly signed by the locator;

(5) notice of lis pendens filed pursuant to Section 38-1-14 NMSA 1978;

(6) certified copies of foreign wills, marriages or birth certificates duly authenticated; and

(7) instruments of writing in any manner affecting lands in the state filed pursuant to Section 14-9-7 NMSA 1978, when these instruments have been duly executed by an authorized public officer.

D. Any filing or recording permitted or required under the provisions of the Uniform Commercial Code need not comply with the requirements of this section.

E. Instruments acknowledged on behalf of a corporation need not have the corporation's seal affixed thereto in order to be filed and recorded."

## **Chapter 134 Section 8 Laws 2011**

SECTION 8. Section 14-8-6 NMSA 1978 (being Laws 1855-1856, Chapter 18, Section 3, as amended) is amended to read:

"14-8-6. COUNTY CLERKS--TO ENDORSE AND RECORD LAND TITLES--NOTICE.--When any land title or other document is delivered to the county clerk to be

recorded, it is the clerk's duty to endorse immediately on that document or other paper the day, month and year in which the clerk received it, and the clerk shall record it in the book of record as soon as possible. The documents, from the date on which they were delivered to the county clerk, shall be considered as recorded, and this shall be sufficient notice to the public of the contents thereof."

## **Chapter 134 Section 9 Laws 2011**

SECTION 9. Section 14-8-7 NMSA 1978 (being Laws 1923, Chapter 114, Section 1) is amended to read:

"14-8-7. STANDARDS--DURABILITY REQUIREMENTS.--It is the duty of county clerks in this state in recording all instruments of writing that by law they are required to record to do so by a method that ensures permanency and durability. The county clerk of each county in the state shall provide, at the expense of the clerk's respective county, such books or technology as may be necessary and suitable in which to record notices, affidavits and other documents."

## **Chapter 134 Section 10 Laws 2011**

SECTION 10. Section 14-8-9 NMSA 1978 (being Laws 1855-1856, Chapter 18, Section 4, as amended) is amended to read:

"14-8-9. SECURITY OF BOOKS OF RECORD--DELIVERY TO SUCCESSORS.-It is the duty of the county clerks to keep their books of record well secured, and when they leave office as clerks, they shall deliver them complete to their successors, including all necessary keys, combinations and passwords."

## **Chapter 134 Section 11 Laws 2011**

SECTION 11. Section 14-8-10 NMSA 1978 (being Laws 1855-1856, Chapter 18, Section 5, as amended) is amended to read:

"14-8-10. COUNTY CLERKS--FAILURE TO PERFORM DUTIES AS RECORDER.--For failure to comply with the responsibilities and duties in Chapter 14, Article 8 NMSA 1978, each county clerk is responsible on the clerk's official bond for damages suffered by the injured party."

## **Chapter 134 Section 12 Laws 2011**

SECTION 12. Section 14-8-12.2 NMSA 1978 (being Laws 1985, Chapter 122, Section 2, as amended) is amended to read:

"14-8-12.2. COUNTY CLERK RECORDING AND FILING FUND--USES.--

A. A "county clerk recording and filing fund" is established in each county.

B. Expenditures from the county clerk recording and filing fund shall be determined annually by the county clerk and approved by the board of county commissioners.

C. Expenditures from the county clerk recording and filing fund may be expended only:

(1) to rent, purchase, lease or

lease-purchase recording equipment and for supplies, training and maintenance for such equipment;

(2) to rent, purchase, lease or

lease-purchase equipment associated with all regular duties in the county clerk's office and for supplies, training and maintenance for such equipment;

(3) to rent, purchase, lease or

lease-purchase vehicles associated with all regular duties in the county clerk's office and for supplies, training and maintenance for such vehicles, provided that the county clerk shall report annually to the board of county commissioners the usage, mileage and necessity of any vehicle acquired pursuant to this paragraph;

(4) for technical assistance or for training associated with all regular duties of the county clerk's office; or

(5) for staff travel associated with all regular duties of the county clerk's office pursuant to the Per Diem and Mileage Act."

## **Chapter 134 Section 13 Laws 2011**

SECTION 13. Section 14-8-14 NMSA 1978 (being Laws 1886-1887, Chapter 10, Section 6, as amended) is amended to read:

"14-8-14. SEARCHING RECORDS--REPRODUCTION OF RECORDS--FEES.--

A. Records maintained in the office of the county clerk are available to be searched without charge during regular business hours.

B. County clerks:

(1) may charge reasonable fees for conducting searches and for reproducing or permitting reproduction of their records as well as for certifying documents;

(2) shall not charge fees in excess of one dollar (\$1.00) per page for documents eleven inches by seventeen inches in size or smaller;

(3) may require advance payment of fees before making copies of public records;

(4) shall not charge a fee for the cost of determining whether any public record is subject to disclosure; and

(5) shall provide a receipt, upon request.

C. County clerks shall establish reasonable fees for conducting searches and for reproducing or copying records maintained at the office of the county clerk."

## **Chapter 134 Section 14 Laws 2011**

SECTION 14. Section 14-8-15 NMSA 1978 (being Laws 1901, Chapter 62, Section 19, as amended) is amended to read:

"14-8-15. PAYMENT OF FEES--DISPOSITION.--

A. No county clerk shall receive any instrument of writing for filing or record unless the fees for such filing and recording have first been paid.

B. Unless otherwise specified by law, the county clerk shall collect a recording fee of twenty-five dollars (\$25.00) for each document filed or recorded by the county clerk.

C. If a document being filed or recorded contains more than ten entries to the county recording index, the county clerk shall collect an additional fee of twenty-five dollars (\$25.00) for each additional block of ten or fewer entries to the county recording index from the document.

D. To the extent documents described in Section 14-8-13 NMSA 1978 are filed or recorded in the office of the county clerk, the documents shall be received pursuant to the fees described in this section.

E. For each fee of twenty-five dollars (\$25.00) collected by the county clerk pursuant to this section, eighteen dollars (\$18.00) shall be deposited in the county general fund and seven dollars (\$7.00) shall be deposited in the county clerk recording and filing fund."

## **Chapter 134 Section 15 Laws 2011**

SECTION 15. Section 14-8-16 NMSA 1978 (being Laws 1973, Chapter 258, Section 150, as amended) is amended to read:

"14-8-16. FILINGS OF LEGAL DESCRIPTIONS AND PLATS OF REAL PROPERTY AUTHORIZED--RECORDING.--

A. A person owning real property that is subject to property taxation under the Property Tax Code may file for record in the office of the county clerk of the county where the real property is located a legal description or a plat of the real property. The legal description or plat shall be acknowledged and shall be certified by a professional surveyor licensed in the state.

B. The United States, the state or its political subdivisions and any agency, department or instrumentality of the United States, the state or its political subdivisions may file for record in the office of the county clerk of the county where the real property is located a legal description or a plat of real property. The legal description or plat shall be acknowledged and shall be certified by a professional surveyor licensed in the state and shall show the governmental agency, department or political subdivision under whose supervision and direction the description or plat was prepared.

C. The county clerk shall number descriptions filed under this section consecutively and shall number plats filed under this section consecutively. Immediately upon receiving a description or plat for filing, the county clerk shall note on the instrument the filing number, the date and the time of filing and shall make proper entries in the reception book and in the index to general real estate records.

D. The county clerk shall record all descriptions and plats in the same manner as other similar instruments affecting real property are recorded. The county clerk shall charge a fee as provided for in Section 14-8-15 NMSA 1978 for recording documents in the office of the county clerk.

E. If the county clerk has the appropriate technology, the clerk shall record the plat electronically, return the original to the person who submitted the plat and forward an electronic copy to the county assessor. Otherwise, all plats to be recorded shall be filed in duplicate with the county clerk. One copy shall be recorded by the county clerk, and one copy shall be delivered by the county clerk to the county assessor."

## **Chapter 134 Section 16 Laws 2011**

SECTION 16. Section 14-8-17 NMSA 1978 (being Laws 1921, Chapter 61, Section 1, as amended) is amended to read:

"14-8-17. DOCUMENTS RECORDED WITHOUT COST.--The county clerk shall record free of charge:

A. oaths of public office made pursuant to Article 20, Section 1 of the constitution of New Mexico;

B. the discharge papers of any person who was accepted for service and served in the armed forces of the United States for thirty days or more;

C. tax delinquency lists filed by the county treasurer pursuant to Section 7-38-61 NMSA 1978;

D. notices and warrants issued by the secretary of workforce solutions for defaults on payments to the unemployment compensation administration fund filed pursuant to Section 51-1-36 NMSA 1978; and

E. a claim of lien under oath of the state engineer, artesian well supervisor or an officer of an artesian conservancy district filed pursuant to Section

72-13-8 NMSA 1978."

## **Chapter 134 Section 17 Laws 2011**

SECTION 17. Section 40-4-15 NMSA 1978 (being Laws 1947, Chapter 16, Section 4, as amended) is amended to read:

"40-4-15. CHILD SUPPORT TO CONSTITUTE LIEN ON REAL AND PERSONAL PROPERTY.--

A. In case a sum of money is allowed to the children by the decree for the support, education or maintenance of the children, the decree shall become a lien on the real and personal property of the obligor party from the date of filing of a notice of order or decree in the office of the county clerk of each county where any of the property may be situated.

B. The notice of order or decree shall contain:

(1) the caption of the case from which the duty of child support arose, including the state, county and court in which the case was heard, the case number and the names of the parties when the case was heard;

(2) the date of entry of the judgment, order or decree from which the duty of child support arose;

(3) the current names and years of birth of the parties; and

(4) each party's last known address, unless ordered otherwise in the judgment, order or decree from which the duty of child support arose.

C. The notice shall be executed and acknowledged in the same manner as a grant of land is executed and acknowledged.

D. A copy of the recorded notice shall be sent to the obligor spouse at the obligor's last known address."

## **Chapter 134 Section 18 Laws 2011**

SECTION 18. Section 45-3-1205 NMSA 1978 (being Laws 1985, Chapter 12, Section 1 and Laws 1985, Chapter 132, Section 1) is amended to read:

"45-3-1205. SMALL ESTATES--TRANSFER OF TITLE TO HOMESTEAD TO SURVIVING SPOUSE BY AFFIDAVIT.--

A. Where a husband and wife own a homestead as community property and when either the husband or wife dies intestate or dies testate and by the husband's or wife's will devises the husband's or wife's interest in the homestead to the surviving spouse, the homestead passes to the survivor and no probate or administration is necessary.

B. Six months after the death of a decedent, the surviving spouse may record with the county clerk in the county in which the homestead is located an affidavit describing the real property and stating that:

(1) six months have elapsed since the death of the decedent as shown on the death certificate;

(2) the affiant and the decedent were at the time of the death of the decedent married and owned the homestead as community property;

(3) a copy of the deed with a legal description of the homestead is attached to the affidavit;

(4) but for the homestead, the decedent's estate need not be subject to any judicial probate proceeding either in district court or probate court;

(5) no application or petition for appointment of a personal representative or for admittance of a will to probate is pending or has been granted in any jurisdiction;

(6) funeral expenses, expenses of last illness and all unsecured debts of the decedent have been paid;



(7) the affiant is the surviving spouse of the decedent and is entitled to title to the homestead by intestate succession as provided in Section 45-2-102 NMSA 1978 or by devise under a valid last will of the decedent, the original of which is attached to the affidavit;

(8) no other person has a right to the interest of the decedent in the described property;

(9) no federal or state tax is due on the decedent's estate; and

(10) the affiant affirms that all statements in the affidavit are true and correct and further acknowledges that any false statement may subject the person to penalties relating to perjury and subornation of perjury.

C. As used in this section, "homestead" means the principal place of residence of the decedent or surviving spouse or the last principal place of residence if neither the decedent nor the surviving spouse is residing in that residence because of illness or incapacitation and that consists of one or more dwellings together with appurtenant structures, the land underlying both the dwellings and the appurtenant structures and a quantity of land reasonably necessary for parking and other uses that facilitates the use of the dwellings and appurtenant structures, and provided the full value of this property as assessed for property taxation purposes does not exceed five hundred thousand dollars (\$500,000)."

## **Chapter 134 Section 19 Laws 2011**

SECTION 19. Section 48-2-8 NMSA 1978 (being Laws 1880, Chapter 16, Section 8, as amended) is amended to read:

"48-2-8. RECORDING OF LIENS--INDEXING--FEES.--The county clerk shall make a record of a claim that shall be indexed as deeds and other conveyances are required by law to be indexed and for which the county clerk may receive the same fees as are allowed by law for recording deeds and other instruments. Any claim, the form of which complies with the requirements of Chapter 48, Article 2 NMSA 1978, shall be entitled to be filed of record."

## **Chapter 134 Section 20 Laws 2011**

SECTION 20. Section 61-23-28.2 NMSA 1978 (being Laws 1999, Chapter 259, Section 34) is amended to read:

"61-23-28.2. SURVEYING--RECORD OF SURVEY.--

A. For those surveys that do not create a division of land but only show existing tracts of record, except in the instance of remonumentation as specified in the board's minimum standards for boundary surveys, within sixty calendar days of the

completion of the survey, a professional surveyor shall cause to be recorded at the office of the county clerk a survey entitled "boundary survey" that shall:

(1) contain a printed certification of the professional surveyor stating that "this is a boundary survey of an existing tract", or existing tracts, if appropriate, and that "it is not a land division or subdivision as defined in the New Mexico Subdivision Act";

(2) identify all tracts by the uniform parcel code designation or other designation established by the county assessor, if applicable;

(3) meet the minimum standards for surveying in New Mexico as established by the board; and

(4) not exceed a size of eighteen inches by twenty-four inches and be at least eight and one-half inches by eleven inches.

B. Fees for recording a boundary survey shall be in conformance with Section 14-8-15 NMSA 1978.

C. For those surveys that do create a division of land, the survey shall be completed in conformity with the board's minimum standards and in conformity with the New Mexico Subdivision Act and any applicable local subdivision ordinances. Filing procedures shall be prescribed in the board's minimum standards. The record of survey required to be filed and recorded pursuant to this subsection shall be recorded at the office of the county clerk within sixty calendar days after completion of the survey or approval by the governing authority."

## **Chapter 134 Section 21 Laws 2011**

SECTION 21. A new section of Chapter 14, Article 8 NMSA 1978 is enacted to read:

### **"PUBLIC RECORDS--INSPECTION--EXCEPTIONS.--**

A. Except as provided in this section, all documents filed and recorded in the office of the county clerk are public records, subject to disclosure pursuant to the Inspection of Public Records Act.

B. The county clerk shall publicly post in the office of the county clerk and on the county's web page a notice that documents recorded in the office of the county clerk are public records, subject to inspection and disclosure.

C. Before digitizing or purchasing of documents by third parties, protected personal identifier information, as defined in the Inspection of Public Records Act, shall be redacted.

D. Documents containing health information that relates to and identifies specific individuals as patients are exempt as a public record pursuant to Section 14-6-1 NMSA 1978.

E. Discharge papers of a veteran of the armed forces of the United States recorded in the office of the county clerk shall be segregated from public records in the office of the county clerk. Discharge papers recorded before July 1, 2005 that have been commingled with public records and that remain unsegregated are available for inspection in the office of the county clerk but shall not be copied, digitized or purchased by any third party, except by those persons authorized in this section. As the technology becomes available, county clerks shall segregate commingled discharge papers from the public records in the office of the county clerk. Discharge papers recorded in the office of the county clerk are available only to:

- (1) the veteran who filed the papers;
- (2) the veteran's next of kin;
- (3) the deceased veteran's properly appointed personal representative or executor;
- (4) a person holding the veteran's general power of attorney; or
- (5) a person designated by the veteran in an acknowledged statement to receive the records.

F. Death certificates that have been recorded in the office of the county clerk may be inspected, but shall not be copied, digitized or purchased by any third party unless fifty years have elapsed after the date of death and the cause of death and any other medical information contained on the death certificate is redacted, in addition to redaction of protected personal identifier information. Death certificates and other vital records recorded in the office of the county clerk are exempt from the restrictions contained in Subsection A of Section 24-14-27 NMSA 1978. The act of recording a death certificate in the office of the county clerk is considered a convenience; provided that no person shall be required to record a death certificate in the office of the county clerk to effect change of title or interest in property."

## **Chapter 134 Section 22 Laws 2011**

SECTION 22. A new section of Chapter 14, Article 8 NMSA 1978 is enacted to read:

"PAYMENT OF FEES--IN-PERSON FILINGS--DISPOSITION.--

A. Notwithstanding the provisions of Subsection B of Section 14-8-15 NMSA 1978, if a document being filed or recorded contains fewer than ten entries to the

county recording index and is filed or recorded in person in the office of the county clerk by one of the interested persons named on the document, the county clerk shall collect a fee of ten dollars (\$10.00).

B. For each fee of ten dollars (\$10.00) collected by the county clerk pursuant to this section, three dollars (\$3.00) shall be deposited in the county general fund and seven dollars (\$7.00) shall be deposited in the county clerk recording and filing fund."

## **Chapter 134 Section 23 Laws 2011**

SECTION 23. A new section of Chapter 21, Article 1 NMSA 1978 is enacted to read:

"STATE INSTITUTIONS OF HIGHER EDUCATION--PRESIDENTIAL SEARCHES.--

A. Public records containing the identity of or identifying information relating to an applicant or nominee for the position of president of a public institution of higher education are exempt from inspection under the Inspection of Public Records Act.

B. At least twenty-one days before the date of the meeting of the governing board of a public institution of higher education at which final action is taken on selection of the person for the position of president of the institution, the governing board shall give public notice of the names of the finalists being considered for the position. The board shall consider in the final selection process at least five finalists. The required notice shall be given by publication in a newspaper of statewide circulation and in a newspaper of countywide circulation in the county in which the institution is located. Publication shall be made once and shall occur at least twenty-one days and not more than thirty days before the described meeting.

C. Postponement of a meeting described in Subsection B of this section for which notice has been given does not relieve the governing body from the requirement of giving notice of a rescheduled meeting in accordance with the provisions of Subsection B of this section.

D. Action taken by a governing body without compliance with the notice requirements of Subsections B and C of this section is void.

E. Nothing in this section prohibits a governing body from identifying or otherwise disclosing the information described in this section.

F. This section may be enforced pursuant to the provisions of the Inspection of Public Records Act."

## **Chapter 134 Section 24 Laws 2011**

SECTION 24. REPEAL.--Sections 14-8-8, 14-8-11, 14-8-12.3, 14-8-12.4, 55-9-710 and 69-3-2 NMSA 1978 (being Laws 1923, Chapter 114, Section 2, Laws 1939, Chapter 179, Section 1, Laws 1985, Chapter 122, Sections 3 and 4, Laws 2001, Chapter 139, Section 154 and Laws 1876, Chapter 38, Section 2, as amended) are repealed.

## **Chapter 134 Section 25 Laws 2011**

SECTION 25. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.

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Senate Bill 369, aa

Approved April 7, 2011

# **LAWS 2011, CHAPTER 135**

AN ACT

RELATING TO THE PRACTICE OF PSYCHOLOGY; AMENDING THE EXPERIENCE REQUIREMENTS FOR LICENSURE UNDER THE PROFESSIONAL PSYCHOLOGIST ACT.

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

## **Chapter 135 Section 1 Laws 2011**

SECTION 1. 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 at least two years of supervised experience in psychological work of a type satisfactory to the board; provided that:

(a) up to one year of the supervised experience may be obtained in predoctoral practicum hours overseen by a graduate training program and consistent with the guidelines on practicum experience for licensure promulgated by the association of state and provincial psychology boards;

(b) up to one year of the supervised experience may be obtained in a predoctoral internship approved by the American psychological association;

(c) up to one-half year of the supervised experience may be obtained in a predoctoral internship that is not approved by the American psychological association; and

(d) any portion of the required supervised experience not satisfied pursuant to Subparagraphs (a), (b) and (c) of this paragraph shall be obtained in postdoctoral psychological work;

(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 online 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 135 Section 2 Laws 2011**

SECTION 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.

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Senate Bill 377

Approved April 7, 2011

## **LAWS 2011, CHAPTER 136**

AN ACT

RELATING TO INSURANCE; AMENDING A SECTION OF THE NEW MEXICO INSURANCE CODE TO PROVIDE FOR INSURANCE FOR ELECTRONIC DEVICES; 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 136 Section 1 Laws 2011

SECTION 1. Section 59A-12-18 NMSA 1978 (being Laws 1984, Chapter 127, Section 219, as amended by Laws 2007, Chapter 282, Section 7 and by Laws 2007, Chapter 283, Section 1) is amended to read:

"59A-12-18. LIMITED LICENSE.--

A. The superintendent may issue a limited agent's license to:

(1) individual applicants qualified pursuant to Chapter 59A, Article 12 NMSA 1978 and employed as transportation ticket sellers by public carriers, who in the course of such employment solicit or sell insurance incidental to transportation of persons or storage or transportation of baggage, provided that the license is limited to that insurance; or

(2) individual applicants employed full time by a vendor of merchandise or other property or by a financial institution making consumer loans, on terms with respect to which credit life insurance or health insurance under individual policies is customarily required of or offered to the purchaser or borrower, covering only that credit life and health insurance.

B. The superintendent may issue a limited agent's license to applicants who are retail vendors or lessors of portable electronics or services. The license shall authorize any employee or authorized representative of the vendor, in connection with the lease, retail sale or provision of portable electronics or services for portable electronics, to sell insurance covering the loss, theft, mechanical failure or malfunction of or damage to the portable electronics. A license issued pursuant to this section shall authorize the licensee and its employees or authorized representatives to engage only in those activities that are expressly permitted in this section. The licensee shall be required to keep a record of the name, address, contact information and any other information of the locations operating pursuant to this section as required by the superintendent. These records shall be made available by the vendor upon the request of the superintendent. The licensee shall provide training to all employees and authorized representatives of the vendors who sell that insurance. The conduct of the licensee's business under the limited license by its employees or authorized representatives shall be attributed to the licensee. As used in this subsection, "portable electronics" means electronic devices that are portable in nature and their accessories and services related to the use of the device.

C. No holder of a limited license issued pursuant to Subsection A of this section shall concurrently be otherwise licensed under the Insurance Code."



Approved April 7, 2011

## **LAWS 2011, CHAPTER 137**

AN ACT

RELATING TO ELECTIONS; STANDARDIZING LANGUAGE IN THE ELECTION CODE; PROVIDING DEFINITIONS; PROVIDING STANDARDS FOR

BALLOT-PRINTING SYSTEMS; ALLOWING FOR ELECTION OBSERVERS AND ELECTION-RELATED ORGANIZATIONS; DELIMITING DUTIES OF THE SECRETARY OF STATE AND COUNTY CLERKS; PROVIDING FOR THE APPOINTMENT AND OPERATION OF PRECINCT BOARDS; PROVIDING FOR CHALLENGERS, WATCHERS AND COUNTY CANVASS OBSERVERS; PROVIDING REGISTRATION PROCEDURES; PROVIDING VOTING PROCEDURES FOR EARLY IN-PERSON ABSENTEE VOTING; PROVIDING QUALIFICATION PROCEDURES FOR MINOR PARTIES; SETTING THE DATE OF THE PRIMARY ELECTION; SETTING FILING DATES FOR CERTAIN CANDIDATES; PRESCRIBING THE FORM FOR NOMINATING PETITIONS; PROVIDING PROCEDURES FOR CERTIFICATION AND PREPARATION OF VOTING MACHINES; PROVIDING FOR ELECTION AND POST-ELECTION PROCEDURES; AMENDING, REPEALING, ENACTING AND RECOMPILING SECTIONS OF THE NMSA 1978.

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

### **Chapter 137 Section 1 Laws 2011**

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

"ELECTION OBSERVER.--As used in the Election Code, "election observer" means a person registered with the United States department of state as an international election observer or a person registered with the New Mexico secretary of state who is an academic engaged in research on elections and the election process."

### **Chapter 137 Section 2 Laws 2011**

SECTION 2. A new section of Chapter 1, Article 1 NMSA 1978 is enacted to read:

"ELECTION-RELATED ORGANIZATION.--As used in the Election Code, "election-related organization" means an organization registered with the secretary of state that is involved in election monitoring or voter turnout activities."

### **Chapter 137 Section 3 Laws 2011**

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

"BALLOT BOX KEY.--As used in the Election Code, "ballot box key" means:

- A. a physical key that opens a lock used to secure a ballot box; or
- B. the number on a numbered seal affixed to secure a ballot box."

### **Chapter 137 Section 4 Laws 2011**

SECTION 4. Section 1-1-3.1 NMSA 1978 (being Laws 2003, Chapter 356, Section 1) is amended to read:

"1-1-3.1. ELECTION CYCLE.--Except as otherwise provided, as used in the Election Code:

A. "election cycle" means the period beginning on the day after the last general election and ending on the day of the general election;

B. "general election cycle" means the period beginning on the day after the primary election and ending on the day of the general election; and

C. "primary election cycle" means the period beginning on the day after the last general election and ending on the day of the primary election."

### **Chapter 137 Section 5 Laws 2011**

SECTION 5. Section 1-1-4 NMSA 1978 (being Laws 1969, Chapter 240, Section 4, as amended) is amended to read:

"1-1-4. QUALIFIED ELECTOR.--As used in the Election Code, "qualified elector" means any resident of this state who is qualified to vote under the provisions of the constitution of New Mexico and the constitution of the United States."

### **Chapter 137 Section 6 Laws 2011**

SECTION 6. Section 1-1-5 NMSA 1978 (being Laws 1969, Chapter 240, Section 5) is amended to read:

"1-1-5. VOTER.--As used in the Election Code, "voter" means any qualified elector, federal qualified elector or overseas voter who is registered under the provisions of the Election Code."

### **Chapter 137 Section 7 Laws 2011**

SECTION 7. Section 1-1-12 NMSA 1978 (being Laws 1969, Chapter 240, Section 11, as amended) is amended to read:

"1-1-12. CONSOLIDATED PRECINCT.--

A. As used in the Election Code, "consolidated precinct" means the combination of two or more precincts into one polling place pursuant to the provisions of Section 1-3-4 NMSA 1978.

B. When consolidated precincts are used in an election, references to "precincts" in the voting process shall be applicable to consolidated precincts."

### **Chapter 137 Section 8 Laws 2011**

SECTION 8. Section 1-1-13 NMSA 1978 (being Laws 1969, Chapter 240, Section 12) is amended to read:

"1-1-13. PRECINCT BOARD.--As used in the Election Code, "precinct board" or "poll workers" means the appointed election officials serving a single precinct, a consolidated precinct, an absent voter precinct or an alternate voting location."

### **Chapter 137 Section 9 Laws 2011**

SECTION 9. Section 1-1-14 NMSA 1978 (being Laws 1969, Chapter 240, Section 14, as amended) is amended to read:

"1-1-14. PUBLICATION.--

A. As used in the Election Code, "publication", unless otherwise provided in the constitution of New Mexico or the Election Code, means publication for the required number of times in a newspaper of general circulation in the county. "Publication in Spanish" means publication for the required number of times in an official Spanish language newspaper as set forth in Section 14-11-13 NMSA 1978 or any other Spanish language newspaper that meets the requirements of Section 14-11-2 NMSA 1978 if such newspaper exists in the county and is of general circulation in the county.

B. In addition to publication as required by Subsection A of this section, any publication required of:

(1) the secretary of state shall also be posted in the office of the secretary of state and on the secretary of state's web site; and

(2) the county clerk shall also be posted in the office of the county clerk and on the county's web site, if the county maintains a web site."

### **Chapter 137 Section 10 Laws 2011**

SECTION 10. Section 1-1-15 NMSA 1978 (being Laws 1969, Chapter 240, Section 15) is amended to read:

"1-1-15. POSTING.--

A. As used in the Election Code, "posting" means posting for not less than seven days prior to an election or to an action to be taken.

B. A posting as described in Subsection A of this section is satisfied by posting in the office of:

(1) the secretary of state and on the secretary of state's web site, when the secretary of state has the duty to post; or

(2) the county clerk and on the county's web site, if the county maintains a web site, when the county clerk has the duty to post."

## **Chapter 137 Section 11 Laws 2011**

SECTION 11. A new section of Chapter 1, Article 2 NMSA 1978 is enacted to read:

"STATE CANVASS OBSERVERS.--

A. The state chair of each political party represented on the ballot may appoint in writing state canvass observers. A candidate for elected office and an election-related organization may each appoint state canvass observers if the candidate or organization makes a written request to the secretary of state at least ten days prior to the election date and specifies the names of the qualified appointees.

B. State canvass observers shall be voters of the state. No person shall be qualified for appointment or service as a state canvass observer who is a sheriff, deputy sheriff, marshal, deputy marshal or state or municipal police officer.

C. The state canvass observer or election observer, upon presentation of the observer's written appointment, shall be permitted to be present at any time from the time the state canvassing begins until the completion of the canvass.

D. A state canvass observer or election observer is strictly limited to observing and documenting the canvassing process, and shall not interrupt the canvassing process.

E. State canvass observers shall not interfere with the orderly conduct of the canvass and may be removed by the secretary of state if the observer does not comply with the law.

F. As used in this section, "state canvass" means the process of examining election returns and certificates issued by the county canvassing boards and ending with the certification and announcement of the results by the state canvassing board."

## **Chapter 137 Section 12 Laws 2011**

SECTION 12. Section 1-2-1 NMSA 1978 (being Laws 1969, Chapter 240, Section 22, as amended) is amended to read:

"1-2-1. SECRETARY OF STATE--CHIEF ELECTION OFFICER--RULES--ENFORCEMENT POWERS.--

A. The secretary of state is the chief election officer of the state and shall:

(1) obtain and maintain uniformity in the application, operation and interpretation of the Election Code;

(2) subject to the State Rules Act, make rules pursuant to the provisions of, and necessary to carry out the purposes of, the Election Code and shall furnish to the county clerks copies of such rules; provided that no rule is adopted or amended within the fifty-six days before a primary or a general election; and

(3) through the attorney general or the district attorney having jurisdiction, bring such actions as deemed necessary and proper for the enforcement of the provisions of the Election Code.

B. No forms or procedures shall be used in any election held pursuant to the Election Code without prior approval of the secretary of state."

## **Chapter 137 Section 13 Laws 2011**

SECTION 13. Section 1-2-2 NMSA 1978 (being Laws 1969, Chapter 240, Section 23, as amended) is amended to read:

"1-2-2. SECRETARY OF STATE--GENERAL DUTIES.--The secretary of state shall:

A. generally supervise all elections by administering the Election Code in its statewide application;

B. prepare instructions for the conduct of election and registration matters in accordance with the laws of the state;

C. advise county clerks, boards of county commissioners and boards of registration as to the proper methods of performing their duties prescribed by the Election Code;

D. report possible violations of the Election Code of which the secretary of state has knowledge to the district attorney or the attorney general for prosecution;

E. cause to be published in book form and distributed to the county clerk of each county for use by precinct boards a sufficient number of copies of the Election Code as it is from time to time amended and supplemented;

F. be responsible for the education and training of county clerks regarding elections;

G. be responsible for the education and training of voting machine technicians; and

H. assist the county clerks in the education and training of registration officers."

## **Chapter 137 Section 14 Laws 2011**

SECTION 14. Section 1-2-7 NMSA 1978 (being Laws 1969, Chapter 240, Section 29, as amended) is amended to read:

"1-2-7. PRECINCT BOARD--QUALIFICATION OF MEMBERS--QUALIFICATION OF PRESIDING JUDGES--QUALIFICATION OF MINORS.--

A. In order to qualify as a member of the precinct board, a person shall:

(1) be a voter of the county in which the person is appointed to serve;

(2) be able to read and write;

(3) have the necessary capacity to carry out a precinct board member's functions with acceptable skill and dispatch; and

(4) execute the precinct board member's oath of office.

B. Before serving as a presiding judge of a precinct board, a person shall receive training in the duties of that position and be certified for the position by the county clerk.

C. No person shall be qualified for appointment or service on a precinct board:

(1) who is a candidate to be voted for at the election;

(2) who is a spouse, parent, child, brother or sister of any candidate to be voted for at the election;

(3) who is married to a parent, child, brother or sister of any candidate to be voted for at the election or who is the parent of the spouse of any candidate to be voted for at the election; or

(4) who is a sheriff, deputy sheriff, marshal, deputy marshal or state or municipal police officer.

D. A county clerk may appoint not more than two minors to serve on a precinct board under the direct supervision of the presiding judge. A minor appointed by the county clerk shall:

(1) meet the qualifications set forth in Subsection A of this section, except the minor need not be eligible to vote;

(2) be sixteen or seventeen years of age at the time of the election in which the minor is serving as a member of a precinct board;

(3) be a citizen at the time of the election for which the minor will be serving as a member of a precinct board;

(4) have the approval of the minor's parent or legal guardian, unless the minor is emancipated;

(5) attend at least one school of instruction in accordance with the provisions of Section 1-2-17 NMSA 1978; and

(6) be appointed to a precinct board in the county in which the minor's parent or legal guardian resides, in accordance with the provisions of Section 1-2-11 NMSA 1978.

E. A minor appointed to a precinct board shall not serve as the presiding judge or as an election judge."

## **Chapter 137 Section 15 Laws 2011**

SECTION 15. Section 1-2-11 NMSA 1978 (being Laws 1977, Chapter 222, Section 5) is amended to read:

"1-2-11. PRECINCT BOARD--ASSIGNMENT.--Wherever possible, the county clerk shall assign persons appointed as precinct board members to serve in precincts wherein they reside or in precincts located in the representative district wherein they

reside. In the event of a shortage or absence of precinct board members in certain precincts, the county clerk may, in the best interest of the election process, assign appointed precinct board members to serve on any precinct board in the county, provided that such appointed board members shall not change the proportionate representation of each party on the board."

## **Chapter 137 Section 16 Laws 2011**

SECTION 16. 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.--

A. For primary, general and special federal elections, the precinct board shall consist of:

- (1) a presiding judge;
- (2) two election judges; and
- (3) one election clerk.

B. The county clerk, in appointing precinct boards for primary, general and special federal elections:

(1) shall appoint presiding judges and election judges so that at least one election judge shall not be of the same political party, if any, as the presiding judge; and

(2) may appoint teams of presiding judges and election judges for absent voter precincts and alternate voting locations, provided that each team meets the requirements pursuant to Paragraph (1) of this subsection.

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, the clerk may appoint such additional election clerks as the clerk deems necessary."

## **Chapter 137 Section 17 Laws 2011**



SECTION 17. Section 1-2-14 NMSA 1978 (being Laws 1969, Chapter 240, Section 34, as amended) is amended to read:

"1-2-14. PRECINCT BOARDS--NOTICE OF APPOINTMENT.--

A. Immediately after the appointment of the precinct boards, the county clerk shall:

(1) make and certify a list of the names of the appointees for each polling location, by precinct where applicable, post the list in a conspicuous and accessible place in the county clerk's office and keep it posted for five days and send a copy of the list upon request to the county chair of each political party participating in the election and to the secretary of state; and

(2) notify each person appointed, request the person's acceptance and keep a record of all notifications and acceptances.

B. If any person appointed to a precinct board fails to accept the appointment within two weeks after the notice was sent or communicated, the county clerk shall appoint another qualified person for the precinct board."

### **Chapter 137 Section 18 Laws 2011**

SECTION 18. Section 1-2-16 NMSA 1978 (being Laws 1969, Chapter 240, Section 36, as amended) is amended to read:

"1-2-16. PRECINCT BOARD--COMPENSATION.--

A. Members of a precinct board shall be compensated for their services at the rate of not less than the federal minimum hourly wage rate nor more than two hundred dollars (\$200) for an election day.

B. Members of a precinct board assigned to alternate voting locations or absent voter precincts may be compensated at an hourly rate set by the county clerk.

C. Compensation shall be paid within thirty days following the date of election."

### **Chapter 137 Section 19 Laws 2011**

SECTION 19. Section 1-2-17 NMSA 1978 (being Laws 1969, Chapter 240, Section 37, as amended) is amended to read:

"1-2-17. PRECINCT BOARD--SCHOOLS OF INSTRUCTION.--

A. The county clerk shall cause to be held a public school of instruction for all presiding judges, precinct boards and others who will be officially concerned with the conduct of elections.

B. The schools for instruction provided for in this section shall be as follows:

(1) one school not less than seven days before the primary election;

(2) one school not less than seven days before the general election; and

(3) one school not less than seven days before any other statewide election.

C. All major details of the conduct of elections shall be covered by the county clerk or the clerk's authorized representative at such school, with special emphasis being given to recent changes in the Election Code.

D. The school of instruction shall be open to any interested person, and notice of the school shall be given to the public press at least four days before the school is to be held. Each member of the precinct board shall be notified at least seven days prior to commencement of the school.

E. A person shall not serve as a judge or member of a precinct board in any election unless that person has attended at least one such school of instruction in the calendar year of the election at which the person is appointed to serve or has been certified by the county clerk with respect to the person's completion of the school of instruction. This subsection shall not apply to filling of vacancies on election day as provided in Subsection B of Section 1-2-15 NMSA 1978."

## **Chapter 137 Section 20 Laws 2011**

SECTION 20. Section 1-2-21 NMSA 1978 (being Laws 1969, Chapter 240, Section 40, as amended) is amended to read:

### **"1-2-21. CHALLENGERS--APPOINTMENT.--**

A. The county chair of each political party represented on the ballot may appoint in writing challengers for each polling location. If more than one challenger is appointed to a polling location, the challengers shall be listed in ranking order.

B. If any county chair fails to make such appointments, the precinct chair of the political party may appoint in writing one challenger for the polling location corresponding to the precinct.

C. If any precinct chair fails to make such appointments, or if no person properly appointed is present at the polling place and offers to serve, the voters present belonging to that political party may appoint one challenger in writing."

## **Chapter 137 Section 21 Laws 2011**

SECTION 21. Section 1-2-22 NMSA 1978 (being Laws 1969, Chapter 240, Section 41, as amended) is amended to read:

"1-2-22. CHALLENGERS, WATCHERS AND ELECTION OBSERVERS--QUALIFICATIONS--RESTRICTIONS.--Challengers and watchers shall be voters of a precinct located in that county to which they are appointed. No person shall be qualified for appointment or service as a challenger, watcher or election observer:

A. who is a candidate for any office to be voted for at the election;

B. who is a spouse, parent, child, brother or sister of any candidate to be voted for at the election;

C. who is married to a parent, child, brother or sister of any candidate to be voted for at the election or who is the parent of the spouse of any candidate to be voted for at the election; or

D. who is a sheriff, deputy sheriff, marshal, deputy marshal or state or municipal police officer."

## **Chapter 137 Section 22 Laws 2011**

SECTION 22. 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, upon presentation of the written appointment to the precinct board, shall be permitted to be present at any time from the time the precinct board convenes at the polling place until the completion of the precinct board's duties after the polls close.

B. A challenger, for the purpose of interposing challenges, may:

(1) view the signature roster or precinct voter list for the purpose of determining whether the challenger desires to interpose a challenge when a signature roster or precinct voter list is used;

(2) view the application to vote form before the voter receives a ballot for the purpose of determining whether the challenger desires to interpose a challenge when an application to vote form is used;

(3) view the signature roster or checklist of voters to determine whether entries are being made in accordance with the Election Code;

(4) view each voting machine before the polls are opened to ensure that the public counter is at zero, that the results tape contains no votes and that there are no voted ballots in the voting machine bins; and

(5) make in any polling place and preserve for future reference written memoranda of any action or omission on the part of any member of the precinct board."

## **Chapter 137 Section 23 Laws 2011**

SECTION 23. Section 1-2-25 NMSA 1978 (being Laws 1969, Chapter 240, Section 44, as amended) is amended to read:

"1-2-25. CHALLENGERS, WATCHERS, COUNTY CANVASS OBSERVERS-- PERMITTED AND PROHIBITED ACTIVITIES.--

A. Challengers, watchers and county canvass observers shall:

(1) not be permitted to perform any duty of a precinct board member;

(2) not handle the ballots, signature rosters, checklist of voters or voting machines or take any part in the counting or tallying of the ballots or the county canvass;

(3) not be allowed to view a voter's full date of birth or any portion of the voter's social security number;

(4) not interfere with the orderly conduct of the election, the counting or tallying of the ballots or the county canvass;

(5) be allowed in the room in which the voting is being conducted at a polling location, provided that at any given time each political party, candidate or election-related organization may have no more than one person present; and

(6) be allowed in the room in which the absent voter precinct board conducts its business or, in the case of county canvass observers, in which the county canvass is conducted, provided that each political party, candidate or election-related organization shall have no more than:

(a) two persons present at any given time in counties with more than ten thousand registered voters;

(b) four persons present at any given time in counties with more than fifty thousand registered voters; or

(c) fifteen persons present at any given time in counties with more than two hundred fifty thousand registered voters.

B. Subject to permission granted by the county clerk, additional challengers may be present in the room in which the absent voter precinct board conducts its business, provided that the number of additional challengers allowed pursuant to this subsection is identical for each political party participating in the election."

### **Chapter 137 Section 24 Laws 2011**

SECTION 24. Section 1-2-26 NMSA 1978 (being Laws 1969, Chapter 240, Section 45, as amended) is amended to read:

"1-2-26. CHALLENGERS--PENALTY.--The act of denying a challenger, who has presented a written appointment to the precinct board and who is not interfering with the orderly conduct of the election, the right to be present at the polling place, or denying a challenger the right to challenge voters and view the signature rosters or checklist of voters or denying a challenger the right to witness the precinct board in the conduct of its duties is a petty misdemeanor."

### **Chapter 137 Section 25 Laws 2011**

SECTION 25. Section 1-2-27 NMSA 1978 (being Laws 1969, Chapter 240, Section 46, as amended) is amended to read:

"1-2-27. WATCHERS--APPOINTMENT.--

A. An election-related organization may appoint watchers in a county if the organization provides a written notice to the secretary of state at least ten days prior to the election date and specifies the names of the qualified appointees. The secretary of state shall notify the county clerk of the qualified appointees at least five days before the election.

B. Any group of three candidates for elected office may appoint watchers in a county if the candidates provide a written notice to the secretary of state at least ten days prior to the election date and specify the names of the qualified appointees. The secretary of state shall notify the county clerk of the qualified appointees at least five days before the election."

## **Chapter 137 Section 26 Laws 2011**

SECTION 26. Section 1-2-29 NMSA 1978 (being Laws 1969, Chapter 240, Section 48, as amended) is amended to read:

"1-2-29. WATCHERS AND ELECTION OBSERVERS--PERMISSIBLE ACTIVITIES.--

A. Upon presentation to a precinct board of a written appointment, a watcher or election observer may:

(1) be present at any time from the time the precinct board convenes at the polling place until the completion of the precinct board's duties after the polls close;

(2) be permitted to observe that the election is being conducted in accordance with the Election Code;

(3) view the precinct voter list to ascertain whether a voter has voted, subject to the same prohibitions and restrictions as are placed upon challengers by the Election Code;

(4) view any voting machine being used in the precinct in the same manner that challengers may examine the voting machines; and

(5) make in any polling place and preserve for future reference written memoranda of any action or omission on the part of any member of the precinct board charged with the performance of a duty by the Election Code.

B. A watcher appointed on behalf of candidates may be present only in polling locations within the county of appointment at which ballots are cast for at least one of the candidates making the appointment."

## **Chapter 137 Section 27 Laws 2011**

SECTION 27. Section 1-2-30 NMSA 1978 (being Laws 1969, Chapter 240, Section 49) is amended to read:

"1-2-30. WATCHERS AND ELECTION OBSERVERS--PENALTY.--The act of denying a watcher or an election observer, who has presented a written appointment to the precinct board and who is not interfering with the orderly conduct of the election, the right to be present at the polling place or denying a watcher or election observer the right to witness the precinct board in the conduct of its duties is a petty misdemeanor."

## **Chapter 137 Section 28 Laws 2011**

SECTION 28. Section 1-2-31 NMSA 1978 (being Laws 2005, Chapter 270, Section 15) is amended to read:

"1-2-31. COUNTY CANVASS OBSERVERS.--

A. The county chair of each political party represented on the ballot may appoint in writing county canvass observers. A candidate for elected office and an election-related organization may each appoint county canvass observers in a county if the candidate or organization makes a written request to the secretary of state at least ten days prior to the election date and specifies the names of the qualified appointees. The secretary of state shall notify the county clerk of the qualified appointees at least five days before the election.

B. County canvass observers shall be voters of a precinct located in that county to which they are appointed. No person shall be qualified for appointment or service as a county canvass observer who is a sheriff, deputy sheriff, marshal, deputy marshal or state or municipal police officer.

C. A county canvass observer or an election observer, upon presentation of the observer's written appointment, shall be permitted to be present at any time from the time the county canvassing begins until the completion of the canvass.

D. A county canvass observer or election observer is strictly limited to observing and documenting the canvassing process and shall not interrupt the canvassing process.

E. County canvass observers and election observers shall not interfere with the orderly conduct of the canvass and may be removed by the county clerk if the observer does not comply with the law.

F. As used in this section, "county canvass" means the process of qualifying and verifying paper ballots and counting and tallying votes for each precinct beginning upon the closing of the polls and ending with the certification and announcement of the results by the county canvassing board."

## **Chapter 137 Section 29 Laws 2011**

SECTION 29. Section 1-3-3 NMSA 1978 (being Laws 1969, Chapter 240, Section 52, as amended) is amended to read:

"1-3-3. PRECINCTS--COMBINED.--

A. In the interest of economy, the board of county commissioners may combine any precinct where the total vote cast from that precinct in the last preceding general election was less than one hundred with an adjacent and contiguous precinct.

B. No such combination shall be made where the total vote cast from both precincts in the last preceding general election exceeds eight hundred or where such combinations would cross legislative district boundary lines."

## **Chapter 137 Section 30 Laws 2011**

SECTION 30. Section 1-4-2 NMSA 1978 (being Laws 1969, Chapter 240, Section 60, as amended) is amended to read:

"1-4-2. QUALIFICATION FOR REGISTRATION.--Any resident of New Mexico who will be a qualified elector at the date of the next ensuing election shall be permitted within the provisions of the Election Code to register and become a voter."

## **Chapter 137 Section 31 Laws 2011**

SECTION 31. Section 1-4-5 NMSA 1978 (being Laws 1969, Chapter 240, Section 63, as amended) is amended to read:

"1-4-5. METHOD OF REGISTRATION--UNLAWFUL USE OF INFORMATION--PENALTY.--

A. A qualified elector may apply to a registration officer or agent for registration.

B. The registration officer or agent or qualified elector shall fill out each of the blanks on the certificate of registration by typing or printing in ink. The qualified elector shall be given a receipt that shall contain:

(1) a number traceable to the registration agent or officer;

(2) a statement informing the qualified elector that if the qualified elector does not receive confirmation of the qualified elector's registration within fifteen days of the receipt date, the qualified elector should contact the office of the county clerk in the county where the qualified elector resides; and

(3) a toll-free number for the office of the county clerk and an address for the web site of the secretary of state.

C. The qualified elector shall subscribe a certificate of registration as follows:

(1) by signing the certificate of registration using the qualified elector's given name, middle name or initial and last name; or

(2) if any qualified elector seeking to register is unable to read and write either the English or Spanish language or is unable to read or write because of



some physical disability, the certificate of such person shall be filled out by a registration officer or agent and the name of the qualified elector so registering shall be subscribed by the making of the qualified elector's mark.

D. When properly executed by the registration agent or officer or qualified elector, the original of the certificate of registration shall be presented, either in person or by mail by the qualified elector or by the registration agent or officer, to the county clerk of the county in which the qualified elector resides.

E. Only when the certificate of registration is properly filled out, subscribed by the qualified elector and accepted for filing by the county clerk as evidenced by the county clerk's signature or stamp and the date of acceptance thereon shall it constitute an official public record of the registration of the qualified elector. It is unlawful for the qualified elector's month and day of birth or any portion of the qualified elector's social security number required on the certificate of registration to be copied, conveyed or used by anyone other than the person registering to vote, either before or after it is filed with the county clerk, and by elections administrators in their official capacity.

F. A person who unlawfully copies, conveys or uses information from a certificate of registration is guilty of a fourth degree felony."

## **Chapter 137 Section 32 Laws 2011**

SECTION 32. Section 1-4-15 NMSA 1978 (being Laws 1969, Chapter 240, Section 71, as amended) is amended to read:

"1-4-15. REGISTRATION--CHANGE OF PARTY AFFILIATION.--

A. A voter may change the voter's designated party affiliation by executing a new certificate of registration indicating the change of party affiliation.

B. A voter who has previously declined to designate a party affiliation but who desires to designate a party affiliation shall execute a new certificate of registration indicating the desired party affiliation.

C. A voter who does not designate on the certificate of registration a party affiliation shall be considered to have declined to designate a party affiliation."

## **Chapter 137 Section 33 Laws 2011**

SECTION 33. Section 1-4-18 NMSA 1978 (being Laws 1969, Chapter 240, Section 74, as amended by Laws 1993, Chapter 314, Section 17 and also by Laws 1993, Chapter 316,

Section 17) is amended to read:

"1-4-18. CHANGE OF REGISTERED RESIDENCE TO ANOTHER COUNTY.--  
When a voter changes the voter's registered residence address from one county in this state to another county in this state, the voter shall complete a new certificate of registration and file it with the appropriate county clerk."

## **Chapter 137 Section 34 Laws 2011**

SECTION 34. Section 1-4-22 NMSA 1978 (being Laws 1969, Chapter 240, Section 78, as amended) is amended to read:

"1-4-22. CANCELLATION OF REGISTRATION--PETITION TO DISTRICT COURT.--

A. At any time not less than ninety days prior to a primary or general election, the secretary of state may file and present to the district court a verified petition alleging, on information and belief, that certain persons registered, named in the petition, are not qualified electors in the precincts named in the petition. The petition shall contain a brief statement of the facts upon which such allegation is made.

B. Upon filing and presentation of the petition, the court shall by order fix a day for hearing thereon, which date shall be not less than fourteen days nor more than twenty-one days after such order. The court shall direct the county clerk to use the address on the certificates of registration to forthwith notify the persons named in the petition whose registration is sought to be canceled of the date and purpose of the hearing and that each person should contact the county clerk no later than the close of business the day before the hearing or be present at the hearing if the person desires to oppose the cancellation.

C. If, after hearing, the court finds that the registration of any of the persons named in the petition should be canceled, it shall by order direct the county clerk to cancel the registrations."

## **Chapter 137 Section 35 Laws 2011**

SECTION 35. Section 1-4-27.1 NMSA 1978 (being Laws 2001, Chapter 46, Section 1, as amended) is amended to read:

"1-4-27.1. CANCELLATION OF REGISTRATION FOLLOWING CONVICTION--  
ELIGIBILITY FOR VOTING UPON SATISFACTION OF CONDITIONS.--

A. When a voter has been convicted of a felony in any state or federal court, the voter's registration shall be canceled.

B. A person convicted of a felony who is otherwise a qualified elector is eligible to register to vote when that person:

(1) has been unconditionally discharged from a correctional facility or detention center;

(2) has completed all conditions of parole or supervised probation;  
or

(3) has had the conviction overturned on appeal.

C. The secretary of state shall each month maintain current in the statewide voter registration electronic management system the eligibility status of persons convicted of felonies to register to vote pursuant to this section.

D. The corrections department, the New Mexico sentencing commission and the administrative office of the courts shall deliver to the secretary of state information and data as needed to carry out the provisions of this section.

E. The secretary of state shall request from the United States attorney for the district of New Mexico, in conformance with 42 U.S.C. Section 1973gg-6(g), information and data as needed to carry out the provisions of this section."

## **Chapter 137 Section 36 Laws 2011**

SECTION 36. Section 1-4-28 NMSA 1978 (being Laws 1975, Chapter 255, Section 46, as amended) is amended to read:

"1-4-28. CANCELLATION OF REGISTRATION--CHANGE OF RESIDENCE--NOTICE.--

A. The secretary of state, county clerks and boards of registration, in compliance with the federal National Voter Registration Act of 1993, shall remove from the official list of eligible voters the names of voters who are ineligible to vote due to change of residence.

B. The secretary of state shall conduct a general program that identifies voters who may no longer reside at their address of registration. This program shall use information supplied by the United States postal service national change of address service. This program may also include, among other practices, identification of voters whose official election-related mail is returned and periodic mailings to voters to verify continued residency at their address of registration, provided such practices are uniform, nondiscriminatory and in compliance with the federal Voting Rights Act of 1965.

C. Between ninety and one hundred twenty days before the next general election, the secretary of state shall send to each voter who it appears has changed address from the voter's precinct of registration a notice, sent by forwardable mail, that shall include a postage prepaid and pre-addressed return card. The notice shall state that:

(1) if the voter did not change residency, the voter should return the card no later than twenty-eight days before the next general election;

(2) if the voter does not return the card, the voter may be provided an opportunity to update the voter's registration address before the voter casts a ballot in any election during the period beginning on the date of the notice and ending on the day after the second general election that occurs after the date of the notice;

(3) if the voter does not vote in any election during the period beginning on the date of that notice and ending on the day after the second general election that occurs after the date of the notice, the voter's registration may be canceled;

(4) if the voter has changed residence within the same county, the voter should complete the place on the return card for the voter to indicate the address of the new residence and a request to have the voter's registration moved to that address in the same county; and

(5) if the voter has changed residence outside of the county, the voter should follow the information provided concerning how the voter can continue to be eligible to vote.

D. The county clerk shall correct the official list of eligible voters in accordance with change of residence information obtained on the prepaid and pre-addressed return card to a new address in the same county, and such names shall not be removed from the list of eligible voters for reason of change of residence.

E. No later than the fifteenth day of March following a general election, the board of registration shall review the list of eligible voters. The board of registration shall direct the county clerk to cancel the registration of any voter who has been sent notice in conformance with this section and who:

(1) has failed to respond to the notice sent in conformance with this section and has not voted or appeared to vote in any election during the period beginning on the date of the notice and ending on the day after the second general election that occurs after the date of the notice; or

(2) has confirmed in writing that the voter has changed residence to a place outside the county."

## **Chapter 137 Section 37 Laws 2011**

SECTION 37. Section 1-4-30 NMSA 1978 (being Laws 1969, Chapter 240, Section 86, as amended by Laws 1993, Chapter 314, Section 26 and also by Laws 1993, Chapter 316, Section 26) is amended to read:

"1-4-30. CANCELLATION OF REGISTRATION--VOTER'S REQUEST.--

A. The county clerk shall cancel a certificate of registration upon the request of a voter only for the following reasons:

(1) when the voter changes the voter's registered residence address to another county within the state;

(2) when the voter moves to another state; and

(3) upon the written request of the voter.

B. A written request by a voter to cancel the voter's registration shall be in writing and subscribed before a registration officer or a person authorized to administer oaths or on a form prescribed by the secretary of state.

C. The voter's certificate of registration shall be deemed canceled upon receipt by the county clerk of the request when the request is for the reasons specified in Subsection A of this section."

## **Chapter 137 Section 38 Laws 2011**

SECTION 38. Section 1-4-50 NMSA 1978 (being Laws 2007, Chapter 337, Section 1) is amended to read:

"1-4-50. PROHIBITION ON RELEASE OF REGISTRATION INFORMATION.-- The secretary of state, county clerk or any other registration agent shall not release to the public a voter's social security number or a voter's month and day of birth, and no person shall release to the public or share that information with someone other than a registration officer if the person learned of that information from the voter's certificate of registration."

## **Chapter 137 Section 39 Laws 2011**

SECTION 39. Section 1-6-4 NMSA 1978 (being Laws 1969, Chapter 240, Section 130, as amended) is amended to read:

"1-6-4. ABSENTEE BALLOT APPLICATION--FEDERAL QUALIFIED ELECTOR--OVERSEAS VOTER.--

A. Application by a federal qualified elector or an overseas voter for an absentee ballot shall be made on the official postcard form prescribed or authorized by the federal government to the county clerk of the county of the applicant's residence. The form shall allow the applicant to receive an absentee ballot for all elections within an election cycle.

B. Application by a voter for an absentee ballot shall be made only on a form prescribed by the secretary of state in accordance with federal law. The form shall

identify the applicant and contain information to establish the applicant's qualification for issuance of an absentee ballot under the Absent Voter Act; provided that on the application form for a general election ballot there shall be no box, space or place provided for designation of the voter's political party affiliation.

C. Each application for an absentee ballot shall be signed by the applicant and shall require the applicant's printed name, registration address and year of birth to be supplied by the applicant, which shall constitute the required form of identification, except for new registrants who have registered by mail and at that time did not provide acceptable identification. The secretary of state shall issue rules to exempt voters from submitting identification only as required by federal law and shall review and, if necessary, update these rules no later than March 15 of even-numbered years.

D. An application for an absentee ballot by a federal qualified elector or an overseas voter shall be accepted at any time preceding the general election.

E. A person who willfully and with knowledge and intent to deceive or mislead any voter, precinct board, canvassing board, county clerk or other election official and who falsifies any information on an absentee ballot request form or who affixes a signature or mark other than the person's own on an absentee ballot request form is guilty of a fourth degree felony."

## **Chapter 137 Section 40 Laws 2011**

SECTION 40. 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. 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. 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. 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. The additional alternate voting location shall be operated by the county clerk and the county clerk's staff.

G. When marking an absentee ballot in person at the county clerk's office, 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 voter identification, the voter, after subscribing an application for an absentee

ballot, shall be allowed to vote by inserting the ballot into an optical scan tabulator certified for in-person absentee voting at the county clerk's office. The county clerk or the clerk's authorized representative shall make an appropriate designation indicating that the voter has voted absentee. In marking the absentee ballot, the voter may be assisted pursuant to the provisions of Section 1-12-15 NMSA 1978.

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.

L. It is unlawful to electioneer in the county clerk's office or in any alternate voting location."

## **Chapter 137 Section 41 Laws 2011**

SECTION 41. 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 county clerk shall:

A. ensure that voters have adequate access to alternate voting locations for early voting in the 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 voting locations in those precincts having a majority of qualified electors who are part of a recognized language minority; and

D. based on rules adopted by the secretary of state, 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 137 Section 42 Laws 2011

SECTION 42. Section 1-6-5.7 NMSA 1978 (being Laws 2005, Chapter 270, Section 40, as amended) 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. Early voting shall be conducted in each office of the county clerk and at such alternate voting locations as may be established by the county clerk, provided that the county clerk shall establish:

(1) in counties with more than ten thousand voters, not fewer than one alternate voting location;

(2) in counties with more than fifty thousand voters, not fewer than four alternate voting locations; and

(3) in counties with more than two hundred fifty thousand voters, not fewer than fifteen alternate voting locations.

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 pre-printed ballots or for storage of a paper ballot stock and a system designed to print ballots at a polling location; 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 on a form approved by the secretary of state. The county clerk or the clerk's authorized representative shall make an appropriate designation on the signature roster or register next to the voter's name indicating that the voter has voted early."

## **Chapter 137 Section 43 Laws 2011**

SECTION 43. Section 1-6-9.2 NMSA 1978 (being Laws 1999, Chapter 267, Section 1) is amended to read:

### **"1-6-9.2. PREPARATION OF ELECTRONIC VOTING MACHINES.--**

A. Beginning ten days before an electronic voting machine is issued for absentee voting, the county clerk may begin to prepare, inspect and seal the voting machine in accordance with Section 1-11-6 NMSA 1978.

B. At least one day before an electronic voting machine is used for absentee voting, the county clerk shall certify to the secretary of state and the county chair of each political party represented on the ballot the type and serial number of each voting machine to be used."

## **Chapter 137 Section 44 Laws 2011**

SECTION 44. Section 1-6-10 NMSA 1978 (being Laws 1969, Chapter 240, Section 136, as amended) is amended to read:

### **"1-6-10. RECEIPT OF ABSENTEE BALLOTS BY CLERK.--**

A. The county clerk shall mark on each completed official mailing envelope the date and time of receipt in the clerk's office, record this information in the

absentee ballot register and safely keep the official mailing envelope unopened in a locked and number-sealed ballot box until it is delivered to the absent voter precinct board or until it is canceled and destroyed in accordance with law.

B. Completed official mailing envelopes shall be accepted until 7:00 p.m. on election day. Any completed official mailing envelope received after that time shall not be delivered to the absent voter precinct board but shall be preserved by the county clerk until the time for election contests has expired. In the absence of a restraining order after expiration of the time for election contests, the county clerk shall destroy all late official mailing envelopes without opening or permitting the contents to be examined, cast, counted or canvassed. Before their destruction, the county clerk shall count the numbers of late ballots from voters, overseas voters and federal qualified electors and report the number from each category to the secretary of state.

C. No later than 5:00 p.m. on the Monday immediately preceding the date of election, the county clerk shall record the numbers of unused ballots and shall publicly destroy in the county clerk's office all such unused ballots or prepare the unused ballots for delivery to precinct boards. The county clerk shall execute a certificate of destruction, which shall include the numbers on the ballots destroyed. A copy of the certificate of destruction shall be sent to the secretary of state."

## **Chapter 137 Section 45 Laws 2011**

SECTION 45. 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 judge or election clerk shall enter the voter's name in the signature rosters or register and shall write the notation "Rejected--Missing Signature" in the "Notations" column of the signature rosters or register. 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 view 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 by someone other than the voter prior to being received by the absent voter precinct board;

(2) the official mailing envelope does not contain a signature; or

(3) the person offering to vote is not a voter as provided in the Election Code.

D. If a challenge is upheld by unanimous vote of the presiding judge and the election judges, the official mailing envelope shall not be opened but shall be placed in an envelope provided for challenged ballots. If the reason for the challenge is satisfied by the voter before the conclusion of the county canvass, the official mailing envelope shall be opened and the vote counted. The same procedure shall be followed in canvassing and determining the validity of challenged absentee ballots as with other challenged ballots.

E. If the official mailing envelope has been properly subscribed and the voter has not been challenged:

(1) the judges or 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 or register; 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.

F. 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.

G. Absentee ballots shall be counted and tallied, where possible, on an electronic voting machine as provided in the Election Code.

H. 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.

I. If an absentee ballot does not contain the identification required pursuant to Subsection D of Section 1-6-5 NMSA 1978, it shall be handled as a provisional paper ballot in accordance with the Election Code."

## **Chapter 137 Section 46 Laws 2011**

SECTION 46. Section 1-6-16 NMSA 1978 (being Laws 1969, Chapter 240, Section 141, as amended) is amended to read:

"1-6-16. CASTING BALLOT IN PERSON PROHIBITED.--

A. No person who has been issued an absentee ballot shall vote in person other than on a replacement absentee ballot.

B. At any time prior to 5:00 p.m. on the Monday immediately preceding the date of the election, a person whose absentee ballot application has been accepted and who was mailed an absentee ballot but who has not received the absentee ballot may execute, in the office of the county clerk or at an alternate voting location in the county where the voter is registered to vote, during operational hours, a sworn affidavit stating that the person did not receive or vote the absentee ballot. Upon receipt of the sworn affidavit, the county clerk shall issue the voter a replacement absentee ballot.

C. Replacement absentee ballots shall be delivered to the absent voter precinct board for tabulation and shall not be placed in a voting system for tabulation of votes cast at the office of the county clerk or at an alternate voting location.

D. The secretary of state shall prescribe the form of the affidavit and the manner in which the county clerk shall void the first ballot mailed to the applicant."

## **Chapter 137 Section 47 Laws 2011**

SECTION 47. Section 1-6-22.1 NMSA 1978 (being Laws 2009, Chapter 251, Section 1 and Laws 2009, Chapter 274, Section 1) is amended to read:

"1-6-22.1. MAIL BALLOT ELECTION PRECINCT--ABSENTEE VOTING IN LIEU OF POLLING PLACE.--

A. Notwithstanding the provisions of Sections 1-1-11 and 1-1-12 NMSA 1978, not later than the first Monday in November of each odd-numbered year a board of county commissioners may designate a precinct as a mail ballot election precinct if, upon a written request of the county clerk, it finds that the precinct has fewer than one hundred voters and the nearest polling place for an adjoining precinct is more than twenty miles driving distance from the boundary for the precinct in question.

B. If a precinct is designated a mail ballot election precinct, in addition to the notice required pursuant to Section 1-3-8 NMSA 1978, the county clerk shall notify by registered mail all voters in that precinct at least forty-two days before an election that each voter will be sent an absentee ballot twenty-eight days before the election and that there will be no polling place for the precinct on election day. The county clerk shall include in the notice a card informing the voter that if the voter does not want to receive an absentee ballot, 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 137 Section 48 Laws 2011**

SECTION 48. Section 1-1-9 NMSA 1978 (being Laws 1969, Chapter 240, Section 8, as amended) is recompiled as part of Chapter 1, Article 7 NMSA 1978 and is amended to read:

"MAJOR POLITICAL PARTY--MINOR POLITICAL PARTY.--As used in the Election Code:

A. "major political party" means any qualified political party, any of whose candidates received as many as five percent of the total number of votes cast at the last preceding general election for the office of governor or president of the United States, as the case may be, and whose membership totals not less than one-third of one percent of the statewide registered voter file on the day of the governor's primary election proclamation; and

B. "minor political party" means any qualified political party that is not qualified as a major political party pursuant to Subsection A of this section."

## **Chapter 137 Section 49 Laws 2011**

SECTION 49. Section 1-7-2 NMSA 1978 (being Laws 1969, Chapter 240, Section 145, as amended) is amended to read:

"1-7-2. QUALIFICATION--REMOVAL--REQUALIFICATION.--

A. To qualify as a political party in New Mexico, each political party through its governing body shall adopt rules providing for the organization and government of that party and shall file the rules with the secretary of state. Uniform rules shall be adopted throughout the state by the county organizations of that party, where a county organization exists, and shall be filed with the county clerks. At the same time the rules are filed with the secretary of state, the governing body of the political party

shall also file with the secretary of state a petition containing the hand-printed names, signatures, addresses of registration and counties of residence of at least one-half of one percent of the total votes cast for the office of governor at the preceding general election who declare by their signatures on the petition that they are voters of

New Mexico and that they desire the party to be a qualified political party in New Mexico. Blank petition forms shall be available at any time from the secretary of state.

B. Each county political party organization may adopt supplementary rules insofar as they do not conflict with the uniform state rules or do not abridge the lawful political rights of any person. Such supplementary rules shall be filed with the county clerk and the secretary of state in the same manner as other rules are filed.

C. A qualified political party shall cease to be qualified for the purposes of the Election Code if two successive general elections are held without at least one of the party's candidates on the ballot or if the total votes cast for the party's candidates for governor or president of the United States, provided that the party has a candidate seeking election to either of these offices, in a general election do not equal at least one-half of one percent of the total votes cast for the office of governor or president of the United States, as applicable. No later than March 15 of an odd-numbered year, the secretary of state shall send notice of nonqualification to the state chair of any political party that fails to remain qualified. The notice shall be delivered by registered mail to the last known address of the state chair of the political party, and a copy shall be kept in the secretary of state's file of parties qualified in New Mexico.

D. The secretary of state shall then notify all county clerks of the removal and nonqualification of the political party and shall post the notice on the web site maintained by the secretary of state. The secretary of state shall within forty-five days notify by mail all voters registered as members of such party of the removal and nonqualification of the party.

E. To requalify, the party shall again comply with the provisions of the Election Code dealing with filing requirements for political parties."

## **Chapter 137 Section 50 Laws 2011**

SECTION 50. Section 1-8-4 NMSA 1978 (being Laws 1969, Chapter 240, Section 154, as amended) is amended to read:

"1-8-4. SECRETARY OF STATE--CERTIFICATION OF NOMINEES--MINOR POLITICAL PARTY.--Upon receipt of certificates of nomination of any minor political party, and no later than 5:00 p.m. on the thirty-fifth day following the filing date, the secretary of state shall:

A. determine whether the method of nomination used by the certifying political party complies with the current rules of that party on file in the secretary of state's office;

B. determine whether all the requirements of Sections 1-8-1 through 1-8-3 NMSA 1978 have been complied with and that the petition and list of signatures and addresses of voters are valid and comply with law; and

C. if such determinations are answered in the affirmative, within forty-two days following the filing date certify the names of each minor party's nominees as candidates for the office for which each is nominated to each county clerk in the state."

## **Chapter 137 Section 51 Laws 2011**

SECTION 51. Section 1-8-8 NMSA 1978 (being Laws 1969, Chapter 240, Section 158, as amended) is amended to read:

"1-8-8. VACANCY ON GENERAL ELECTION BALLOT--OCCURRING AFTER PRIMARY.--

A. If after a primary election a vacancy occurs, for any cause, in the list of the nominees of a qualified political party for any public office to be filled in the general election, or a vacancy occurs because of the resignation or death of a person holding a public office not included in the governor's proclamation and which office is required by law to be filled at the next succeeding general election, or a vacancy occurs because a new public office is created and was not included in the governor's proclamation but is capable by law of being filled at the next succeeding general election, the vacancy on the general election ballot may be filled by:

(1) the central committee of the state political party filing the name of its nominee for the office with the proper filing officer when the office is a federal office, state office, district office or multicounty legislative district office; and

(2) the central committee of the county political party filing the name of its nominee for the office with the proper filing officer when the office is a magistrate office, county office or legislative district office where the district is entirely within the boundaries of a single county.

B. Appointments made pursuant to Subsection A of this section shall qualify pursuant to Section 1-8-18 NMSA 1978.

C. Appointments to fill vacancies in the list of a party's nominees shall be made and filed at least fifty-six days prior to the general election.



D. When the name of a nominee is filed as provided in this section, the name shall be placed on the general election ballot as the party's candidate for that office."

### **Chapter 137 Section 52 Laws 2011**

SECTION 52. Section 1-8-9 NMSA 1978 (being Laws 1975, Chapter 255, Section 104, as amended) is amended to read:

"1-8-9. GENERAL ELECTION--WITHDRAWAL OF CANDIDATES.--No candidate shall withdraw from a general election unless the candidate withdraws at least sixty-three days prior to that election and the candidate files a signed and notarized statement of withdrawal with the proper filing officer."

### **Chapter 137 Section 53 Laws 2011**

SECTION 53. Section 1-8-11 NMSA 1978 (being Laws 1969, Chapter 240, Section 160) is amended to read:

"1-8-11. PRIMARY ELECTION LAW--TIME OF HOLDING PRIMARY.--A primary election shall be held in each county in this state on the first Tuesday after the first Monday in June of each even-numbered year."

### **Chapter 137 Section 54 Laws 2011**

SECTION 54. Section 1-8-16 NMSA 1978 (being Laws 1969, Chapter 240, Section 165, as amended) is amended to read:

"1-8-16. PRIMARY ELECTION LAW--PROCLAMATION--AMENDMENT.--The governor may amend the proclamation between the time of its issuance and the first Tuesday in March to include a newly created public office that is capable by law of being filled at the next succeeding general election, or any existing office becoming vacant by removal, resignation or death, or to provide for any corrections or omissions."

### **Chapter 137 Section 55 Laws 2011**

SECTION 55. Section 1-8-25 NMSA 1978 (being Laws 1969, Chapter 240, Section 170, as amended) is amended to read:

"1-8-25. PROPER FILING OFFICER--DECLARATION OF CANDIDACY--NOMINATING PETITIONS--WITHDRAWAL OF CANDIDACY.--For the purposes of Chapter 1, Articles 8 and 12 NMSA 1978, the proper filing officer is:

A. the secretary of state for the offices of:

- (1) United States senator;
- (2) United States representative;
- (3) all state elective offices;
- (4) legislative offices elected from multicounty districts;
- (5) all public regulation commission districts;
- (6) all elective judicial offices in the judicial department, except magistrates; and
- (7) all offices representing a district composed of more than one county; and

B. the county clerk for the offices of:

- (1) all elective county offices;
- (2) magistrates; and
- (3) legislative offices elected from a district located wholly within one county or that is composed of only one county."

## **Chapter 137 Section 56 Laws 2011**

SECTION 56. 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 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 to be nominated in the primary election 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. Declarations of candidacy for retention for all affected judicial offices shall be filed with the proper filing officer between the hours of 9:00 a.m. and 5:00 p.m. on the twenty-first day after the primary election.

E. 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.

F. 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. The decision of the district court may be appealed to the supreme court within five days after the decision is rendered. The supreme court shall hear and render a decision on the appeal forthwith."

## **Chapter 137 Section 57 Laws 2011**

SECTION 57. Section 1-8-30 NMSA 1978 (being Laws 1973, Chapter 228, Section 4, as amended) is amended to read:

"1-8-30. PRIMARY ELECTION LAW--DECLARATION OF CANDIDACY--  
NOMINATING PETITION--FILING AND FORM.--

A. As used in the Primary Election Law, "nominating petition" means the authorized form used for obtaining the required number of signatures of voters, which is signed on behalf of the person wishing to become a candidate for a political office in the primary election requiring a nominating petition.

B. In making a declaration of candidacy, the candidate at the same time shall file a nominating petition, which shall be on the form prescribed by law.

C. The nominating petition shall be on paper approximately eight and one-half inches wide and eleven inches long with numbered lines for signatures spaced approximately three-eighths of an inch apart and shall be in the following form:

### "NOMINATING PETITION

I, the undersigned, a registered voter of New Mexico, and a member of the \_\_\_\_\_ party, hereby nominate \_\_\_\_\_, who resides at \_\_\_\_\_ in the county of \_\_\_\_\_, New Mexico, for the party nomination for the office of \_\_\_\_\_, to be voted for at the primary election to be held on \_\_\_\_\_, and I declare that I am a registered voter of the state,

district, county or area to be represented by the office for which the person being nominated is a candidate. I also declare that I have not signed, and will not sign, any nominating petition for more persons than the number of candidates necessary to fill such office at the next ensuing general election.

1. \_\_\_\_\_

(usual (name printed (address as (city or  
signature) as registered) registered) zip code)

2. \_\_\_\_\_

(usual (name printed (address as (city or  
signature) as registered) registered) zip code).".

D. In October of odd-numbered years, the secretary of state shall post on the secretary of state's web site and shall furnish to each county clerk a sample of a nominating petition form, a copy of which shall be made available by the county clerk upon request of any candidate.

E. When more than one sheet is required for a petition, each of the sheets shall be in the form prescribed by this section and all sheets shall be firmly secured by a staple or other suitable fastening."

## **Chapter 137 Section 58 Laws 2011**

SECTION 58. Section 1-8-31 NMSA 1978 (being Laws 1973, Chapter 228, Section 5, as amended) is amended to read:

"1-8-31. PRIMARY ELECTION LAW--NOMINATING PETITION--SIGNATURES TO BE COUNTED.--

A. A person who signs a nominating petition shall sign only one petition for the same office unless more than one candidate is to be elected to that office, and in that case, a person may sign not more than the number of nominating petitions equal to the number of candidates to be elected to the office.

B. A person who signs a nominating petition shall indicate the person's registration address. If the person does not have a standard street address, the person may provide the mailing address as shown on the person's certificate of registration.

C. A signature shall be counted on a nominating petition unless there is evidence presented that the person signing:

(1) was not a registered member of the candidate's political party ten days prior to the filing of the nominating petition;

(2) failed to provide information required by the nominating petition;

(3) is not a voter of the state, district, county or area to be represented by the office for which the person seeking the nomination is a candidate;

(4) has signed more than one petition for the same office, except as provided in Subsection A of this section, or has signed one petition more than once;

(5) is not of the same political party as the candidate named in the nominating petition as shown by the signer's certificate of registration; or

(6) is not the person whose name appears on the nominating petition.

D. The following information shall be listed in the appropriate space at the top of the nominating petition before the petition has been signed by any voter: the party affiliation of voters signing the petition, the candidate's name, the candidate's address, the candidate's county of residence and the office sought by the candidate, which shall include the district or division of the office sought, if applicable. A nominating petition, including all signatures on the petition page, shall be invalid if any of the preceding information is not listed before the petition is signed by a voter or if any of the preceding information is altered.

E. The procedures set forth in this section shall be used to validate signatures on any petition required by the Election Code, except that Paragraphs (1) and (5) of Subsection C of this section shall not apply to petitions filed by unaffiliated candidates or petitions filed by candidates of minor political parties."

## **Chapter 137 Section 59 Laws 2011**

SECTION 59. 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 between 9:00 a.m. and 5:00 p.m. on the third 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 pre-printed stickers or labels."

## **Chapter 137 Section 60 Laws 2011**

SECTION 60. Section 1-8-41 NMSA 1978 (being Laws 1973, Chapter 228, Section 11, as amended) is amended to read:

"1-8-41. PRIMARY ELECTION LAW--FILING FEE.--The filing fee in the primary election for any county office shall be fifty dollars (\$50.00), which shall be paid at the time of the filing of the declaration of candidacy for nomination by a political party."

## **Chapter 137 Section 61 Laws 2011**

SECTION 61. Section 1-8-44 NMSA 1978 (being Laws 1969, Chapter 240, Section 182, as amended) is amended to read:

"1-8-44. PRIMARY ELECTION LAW--WITHDRAWAL OF CANDIDATES.--A candidate seeking to withdraw from a primary election shall withdraw no later than the first Tuesday in April before that primary election by filing a signed and notarized statement of withdrawal with the proper filing officer."

## **Chapter 137 Section 62 Laws 2011**

SECTION 62. Section 1-8-45 NMSA 1978 (being Laws 1977, Chapter 322, Section 1, as amended by Laws 1993, Chapter 314, Section 49 and also by Laws 1993, Chapter 316, Section 49) is amended to read:

"1-8-45. INDEPENDENT CANDIDATES FOR GENERAL OR UNITED STATES REPRESENTATIVE SPECIAL ELECTIONS--DEFINITION.--

A. As used in the Election Code, an independent candidate means a person who:

(1) is a candidate for any state or county office to be voted on at a general election:

(a) whose certificate of voter registration shows affiliation with no qualified political party on the date of the governor's proclamation for the primary election and, if applicable, shows residence on the date of the governor's proclamation for the primary election in the district or county of the office for which the person is a candidate; and

(b) who has complied with the nomination procedures set forth in the Election Code for independent candidates;

(2) is a candidate for United States senator or United States representative:

(a) whose certificate of voter registration, if any, shows affiliation with no qualified political party on the date of the governor's proclamation for the primary election;

(b) who will be a resident of New Mexico when elected; and

(c) who has complied with the nomination procedures set forth in the Election Code for independent candidates; or

(3) is a candidate for the office of president or vice president who:

(a) has complied with the nomination procedures set forth in the Election Code for independent candidates; and

(b) was not a major party candidate for the same office on the primary election ballot.

B. No person shall become an independent candidate for any office, and the person's name shall not be printed on the general election ballot, unless the person complies with the requirements of this section.

C. Any voter may challenge the candidacy of any person seeking to become an independent candidate for any office for the reason that the person does not meet the requirements of this section or because the nominating petitions, if required, do not meet the requirements of Section 1-8-31 NMSA 1978 by filing a petition in the district court within ten days after the last day for filing a declaration of candidacy. The district court shall hear and render a decision on the matter within ten days after the filing of the petition. The decision of the district court may be appealed to the supreme court within five days after the decision is rendered. The supreme court shall hear and render a decision on the appeal forthwith."

## **Chapter 137 Section 63 Laws 2011**

SECTION 63. Section 1-8-48 NMSA 1978 (being Laws 1977, Chapter 322, Section 4, as amended) is amended to read:

"1-8-48. INDEPENDENT CANDIDATES FOR GENERAL OR UNITED STATES REPRESENTATIVE SPECIAL ELECTIONS--DECLARATION OF INDEPENDENT CANDIDACY AND NOMINATING PETITION.--

A. Nomination as an independent candidate shall be made by filing a declaration of independent candidacy and a nominating petition with the proper filing officer.

B. In making a declaration of independent candidacy, the candidate for an office other than that of president or vice president shall submit a sworn statement in the following form:

"DECLARATION OF INDEPENDENT CANDIDACY

I, \_\_\_\_\_ (candidate's name), being first duly sworn, say that:

I reside at \_\_\_\_\_;



I did not designate any current affiliation with a qualified political party on my certificate of registration on or before the date of issuance of the governor's proclamation for the primary election in the year of the general election at which I seek to be a candidate;

I meet the qualifications listed in Section  
1-8-45 NMSA 1978 for the office that I seek;

I desire to become a candidate for the office of \_\_\_\_\_, District \_\_\_\_\_

at the general election to be held on the date set  
by law for this year;

if the office I seek be a state or county district office, I actually reside within the district of the office for which I declare my candidacy, and if the office I seek be a countywide office, I actually reside in the county of the office for which I declare my candidacy;

I will be eligible and legally qualified to hold this office at the beginning of its term;

if a candidate for any office for which a nominating petition is required, I am submitting with this statement a nominating petition in the form and manner as prescribed by the Election Code; and

I make the foregoing affidavit under oath or affirmation knowing that any false statement herein constitutes a felony punishable under the criminal laws of New Mexico.

\_\_\_\_\_

(Declarant)

\_\_\_\_\_

(Residence Address)

\_\_\_\_\_

(Mailing Address, if different)

Subscribed and sworn to or affirmed before me          this \_\_\_\_\_ day of  
\_\_\_\_\_, \_\_\_\_\_.

(month) (year)

\_\_\_\_\_

(Notary Public)

My commission expires:

\_\_\_\_\_".

C. The secretary of state shall prescribe and furnish the form for the declaration of independent candidacy for the office of president and vice president."

### **Chapter 137 Section 64 Laws 2011**

SECTION 64. Section 1-8-50 NMSA 1978 (being Laws 1977, Chapter 322, Section 6, as amended) is amended to read:

"1-8-50. INDEPENDENT CANDIDATES FOR GENERAL OR UNITED STATES REPRESENTATIVE SPECIAL ELECTIONS--NOMINATING PETITION FORM.--

A. As used in Sections 1-8-45 through 1-8-52 NMSA 1978, "nominating petition" means the authorized form used for obtaining the required number of signatures of voters that is signed on behalf of the person wishing to become an independent candidate for a political office in a general or United States representative special election requiring a nominating petition.

B. In making a declaration of candidacy, the candidate shall file a nominating petition at the same time, which shall be on forms prescribed by law.

C. The nominating petition for an independent candidate for any office except president of the United States shall be on paper approximately eight and one-half inches wide and eleven inches long with numbered lines for signatures spaced approximately three-eighths of an inch apart and shall be in the following form:

#### "NOMINATING PETITION FOR INDEPENDENT CANDIDACY

I, the undersigned, a registered voter of

New Mexico, hereby nominate \_\_\_\_\_, who resides  
at \_\_\_\_\_ in the county

of \_\_\_\_\_, New Mexico, as an independent candidate for the office of  
\_\_\_\_\_.

to be voted for at the general election, or United States representative special election to be held on \_\_\_\_\_, \_\_\_\_\_

(month) (day) (year)

and I declare that I am a registered voter of the state, district, county or area to be represented by the office for which the person being nominated is a candidate. I also declare that I have not signed, and will not sign, any nominating petition for more persons than the number of candidates necessary to fill the office at the next ensuing general election or at a United States representative special election.

1. \_\_\_\_\_

(usual (name printed (address as (city or zip  
signature) as registered) registered code)

2. \_\_\_\_\_

(usual (name printed (address as (city or zip  
signature) as registered) registered code)."

D. The nominating petition for an independent candidate for the office of president of the United States shall be on paper approximately eight and one-half inches wide and eleven inches long with numbered lines for signatures spaced approximately three-eighths of an inch apart and shall be in the following form:

"NOMINATING PETITION FOR INDEPENDENT CANDIDACY  
FOR THE OFFICE OF PRESIDENT OF THE UNITED STATES

I, the undersigned, a registered voter of New Mexico, by endorsement hereon, petition that the name of \_\_\_\_\_ be printed on the general election ballot as an independent candidate for the office of president of the United States, to be voted on at the general election to be held on November \_\_\_\_\_, \_\_\_\_\_. I also declare that I am that person whose name appears hereon and that I have not signed, nor will I sign, any nominating petition for any other candidate seeking the office of president of the United States at the next ensuing general election."

E. In March of even-numbered years, the secretary of state shall post on the secretary of state's web site and shall furnish to each county clerk a sample of the nominating petition form, a copy of which shall be made available by the county clerk upon request of any candidate as provided by the Election Code.

F. When more than one sheet is required for a petition, each of the sheets shall be in the form prescribed by this section, and all sheets shall be firmly secured by a staple or other suitable fastening."

## **Chapter 137 Section 65 Laws 2011**

SECTION 65. Section 1-8-52 NMSA 1978 (being Laws 1977, Chapter 322, Section 8, as amended) is amended to read:

"1-8-52. INDEPENDENT CANDIDATES FOR GENERAL OR UNITED STATES REPRESENTATIVE SPECIAL ELECTIONS--NOMINATING PETITIONS--CIRCULATION--DATE OF FILING.--

A. Declarations of independent candidacy and nominating petitions shall be filed with the proper filing officer between 9:00 a.m. and 5:00 p.m. on the twenty-first day following the primary election of each even-numbered year and between 9:00 a.m. and 5:00 p.m. on the fifty-sixth day preceding any United States representative special election.

B. Declarations of independent candidacy and nominating petitions for the office of president of the United States shall be filed with the proper filing officer between 9:00 a.m. and 5:00 p.m. on the twenty-first day following the primary election."

## **Chapter 137 Section 66 Laws 2011**

SECTION 66. A new section of Chapter 1, Article 9 NMSA 1978 is enacted to read:

"SYSTEMS DESIGNED TO PRINT BALLOTS AT POLLING LOCATIONS--BALLOT PREPARATION REQUIREMENTS.--Systems designed to print ballots at polling locations shall provide the general capabilities for ballot preparation and shall be capable of:

A. enabling the automatic formatting of ballots in accordance with the requirements of the Election Code, as amended from time to time, for offices, candidates and questions qualified to be placed on the ballot for each political subdivision and election district;

B. supporting the maximum number of potentially active voting positions;

C. generating ballots for a primary election that segregate the choices in partisan contests by party affiliation;

D. generating ballots that contain identifying codes or marks uniquely associated with each format;

- E. ensuring that voting response fields properly align with the specific candidate names or questions printed on the ballot;
- F. generating ballots that can be tabulated by all certified voting systems in the state;
- G. generating a ballot for an individual voter based on voter registration data provided by state or county;
- H. functionality in absentee, early and election day voting environments;
- I. providing absentee ballot tracking ability;
- J. uniform allocation of space and fonts used for each office, candidate and question such that the voter perceives no active voting position to be preferred to any other;
- K. rendering the ballot in any of the written languages required by the federal Voting Rights Act of 1965, as amended;
- L. conformity with optical scan vote tabulator vendor specifications for type of paper stock, weight, size and shape; size and location of voting positions used to record votes; folding; bleed-through; and ink for printing; and
- M. interfacing with the statewide voter file for the exchange of data."

## **Chapter 137 Section 67 Laws 2011**

SECTION 67. A new section of Chapter 1, Article 9 NMSA 1978 is enacted to read:

"SYSTEMS DESIGNED TO PRINT BALLOTS AT POLLING LOCATIONS-- SECURITY REQUIREMENTS.--Systems designed to print ballots at polling locations shall provide the security capabilities for ballot preparation and shall be capable of:

- A. providing a full audit trail of individual voter activity;
- B. providing full ballot production audit logs for all activity, including absentee voting by mail, in-person absentee voting, early voting, provisional voting and spoiling ballots;
- C. creation and preservation of an audit trail of every ballot issued, including during a period of interrupted communication in the event of loss of network connectivity;

D. suitable security passwords at user, administrator and management levels;

E. preventing the modification of ballot formatting by polling place users; and

F. retaining full functionality and capability of printing ballots during a period of interrupted communication in the event of loss of network connectivity."

## **Chapter 137 Section 68 Laws 2011**

SECTION 68. A new section of Chapter 1, Article 9 NMSA 1978 is enacted to read:

"SYSTEMS DESIGNED TO PRINT BALLOTS AT POLLING LOCATIONS--  
HARDWARE, SOFTWARE AND USABILITY REQUIREMENTS.--Systems designed to print ballots at polling locations shall:

A. provide hardware requirements that:

(1) shall be networkable and scalable for multi-user environments;

(2) function without degradation in capabilities after transit to and from the place of use;

(3) function without degradation in capabilities after storage between elections;

(4) function in the natural environment, including variations in temperature, humidity and atmospheric pressure;

(5) function in an induced environment, including proper and improper operation and handling of the system and its components during the election process;

(6) contain prominent instructions as to any special requirements;

(7) have no restrictions on space allowed for installation, except that the arrangement of the system shall not impede the performance of duties by election workers, the orderly flow of voters through the polling place or the ability of voters to vote in private; and

(8) operate with the electrical supply ordinarily found in polling place, nominal one hundred twenty volts alternating current, sixty hertz, single phase;

B. provide software requirements that shall:

(1) be capable of exporting voter data and voter activity status data to state and county voter registration systems;

(2) be capable of generating all required absentee and early voting signature rosters in a state-approved format;

(3) generate daily and to-date activity reports based on user-defined criteria; and

(4) have both single transaction and batch transaction absentee production capability; and

C. be capable of being operated by computer users familiar with a graphical user interface."

## **Chapter 137 Section 69 Laws 2011**

SECTION 69. Section 1-9-1 NMSA 1978 (being Laws 1969, Chapter 240, Section 184, as amended) is amended to read:

"1-9-1. SECRETARY OF STATE--DUTIES--VOTING SYSTEM DEFINED.--

A. The secretary of state shall study, examine and certify all voting systems used in elections for public office in New Mexico. The secretary of state shall maintain a current list of certified voting systems and copies of filed testing and evaluation reports accessible by the public on the secretary of state's web site. Only voting systems certified by the secretary of state and acquired pursuant to a competitive bid process in accordance with the provisions of the Procurement Code shall be used in any election for public office in New Mexico.

B. As used in Chapter 1, Article 9 NMSA 1978, "voting system" means a combination of mechanical, electromechanical or electronic equipment, including the software and firmware required to program and control the equipment, that is used to cast and count votes, and also including any type of system that is designed to print or to mark ballots at a polling location; equipment that is not an integral part of a voting system but that can be used as an adjunct to it is considered to be a component of the system."

## **Chapter 137 Section 70 Laws 2011**

SECTION 70. Section 1-9-7.5 NMSA 1978 (being Laws 2010, Chapter 28, Section 3) is amended to read:

"1-9-7.5. VOTING SYSTEMS--VOTING SYSTEM CERTIFICATION COMMITTEE--MEMBERS.--

A. The "voting system certification committee" is created. The committee shall review written test reports and the findings of the secretary of state on the certification, recertification and decertification of voting systems for use in elections in the state.

B. The voting system certification committee shall be composed of:

(1) the secretary of information technology or the secretary's designee from within the department of information technology; and

(2) four additional members as follows:

(a) one member appointed by the president pro tempore of the senate;

(b) one member appointed by the minority floor leader of the senate;

(c) one member appointed by the speaker of the house of representatives; and

(d) one member appointed by the minority floor leader of the house of representatives.

C. The four additional members appointed pursuant to Paragraph (2) of Subsection B of this section shall be county clerks or their chief deputies or other persons knowledgeable of elections in this state. Members shall be appointed for terms of two years beginning on May 1 of each even-numbered year. Vacancies shall be filled by the original appointing authority.

D. The members of the committee shall select a committee member to serve as chair of the committee. No person who is currently or has been within the previous twelve months an employee or contractor of a voting machine vendor or the office of the secretary of state may serve as a member of the committee. Members of the committee are entitled to receive per diem and mileage as provided in the Per Diem and Mileage Act, to be paid out of the funds appropriated to the secretary of state.

E. All meetings of the voting system certification committee shall be open meetings held in accordance with the Open Meetings Act. All reports and other records that are used, created, received, maintained or held by or on behalf of the voting system certification committee shall be open to public inspection pursuant to the Inspection of Public Records Act."

## **Chapter 137 Section 71 Laws 2011**



SECTION 71. Section 1-10-4 NMSA 1978 (being Laws 1977, Chapter 222, Section 27, as amended) is amended to read:

"1-10-4. BALLOTS--PREPARATION.--

A. Not less than fifty-six days before the primary election, each proper filing officer shall group all candidates for each party by themselves and prepare in writing a separate ballot for each party and certify the candidates for each ballot position to the printer.

B. Not less than fifty-six days before the general election, each proper filing officer shall prepare in writing the ballot containing the name of each candidate that has been certified and filed as the nominee of a party and any constitutional amendments, questions or other propositions that are to be voted on and certify all such information to the ballot printer. A copy of each certification shall be kept on file in the office of the secretary of state.

C. Upon request of the county chair of a political party participating in the election, the county clerk shall furnish proof sheets or a copy of the proof sheets of the ballot as soon as they become available."

### **Chapter 137 Section 72 Laws 2011**

SECTION 72. Section 1-10-5 NMSA 1978 (being Laws 1977, Chapter 222, Section 28, as amended) is amended to read:

"1-10-5. BALLOTS--PRINTING.--The county clerk shall have access to sufficient ballots to send to federal qualified electors and overseas voters no later than the last business day before the forty-fifth day prior to a primary or general election, as required by federal law. All other ballots shall be printed and in the possession of the county clerk at least forty days before the election. When a county is using a system that is designed to print ballots at a polling location, the system shall be programmed and capable of operation at least forty days before the election."

### **Chapter 137 Section 73 Laws 2011**

SECTION 73. Section 1-11-2 NMSA 1978 (being Laws 1969, Chapter 240, Section 212, as amended) is amended to read:

"1-11-2. CONTENTS OF PROCLAMATION.--The proclamation shall:

- A. give notice of the election;
- B. set forth the purpose of the election;
- C. list the offices to be filled;

D. list all properly certified candidates and their party affiliation for each of the offices to be filled;

E. list all properly certified candidates for judicial retention;

F. list all properly declared write-in candidates for each of the offices to be filled;

G. list the names of all precinct board members, the polling location and the precinct, if applicable, to which they are appointed; and

H. give the address or location of each polling place and alternate voting location where the election is to be held."

### **Chapter 137 Section 74 Laws 2011**

SECTION 74. Section 1-11-5 NMSA 1978 (being Laws 1969, Chapter 240, Section 215, as amended) is amended to read:

"1-11-5. VOTING DEVICE--PREPARATION--CERTIFICATION.--Forty-two days before the election, the county clerk may begin to prepare, inspect, certify and seal electronic voting machines that are to be used in the election, and such preparation, inspection, certification and sealing shall continue until all machines are prepared, inspected, certified and sealed."

### **Chapter 137 Section 75 Laws 2011**

SECTION 75. Section 1-11-6 NMSA 1978 (being Laws 1969, Chapter 240, Section 216, as amended) is amended to read:

"1-11-6. VOTING MACHINES--MANNER OF PREPARING.--When preparing, inspecting and sealing voting machines, the county clerk shall:

A. certify to the secretary of state and the county chair of each political party participating in the election the type and serial number of each voting machine intended to be used in each polling location, by precinct number, where applicable;

B. prepare, in the presence of those persons entitled to be present, the electronic voting machines for the election as follows:

(1) all public, candidate and question counters shall be set at zero;

(2) each such counter shall be tested for accuracy by casting votes upon it until it correctly registers each vote cast;

(3) each such counter shall be reset at zero and the voting machine shall be immediately sealed with a numbered metal seal so as to prevent operation of the machine or its registering counters without breaking the seal; and

(4) on the certificate for that voting machine there shall be recorded:

(a) the number on the seal; and

(b) the reading shown on the protective counter; and

C. seal and retain the logic and accuracy test printout, known as the internal audit trail, until it may be disposed of pursuant to Section 1-12-69 NMSA 1978."

### **Chapter 137 Section 76 Laws 2011**

SECTION 76. Section 1-11-6.1 NMSA 1978 (being Laws 1985, Chapter 207, Section 26, as amended) is amended to read:

"1-11-6.1. ELECTRONIC VOTING MACHINES--TESTING.--All programming of vote tabulating machines shall be tested under the supervision of the county clerk. The machines shall be programmed so that votes will be counted in accordance with the specifications for electronic voting machines."

### **Chapter 137 Section 77 Laws 2011**

SECTION 77. Section 1-11-7 NMSA 1978 (being Laws 1969, Chapter 240, Section 217, as amended) is amended to read:

"1-11-7. VOTING MACHINE--CERTIFICATE OF PREPARATION.--Immediately after each electronic voting machine has been prepared for the election, the county clerk shall prepare a written certificate, which shall be filed in the county clerk's office. A copy of the certificate shall be posted on the voting machine, and one copy shall be forwarded to the secretary of state. The certificate shall show the serial number for the voting machine, whether or not the machine has all of its public counters set at zero and whether or not the machine has been tested by voting on each public counter to prove the counter is in perfect condition. The certificate shall also show the number of the seal that has sealed the machine and the number registered on the public counter."

### **Chapter 137 Section 78 Laws 2011**

SECTION 78. Section 1-11-8 NMSA 1978 (being Laws 1969, Chapter 240, Section 218, as amended) is amended to read:

"1-11-8. VOTING MACHINES--NOTICE OF SEALING.--

A. At least three days before preparing any type of voting machine for an election, the county clerk shall send notice to the county chair of each political party having a candidate on the ballot in the election. The notice shall state the times when and places where the voting machines will be prepared.

B. Party and organization representatives, election observers and candidates may be present at the preparation, inspection and sealing of the voting machines to ensure compliance with the Election Code."

## **Chapter 137 Section 79 Laws 2011**

SECTION 79. Section 1-11-13 NMSA 1978 (being Laws 1969, Chapter 240, Section 223) is amended to read:

"1-11-13. INDEX OF VOTERS.--Upon the written request of a qualified political party, a candidate, an election-related organization or an election observer, the secretary of state shall send to the requester an index of all voters and their addresses, their party affiliation, their precinct, their voter history, their unique identifier and their early or absentee voting status in any election currently underway. Each index shall be certified by the secretary of state as being an accurate listing of all voters in each requested county. The written request shall specify whether the information is to be received electronically or on paper, the electronic or physical delivery address, the time period during which the information is to be received, the frequency of receiving the information and the method of payment."

## **Chapter 137 Section 80 Laws 2011**

SECTION 80. Section 1-11-14 NMSA 1978 (being Laws 1969, Chapter 240, Section 224, as amended) is amended to read:

"1-11-14. TALLY SHEETS AND STATEMENTS OF CANVASS--PREPARATION.--Prior to election day, the secretary of state shall cause to be printed in the tally sheets and statements of canvass, in the proper places and under the proper designations, the names of all candidates appearing on the official ballot. The secretary shall approve a county's use of computer-based tally sheets upon recommendation of the voting system certification committee if the county submits the software program to be used for tallying to the secretary of state at least ninety days prior to the election and the voting system certification committee determines that the program is acceptable for the proposed use."

## **Chapter 137 Section 81 Laws 2011**

SECTION 81. Section 1-12-2.1 NMSA 1978 (being Laws 1999, Chapter 236, Section 1) is amended to read:

"1-12-2.1. PRECINCT BOARD WORK SHIFT OPTION.--

A. The county clerk may choose to schedule precinct board members into two work shifts on election day and also may determine the length of each shift for each precinct board member so long as the first shift begins at least one hour before the polls open.

B. If the county clerk chooses to schedule precinct board members in shifts, the presiding judge on each precinct board shall be scheduled to work both shifts that day.

C. The county clerk shall notify the secretary of state of all precincts that will be following a two-shift schedule when the county clerk submits the list of precinct board appointments in accordance with Section 1-2-14 NMSA 1978."

### **Chapter 137 Section 82 Laws 2011**

SECTION 82. Section 1-12-3 NMSA 1978 (being Laws 1977, Chapter 222, Section 36) is amended to read:

"1-12-3. CONDUCT OF ELECTION--PRECINCT BOARD DUTIES.--The secretary of state shall prescribe the duties of the precinct board, including duties that, during the conduct of the election, the presiding judge may reassign between judges and election clerks. Copies of such duties shall be furnished to each county clerk, and the clerk shall distribute them to each precinct."

### **Chapter 137 Section 83 Laws 2011**

SECTION 83. Section 1-12-7.1 NMSA 1978 (being Laws 1969, Chapter 240, Section 112, as amended) is amended to read:

"1-12-7.1. VOTER LISTS--SIGNATURE ROSTERS--CHECKLIST OF VOTERS--USE DURING ELECTION.--

A. Each precinct board using voter lists shall post securely at or near the entrance of the polling place one copy of an alphabetical list of voters for use of the voters prior to voting. The posted copy shall not contain a listing of voter addresses, years of birth, unique identifiers or social security numbers.

B. The presiding judge of the precinct board shall assign one judge or election clerk of the board to be in charge of one copy of the checklist of voters, which shall be used to confirm the registration and voting of each person offering to vote.

C. The presiding judge of the precinct board shall assign one judge or election clerk to be in charge of the signature roster.

D. The judge or election clerk assigned to the checklist of voters used for confirmation of registration and voting shall determine that each person offering to vote

is registered and, in the case of a primary election, that the voter is registered in a party designated on the primary election ballot. If the person's registration is confirmed by the presence of the person's name on the checklist of voters and the voter provides the required voter identification, the judge or election clerk shall announce to the judges or election clerks the list number and the name of the voter as shown on the checklist of voters. If the voter does not provide the required voter identification, the voter shall be allowed to vote on a provisional paper ballot and shall provide the required voter identification to the county clerk's office before 5:00 p.m. on the second day following the election, or to the precinct board before the polls close, or the voter's provisional ballot shall not be qualified. If the required voter identification is provided, the voter's provisional paper ballot shall be qualified and the voter shall not vote on any other type of ballot.

E. The judge or election clerk shall locate that list number and name on the signature roster and shall require the voter to sign the voter's usual signature or, if unable to write, to make the voter's mark opposite the voter's printed name. If the voter makes the voter's mark, it shall be witnessed by one of the judges or election clerks of the precinct board. If the signature roster indicates that the voter is required to present a physical form of identification before voting, the judge or election clerk shall ask the voter for the required physical form of identification. If the voter does not provide the required identification, the voter shall be allowed to vote on a provisional paper ballot; provided, however, that if the voter brings the required physical form of identification to the polling place after casting a provisional paper ballot, that ballot shall be qualified and the voter shall not vote on any other type of ballot.

F. The judge or election clerk shall follow the procedures provided for in Sections 1-12-7.2 and 1-12-8 NMSA 1978 if a person whose name does not appear on the signature roster requests to vote or a person is required to vote on a provisional paper ballot.

G. A voter shall not be permitted to vote until the voter has properly signed the voter's usual signature or made the voter's mark in the signature roster."

## **Chapter 137 Section 84 Laws 2011**

SECTION 84. Section 1-12-7.2 NMSA 1978 (being Laws 1969, Chapter 240, Section 114, as amended) is amended to read:

"1-12-7.2. VOTER WHOSE NAME IS NOT ON LIST OR ROSTER.--

A. A voter whose name does not appear on the voter list and signature roster for the precinct in which the voter offers to vote shall be permitted to vote in the precinct pursuant to the federal National Voter Registration Act of 1993 and Section 1-12-8 NMSA 1978.

B. The judges or election clerks in charge of the signature rosters shall add the voter's name and address in ink to the signature roster on the line immediately following the last entered voter's name and, the voter shall be allowed to sign an affidavit of eligibility and cast a provisional paper ballot, provided the voter has first signed or marked both the signature roster and checklist of registered voters.

C. The provisional paper ballot tracking number for the voter shall be entered on the affidavit of eligibility, the signature roster and the checklist of registered voters.

D. In a primary election, a voter shall not be permitted to vote for a candidate of a party different from the party designation shown on the voter's certificate of registration. Upon making that determination, the county clerk shall transmit the ballot to the county canvassing board to be tallied and included in the canvass of that county for the appropriate precinct."

## **Chapter 137 Section 85 Laws 2011**

SECTION 85. Section 1-12-8 NMSA 1978 (being Laws 1969, Chapter 240, Section 247, as amended) is amended to read:

### "1-12-8. CONDUCT OF ELECTION--PROVISIONAL VOTING.--

A. A person shall be permitted to vote on a provisional paper ballot even though the person's original certificate of registration cannot be found in the county register or even if the person's name does not appear on the signature roster, provided:

(1) the person's residence is within the boundaries of the county in which the person offers to vote;

(2) the person's name is not on the list of persons submitting absentee ballots; and

(3) the person executes a statement swearing or affirming to the best of the person's knowledge that the person is a qualified elector, is currently registered and eligible to vote in that county and has not cast a ballot or voted in that election.

B. A voter shall vote on a provisional paper ballot if the voter:

(1) has not previously voted in a general election in New Mexico or has been purged from the voter list;

(2) registered to vote by mail;

(3) did not submit the physical form of the required voter identification with the certificate of registration form; and

(4) does not present to the election judge a physical form of the required voter identification.

C. A voter shall vote on a provisional paper ballot in accordance with the provisions of Section 1-12-7.1 NMSA 1978 if the voter does not provide the required voter identification to the election judge.

D. A judge or election clerk shall have the voter sign the signature roster and issue the voter a provisional paper ballot, an outer envelope and an official inner envelope. The voter shall vote on the provisional paper ballot in secrecy and, when done, place the ballot in the official inner envelope and place the official inner envelope in the outer envelope and return it to the judge or election clerk. The judge or election clerk shall ensure that the required information is completed on the outer envelope, have the voter sign it in the appropriate place and place it in an envelope designated for provisional paper ballots.

E. Knowingly executing a false statement constitutes perjury as provided in the Criminal Code, and voting on the basis of such falsely executed statement constitutes fraudulent voting."

## **Chapter 137 Section 86 Laws 2011**

SECTION 86. Section 1-12-8.1 NMSA 1978 (being Laws 2005, Chapter 270, Section 62, as amended) is amended to read:

"1-12-8.1. CONDUCT OF ELECTION--USE OF VOTER'S RECEIPT OF CERTIFICATE OF REGISTRATION--PROCEDURES.--If a voter whose name is not in the signature roster presents the voter's receipt of the voter's certificate of registration, the voter shall be allowed to vote on a provisional paper ballot in the proper precinct in accordance with the provisions of Section 1-12-7.1 NMSA 1978. The judge or election clerk shall inform the voter that the voter will be notified by the county clerk to provide a copy of the receipt of the certificate of registration to the county clerk if the original certificate is not located. A note shall be entered on the signature roster indicating that the voter's certificate of registration should be checked by the county clerk. For the purposes of investigation or prosecution, the county clerk shall provide the district attorney and the secretary of state with the person's name and address and the corresponding receipt number of the person's certificate of registration for each person whose certificate of registration is not located."

## **Chapter 137 Section 87 Laws 2011**

SECTION 87. Section 1-12-8.2 NMSA 1978 (being Laws 2005, Chapter 270, Section 60, as amended) is amended to read:



"1-12-8.2. CONDUCT OF ELECTION--ELECTION DAY DELIVERY OF ABSENTEE BALLOT BY VOTER--PROCEDURES.--

A. A voter who requested and received an absentee ballot shall be allowed to deliver the official mailing envelope containing the voter's absentee ballot on election day to any polling location in the county in which the voter is registered if the voter presents the official mailing envelope to the presiding judge before the polls close on election day.

B. The judge shall note that the voter delivered the absentee ballot in person on election day. The official mailing envelope shall not be opened but shall be placed in an envelope provided for delivery to the county clerk. The precinct board shall deliver the unopened official mailing envelopes to the county clerk before midnight on election day.

C. If the unopened official mailing envelope is received by the county clerk from a precinct board before the absent voter precinct board has adjourned, it shall be logged and transmitted to the absent voter precinct board to be tallied immediately. If the unopened mailing envelope is received by the county clerk from a precinct board after the absent voter precinct board has adjourned, it shall be logged and transmitted to the county canvassing board to be tallied and included in the canvass of that county for the appropriate precinct."

## **Chapter 137 Section 88 Laws 2011**

SECTION 88. Section 1-12-10 NMSA 1978 (being Laws 1969, Chapter 240, Section 249, as amended) is amended to read:

"1-12-10. CONDUCT OF ELECTION--VOTER'S NAME, ADDRESS AND SIGNATURE.--

A. A voter at the polls shall announce the voter's name and address in an audible tone of voice. When a judge or election clerk finds the voter's name in the signature roster, the judge or election clerk shall in like manner repeat the name of the voter. The judge or election clerk shall then ask the voter to provide the required voter identification. The voter shall then sign the voter's name or make the voter's mark on the signature line in the copy of the signature roster to be returned to the county clerk. Upon the voter's name or mark being written in the signature roster, a challenge may be interposed as provided in the Election Code.

B. If a voter fails to provide the required voter identification, the voter shall be allowed to vote on a provisional paper ballot."

## **Chapter 137 Section 89 Laws 2011**

SECTION 89. 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 general election shall file with the proper filing officer between 9:00 a.m. and 5:00 p.m. on the twenty-first day after the primary election a declaration of intent to be a write-in candidate. 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 between 9:00 a.m. and 5:00 p.m. on the sixty-third day immediately preceding the election a declaration of intent to be a write-in candidate.

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 more than ten days after the filing date, 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. A write-in candidate for governor or lieutenant governor in the general election shall have a companion write-in candidate, and they shall be candidates to be elected jointly by the casting by a voter of a single vote applicable to both offices.

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 equal to two percent of the total vote in the state, district or county in which the candidate seeks election that were cast for governor in the last preceding general election in which a governor was elected.

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 137 Section 90 Laws 2011**

SECTION 90. Section 1-12-20 NMSA 1978 (being Laws 1969, Chapter 240, Section 273, as amended) is amended to read:

"1-12-20. CONDUCT OF ELECTION--INTERPOSING CHALLENGES.--A challenge may be interposed by a member of the precinct board or by a party challenger for the following reasons:

- A. the person offering to vote is not registered to vote;
- B. the person offering to vote is listed among those persons to whom an absentee ballot was mailed;
- C. the person offering to vote has already cast a ballot in that election;
- D. the person offering to vote is improperly registered because the person is not a qualified elector; or
- E. in the case of a primary election, the person desiring to vote is not affiliated with a political party represented on the ballot."

### **Chapter 137 Section 91 Laws 2011**

SECTION 91. Section 1-12-21 NMSA 1978 (being Laws 1969, Chapter 240, Section 274, as amended) is amended to read:

"1-12-21. CONDUCT OF ELECTION--CHALLENGES--ENTRIES.--When a challenge is interposed, the judges or election clerks shall enter the word "CHALLENGED" under the notation headings in the signature rosters, along with the reason for the challenge, the time the challenge was made and the name and title of the person interposing the challenge."

### **Chapter 137 Section 92 Laws 2011**

SECTION 92. Section 1-12-22 NMSA 1978 (being Laws 1969, Chapter 240, Section 275, as amended) is amended to read:

"1-12-22. CONDUCT OF ELECTION--CHALLENGES--DISPOSITION.--  
Challenges shall be handled as follows:

A. if the challenge is unanimously affirmed by the presiding judge and the two election judges, the person shall be furnished a provisional paper ballot. The election clerks shall enter such voter's name in the checklist of registered voters, and the voter shall sign the voter's name in the signature roster. The word "Affirmed" shall be written opposite such voter's name under the challenge notation in the signature roster and checklist of registered voters, together with the number of the ballot so furnished; or

B. if the challenge is not unanimously affirmed by the presiding judge and the two election judges, the voter shall be allowed to vote, and the election clerks shall enter the words "Not Affirmed" under the challenge notation after the voter's name in the signature roster and the checklist of registered voters."

### **Chapter 137 Section 93 Laws 2011**

SECTION 93. Section 1-12-23 NMSA 1978 (being Laws 1969, Chapter 240, Section 277, as amended) is amended to read:

"1-12-23. CONDUCT OF ELECTION--VOTING MACHINES--INSTRUCTIONS.--  
Before each voter receives a ballot, a member of the precinct board shall, so far as possible, instruct the voter on the voting process and call the voter's attention to the posted sample ballot. If any voter asks for further information before completing the voting process, the judges or election clerks shall provide appropriate information and assist the voter with the voting process."

### **Chapter 137 Section 94 Laws 2011**

SECTION 94. Section 1-12-25.2 NMSA 1978 (being Laws 2003, Chapter 356, Section 3, as amended) is amended to read:

"1-12-25.2. CONDUCT OF ELECTION--PROVISIONAL VOTING--  
INFORMATION TO VOTER--STATUS OF VOTER'S BALLOT.--

A. If a voter is required to vote on a provisional paper ballot, the presiding judge or election judge shall give the voter written instructions on how the voter may determine whether the vote was counted and, if the vote was not counted, the reason it was not counted.

B. The county clerk shall provide a free access system, such as a toll-free telephone number or internet web site, that a voter who casts a provisional paper ballot

may access to ascertain whether the voter's ballot was counted and, if the vote was not counted, the reason it was not counted and how to appeal the decision pursuant to rules issued by the secretary of state. Access to information about an individual voter's provisional paper ballot is restricted to the voter who cast the ballot.

C. Beginning with the closing of the polls on election day through the tenth day following the election, the county clerk shall notify by mail each person whose provisional paper ballot was not counted of the reason the ballot was not counted. The voter shall have until the Friday prior to the meeting of the state canvassing board to appeal to the county clerk a decision to reject the voter's ballot."

## **Chapter 137 Section 95 Laws 2011**

SECTION 95. Section 1-12-30 NMSA 1978 (being Laws 1969, Chapter 240, Section 289, as amended) is amended to read:

"1-12-30. CONDUCT OF ELECTION--DISPOSITION OF SIGNATURE ROSTER, CHECKLIST OF REGISTERED VOTERS AND MACHINE-PRINTED RETURN REPORTING UNOFFICIAL RETURNS.--

A. After all certificates have been executed, the presiding judge and the two election judges shall place the checklist of registered voters voting and one copy of the machine-printed returns in the stamped, addressed envelope provided for that purpose and immediately mail it to the secretary of state.

B. The signature roster, the machine-printed returns and the removable media storage device shall be returned to the county clerk. The signature roster, the machine-printed returns and the removable media storage device shall not be placed in the ballot box.

C. Signature rosters and machine-printed returns in the custody of the county clerk may be destroyed only pursuant to Section 1-12-69 NMSA 1978.

D. The county clerk shall report the unofficial total returns for the county to the secretary of state within ten hours after the polls close."

## **Chapter 137 Section 96 Laws 2011**

SECTION 96. 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 ballot box:

- (1) one ballot box key in an envelope addressed to the county clerk;
- (2) one signature roster;
- (3) one tally sheet;
- (4) all unused election supplies not destroyed pursuant to the Election Code; and
- (5) the removable media storage device.

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 137 Section 97 Laws 2011**

SECTION 97. Section 1-12-37 NMSA 1978 (being Laws 1973, Chapter 358, Section 2, as amended) is amended to read:

"1-12-37. CONDUCT OF ELECTION--VOTING MACHINES--VERIFICATION OF RETURNS.--Two election officials of different parties 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 constitutional amendment or other question submitted, and the return shall be signed by each member of the precinct board and two watchers of opposing interest, if there be such."

### **Chapter 137 Section 98 Laws 2011**

SECTION 98. Section 1-12-43 NMSA 1978 (being Laws 1977, Chapter 222, Section 46, as amended) 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. If a disabled electronic vote tabulator cannot be repaired in a reasonable length of time and if there are no other electronic 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.

C. 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.

D. The county clerk shall provide additional ballots if needed and when requested by the precinct board."

### **Chapter 137 Section 99 Laws 2011**

SECTION 99. Section 1-12-51 NMSA 1978 (being Laws 1977, Chapter 222, Section 54, as amended) 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 or at an alternate 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 137 Section 100 Laws 2011**

SECTION 100. 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 only pursuant to Section 1-12-69 NMSA 1978."

### **Chapter 137 Section 101 Laws 2011**

SECTION 101. Section 1-13-8 NMSA 1978 (being Laws 1969, Chapter 240, Section 310, as amended) is amended to read:

"1-13-8. POST-ELECTION DUTIES--COUNTY CANVASS--SEARCH FOR MISSING RETURNS.--If it is necessary to open a ballot box on election night to ascertain if missing election returns are enclosed in the ballot box, the ballot box shall be opened by the county clerk and the district judge, or someone designated by the district judge. In the presence of the district judge or the designated representative of the district judge, the county clerk may remove the missing returns necessary to canvass the election. When such omission or negligence of the precinct board causes an additional expense to be incurred, no compensation shall be paid to the precinct board for its services on election day."

### **Chapter 137 Section 102 Laws 2011**

SECTION 102. Section 1-13-21 NMSA 1978 (being Laws 1971, Chapter 317, Section 21, as amended) is amended to read:

"1-13-21. CLEARING VOTING SYSTEMS.--

A. The county clerk shall not clear the votes recorded on the removable storage media devices until at least thirty days after adjournment of the state canvassing board.

B. The county clerk shall not clear and shall keep locked those removable media storage devices from voting systems used to tabulate votes for precincts where a recount, judicial inquiry or inspection is sought, subject to order of the district court or other authority having jurisdiction of the contest or inspection."

### **Chapter 137 Section 103 Laws 2011**

SECTION 103. Section 1-20-8 NMSA 1978 (being Laws 1969, Chapter 240, Section 432) is amended to read:

"1-20-8. FALSE VOTING.--False voting consists of:

A. voting or offering to vote with the knowledge of not being a qualified elector;

B. voting or offering to vote in the name of any other person;

C. voting or offering to vote more than once in the same election;

D. falsifying any information on an absentee ballot official mailing envelope or affixing a signature or mark other than one's own on an absentee ballot official mailing envelope;



E. inducing, abetting or procuring or attempting to induce, abet or procure a person known to not be a qualified elector to vote; or

F. inducing, abetting or procuring or attempting to induce, abet or procure a person who, having voted once in any election, to vote or attempt to vote again at the same election.

Whoever commits false voting is guilty of a fourth degree felony."

## **Chapter 137 Section 104 Laws 2011**

SECTION 104. Section 1-20-16 NMSA 1978 (being Laws 1969, Chapter 240, Section 440) is amended to read:

"1-20-16. ELECTIONEERING TOO CLOSE TO THE POLLING PLACE.--

A. Electioneering too close to the polling place consists of any form of campaigning within:

(1) one hundred feet of the building in which the polling place is located on election day when voting at a school, church or private residence; and

(2) one hundred feet of the door through which voters may enter to vote at the office of the county clerk, an alternate voting location, a mobile voting site or any location used as a polling place on election day that is not a school, church or private residence.

B. Electioneering includes the display or distribution of signs or campaign literature, campaign buttons, t-shirts, hats, pins or other such items and includes the verbal or electronic solicitation of votes for a candidate or question.

C. Whoever commits electioneering too close to the polling place is guilty of a petty misdemeanor."

## **Chapter 137 Section 105 Laws 2011**

SECTION 105. Section 1-20-17 NMSA 1978 (being Laws 1969, Chapter 240, Section 441) is amended to read:

"1-20-17. OBSTRUCTING THE POLLING PLACE.--

A. Obstructing the polling place consists of:

(1) any person other than a voter offering to vote, a member of the precinct board, a lawfully appointed challenger or watcher, an election observer, an election official having business in the polling place or a person authorized by the

Election Code to give assistance to a voter who, during the conduct of the election, approaches nearer than fifty feet from the door through which voters may enter to vote at the office of the county clerk, an alternate voting location, a mobile voting site or any location used as a polling place; or

(2) any person who willfully blocks the entrance to a polling place so as to prevent free ingress and egress.

B. A person conducting lawful, non-election-related business nearer than fifty feet from the door through which voters may enter to vote is not guilty of obstructing a polling place, provided the person does not willfully block the entrance to the polling place.

C. Whoever obstructs the polling place is guilty of a petty misdemeanor."

## **Chapter 137 Section 106 Laws 2011**

SECTION 106. Section 1-23-4 NMSA 1978 (being Laws 1987, Chapter 160, Section 4) is amended to read:

"1-23-4. LAW GOVERNING.--

A. Except as otherwise provided in the Mail Ballot Election Act, mail ballot elections shall be conducted in accordance with the provisions of the local government's absentee voter law.

B. If the local government does not have an absentee voter law, the mail ballot election shall be called, conducted and canvassed as provided in the Election Code."

## **Chapter 137 Section 107 Laws 2011**

SECTION 107. Section 1-24-2 NMSA 1978 (being Laws 1989, Chapter 295, Section 2) is amended to read:

"1-24-2. SPECIAL ELECTION PROCEDURES--PROCLAMATION--  
PUBLICATION.--

A. Whenever a local government special election is to be called or is required by law, the governing body shall by resolution issue a public proclamation calling the election. The proclamation shall forthwith be filed with the county clerk. The proclamation shall specify:

(1) the date on which the special election will be held;

(2) the purpose for which the special election is called;

(3) if officers are to be elected or positions on the governing body are to be filled, the date on which declarations of candidacy are to be filed;

(4) if a question is to be voted upon, the text of that question;

(5) the precincts in each county in which the election is to be held and the location of each polling place in the precinct;

(6) the hours that each polling place will be open; and

(7) the date and time of closing the registration books by the county clerk as required by law.

B. After filing with the county clerk the proclamation issued pursuant to Subsection A of this section, and not less than fifty-six days before the date of the election, the governing body shall publish the proclamation once each week for two consecutive weeks in a newspaper of general circulation within the boundaries of the local government or special district. The proclamation shall conform to the requirements of the federal Voting Rights Act of 1965, as amended.

C. Whenever a statewide special election is to be called or is required by law, the governor shall by resolution issue a public proclamation calling the election. Whenever an election to fill a vacancy in the office of United States representative is to be called or is required by law, the governor shall by resolution issue a public proclamation calling the election pursuant to the requirements of Section 1-15-18.1 NMSA 1978. The proclamation shall forthwith be filed with the secretary of state. The proclamation shall specify:

(1) the date on which the special election will be held;

(2) the purpose for which the special election is called;

(3) if a vacancy in the office of United States representative is to be filled, the date on which declarations of candidacy are to be filed;

(4) if a question is to be voted upon, the text of that question; and

(5) the date and time of closing the registration books by the county clerk as required by law.

D. After the proclamation issued pursuant to Subsection C of this section is filed with the secretary of state, the secretary of state shall within five days certify the proclamation to each county clerk in the state. Not less than fifty-six days before the date of the election, the county clerk shall publish the proclamation once each week for two consecutive weeks in a newspaper of general circulation, which shall include the precincts in the county in which the election is to be held and the location of each polling

place in the precinct and the hours that each polling place will be open. For an election called pursuant to Subsection F of Section 1-15-18.1 NMSA 1978, the proclamation shall be published consistent with this subsection not less than thirty-six days before the date of the election. The proclamation shall conform to the requirements of the federal Voting Rights Act of 1965, as amended."

## **Chapter 137 Section 108 Laws 2011**

SECTION 108. Section 4-38-24 NMSA 1978 (being Laws 1876, Chapter 1, Section 14 (7), as amended) is amended to read:

"4-38-24. POWERS OVER HIGHWAYS.--The board of county commissioners of each county shall have the power to lay out, alter or discontinue any road running through one or more precincts or townships in such county and to perform such other duties respecting roads as may be required by law."

## **Chapter 137 Section 109 Laws 2011**

SECTION 109. TEMPORARY PROVISIONS--RECOMPILATION.--

A. Sections 1-4-10, 1-5-7 and 1-5-8 NMSA 1978 (being Laws 1977, Chapter 222, Section 7 and Laws 1969, Chapter 240, Sections 109 and 110, as amended) are recompiled in Chapter 1, Article 12 NMSA 1978.

B. Sections 1-5-19, 1-5-24 and 1-5-25 NMSA 1978 (being Laws 1969, Chapter 240, Section 125 and Laws 1975, Chapter 255, Sections 78 and 79, as amended) are recompiled in Chapter 1, Article 4 NMSA 1978.

C. Sections 1-8-53 through 1-8-61 and 1-8-63 NMSA 1978 (being Laws 1977, Chapter 230, Sections 1 and 2, Laws 2003, Chapter 300, Section 3 and Laws 1977, Chapter 230, Sections 3 through 9 and 11, as amended) are recompiled in Chapter 1, Article 15 NMSA 1978.

D. Sections 1-12-9, 1-12-9.1 and 1-12-58 NMSA 1978 (being Laws 1969, Chapter 240, Section 248, Laws 1995, Chapter 198, Section 15 and Laws 1977, Chapter 222, Section 61, as amended) are recompiled in Chapter 1, Article 20 NMSA 1978.

## **Chapter 137 Section 110 Laws 2011**

SECTION 110. REPEAL.--Sections 1-2-13, 1-2-28, 1-4-14, 1-4-23, 1-4-31, 1-6-5.3, 1-6-5.5, 1-6-9.1, 1-6-24, 1-6-25, 1-8-52.1, 1-8-64, 1-10-2.1, 1-10-7.1, 1-11-9, 1-11-12, 1-11-12.1, 1-12-11, 1-12-25, 1-12-35, 1-12-37.1 and 1-12-40 NMSA 1978 (being Laws 1969, Chapter 240, Sections 33, 47, 70, 79 and 87, Laws 1999, Chapter 267, Section 2, Laws 2003, Chapter 357, Section 4, Laws 1991, Chapter 105, Section 13, Laws 1969, Chapter 54, Sections 5 and 6, Laws 2007, Chapter 25, Section 1, Laws

1979, Chapter 74, Section 5, Laws 1991, Chapter 105, Section 16, Laws 1997, Chapter 93, Section 1, Laws 1969, Chapter 240, Sections 219 and 222, Laws 2005, Chapter 270, Section 9, Laws 1969, Chapter 240, Sections 250, 279 and 295, Laws 2002, Chapter 51, Section 1 and Laws 1969, Chapter 240, Section 300, as amended) are repealed.

## **Chapter 137 Section 111 Laws 2011**

SECTION 111. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.

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Senate Bill 403

Approved April 7, 2011

## **LAWS 2011, CHAPTER 138**

AN ACT

RELATING TO ETHICS; EXTENDING PROVISIONS OF THE GOVERNMENTAL CONDUCT ACT TO INCLUDE PUBLIC OFFICERS AND EMPLOYEES OF POLITICAL SUBDIVISIONS OF THE STATE; EXPANDING THE DEFINITION OF "CONTRACT"; ALLOWING PUBLIC OFFICERS AND EMPLOYEES TO CONTRACT WITH THE AGENCY THAT EMPLOYS THEM; PROHIBITING CERTAIN ACTS BY PUBLIC OFFICERS AND EMPLOYEES; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

### **Chapter 138 Section 1 Laws 2011**

SECTION 1. A new section of the Governmental Conduct Act is enacted to read:

"PROHIBITED EMPLOYMENT.--It is unlawful for a state agency employee or local government agency employee who is participating directly or indirectly in the contracting process to become or to be, while such an employee, the employee of any person or business contracting with the governmental body by whom the employee is employed."

### **Chapter 138 Section 2 Laws 2011**

SECTION 2. Section 10-16-2 NMSA 1978 (being Laws 1967, Chapter 306, Section 2, as amended) is amended to read:

"10-16-2. DEFINITIONS.--As used in the Governmental Conduct Act:

A. "business" means a corporation, partnership, sole proprietorship, firm, organization or individual carrying on a business;

B. "confidential information" means information that by law or practice is not available to the public;

C. "contract" means an agreement or transaction having a value of more than one thousand dollars (\$1,000) with a state or local government agency for:

- (1) the rendition of services, including professional services;
- (2) the furnishing of any material, supplies or equipment;
- (3) the construction, alteration or repair of any public building or public work;
- (4) the acquisition, sale or lease of any land or building;
- (5) a licensing arrangement;
- (6) a loan or loan guarantee; or
- (7) the purchase of financial securities or instruments;

D. "employment" means rendering of services for compensation in the form of salary as an employee;

E. "family" means an individual's spouse, parents, children or siblings, by consanguinity or affinity;

F. "financial interest" means an interest held by an individual or the individual's family that is:

- (1) an ownership interest in business or property; or
- (2) any employment or prospective employment for which negotiations have already begun;

G. "local government agency" means a political subdivision of the state or an agency of a political subdivision of the state;

H. "official act" means an official decision, recommendation, approval, disapproval or other action that involves the use of discretionary authority;

I. "public officer or employee" means any elected or appointed official or employee of a state agency or local government agency who receives compensation in the form of salary or is eligible for per diem or mileage but excludes legislators;

J. "standards" means the conduct required by the Governmental Conduct Act;

K. "state agency" means any branch, agency, instrumentality or institution of the state; and

L. "substantial interest" means an ownership interest that is greater than twenty percent."

### **Chapter 138 Section 3 Laws 2011**

SECTION 3. Section 10-16-3 NMSA 1978 (being Laws 1993, Chapter 46, Section 28, as amended) is amended to read:

"10-16-3. ETHICAL PRINCIPLES OF PUBLIC SERVICE--CERTAIN OFFICIAL ACTS PROHIBITED--PENALTY.--

A. A legislator or public officer or employee shall treat the legislator's or public officer's or employee's government position as a public trust. The legislator or public officer or employee shall use the powers and resources of public office only to advance the public interest and not to obtain personal benefits or pursue private interests.

B. Legislators and public officers and employees shall conduct themselves in a manner that justifies the confidence placed in them by the people, at all times maintaining the integrity and discharging ethically the high responsibilities of public service.

C. Full disclosure of real or potential conflicts of interest shall be a guiding principle for determining appropriate conduct. At all times, reasonable efforts shall be made to avoid undue influence and abuse of office in public service.

D. No legislator or public officer or employee may request or receive, and no person may offer a legislator or public officer or employee, any money, thing of value or promise thereof that is conditioned upon or given in exchange for promised performance of an official act. Any person who knowingly and willfully violates the provisions of this subsection is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978."

### **Chapter 138 Section 4 Laws 2011**

SECTION 4. Section 10-16-3.1 NMSA 1978 (being Laws 2007, Chapter 362, Section 9) is amended to read:

"10-16-3.1. PROHIBITED POLITICAL ACTIVITIES.--A public officer or employee is prohibited from:

A. directly or indirectly coercing or attempting to coerce another public officer or employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for a political purpose;

B. threatening to deny a promotion or pay increase to an employee who does or does not vote for certain candidates, requiring an employee to contribute a percentage of the employee's pay to a political fund, influencing a subordinate employee to purchase a ticket to a political fundraising dinner or similar event, advising an employee to take part in political activity or similar activities; or

C. violating the officer's or employee's duty not to use property belonging to a state agency or local government agency, or allow its use, for other than authorized purposes."

## **Chapter 138 Section 5 Laws 2011**

SECTION 5. Section 10-16-4 NMSA 1978 (being Laws 1967, Chapter 306, Section 4, as amended) is amended to read:

"10-16-4. OFFICIAL ACT FOR PERSONAL FINANCIAL INTEREST PROHIBITED--DISQUALIFICATION FROM OFFICIAL ACT--PROVIDING A PENALTY.--

A. It is unlawful for a public officer or employee to take an official act for the primary purpose of directly enhancing the public officer's or employee's financial interest or financial position. Any person who knowingly and willfully violates the provisions of this subsection is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

B. A public officer or employee shall be disqualified from engaging in any official act directly affecting the public officer's or employee's financial interest, except a public officer or employee shall not be disqualified from engaging in an official act if the financial benefit of the financial interest to the public officer or employee is proportionately less than the benefit to the general public.

C. No public officer during the term for which elected and no public employee during the period of employment shall acquire a financial interest when the public officer or employee believes or should have reason to believe that the new financial interest will be directly affected by the officer's or employee's official act."



## **Chapter 138 Section 6 Laws 2011**

SECTION 6. Section 10-16-4.2 NMSA 1978 (being Laws 2007, Chapter 362, Section 10) is amended to read:

"10-16-4.2. DISCLOSURE OF OUTSIDE EMPLOYMENT.--A public officer or employee shall disclose in writing to the officer's or employee's respective office or employer all employment engaged in by the officer or employee other than the employment with or service to a state agency or local government agency."

## **Chapter 138 Section 7 Laws 2011**

SECTION 7. Section 10-16-6 NMSA 1978 (being Laws 1967, Chapter 306, Section 6, as amended) is amended to read:

"10-16-6. CONFIDENTIAL INFORMATION.--No legislator or public officer or employee shall use or disclose confidential information acquired by virtue of the legislator's or public officer's or employee's position with a state agency or local government agency for the legislator's, public officer's or employee's or another's private gain."

## **Chapter 138 Section 8 Laws 2011**

SECTION 8. 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. A state agency shall not enter into a contract 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 through public notice the public officer's or employee's substantial interest and unless the contract is awarded pursuant to a competitive process; provided that this section does not apply to a contract of official employment with the state. 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.

B. Unless a public officer or employee has disclosed the public officer's or employee's substantial interest through public notice and unless a contract is awarded pursuant to a competitive process, a local government agency shall not enter into a contract with a public officer or employee of that local government agency, 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.

C. Subsection B of this section does not apply to a contract of official employment with a political subdivision. A person negotiating or executing a contract on behalf of a local government agency shall exercise due diligence to ensure compliance with the provisions of this section."

## **Chapter 138 Section 9 Laws 2011**

SECTION 9. Section 10-16-8 NMSA 1978 (being Laws 1967, Chapter 306, Section 8, as amended) is amended to read:

"10-16-8. CONTRACTS INVOLVING FORMER PUBLIC OFFICERS OR EMPLOYEES--REPRESENTATION OF CLIENTS AFTER GOVERNMENT SERVICE.--

A. A state agency shall not enter into a contract with, or take any action favorably affecting, any person or business that is:

(1) represented personally in the matter by a person who has been a public officer or employee of the state within the preceding year if the value of the contract or action is in excess of one thousand dollars (\$1,000) and the contract is a direct result of an official act by the public officer or employee; or

(2) assisted in the transaction by a former public officer or employee of the state whose official act, while in state employment, directly resulted in the agency's making that contract or taking that action.

B. A former public officer or employee shall not represent a person in the person's dealings with the government on a matter in which the former public officer or employee participated personally and substantially while a public officer or employee.

C. A local government agency shall not enter into a contract with, or take any action favorably affecting, any person or business that is:

(1) represented personally in the matter by a person who has been a public officer or employee of that local government agency within the preceding year if the value of the contract or action is in excess of one thousand dollars (\$1,000) and the contract is a direct result of an official act by the public officer or employee; or

(2) assisted in the transaction by a former public officer or employee of that political subdivision of the state whose official act, while in employment with that political subdivision of the state, directly resulted in the agency's making that contract or taking that action.

D. For a period of one year after leaving government service or employment, a former public officer or employee shall not represent for pay a person before the state agency or local government agency at which the former public officer or employee served or worked."

## **Chapter 138 Section 10 Laws 2011**

SECTION 10. Section 10-16-13 NMSA 1978 (being Laws 1967, Chapter 306, Section 13, as amended) is amended to read:

"10-16-13. PROHIBITED BIDDING.--No state agency or local government agency shall accept a bid or proposal from a person who directly participated in the preparation of specifications, qualifications or evaluation criteria on which the specific competitive bid or proposal was based. A person accepting a bid or proposal on behalf of a state agency or local government agency shall exercise due diligence to ensure compliance with this section."

## **Chapter 138 Section 11 Laws 2011**

SECTION 11. Section 10-16-13.2 NMSA 1978 (being Laws 2007, Chapter 362, Section 8) is amended to read:

"10-16-13.2. CERTAIN BUSINESS SALES TO THE EMPLOYEES OF STATE AGENCIES AND LOCAL GOVERNMENT AGENCIES PROHIBITED.--

A. A public officer or employee shall not sell, offer to sell, coerce the sale of or be a party to a transaction to sell goods, services, construction or items of tangible personal property directly or indirectly through the public officer's or employee's family or a business in which the public officer or employee has a substantial interest, to an employee supervised by the public officer or employee. A public officer or employee shall not receive a commission or shall not profit from the sale or a transaction to sell goods, services, construction or items of tangible personal property to an employee supervised by the public officer or employee. The provisions of this subsection shall not apply if the supervised employee initiates the sale. It is not a violation of this subsection if a public officer or employee, in good faith, is not aware that the employee to whom the goods, services, construction or items of tangible personal property are being sold is under the supervision of the public officer or employee.

B. A public officer or employee shall not sell, offer to sell, coerce the sale of or be a party to a transaction to sell goods, services, construction or items of tangible personal property, directly or indirectly through the public officer's or employee's family or a business in which the public officer or employee has a substantial interest, to a person over whom the public officer or employee has regulatory authority.

C. A public officer or employee shall not receive a commission or profit from the sale or a transaction to sell goods, services, construction or items of tangible personal property to a person over whom the public officer or employee has regulatory authority.

D. A public officer or employee shall not accept from a person over whom the public officer or employee has regulatory authority an offer of employment or an

offer of a contract in which the public officer or employee provides goods, services, construction, items of tangible personal property or other things of value to the person over whom the public officer or employee has regulatory authority."

## **Chapter 138 Section 12 Laws 2011**

SECTION 12. Section 10-16-13.3 NMSA 1978 (being Laws 2007, Chapter 362, Section 11) is amended to read:

### **"10-16-13.3. PROHIBITED CONTRIBUTIONS--FINANCIAL SERVICE CONTRACTORS.--**

A. A business that contracts with a state agency or local government agency to provide financial services involving the investment of public money or issuance of bonds for public projects shall not knowingly contribute anything of value to a public officer or employee of that state agency or local government agency who has authority over the investment of public money or issuance of bonds, the revenue of which is used for public projects in the state.

B. A public officer or employee of a state agency or local government agency that has authority over the investment of public money or issuance of bonds, the revenue of which is used for public projects in the state, shall not knowingly accept a contribution of anything of value from a business that contracts with that state agency or local government agency to provide financial services involving the investment of public money or issuance of bonds for public projects.

C. For the purposes of this section:

(1) "anything of value" means any money, property, service, loan or promise, but does not include food and refreshments with a value of less than one hundred dollars (\$100) consumed in a day; and

(2) "contribution" means a donation or transfer to a recipient for the personal use of the recipient, without commensurate consideration."

## **Chapter 138 Section 13 Laws 2011**

SECTION 13. A new section of the Governmental Conduct Act is enacted to read:

"STATE AGENCY OR LOCAL GOVERNMENT AGENCY AUTHORITY.--Nothing in the Governmental Conduct Act shall be construed to preclude a state agency or local government agency from adopting and publishing ordinances, rules or standards that are more stringent than those required by the Governmental Conduct Act."

## **Chapter 138 Section 14 Laws 2011**

SECTION 14. REPEAL.--Sections 3-10-4, 3-10-5 and 4-44-22 through 4-44-27 NMSA 1978 (being Laws 1977, Chapter 78, Section 1, Laws 1965, Chapter 300, Section 14-9-5 and Laws 1969, Chapter 244, Sections 1 through 6) are repealed.

### **Chapter 138 Section 15 Laws 2011**

SECTION 15. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.

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Senate Bill 432

Approved April 7, 2011

## **LAWS 2011, CHAPTER 139**

AN ACT

RELATING TO TAXATION; REQUIRING CERTAIN INFORMATION RELATING TO THE WITHHOLDING OF OIL AND GAS PROCEEDS TO BE SUBMITTED BY THE TAXATION AND REVENUE DEPARTMENT TO THE LEGISLATURE.

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

### **Chapter 139 Section 1 Laws 2011**

SECTION 1. Section 7-3A-9 NMSA 1978 (being Laws 2003, Chapter 86, Section 12, as amended) is amended to read:

"7-3A-9. INTERPRETATION OF ACT--ADMINISTRATION AND ENFORCEMENT OF ACT--REPORT TO LEGISLATURE.--

A. The department shall interpret the provisions of the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act.

B. The department shall administer and enforce the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act, and the Tax Administration Act applies to the administration and enforcement of the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act.

C. No later than December 1 of each year, the department shall submit a report to the legislature showing:

(1) the total amount of taxes withheld by remitters and paid to the department during the previous calendar year pursuant to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act; and

(2) the amount of taxes withheld by remitters pursuant to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act that were credited against income taxes or corporate income taxes by remitees during the previous calendar year."

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Senate Bill 436

Approved April 7, 2011

## **LAWS 2011, CHAPTER 140**

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;  
EXPANDING THE NUMBER OF PROVIDERS ELIGIBLE FOR

PRE-KINDERGARTEN SERVICES; ALLOWING THE PUBLIC EDUCATION  
DEPARTMENT TO PROVIDE APPLICATIONS FOR PRE-KINDERGARTEN  
SERVICES.

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

### **Chapter 140 Section 1 Laws 2011**

SECTION 1. Section 32A-23-5 NMSA 1978 (being Laws 2005, Chapter 170, Section 5) is amended to read:

"32A-23-5. PRE-KINDERGARTEN--ELIGIBILITY.--Pre-kindergarten services may be provided by public schools or eligible providers on a per-child reimbursement rate in communities with public elementary schools that are designated as Title 1 schools."

### **Chapter 140 Section 2 Laws 2011**

SECTION 2. Section 32A-23-6 NMSA 1978 (being Laws 2005, Chapter 170, Section 6) is amended to read:

"32A-23-6. REQUESTS FOR PROPOSALS--CONTRACTS FOR SERVICES.--

A. Each department shall publish a request for proposals or a request for applications that contains the same requested information for pre-kindergarten services.

B. Eligible providers shall submit proposals or applications for pre-kindergarten services to the appropriate department. An eligible provider's proposal or application shall include a description of the services that will be provided, including:

(1) how those services meet children, youth and families department or public education department standards;

(2) the number of four-year-old children the eligible provider can serve;

(3) site and floor plans and a description of the facilities;

(4) revenue sources and amounts other than state funding available for the pre-kindergarten program;

(5) a description of the qualifications and experience of the early childhood development staff for each site;

(6) the plan for communicating with and involving parents in the pre-kindergarten program;

(7) how those services meet the continuum of services to children; and

(8) other relevant information requested by the departments.

C. Each department shall accept and evaluate proposals or applications for funding for pre-kindergarten.

D. For funding purposes, applications and proposals shall be evaluated and priority given to programs in communities with public elementary schools that are designated as Title 1 schools and that have at least sixty-six percent of the children served living within the attendance zone of a Title 1 elementary school. Additional funding criteria include:

(1) the number of four-year-olds residing in the community and the number of four-year-olds proposed to be served;

(2) the adequacy and capacity of pre-kindergarten facilities in the community;

(3) language and literacy services in the community;

- community;
- (4) the cultural, historic and linguistic responsiveness to the
- in the community;
- (5) parent education services available for parents of four-year-olds
- (6) the qualifications of eligible providers in the community;
- (7) staff professional development plans;
- (8) the capacity of local organizations and persons interested in and involved in programs and services for four-year-olds and their commitment to work together;
- community; and
- (9) the extent of local support for pre-kindergarten services in the
- (10) other relevant criteria specified by joint rule of the departments.

E. A contract or agreement with an eligible provider shall specify and ensure that funds shall not be used for any religious, sectarian or denominational purposes, instruction or material."

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SEC/Senate Bill 605, aa

Approved April 7, 2011

## **LAWS 2011, CHAPTER 141**

AN ACT

RELATING TO REAL PROPERTY; ENACTING THE UNIFORM ASSIGNMENT OF RENTS ACT.

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

### **Chapter 141 Section 1 Laws 2011**

SECTION 1. SHORT TITLE.--This act may be cited as the "Uniform Assignment of Rents Act".

### **Chapter 141 Section 2 Laws 2011**



SECTION 2. DEFINITIONS.--As used in the Uniform Assignment of Rents Act:

A. "assignee" means a person entitled to enforce an assignment of rents;

B. "assignment of rents" means a transfer of an interest in rents in connection with an obligation secured by real property located in New Mexico and from which the rents arise;

C. "assignor" means a person that makes an assignment of rents or the successor owner of the real property from which the rents arise;

D. "cash proceeds" means proceeds that are money, checks, deposit accounts or the like;

E. "day" means a calendar day;

F. "deposit account" means a demand, time, savings, passbook or similar account maintained with a bank, savings bank, savings and loan association, credit union or trust company;

G. "document" means information that is inscribed on a tangible medium or that is stored on an electronic or other medium and is retrievable in perceivable form;

H. "notification" means a document containing information that the Uniform Assignment of Rents Act requires a person to provide to another, signed by the person required to provide the information;

I. "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;

J. "proceeds" means personal property that is received or collected on account of a tenant's obligation to pay rents;

K. "purchase" means to take by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift or any other voluntary transaction creating an interest in property;

L. "rents" means:

(1) sums payable for the right to possess or occupy, or for the actual possession or occupation of, real property of another person;

(2) sums payable to an assignor pursuant to a policy of rental interruption insurance covering real property;

(3) claims arising out of a default in the payment of sums payable for the right to possess or occupy real property of another person;

(4) sums payable to terminate an agreement to possess or occupy real property of another person;

(5) sums payable to an assignor for payment or reimbursement of expenses incurred in owning, operating and maintaining, or constructing or installing improvements on, real property; or

(6) any other sums payable pursuant to an agreement relating to the real property of another person that constitute rents pursuant to any law of New Mexico other than the Uniform Assignment of Rents Act;

M. "secured obligation" means an obligation, the performance of which is secured by an assignment of rents;

N. "security instrument" means a document, however denominated, that creates or provides for a security interest in real property, whether or not it also creates or provides for a security interest in personal property;

O. "security interest" means an interest in property that arises by agreement and secures performance of an obligation;

P. "sign" means, with present intent to authenticate or adopt a document:

(1) to execute or adopt a tangible symbol; or

(2) to attach to or logically associate with the document an electronic sound, symbol or process;

Q. "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;

R. "submit for recording" means to submit a document complying with applicable legal standards, with required fees, to the office of the county clerk in the county or counties designated in Section 14-9-1 NMSA 1978; and

S. "tenant" means a person that has an obligation to pay sums for the right to possess or occupy, or for possessing or occupying, the real property of another person.

## **Chapter 141 Section 3 Laws 2011**

### **SECTION 3. MANNER OF GIVING NOTIFICATION.--**

A. Except as otherwise provided in Subsections C and D of this section, a person gives a notification or a copy of a notification pursuant to the Uniform Assignment of Rents Act:

(1) by depositing it with the United States postal service or with a commercially reasonable delivery service, properly addressed to the intended recipient's address as specified in Subsection B of this section, with first-class postage or cost of delivery provided; or

(2) if the recipient agreed to receive notification by facsimile transmission, electronic mail or other electronic transmission, by sending it to the recipient in the agreed manner at the address specified in the agreement.

B. The following rules determine the proper address for giving a notification pursuant to Subsection A of this section:

(1) a person giving a notification to an assignee shall use the address for notices to the assignee provided in the document creating the assignment of rents, but, if the assignee has provided the person giving the notification with a more recent address for notices, the person giving the notification shall use that address;

(2) a person giving a notification to an assignor shall use the address for notices to the assignor provided in the document creating the assignment of rents, but, if the assignor has provided the person giving the notification with a more recent address for notices, the person giving the notification shall use that address; and

(3) if a tenant's agreement with an assignor provides an address for notices to the tenant and the person giving notification has received a copy of the agreement or knows the address for notices specified in the agreement, the person giving the notification shall use that address in giving a notification to the tenant. Otherwise, the person shall use the address of the premises covered by the agreement.

C. If a person giving a notification pursuant to the Uniform Assignment of Rents Act and the recipient have agreed to the method for giving a notification, any notification shall be given by that method.

D. If a notification is received by the recipient, it is effective even if it was not given in accordance with Subsection A or C of this section.

## **Chapter 141 Section 4 Laws 2011**

**SECTION 4. SECURITY INSTRUMENT CREATES ASSIGNMENT OF RENTS--  
ASSIGNMENT OF RENTS CREATES SECURITY INTEREST.--**

A. An enforceable security instrument creates an assignment of rents arising from the real property described in the security instrument, unless the security instrument provides otherwise.

B. An assignment of rents creates a presently effective security interest in all accrued and unaccrued rents arising from the real property described in the document creating the assignment, regardless of whether the document is in the form of an absolute assignment, an absolute assignment conditioned upon default, an assignment as additional security or any other form. The security interest in rents is separate and distinct from any security interest held by the assignee in the real property.

## **Chapter 141 Section 5 Laws 2011**

### **SECTION 5. RECORDATION--PERFECTION OF SECURITY INTEREST IN RENTS--PRIORITY OF CONFLICTING INTERESTS IN RENTS.--**

A. A document creating an assignment of rents may be submitted for recording in the office of the county clerk in the same manner as any other document evidencing a conveyance of an interest in real property.

B. Upon recording, the security interest in rents created by an assignment of rents is fully perfected, even if a provision of the document creating the assignment or law of New Mexico other than the Uniform Assignment of Rents Act would preclude or defer enforcement of the security interest until the occurrence of a subsequent event, including a subsequent default of the assignor, the assignee's obtaining possession of the real property or the appointment of a receiver.

C. Except as otherwise provided in Subsection D of this section, a perfected security interest in rents takes priority over the rights of a person that, after the security interest is perfected:

(1) acquires a judicial lien against the rents or the real property from which the rents arise; or

(2) purchases an interest in the rents or the real property from which the rents arise.

D. A perfected security interest in rents has priority over the rights of a person described in Subsection C of this section with respect to future advances to the same extent as the assignee's security interest in the real property has priority over the rights of that person with respect to future advances.

## **Chapter 141 Section 6 Laws 2011**

### **SECTION 6. ENFORCEMENT OF SECURITY INTEREST IN RENTS.--**

A. An assignee may enforce an assignment of rents using one or more of the methods specified in Sections 7, 8 and 9 of the Uniform Assignment of Rents Act or any other method sufficient to enforce the assignment pursuant to any law of New Mexico other than that act.

B. From the date of enforcement, the assignee or, in the case of enforcement by appointment of a receiver pursuant to Section 7 of the Uniform Assignment of Rents Act, the receiver is entitled to collect all rents that:

- (1) have accrued but remain unpaid on that date; and
- (2) accrue on or after that date, as those rents accrue.

## **Chapter 141 Section 7 Laws 2011**

### **SECTION 7. ENFORCEMENT BY APPOINTMENT OF RECEIVER.--**

A. An assignee is entitled to the appointment of a receiver for the real property subject to the assignment of rents if:

(1) the assignor is in default and:

(a) the assignor has agreed in a signed document to the appointment of a receiver in the event of the assignor's default;

(b) it appears likely that the real property may not be sufficient to satisfy the secured obligation;

(c) the assignor has failed to turn over to the assignee proceeds that the assignee was entitled to collect; or

(d) a subordinate assignee of rents obtains the appointment of a receiver for the real property; or

(2) other circumstances exist that would justify the appointment of a receiver pursuant to the Receivership Act or any other law of New Mexico other than the Uniform Assignment of Rents Act.

B. An assignee may file a petition for the appointment of a receiver in connection with an action:

(1) to foreclose the security instrument;

(2) for specific performance of the assignment;

(3) seeking a remedy on account of waste or threatened waste of the real property subject to the assignment; or

(4) otherwise to enforce the secured obligation or the assignee's remedies arising from the assignment.

C. An assignee that files a petition pursuant to Subsection B of this section shall also give a copy of the petition in the manner specified in Section 3 of the Uniform Assignment of Rents Act to any other person that, ten days before the date the petition is filed, held a recorded assignment of rents arising from the real property.

D. If an assignee enforces an assignment of rents pursuant to this section, the date of enforcement is the date on which the court enters an order appointing a receiver for the real property subject to the assignment.

E. From the date of its appointment, a receiver is entitled to collect rents as provided in Subsection B of Section 6 of the Uniform Assignment of Rents Act. The receiver also has the authority provided in the order of appointment, the Receivership Act and any other law of New Mexico other than the Uniform Assignment of Rents Act.

F. The following rules govern priority among receivers:

(1) if more than one assignee qualifies pursuant to this section for the appointment of a receiver, a receivership requested by an assignee entitled to priority in rents pursuant to the Uniform Assignment of Rents Act has priority over a receivership requested by a subordinate assignee, even if a court has previously appointed a receiver for the subordinate assignee; and

(2) if a subordinate assignee obtains the appointment of a receiver, the receiver may collect the rents and apply the proceeds in the manner specified in the order appointing the receiver until a receiver is appointed pursuant to a senior assignment of rents.

## **Chapter 141 Section 8 Laws 2011**

### **SECTION 8. ENFORCEMENT BY NOTIFICATION TO ASSIGNOR.--**

A. Upon the assignor's default, or as otherwise agreed by the assignor, the assignee may give the assignor a notification demanding that the assignor pay over the proceeds of any rents that the assignee is entitled to collect pursuant to Section 6 of the Uniform Assignment of Rents Act. The assignee shall also give a copy of the notification to any other person that, ten days before the notification date, held a recorded assignment of rents arising from the real property.

B. If an assignee enforces an assignment of rents pursuant to this section, the date of enforcement is the date on which the assignor receives a notification pursuant to Subsection A of this section.

C. An assignee's failure to give a notification pursuant to Subsection A of this section to any person holding a recorded assignment of rents does not affect the effectiveness of the notification as to the assignor, but the other person is entitled to any relief permitted pursuant to any law of New Mexico other than the Uniform Assignment of Rents Act.

D. An assignee that holds a security interest in rents solely by virtue of Subsection A of Section 4 of the Uniform Assignment of Rents Act shall not enforce the security interest pursuant to this section while the assignor occupies the real property as the assignor's primary residence.

## **Chapter 141 Section 9 Laws 2011**

### **SECTION 9. ENFORCEMENT BY NOTIFICATION TO TENANT.--**

A. Upon the assignor's default, or as otherwise agreed by the assignor, the assignee may give to a tenant of the real property a notification demanding that the tenant pay to the assignee all unpaid accrued rents and all unaccrued rents as they accrue. The assignee shall give a copy of the notification to the assignor and to any other person that, ten days before the notification date, held a recorded assignment of rents arising from the real property. The notification shall be signed by the assignee and shall:

(1) identify the tenant, assignor, assignee, premises covered by the agreement between the tenant and the assignor and assignment of rents being enforced;

(2) provide the recording data for the document creating the assignment or other reasonable proof that the assignment was made;

(3) state that the assignee has the right to collect rents in accordance with the assignment;

(4) direct the tenant to pay to the assignee all unpaid accrued rents and all unaccrued rents as they accrue;

(5) describe the manner in which Subsections C and D of this section affect the tenant's payment obligations;

(6) provide the name and telephone number of a contact person and an address to which the tenant can direct payment of rents and any inquiry for

additional information about the assignment or the assignee's right to enforce the assignment; and

(7) contain a statement that the tenant may consult a lawyer if the tenant has questions about its rights and obligations.

B. If an assignee enforces an assignment of rents pursuant to this section, the date of enforcement is the date on which the tenant receives a notification substantially complying with Subsection A of this section.

C. Subject to Subsection D of this section and any other claim or defense that a tenant has pursuant to any law of New Mexico other than the Uniform Assignment of Rents Act, following receipt of a notification substantially complying with Subsection A of this section:

(1) a tenant is obligated to pay to the assignee all unpaid accrued rents and all unaccrued rents as they accrue, unless the tenant has previously received a notification from another assignee of rents given by that assignee in accordance with this section and the other assignee has not canceled that notification;

(2) unless the tenant occupies the premises as the tenant's primary residence, a tenant that pays rents to the assignor is not discharged from the obligation to pay rents to the assignee;

(3) a tenant's payment to the assignee of rents then due satisfies the tenant's obligation pursuant to the tenant's agreement with the assignor to the extent of the payment made; and

(4) a tenant's obligation to pay rents to the assignee continues until the tenant receives a court order directing the tenant to pay the rent in a different manner or a signed document from the assignee canceling its notification, whichever occurs first.

D. A tenant that has received a notification pursuant to Subsection A of this section is not in default for nonpayment of rents accruing within thirty days after the date the notification is received before the earlier of:

(1) ten days after the date the next regularly scheduled rental payment would be due; or

(2) thirty days after the date the tenant receives the notification.

E. Upon receiving a notification from another creditor that is entitled to priority pursuant to Subsection C of Section 5 of the Uniform Assignment of Rents Act that the other creditor has enforced and is continuing to enforce its interest in rents, an assignee that has given a notification to a tenant pursuant to Subsection A of this



section shall immediately give another notification to the tenant canceling the earlier notification.

F. An assignee's failure to give a notification pursuant to Subsection A of this section to any person holding a recorded assignment of rents does not affect the effectiveness of the notification as to the assignor and those tenants receiving the notification. However, the person entitled to the notification is entitled to any relief permitted by any law of New Mexico other than the Uniform Assignment of Rents Act.

G. An assignee that holds a security interest in rents solely by virtue of Subsection A of Section 4 of the Uniform Assignment of Rents Act shall not enforce the security interest pursuant to this section while the assignor occupies the real property as the assignor's primary residence.

## **Chapter 141 Section 10 Laws 2011**

SECTION 10. NOTIFICATION TO TENANT--FORM.--No particular phrasing is required for the notification specified in Section 9 of the Uniform Assignment of Rents Act. However, the following form of notification, when properly completed, is sufficient to satisfy the requirements of that section:

"NOTIFICATION TO PAY RENTS TO PERSON OTHER THAN LANDLORD

Tenant: \_\_\_\_\_

[Name of Tenant]

Property Occupied by Tenant (the  
"Premises"): \_\_\_\_\_  
\_\_\_\_\_

[Address]

Landlord:

\_\_\_\_\_

[Name of Landlord]

Assignee:

\_\_\_\_\_

[Name of Assignee]

Address and Telephone Number of Assignee:

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[Address of Assignee]

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1. The Assignee named above has become the person entitled to collect your rents on the Premises listed above pursuant to

\_\_\_\_\_ [name of document] (the "Assignment of Rents") dated \_\_\_\_\_, and recorded at \_\_\_\_\_ [recording data] in the office of the county clerk of the following county or counties:

\_\_\_\_\_. You may obtain additional information about the Assignment of Rents and the Assignee's right to enforce it at the address listed above.

2. The Landlord is in default pursuant to the Assignment of Rents. Pursuant to the Assignment of Rents, the Assignee is entitled to collect rents from the Premises.

3. This notification affects your rights and obligations pursuant to the agreement pursuant to which you occupy the Premises (your "Agreement"). In order to provide you with an opportunity to consult with a lawyer, if your next scheduled rental payment is due within thirty days after you receive this notification, neither the Assignee nor the Landlord can hold you in default pursuant to your Agreement for nonpayment of that rental payment until ten days after the due date of that payment or thirty days following the date you receive this notification, whichever occurs first. You may consult a lawyer at your expense concerning your rights and obligations pursuant to your Agreement and the effect of this notification.

4. You shall pay to the Assignee at the address listed above all rents pursuant to your Agreement that are due and payable on the date you receive this notification and all rents accruing pursuant to your Agreement after you receive this notification. If you pay rents to the Assignee after receiving this notification, the payment will satisfy your rental obligation to the extent of that payment.

5. Unless you occupy the Premises as your primary residence, if you pay any rents to the Landlord after receiving this notification, your payment to the Landlord will not discharge your rental obligation, and the Assignee may hold you liable for that rental obligation notwithstanding your payment to the Landlord.

6. If you have previously received a notification from another person that also holds an assignment of the rents due pursuant to your Agreement, you should continue paying your rents to the person that sent that notification until that person cancels that notification. Once that notification is canceled, you shall begin paying rents to the Assignee in accordance with this notification.

7. Your obligation to pay rents to the Assignee will continue until you receive either:

(a) a written order from a court directing you to pay the rent in a manner specified in that order; or

(b) written instructions from the Assignee canceling this notification.

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[Name of Assignee]

By: \_\_\_\_\_

[Officer/Authorized Agent of Assignee]"

## **Chapter 141 Section 11 Laws 2011**

SECTION 11. EFFECT OF ENFORCEMENT.--The enforcement of an assignment of rents by one or more of the methods identified in Sections 7, 8 and 9 of the Uniform Assignment of Rents Act, the application of proceeds by the assignee pursuant to Section 12 of that act after enforcement, the payment of expenses pursuant to Section 13 of that act or an action pursuant to Subsection D of Section 14 of that act does not:

- A. make the assignee a mortgagee in possession of the real property;
- B. make the assignee an agent of the assignor;
- C. constitute an election of remedies that precludes a later action to enforce the secured obligation;
- D. make the secured obligation unenforceable; or
- E. limit any right available to the assignee with respect to the secured obligation.

## **Chapter 141 Section 12 Laws 2011**

SECTION 12. APPLICATION OF PROCEEDS.--Unless otherwise agreed, an assignee that collects rents pursuant to the Uniform Assignment of Rents Act or collects upon a judgment in an action pursuant to Subsection D of Section 14 of that act shall apply the sums collected in the following order to:

- A. the assignee's reasonable expenses of enforcing its assignment of rents, including, to the extent provided for by agreement and not prohibited by any law

of New Mexico other than the Uniform Assignment of Rents Act, reasonable attorney fees and costs incurred by the assignee;

B. reimbursement of any expenses incurred by the assignee to protect or maintain the real property subject to the assignment;

C. payment of the secured obligation;

D. payment of any obligation secured by a subordinate security interest or other lien on the rents if, before distribution of the proceeds, the assignor and assignee receive a notification from the holder of the interest or lien demanding payment of the proceeds; and

E. the assignor.

## **Chapter 141 Section 13 Laws 2011**

### **SECTION 13. APPLICATION OF PROCEEDS TO EXPENSES OF PROTECTING REAL PROPERTY--CLAIMS AND DEFENSES OF TENANT.--**

A. Unless otherwise agreed by the assignee, and subject to Subsection C of this section, an assignee that collects rents following enforcement pursuant to Section 8 or 9 of the Uniform Assignment of Rents Act need not apply them to the payment of expenses of protecting or maintaining the real property subject to the assignment.

B. Unless a tenant has made an enforceable agreement not to assert claims or defenses, the right of the assignee to collect rents from the tenant is subject to the terms of the agreement between the assignor and tenant and any claim or defense arising from the assignor's nonperformance of that agreement.

C. The Uniform Assignment of Rents Act does not limit the standing or right of a tenant to request a court to appoint a receiver for the real property subject to the assignment or to seek other relief on the grounds that the assignee's nonpayment of expenses of protecting or maintaining the real property has caused or threatened harm to the tenant's interest in the property. Whether the tenant is entitled to the appointment of a receiver or other relief is governed by any law of New Mexico other than the Uniform Assignment of Rents Act.

## **Chapter 141 Section 14 Laws 2011**

### **SECTION 14. TURNOVER OF RENTS--COMMINGLING AND IDENTIFIABILITY OF RENTS--LIABILITY OF ASSIGNOR.--**

A. As used in this section, "good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

B. If an assignor collects rents that the assignee is entitled to collect pursuant to the Uniform Assignment of Rents Act:

(1) the assignor shall turn over the proceeds to the assignee, less any amount representing payment of expenses authorized by the assignee; and

(2) the assignee continues to have a security interest in the proceeds so long as they are identifiable.

C. For purposes of the Uniform Assignment of Rents Act, cash proceeds are identifiable if they are maintained in a segregated account or, if commingled with other funds, to the extent the assignee can identify them by a method of tracing, including application of equitable principles, that is permitted pursuant to any law of New Mexico other than the Uniform Assignment of Rents Act with respect to commingled funds.

D. In addition to any other remedy available to the assignee pursuant to any law of New Mexico other than the Uniform Assignment of Rents Act, if an assignor fails to turn over proceeds to the assignee as required by Subsection B of this section, the assignee may recover from the assignor in a civil action:

(1) the proceeds, or an amount equal to the proceeds, that the assignor was obligated to turn over pursuant to Subsection B of this section; and

(2) reasonable attorney fees and costs incurred by the assignee to the extent provided for by agreement and not prohibited by any law of New Mexico other than the Uniform Assignment of Rents Act.

E. The assignee may maintain an action pursuant to Subsection D of this section without bringing an action to foreclose any security interest that it may have in the real property. Any sums recovered in the action shall be applied in the manner specified in Section 12 of the Uniform Assignment of Rents Act.

F. Unless otherwise agreed, if an assignee entitled to priority pursuant to Subsection C of Section 5 of the Uniform Assignment of Rents Act enforces its interest in rents after another creditor holding a subordinate security interest in rents has enforced its interest pursuant to Section 8 or 9 of that act, the creditor holding the subordinate security interest in rents is not obligated to turn over any proceeds that it collects in good faith before the creditor receives notification that the senior assignee has enforced its interest in rents. The creditor shall turn over to the senior assignee any proceeds that it collects after it receives the notification.

## **Chapter 141 Section 15 Laws 2011**

SECTION 15. PERFECTION AND PRIORITY OF ASSIGNEE'S SECURITY INTEREST IN PROCEEDS.--

A. As used in this section:

(1) "Article 9" means Chapter 55, Article 9 NMSA 1978 or, to the extent applicable to any particular issue, Article 9 of the Uniform Commercial Code as adopted by the state whose laws govern that issue pursuant to the choice-of-laws rules contained in Chapter 55, Article 9 NMSA 1978; and

(2) "conflicting interest" means an interest in proceeds, held by a person other than an assignee, that is:

(a) a security interest arising pursuant to Article 9; or

(b) any other interest if Article 9 resolves the priority conflict between that person and a secured party with a conflicting security interest in the proceeds.

B. An assignee's security interest in identifiable cash proceeds is perfected if its security interest in rents is perfected. An assignee's security interest in identifiable noncash proceeds is perfected only if the assignee perfects that interest in accordance with Article 9.

C. Except as otherwise provided in Subsection D of this section, priority between an assignee's security interest in identifiable proceeds and a conflicting interest is governed by the priority rules in Article 9.

D. An assignee's perfected security interest in identifiable cash proceeds is subordinate to a conflicting interest that is perfected by control pursuant to Article 9 but has priority over a conflicting interest that is perfected other than by control.

## **Chapter 141 Section 16 Laws 2011**

SECTION 16. PRIORITY SUBJECT TO SUBORDINATION.--The Uniform Assignment of Rents Act does not preclude subordination by agreement as to rents or proceeds.

## **Chapter 141 Section 17 Laws 2011**

SECTION 17. UNIFORMITY OF APPLICATION AND CONSTRUCTION.--In applying and construing the Uniform Assignment of Rents 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 141 Section 18 Laws 2011**

SECTION 18. RELATION TO FEDERAL ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.--The Uniform Assignment of Rents 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 or authorize electronic delivery of any of the notices described in Section 103(b) of that act.

## **Chapter 141 Section 19 Laws 2011**

### SECTION 19. APPLICATION TO EXISTING RELATIONSHIPS.--

A. Except as otherwise provided in this section, the Uniform Assignment of Rents Act governs the enforcement of an assignment of rents and the perfection and priority of a security interest in rents, even if the document creating the assignment was signed and delivered before the effective date of that act.

B. The Uniform Assignment of Rents Act does not affect an action or proceeding commenced before the effective date of that act.

C. Subsection A of Section 4 of the Uniform Assignment of Rents Act does not apply to any security instrument signed and delivered before the effective date of that act.

D. The Uniform Assignment of Rents Act does not affect:

(1) the enforceability of an assignee's security interest in rents or proceeds if, immediately before the effective date of that act, that security interest was enforceable;

(2) the perfection of an assignee's security interest in rents or proceeds if, immediately before the effective date of that act, that security interest was perfected; or

(3) the priority of an assignee's security interest in rents or proceeds with respect to the interest of another person if, immediately before the effective date of that act, the interest of the other person was enforceable and perfected, and that priority was established.

## **Chapter 141 Section 20 Laws 2011**

SECTION 20. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 2012.

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House Bill 199

Approved April 7, 2011

# **LAWS 2011, CHAPTER 142**

AN ACT

RELATING TO JAILS; PROVIDING FOR ANNUAL INSPECTION OF JAILS AND DETENTION CENTERS; REPEALING AND ENACTING A SECTION OF THE NMSA 1978.

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

## **Chapter 142 Section 1 Laws 2011**

SECTION 1. Section 33-3-4 NMSA 1978 (being Laws 1865-1866, Chapter 19, Section 3, as amended) is repealed and a new Section 33-3-4 NMSA 1978 is enacted to read:

"33-3-4. INSPECTION OF JAILS AND DETENTION CENTERS--REPORT.-- Each governing body of a county or municipality shall conduct an annual site visit to the jail or detention center under its jurisdiction to inspect the overall conditions at the facility. Following a site visit, an inspection report shall be presented at a regular meeting of the governing body."

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HJC/House Bill 426

Approved April 7, 2011

# **LAWS 2011, CHAPTER 143**

AN ACT

RELATING TO YOUTH DRIVING; MODIFYING REQUIREMENTS FOR LICENSING DRIVERS UNDER EIGHTEEN YEARS OF AGE; PROVIDING FOR AN ADDITIONAL THIRTY DAYS OF DRIVING WITH AN INSTRUCTION PERMIT OR A PROVISIONAL LICENSE FOR EACH TRAFFIC VIOLATION COMMITTED; INCLUDING SEAT BELT LAWS, THE USE OF MOBILE PHONES AND BUYING, POSSESSING OR BEING SERVED ALCOHOLIC BEVERAGES TO THE LIST OF VIOLATIONS THAT WOULD DELAY THE ISSUANCE OF A PROVISIONAL LICENSE OR DRIVER'S LICENSE TO A PERSON UNDER AGE EIGHTEEN; 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 143 Section 1 Laws 2011**



SECTION 1. Section 66-5-1.1 NMSA 1978 (being Laws 1999, Chapter 175, Section 1) is amended to read:

"66-5-1.1. DEFINITION.--As used in Sections 66-5-8 and 66-5-9 NMSA 1978, "traffic violation" means:

A. failure to obey traffic-control devices, as provided in Section 66-7-104 NMSA 1978;

B. failure to obey traffic-control signals, as provided in Section 66-7-105 NMSA 1978;

C. speeding, as provided in Section 66-7-301 NMSA 1978;

D. failure to yield, as provided in Sections 66-7-328 through 66-7-332.1 NMSA 1978;

E. child not in restraint device or seat belt, as provided in Section 66-7-369 NMSA 1978;

F. failure to properly fasten safety belt, as provided in Section 66-7-372 NMSA 1978;

G. homicide by vehicle, as provided in Section 66-8-101 NMSA 1978;

H. injury to pregnant woman by vehicle, as provided in Section 66-8-101.1 NMSA 1978;

I. driving while under the influence of intoxicating liquor or drugs, as provided in Section 66-8-102 NMSA 1978;

J. refusal to submit to chemical tests, as provided in Section 66-8-111 NMSA 1978;

K. reckless driving, as provided in Section 66-8-113 NMSA 1978;

L. careless driving, as provided in Section 66-8-114 NMSA 1978;

M. racing on highways, as provided in Section 66-8-115 NMSA 1978;

N. using a mobile communication device while driving a motor vehicle, unless the driver holds a valid amateur radio operator license issued by the federal communications commission and is operating an amateur radio. As used in this subsection:

(1) "driving" means being in actual physical control of a motor vehicle on a highway or street, except that "driving" does not include being lawfully parked; and

(2) "mobile communication device" means a wireless communication device that is designed to receive and transmit voice, text or image communication; or

O. buying, attempting to buy, receiving, possessing or permitting oneself to be served alcoholic beverages, as provided in Subsection C of Section 60-7B-1 NMSA 1978."

## **Chapter 143 Section 2 Laws 2011**

SECTION 2. Section 66-5-5 NMSA 1978 (being Laws 1978, Chapter 35, Section 227, as amended by Laws 2007, Chapter 316, Section 1 and by Laws 2007, Chapter 317, Section 1) is amended to read:

"66-5-5. PERSONS NOT TO BE LICENSED.--The division shall not issue a driver's license under the Motor Vehicle Code to any person:

A. who is under the age of eighteen years, except the division may, in its discretion, issue:

(1) an instruction permit to a person fifteen years of age or older who is enrolled in and attending or has completed a driver education course approved by the bureau that includes a DWI education and prevention component;

(2) a provisional license to a person fifteen years and six months of age or older:

(a) who has completed a driver education course approved by the bureau or offered by a public school that includes a DWI education and prevention component and has had an instruction permit for at least six months as provided in Section 66-5-8 NMSA 1978; and

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

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

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

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

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

(4) to a person thirteen years of age or older who passes an examination prescribed by the division, a license restricted to the operation of a motorcycle, provided:

(a) the motorcycle is not in excess of one hundred cubic centimeters displacement;

(b) no holder of an initial license may carry any other passenger while driving a motorcycle; and

(c) the director approves and certifies motorcycles as not in excess of one hundred cubic centimeters displacement and by rule provides for a method of identification of such motorcycles by all law enforcement officers;

B. whose license or driving privilege has been suspended or denied, during the period of suspension or denial, or to any person whose license has been revoked, except as provided in Section 66-5-32 NMSA 1978 and the Ignition Interlock Licensing Act;

C. who is an habitual user of narcotic drugs or alcohol or an habitual user of any drug to a degree that renders the person incapable of safely driving a motor vehicle;

D. who is four or more times convicted of driving a motor vehicle while under the influence of intoxicating liquor or narcotic drug regardless of whether the convictions are under the laws or ordinances of this state or any municipality or county of this state or under the laws or ordinances of any other state, the District of Columbia or any governmental subdivision thereof, except as provided in the Ignition Interlock Licensing Act. Five years from the date of the fourth conviction and every five years thereafter, the person may apply to any district court of this state for restoration of the license, and the court, upon good cause being shown, may order restoration of the license applied for; provided that the person has not been subsequently convicted of driving a motor vehicle while under the influence of intoxicating liquor or drugs. Upon issuance of the order of restoration, a certified copy shall immediately be forwarded to the division, and if the person is otherwise qualified for the license applied for, the four previous convictions shall not prohibit issuance of the license;

E. who was convicted on or after June 17, 2005 of driving a motor vehicle while under the influence of intoxicating liquor or drugs pursuant to the laws or

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

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

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

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

I. when the director has good cause to believe that the operation of a motor vehicle on the highways by the person would be inimical to public safety or welfare; or

J. as a motorcycle driver who is less than eighteen years of age and who has not presented a certificate or other evidence of having successfully completed a motorcycle driver education program licensed or offered in conformance with rules of the bureau."

## **Chapter 143 Section 3 Laws 2011**

SECTION 3. Section 66-5-8 NMSA 1978 (being Laws 1978, Chapter 35, Section 230, as amended) is amended to read:

"66-5-8. PROVISIONAL LICENSES--INSTRUCTION PERMITS--DRIVER EDUCATION STUDENTS--TEMPORARY LICENSES.--

A. A person fifteen years and six months of age or older may apply to the division for a provisional license if the person:

(1) has completed a driver education course approved by the bureau that includes a DWI prevention and education component;

(2) has had an instruction permit for at least six months; provided that thirty days shall be added to the six months for each adjudication or conviction of a traffic violation committed during the time the person was driving with an instruction permit;

(3) has not been cited for a traffic violation that is pending at the time of application; and

(4) has successfully completed a practice driving component.

B. Successful completion of a practice driving component shall include not less than fifty hours of actual driving by the applicant, including not less than ten hours of night driving. An applicant for a provisional license who cannot drive at night due to low nighttime vision may be exempted from the night driving requirement of this subsection; provided that the applicant submits to the division an ophthalmologic or optometric report from a licensed ophthalmologist or optometrist who attests to the applicant's visual condition and its effect on the applicant's driving ability. The applicant's parent or guardian shall certify that the applicant has completed the practice driving component.

C. When operating a motor vehicle, a provisional licensee may be accompanied by not more than one passenger under the age of twenty-one who is not a member of the licensee's immediate family. A provisional license entitles the licensee, while having the license in the licensee's immediate possession, to operate a motor vehicle upon the public highways between the hours of 5:00 a.m. and midnight unless the provisional licensee is eligible for a license restricting driving to daylight hours. A provisional licensee may drive at any hour unless otherwise restricted as provided in this subsection if:

(1) accompanied by a licensed driver who is twenty-one years of age or older;

(2) required by family necessity as evidenced by a signed statement of a parent or guardian;

(3) required by medical necessity as evidenced by a signed statement from medical personnel;

(4) driving to and from work as evidenced by a signed statement from the licensee's employer;

(5) driving to and from school or a religious activity as evidenced by a signed statement of a school or religious official or a parent or guardian; or

(6) required due to a medical emergency.

D. A provisional license shall be in such form as to be readily distinguishable from an unrestricted driver's license and shall contain an indication that the licensee may drive without supervision.

E. A person fifteen years of age or older who is enrolled in and attending or has completed a driver education course approved by the bureau that includes a DWI prevention and education component may apply to the division for an instruction permit. The division, in its discretion after the applicant has successfully passed all parts of the examination other than the driving test, may issue to the applicant an instruction permit. This permit entitles the applicant, while having the permit in the applicant's immediate possession, to drive a motor vehicle upon the public highways when accompanied by a licensed driver who is twenty-one years of age or older, who has been licensed for at least three years in this state or in another state and who is occupying a seat beside the driver except in the event the permittee is operating a motorcycle.

F. A person fifteen years of age or older who is a student enrolled in and attending a driver education course that is approved by the bureau and that includes both a DWI education and prevention component and practice driving component may drive a motor vehicle on the highways of this state even though the person has not reached the legal age to be eligible for a driver's license or a provisional license. In completing the practice driving component, a person may only operate a motor vehicle on a public highway if:

(1) an approved instructor is occupying a seat beside the person; or

(2) a licensed driver who is twenty-one years of age or older and who has been licensed for at least three years in this state or another state is occupying a seat beside the person.

G. The division in its discretion may issue a temporary driver's permit to an applicant for a driver's license permitting the applicant to operate a motor vehicle while the division is completing its investigation and determination of all facts relative to the applicant's right to receive a driver's license. The permit shall be in the applicant's immediate possession while operating a motor vehicle, and it shall be invalid when the applicant's license has been issued or for good cause has been refused.

H. A holder of an instruction permit for a motorcycle shall not carry any other passenger while operating a motorcycle."

## **Chapter 143 Section 4 Laws 2011**

SECTION 4. Section 66-5-9 NMSA 1978 (being Laws 1978, Chapter 35, Section 231, as amended) is amended to read:

"66-5-9. APPLICATION FOR LICENSE, TEMPORARY LICENSE, PROVISIONAL LICENSE OR INSTRUCTION PERMIT.--

A. An application for an instruction permit, provisional license or driver's license shall be made upon a form furnished by the department. An application shall be accompanied by the proper fee. For permits, provisional licenses or driver's licenses other than those issued pursuant to the New Mexico Commercial Driver's License Act, submission of a complete application with payment of the fee entitles the applicant to not more than three attempts to pass the examination within a period of six months from the date of application.

B. An application shall contain the full name, social security number or individual tax identification number, date of birth, sex and New Mexico residence address of the applicant and briefly describe the applicant and indicate whether the applicant has previously been licensed as a driver and, if so, when and by what state or country and whether any such license has ever been suspended or revoked or whether an application has ever been refused and, if so, the date of and reason for the suspension, revocation or refusal. For foreign nationals applying for driver's licenses, the secretary shall accept the individual taxpayer identification number as a substitute for a social security number regardless of immigration status. The secretary is authorized to establish by regulation other documents that may be accepted as a substitute for a social security number or an individual tax identification number.

C. An applicant shall indicate whether the applicant has been convicted of driving while under the influence of intoxicating liquor or drugs in this state or in any other jurisdiction. Failure to disclose any such conviction prevents the issuance of a driver's license, provisional license, temporary license or instruction permit for a period of one year if the failure to disclose is discovered by the department prior to issuance. If the nondisclosure is discovered by the department subsequent to issuance, the department shall revoke the driver's license, provisional license, temporary license or instruction permit for a period of one year. Intentional and willful failure to disclose, as required in this subsection, is a misdemeanor.

D. An applicant under eighteen years of age who is making an application for a first New Mexico driver's license shall submit evidence that the applicant has:

(1) successfully completed a driver education course approved by the bureau that included a DWI prevention and education component. The bureau may accept verification of driver education course completion from another state if the driver education course substantially meets the requirements of the bureau for a course offered in New Mexico;

(2) had a provisional license for at least the twelve-month period immediately preceding the date of the application for the driver's license; provided that thirty days shall be added to the twelve-month period for each adjudication or conviction of a traffic violation committed during the time the person was driving with a provisional license;

(3) complied with restrictions on that license;

(4) not been cited for a traffic violation that is pending at the time of application; and

(5) not been adjudicated for an offense involving the use of alcohol or drugs during the twelve-month period immediately preceding the date of the application for the driver's license and that there are no pending adjudications alleging an offense involving the use of alcohol or drugs at the time of application.

E. An applicant eighteen years of age or over, but under twenty-five years of age, who is making an application to be granted a first New Mexico driver's license shall submit evidence with the application that the applicant has successfully completed a bureau-approved DWI prevention and education program.

F. An applicant twenty-five years of age or over who has been convicted of driving under the influence of intoxicating liquor or drugs and who is making an application to be granted a first New Mexico driver's license, shall submit evidence with the application that the applicant has successfully completed a bureau-approved DWI prevention and education program.

G. Whenever an application is received from a person previously licensed in another jurisdiction, the department may request a copy of the driver's record from the other jurisdiction. When received, the driver's record may become a part of the driver's record in this state with the same effect as though entered on the driver's record in this state in the original instance.

H. Whenever the department receives a request for a driver's record from another licensing jurisdiction, the record shall be forwarded without charge.

I. This section does not apply to driver's licenses issued pursuant to the New Mexico Commercial Driver's License Act."

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SJC/Senate Bill 9, aa

Approved April 7, 2011

## **LAWS 2011, CHAPTER 144**



## AN ACT

RELATING TO HEALTH INSURANCE; AMENDING AND ENACTING SECTIONS OF THE NEW MEXICO INSURANCE CODE TO PROVIDE NEW STANDARDS IN REVIEW OF FILINGS OF HEALTH INSURANCE RATES; PROVIDING FOR ADMINISTRATIVE HEARINGS AND APPEAL TO THE SUPREME COURT OF DETERMINATIONS IN HEALTH INSURANCE AND HEALTH CARE PLAN RATE MATTERS; PROVIDING FOR RULEMAKING BY THE SUPERINTENDENT OF INSURANCE; PROVIDING FOR POOLING OF CLOSED BLOCKS OF BUSINESS.

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

### **Chapter 144 Section 1 Laws 2011**

SECTION 1. Section 59A-4-15 NMSA 1978 (being Laws 1984, Chapter 127, Section 59, as amended) is amended to read:

"59A-4-15. HEARINGS--IN GENERAL.--

A. The superintendent may hold a hearing, without request by others, for any purpose within the scope of the Insurance Code.

B. The superintendent shall hold a hearing:

(1) if required by any other provision of the Insurance Code; or

(2) upon written request for a hearing by a person aggrieved by any act, threatened act or failure of the superintendent to act or by any report, rule, regulation or order of the superintendent, other than an order for the holding of a hearing or order on hearing or pursuant to such an order on a hearing of which such person had notice.

C. The request for a hearing shall briefly state the respects in which the applicant is so aggrieved, the relief to be sought and the grounds to be relied upon as basis for relief.

D. If the superintendent finds that the request is made in good faith, that the applicant would be so aggrieved if the stated grounds are established and that such grounds otherwise justify the hearing, the superintendent shall commence the hearing within thirty days after filing of the request, unless postponed by mutual consent. No postponement shall be later than ninety days after the filing of the request.

E. Pending the hearing and decision, the superintendent may suspend or postpone the effective date of the action as to which the hearing is requested. If upon request the superintendent refuses to grant the suspension or postponement, the person requesting the hearing may apply no later than twenty days from the

superintendent's refusal to the district court of Santa Fe county for a stay of the superintendent's action or proposed action pending the hearing and the superintendent's order.

F. Except as otherwise expressly provided, this section does not apply to hearings relative to matters arising under Chapter 59A, Article 17 NMSA 1978.

G. The superintendent may appoint a hearing officer to preside over hearings on reconsideration of rate filings. The hearing officer shall provide the superintendent with a recommended decision on the matter assigned to the hearing officer, including findings of fact and conclusions of law."

## **Chapter 144 Section 2 Laws 2011**

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, health care plan 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 or health care plan be used, until a copy of the form and the classification of risks pertaining to the policy or health care plan has been filed with the superintendent. Except for a filing for health insurance or health care plan rates, 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 related to health insurance or health care plan or rates shall be subject to the provisions of Section 5 of this 2011 act. A filing for any kind of insurance other than life insurance, health care plans 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, a beneficiary or, in the public interest of the state, the attorney general, may in writing request the insurer to review the manner in which its filing has been applied as to insurance or health care plan afforded the insured, the beneficiary, or the attorney general. If the insurer fails to make a review and grant appropriate relief within thirty days after the request is received, the insured, the beneficiary or the attorney general 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, the beneficiary or the attorney general would be aggrieved if the violation is proved, the superintendent shall hold a hearing, with notice to the insured, the beneficiary or the attorney general 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.

E. As used in this section, "health insurance" or "health care plan" means a hospital and medical expense-incurred policy, plan or contract offered by a health insurer; nonprofit health service provider; health maintenance organization; managed care organization; or provider service organization; "health insurance" or "health care plan" does not include an individual policy intended to supplement major medical group-type coverage such as medicare supplement, long-term care, disability income, specified disease, accident-only, hospital indemnity or any other limited-benefit health insurance policy."

## **Chapter 144 Section 3 Laws 2011**

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 and health care plans, the insurer shall also file with the superintendent its rates applicable to such health insurance forms. An insurer shall not use any form that has not been approved by the superintendent or that is not in effect in accordance with Section 59A-18-14 NMSA 1978.

B. 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 144 Section 4 Laws 2011**

SECTION 4. Section 59A-18-14 NMSA 1978 (being Laws 1984, Chapter 127, Section 344, as amended) is amended to read:

"59A-18-14. GROUNDS, PROCEDURE FOR DISAPPROVAL.--

A. The superintendent shall review any filing, except any filing by a health insurance issuer for a change in rate, made pursuant to Section 59A-18-12 or 59A-18-13 NMSA 1978 within sixty days of the filing date. The superintendent shall approve any form if the superintendent finds that it complies with the Insurance Code and shall disapprove any form, classification of risks or rate only on one or more of the following grounds:

(1) if the form is in any respect in violation of or does not comply with the Insurance Code;

(2) if the form contains, or incorporates by reference where such incorporation is otherwise permissible, any inconsistent, ambiguous or misleading clauses or exceptions and conditions that deceptively affect the risk purported to be assumed in the general coverage of the contract, or that encourage misrepresentation of the policy or its benefits;

(3) if the benefits offered are unreasonably restricted in relation to the premium charged;

(4) if the form has a title, heading or other indication of its provisions that is misleading or if the form is printed in such type or manner of reproduction as to be difficult to read; or

(5) if purchase of the form is being solicited by advertising, communication or dissemination of information that is deceptive or misleading.

B. If the superintendent disapproves any form during the sixty-day review period, the superintendent shall give the insurer written notice of the disapproval, stating the grounds for the disapproval.

C. After expiration of the sixty-day review period referred to in Subsection A of this section or at any time after having approved a form, the superintendent may, after a hearing thereon, disapprove a form or withdraw a previous approval on any of the grounds stated in Subsection A of this section. The superintendent's order issued on such hearing shall state the grounds for disapproval or withdrawal of previous approval and the date, not less than twenty days after the date of the order, when disapproval or withdrawal of approval shall become effective.

D. Any filing for a rate by a health insurance issuer shall be reviewed pursuant to the provisions of Section 6 of this 2011 act.

E. As used in this section, "health insurance issuer" means a health insurer; nonprofit health service provider; health maintenance organization; managed care organization; or provider service organization that offers a hospital and medical expense-incurred policy, plan or contract; "health insurance issuer" does not include a person that offers an individual policy intended to supplement major medical group-type coverage such as medicare supplement, long-term care, disability income, specified disease, accident-only, hospital indemnity or any other limited-benefit health insurance policy."

## **Chapter 144 Section 5 Laws 2011**

SECTION 5. A new section of Chapter 59A, Article 18 NMSA 1978 is enacted to read:

### **"HEALTH INSURANCE--HEALTH CARE PLAN RATES FILING REQUIREMENTS.--**

A. All health insurance or health care plan rates filed by an insurer with the superintendent pursuant to Section 59A-18-12 NMSA 1978 shall include all related forms.

B. An insurer shall not use a rate without prior approval of the superintendent pursuant to Section 6 of this 2011 act and compliance with the provisions of that act.

C. Upon making a filing pursuant to Subsection A of this section, an insurer shall provide written notice to policyholders and beneficiaries potentially affected by the insurer's filing. The language of the notice shall meet the minimum language

simplification standards in the Policy Language Simplification Law. The insurer shall provide, at a minimum, the following in its notice:

(1) a summary of the rates, including any percentage changes in the rates;

(2) a summary of all related form changes;

(3) an explanation of form and rate changes; and

(4) the policyholder or beneficiary rights under the Insurance Code, including the right to comment on the filing for the thirty days following the posting on the division's web site as required by Subsection D of this section.

D. Within twelve days of the filing, the superintendent shall make available on the division's web site in language that shall meet the minimum language simplification standards in the Policy Language Simplification Law the following information provided by the insurer that relates to each block of business included in the filing:

(1) the information required by Subsection C of this section;

(2) the proposed rates;

(3) a brief description of how the revised rates were determined, including the general description and source of each assumption used;

(4) the expected medical loss ratio and, for blocks of business in existence for at least three years, the medical loss ratio for the three years preceding the date of filing, accompanied by supporting information as to how the blocks of business will meet the requirements for medical loss ratio in state and federal law;

(5) if medical costs, including utilization and compensation rates, are alleged to justify a rate increase, the filing shall identify in the aggregate the types of expenditures in those categories that support the premium rate increase in the geographic area covered;

(6) for blocks of business in existence for at least three years, premium revenues, claims history, losses and reserves for the three years preceding the date of filing, accompanied by supporting documentation; and

(7) whether the insurer has ceased to actively offer or sell to new applicants a block of business for which it seeks a rate increase.

E. Regarding an insurer's overall insurance operations in the state for the three years preceding the date of filing, the superintendent shall make available on the division's web site, at a minimum, the following information that the insurer provides:

(1) a list detailing which blocks of business are open and which are closed to new enrollment;

(2) reserves and surpluses for all product lines sold in the state and a reasonable estimate of the expected reserves and surpluses; and

(3) changes in total medical and administrative costs over the previous three years.

F. The superintendent shall post a link on the division's web site to the most recent annual financial statement and actuarial memorandum that the insurer has filed with the division.

G. Notwithstanding any other provision of this section, upon request by an insurer, the superintendent may exempt from disclosure any part of the filing that the superintendent determines to contain proprietary information and that would, if disclosed, harm competition. Pending the superintendent's determination under this subsection, the superintendent shall not disclose the part of a filing that is the subject of an insurer's request.

H. On the date that the superintendent posts a filing pursuant to Subsection D of this section, the superintendent shall open a thirty-day public comment period for policyholders and the general public, during which the policyholders and the general public may make comments online or in writing. The superintendent shall post on the division's web site in a manner easily accessible to the public all comments made during the thirty-day public comment period.

I. 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.

J. As used in this section, "health insurance" or "health care plan" means a hospital and medical expense-incurred policy, plan or contract offered by a health insurer; nonprofit health service provider; health maintenance organization; managed care organization; or provider service organization; "health insurance" or "health care plan" does not include an individual policy intended to supplement major medical group-type coverage such as medicare supplement, long-term care, disability income, specified disease, accident-only, hospital indemnity or any other limited-benefit health insurance policy."

## **Chapter 144 Section 6 Laws 2011**

SECTION 6. A new section of Chapter 59A, Article 18 NMSA 1978 is enacted to read:

"HEALTH INSURANCE FILINGS--GROUNDS AND PROCEDURE FOR APPROVAL OR DISAPPROVAL.--

A. The superintendent shall issue a final order within sixty days of the filing date for health insurance filings made on rates. The superintendent shall consider any public comment made pursuant to Subsection H of Section 5 of this 2011 act. The superintendent shall issue findings and shall approve any rates on the following grounds:

(1) the proposed rate is in compliance with federal law and the Insurance Code;

(2) the proposed rate does not contain, or incorporate by reference, any inconsistent, ambiguous or misleading clause, exception or condition that deceptively affects the risk purported to be assumed in the general coverage of the contract, or that encourages misrepresentation of the policy or its benefits;

(3) the proposed rate is actuarially sound and is supported by the actuarial memorandum submitted;

(4) the proposed rate is reasonable, not excessive or inadequate and not unfairly discriminatory; and

(5) the proposed rate is based upon administrative expenses that are permitted by federal and state law.

B. In order to determine whether the proposed rates are reasonable, actuarially sound and based on reasonable administrative expenses, the superintendent shall consider, at a minimum:

(1) the financial position of the insurer's insurance operations in the state, including surplus and reserves as reported in the latest three years' financial statements filed by the insurer;

(2) information provided to the superintendent for calculation of the amount of the insurer's direct services reimbursement pursuant to Section 59A-22-50, 59A-23C-10, 59A-46-51 or 59A-47-46 NMSA 1978;

(3) any anticipated change in the number of enrollees if the proposed rate is approved;

(4) changes to covered benefits or health benefit plan design;



(5) the insurer's compliance with all federal and state requirements for pooling risk and for participation in risk adjustment programs in effect under federal and state law; and

(6) the reliability and accuracy of the information provided in order to assure a meaningful review.

C. No final order shall be issued until after the close of the public comment period pursuant to Subsection H of Section 5 of this 2011 act.

D. In rate filings for which the superintendent holds a hearing on reconsideration pursuant to Section 59A-4-15 NMSA 1978, the superintendent shall issue a final order within sixty days of the hearing.

E. A final order of the superintendent under this section may be appealed to the commission pursuant to the provisions of Section 7 of this 2011 act within twenty days.

F. As used in this section, "health insurance" or "health care plan" means a hospital and medical expense-incurred policy, plan or contract offered by a health insurer; nonprofit health service provider; health maintenance organization; managed care organization; or provider service organization; "health insurance" or "health care plan" does not include an individual policy intended to supplement major medical group-type coverage such as medicare supplement, long-term care, disability income, specified disease, accident-only, hospital indemnity or any other limited-benefit health insurance policy."

## **Chapter 144 Section 7 Laws 2011**

SECTION 7. A new section of Chapter 59A, Article 18 NMSA 1978 is enacted to read:

"REVIEW OF HEALTH INSURANCE OR PLAN RATES--APPEAL--  
COMMISSION--HEARING--HEARING EXAMINER--FINDINGS.--

A. A hearing conducted pursuant to an appeal to the public regulation commission filed following a final order of the superintendent under Section 6 of this 2011 act shall be a hearing conducted:

(1) within forty days after the date a request for appeal was filed;

(2) in accordance with Sections 8-8-16 through 8-8-18 NMSA 1978;

(3) by a hearing examiner that the commission appoints pursuant to Section 8-8-14 NMSA 1978; and

(4) as a hearing on the record as a whole.

B. On appeal, the commission shall set aside the superintendent's final order and remand the matter to the superintendent only if:

(1) after evaluation of the record of evidence as a whole, it finds that the superintendent's decision was not based on substantial evidence as to whether the proposed rates are reasonable, actuarially sound and based on reasonable administrative expenses;

(2) it finds that the superintendent's decision was arbitrary, capricious or an abuse of discretion; or

(3) it finds that the superintendent's decision is otherwise not in accordance with law.

C. The commission shall render a decision within ninety days of a hearing held pursuant to this section."

## **Chapter 144 Section 8 Laws 2011**

SECTION 8. A new section of Chapter 59A, Article 18 NMSA 1978 is enacted to read:

"REVIEW OF HEALTH INSURANCE OR PLAN RATES--APPEAL TO SUPREME COURT FROM COMMISSION.--

A. In a matter arising from an order of the commission on appeal pursuant to Section 7 of this 2011 act, an aggrieved party may appeal to the supreme court.

B. The supreme court shall consider the commission's order on appeal and reverse the commission's order on appeal only if the supreme court determines:

(1) after evaluation of the record of evidence as a whole, that the superintendent's decision was not based on substantial evidence as to whether the proposed rates are reasonable, actuarially sound and based on reasonable administrative expenses;

(2) that the commission's decision was arbitrary, capricious or an abuse of discretion; or

(3) that the commission's decision on appeal is otherwise not in accordance with law."

## **Chapter 144 Section 9 Laws 2011**

SECTION 9. A new section of Chapter 59A, Article 18 NMSA 1978 is enacted to read:

"POOLING OF CLOSED BLOCKS OF BUSINESS.--For the purpose of determining the rate of any policy within a closed block of business, the superintendent may require an insurer to pool the experience of a closed block of business with all appropriate blocks of business that are not closed in accordance with Section 59A-18-13.1 NMSA 1978. An insurer shall not apply a rate penalty or surcharge beyond that which reflects the experience of a pool combined in accordance with this section."

### **Chapter 144 Section 10 Laws 2011**

SECTION 10. A new section of Chapter 59A, Article 18 NMSA 1978 is enacted to read:

"CLOSED BLOCK OF BUSINESS.--As used in Chapter 59A, Article 18 NMSA 1978, "closed block of business" means a policy or group of policies that division rules identify as closed because an insurer no longer markets or sells the policy or group of policies or because the policy's or group of policies' enrollment has decreased."

### **Chapter 144 Section 11 Laws 2011**

SECTION 11. A new section of Chapter 59A, Article 18 NMSA 1978 is enacted to read:

"'BLOCK OF BUSINESS" DEFINED.--As used in Chapter 59A, Article 18 NMSA 1978, "block of business" means a particular policy or pool that provides health insurance, that an insurer issues to one or more individuals and that includes distinct benefits, services and terms."

### **Chapter 144 Section 12 Laws 2011**

SECTION 12. A new section of Chapter 59A, Article 18 NMSA 1978 is enacted to read:

"HEALTH INSURANCE OR HEALTH PLAN FORM AND RATE FILINGS--SUPERINTENDENT--RULEMAKING--COMPLIANCE WITH FEDERAL LAW.--The superintendent shall adopt rules:

A. to define terms used regarding forms, rates, reviews and blocks of business that an insurer or health care plan submits in filing matters;

B. to govern any additional filing requirements the superintendent deems appropriate;

C. to provide notice of hearings and the grounds on which the hearings have been requested;

D. to meet criteria for review in accordance with federal law; and

E. that the superintendent deems appropriate to carry out the provisions of Chapter 59A, Article 18 NMSA 1978."

## **Chapter 144 Section 13 Laws 2011**

SECTION 13. Section 59A-4-20 NMSA 1978 (being Laws 1984, Chapter 127, Section 67, as amended) is amended to read:

"59A-4-20. APPEAL TO COURT.--

A. Except in matters arising from Sections 6 and 7 of this 2011 act, a party may appeal from an order of the superintendent made after an informal hearing or an administrative hearing. The appeal shall be taken to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

B. This section shall not apply as to matters arising pursuant to Chapter 59A, Article 17 NMSA 1978."

## **Chapter 144 Section 14 Laws 2011**

SECTION 14. EFFECTIVE DATE.--The effective date of provisions of this act is January 1, 2012.

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SJC/SPAC/Senate Bills 208 & 499, aa

Approved April 7, 2011

# **LAWS 2011, CHAPTER 145**

AN ACT

RELATING TO HEALTH CARE; REQUIRING HEALTH CARE PROVIDERS TO INFORM PERSONS UNDERGOING MASTECTOMY OR LUMPECTOMY OR LYMPH NODE DISSECTION SURGERY OF THE BREAST ABOUT THE OPTION OF RECONSTRUCTIVE SURGERY.

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

## **Chapter 145 Section 1 Laws 2011**

### **SECTION 1. COMMUNICATION REGARDING RECONSTRUCTIVE BREAST SURGERY.--**

A. A health care provider that provides mastectomy or lumpectomy or lymph node dissection surgery of the breast shall provide information to the patient about the option of reconstructive surgery. The information shall be provided to the patient in writing and in advance of obtaining consent for the mastectomy or lumpectomy or lymph node dissection surgery of the breast. The information shall include at least a description of:

(1) reconstructive surgery options and the advantages and disadvantages of each option;

(2) the availability of health insurance or health care coverage for costs related to reconstructive surgery pursuant to the New Mexico Insurance Code and the federal Women's Health and Cancer Rights Act of 1998; and

(3) patient access to reconstructive surgery services, including referring the patient to a health care provider that provides reconstructive surgery if the health care provider that performs the mastectomy or lumpectomy or lymph node dissection surgery of the breast does not offer reconstructive surgery services.

B. The department of health shall notify health care providers of the provisions of Subsection A of this section.

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Senate Bill 283

Approved April 7, 2011

## **LAWS 2011, CHAPTER 146**

AN ACT

RELATING TO TRUANCY; CLARIFYING THE DEFINITION OF HABITUAL TRUANT.

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

## **Chapter 146 Section 1 Laws 2011**

SECTION 1. 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 days or more of 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 an 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."

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Senate Bill 290

Approved April 7, 2011

## **LAWS 2011, CHAPTER 147**

### **AN ACT**

RELATING TO MOTOR VEHICLES; AMENDING A SECTION OF THE MOTOR VEHICLE CODE TO PROVIDE FOR ELIGIBILITY FOR THE DISABLED VETERANS SPECIAL REGISTRATION PLATE FOR VETERANS WITH AT LEAST A FIFTY PERCENT DISABILITY.

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

### **Chapter 147 Section 1 Laws 2011**

SECTION 1. Section 66-3-412 NMSA 1978 (being Laws 1979, Chapter 299, Section 2, as amended) is amended to read:

"66-3-412. SPECIAL REGISTRATION PLATES--FIFTY PERCENT OR MORE DISABLED VETERANS--SUBMISSION OF PROOF--PENALTY.--

A. The department shall issue distinctive registration plates for up to two vehicles, including motorcycles, to a person who is a veteran of the armed forces of the United States and was fifty percent or more disabled while serving in the armed forces of the United States, upon the submission by the person of proof satisfactory to the department that the person was fifty percent or more disabled while serving in the armed forces of the United States. No fee, including the regular registration fee

applicable to the passenger motor vehicle or regular motorcycle registration fees, if any, shall be collected for issuance of a special registration plate pursuant to this section. A person eligible for a special registration plate pursuant to this section and also eligible for one or more special registration plates pursuant to Sections 66-3-406, 66-3-409, 66-3-411 and 66-3-412.1 NMSA 1978 shall be issued only one special registration plate of the person's choice.

B. No person shall falsely make any representation as having been fifty percent or more disabled while serving in the armed forces of the United States so as to be eligible to be issued special registration plates pursuant to this section when the person in fact was not fifty percent or more disabled while serving in the armed forces of the United States.

C. A person who violates the provisions of Subsection B of this section is guilty of a misdemeanor.

D. As used in this section, "veteran" means a citizen of the United States who was regularly enlisted, drafted, inducted or commissioned, who was accepted for and assigned to active duty in the armed forces of the United States and who was not separated from such service under circumstances amounting to dishonorable discharge."

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Senate Bill 302

Approved April 7, 2011

## **LAWS 2011, CHAPTER 148**

### **AN ACT**

RELATING TO TAXATION; PROVIDING THAT THE SECRETARY OF TAXATION AND REVENUE IN CERTAIN TRANSACTIONS PURSUANT TO THE GROSS RECEIPTS AND COMPENSATING TAX ACT MAY APPROVE SATISFACTORY EVIDENCE OF DEDUCTIBILITY OTHER THAN NONTAXABLE TRANSACTION CERTIFICATES; DECLARING AN EMERGENCY.

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

### **Chapter 148 Section 1 Laws 2011**

SECTION 1. Section 7-9-43 NMSA 1978 (being Laws 1966, Chapter 47, Section 13, as amended) is amended to read:



"7-9-43. NONTAXABLE TRANSACTION CERTIFICATES AND OTHER EVIDENCE REQUIRED TO ENTITLE PERSONS TO DEDUCTIONS.--

A. All nontaxable transaction certificates of the appropriate series executed by buyers or lessees should be in the possession of the seller or lessor for nontaxable transactions at the time the return is due for receipts from the transactions. If the seller or lessor is not in possession of the required nontaxable transaction certificates within sixty days from the date that the notice requiring possession of these nontaxable transaction certificates is given the seller or lessor by the department, deductions claimed by the seller or lessor that require delivery of these nontaxable transaction certificates shall be disallowed except as provided in Subsection E of this section. The nontaxable transaction certificates shall contain the information and be in a form prescribed by the department. The department by regulation may deem to be nontaxable transaction certificates documents issued by other states or the multistate tax commission to taxpayers not required to be registered in New Mexico. Only buyers or lessees who have a registration number or have applied for a registration number and have not been refused one under Subsection C of Section 7-1-12 NMSA 1978 shall execute nontaxable transaction certificates issued by the department. If the seller or lessor has been given an identification number for tax purposes by the department, the seller or lessor shall disclose that identification number to the buyer or lessee prior to or upon acceptance of a nontaxable transaction certificate. When the seller or lessor accepts a nontaxable transaction certificate within the required time and in good faith that the buyer or lessee will employ the property or service transferred in a nontaxable manner, the properly executed nontaxable transaction certificate shall be conclusive evidence, and the only material evidence, that the proceeds from the transaction are deductible from the seller's or lessor's gross receipts.

B. Properly executed documents required to support the deductions provided in Sections 7-9-57, 7-9-58 and 7-9-74 NMSA 1978 should be in the possession of the seller at the time the return is due for receipts from the transactions. If the seller is not in possession of these documents within sixty days from the date that the notice requiring possession of these documents is given to the seller by the department, deductions claimed by the seller or lessor that require delivery of these documents shall be disallowed. These documents shall contain the information and be in a form prescribed by the department. When the seller accepts these documents within the required time and in good faith that the buyer will employ the property or service transferred in a nontaxable manner, the properly executed documents shall be conclusive evidence, and the only material evidence, that the proceeds from the transaction are deductible from the seller's gross receipts.

C. Notice, as used in this section, is sufficient if the notice is mailed or served as provided in Subsection A of Section 7-1-9 NMSA 1978. Notice by the department under this section shall not be given prior to the commencement of an audit of the seller required to be in possession of the documents.

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

E. The secretary or secretary's delegate may accept other evidence, as specified by rule, to support the deduction provided pursuant to Section 7-9-47 NMSA 1978 for the sale of tangible personal property if a taxpayer is unable to provide a nontaxable transaction certificate within the sixty-day period specified in Subsection A of this section:

(1) prior to the issuance of an audit assessment; or

(2) if the audit assessment is protested, prior to either the taxpayer's withdrawal of the protest or the formal hearing of the protest; provided, however, that the protest in this paragraph is acknowledged by the department prior to December 31, 2011."

## **Chapter 148 Section 2 Laws 2011**

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

Approved April 7, 2011

## **LAWS 2011, CHAPTER 149**

AN ACT

RELATING TO EDUCATION TECHNOLOGY; AMENDING DEFINITIONS IN THE EDUCATION TECHNOLOGY EQUIPMENT ACT; DECLARING AN EMERGENCY.

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

### **Chapter 149 Section 1 Laws 2011**

SECTION 1. Section 6-15A-3 NMSA 1978 (being Laws 1997, Chapter 193, Section 3, as amended) is amended to read:

"6-15A-3. DEFINITIONS.--As used in the Education Technology Equipment Act:

A. "debt" means an obligation payable from ad valorem property tax revenues or the general fund of a school district and that may be secured by the full faith and credit of a school district and a pledge of its taxing powers;

B. "education technology equipment" means tools used in the educational process that constitute learning and administrative resources and may include:

(1) closed-circuit television systems, educational television and radio broadcasting, cable television, satellite, copper and fiber-optic transmission, computer, network connection devices, digital communications equipment (voice, video and data), servers, switches, portable media such as discs and drives to contain data for electronic storage and playback, software licenses or other technologies and services, maintenance, equipment and computer infrastructure information, techniques and tools used to implement technology in schools and related facilities; and

(2) improvements, alterations and modifications to, or expansions of, existing buildings or personal property necessary or advisable to house or otherwise accommodate any of the tools listed in Paragraph (1) of this subsection;

C. "lease-purchase arrangement" means a financing arrangement constituting debt of a school district pursuant to which periodic lease payments composed of principal and interest components are to be paid to the holder of the lease-purchase arrangement and pursuant to which the owner of the education technology equipment may retain title to or a security interest in the equipment and may agree to release the security interest or transfer title to the equipment to the school district for nominal consideration after payment of the final periodic lease payment. "Lease-purchase arrangement" also means any debt of the school district incurred for the purpose of acquiring education technology equipment pursuant to the Education

Technology Equipment Act whether designated as a general obligation lease, note or other instrument evidencing a debt of the school district;

D. "local school board" means the governing body of a school district; and

E. "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."

## **Chapter 149 Section 2 Laws 2011**

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

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Senate Bill 331, aa, w/ec

Approved April 7, 2011

## **LAWS 2011, CHAPTER 150**

AN ACT

RELATING TO THE NEW MEXICO FINANCE AUTHORITY; TEMPORARILY REQUIRING REPORTING OF ECONOMIC DEVELOPMENT REVOLVING FUND PROJECT AND FUND STATUS; TEMPORARILY REMOVING THE REQUIREMENT FOR SPECIFIC PRIOR AUTHORIZATION OF PROJECTS FOR ECONOMIC DEVELOPMENT REVOLVING FUND FUNDING.

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

## **Chapter 150 Section 1 Laws 2011**

SECTION 1. Section 6-25-6 NMSA 1978 (being Laws 2003, Chapter 349, Section 6, as amended) is amended to read:

"6-25-6. NEW MEXICO FINANCE AUTHORITY--ADDITIONAL POWERS AND DUTIES.--

A. To implement a program to assist eligible entities in financing projects, the authority has the powers specified in this section.

B. State projects receiving financing assistance with money in the fund shall first be approved by law. To protect public money in the fund or other public

resources, rules of the authority relating to state projects shall include provisions to ensure achievement of the economic development goals of the state project and shall describe the means of recovering public money or other public resources if an eligible entity defaults on its obligations to the authority.

C. Standard projects shall be approved by the authority pursuant to rules approved by the New Mexico finance authority oversight committee.

D. The authority may:

(1) issue project revenue bonds on behalf of an eligible entity, payable from the revenues of a project and other revenues authorized as security for the bonds, to finance a project on behalf of an eligible entity;

(2) make loans from the fund for projects to eligible entities that establish one or more dedicated sources of revenue to repay the loan from the authority;

(3) enter into loan participation agreements from the fund for projects, whether in the form of an interest rate buy-down, the purchase of loans or portions of loans originated and underwritten by third-party lenders or other similar arrangements;

(4) provide loan guarantees from the fund for projects;

(5) make, execute and enforce all contracts necessary, convenient or desirable for purposes of the authority or pertaining to project revenue bonds, economic development revolving fund bonds, loans, loan participations or loan guarantees and the Statewide Economic Development Finance Act and pay the reasonable value of services rendered to the authority pursuant to the contracts;

(6) purchase and hold loans and loan participations in the fund at prices and in a manner determined by the authority;

(7) sell loans and loan participations acquired or held by the authority in the fund at prices and in a manner determined by the authority;

(8) prescribe the form of application or procedure required of an eligible entity to apply for financing assistance;

(9) fix the terms and conditions of the financing assistance, including the priority of lien and type of collateral or other security, and enter into agreements with eligible entities with respect to financing assistance;

(10) fix, revise from time to time, charge and collect fees and other charges in connection with the issuance of bonds; the making, purchase, participation in

or guarantee of loans; and the review of proposed financing assistance to an eligible entity, whether or not the financing assistance is provided;

(11) employ architects, engineers, accountants and attorneys; construction and financial experts; and such other advisors, consultants and agents as may be necessary in its judgment, and fix and pay their compensation;

(12) to the extent allowed under its contracts with the holders of bonds of the authority, consent to modification of the rate of interest, time and payment of installments of principal or interest, security or any other term of financing assistance;

(13) consider the ability of the eligible entity to secure financing for a project from other sources and the costs of that financing;

(14) acquire fee simple, leasehold, mortgagor's or mortgagee's interests in real or personal property and sell, mortgage, convey, lease or assign that property for authority purposes; and

(15) in the event of default by an eligible entity, enforce its rights by suit, mandamus and all other remedies available under law.

E. The authority shall adopt rules subject to approval of the New Mexico finance authority oversight committee to:

(1) establish procedures for applying for financing assistance;

(2) establish credit qualifications for eligible entities and establish terms and conditions for financing assistance;

(3) establish economic development goals for projects in consultation with the department;

(4) establish methods for determining quantifiable benefits;

(5) provide safeguards to protect public money and other public resources provided for a state project;

(6) establish procedures by which the authority requests approval by law for state projects receiving financing assistance with money in the fund; and

(7) establish fees to pay the costs of evaluating, originating and administering financing assistance.

F. The authority shall coordinate with the department to provide staffing and other assistance to the department in carrying out the department's responsibilities and activities pursuant to the Statewide Economic Development Finance Act.

G. The authority shall report no less than quarterly to the legislature and the New Mexico finance authority oversight committee on applications considered by the authority for funding of standard projects; on projects approved for funding by the authority; and on the status of the economic development revolving fund, pursuant to rules of the authority approved by the New Mexico finance authority oversight committee."

## **Chapter 150 Section 2 Laws 2011**

SECTION 2. Section 6-25-6 NMSA 1978 (being Laws 2003, Chapter 349, Section 6, as amended by Section 1 of this act) is repealed and a new Section 6-25-6 NMSA 1978 is enacted to read:

"6-25-6. NEW MEXICO FINANCE AUTHORITY--ADDITIONAL POWERS AND DUTIES.--

A. To implement a program to assist eligible entities in financing projects, the authority has the powers specified in this section.

B. Projects receiving financing assistance with money in the fund shall first be approved by law. To protect public money in the fund or other public resources, rules of the authority relating to state projects shall include provisions to ensure achievement of the economic development goals of the state project and shall describe the means of recovering public money or other public resources if an eligible entity defaults on its obligations to the authority.

C. Standard projects shall be approved by the authority pursuant to rules approved by the New Mexico finance authority oversight committee.

D. The authority may:

(1) issue project revenue bonds on behalf of an eligible entity, payable from the revenues of a project and other revenues authorized as security for the bonds, to finance a project on behalf of an eligible entity;

(2) make loans from the fund for projects to eligible entities that establish one or more dedicated sources of revenue to repay the loan from the authority;

(3) enter into loan participation agreements from the fund for projects, whether in the form of an interest rate buy-down, the purchase of loans or portions of loans originated and underwritten by third-party lenders or other similar arrangements;

(4) provide loan guarantees from the fund for projects;

(5) make, execute and enforce all contracts necessary, convenient or desirable for purposes of the authority or pertaining to project revenue bonds, economic development revolving fund bonds, loans, loan participations or loan guarantees and the Statewide Economic Development Finance Act and pay the reasonable value of services rendered to the authority pursuant to the contracts;

(6) purchase and hold loans and loan participations in the fund at prices and in a manner determined by the authority;

(7) sell loans and loan participations acquired or held by the authority in the fund at prices and in a manner determined by the authority;

(8) prescribe the form of application or procedure required of an eligible entity to apply for financing assistance;

(9) fix the terms and conditions of the financing assistance, including the priority of lien and type of collateral or other security, and enter into agreements with eligible entities with respect to financing assistance;

(10) fix, revise from time to time, charge and collect fees and other charges in connection with the issuance of bonds; the making, purchase, participation in or guarantee of loans; and the review of proposed financing assistance to an eligible entity, whether or not the financing assistance is provided;

(11) employ architects, engineers, accountants and attorneys; construction and financial experts; and such other advisors, consultants and agents as may be necessary in its judgment, and fix and pay their compensation;

(12) to the extent allowed under its contracts with the holders of bonds of the authority, consent to modification of the rate of interest, time and payment of installments of principal or interest, security or any other term of financing assistance;

(13) consider the ability of the eligible entity to secure financing for a project from other sources and the costs of that financing;

(14) acquire fee simple, leasehold, mortgagor's or mortgagee's interests in real or personal property and sell, mortgage, convey, lease or assign that property for authority purposes; and

(15) in the event of default by an eligible entity, enforce its rights by suit, mandamus and all other remedies available under law.

E. The authority shall adopt rules subject to approval of the New Mexico finance authority oversight committee to:

(1) establish procedures for applying for financing assistance;



(2) establish credit qualifications for eligible entities and establish terms and conditions for financing assistance;

(3) establish economic development goals for projects in consultation with the department;

(4) establish methods for determining quantifiable benefits;

(5) provide safeguards to protect public money and other public resources provided for a state project;

(6) establish procedures by which the authority requests approval by law for projects receiving financing assistance with money in the fund; and

(7) establish fees to pay the costs of evaluating, originating and administering financing assistance.

F. The authority shall coordinate with the department to provide staffing and other assistance to the department in carrying out the department's responsibilities and activities pursuant to the Statewide Economic Development Finance Act."

## **Chapter 150 Section 3 Laws 2011**

### SECTION 3. EFFECTIVE DATE.--

A. The effective date of the provisions of Section 1 of this act is July 1, 2011.

B. The effective date of the provisions of Section 2 of this act is July 1, 2013.

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Senate Bill 454

Approved April 7, 2011

## **LAWS 2011, CHAPTER 151**

AN ACT

RELATING TO FOOD SERVICE ESTABLISHMENTS; ALLOWING PET DOGS IN DESIGNATED OUTDOOR DINING AREAS OF FOOD SERVICE ESTABLISHMENTS.

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

## **Chapter 151 Section 1 Laws 2011**

SECTION 1. A new section of the Food Service Sanitation Act is enacted to read:

"PET DOGS IN OUTDOOR DINING AREAS--REQUIREMENTS.--

A. A food service establishment may allow pet dogs in designated outdoor dining areas of the establishment if the following requirements are met:

- (1) no pet dog shall be allowed in any area where food is prepared;
- (2) patrons shall keep their pet dogs on a leash at all times and keep their pet dogs under reasonable control;
- (3) pet dogs shall not be allowed on chairs, tables or other furnishings; and
- (4) a sign or signs shall be posted to place the public on notice that the designated outdoor dining area is available for the use of patrons with pet dogs. Signs shall be at a minimum eight and one-half inches by eleven inches in size and use type that is uniform in size and no smaller than necessary to fill the sign to within two inches of the borders. The signs shall contain language reasonably designed to inform the public that dogs are permitted and may be present. Signs shall be posted prominently and be easily visible in both the area where dogs are permitted and at the entrance of the establishment. The board shall promulgate by rule the specific language to be included in the signs pursuant to Section 74-1-9 NMSA 1978.

B. Employees shall:

- (1) wash their hands immediately after touching, petting or otherwise handling pet dogs; and
- (2) immediately clean up accidents involving pet waste and sanitize the area.

C. A food service establishment may in its discretion prohibit pet dogs in outdoor dining areas. If a food service establishment allows pet dogs in a designated outdoor dining area, the food service establishment shall have the right to refuse to serve the owner of a pet dog if the owner fails to exercise reasonable control over the pet dog or the pet dog is otherwise behaving in a manner that compromises or threatens to compromise the health or safety of any person present in the restaurant."

## **Chapter 151 Section 2 Laws 2011**

SECTION 2. Section 25-1-4 NMSA 1978 (being Laws 1977, Chapter 309, Section 4) is amended to read:

"25-1-4. BOARD--POWERS AND DUTIES.--The board shall promulgate procedural and substantive regulations consistent with the provisions of Section 74-1-9 NMSA 1978 and shall include provisions for:

A. requiring food service establishments to prepare and serve food in a manner safe for human consumption, free from adulteration, spoilage, contamination and unwholesomeness, and, to accomplish this standard, the following areas of food service establishment operations shall be covered by the regulations:

- (1) disease control;
- (2) employee hygiene and sanitation;
- (3) food service establishment premises sanitation;
- (4) all aspects of food service establishment construction relating to food service sanitation, including requirements for food service establishment construction plans and specifications review and approval by the division;
- (5) control of pests and infestation by pests;
- (6) lavatory and toilet facility placement and sanitation;
- (7) lavatory hygiene;
- (8) food equipment and utensil design and construction;
- (9) food equipment and utensil storage and handling;
- (10) liquid and solid waste disposal;
- (11) food and drink preparation, handling, display and storage;
- (12) food service establishment ventilation;
- (13) water supply;
- (14) itinerant food service establishment construction and operation; and
- (15) any other facet of food service operations that reasonably may be considered to pose an existing or potential hazard to the health of the consuming public; provided that no regulation shall prohibit food service establishments from allowing pet dogs in designated outdoor dining areas;

B. the issuance, suspension and revocation of permits required under the Food Service Sanitation Act, which regulations shall provide for prior notice to and a hearing for any applicant for or holder of a permit when the division-proposed action is to deny an application for or suspend or revoke a permit, except in those specified instances under the provisions of the Food Service Sanitation Act when the division is authorized to take any of the foregoing actions without prior notice and hearing; and

C. establishing requirements for inspections of food service establishments, which shall include provisions for inspections at a frequency of at least once every twelve months."

## **Chapter 151 Section 3 Laws 2011**

SECTION 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.

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Senate Bill 11, aa

Approved April 8, 2011

## **LAWS 2011, CHAPTER 152**

AN ACT

RELATING TO HEALTH CARE; ENACTING THE HEALTH CARE WORK FORCE DATA COLLECTION, ANALYSIS AND POLICY ACT; DIRECTING THE DEPARTMENT OF HEALTH TO COLLECT DATA REGARDING DEMOGRAPHICS, SPECIALTIES AND PROFESSIONS IN THE STATE'S HEALTH CARE WORK FORCE; DIRECTING HEALTH CARE WORK FORCE REGULATORY BOARDS TO COLLECT DATA FROM APPLICANTS FOR LICENSURE OR RENEWAL OF LICENSURE; DIRECTING THE SECRETARY OF HEALTH TO CONVENE A WORK GROUP OF HEALTH CARE WORK FORCE EXPERTS.

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

## **Chapter 152 Section 1 Laws 2011**

SECTION 1. SHORT TITLE.--This act may be cited as the "Health Care Work Force Data Collection, Analysis and Policy Act".

## **Chapter 152 Section 2 Laws 2011**

SECTION 2. DEFINITIONS.--As used in the Health Care Work Force Data Collection, Analysis and Policy Act:

A. "board" means any state health care work force licensing or regulatory board, including the New Mexico medical board; the board of osteopathic medical examiners; the New Mexico board of dental health care; the board of nursing; the board of pharmacy; any other licensing or regulatory board that the secretary of health designates; any other health professional licensing board listed in Chapter 61 NMSA 1978; and the department;

B. "database" means the health care work force database created pursuant to the Health Care Work Force Data Collection, Analysis and Policy Act;

C. "department" means the department of health;

D. "ethnicity" means an individual's self-identification or affiliation as either "Hispanic or Latino" or "not Hispanic or Latino" according to cultural, historical, linguistic or religious ties;

E. "New Mexico center for health care workforce analysis" means a state entity that collects, analyzes and reports data regarding the state's health care work force and collaborates with the federal national center for health care workforce analysis pursuant to Section 5103 of the federal Patient Protection and Affordable Care Act; and

F. "race" means an individual's self-identification or affiliation with one of the following categories used to identify individuals according to historical or phenotypical characteristics:

(1) American Indian or Alaska Native;

(2) Asian;

(3) Black or African American;

(4) Native Hawaiian or other Pacific Islander;

(5) White; or

(6) a mixture of any of the categories listed in Paragraphs (1) through (5) of this subsection.

## **Chapter 152 Section 3 Laws 2011**

### **SECTION 3. HEALTH CARE WORK FORCE DATABASE--COLLECTION OF DATA--HOUSING OF DATA--ANALYSIS AND REPORTING.--**

A. Subject to the availability of state, federal or private foundation funding or other sources of funding, the secretary of health shall create and maintain the "health care work force database". The secretary of health shall:

(1) enter into agreements with entities to create, house and provide information to state agencies, the legislature and the governor and, as the legislature or governor deems appropriate, any others regarding the state's health care work force; and

(2) seek federal or other sources of funding to create a New Mexico center for health care workforce analysis and to ensure the additional funding and staffing needed to achieve the anticipated outcomes.

B. A board shall supply the department with data pertaining to licensed health care providers for inclusion in the database. A board shall collect a core essential data set at the time of new licensure or licensure renewal, including, but not limited to, a provider's:

(1) demographics, including race, ethnicity and primary and other languages spoken;

(2) practice status, including, but not limited to:

(a) active practices in New Mexico and other locations;

(b) practice type; and

(c) practice settings, such as hospitals, public schools, higher education institutions, clinics and other clinical settings;

(3) education, training and primary and secondary specialties for all health professions as appropriate;

(4) average hours worked per week and the average number of weeks worked per year in the licensed profession over the past twelve months;

(5) percentage of practice engaged in direct patient care and in other activities, such as teaching, research and administration, in the licensed profession;

(6) practice plans for the next five years, including retiring from a health care profession, moving out of state or changing health care work hours; and

(7) professional liability insurance costs and availability as they relate to barriers to practice.

## **Chapter 152 Section 4 Laws 2011**

SECTION 4. DATABASE ESTABLISHMENT AND MAINTENANCE--  
DELEGATION.--The secretary of health may contract and collaborate with a private or public entity to establish and maintain the database, to analyze data collected, to develop reports for the legislature or the executive branch or to perform other duties to carry out the provisions of the Health Care Work Force Data Collection, Analysis and Policy Act.

## **Chapter 152 Section 5 Laws 2011**

SECTION 5. HEALTH CARE WORK FORCE DATA COLLECTION BY  
BOARDS--MANDATORY COMPLIANCE FOR APPLICANTS--REPORTING BY  
BOARDS--CONFIDENTIALITY OF DATA--RULEMAKING.--

A. An applicant for a license from a board or renewal of a license by a board shall provide the information prescribed by the secretary of health pursuant to Subsection C of this section. This section applies to applicants for health professional licensure or renewal of health professional licensure pursuant to Chapter 61 NMSA 1978.

B. A board shall not approve a subsequent application for a license or renewal of a license until the applicant provides the information pursuant to Subsection C of this section.

C. A board shall adopt rules regarding the manner, form and content of reporting data; the consistency of data entry fields used; and the information that an applicant, pursuant to Subsection A of this section, shall provide to a board. At a minimum, the rules shall provide for a core essential data set, including the applicant's:

(1) demographics, including race, ethnicity and primary and other languages spoken;

(2) practice status, including, but not limited to:

(a) active practices in New Mexico and other locations;

(b) practice type; and

(c) practice settings, such as hospital, clinic or other clinical settings;

(3) education, training and primary and secondary specialties;

(4) average hours worked per week and the average number of weeks worked per year in the licensed profession;

(5) percentage of practice engaged in direct patient care and in other activities, such as teaching, research and administration, in the licensed profession; and

(6) practice plans for the next five years, including retiring from the health care profession, moving out of state or changing health care work hours.

D. A board shall report health care work force information collected pursuant to this section to the secretary of health.

E. A board shall keep confidential and not release personally identifiable data collected under this section for any person licensed, registered or certified by the board. The provisions of this subsection do not apply to the release of information to a law enforcement agency for investigative purposes or to the release to the secretary of health for state health planning purposes. A person with whom the department contracts to perform data collection, storage and analysis shall protect the privacy of that data. The secretary of health shall ensure that the responses of applicants shall be kept confidential, including taking special precautions when the identity of an applicant may be ascertained due to the applicant's location or occupation.

F. A board shall promulgate rules as necessary to perform the board's duties pursuant to this section, including rules for collecting, storing and analyzing data in addition to the information required to be collected by the Health Care Work Force Data Collection, Analysis and Policy Act.

## **Chapter 152 Section 6 Laws 2011**

SECTION 6. HEALTH CARE WORK FORCE WORK GROUP--WORK FORCE DATA ANALYSIS--RECRUITMENT PLANNING--STRATEGIC PLAN FOR IMPROVING HEALTH CARE ACCESS--WORK FORCE SURVEY.--The secretary of health shall convene a health care work force work group that includes representatives of health care consumers; health care providers; organized groups representing physicians, physician assistants, nurses, nurse practitioners, dentists, dental hygienists and pharmacists; health care work force training institutions; the New Mexico health policy commission; the public education department; the higher education department; and the boards. The work group shall:

A. analyze and make recommendations to the legislature regarding incentives to attract qualified individuals, including those from minority groups underrepresented among health care professions, to pursue health care education and practice in New Mexico;

B. develop a short-term plan and a five-year plan to improve health care access, with a draft report on the plans to be submitted to the interim legislative health and human services committee by November 1, 2011. Beginning October 1, 2012, the



work group shall make detailed annual reports to the legislative health and human services committee by October 1 of each year;

C. analyze the collected data and make recommendations to the legislature for building healthier communities and improving health outcomes; and

D. devise an electronic survey, designed to be completed by applicants within fifteen minutes, for boards to provide to applicants for licensure or renewal of licensure, which includes questions regarding the information required pursuant to Subsection C of Section 5 of the Health Care Work Force Data Collection, Analysis and Policy Act and any other survey questions that the secretary of health and the work group deem appropriate.

### **Chapter 152 Section 7 Laws 2011**

SECTION 7. TEMPORARY PROVISION--APPLICATION FOR GRANTS PURSUANT TO THE FEDERAL PATIENT PROTECTION AND AFFORDABLE CARE ACT.--In order to carry out the provisions set forth in the Health Care Work Force Data Collection, Analysis and Policy Act, the secretary of health shall seek funding pursuant to Section 5102 of the federal Patient Protection and Affordable Care Act, as well as funding from any other source, public or private, that the secretary of health deems appropriate.

### **Chapter 152 Section 8 Laws 2011**

SECTION 8. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.

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Senate Bill 14, aa

Approved April 8, 2011

## **LAWS 2011, CHAPTER 153**

AN ACT

RELATING TO CIVIL ACTIONS; AMENDING A SECTION OF CHAPTER 37, ARTICLE 1 NMSA 1978 TO CLARIFY THE STATUTE OF LIMITATIONS FOR ACTIONS AGAINST MUNICIPALITIES.

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

### **Chapter 153 Section 1 Laws 2011**

SECTION 1. Section 37-1-24 NMSA 1978 (being Laws 1941, Chapter 181, Section 1) is amended to read:

"37-1-24. SUITS AGAINST MUNICIPALITIES OR THEIR OFFICERS.--No suit, action or proceeding at law or equity for the recovery of judgment upon, or the enforcement or collection of, any sum of money claimed due from any city, town or village in this state, or from any officer of any city, town or village in this state, arising out of or founded upon any ordinance, trust relation or contract, or any appropriation of or conversion of any real or personal property, shall be commenced except within three years next after the date of the act of omission or commission giving rise to the cause of action, suit or proceeding. No suit, action or proceeding to recover damages for personal injury or death resulting from the negligence of any city, town or village or any officer thereof shall be commenced except within two years next after the date of the injury. All such suits, proceedings or actions not so commenced shall be forever barred."

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Senate Bill 45, aa

Approved April 8, 2011

## **LAWS 2011, CHAPTER 154**

### **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 154 Section 1 Laws 2011**

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. Except as otherwise provided in this section, regular students shall be in school-directed programs, exclusive of lunch, for a minimum of the following:

(1) kindergarten, for half-day programs, two and one-half hours per day or four hundred fifty hours per year or, for full-day programs, five and one-half hours per day or nine hundred ninety hours per year;

(2) grades one through six, five and one-half hours per day or nine hundred ninety hours per year; and

(3) grades seven through twelve, six hours per day or one thousand eighty hours per year.

B. 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.

C. 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 Subsection A of this section.

D. The secretary may waive the minimum length of school days in those school 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."

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Senate Bill 145, aa

Approved April 8, 2011

## **LAWS 2011, CHAPTER 155**

### **AN ACT**

RELATING TO PUBLIC UTILITIES; AMENDING THE PUBLIC UTILITY ACT;  
ALLOWING WATER UTILITIES TO ADJUST RATES DUE TO THE COST OF  
ACQUISITION OF WATER RESOURCES WITHOUT NOTICE AND HEARING.

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

### **Chapter 155 Section 1 Laws 2011**

SECTION 1. Section 62-8-7 NMSA 1978 (being Laws 1991, Chapter 251, Section 1, as amended) is amended to read:

"62-8-7. CHANGE IN RATES.--

A. At any hearing involving an increase in rates or charges sought by a public utility, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the utility.

B. Unless the commission otherwise orders, no public utility shall make any change in any rate that has been duly established except after thirty days' notice to the commission, which notice shall plainly state the changes proposed to be made in the rates then in force and the time when the changed rates will go into effect and other information as the commission by rule requires. The utility shall also give notice of the proposed changes to other interested persons as the commission may direct. All proposed changes shall be shown by filing new schedules that shall be kept open to public inspection. The commission for good cause shown may allow changes in rates without requiring the thirty days' notice, under conditions that it may prescribe.

C. Whenever there is filed with the commission by any public utility a complete application as prescribed by commission rule proposing new rates, the commission may, upon complaint or upon its own initiative, except as otherwise provided by law, upon reasonable notice, enter upon a hearing concerning the reasonableness of the proposed rates. If the commission determines a hearing is necessary, it shall suspend the operation of the proposed rates before they become effective but not for a longer initial period than nine months beyond the time when the rates would otherwise go into effect, unless the commission finds that a longer time will be required, in which case the commission may extend the period for an additional three months. The commission shall hear and decide cases with reasonable promptness. The commission shall adopt rules identifying criteria for various rate and tariff filings to be eligible for suspension periods shorter than what is allowed by this subsection and to be eligible for summary approval without hearing.

D. If after a hearing the commission finds the proposed rates to be unjust, unreasonable or in any way in violation of law, the commission shall determine the just and reasonable rates to be charged or applied by the utility for the service in question and shall fix the rates by order to be served upon the utility, or the commission by its order shall direct the utility to file new rates respecting such service that are designed to produce annual revenues no greater than those determined by the commission in its order to be just and reasonable. Those rates shall thereafter be observed until changed, as provided by the Public Utility Act.

E. Except as otherwise provided by law, any increase in rates or charges for the utility commodity based upon cost factors other than taxes or cost of fuel, gas or purchased power, filed for after April 4, 1991, shall be permitted only after notice and hearing as provided by this section. The commission shall enact rules governing the use of tax, fuel, gas or purchased power adjustment clauses by utilities that enable the commission to consider periodically at least the following:

(1) whether the existence of a particular adjustment clause is consistent with the purposes of the Public Utility Act, including serving the goal of

providing reasonable and proper service at fair, just and reasonable rates to all customer classes;

(2) the specific adjustment mechanism to recover tax, gas, fuel or purchased power costs;

(3) which costs should be included in an adjustment clause, procedures to avoid the inclusion of costs in an adjustment clause that should not be included and methods by which the propriety of costs that are included may be determined by the commission in a timely manner, including what informational filings are required to enable the commission to make such a determination; and

(4) the proper adjustment period to be employed.

F. Except as otherwise provided by law, any increase in rates or charges for a public utility as defined in Paragraph (3) of Subsection G of Section 62-3-3 NMSA 1978 based upon cost factors other than taxes or cost of fuel, gas, purchased power or acquisition of water resources shall be permitted only after notice and hearing as provided by this section. For the purposes of this subsection, "acquisition of water resources" does not include the purchase or other permanent acquisition of water rights. The commission shall enact rules governing the use of tax, fuel, gas, purchased power or water resource acquisition adjustment clauses by such utilities that enable the commission to consider periodically at least the following:

(1) whether the existence of a particular adjustment clause is consistent with the purposes of the Public Utility Act, including serving the goal of providing reasonable and proper service at fair, just and reasonable rates to all customer classes;

(2) the specific adjustment mechanism to recover tax, gas, fuel, purchased power or acquisition of water resource costs;

(3) which costs should be included in an adjustment clause, procedures to avoid the inclusion of costs in an adjustment clause that should not be included and methods by which the propriety of costs that are included may be determined by the commission in a timely manner, including what informational filings are required to enable the commission to make such a determination; and

(4) the proper adjustment period to be employed.

G. The commission may eliminate or condition a particular adjustment clause if it finds such elimination or condition is consistent with the purposes of the Public Utility Act, including serving the goal of providing reasonable and proper service at fair, just and reasonable rates to all customer classes; provided, however, that no such elimination or condition shall be ordered unless such elimination or condition will not place the affected utility at a competitive disadvantage. The commission rules shall

also provide for variances and may provide for separate examination of a utility's adjustment clause based upon that utility's particular operating characteristics.

H. Whenever there is filed with the commission a schedule proposing new rates by a rural electric cooperative organized under the Rural Electric Cooperative Act, the rates shall become effective as proposed by the rural electric cooperative without a hearing. However, the cooperative shall give written notice of the proposed rates to its affected patrons at least thirty days prior to the filing with the commission, and the commission shall suspend the rates and conduct a hearing concerning the reasonableness of any proposed rates filed by a rural electric cooperative pursuant to Subsections C and D of this section upon the filing with the commission of a protest setting forth grounds for review of the proposed rates signed by the lesser of one percent of or twenty-five members of a customer class of the rural electric cooperative and if the commission determines there is just cause for reviewing the proposed rates on one or more of the grounds of the protest. The protest shall be filed no later than twenty days after the filing with the commission of the schedule proposing the new rates. The hearing and review shall be limited to the issues set forth in the protest and for which the commission may find just cause for the review, which issues shall be contained in the notice of hearing. The provisions of this subsection shall not be construed to affect commission authority or procedure to regulate the sale, furnishing or delivery by wholesale suppliers of electricity to rural electric cooperatives pursuant to Section 62-6-4 NMSA 1978. In addition to the adjustments permitted by Subsections E and G of this section, the commission may authorize rate schedules of rural electric cooperatives to recover, without notice and hearing, changes in the cost of debt capital incurred pursuant to securities that are lawfully issued. For the purposes of this subsection, a member of a rural electric cooperative is a member as defined by the Rural Electric Cooperative Act."

## **Chapter 155 Section 2 Laws 2011**

SECTION 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.

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Senate Bill 209, aa

Approved April 8, 2011

## **LAWS 2011, CHAPTER 156**

AN ACT

RELATING TO SURPLUS LINES INSURANCE; ENACTING AND ENTERING INTO THE SURPLUS LINES INSURANCE MULTISTATE COMPLIANCE COMPACT; LIMITING THE REGULATION OF NONADMITTED INSURERS TO CONFORM TO

FEDERAL LAW; PROVIDING FOR THE ALLOCATION OF PREMIUMS; AMENDING AND ENACTING SECTIONS OF THE NEW MEXICO INSURANCE CODE.

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

## **Chapter 156 Section 1 Laws 2011**

SECTION 1. SURPLUS LINES INSURANCE MULTISTATE COMPLIANCE COMPACT ENTERED INTO.--The "Surplus Lines Insurance Multistate Compliance Compact" is enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

"SURPLUS LINES INSURANCE MULTISTATE COMPLIANCE COMPACT

ARTICLE 1

PURPOSE

The purposes of the Surplus Lines Insurance Multistate Compliance Compact are to:

- A. implement the express provisions of the federal act;
- B. protect the premium tax revenues of the compacting states through facilitating the payment and collection of premium tax on non-admitted insurance;
- C. protect the interests of the compacting states by supporting the continued availability of such insurance to consumers;
- D. provide for allocation of premium tax for non-admitted insurance of multistate risks among the states in accordance with uniform allocation formulas to be developed, adopted and implemented by the commission;
- E. streamline and improve the efficiency of the surplus lines market by eliminating duplicative and inconsistent tax and regulatory requirements among the states;
- F. promote and protect the interest of surplus lines licensees who assist insureds and surplus lines insurers, thereby ensuring the continued availability of surplus lines insurance to consumers;
- G. streamline regulatory compliance with respect to non-admitted insurance placements by providing for exclusive single-state regulatory compliance for non-admitted insurance of multistate risks, in accordance with rules to be adopted by the commission, thereby providing certainty regarding such compliance to all persons who have an interest in such transactions, including, but not limited to, insureds,

regulators, surplus lines licensees, other insurance producers and surplus lines insurers;

H. establish a clearinghouse for receipt and dissemination of premium tax and clearinghouse transaction data related to non-admitted insurance of multistate risks, in accordance with rules to be adopted by the commission;

I. improve coordination of regulatory resources and expertise between state insurance departments and other state agencies, as well as state surplus lines stamping offices, with respect to non-admitted insurance;

J. adopt uniform rules to provide for premium tax payment, reporting, allocation, data collection and dissemination for non-admitted insurance of multistate risks and single-state risks, thereby promoting the overall efficiency of the non-admitted insurance market;

K. adopt uniform mandatory rules with respect to regulatory compliance requirements for:

- (1) foreign insurer eligibility requirements; and
- (2) surplus lines policyholder notices;

L. establish the surplus lines insurance multistate compliance compact commission;

M. coordinate reporting of clearinghouse transaction data on non-admitted insurance of multistate risks among compacting states and contracting states; and

N. perform these and such other related functions as may be consistent with the purposes of this compact.

## ARTICLE 2

### DEFINITIONS

As used in the Surplus Lines Insurance Multistate Compliance Compact:

A. "affiliate" means, with respect to an insured, any entity that controls, is controlled by or is under common control with the insured;

B. "allocation formula" means the uniform methods promulgated by the commission by which insured risk exposures will be apportioned to each state for the purpose of calculating premium taxes due;



C. "bylaws" means those bylaws established by the commission for its governance or for directing or controlling the commission's actions or conduct;

D. "clearinghouse" means the commission's operations involving the acceptance, processing and dissemination, among the compacting states, contracting states, surplus lines licensees, insureds and other persons, of premium tax and clearinghouse transaction data for non-admitted insurance of multistate risks, in accordance with this compact and rules to be adopted by the commission;

E. "clearinghouse transaction data" means the information regarding non-admitted insurance of multistate risks required to be reported, accepted, collected, processed and disseminated by surplus lines licensees for surplus lines insurance and insureds for independently procured insurance under this compact and rules to be adopted by the commission. Clearinghouse transaction data includes information related to single-state risks if a state elects to have the clearinghouse collect taxes on single-state risks for such state;

F. "compacting state" means any state that has enacted this compact and that has not withdrawn or been terminated pursuant to Article 14 of this compact;

G. "commission" means the surplus lines insurance multistate compliance compact commission;

H. "commissioner" means the chief insurance regulatory official of a state, including, but not limited to, commissioner, superintendent, director or administrator or their designees;

I. "contracting state" means any state that has not enacted this compact but has entered into a written contract with the commission to use the services of and fully participate in the clearinghouse;

J. "control" means:

(1) directly, indirectly or acting through one or more other persons, owning, controlling or having the power to vote twenty-five percent or more of any class of voting securities of another entity; or

(2) controlling in any manner the election of a majority of the directors or trustees of another entity;

K. "federal act" means the federal Nonadmitted and Reinsurance Reform Act of 2009, which is 30 Title V, Subtitle B of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act;

L. "home state" means

(1) with respect to an insured:

(a) the state in which an insured maintains its principal place of business or, in the case of an individual, the individual's principal residence; or

(b) if one hundred percent of the insured risk is located out of the state referred to in Subparagraph (a) of this paragraph, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated; or

(2) if more than one insured from an affiliated group are named insureds on a single non-admitted insurance contract, "home state" means the home state, as determined pursuant to Paragraph (1) of this subsection, of the member of the affiliated group that has the largest percentage of premium attributed to it under the insurance contract;

M. "independently procured insurance" means insurance procured by an insured directly from a surplus lines insurer or other non-admitted insurer as permitted by the laws of the home state;

N. "insurer eligibility requirements" means the criteria, forms and procedures established to qualify as a surplus lines insurer under the law of the home state; provided that such criteria, forms and procedures are consistent with the express provisions of the federal act on and after July 21, 2011;

O. "member" means the person chosen by a compacting state as its representative to the commission; provided that each compacting state shall be limited to one vote;

P. "multistate risk" means a risk with insured exposures in more than one state;

Q. "non-compacting state" means a state that has not adopted this compact;

R. "non-admitted insurance" means surplus lines insurance and independently procured insurance;

S. "non-admitted insurer" means an insurer that is not authorized or admitted to transact the business of insurance under the law of the home state;

T. "policyholder notice" means the disclosure notice or stamp that is required to be furnished to the applicant or policyholder in connection with a surplus lines insurance placement;

U. "premium tax" means, with respect to non-admitted insurance, any tax, fee, assessment or other charge imposed by a government entity, directly or indirectly based on any payment made as consideration for such insurance, including premium deposits, assessments, registration fees and any other compensation given in consideration for a contract of insurance;

V. "principal place of business" means, with respect to determining the home state of the insured, the state where the insured maintains its headquarters and where the insured's high-level officers direct, control and coordinate the business activities of the insured;

W. "purchasing group" means any group formed pursuant to the federal Liability Risk Retention Act, 15 U.S.C. 65, that has as one of its purposes the purchase of liability insurance on a group basis; that purchases such insurance only for its group members and only to cover their similar or related liability exposure; that is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar or common business, trade, product, services, premises or operations; and that is domiciled in any state;

X. "rule" means a statement of general or particular applicability and future effect promulgated by the commission designed to implement, interpret or prescribe law or policy or describing the organization, procedure or practice requirements of the commission that shall have the force and effect of law in the compacting states;

Y. "single-state risk" means a risk with insured exposures in only one state;

Z. "state" means any state, district or territory of the United States of America;

AA. "state transaction documentation" means the information required under the laws of the home state to be filed by surplus lines licensees, in order to report surplus lines insurance and verify compliance with surplus lines laws, and by insureds in order to report independently procured insurance;

BB. "surplus lines insurance" means insurance procured by a surplus lines licensee from a surplus lines insurer or other non-admitted insurer as permitted under the law of the home state; for purposes of this compact, "surplus lines insurance" also means excess lines insurance as may be defined by applicable state law;

CC. "surplus lines insurer" means a non-admitted insurer eligible under the law of the home state to accept business from a surplus lines licensee; for purposes of this compact, "surplus lines insurer" also means an insurer that is permitted to write surplus lines insurance under the laws of the state where the insurer is domiciled; and

DD. "surplus lines licensee" means an individual, firm or corporation licensed under the law of the home state to place surplus lines insurance.

### ARTICLE 3

#### ESTABLISHMENT OF THE COMMISSION AND VENUE

A. The compacting states hereby create and establish a joint public agency known as the "surplus lines insurance multistate compliance compact commission".

B. Pursuant to Article 4 of this compact, the commission shall have the power to adopt mandatory rules that establish exclusive home state authority regarding non-admitted insurance of multistate risks, allocation formulas, clearinghouse transaction data, a clearinghouse for receipt and distribution of allocated premium tax and clearinghouse transaction data and uniform rulemaking procedures and rules for the purpose of financing, administering, operating and enforcing compliance with the provisions of this compact, its bylaws and rules.

C. Pursuant to Article 4 of this compact, the commission shall have the power to adopt mandatory rules establishing foreign insurer eligibility requirements and a concise and objective policyholder notice regarding the nature of a surplus lines placement.

D. The commission is a body corporate and politic and an instrumentality of the compacting states.

E. The commission is solely responsible for its liabilities, except as otherwise specifically provided in this compact.

F. 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. The commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

### ARTICLE 4

#### AUTHORITY TO ESTABLISH MANDATORY RULES

The commission shall adopt mandatory rules that establish:

A. allocation formulas for each type of non-admitted insurance coverage, which allocation formulas shall be used by each compacting state and contracting state in acquiring premium tax and clearinghouse transaction data from surplus lines licensees and insureds for reporting to the clearinghouse created by the commission.

Such allocation formulas shall be established with input from surplus lines licensees and be based upon readily available data with simplicity and uniformity for the surplus lines licensee as a material consideration;

B. uniform clearinghouse transaction data reporting requirements for all information reported to the clearinghouse;

C. methods by which compacting states and contracting states require surplus lines licensees and insureds to pay premium tax and to report clearinghouse transaction data to the clearinghouse, including, but not limited to, processing clearinghouse transaction data through state stamping and service offices, state insurance departments or other state-designated agencies or entities;

D. that non-admitted insurance of multistate risks shall be subject to all of the regulatory compliance requirements of the home state exclusively as follows:

(1) home state regulatory compliance requirements applicable to surplus lines insurance shall include, but not be limited to:

(a) persons required to be licensed to sell, solicit or negotiate surplus lines insurance;

(b) insurer eligibility requirements or other approved non-admitted insurer requirements;

(c) diligent search; and

(d) state transaction documentation and clearinghouse transaction data regarding the payment of premium tax as set forth in this compact and rules to be adopted by the commission; and

(2) home state regulatory compliance requirements applicable to independently procured insurance placements shall include, but not be limited to, providing state transaction documentation and clearinghouse transaction data regarding the payment of premium tax as set forth in this compact and rules to be adopted by the commission;

E. that each compacting state and contracting state may charge its own rate of taxation on the premium allocated to such state based on the applicable allocation formula; provided that the state establishes one single rate of taxation applicable to all non-admitted insurance transactions and no other tax, fee assessment or other charge by any governmental or quasi-governmental agency be permitted; and provided further that stamping office fees may be charged as a separate, additional cost unless such fees are incorporated into a state's single rate of taxation;

F. that any change in the rate of taxation by any compacting state or contracting state be restricted to changes made prospectively on not less than ninety days' advance notice to the commission;

G. that each compacting state and contracting state shall require premium tax payments either annually, semiannually or quarterly, using one or more of the following dates only: March 1, June 1, September 1 and December 1;

H. that each compacting state and contracting state prohibit any other state agency or political subdivision from requiring surplus lines licensees to provide clearinghouse transaction data and state transaction documentation other than to the insurance department or tax officials of the home state or one single designated agent thereof;

I. the obligation of the home state by itself, through a designated agent, surplus lines stamping or service office, to collect clearinghouse transaction data from surplus lines licensees and from insureds for independently procured insurance, where applicable, for reporting to the clearinghouse;

J. a method for the clearinghouse to periodically report to compacting states, contracting states, surplus lines licensees and insureds who independently procure insurance all premium taxes owed to each of the compacting states and contracting states, the dates upon which payment of such premium taxes are due and a method to pay them through the clearinghouse;

K. that each surplus lines licensee is required to be licensed only in the home state of each insured for whom surplus lines insurance has been procured;

L. that a policy considered to be surplus lines insurance in the insured's home state shall be considered surplus lines insurance in all compacting states and contracting states and taxed as a surplus lines transaction in all states to which a portion of the risk is allocated. Each compacting state and contracting state shall require each surplus lines licensee to pay every other compacting state and contracting state premium taxes on each multistate risk through the clearinghouse at the tax rate charged on surplus lines transactions in other compacting states and contracting states on the portion of the risk in each compacting state and contracting state as determined by the applicable uniform allocation formula adopted by the commission. A policy considered to be independently procured insurance in the insured's home state shall be considered independently procured insurance in all compacting states and contracting states. Each compacting state and contracting state shall require the insured to pay every other compacting state and contracting state the independently procured insurance premium tax on each multistate risk through the clearinghouse pursuant to the uniform allocation formula adopted by the commission;

M. uniform foreign insurer eligibility requirements as authorized by the federal act;

N. a uniform policyholder notice; and

O. uniform treatment of purchasing group surplus lines insurance placements.

## ARTICLE 5

### POWERS OF THE COMMISSION

The commission shall have the power to:

A. promulgate rules and operating procedures, pursuant to Article 8 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; provided that, except as necessary for promulgating rules to fulfill the purposes of this compact, the commission shall not have authority to otherwise regulate insurance in the compacting states;

B. bring and prosecute legal proceedings or actions in the name of the commission; provided that the standing of any state insurance department to sue or be sued under applicable law shall not be affected;

C. issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence; provided, however, that the commission not be empowered to demand or subpoena records or data from non-admitted insurers;

D. establish and maintain offices, including the creation of a clearinghouse, for the receipt of premium tax and clearinghouse transaction data regarding non-admitted insurance of multistate risks and single-state risks for states that elect to require surplus lines licensees to pay premium tax on single state risks through the clearinghouse and tax reporting forms;

E. purchase and maintain insurance and bonds;

F. borrow, accept or contract for services of personnel, including, but not limited to, employees of a compacting state or stamping office, pursuant to an open, transparent, objective competitive process and procedure adopted by the commission;

G. hire employees, professionals or specialists and elect or appoint officers and to:

(1) fix their compensation, define their duties and give them appropriate authority to carry out the purposes of this compact; and

(2) determine their qualifications, pursuant to an open, transparent, objective competitive process and procedure adopted by the commission;

H. establish the commission's personnel policies and programs relating to conflicts of interest, rates of compensation and qualifications of personnel and other related personnel matters;

I. accept appropriate donations and grants of money, equipment, supplies, materials and services and to receive, use and dispose of the same; provided that at all times the commission shall avoid any appearance of impropriety or conflict of interest;

J. 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 avoid any appearance of impropriety or conflict of interest;

K. sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of any property, real, personal or mixed;

L. provide for tax audit rules and procedures for the compacting states with respect to the allocation of premium taxes, including:

(1) minimum audit standards and sampling methods;

(2) review of internal controls;

(3) cooperation and sharing of audit responsibilities between compacting states;

(4) handling of refunds or credits due to overpayments or improper allocation of premium taxes;

(5) taxpayer records to be reviewed, including a minimum retention period; and

(6) authority of compacting states to review, challenge or re-audit taxpayer records;

M. enforce compliance by compacting states and contracting states with rules;

N. provide for dispute resolution among compacting states and contracting states;

O. advise compacting states and contracting states on tax-related issues relating to insurers, insureds, surplus lines licensees, agents or brokers domiciled or doing business in non-compacting states, consistent with the purposes of this compact;

P. make available advice and training to those personnel in state stamping offices, state insurance departments or other state departments for recordkeeping, tax



compliance and tax allocations and be a resource for state insurance departments and other state departments;

Q. establish a budget and make expenditures;

R. borrow money;

S. appoint and oversee committees, including advisory committees composed of members, state insurance regulators, state legislators or their representatives, insurance industry and consumer representatives and such other interested persons as may be designated in this compact and the bylaws;

T. establish an executive committee pursuant to Subsection B of Article 6 of this compact;

U. establish an operations committee pursuant to Subsection C of Article 6 of this compact;

V. enter into contracts with contracting states so that contracting states can utilize the services of and fully participate in the clearinghouse subject to the terms and conditions set forth in such contracts;

W. adopt and use a corporate seal; and

X. perform 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 6

### ORGANIZATION OF THE COMMISSION

A. The following provisions shall govern commission membership, voting and bylaws:

(1) each compacting state shall have and be limited to one member. Each state shall determine the qualifications and the method by which it selects a member and set forth the selection process in the enabling provision of the legislation that enacts this compact. In the absence of such a provision, the member shall be appointed by the governor 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;

(2) each member shall be entitled to one vote and shall otherwise have an opportunity to participate in the governance of the commission in accordance with the bylaws;

(3) the commission shall, by a majority vote 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, but not limited to:

(a) establishing the fiscal year of the commission;

(b) providing reasonable procedures for holding meetings of the commission, the executive committee and the operations committee;

(c) providing reasonable standards and procedures: 1) for the establishment and meetings of committees; and 2) governing any general or specific delegation of any authority or function of the commission;

(d) providing reasonable procedures for calling and conducting meetings of the commission that consist of a majority of commission members, ensuring reasonable advance notice of each meeting and providing for the right of citizens to attend each meeting with enumerated exceptions designed to protect the public's interest, the privacy of individuals and insurers and surplus lines licensees' proprietary information, including trade secrets. The commission may meet privately only after a majority of the entire membership votes to close a meeting in whole or in part. As soon as practicable, the commission must make public: 1) a copy of the vote to close the meeting, revealing the vote of each member with no proxy votes allowed; and 2) votes taken during the meeting;

(e) establishing the titles, duties and authority and reasonable procedures for the election of the officers of the commission;

(f) 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;

(g) promulgating a code of ethics to address permissible and prohibited activities of commission members and employees; and

(h) 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 and after the payment or reserving of all of its debts and obligations; and

(4) 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.

B. An executive committee of the commission shall be established.

(1) All actions of the executive committee, including compliance and enforcement, are subject to the review and ratification of the commission as provided in the bylaws.

(2) The executive committee shall have no more than fifteen nor less than seven members, provided that, if there are fewer than fifteen compacting states, the executive committee shall have one member for each state. Each member shall be entitled to one vote. Members of the executive committee shall serve for a term of one year.

(3) The executive committee shall have authority and duties as may be set forth in the bylaws, including, but not limited to:

(a) managing the affairs of the commission in a manner consistent with the bylaws and purposes of the commission;

(b) acting on behalf of the commission, with the exception of rulemaking, during periods when the commission is not in session;

(c) establishing and overseeing an organizational structure within, and appropriate procedures for the commission to provide for the creation of, rules and operating procedures;

(d) overseeing the day-to-day activities of the administration of the compact, including the activities of the operations committee and compliance with and enforcement of the provisions of the compact; and

(e) planning, implementing and coordinating communications and activities with other state, federal and local government organizations in order to advance the goals of the commission.

(4) The commission shall annually elect officers from the executive committee, with each officer having such authority and duties as may be specified in the bylaws.

(5) The executive committee may, subject to the approval of the commission, appoint or retain an executive director for a period, upon terms and conditions and for a compensation as the commission may deem appropriate, and who shall:

(a) serve as secretary to the commission but not be a member of the commission; and

(b) hire and supervise other persons as may be authorized by the commission.

C. An operations committee shall be established.

(1) All actions of the operations committee are subject to the review and oversight of the commission and the executive committee and shall be approved by the commission.

(2) The executive committee shall accept the determinations and recommendations of the operations committee unless good cause is shown why such determinations and recommendations should not be approved.

(3) Any disputes as to whether good cause exists to reject any determination or recommendation of the operations committee shall be resolved by the majority vote of the commission.

(4) The operations committee shall have no more than fifteen nor less than seven members, provided that, if there are fewer than fifteen compacting states, the operations committee shall have one member for each state. Each member shall be entitled to one vote. Members of the operations committee shall serve for a term and shall be established as set forth in the bylaws.

(5) The operations committee shall have responsibility for:

(a) evaluating technology requirements for the clearinghouse, assessing existing systems used by state regulatory agencies and state stamping offices to maximize the efficiency and successful integration of the clearinghouse technology systems with state and state stamping office technology platforms and to minimize costs to the states, state stamping offices and the clearinghouse;

(b) making recommendations to the executive committee based on its analysis and determination of the clearinghouse technology requirements and compatibility with existing state and state stamping office systems;

(c) evaluating the most suitable proposals for adoption as mandatory rules, assessing proposals for ease of integration by states and likelihood of successful implementation and reporting to the executive committee its determinations and recommendations; and

(d) such other duties and responsibilities as are delegated to it by the bylaws, the executive committee or the commission.

(6) All members of the operations committee shall be individuals who have extensive experience or employment in the surplus lines insurance business, including, but not limited to, executives and attorneys employed by surplus lines insurers, surplus line licensees, law firms, state insurance departments or state stamping offices. Operations committee representatives from compacting states that use the services of a state stamping office shall appoint the chief operating officer or a senior manager of the state stamping office to the operations committee.

D. A legislative committee composed of state legislators or their designees shall be established to monitor the operations of and make recommendations to the commission and the executive 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 executive committee shall consult with, and report to, the legislative committee.

E. The commission may establish additional advisory committees as its bylaws may provide for the carrying out of its functions.

F. The commission shall maintain its corporate books and records in accordance with the bylaws.

G. The members, officers, executive director, employees and representatives of the commission, the executive committee and any other committee 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, 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 subsection shall be construed to protect any person from suit or liability for any damage, loss, injury or liability caused by the intentional or willful or wanton misconduct of that person.

H. The commission shall defend any member, officer, executive director, employee or representative of the commission, the executive committee or any other committee 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 separate counsel; and provided further that the actual or alleged act, error or omission did not result from that person's intentional or willful or wanton misconduct.

I. The commission shall indemnify and hold harmless any member, officer, executive director, employee or representative of the commission, executive committee

or any other committee of the commission for the amount of any settlement or judgment obtained against that person arising out of an actual or alleged act, error or omission that occurred within the scope of commission employment, duties or responsibilities, or that 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 or wanton misconduct of that person.

## ARTICLE 7

### MEETINGS AND ACTS OF THE COMMISSION

A. The commission shall meet and take such actions as are consistent with the provisions of this compact and the bylaws.

B. 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.

C. The commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

D. Public notice shall be given of all meetings, and all meetings shall be open to the public, except as set forth in the rules or otherwise provided in the compact.

E. The commission shall promulgate rules concerning its meetings consistent with the principles contained in the federal Government in the Sunshine Act, 4 U.S.C. Section 552b, as may be amended.

F. The commission and its committees may close a meeting, or portion thereof, when they determine by majority vote that an open meeting would be likely to:

(1) relate solely to the commission's internal personnel practices and procedures;

(2) disclose matters specifically exempted from disclosure by federal and state statute;

(3) disclose trade secrets or commercial or financial information that is privileged or confidential;

(4) involve accusing a person of a crime or involve formally censuring a person;

(5) disclose information of a personal nature when disclosure would constitute a clearly unwarranted invasion of personal privacy;

(6) disclose investigative records compiled for law enforcement purposes; or

(7) specifically relate to the commission's issuance of a subpoena or its participation in a civil action or other legal proceeding.

G. For a meeting, or portion of a meeting, closed pursuant to this provision, the commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exemptive provision. The commission shall keep minutes that shall fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefor, including a description of the views expressed and the record of a roll call vote. All documents considered in connection with an action shall be identified in the minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the commission.

## ARTICLE 8

### RULEMAKING FUNCTIONS OF THE COMMISSION

A. The commission shall promulgate reasonable rules in order to effectively and efficiently achieve the purposes of this compact; provided that, 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 that it grants, such an action by the commission shall be invalid and have no force or effect.

B. Rules shall be made pursuant to a rulemaking process that substantially conforms to the 1981 Model State Administrative Procedure Act, Uniform Laws Annotated, Vol. 15, p.1 (2000) as amended, as may be appropriate to the operations of the commission.

C. All rules shall become effective as of the date specified in each rule.

D. Not later than thirty days after a rule is promulgated, a person may file a petition for judicial review of the rule; provided that the filing of the petition shall not stay or otherwise prevent the rule 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 to be unlawful if the rule represents a reasonable exercise of the commission's authority.

## ARTICLE 9

## COMMISSION RECORDS AND ENFORCEMENT

A. The commission shall promulgate rules establishing conditions and procedures for public inspection and copying of its information and official records, except for information and records involving the privacy of individuals, insurers, insureds or surplus lines licensee trade secrets. State transaction documentation and clearinghouse transaction data collected by the clearinghouse shall be used for only those purposes expressed in or reasonably implied under the provisions of this compact, and the commission shall afford this data the broadest protections as permitted by any applicable law for proprietary information, trade secrets or personal data. 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.

B. Except as to privileged records, data and information, the laws of a compacting state pertaining to confidentiality or nondisclosure shall not relieve any compacting state member 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 provided further 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 a member, and the commission shall maintain the confidentiality of information provided by a member that is confidential under that member's state law.

C. The commission shall monitor compacting states for compliance with duly adopted bylaws and rules. The commission shall notify a non-complying compacting state in writing of its noncompliance with commission bylaws or rules. If a non-complying 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 14 of this compact.

## ARTICLE 10

### DISPUTE RESOLUTION

A. Before a member may bring an action in a court of competent jurisdiction for violation of a provision, standard or requirement of the compact, the commission shall attempt, upon the request of a member, to resolve disputes or other issues that are subject to this compact and that may arise between two or more compacting states, contracting states or non-compacting states, and the commission



shall promulgate a rule providing alternative dispute resolution procedures for such disputes.

B. The commission shall also provide alternative dispute resolution procedures to resolve disputes between insureds or surplus lines licensees concerning a tax calculation or allocation or related issues that are the subject of this compact.

C. Any alternative dispute resolution procedures shall be used in circumstances in which a dispute arises as to which state constitutes the home state.

## ARTICLE 11

### REVIEW OF COMMISSION DECISIONS

A. Not later than thirty days after the commission has given notice of a rule or allocation formula, a third party filer or compacting state may appeal the determination to a review panel appointed by the commission. The commission shall promulgate rules to establish procedures for appointing review panels and provide for notice and hearing. An allegation that the commission, in making compliance or tax determinations, 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 Subsection F of Article 3 of this compact.

B. The commission shall have authority to monitor, review and reconsider commission decisions upon a finding that the determinations or allocations do not meet the relevant rule. Where appropriate, the commission may withdraw or modify its determination or allocation after proper notice and hearing, subject to the appeal process in Subsection A of this article.

## ARTICLE 12

### FINANCE

A. 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, grants and other forms of funding from the state stamping offices, compacting states and other sources.

B. The commission shall collect a fee payable by the insured directly or through a surplus lines licensee on each transaction processed through the compact clearinghouse 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.

C. 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 8 of this compact.

D. The commission shall be regarded as performing essential governmental functions in exercising its powers and functions and in carrying out the provisions of this compact. The commission shall not be required to pay taxes or assessments levied by any state or political subdivision thereof upon the property used by the commission in the performance of its duties, or on income or revenue that the commission receives, including any profit from a sale or exchange.

E. The commission shall keep complete and accurate accounts of all its internal receipts, including grants and donations, and disbursements for 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 not 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 report shall include a report of the independent audit. The commission's internal accounts shall not be confidential, and the materials may be shared with the commissioner, the controller or the stamping office of any compacting state upon request; provided, however, that work papers related to an internal or independent audit and any information regarding the privacy of individuals and licensees' and insurers' proprietary information, including trade secrets, shall remain confidential.

F. No compacting state shall have 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.

G. The commission shall not make any political contributions to candidates for elected office, elected officials, political parties or political action committees. The commission shall not engage in lobbying except with respect to changes to this compact.

## ARTICLE 13

### COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT

A. Any state is eligible to become a compacting state.

B. 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 rules and creating the clearinghouse when there are a total of ten compacting states and contracting states or, alternatively, when there are compacting states and contracting states representing greater than forty percent of the surplus lines insurance premium volume based on records of the percentage of surplus lines insurance premium for calendar year 2005 as

shown in a study dated February 27, 2007 by Mackin and Company. Thereafter, it shall become effective and binding as to any other compacting state upon enactment of the compact into law by that state; provided that the clearinghouse operations and the duty to report clearinghouse transaction data shall begin on the first January 1 or July 1 following the first anniversary of the commission's effective date. For states that join the compact subsequent to the effective date, a start date for reporting clearinghouse transaction data shall be set by the commission; provided that surplus lines licensees and all other interested parties receive not less than ninety days advance notice.

C. 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 14

### WITHDRAWAL, DEFAULT AND TERMINATION

A. The following provisions govern withdrawal of a state from the commission:

(1) once effective, the compact shall continue in force and remain binding upon each compacting state; provided that a compacting state may withdraw from the compact by enacting a statute specifically repealing the statute that enacted the compact into law;

(2) the effective date of withdrawal is the effective date of the repealing statute; provided, however, that the withdrawal shall not apply to any tax or compliance determinations approved 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 commission;

(3) the member of the withdrawing state shall immediately notify the executive committee of the commission in writing upon the introduction of legislation repealing this compact in the withdrawing state;

(4) the commission shall notify the other compacting states of the introduction of such legislation within ten days after its receipt of notice thereof;

(5) 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. To the extent those obligations may have been released or relinquished by mutual agreement of the commission and the withdrawing state, the commission's determinations 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 commission; and

(6) reinstatement following withdrawal of any compacting state shall occur upon the effective date of the withdrawing state reenacting the compact.

B. The following provisions govern default by a compacting state:

(1) if the commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this compact, the bylaws or duly promulgated rules, 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 the failure of a compacting state to perform its obligations or responsibilities and 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;

(2) decisions of the commission that are issued 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 Subsection A of this article; and

(3) reinstatement following termination of a compacting state requires a reenactment of the compact.

C. The following provisions govern the dissolution of this compact:

(1) the compact dissolves effective upon the date of the withdrawal or default of the compacting state that reduces membership in the compact to one compacting state; and

(2) upon the dissolution of this compact, the compact becomes null and void and shall have no further force or effect, and the business and affairs of the commission shall be terminated and any surplus funds shall be distributed in accordance with the rules and bylaws.

## ARTICLE 15

### SEVERABILITY AND CONSTRUCTION

A. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

B. The provisions of this compact shall be liberally construed to effectuate its purposes.

C. Throughout this compact the use of the singular shall include the plural and vice versa.

D. The headings and captions of articles used in this compact are for convenience only and shall be ignored in construing the substantive provisions of this compact.

## ARTICLE 16

### BINDING EFFECT OF COMPACT AND OTHER LAWS

A. Nothing in this compact prevents the enforcement of any other law of a compacting state except as provided in Subsection B of this article.

B. Decisions of the commission and rules and other requirements of the commission shall constitute the exclusive rule or determination applicable to the compacting states. A law or rule regarding non-admitted insurance of multistate risks that is contrary to rules of the commission is preempted with respect to the following:

(1) clearinghouse transaction data reporting requirements;

(2) allocation formulas;

(3) clearinghouse transaction data collection requirements;

(4) premium tax payment time frames and rules concerning dissemination of data among the compacting states for non-admitted insurance of multistate risks and single-state risks;

(5) exclusive compliance with surplus lines law of the home state of the insured;

(6) rules for reporting to a clearinghouse for receipt and distribution of clearinghouse transaction data related to non-admitted insurance of multistate risks;

(7) uniform foreign insurers eligibility requirements;

(8) uniform policyholder notice; and

(9) uniform treatment of purchasing groups procuring non-admitted insurance.

C. Except as stated in Subsection B of this article, a rule, uniform standard or other requirement of the commission shall constitute the exclusive provision that a commissioner may apply to compliance or tax determinations; provided, however, that no action taken by the commission shall abrogate or restrict:

(1) the access of a person to state courts;

(2) the availability of alternative dispute resolution under Article 10 of this compact;

(3) remedies available under state law related to breach of contract, tort or other laws not specifically directed to compliance or tax determinations;

(4) state law relating to the construction of insurance contracts; or

(5) the authority of the attorney general of the state, including but not limited to maintaining any actions or proceedings, as authorized by law.

D. All lawful actions of the commission, including all rules promulgated by the commission, are binding upon the compacting states, except as provided in this compact.

E. All agreements between the commission and the compacting states are binding in accordance with their terms.

F. 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. This provision may be implemented by rule at the discretion of the commission.

G. 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 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."

## **Chapter 156 Section 2 Laws 2011**

SECTION 2. SURPLUS LINES INSURANCE MULTISTATE COMPLIANCE COMPACT--STATE REPRESENTATIVE.--New Mexico's member on the surplus lines

insurance multistate compliance compact commission shall be the superintendent of insurance or the superintendent's designee.

## **Chapter 156 Section 3 Laws 2011**

SECTION 3. Section 59A-6-5 NMSA 1978 (being Laws 1984, Chapter 127, Section 105, as amended) is amended to read:

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

A. All money received by the division for fees, licenses, penalties and taxes shall be paid daily by the superintendent to the state treasurer and credited to the "insurance department suspense fund" except as provided by:

- (1) the Law Enforcement Protection Fund Act;
- (2) Section 59A-6-1.1 NMSA 1978; and
- (3) the Voter Action Act.

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

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

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

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

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

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

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

## **Chapter 156 Section 4 Laws 2011**

SECTION 4. Section 59A-14-1 NMSA 1978 (being Laws 1984, Chapter 127, Section 239, as amended) is amended to read:

"59A-14-1. SCOPE OF ARTICLE--PURPOSE--NECESSITY FOR REGULATION.--

A. Chapter 59A, Article 14 NMSA 1978 governs the placing of insurance where New Mexico is the home state of the insured, through licensed surplus lines brokers, in insurers not otherwise authorized to transact insurance in this state and subject to the conditions for such placing as stated in that article; qualifications, licensing and duties and responsibilities of surplus lines brokers; and other provisions as to such surplus lines business and brokers. As to unauthorized insurers in general, and in respects other than as to surplus lines, refer to Chapter 59A, Article 15 NMSA 1978.

B. Chapter 59A, Article 14 NMSA 1978 shall not apply as to reinsurance or to the following insurances when placed by general lines agents or surplus lines brokers licensed as such by this state:

(1) any insurance where New Mexico is not the home state of the insured;

(2) wet marine and transportation insurance, as defined in Section 59A-7-5 NMSA 1978;

(3) insurance on vehicles or aircraft owned and principally garaged outside this state;

(4) insurance of property and operations of railroads engaged in interstate commerce;

(5) insurance of aircraft of common carriers, or cargo of such aircraft, or against liability, other than employer's liability, arising out of ownership, maintenance or use of such aircraft;



(6) insurance of automobile bodily injury and property damage liability risks when written in Mexican insurers and covering in Mexico and not in the United States; or

(7) insurance independently procured.

C. Chapter 59A, Article 14 NMSA 1978 shall be liberally construed and applied to promote its underlying purposes, which include:

(1) protecting insureds and persons seeking insurance in this state;

(2) permitting surplus lines insurance to be placed with reputable and financially sound unauthorized insurers, but only pursuant to Chapter 59A, Article 14 NMSA 1978;

(3) establishing a system of regulation that will permit controlled access to surplus lines insurance in this state; and

(4) assuring collection of revenues and other amounts due to this state."

## **Chapter 156 Section 5 Laws 2011**

SECTION 5. Section 59A-14-2 NMSA 1978 (being Laws 1991, Chapter 125, Section 12) is amended to read:

"59A-14-2. DEFINITIONS.--As used in Chapter 59A, Article 14 NMSA 1978:

A. "affiliate" means, with respect to an insured, any entity that controls, is controlled by or is under common control with the insured;

B. "affiliated group" means any group of entities that are all affiliated;

C. "association" means the national association of insurance commissioners or any successor entity;

D. "control" means that:

(1) an entity directly or indirectly or acting through one or more other persons owns, controls or has the power to vote twenty-five percent or more of any class of voting securities of another entity; or

(2) an entity controls in any manner the election of a majority of the directors or trustees of another entity;

E. "eligible surplus lines insurer" means a qualified nonadmitted insurer, approved and listed pursuant to Section 59A-14-4 NMSA 1978, with which a surplus lines broker may place surplus lines insurance;

F. "exempt commercial purchaser" means any person purchasing commercial insurance that, at the time of placement, meets the following requirements:

(1) the person employs or retains a qualified risk manager to negotiate insurance coverage;

(2) the person has paid aggregate nationwide commercial property and casualty insurance premiums in excess of one hundred thousand dollars (\$100,000) in the immediately preceding twelve months; and

(3) the person:

(a) possesses a net worth in excess of twenty million dollars (\$20,000,000), provided that this amount shall be adjusted every five years by rule of the superintendent to account for the percentage change in the consumer price index;

(b) generates annual revenues in excess of fifty million dollars (\$50,000,000), provided that this amount shall be adjusted every five years by rule of the superintendent to account for the percentage change in the consumer price index;

(c) employs more than five hundred full-time or full-time-equivalent employees per insured entity or is a member of an affiliated group employing more than one thousand employees in the aggregate;

(d) is a not-for-profit organization or public entity generating annual budgeted expenditures of at least thirty million dollars (\$30,000,000), provided that this amount shall be adjusted every five years by rule of the superintendent to account for the percentage change in the consumer price index; or

(e) is a municipality with a population in excess of fifty thousand persons;

G. "export" means to place insurance with a nonadmitted insurer;

H. "home state" means, with respect to an insured:

(1) except as provided in Paragraph (3) of this subsection, the state in which an insured maintains its principal place of business or, in the case of an individual, the individual's principal residence;

(2) except as provided in Paragraph (3) of this subsection, if one hundred percent of the insured risk is located out of the state referred to in Paragraph (1) of this subsection, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated; or

(3) if more than one insured from an affiliated group are named insureds on a single nonadmitted insurance contract, "home state" means the home state, as determined pursuant to Paragraph (1) or (2) of this subsection, of the member of the affiliated group that has the largest percentage of premium attributed to it under the insurance contract;

I. "nonadmitted insurance" means any property and casualty insurance permitted to be placed directly or through a surplus lines broker with an eligible surplus lines insurer;

J. "nonadmitted insurer" means an insurer not licensed to engage in the business of insurance in New Mexico;

K. "producing broker" means the broker or agent dealing directly with the person seeking insurance if the home state of the person seeking insurance is New Mexico;

L. "professional designation" means:

(1) a designation as a chartered property and casualty underwriter issued by the American institute for chartered property and casualty underwriters;

(2) a designation as an associate in risk management issued by the insurance institute of America;

(3) a designation as a certified risk manager issued by the national alliance for insurance education and research;

(4) a designation as a RIMS fellow issued by the global risk management institute; or

(5) any other designation, certification or license determined by the superintendent to demonstrate minimum competency in risk management;

M. "qualified risk manager" means, with respect to an exempt commercial purchaser, a person who:

(1) is an employee of, or a third-party consultant retained by, the exempt commercial purchaser;

(2) provides skilled services in loss prevention, loss reduction, risk and insurance coverage analysis and purchase of insurance; and

(3) has:

(a) a bachelor's degree or higher from an accredited college or university in risk management, business administration, finance, economics or any other field determined by the superintendent to demonstrate minimum competence in risk management and either: 1) three years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis or purchase of commercial lines of insurance; or 2) a professional designation;

(b) a professional designation and at least seven years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis or purchase of commercial lines of insurance;

(c) at least ten years of experience in risk financing, claims administration, loss prevention, risk and insurance coverage analysis or purchase of commercial lines of insurance; or

(d) a graduate degree from an accredited college or university in risk management, business administration, finance, economics or any other field determined by the superintendent to demonstrate minimum competence in risk management;

N. "surplus lines broker" means an individual, firm or corporation licensed under Chapter 59A, Article 14 NMSA 1978 to place insurance with eligible surplus lines insurers;

O. "surplus lines insurance" means any insurance permitted to be exported through a surplus lines broker;

P. "type of insurance" means one of the types of insurance required to be reported in the annual statement that must be filed with the superintendent by authorized insurers; and

Q. "unauthorized insurer" means a nonadmitted insurer."

## **Chapter 156 Section 6 Laws 2011**

SECTION 6. Section 59A-14-3 NMSA 1978 (being Laws 1991, Chapter 125, Section 13, as amended) is amended to read:

"59A-14-3. PLACEMENT OF SURPLUS LINES INSURANCE.--No surplus lines insurance for an insured whose home state is New Mexico shall be solicited, negotiated,

contracted for, effectuated or otherwise transacted within the meaning of Section 59A-1-13 NMSA 1978, unless:

A. the insurance is procured through a surplus lines broker;

B. each nonadmitted insurer providing such insurance is an eligible surplus lines insurer;

C. either:

(1) the full amount or type of insurance cannot be obtained from insurers authorized to do business in this state as determined after making a diligent search among insurers authorized to transact and actually writing the particular type and class of insurance in this state; or

(2) the insurance is being procured for an exempt commercial purchaser and:

(a) the surplus lines broker procuring or placing the surplus lines insurance has disclosed to the exempt commercial purchaser that the insurance may or may not be available from insurers authorized to do business in this state, which may provide greater protection with more regulatory oversight; and

(b) the exempt commercial purchaser has subsequently requested in writing the surplus lines broker to procure or place the insurance from an eligible surplus lines insurer;

D. the surplus lines broker has taken such reasonable steps to ascertain that the insurer is in sound financial condition as may be required by regulations adopted by the superintendent; and

E. all other requirements of Chapter 59A, Article 14 NMSA 1978 are met."

## **Chapter 156 Section 7 Laws 2011**

SECTION 7. Section 59A-14-4 NMSA 1978 (being Laws 1991, Chapter 125, Section 14, as amended) is amended to read:

"59A-14-4. ELIGIBLE SURPLUS LINES INSURERS REQUIRED.--

A. No person shall export insurance on behalf of an insured whose home state is New Mexico except as authorized by and in accordance with Chapter 59A, Article 14 NMSA 1978.

B. No surplus lines broker shall transact surplus lines insurance with an insurer other than an eligible surplus lines insurer.

C. To qualify as an eligible surplus lines insurer, a nonadmitted insurer shall file information demonstrating to the superintendent's satisfaction that:

(1) the insurer is authorized to write the particular line of business in the state in which it is domiciled and:

(a) the insurer has capital and surplus or their equivalent that equals the greater of: 1) fifteen million dollars (\$15,000,000); or 2) the minimum capital and surplus required in this state for that particular line of business; or

(b) the insurer has capital and surplus less than the amounts required in Subparagraph (a) of this paragraph but the superintendent affirmatively finds that the insurer is acceptable as an eligible surplus lines insurer. The finding shall be based upon such factors as quality of management, capital and surplus of any parent company, company underwriting profit and investment income trends and company record and reputation within the industry. In no event shall the superintendent make an affirmative finding of acceptability when the surplus lines insurer's capital and surplus is less than four million five hundred thousand dollars (\$4,500,000);

(2) the insurer is a member of an "insurance exchange", which is an association of syndicates or insurers created by the laws of individual states, and shall maintain capital and surplus, or the equivalent thereof, of not less than fifty million dollars (\$50,000,000) in the aggregate. For insurance exchanges that maintain funds for the protection of all insurance exchange policyholders, each individual syndicate shall maintain minimum capital and surplus, or the equivalent thereof, of not less than five million dollars (\$5,000,000). In the event the insurance exchange does not maintain funds for the protection of all insurance exchange policyholders, each individual syndicate shall meet the minimum capital and surplus requirements of Subparagraph (a) of Paragraph (1) of this subsection;

(3) if the insurer is an alien insurer, the insurer is listed on the quarterly listing of alien insurers maintained by the international insurers department of the association; or

(4) if, pursuant to law, New Mexico has joined a compact for the regulation of surplus lines insurance and the state, through the compact commission, has adopted nationwide uniform eligibility requirements, the insurer is in compliance with those requirements.

D. The superintendent shall maintain a list of nonadmitted insurers that qualify as an eligible surplus lines insurer under this section. In addition to the requirements of Subsection C of this section, in order to appear on the list of eligible surplus lines insurers, a nonadmitted insurer shall provide to the superintendent a copy of its most current annual statement certified and sworn to by the insurer. The statement shall be provided at the same time it is provided to the insurer's domicile, but in no event more than nine months after the close of the period reported upon, and shall be either:

(1) filed with and approved by the regulatory authority in the insurer's domicile; or

(2) certified as correct and in accordance with applicable accounting principles by a public accounting firm licensed in the insurer's domicile.

In the case of an insurance exchange, the statement may be an aggregate combined statement of all underwriting syndicates operating during the period reported.

E. The listing required by Subsection D of this section shall not be deemed to constitute or evidence the superintendent's approval or guaranty as to the financial condition or business practices of the insurer, and no insurer or other person shall allege orally or in writing that any such listing constitutes or implies the superintendent's approval.

F. The superintendent may adopt rules fixing reasonable conditions to be met by insurers for the listing. For good cause shown, the superintendent may in writing waive the requirements of this section to permit insurance to be placed as to a particular risk and insurer if the insurance is not otherwise reasonably obtainable."

## **Chapter 156 Section 8 Laws 2011**

SECTION 8. Section 59A-14-7 NMSA 1978 (being Laws 1984, Chapter 127, Section 245, as amended by Laws 1999, Chapter 272, Section 19 and also by Laws 1999, Chapter 289, Section 21) is amended to read:

"59A-14-7. SURPLUS LINES BROKER LICENSE REQUIRED--  
QUALIFICATIONS FOR LICENSE.--

A. No person shall in New Mexico be, act as or hold out to be a surplus lines broker, or place insurance of risks where New Mexico is the home state of the insured in any nonadmitted insurer on behalf of others and for compensation as an independent contractor in any form, unless licensed as a surplus lines broker under Chapter 59A, Article 14 NMSA 1978.

B. The superintendent shall, upon due application and payment of the license fee, issue a license as surplus lines broker to a person qualified as follows:

(1) must be currently licensed as an insurance agent in this state as to the kinds of insurance to be exported under the surplus lines broker license applied for and have had experience or special training or education sufficient in duration and character as such an agent as to render the applicant, in the opinion of the superintendent, reasonably competent to engage in business as a surplus lines broker; and

(2) if the applicant is a firm or corporation, all individuals to represent it in this state must be licensed agents. Each such individual shall be qualified as for an individual license as surplus lines broker, and an additional license fee shall be paid as to each individual, in excess of one, who is to exercise the surplus lines broker license powers."

## **Chapter 156 Section 9 Laws 2011**

SECTION 9. Section 59A-14-12 NMSA 1978 (being Laws 1984, Chapter 127, Section 250, as amended) is amended to read:

"59A-14-12. PREMIUM TAX ON SURPLUS LINES INSURANCE.--

A. Within sixty days after expiration of a calendar quarter, the surplus lines broker shall pay to the superintendent for the use of the state a tax on gross premiums received, less returned premiums, on surplus lines business where New Mexico is the home state of the insured transacted under the surplus lines broker's license during such calendar quarter as shown by the quarterly statement filed with the superintendent pursuant to Section 59A-14-11 NMSA 1978. The tax shall be at the same rate as is applicable to premiums of authorized insurers under Section 59A-6-2 NMSA 1978.

B. For purposes of this section, "premiums" shall include any additional amount charged the insured, including policy fees, risk purchasing group fees and inspection fees; but "premiums" shall not include any additional amount charged the insured for local, state or federal tax; regulatory authority fee; or examination fee, if any.

C. The superintendent may require surplus lines brokers and insureds who have independently procured insurance to file tax allocation reports annually detailing the portion of the nonadmitted insurance policy premiums attributable to properties, risks or exposures located in each state.

D. A penalty of ten percent of the amount of tax originally due, plus one percent of such tax amount for each month or fraction thereof of delinquency after the first thirty days of delinquency, shall be paid by the surplus lines broker for failure to pay the tax in full within sixty days after expiration of the calendar quarter as provided in Subsection A of this section; except that the superintendent may waive or remit the penalty if the superintendent finds that the failure or delay in payment arose from excusable mistake or excusable inadvertence."

## **Chapter 156 Section 10 Laws 2011**

SECTION 10. A new section of Chapter 59A, Article 14 NMSA 1978 is enacted to read:

"NATIONAL DATABASE--PARTICIPATION REQUIRED.--No later than July 21, 2012, the superintendent shall participate in the national insurance producer database



of the association, or any other equivalent uniform national database, for the licensure of surplus lines brokers and the renewal of the licenses."

## **Chapter 156 Section 11 Laws 2011**

SECTION 11. APPLICABILITY OF ACT.--The provisions of Sections 3 through 10 of this act are applicable to insurance policies issued on or after July 21, 2011.

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SCORC/Senate Bill 250

Approved April 8, 2011

## **LAWS 2011, CHAPTER 157**

AN ACT

RELATING TO EDUCATIONAL RETIREMENT; AUTHORIZING THE EDUCATIONAL RETIREMENT BOARD TO SELECT A CUSTODIAL BANK AND TO HIRE ATTORNEYS ON A CONTINGENT FEE BASIS; CREATING A SUSPENSE FUND.

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

## **Chapter 157 Section 1 Laws 2011**

SECTION 1. Section 22-11-6 NMSA 1978 (being Laws 1967, Chapter 16, Section 130) is amended to read:

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

A. The board shall:

- (1) properly and uniformly enforce the Educational Retirement Act;
- (2) hire employees and delegate administrative authority to these employees;
- (3) make an actuarial report on the financial operation of the Educational Retirement Act to the legislature at each regular session every odd-numbered year;
- (4) accept donations, gifts or bequests; and
- (5) adopt regulations pursuant to the Educational Retirement Act.

B. The board may:

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

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

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

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

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

## **Chapter 157 Section 2 Laws 2011**

SECTION 2. Section 22-11-11 NMSA 1978 (being Laws 1967, Chapter 16, Section 135) is amended to read:

"22-11-11. EDUCATIONAL RETIREMENT FUND--SUSPENSE FUND.--

A. The "educational retirement fund" and the "educational retirement suspense fund" are created.

B. The state treasurer shall be the custodian of the funds, and the board shall be the trustee of the funds.

C. All membership fees, contributions from members and local administrative units, securities evidencing the investment of money from the fund, interest, gifts, grants or bequests shall be deposited in the educational retirement fund.

D. All amounts received in satisfaction of a claim brought by private attorneys on behalf of the board shall be deposited into the educational retirement suspense fund. The board shall disburse the compensation due the private attorneys, together with reimbursement for reasonable costs and expenses, in accordance with the terms of the contract with the attorneys. After the disbursements have been made, the balance of each deposit shall be distributed to the educational retirement fund."

### **Chapter 157 Section 3 Laws 2011**

SECTION 3. Section 22-11-12 NMSA 1978 (being Laws 1967, Chapter 16, Section 136, as amended) is amended to read:

"22-11-12. FUND--SUSPENSE FUND--DISBURSEMENTS.--The state treasurer shall make disbursements from the educational retirement fund or the educational retirement suspense fund only on warrants issued by the department of finance and administration or through any other process as approved by the department of finance and administration. Warrants for disbursements from the educational retirement fund or the educational retirement suspense fund shall be issued by the department of finance and administration only upon voucher of the director."

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SJC/Senate Bill 269, aa

Approved April 8, 2011

## **LAWS 2011, CHAPTER 158**

AN ACT

RELATING TO PUBLIC FINANCES; INCREASING THE FUNDS AUTHORIZED FOR DEPOSIT INTO THE PARTICIPATING GOVERNMENT INVESTMENT FUND.

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

### **Chapter 158 Section 1 Laws 2011**

SECTION 1. Section 6-10-10.1 NMSA 1978 (being Laws 1988, Chapter 61, Section 2, as amended) is amended to read:

"6-10-10.1. PARTICIPATING GOVERNMENT INVESTMENT FUND CREATED--  
DISTRIBUTION OF EARNINGS--REPORT OF INVESTMENTS.--

A. There is created in the state treasury the "participating government investment fund". The fund shall consist of all deposits from participating governments, including revenues dedicated to repaying bonds, that are placed in the custody of the state treasurer for investment purposes pursuant to this section. The state treasurer shall maintain one or more separate accounts for each participating government having deposits in the participating government investment fund and may divide the fund into two or more subfunds, as the state treasurer deems appropriate, for short-term and medium-term investment purposes, including one or more subfunds for bond proceeds deposited by participating governments.

B. If an eligible governing body is unable to receive payment on public money at the rate of interest as set forth in Section 6-10-36 NMSA 1978 from financial institutions within the geographic boundaries of the eligible governing body, or if the eligible governing body is not bound by the terms of Section 6-10-36 NMSA 1978, the finance officer having control of the money of that eligible governing body not required for current expenditure may, with the consent of the board of finance of the eligible governing body if consent is required by the laws or rules of the eligible governing body, remit some or all of the money to the state treasurer for deposit for the purpose of investment as allowed by this section.

C. Before funds are invested or reinvested pursuant to this section, a finance officer shall notify and make the funds available for investment to banks, savings and loan associations and credit unions located within the geographical boundaries of the participating government or the eligible governing body, subject to the limitation on credit union accounts. To be eligible for deposit of the government funds, the financial institution shall pay to the participating government or eligible governing body the rate established by the state treasurer pursuant to a policy adopted by the state board of finance for the investments.

D. A finance officer shall specify the length of time a deposit shall be in the participating government investment fund. The state treasurer through the use of the state fiscal agent shall separately track each deposit and shall make information regarding the deposit available to the public upon written request.

E. The state treasurer shall invest the participating government investment fund as provided in Section 6-10-10 NMSA 1978 regarding the investment of state funds in investments with a maturity at the time of purchase that does not exceed three years. The state treasurer may elect to have the participating government investment fund consolidated for investment purposes with the state funds under the control of the state treasurer; provided that accurate and detailed accounting records are maintained for the account of each participating government and that a proportionate amount of interest earned is credited to each of the separate accounts of a participating

government. The fund shall be invested to achieve its objective, which is to realize the maximum return consistent with safe and prudent management.

F. At the end of each month, all net investment income or losses from investment of the participating government investment fund shall be distributed by the state treasurer to the accounts of participating governments in amounts directly proportionate to the respective amounts deposited by them in the participating government investment fund and the length of time the amounts in each account were invested.

G. The state treasurer shall charge participating governments reasonable audit, administrative and investment expenses and shall deduct those expenses directly from the net investment income for the investment and administrative services provided pursuant to this subsection. The amount of the charges, the manner of the use by the state treasurer and the nature of bond-related services to be offered shall be established in rules adopted and promulgated by the state treasurer subject to approval by the state board of finance.

H. Subject to appropriation by the legislature, amounts deducted from the accounts of participating governments for charges permitted pursuant to this section shall be expended by the state treasurer in fiscal year 2008 and in subsequent fiscal years for the administration and management of the participating government investment fund, services provided to participating governments related to investment of their money in that fund and other services authorized by this section. Balances remaining at the end of a fiscal year from the amounts deducted pursuant to this section shall revert to the general fund. Balances in the state treasurer's operating account resulting from deductions taken pursuant to this section in excess of the amount required to provide administration, management and related services required by this subsection or other services authorized by this section shall be offset by reductions in the charges made by the state treasurer to the accounts of participating governments in subsequent deductions from participating governments' accounts.

I. Investments of the participating government investment fund shall be made in such a manner that the portion of the fund invested in short-term investments maintains an "AA" or higher rating. Each fiscal year and at such other times as directed by the state board of finance, the state treasurer shall cause to have the short-term investment portion of the participating government investment fund rated by a nationally recognized statistical rating organization. If the rating received by the short-term investment portion of the fund is lower than "AA", the state treasurer shall immediately submit a plan to the state board of finance detailing the steps that will be taken to obtain an "AA" or higher rating.

J. The state treasurer may offer to provide to participating governments services related to requirements of the federal income tax laws applicable to the investment of bond proceeds.

K. A tribe or quasi-governmental body created pursuant to New Mexico statute may become a participating government only if the governing authority of the tribe or quasi-governmental body has adopted a resolution authorizing the tribe or quasi-governmental body to remit money to the state treasurer for investment in the participating government investment fund.

L. Deposits by the state treasurer on behalf of the general fund and bond proceeds investment pools shall not exceed thirty-five percent of the total amount in the participating government investment fund at any time."

## **Chapter 158 Section 2 Laws 2011**

SECTION 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.

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Senate Bill 275

Approved April 8, 2011

## **LAWS 2011, CHAPTER 159**

AN ACT

RELATING TO FAMILY LAW; AMENDING THE UNIFORM INTERSTATE FAMILY SUPPORT ACT TO COMPLY WITH INTERNATIONAL TREATY; MAKING STYLISTIC CHANGES; AMENDING, REPEALING, RECOMPILING AND ENACTING SECTIONS OF THE NMSA 1978.

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

## **Chapter 159 Section 1 Laws 2011**

SECTION 1. Section 40-6A-102 NMSA 1978 (being Laws 1994, Chapter 107, Section 101, as amended) is amended to read:

"40-6A-102. DEFINITIONS.--As used in the Uniform Interstate Family Support Act:

A. "child" means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be the beneficiary of a support order directed to the parent;

B. "child-support order" means a support order for a child, including a child who has attained the age of majority under the law of the issuing state or foreign country;

C. "convention" means the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, concluded at The Hague on November 23, 2007;

D. "duty of support" means an obligation imposed or imposable by law to provide support for a child, spouse or former spouse, including an unsatisfied obligation to provide support;

E. "foreign country" means a country, including a political subdivision thereof, other than the United States, that authorizes the issuance of support orders and:

(1) that has been declared under the law of the United States to be a foreign reciprocating country;

(2) that has established a reciprocal arrangement for child support with this state as provided in Section 40-6A-308 NMSA 1978;

(3) that has enacted a law or established procedures for the issuance and enforcement of support orders that are substantially similar to the procedures pursuant to the Uniform Interstate Family Support Act; or

(4) in which the convention is in force with respect to the United States;

F. "foreign support order" means a support order of a foreign tribunal;

G. "foreign tribunal" means a court, administrative agency or quasi-judicial entity of a foreign country that is authorized to establish, enforce or modify support orders or to determine parentage of a child. "Foreign tribunal" includes a competent authority pursuant to the convention;

H. "home state" means the state or foreign country in which a child lived with a parent or a person acting as parent for at least six consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than six months old, the state or foreign country in which the child lived from birth with a parent or a person acting as parent. A period of temporary absence of any of them is counted as part of the six-month or other period;

I. "income" includes earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under the law of this state;

J. "income-withholding order" means an order or other legal process directed to an obligor's employer or other debtor to withhold support from the income of the obligor;

K. "initiating tribunal" means the tribunal of a state or foreign country from which a petition or comparable pleading is forwarded or in which a petition or comparable pleading is filed for forwarding to another state or a foreign country;

L. "issuing foreign country" means the foreign country in which a tribunal issues a support order or a judgment determining parentage of a child;

M. "issuing state" means the state in which a tribunal issues a support order or a judgment determining parentage of a child;

N. "issuing tribunal" means the tribunal of a state or foreign country that issues a support order or a judgment determining parentage of a child;

O. "law" includes decisional and statutory law and rules and regulations having the force of law;

P. "obligee" means:

(1) an individual to whom a duty of support is or is alleged to be owed or in whose favor a support order or a judgment determining parentage of a child has been issued;

(2) a foreign country, state or political subdivision of a state to which the rights under a duty of support or support order have been assigned or which has independent claims based on financial assistance provided to an individual obligee in place of child support;

(3) an individual seeking a judgment determining parentage of the individual's child; or

(4) a person that is a creditor in a proceeding pursuant to Sections 40-6A-701 through 40-6A-713 NMSA 1978;

Q. "obligor" means an individual or the estate of a decedent who:

(1) owes or is alleged to owe a duty of support;

(2) is alleged but has not been adjudicated to be a parent of a child;

(3) is liable under a support order; or



(4) is a debtor in a proceeding pursuant to Sections 40-6A-701 through 40-6A-713 NMSA 1978;

R. "outside this state" means a location in another state or in a country other than the United States, whether or not the country is a foreign country;

S. "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;

T. "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;

U. "register" means to file in a tribunal of this state a support order or judgment determining parentage of a child issued in another state or a foreign country;

V. "registering tribunal" means a tribunal in which a support order or judgment determining parentage of a child is registered;

W. "responding state" means a state in which a petition or comparable pleading for support or to determine parentage of a child is filed or to which a petition or comparable pleading is forwarded for filing from another state or a foreign country;

X. "responding tribunal" means the authorized tribunal in a responding state or foreign country;

Y. "spousal support order" means a support order for a spouse or former spouse of the obligor;

Z. "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 under the jurisdiction of the United States. "State" includes an Indian tribe, pueblo, nation or band;

AA. "support enforcement agency" means a public official, governmental entity or private agency, acting under contract with such a public official or governmental entity, that is authorized to:

(1) seek enforcement of support orders or laws relating to the duty of support;

(2) seek establishment or modification of child support;

(3) request determination of parentage of a child;

(4) attempt to locate obligors or their assets; or

(5) request determination of the controlling child-support order;

BB. "support order" means a judgment, decree, order, decision or directive, whether temporary, final or subject to modification, issued in a state or foreign country for the benefit of a child, a spouse or a former spouse, that provides for monetary support, health care, arrearages, retroactive support or reimbursement for financial assistance provided to an individual obligee in place of child support. "Support order" may include related costs and fees, interest, income withholding, automatic adjustment, reasonable attorney fees and other relief; and

CC. "tribunal" means a court, administrative agency or quasi-judicial entity authorized to establish, enforce or modify support orders or to determine parentage of a child."

## **Chapter 159 Section 2 Laws 2011**

SECTION 2. Section 40-6A-105 NMSA 1978 (being Laws 1994, Chapter 107, Section 102, as amended) is recompiled as Section 40-6A-103 NMSA 1978 and is amended to read:

"40-6A-103. STATE TRIBUNAL AND SUPPORT ENFORCEMENT AGENCY.--

A. The district courts are the tribunals of this state.

B. The human services department is the support enforcement agency of this state."

## **Chapter 159 Section 3 Laws 2011**

SECTION 3. Section 40-6A-104 NMSA 1978 (being Laws 1994, Chapter 107, Section 103, as amended) is amended to read:

"40-6A-104. REMEDIES CUMULATIVE.--

A. Remedies provided by the Uniform Interstate Family Support Act are cumulative and do not affect the availability of remedies under other law or the recognition of a foreign support order on the basis of comity.

B. The Uniform Interstate Family Support Act does not:

(1) provide the exclusive method of establishing or enforcing a support order under the law of this state; or

(2) grant a tribunal of this state jurisdiction to render judgment or issue an order relating to child custody or visitation in a proceeding pursuant to the Uniform Interstate Family Support Act."

## **Chapter 159 Section 4 Laws 2011**

SECTION 4. A new Section 40-6A-105 NMSA 1978 is enacted to read:

"40-6A-105. APPLICATION OF UNIFORM INTERSTATE FAMILY SUPPORT ACT TO RESIDENT OF FOREIGN COUNTRY AND FOREIGN SUPPORT PROCEEDING.--

A. A tribunal of this state shall apply Sections 40-6A-101 through 40-6A-616 NMSA 1978 and, as applicable, Sections 40-6A-701 through 40-6A-713 NMSA 1978, to a support proceeding involving:

- (1) a foreign support order;
- (2) a foreign tribunal; or
- (3) an obligee, obligor or child residing in a foreign country.

B. A tribunal of this state that is requested to recognize and enforce a support order on the basis of comity may apply the procedural and substantive provisions of Sections 40-6A-101 through 40-6A-616 NMSA 1978.

C. Sections 40-6A-701 through 40-6A-713 NMSA 1978 shall apply only to a support proceeding pursuant to the convention. In such a proceeding, if a provision of Sections 40-6A-701 through 40-6A-713 NMSA 1978 is inconsistent with Sections 40-6A-101 through 40-6A-616 NMSA 1978, the provisions of Sections 40-6A-701 through 40-6A-713 NMSA 1978 control."

## **Chapter 159 Section 5 Laws 2011**

SECTION 5. Section 40-6A-201 NMSA 1978 (being Laws 1994, Chapter 107, Section 201, as amended) is amended to read:

"40-6A-201. BASES FOR JURISDICTION OVER NONRESIDENT.--

A. In a proceeding to establish or enforce a support order or to determine parentage of a child, a tribunal of this state may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:

- (1) the individual is personally served with notice within this state;

(2) the individual submits to the jurisdiction of this state by consent, by entering a general appearance or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;

(3) the individual resided with the child in this state;

(4) the individual resided in this state and provided prenatal expenses or support for the child;

(5) the child resides in this state as a result of the acts or directives of the individual;

(6) the individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse;

(7) the individual asserted parentage of a child in the putative father registry maintained in this state by the department of health; or

(8) there is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.

B. The bases of personal jurisdiction set forth in Subsection A of this section or in any other law of this state may not be used to acquire personal jurisdiction for a tribunal of this state to modify a child support order of another state unless the requirements of Section 40-6A-611 NMSA 1978 are met or, in the case of a foreign support order, unless the requirements of Section 40-6A-615 NMSA 1978 are met."

## **Chapter 159 Section 6 Laws 2011**

SECTION 6. Section 40-6A-203 NMSA 1978 (being Laws 1994, Chapter 107, Section 203, as amended) is amended to read:

"40-6A-203. INITIATING AND RESPONDING TRIBUNAL OF STATE.--Pursuant to the Uniform Interstate Family Support Act, a tribunal of this state may serve as an initiating tribunal to forward proceedings to a tribunal of another state or a foreign country and as a responding tribunal for proceedings initiated in another state or a foreign country."

## **Chapter 159 Section 7 Laws 2011**

SECTION 7. Section 40-6A-204 NMSA 1978 (being Laws 1994, Chapter 107, Section 204, as amended) is amended to read:

"40-6A-204. SIMULTANEOUS PROCEEDINGS.--

A. A tribunal of this state may exercise jurisdiction to establish a support order if the petition or comparable pleading is filed after a petition or comparable pleading is filed in another state or a foreign country only if:

(1) the petition or comparable pleading in this state is filed before the expiration of the time allowed in the other state or the foreign country for filing a responsive pleading challenging the exercise of jurisdiction by the other state or the foreign country;

(2) the contesting party timely challenges the exercise of jurisdiction in the other state or the foreign country; and

(3) if relevant, this state is the home state of the child.

B. A tribunal of this state may not exercise jurisdiction to establish a support order if the petition or comparable pleading is filed before a petition or comparable pleading is filed in another state or a foreign country if:

(1) the petition or comparable pleading in the other state or foreign country is filed before the expiration of the time allowed in this state for filing a responsive pleading challenging the exercise of jurisdiction by this state;

(2) the contesting party timely challenges the exercise of jurisdiction in this state; and

(3) if relevant, the other state or foreign country is the home state of the child."

## **Chapter 159 Section 8 Laws 2011**

SECTION 8. Section 40-6A-205 NMSA 1978 (being Laws 1994, Chapter 107, Section 205, as amended) is amended to read:

"40-6A-205. CONTINUING, EXCLUSIVE JURISDICTION TO MODIFY CHILD-SUPPORT ORDER.--

A. A tribunal of this state that has issued a child-support order consistent with the law of this state has and shall exercise continuing, exclusive jurisdiction to modify its child-support order if the order is the controlling order and:

(1) at the time of the filing of a request for modification this state is the residence of the obligor, the individual obligee or the child for whose benefit the support order is issued; or

(2) even if this state is not the residence of the obligor, the individual obligee or the child for whose benefit the support order is issued, the parties

consent in a record or in open court that the tribunal of this state may continue to exercise jurisdiction to modify its order.

B. A tribunal of this state that has issued a child-support order consistent with the law of this state may not exercise continuing exclusive jurisdiction to modify the order if:

(1) all of the parties who are individuals file consent in a record with the tribunal of this state that a tribunal of another state that has jurisdiction over at least one of all the parties who is an individual or that is located in the state of residence of the child may modify the order and assume continuing, exclusive jurisdiction; or

(2) its order is not the controlling order.

C. If a tribunal of another state has issued a child-support order pursuant to the Uniform Interstate Family Support Act or a law substantially similar to that act that modifies a child-support order of a tribunal of this state, tribunals of this state shall recognize the continuing, exclusive jurisdiction of the tribunal of the other state.

D. A tribunal of this state that lacks continuing, exclusive jurisdiction to modify a child-support order may serve as an initiating tribunal to request a tribunal of another state to modify a support order issued in that state.

E. A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal."

## **Chapter 159 Section 9 Laws 2011**

SECTION 9. Section 40-6A-206 NMSA 1978 (being Laws 1994, Chapter 107, Section 206, as amended) is amended to read:

"40-6A-206. CONTINUING JURISDICTION TO ENFORCE CHILD-SUPPORT ORDER.--

A. A tribunal of this state that has issued a child-support order consistent with the law of this state may serve as an initiating tribunal to request a tribunal of another state to enforce:

(1) the order if the order is the controlling order and has not been modified by a tribunal of another state that assumed jurisdiction pursuant to the Uniform Interstate Family Support Act; or

(2) a money judgment for arrears of support and interest on the order accrued before a determination that an order of a tribunal of another state is the controlling order.

B. A tribunal of this state having continuing jurisdiction over a support order may act as a responding tribunal to enforce the order."

## **Chapter 159 Section 10 Laws 2011**

SECTION 10. Section 40-6A-207 NMSA 1978 (being Laws 1994, Chapter 107, Section 207, as amended) is amended to read:

"40-6A-207. DETERMINATION OF CONTROLLING CHILD-SUPPORT ORDER.-

A. If a proceeding is brought pursuant to the Uniform Interstate Family Support Act and only one tribunal has issued a child-support order, the order of that tribunal controls and shall be so recognized.

B. If a proceeding is brought pursuant to the Uniform Interstate Family Support Act and two or more child-support orders have been issued by tribunals of this state, another state or a foreign country with regard to the same obligor and same child, a tribunal of this state having personal jurisdiction over both the obligor and individual obligee shall apply the following rules and by order shall determine which order controls and must be recognized:

(1) if only one of the tribunals would have continuing, exclusive jurisdiction pursuant to the Uniform Interstate Family Support Act, the order of that tribunal controls;

(2) if more than one of the tribunals would have continuing, exclusive jurisdiction pursuant to the Uniform Interstate Family Support Act:

(a) an order issued by a tribunal in the current home state of the child controls; or

(b) if an order has not been issued in the current home state of the child, the order most recently issued controls; and

(3) if none of the tribunals would have continuing, exclusive jurisdiction pursuant to the Uniform Interstate Family Support Act, the tribunal of this state shall issue a child-support order, which controls.

C. If two or more child-support orders have been issued for the same obligor and same child upon request of a party who is an individual or that is a support enforcement agency, a tribunal of this state having personal jurisdiction over both the obligor and the obligee who is an individual shall determine which order controls pursuant to Subsection B of this section. The request may be filed with a registration for enforcement or registration for modification pursuant to Sections 40-6A-601 through 40-6A-615 NMSA 1978, or may be filed as a separate proceeding.

D. A request to determine which is the controlling order shall be accompanied by a copy of every child-support order in effect and the applicable record of payments. The requesting party shall give notice of the request to each party whose rights may be affected by the determination.

E. The tribunal that issued the controlling order under Subsection A, B or C of this section has continuing jurisdiction to the extent provided in Section 40-6A-205 or 40-6A-206 NMSA 1978.

F. A tribunal of this state that determines by order which is the controlling order pursuant to Paragraph (1) or (2) of Subsection B or Subsection C of this section or that issues a new controlling order pursuant to Paragraph (3) of Subsection B of this section shall state in that order:

(1) the basis on which the tribunal made its determination;

(2) the amount of prospective support, if any; and

(3) the total amount of consolidated arrears and accrued interest, if any, under all of the orders after all payments made are credited as provided by Section 40-6A-209 NMSA 1978.

G. Within thirty days after issuance of an order determining which is the controlling order, the party obtaining the order shall file a certified copy of it in each tribunal that issued or registered an earlier order of child support. A party or support enforcement agency obtaining the order that fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the controlling order.

H. An order that has been determined to be the controlling order, or a judgment for consolidated arrears of support and interest, if any, made pursuant to this section must be recognized in proceedings under the Uniform Interstate Family Support Act."

## **Chapter 159 Section 11 Laws 2011**

SECTION 11. Section 40-6A-208 NMSA 1978 (being Laws 1994, Chapter 107, Section 208, as amended) is amended to read:

"40-6A-208. CHILD SUPPORT ORDERS FOR TWO OR MORE OBLIGEES.--In responding to registrations or petitions for enforcement of two or more child support orders in effect at the same time with regard to the same obligor and different individual obligees, at least one of which was issued by a tribunal of another state or a foreign country, a tribunal of this state shall enforce those orders in the same manner as if the orders had been issued by a tribunal of this state."



## **Chapter 159 Section 12 Laws 2011**

SECTION 12. Section 40-6A-209 NMSA 1978 (being Laws 1994, Chapter 107, Section 209, as amended) is amended to read:

"40-6A-209. CREDIT FOR PAYMENTS.--A tribunal of this state shall credit amounts collected for a particular period pursuant to any child-support order against the amounts owed for the same period under any other child-support order for support of the same child issued by a tribunal of this or another state or a foreign country."

## **Chapter 159 Section 13 Laws 2011**

SECTION 13. Section 40-6A-210 NMSA 1978 (being Laws 2005, Chapter 166, Section 11) is amended to read:

"40-6A-210. APPLICATION OF THE UNIFORM INTERSTATE FAMILY SUPPORT ACT TO A NONRESIDENT SUBJECT TO PERSONAL JURISDICTION.--A tribunal of this state exercising personal jurisdiction over a nonresident in a proceeding pursuant to the Uniform Interstate Family Support Act, pursuant to other law of this state relating to a support order or recognizing a foreign support order may receive evidence from outside this state pursuant to Section 40-6A-316 NMSA 1978, communicate with a tribunal outside this state pursuant to Section 40-6A-317 NMSA 1978 and obtain discovery through a tribunal outside this state pursuant to Section 40-6A-318 NMSA 1978. In all other respects, Sections 40-6A-301 through 40-6A-616 NMSA 1978 do not apply and the tribunal shall apply the procedural and substantive law of this state."

## **Chapter 159 Section 14 Laws 2011**

SECTION 14. Section 40-6A-211 NMSA 1978 (being Laws 2005, Chapter 166, Section 12) is amended to read:

"40-6A-211. CONTINUING, EXCLUSIVE JURISDICTION TO MODIFY SPOUSAL-SUPPORT ORDER.--

A. A tribunal of this state issuing a spousal-support order consistent with the law of this state has continuing, exclusive jurisdiction to modify the spousal-support order through the existence of the support obligation.

B. A tribunal of this state may not modify a spousal-support order issued by a tribunal of another state or a foreign country having continuing, exclusive jurisdiction over that order pursuant to the law of that state or foreign country.

C. A tribunal of this state that has continuing, exclusive jurisdiction over a spousal-support order may serve as:

(1) an initiating tribunal to request a tribunal of another state to enforce the spousal-support order issued in this state; or

(2) a responding tribunal to enforce or modify its own spousal-support order."

## **Chapter 159 Section 15 Laws 2011**

SECTION 15. Section 40-6A-301 NMSA 1978 (being Laws 1994, Chapter 107, Section 301, as amended) is amended to read:

"40-6A-301. PROCEEDINGS UNDER THE UNIFORM INTERSTATE FAMILY SUPPORT ACT.--

A. Except as otherwise provided in the Uniform Interstate Family Support Act, Sections 40-6A-301 through 40-6A-319 NMSA 1978 apply to all proceedings pursuant to that act.

B. An individual petitioner or a support enforcement agency may initiate a proceeding authorized pursuant to the Uniform Interstate Family Support Act by filing a petition in an initiating tribunal for forwarding to a responding tribunal or by filing a petition or a comparable pleading directly in a tribunal of another state or a foreign country that has or can obtain personal jurisdiction over the respondent."

## **Chapter 159 Section 16 Laws 2011**

SECTION 16. Section 40-6A-303 NMSA 1978 (being Laws 1994, Chapter 107, Section 303, as amended) is amended to read:

"40-6A-303. APPLICATION OF LAW OF STATE.--Except as otherwise provided by the Uniform Interstate Family Support Act, a responding tribunal of this state shall:

A. apply the procedural and substantive law generally applicable to similar proceedings originating in this state and may exercise all powers and provide all remedies available in those proceedings; and

B. determine the duty of support and the amount payable in accordance with the law and support guidelines of this state."

## **Chapter 159 Section 17 Laws 2011**

SECTION 17. Section 40-6A-304 NMSA 1978 (being Laws 1994, Chapter 107, Section 304, as amended) is amended to read:

"40-6A-304. DUTIES OF INITIATING TRIBUNAL.--

A. Upon the filing of a petition authorized pursuant to the Uniform Interstate Family Support Act, an initiating tribunal of this state shall forward the petition and its accompanying documents:

(1) to the responding tribunal or appropriate support enforcement agency in the responding state; or

(2) if the identity of the responding tribunal is unknown, to the state information agency of the responding state with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged.

B. If requested by the responding tribunal, a tribunal of this state shall issue a certificate or other document and make findings required by the law of the responding state. If the responding state is in a foreign country, upon request, the tribunal of this state shall specify the amount of support sought, convert that amount into the equivalent amount in the foreign currency under applicable official or market exchange rate as publicly reported and provide any other documents necessary to satisfy the requirements of the responding foreign tribunal."

## **Chapter 159 Section 18 Laws 2011**

SECTION 18. Section 40-6A-305 NMSA 1978 (being Laws 1994, Chapter 107, Section 305, as amended) is amended to read:

### **"40-6A-305. DUTIES AND POWERS OF RESPONDING TRIBUNAL.--**

A. When a responding tribunal of this state receives a petition or comparable pleading from an initiating tribunal or directly pursuant to Subsection B of Section 40-6A-301 NMSA 1978, it shall cause the petition or pleading to be filed and notify the petitioner where and when it was filed.

B. A responding tribunal of this state, to the extent not prohibited by other law, may do one or more of the following:

(1) establish or enforce a support order, modify a child-support order, determine the controlling child-support order or determine parentage of a child;

(2) order an obligor to comply with a support order, specifying the amount and the manner of compliance;

(3) order income withholding;

(4) determine the amount of any arrearage and specify a method of payment;

(5) enforce orders by civil or criminal contempt, or both;

(6) set aside property for satisfaction of the support order;

(7) place liens and order execution on the obligor's property;

(8) order an obligor to keep the tribunal informed of the obligor's current residential address, electronic mail address, telephone number, employer, address of employment and telephone number at the place of employment;

(9) issue a bench warrant for an obligor who has failed after proper notice to appear at a hearing ordered by the tribunal and enter the bench warrant in any local and state computer systems for criminal warrants;

(10) order the obligor to seek appropriate employment by specified methods;

(11) award reasonable attorney's fees and other fees and costs;  
and

(12) grant any other available remedy.

C. A responding tribunal of this state shall include in a support order issued pursuant to the Uniform Interstate Family Support Act, or in the documents accompanying the order, the calculations on which the support order is based.

D. A responding tribunal of this state may not condition the payment of a support order issued pursuant to the Uniform Interstate Family Support Act upon compliance by a party with provisions for visitation.

E. If a responding tribunal of this state issues an order pursuant to the Uniform Interstate Family Support Act, the tribunal shall send a copy of the order to the petitioner and the respondent and to the initiating tribunal, if any.

F. If requested to enforce a support order, arrears or judgment or modify a support order stated in a foreign currency, a responding tribunal of this state shall convert the amount stated in the foreign currency to the equivalent amount in dollars under applicable official or market exchange rate as publicly reported."

## **Chapter 159 Section 19 Laws 2011**

SECTION 19. Section 40-6A-306 NMSA 1978 (being Laws 1994, Chapter 107, Section 306, as amended) is amended to read:

"40-6A-306. INAPPROPRIATE TRIBUNAL.--If a petition or comparable pleading is received by an inappropriate tribunal of this state, the tribunal shall forward the pleading and accompanying documents to an appropriate tribunal of this state or another state and notify the petitioner where and when the pleading was sent."

## Chapter 159 Section 20 Laws 2011

SECTION 20. Section 40-6A-307 NMSA 1978 (being Laws 1994, Chapter 107, Section 307, as amended) is amended to read:

"40-6A-307. DUTIES OF SUPPORT ENFORCEMENT AGENCY.--

A. A support enforcement agency of this state, upon request, shall provide services to a petitioner in a proceeding pursuant to the Uniform Interstate Family Support Act.

B. A support enforcement agency of this state that is providing services to the petitioner shall:

(1) take all steps necessary to enable an appropriate tribunal of this state, another state or a foreign country to obtain jurisdiction over the respondent;

(2) request an appropriate tribunal to set a date, time and place for a hearing;

(3) make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;

(4) within two days, exclusive of Saturdays, Sundays and legal holidays, after receipt of a written notice in a record from an initiating, responding or registering tribunal, send a copy of the notice to the petitioner;

(5) within two days, exclusive of Saturdays, Sundays and legal holidays, after receipt of a written communication in a record from the respondent or the respondent's attorney, send a copy of the communication to the petitioner; and

(6) notify the petitioner if jurisdiction over the respondent cannot be obtained.

C. A support enforcement agency of this state that requests registration of a child-support order in this state for enforcement or for modification shall make reasonable efforts:

(1) to ensure that the order to be registered is the controlling order;  
or

(2) if two or more child-support orders exist and the identity of the controlling order has not been determined, to ensure that a request for such a determination is made in a tribunal having jurisdiction to do so.

D. A support enforcement agency of this state that requests registration and enforcement of a support order, arrears or judgment stated in a foreign currency shall convert the amounts stated in the foreign currency into the equivalent amounts in dollars under the applicable official or market exchange rate as publicly reported.

E. A support enforcement agency of the state shall issue or request a tribunal of this state to issue a child-support order and an income-withholding order that redirect payment of current support, arrears and interest if requested to do so by a support enforcement agency of another state pursuant to Section 40-6A-319 NMSA 1978.

F. The Uniform Interstate Family Support Act does not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency."

## **Chapter 159 Section 21 Laws 2011**

SECTION 21. Section 40-6A-308 NMSA 1978 (being Laws 1994, Chapter 107, Section 308, as amended) is amended to read:

"40-6A-308. DUTY OF ATTORNEY GENERAL.--

A. If the attorney general determines that the support enforcement agency is neglecting or refusing to provide services to an individual, the attorney general may order the agency to perform its duties pursuant to the Uniform Interstate Family Support Act or may provide those services directly to the individual.

B. The attorney general may determine that a foreign country has established a reciprocal arrangement for child support with this state and take appropriate action for notification of the determination."

## **Chapter 159 Section 22 Laws 2011**

SECTION 22. Section 40-6A-310 NMSA 1978 (being Laws 1994, Chapter 107, Section 310, as amended) is amended to read:

"40-6A-310. DUTIES OF STATE INFORMATION AGENCY.--

A. The human services department is the state information agency pursuant to the Uniform Interstate Family Support Act.

B. The state information agency shall:

(1) compile and maintain a current list, including addresses, of the tribunals in this state that have jurisdiction pursuant to the Uniform Interstate Family

Support Act and any support enforcement agencies in this state and transmit a copy to the state information agency of every other state;

(2) maintain a register of names and addresses of tribunals and support enforcement agencies received from other states;

(3) forward to the appropriate tribunal in the county in this state in which the obligee who is an individual or the obligor resides, or in which the obligor's property is believed to be located, all documents concerning a proceeding pursuant to the Uniform Interstate Family Support Act received from another state or a foreign country; and

(4) obtain information concerning the location of the obligor and the obligor's property within this state not exempt from execution, by such means as postal verification and federal or state locator services, examination of telephone directories, requests for the obligor's address from employers and examination of governmental records, including, to the extent not prohibited by other law, those relating to real property, vital statistics, law enforcement, taxation, motor vehicles, driver's licenses and social security."

## **Chapter 159 Section 23 Laws 2011**

SECTION 23. Section 40-6A-311 NMSA 1978 (being Laws 1994, Chapter 107, Section 311, as amended) is amended to read:

"40-6A-311. PLEADINGS AND ACCOMPANYING DOCUMENTS.--

A. In a proceeding pursuant to the Uniform Interstate Family Support Act, a petitioner seeking to establish a support order, to determine parentage of a child or to register and modify a support order of a tribunal of another state or a foreign country shall file a petition. Unless otherwise ordered pursuant to Section 40-6A-312 NMSA 1978, the petition or accompanying documents shall provide, so far as known, the name, residential address and social security numbers of the obligor and the obligee or the parent and alleged parent and the name, sex, residential address, social security number and date of birth of each child for whose benefit support is sought or whose parentage is to be determined. Unless filed at the time of registration, the petition shall be accompanied by a copy of any support order known to have been issued by another tribunal. The petition may include any other information that may assist in locating or identifying the respondent.

B. The petition shall specify the relief sought. The petition and accompanying documents shall conform substantially with the requirements imposed by the forms mandated by federal law for use in cases filed by a support enforcement agency."

## **Chapter 159 Section 24 Laws 2011**

SECTION 24. Section 40-6A-313 NMSA 1978 (being Laws 1994, Chapter 107, Section 313, as amended) is amended to read:

"40-6A-313. COSTS AND FEES.--

A. The petitioner may not be required to pay a filing fee or other costs.

B. If an obligee prevails, a responding tribunal of this state may assess against an obligor filing fees, reasonable attorney fees, other costs and necessary travel and other reasonable expenses incurred by the obligee and the obligee's witnesses. The tribunal may not assess fees, costs or expenses against the obligee or the support enforcement agency of either the initiating or the responding state or foreign country, except as provided by other law. Attorney fees may be taxed as costs and may be ordered paid directly to the attorney, who may enforce the order in the attorney's own name. Payment of support owed to the obligee has priority over fees, costs and expenses.

C. The tribunal shall order the payment of costs and reasonable attorney fees if it determines that a hearing was requested primarily for delay. In a proceeding pursuant to Sections 40-6A-601 through 40-6A-616 NMSA 1978, a hearing is presumed to have been requested primarily for delay if a registered support order is confirmed or enforced without change."

## **Chapter 159 Section 25 Laws 2011**

SECTION 25. Section 40-6A-314 NMSA 1978 (being Laws 1994, Chapter 107, Section 314, as amended) is amended to read:

"40-6A-314. LIMITED IMMUNITY OF PETITIONER.--

A. Participation by a petitioner in a proceeding pursuant to the Uniform Interstate Family Support Act before a responding tribunal, whether in person, by private attorney or through services provided by the support enforcement agency, does not confer personal jurisdiction over the petitioner in another proceeding.

B. A petitioner is not amenable to service of civil process while physically present in this state to participate in a proceeding pursuant to the Uniform Interstate Family Support Act.

C. The immunity granted by this section does not extend to civil litigation based on acts unrelated to a proceeding pursuant to the Uniform Interstate Family Support Act committed by a party while present in this state to participate in the proceeding."

## **Chapter 159 Section 26 Laws 2011**



SECTION 26. Section 40-6A-315 NMSA 1978 (being Laws 1994, Chapter 107, Section 315) is amended to read:

"40-6A-315. NONPARENTAGE AS DEFENSE.--A party whose parentage of a child has been previously determined by or pursuant to law may not plead nonparentage as a defense to a proceeding pursuant to the Uniform Interstate Family Support Act."

## **Chapter 159 Section 27 Laws 2011**

SECTION 27. Section 40-6A-316 NMSA 1978 (being Laws 1994, Chapter 107, Section 316, as amended) is amended to read:

"40-6A-316. SPECIAL RULES OF EVIDENCE AND PROCEDURE.--

A. The physical presence of a nonresident party who is an individual in a tribunal of this state is not required for the establishment, enforcement or modification of a support order or the rendition of a judgment determining parentage of a child.

B. An affidavit, a document substantially complying with federally mandated forms, or a document incorporated by reference in any of them that would not be excluded under the hearsay rule if given in person, is admissible in evidence if given under penalty of perjury by a party or witness residing outside this state.

C. A copy of the record of child support payments certified as a true copy of the original by the custodian of the record may be forwarded to a responding tribunal. The copy is evidence of facts asserted in it and is admissible to show whether payments were made.

D. Copies of bills for testing for parentage of a child and for prenatal and postnatal health care of the mother and child, furnished to the adverse party at least ten days before trial, are admissible in evidence to prove the amount of the charges billed and that the charges were reasonable, necessary and customary.

E. Documentary evidence transmitted from outside this state to a tribunal of this state by telephone, telecopier or other electronic means that do not provide an original record may not be excluded from evidence on an objection based on the means of transmission.

F. In a proceeding pursuant to the Uniform Interstate Family Support Act, a tribunal of this state shall permit a party or witness residing outside this state to be deposed or to testify by telephone, audiovisual means or other electronic means at a designated tribunal or other location. A tribunal of this state shall cooperate with other tribunals in designating an appropriate location for the deposition or testimony.

G. If a party called to testify at a civil hearing refuses to answer on the ground that the testimony may be self-incriminating, the trier of fact may draw an adverse inference from the refusal.

H. A privilege against disclosure of communications between spouses does not apply in a proceeding pursuant to the Uniform Interstate Family Support Act.

I. The defense of immunity based on the relationship of husband and wife or parent and child does not apply in a proceeding pursuant to the Uniform Interstate Family Support Act.

J. A voluntary acknowledgment of paternity, certified as a true copy, is admissible to establish parentage of the child."

### **Chapter 159 Section 28 Laws 2011**

SECTION 28. Section 40-6A-317 NMSA 1978 (being Laws 1994, Chapter 107, Section 317, as amended) is amended to read:

"40-6A-317. COMMUNICATIONS BETWEEN TRIBUNALS.--A tribunal of this state may communicate with a tribunal outside this state in a record or by telephone, electronic mail or other means to obtain information concerning the laws, the legal effect of a judgment, decree or order of that tribunal and the status of a proceeding. A tribunal of this state may furnish similar information by similar means to a tribunal outside this state."

### **Chapter 159 Section 29 Laws 2011**

SECTION 29. Section 40-6A-318 NMSA 1978 (being Laws 1994, Chapter 107, Section 318) is amended to read:

"40-6A-318. ASSISTANCE WITH DISCOVERY.--A tribunal of this state may:

A. request a tribunal outside this state to assist in obtaining discovery; and

B. upon request, compel a person over which it has jurisdiction to respond to a discovery order issued by a tribunal outside this state."

### **Chapter 159 Section 30 Laws 2011**

SECTION 30. Section 40-6A-319 NMSA 1978 (being Laws 1994, Chapter 107, Section 319, as amended) is amended to read:

"40-6A-319. RECEIPT AND DISBURSEMENT OF PAYMENTS.--

A. A support enforcement agency or tribunal of this state shall disburse promptly any amounts received pursuant to a support order, as directed by the order. The agency or tribunal shall furnish to a requesting party or tribunal of another state or a foreign country a certified statement by the custodian of the record of the amounts and dates of all payments received.

B. If neither the obligor, nor the obligee who is an individual, nor the child resides in this state, upon request from the support enforcement agency of this state or another state, the support enforcement agency of this state or a tribunal of this state shall:

(1) direct that the support payment be made to the support enforcement agency in the state in which the obligee is receiving services; and

(2) issue and send to the obligor's employer a conforming income-withholding order or an administrative notice of change of payee, reflecting the redirected payments.

C. The support enforcement agency of this state receiving redirected payments from another state pursuant to a law similar to Subsection B of this section shall furnish to a requesting party or tribunal of the other state a certified statement by the custodian of the record of the amount and dates of all payments received."

## **Chapter 159 Section 31 Laws 2011**

SECTION 31. Section 40-6A-401 NMSA 1978 (being Laws 1994, Chapter 107, Section 401, as amended) is amended to read:

"40-6A-401. ESTABLISHMENT OF SUPPORT ORDER.--

A. If a support order entitled to recognition pursuant to the Uniform Interstate Family Support Act has not been issued, a responding tribunal of this state with personal jurisdiction over the parties may issue a support order if:

(1) the individual seeking the order resides outside this state; or

(2) the support enforcement agency seeking the order is located outside this state.

B. The tribunal may issue a temporary child support order if the tribunal determines that such an order is appropriate and the individual ordered to pay is:

(1) a presumed father of the child;

(2) petitioning to have his paternity adjudicated;

- (3) identified as the father of the child through genetic testing;
- (4) an alleged father who has declined to submit to genetic testing;
- (5) shown by clear and convincing evidence to be the father of the child;
- (6) an acknowledged father as provided by applicable state law;
- (7) the mother of the child; or
- (8) an individual who has been ordered to pay child support in a previous proceeding and the order has not been reversed or vacated.

C. Upon finding, after notice and opportunity to be heard, that an obligor owes a duty of support, the tribunal shall issue a support order directed to the obligor and may issue other orders pursuant to Section 40-6A-305 NMSA 1978."

### **Chapter 159 Section 32 Laws 2011**

SECTION 32. A new Section 40-6A-402 NMSA 1978 is enacted to read:

"40-6A-402. PROCEEDING TO DETERMINE PARENTAGE.--A tribunal of this state authorized to determine parentage of a child may serve as a responding tribunal in a proceeding to determine parentage of a child brought pursuant to the Uniform Interstate Family Support Act or a law or procedure substantially similar to that act."

### **Chapter 159 Section 33 Laws 2011**

SECTION 33. Section 40-6A-502 NMSA 1978 (being Laws 1997, Chapter 9, Section 12, as amended) is amended to read:

"40-6A-502. EMPLOYER'S COMPLIANCE WITH INCOME-WITHHOLDING ORDER OF ANOTHER STATE.--

A. Upon receipt of an income-withholding order, the obligor's employer shall immediately provide a copy of the order to the obligor.

B. The employer shall treat an income-withholding order issued in another state that appears regular on its face as if it had been issued by a tribunal of this state.

C. Except as otherwise provided in Subsection D of this section and Section 40-6A-503 NMSA 1978, the employer shall withhold and distribute the funds as directed in the withholding order by complying with terms of the order that specify:

(1) the duration and amount of periodic payments of current child support, stated as a sum certain;

(2) the person designated to receive payments and the address to which the payments are to be forwarded;

(3) medical support, whether in the form of periodic cash payment, stated as a sum certain, or ordering the obligor to provide health insurance coverage for the child under a policy available through the obligor's employment;

(4) the amount of periodic payments of fees and costs for a support enforcement agency, the issuing tribunal and the obligee's attorney, stated as sums certain; and

(5) the amount of periodic payments of arrearages and interest on arrearages, stated as sums certain.

D. An employer shall comply with the law of the state of the obligor's principal place of employment for withholding from income with respect to:

(1) the employer's fee for processing an income-withholding order;

(2) the maximum amount permitted to be withheld from the obligor's income; and

(3) the times within which the employer shall implement the withholding order and forward the child-support payment."

## **Chapter 159 Section 34 Laws 2011**

SECTION 34. Section 40-6A-504 NMSA 1978 (being Laws 1997, Chapter 9, Section 14) is amended to read:

"40-6A-504. IMMUNITY FROM CIVIL LIABILITY.--An employer that complies with an income-withholding order issued in another state in accordance with Sections 40-6A-501 through 40-6A-507 NMSA 1978 is not subject to civil liability to an individual or agency with regard to the employer's withholding of child support from the obligor's income."

## **Chapter 159 Section 35 Laws 2011**

SECTION 35. Section 40-6A-505 NMSA 1978 (being Laws 1997, Chapter 9, Section 15) is amended to read:

"40-6A-505. PENALTIES FOR NONCOMPLIANCE.--An employer that willfully fails to comply with an income-withholding order issued in another state and received

for enforcement is subject to the same penalties that may be imposed for noncompliance with an order issued by a tribunal of this state."

## **Chapter 159 Section 36 Laws 2011**

SECTION 36. Section 40-6A-506 NMSA 1978 (being Laws 1997, Chapter 9, Section 16, as amended) is amended to read:

"40-6A-506. CONTEST BY OBLIGOR.--

A. An obligor may contest the validity or enforcement of an income-withholding order issued in another state and received directly by an employer in this state by registering the order in a tribunal of this state and filing a contest to that order as provided in Sections 40-6A-601 through 40-6A-616 NMSA 1978, or otherwise contesting the order in the same manner as if the order had been issued by a tribunal of this state.

B. The obligor shall give notice of the contest to:

- (1) a support enforcement agency providing services to the obligee;
- (2) each employer that has directly received an income-withholding order relating to the obligor; and
- (3) the person designated to receive payments in the income-withholding order or, if no person is designated, to the obligee."

## **Chapter 159 Section 37 Laws 2011**

SECTION 37. Section 40-6A-507 NMSA 1978 (being Laws 1997, Chapter 9, Section 17, as amended) is amended to read:

"40-6A-507. ADMINISTRATIVE ENFORCEMENT OF ORDERS.--

A. A party or support enforcement agency seeking to enforce a support order or an income-withholding order, or both, issued in another state, or a foreign support order may send the documents required for registering the order to a support enforcement agency of this state.

B. Upon receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this state to enforce a support order or an income-withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency shall register the order pursuant to the Uniform Interstate Family Support Act."

## **Chapter 159 Section 38 Laws 2011**

SECTION 38. Section 40-6A-601 NMSA 1978 (being Laws 1994, Chapter 107, Section 601, as amended) is amended to read:

"40-6A-601. REGISTRATION OF ORDER FOR ENFORCEMENT.--A support order or income-withholding order issued in another state or a foreign support order may be registered in this state for enforcement."

## **Chapter 159 Section 39 Laws 2011**

SECTION 39. Section 40-6A-602 NMSA 1978 (being Laws 1994, Chapter 107, Section 602, as amended) is amended to read:

"40-6A-602. PROCEDURE TO REGISTER ORDER FOR ENFORCEMENT.--

A. Except as otherwise provided in Section 40-6A-706 NMSA 1978, a support order or income-withholding order of another state or a foreign support order may be registered in this state by sending the following records to the appropriate tribunal in this state:

(1) a letter of transmittal to the tribunal requesting registration and enforcement;

(2) two copies, including one certified copy, of the order to be registered, including any modification of the order;

(3) a sworn statement by the person requesting registration or a certified statement by the custodian of the records showing the amount of any arrearage;

(4) the name of the obligor and, if known:

(a) the obligor's address and social security number;

(b) the name and address of the obligor's employer and any other source of income of the obligor; and

(c) a description and the location of property of the obligor in this state not exempt from execution; and

(5) except as otherwise provided in Section 40-6A-312 NMSA 1978, the name and address of the obligee and, if applicable, the person to whom support payments are to be remitted.

B. On receipt of a request for registration, the registering tribunal shall cause the order to be filed as an order of a tribunal of another state or as a foreign support order, together with one copy of the documents and information, regardless of their form.

C. A petition or comparable pleading seeking a remedy that must be affirmatively sought under other law of this state may be filed at the same time as the request for registration or later. The pleading shall specify the grounds for the remedy sought.

D. If two or more orders are in effect, the person requesting registration shall:

(1) furnish to the tribunal a copy of every support order asserted to be in effect in addition to the documents specified in this section;

(2) specify the order alleged to be the controlling order, if any; and

(3) specify the amount of consolidated arrears, if any.

E. A request for a determination of which is the controlling order may be filed separately or with a request for registration and enforcement or for registration and modification. The person requesting registration shall give notice of the request to each party whose rights may be affected by the determination."

## **Chapter 159 Section 40 Laws 2011**

SECTION 40. Section 40-6A-603 NMSA 1978 (being Laws 1994, Chapter 107, Section 603) is amended to read:

"40-6A-603. EFFECT OF REGISTRATION FOR ENFORCEMENT.--

A. A support order or income-withholding order issued in another state or a foreign support order is registered when the order is filed in the registering tribunal of this state.

B. A registered support order issued in another state or a foreign country is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of this state.

C. Except as otherwise provided in Sections 40-6A-601 through 40-6A-616 NMSA 1978, a tribunal of this state shall recognize and enforce, but may not modify, a registered support order if the issuing tribunal had jurisdiction."

## **Chapter 159 Section 41 Laws 2011**



SECTION 41. Section 40-6A-604 NMSA 1978 (being Laws 1994, Chapter 107, Section 604, as amended) is amended to read:

"40-6A-604. CHOICE OF LAW.--

A. Except as otherwise provided in Subsection D of this section, the law of the issuing state or foreign country governs:

(1) the nature, extent, amount and duration of current payments under a registered support order;

(2) the computation and payment of arrearages and accrual of interest on the arrearages under the support order; and

(3) the existence and satisfaction of other obligations under the support order.

B. In a proceeding for arrears under a registered support order, the statute of limitation of this state or of the issuing state or foreign country, whichever is longer, applies.

C. A responding tribunal of this state shall apply the procedures and remedies of this state to enforce current support and collect arrears and interest due on a support order of another state or a foreign country registered in this state.

D. After a tribunal of this or another state determines which is the controlling order and issues an order consolidating arrears, if any, a tribunal of this state shall prospectively apply the law of the state or foreign country issuing the controlling order, including its law on interest on arrears, on current and future support, and on consolidated arrears."

## **Chapter 159 Section 42 Laws 2011**

SECTION 42. Section 40-6A-605 NMSA 1978 (being Laws 1994, Chapter 107, Section 605, as amended) is amended to read:

"40-6A-605. NOTICE OF REGISTRATION OF ORDER.--

A. When a support order or income-withholding order issued in another state or a foreign support order is registered, the registering tribunal of this state shall notify the nonregistering party. The notice shall be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

B. A notice shall inform the nonregistering party:

(1) that a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state;

(2) that a hearing to contest the validity or enforcement of the registered order must be requested within twenty days after notice unless the registered order is pursuant to Section 40-6A-707 NMSA 1978;

(3) that failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearage and precludes further contest of that order with respect to any matter that could have been asserted; and

(4) of the amount of any alleged arrearage.

C. If the registering party asserts that two or more orders are in effect, a notice shall also:

(1) identify the two or more orders and the order alleged by the registering party to be the controlling order and the consolidated arrears, if any;

(2) notify the nonregistering party of the right to a determination of which is the controlling order;

(3) state that the procedures provided in Subsection B of this section apply to the determination of which is the controlling order; and

(4) state that failure to contest the validity or enforcement of the order alleged to be the controlling order in a timely manner may result in confirmation that the order is the controlling order.

D. Upon registration of an income-withholding order for enforcement, the support enforcement agency or the registering tribunal shall notify the obligor's employer."

## **Chapter 159 Section 43 Laws 2011**

SECTION 43. Section 40-6A-606 NMSA 1978 (being Laws 1994, Chapter 107, Section 606, as amended) is amended to read:

"40-6A-606. PROCEDURE TO CONTEST VALIDITY OR ENFORCEMENT OF REGISTERED SUPPORT ORDER.--

A. A nonregistering party seeking to contest the validity or enforcement of a registered support order in this state shall request a hearing within the time required by Section 40-6A-605 NMSA 1978. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered

support order or to contest the remedies being sought or the amount of any alleged arrearage pursuant to Section 40-6A-607 NMSA 1978.

B. If the nonregistering party fails to contest the validity or enforcement of the registered support order in a timely manner, the order is confirmed by operation of law.

C. If a nonregistering party requests a hearing to contest the validity or enforcement of the registered support order, the registering tribunal shall schedule the matter for hearing and give notice to the parties of the date, time and place of the hearing."

## **Chapter 159 Section 44 Laws 2011**

SECTION 44. Section 40-6A-607 NMSA 1978 (being Laws 1994, Chapter 107, Section 607, as amended) is amended to read:

"40-6A-607. CONTEST OF REGISTRATION OR ENFORCEMENT.--

A. A party contesting the validity or enforcement of a registered support order or seeking to vacate the registration has the burden of proving one or more of the following defenses:

- (1) the issuing tribunal lacked personal jurisdiction over the contesting party;
- (2) the order was obtained by fraud;
- (3) the order has been vacated, suspended or modified by a later order;
- (4) the issuing tribunal has stayed the order pending appeal;
- (5) there is a defense under the law of this state to the remedy sought;
- (6) full or partial payment has been made;
- (7) the statute of limitation under Section 40-6A-604 NMSA 1978 precludes enforcement of some or all of the alleged arrearage; or
- (8) the alleged controlling order is not the controlling order.

B. If a party presents evidence establishing a full or partial defense under Subsection A of this section, a tribunal may stay enforcement of a registered support order, continue the proceeding to permit production of additional relevant evidence and

issue other appropriate orders. An uncontested portion of the registered support order may be enforced by all remedies available under the law of this state.

C. If the contesting party does not establish a defense under Subsection A of this section to the validity or enforcement of a registered support order, the registering tribunal shall issue an order confirming the order."

### **Chapter 159 Section 45 Laws 2011**

SECTION 45. Section 40-6A-608 NMSA 1978 (being Laws 1994, Chapter 107, Section 608) is amended to read:

"40-6A-608. CONFIRMED ORDER.--Confirmation of a registered support order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration."

### **Chapter 159 Section 46 Laws 2011**

SECTION 46. Section 40-6A-609 NMSA 1978 (being Laws 1994, Chapter 107, Section 609) is amended to read:

"40-6A-609. PROCEDURE TO REGISTER CHILD SUPPORT ORDER OF ANOTHER STATE FOR MODIFICATION.--A party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another state shall register that order in this state in the same manner provided in Sections 40-6A-601 through 40-6A-608 NMSA 1978 if the order has not been registered. A petition for modification may be filed at the same time as a request for registration, or later. The pleading shall specify the grounds for modification."

### **Chapter 159 Section 47 Laws 2011**

SECTION 47. Section 40-6A-610 NMSA 1978 (being Laws 1994, Chapter 107, Section 610, as amended) is amended to read:

"40-6A-610. EFFECT OF REGISTRATION FOR MODIFICATION.--

A tribunal of this state may enforce a child support order of another state registered for purposes of modification, in the same manner as if the order had been issued by a tribunal of this state, but the registered support order may be modified only if the requirements of Section 40-6A-611 or 40-6A-613 NMSA 1978 have been met."

### **Chapter 159 Section 48 Laws 2011**

SECTION 48. Section 40-6A-611 NMSA 1978 (being Laws 1994, Chapter 107, Section 611, as amended) is amended to read:

"40-6A-611. MODIFICATION OF CHILD-SUPPORT ORDER OF ANOTHER STATE.--

A. If Section 40-6A-613 NMSA 1978 does not apply, upon petition, a tribunal of this state may modify a child-support order issued in another state that is registered in this state if, after notice and hearing, the tribunal finds that:

(1) the following requirements are met:

(a) neither the child, nor the obligee who is an individual nor the obligor resides in the issuing state;

(b) a petitioner who is a nonresident of this state seeks modification; and

(c) the respondent is subject to the personal jurisdiction of the tribunal of this state; or

(2) this state is the residence of the child or a party who is an individual is subject to the personal jurisdiction of the tribunal of this state and all of the parties who are individuals have filed consents in a record in the issuing tribunal for a tribunal of this state to modify the support order and assume continuing, exclusive jurisdiction.

B. Modification of a registered child-support order is subject to the same requirements, procedures and defenses that apply to the modification of an order issued by a tribunal of this state, and the order may be enforced and satisfied in the same manner.

C. A tribunal of this state may not modify any aspect of a child-support order that may not be modified under the law of the issuing state, including the duration of the obligation of support. If two or more tribunals have issued child-support orders for the same obligor and same child, the order that controls and shall be so recognized under Section 40-6A-207 NMSA 1978 establishes the aspects of the support order which are nonmodifiable.

D. In a proceeding to modify a child-support order, the law of the state that is determined to have issued the initial controlling order governs the duration of the obligation of support. The obligor's fulfillment of the duty of support established by that order precludes imposition of further obligation of support by a tribunal of this state.

E. On issuance of an order by a tribunal of this state modifying a child-support order issued in another state, the tribunal of this state becomes the tribunal having continuing, exclusive jurisdiction.

F. Notwithstanding Subsections A through E of this section and Subsection B of Section 40-6A-201 NMSA 1978, a tribunal of this state retains jurisdiction to modify an order issued by a tribunal of this state if:

(1) one party resides in another state; and

(2) the other party resides outside the United States."

## **Chapter 159 Section 49 Laws 2011**

SECTION 49. Section 40-6A-612 NMSA 1978 (being Laws 1994, Chapter 107, Section 612, as amended) is amended to read:

"40-6A-612. RECOGNITION OF ORDER MODIFIED IN ANOTHER STATE.--If a child-support order issued by a tribunal of this state is modified by a tribunal of another state that assumed jurisdiction pursuant to the Uniform Interstate Family Support Act, a tribunal of this state:

A. may enforce its order that was modified only as to arrears and interest accruing before the modification;

B. may provide appropriate relief for violations of its order that occurred before the effective date of the modification; and

C. shall recognize the modifying order of the other state, upon registration, for the purpose of enforcement."

## **Chapter 159 Section 50 Laws 2011**

SECTION 50. Section 40-6A-613 NMSA 1978 (being Laws 1997, Chapter 9, Section 21) is amended to read:

"40-6A-613. JURISDICTION TO MODIFY CHILD-SUPPORT ORDER OF ANOTHER STATE WHEN INDIVIDUAL PARTIES RESIDE IN THIS STATE.--

A. If all of the parties who are individuals reside in this state and the child does not reside in the issuing state, a tribunal of this state has jurisdiction to enforce and to modify the issuing state's child-support order in a proceeding to register that order.

B. A tribunal of this state exercising jurisdiction under this section shall apply the provisions of Sections 40-6A-101 through 40-6A-211 and 40-6A-601 through

40-6A-616 NMSA 1978 and the procedural and substantive law of this state to the proceeding for enforcement or modification. Sections 40-6A-301 through 40-6A-507 and 40-6A-701 through 40-6A-802 NMSA 1978 do not apply."

## **Chapter 159 Section 51 Laws 2011**

SECTION 51. Section 40-6A-615 NMSA 1978 (being Laws 2005, Chapter 166, Section 43) is amended to read:

"40-6A-615. JURISDICTION TO MODIFY CHILD-SUPPORT ORDER OF FOREIGN COUNTRY.--

A. Except as otherwise provided in Section 40-6A-711 NMSA 1978, if a foreign country lacks or refuses to exercise jurisdiction to modify its child-support order pursuant to its laws, a tribunal of this state may assume jurisdiction to modify the child-support order and bind all individuals subject to the personal jurisdiction of the tribunal whether or not the consent to modification of a child-support order otherwise required of the individual pursuant to Section 40-6A-611 NMSA 1978 has been given or whether the individual seeking modification is a resident of this state or of the foreign country.

B. An order issued by a tribunal of this state modifying a foreign child-support order pursuant to this section is the controlling order."

## **Chapter 159 Section 52 Laws 2011**

SECTION 52. A new Section 40-6A-616 NMSA 1978 is enacted to read:

"40-6A-616. PROCEDURE TO REGISTER CHILD-SUPPORT ORDER OF FOREIGN COUNTRY FOR MODIFICATION.--A party or support enforcement agency seeking to modify, or to modify and enforce, a foreign child-support order not pursuant to the convention may register that order in this state pursuant to Sections 40-6A-601 through 40-6A-608 NMSA 1978 if the order has not been registered. A petition for modification may be filed at the same time as a request for registration or at another time. The petition shall specify the grounds for modification."

## **Chapter 159 Section 53 Laws 2011**

SECTION 53. Section 40-6A-701 NMSA 1978 (being Laws 1994, Chapter 107, Section 701, as amended) is repealed and a new Section 40-6A-701 NMSA 1978 is enacted to read:

"40-6A-701. DEFINITIONS.--As used in Sections 40-6A-701 through 40-6A-713 NMSA 1978:

A. "application" means a request pursuant to the convention by an obligee or obligor, or on behalf of a child, made through a central authority for assistance from another central authority;

B. "central authority" means the entity designated by the United States or a foreign country described in Paragraph (4) of Subsection E of Section 40-6A-102 NMSA 1978 to perform the functions specified in the convention;

C. "convention child-support order" means a child-support order of a tribunal of a foreign country described in Paragraph (4) of Subsection E of Section 40-6A-102 NMSA 1978;

D. "convention support order" means a support order of a tribunal of a foreign country described in Paragraph (4) of Subsection E of Section 40-6A-102 NMSA 1978;

E. "direct request" means a petition filed by an individual in a tribunal of this state in a proceeding involving an obligee, obligor or child residing outside the United States;

F. "foreign central authority" means the entity designated by a foreign country described in Paragraph (4) of Subsection E of Section 40-6A-102 NMSA 1978 to perform the functions specified in the convention;

G. "foreign support agreement":

(1) means an agreement for support in a record that:

(a) is enforceable as a support order in the country of origin;

(b) has been: 1) formally drawn up or registered as an authentic instrument by a foreign tribunal; or 2) authenticated by or concluded, registered or filed with a foreign tribunal; and

(c) may be reviewed and modified by a foreign tribunal; and

(2) includes a maintenance arrangement or authentic instrument pursuant to the convention; and

H. "United States central authority" means the secretary of the United States department of health and human services."

## **Chapter 159 Section 54 Laws 2011**

SECTION 54. A new Section 40-6A-702 NMSA 1978 is enacted to read:



"40-6A-702. APPLICABILITY.--Sections 40-6A-701 through 40-6A-713 NMSA 1978 apply only to a support proceeding pursuant to the convention. In such a proceeding, if a provision of Sections 40-6A-701 through 40-6A-713 NMSA 1978 is inconsistent with Sections 40-6A-101 through 40-6A-616 NMSA 1978, the provisions of Sections 40-6A-701 through 40-6A-713 NMSA 1978 control."

## **Chapter 159 Section 55 Laws 2011**

SECTION 55. A new Section 40-6A-703 NMSA 1978 is enacted to read:

"40-6A-703. RELATIONSHIP OF HUMAN SERVICES DEPARTMENT TO UNITED STATES CENTRAL AUTHORITY. The human services department of this state is recognized as the agency designated by the United States central authority to perform specific functions pursuant to the convention."

## **Chapter 159 Section 56 Laws 2011**

SECTION 56. A new Section 40-6A-704 NMSA 1978 is enacted to read:

"40-6A-704. INITIATION BY HUMAN SERVICES DEPARTMENT OF SUPPORT PROCEEDING UNDER CONVENTION.--

A. In a support proceeding pursuant to Sections 40-6A-701 through 40-6A-713 NMSA 1978, the human services department of this state shall:

(1) transmit and receive applications; and

(2) initiate or facilitate the institution of a proceeding regarding an application in a tribunal of this state.

B. The following support proceedings are available to an obligee pursuant to the convention:

(1) recognition or recognition and enforcement of a foreign support order;

(2) enforcement of a support order issued or recognized in this state;

(3) establishment of a support order if there is no existing order, including, if necessary, determination of parentage of a child;

(4) establishment of a support order if recognition of a foreign support order is refused pursuant to Paragraph (2), (4) or (9) of Subsection B of Section 40-6A-708 NMSA 1978;

(5) modification of a support order of a tribunal of this state; and

(6) modification of a support order of a tribunal of another state or a foreign country.

C. The following support proceedings are available pursuant to the convention to an obligor against which there is an existing support order:

(1) recognition of an order suspending or limiting enforcement of an existing support order of a tribunal of this state;

(2) modification of a support order of a tribunal of this state; and

(3) modification of a support order of a tribunal of another state or a foreign country.

D. A tribunal of this state may not require security, bond or deposit, however described, to guarantee the payment of costs and expenses in proceedings pursuant to the convention."

## **Chapter 159 Section 57 Laws 2011**

SECTION 57. A new Section 40-6A-705 NMSA 1978 is enacted to read:

"40-6A-705. DIRECT REQUEST.--

A. A petitioner may file a direct request seeking establishment or modification of a support order or determination of parentage of a child. In the proceeding, the law of this state applies.

B. A petitioner may file a direct request seeking recognition and enforcement of a support order or foreign support agreement. In the proceeding, Sections 40-6A-706 through 40-6A-713 NMSA 1978 apply.

C. In a direct request for recognition and enforcement of a convention support order or foreign support agreement:

(1) a security, bond or deposit is not required to guarantee the payment of costs and expenses; and

(2) an obligee or obligor that in the issuing country has benefited from free legal assistance is entitled to benefit, at least to the same extent, from any free legal assistance provided for by the law of this state under the same circumstances.

D. A petitioner filing a direct request is not entitled to assistance from the human services department of this state.

E. Sections 40-6A-701 through 40-6A-713 NMSA 1978 do not prevent the application of laws of this state that provide simplified, more expeditious rules regarding a direct request for recognition and enforcement of a foreign support order or foreign support agreement."

## **Chapter 159 Section 58 Laws 2011**

SECTION 58. A new Section 40-6A-706 NMSA 1978 is enacted to read:

"40-6A-706. REGISTRATION OF CONVENTION SUPPORT ORDER.--

A. Except as otherwise provided in Sections 40-6A-701 through 40-6A-713 NMSA 1978, a party who is an individual or a support enforcement agency seeking recognition of a convention support order shall register the order in this state as provided in Sections 40-6A-601 through 40-6A-616 NMSA 1978.

B. Notwithstanding Section 40-6A-311 NMSA 1978 and Subsection A of Section 40-6A-602 NMSA 1978, a request for registration of a convention support order must be accompanied by:

(1) a complete text of the support order or an abstract or extract of the support order drawn up by the issuing foreign tribunal, which may be in the form recommended by The Hague Conference on Private International Law;

(2) a record stating that the support order is enforceable in the issuing country;

(3) if the respondent did not appear and was not represented in the proceedings in the issuing country, a record attesting, as appropriate, either that the respondent had proper notice of the proceedings and an opportunity to be heard or that the respondent had proper notice of the support order and an opportunity to be heard in a challenge or appeal on fact or law before a tribunal;

(4) a record showing the amount of arrears, if any, and the date the amount was calculated;

(5) a record showing a requirement for automatic adjustment of the amount of support, if any, and the information necessary to make the appropriate calculations; and

(6) if necessary, a record showing the extent to which the applicant received free legal assistance in the issuing country.

C. A request for registration of a convention support order may seek recognition and partial enforcement of the order.

D. A tribunal of this state may vacate the registration of a convention support order without the filing of a contest pursuant to Section 40-6A-707 NMSA 1978 only if, acting on its own motion, the tribunal finds that recognition and enforcement of the order would be manifestly incompatible with public policy.

E. The tribunal shall promptly notify the parties of the registration or the order vacating the registration of a convention support order."

## **Chapter 159 Section 59 Laws 2011**

SECTION 59. A new Section 40-6A-707 NMSA 1978 is enacted to read:

"40-6A-707. CONTEST OF REGISTERED CONVENTION SUPPORT ORDER.--

A. Except as otherwise provided in Sections 40-6A-701 through 40-6A-713 NMSA 1978, Sections 40-6A-605 through 40-6A-608 NMSA 1978 apply to a contest of a registered convention support order.

B. A party contesting a registered convention support order shall file a contest not later than thirty days after notice of the registration, but if the contesting party does not reside in the United States, the contest must be filed not later than sixty days after notice of the registration.

C. If the nonregistering party fails to contest the registered convention support order by the time specified in Subsection B of this section, the order is enforceable.

D. A contest of a registered convention support order may be based only on grounds set forth in Section 40-6A-708 NMSA 1978. The contesting party bears the burden of proof.

E. In a contest of a registered convention support order, a tribunal of this state:

(1) is bound by the findings of fact on which the foreign tribunal based its jurisdiction; and

(2) may not review the merits of the order.

F. A tribunal of this state deciding a contest of a registered convention support order shall promptly notify the parties of its decision.

G. A challenge or appeal, if any, does not stay the enforcement of a convention support order unless there are exceptional circumstances."

## **Chapter 159 Section 60 Laws 2011**

SECTION 60. A new Section 40-6A-708 NMSA 1978 is enacted to read:

"40-6A-708. RECOGNITION AND ENFORCEMENT OF REGISTERED CONVENTION SUPPORT ORDER.--

A. Except as otherwise provided in Subsection B of this section, a tribunal of this state shall recognize and enforce a registered convention support order.

B. The following grounds are the only grounds on which a tribunal of this state may refuse recognition and enforcement of a registered convention support order:

(1) recognition and enforcement of the order is manifestly incompatible with public policy, including the failure of the issuing tribunal to observe minimum standards of due process, which include notice and an opportunity to be heard;

(2) the issuing tribunal lacked personal jurisdiction consistent with the requirements of Section 40-6A-201 NMSA 1978 if those requirements were applied to the foreign country where the tribunal is located;

(3) the order is not enforceable in the issuing foreign country;

(4) the order was obtained by fraud in connection with a matter of procedure;

(5) a record transmitted in accordance with Section 40-6A-706 NMSA 1978 lacks authenticity or integrity;

(6) a proceeding between the same parties and having the same purpose is pending before a tribunal of this state and that proceeding was the first to be filed;

(7) the order is incompatible with a more recent support order involving the same parties and having the same purpose if the more recent support order is entitled to recognition and enforcement pursuant to Sections 40-6A-701 through 40-6A-713 NMSA 1978 in this state;

(8) payment, to the extent alleged arrears have been paid in whole or in part;

(9) in a case in which the respondent neither appeared nor was represented in the proceeding in the issuing foreign country:

(a) if the law of that country provides for prior notice of proceedings, the respondent did not have proper notice of the proceedings and an opportunity to be heard; or

(b) if the law of that country does not provide for prior notice of the proceedings, the respondent did not have proper notice of the order and an opportunity to be heard in a challenge or appeal on fact or law before a tribunal; or

(10) the order was made in violation of Section 40-6A-711 NMSA 1978.

C. If a tribunal of this state does not recognize a convention support order pursuant to Paragraph (2), (4), (6) or (9) of Subsection B of this section:

(1) the tribunal may not dismiss the proceeding without allowing a reasonable time for a party to request the establishment of a new convention support order; and

(2) the human services department of this state shall take all appropriate measures to request a child-support order for the obligee if the application for recognition and enforcement was received pursuant to Section 40-6A-704 NMSA 1978."

## **Chapter 159 Section 61 Laws 2011**

SECTION 61. A new Section 40-6A-709 NMSA 1978 is enacted to read:

"40-6A-709. PARTIAL ENFORCEMENT.--If a tribunal of this state does not recognize and enforce a convention support order in its entirety, it shall enforce any severable part of the order. An application or direct request may seek recognition and partial enforcement of a convention support order."

## **Chapter 159 Section 62 Laws 2011**

SECTION 62. A new Section 40-6A-710 NMSA 1978 is enacted to read:

"40-6A-710. FOREIGN SUPPORT AGREEMENT.--

A. Except as otherwise provided in Subsections C and D of this section, a tribunal of this state shall recognize and enforce a foreign support agreement registered in this state.

B. An application or direct request for recognition and enforcement of a foreign support agreement must be accompanied by:

(1) a complete text of the foreign support agreement; and

(2) a record stating that the foreign support agreement is enforceable as an order of support in the issuing foreign country.

C. A tribunal of this state may vacate the registration of a foreign support agreement only if, acting on its own motion, the tribunal finds that recognition and enforcement would be manifestly incompatible with public policy.

D. In a contest of a foreign support agreement, a tribunal of this state may refuse recognition and enforcement of the agreement if it finds:

(1) recognition and enforcement of the agreement is manifestly incompatible with public policy;

(2) the agreement was obtained by fraud or falsification;

(3) the agreement is incompatible with a support order involving the same parties and having the same purpose in this state, another state, or a foreign country if the support order is entitled to recognition and enforcement pursuant to Sections 40-6A-701 through 40-6A-713 NMSA 1978 in this state; or

(4) the record submitted pursuant to Subsection B of this section lacks authenticity or integrity.

E. A proceeding for recognition and enforcement of a foreign support agreement must be suspended during the pendency of a challenge to or appeal of the agreement before a tribunal of another state or a foreign country."

## **Chapter 159 Section 63 Laws 2011**

SECTION 63. A new Section 40-6A-711 NMSA 1978 is enacted to read:

"40-6A-711. MODIFICATION OF CONVENTION CHILD-SUPPORT ORDER.--

A. A tribunal of this state may not modify a convention child-support order if the obligee remains a resident of the foreign country where the support order was issued unless:

(1) the obligee submits to the jurisdiction of a tribunal of this state, either expressly or by defending on the merits of the case without objecting to the jurisdiction at the first available opportunity; or

(2) the foreign tribunal lacks or refuses to exercise jurisdiction to modify its support order or issue a new support order.

B. If a tribunal of this state does not modify a convention child-support order because the order is not recognized in this state, Subsection C of Section 40-6A-708 NMSA 1978 applies."

## **Chapter 159 Section 64 Laws 2011**

SECTION 64. A new Section 40-6A-712 NMSA 1978 is enacted to read:

"40-6A-712. PERSONAL INFORMATION--LIMIT ON USE.--Personal information gathered or transmitted pursuant to Sections 40-6A-701 through 40-6A-713 NMSA 1978 may be used only for the purposes for which it was gathered or transmitted."

## **Chapter 159 Section 65 Laws 2011**

SECTION 65. A new Section 40-6A-713 NMSA 1978 is enacted to read:

"40-6A-713. RECORD IN ORIGINAL LANGUAGE--ENGLISH TRANSLATION.--A record filed with a tribunal of this state pursuant to Sections 40-6A-701 through 40-6A-713 NMSA 1978 must be in the original language and, if not in English, must be accompanied by an English translation. The cost of the translation shall be paid by the state or foreign country issuing the record."

## **Chapter 159 Section 66 Laws 2011**

SECTION 66. Section 40-6A-801 NMSA 1978 (being Laws 1994, Chapter 107, Section 801, as amended) is amended to read:

"40-6A-801. GROUNDS FOR RENDITION.--

A. For purposes of Section 40-6A-802 NMSA 1978, "governor" includes an individual performing the functions of governor or the executive authority of a state covered by the Uniform Interstate Family Support Act.

B. The governor of this state may:

(1) demand that the governor of another state surrender an individual found in the other state who is charged criminally in this state with having failed to provide for the support of an obligee; or

(2) on the demand of the governor of another state, surrender an individual found in this state who is charged criminally in the other state with having failed to provide for the support of an obligee.



C. A provision for extradition of individuals not inconsistent with the Uniform Interstate Family Support Act applies to the demand even if the individual whose surrender is demanded was not in the demanding state when the crime was allegedly committed and has not fled therefrom."

## **Chapter 159 Section 67 Laws 2011**

SECTION 67. Section 40-6A-802 NMSA 1978 (being Laws 1994, Chapter 107, Section 802, as amended) is amended to read:

"40-6A-802. CONDITIONS OF RENDITION.--

A. Before making demand that the governor of another state surrender an individual charged criminally in this state with having failed to provide for the support of an obligee, the governor of this state may require a prosecutor of this state to demonstrate that at least sixty days previously the obligee had initiated proceedings for support pursuant to the Uniform Interstate Family Support Act or that the proceeding would be of no avail.

B. If, under the Uniform Interstate Family Support Act or a law substantially similar to that act, the governor of another state makes a demand that the governor of this state surrender an individual charged criminally in that state with having failed to provide for the support of a child or other individual to whom a duty of support is owed, the governor may require a prosecutor to investigate the demand and report whether a proceeding for support has been initiated or would be effective. If it appears that a proceeding would be effective but has not been initiated, the governor may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

C. If a proceeding for support has been initiated and the individual whose rendition is demanded prevails, the governor may decline to honor the demand. If the petitioner prevails and the individual whose rendition is demanded is subject to a support order, the governor may decline to honor the demand if the individual is complying with the support order."

## **Chapter 159 Section 68 Laws 2011**

SECTION 68. TEMPORARY PROVISION--RECOMPILATION.--Section 40-6A-100 NMSA 1978 (being Laws 1994, Chapter 107, Section 902, as amended) is recompiled as Section 40-6A-101 NMSA 1978.

## **Chapter 159 Section 69 Laws 2011**

SECTION 69. APPLICABILITY.--The provisions of this act apply to proceedings begun on or after January 1, 2012 to establish a support order, to determine parentage of a child or to register, recognize, enforce or modify a prior support order, determination or agreement, whenever issued or entered.

## **Chapter 159 Section 70 Laws 2011**

SECTION 70. CONTINGENT EFFECTIVE DATE.--The effective date of the provisions of this act is the later of:

A. the date that the United States deposits the instrument of ratification for the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance with the Hague conference on private international law, as certified by the secretary of human services; or

B. January 1, 2012.

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Senate Bill 284, aa

Approved April 8, 2011

## **LAWS 2011, CHAPTER 160**

AN ACT

RELATING TO EDUCATIONAL RETIREMENT; AUTHORIZING CERTAIN MEMBERS OF THE EDUCATIONAL RETIREMENT BOARD TO APPOINT DESIGNEES TO SERVE ON THE BOARD; SPECIFYING QUALIFICATIONS FOR THE DESIGNEES.

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

### **Chapter 160 Section 1 Laws 2011**

SECTION 1. Section 22-11-3 NMSA 1978 (being Laws 1967, Chapter 16, Section 127, as amended) is amended to read:

"22-11-3. EDUCATIONAL RETIREMENT BOARD--MEMBERS--TERMS--VACANCIES.--

A. The "educational retirement board" is created.

B. The board shall be composed of seven members, consisting of the following:

(1) the secretary of public education, or a designee of the secretary who:

(a) is a resident of New Mexico;

and (b) is a current employee of the public education department;

(c) possesses experience relevant to the financial or fiduciary aspects of pension or investment fund management;

(2) the state treasurer, or a designee of the treasurer who:

(a) is a resident of New Mexico;

(b) is a current employee of the state treasurer's office; and

(c) possesses experience relevant to the financial or fiduciary aspects of pension or investment fund management;

(3) one member to be elected for a term of four years by members of the New Mexico association of educational retirees;

(4) one member to be elected for a term of four years by the members of the national education association of New Mexico;

(5) one member to be elected for a term of four years by the New Mexico members of the American association of university professors; and

(6) two members to be appointed by the governor for terms of four years each. Each member appointed pursuant to this paragraph shall have a background in investments, finance or pension fund administration.

C. A designee of a board member shall have the same responsibilities, duties, liabilities and immunities as the board member, including the indemnification provided by Subsection H of Section 22-11-13 NMSA 1978. The appointment of a designee does not relieve the board member of the member's responsibilities, duties, liabilities and immunities as a board member, and the board member shall be fully responsible and liable for the actions of the designee while serving on the board.

D. In the initial composition of the board, the member elected by the members of the American association of university professors shall serve for a term of three years; one member appointed by the governor shall serve for a term of two years; and the other member appointed by the governor shall serve for a term of one year.

E. Vacancies occurring in the terms of office of those members appointed by the governor or elected by an association shall be filled either by the governor appointing or the association electing a new member to fill the unexpired term."

## **Chapter 160 Section 2 Laws 2011**

SECTION 2. 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 fiscal agent of New Mexico 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, including any designee authorized by Paragraph (1) or (2) of Subsection B of Section 22-11-3 NMSA 1978, 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 160 Section 3 Laws 2011**

SECTION 3. TEMPORARY PROVISION--APPLICATION OF ACT.--The amendment in this act to Paragraph (6) of Subsection B of Section 22-11-3 NMSA 1978 shall apply only to appointments made after the effective date of this act and shall not affect the status of existing appointees to the educational retirement board.

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Senate Bill 329, aa

Approved April 8, 2011

## **LAWS 2011, CHAPTER 161**

AN ACT

RELATING TO FINANCIAL SOLVENCY; SUSPENDING THE REQUIREMENTS FOR CERTAIN STUDENT ASSESSMENTS FOR THE 2011-2012 SCHOOL YEAR.

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

## **Chapter 161 Section 1 Laws 2011**

SECTION 1. TEMPORARY PROVISION--PUBLIC SCHOOLS FINANCIAL SOLVENCY--SUSPENDING CERTAIN REQUIRED STUDENT ASSESSMENTS FOR ONE SCHOOL YEAR.--

A. The legislature finds that the financial crisis of calendar years 2008-2010 will continue into fiscal year 2012, and, to balance the state budget, the legislature must reduce general appropriations for state government, higher education and public schools by several hundred million dollars. The purpose of this section is to temporarily suspend the requirement that local school districts administer certain student assessments.

B. For school year 2011-2012, the public education department and school districts, charter schools and state educational institutions shall not be required to administer the following student assessments:

(1) the provisions of Section 22-2C-4 NMSA 1978 notwithstanding, in grade eleven, a standards-based assessment in social studies; and for grades four, six, seven and eleven, a standards-based writing assessment; and

(2) the provisions of Section 22-2C-4.1 NMSA 1978 notwithstanding, in grades nine and ten, short-cycle diagnostic assessments in reading, language arts and mathematics and, in grade eleven, a college placement assessment or a workforce readiness assessment.

C. The provisions of Section 22-13-1.1 NMSA 1978 notwithstanding, a student who has completed the course requirements for high school graduation in the 2011-2012 school year may graduate without demonstrating competence in required subject areas on the standards-based assessment or assessments or a portfolio of standards-based indicators established by the public education department by rule.

D. During school year 2011-2012, public schools, charter schools and state educational institutions shall use an appropriate assessment for grades nine and ten to comply with the federal Individuals with Disabilities Education Act.

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Senate Bill 360, aa

Approved April 8, 2011

## **LAWS 2011, CHAPTER 162**

AN ACT

RELATING TO THE FIRE PROTECTION FUND; EXPANDING ITS USE FOR EMERGENCY MEDICAL SERVICES.

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

**Chapter 162 Section 1 Laws 2011**

SECTION 1. Section 59A-53-8 NMSA 1978 (being Laws 1984, Chapter 127, Section 979, as amended) is amended to read:

"59A-53-8. EXPENDITURE OF FIRE PROTECTION FUND MONEY.--Any amount distributed from the fire protection fund to an incorporated municipality or to a county fire district shall be expended only for the maintenance of its fire department; the purchase, construction, maintenance, repair and operation of its fire stations, including substations; fire apparatus and equipment and the financing or refinancing thereof; the payment of insurance premiums on fire stations, substations, fire apparatus and equipment and insurance premiums for injuries or deaths of firefighters as otherwise provided by law; and fire department emergency medical services, except salaries. Provided, however, that no money shall be expended from the fund for any purpose relating to the water supply systems of any incorporated municipality or district or for the improvement or construction of the systems or for purchase, rental, installation or maintenance of fire hydrants or for any other appurtenances relating to the distribution or use of the water supply system. Funds distributed from the fire protection fund to an incorporated municipality or a county fire district may also be expended for the expense of firefighters for attending fire schools and conventions approved by the marshal."

## **Chapter 162 Section 2 Laws 2011**

SECTION 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.

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Senate Bill 505

Approved April 8, 2011

## **LAWS 2011, CHAPTER 163**

AN ACT

RELATING TO THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT;  
PROHIBITING EMPLOYEES, STAFF MEMBERS AND VOLUNTEERS AT THE  
CHILDREN, YOUTH AND FAMILIES DEPARTMENT, INCLUDING PROSPECTIVE  
EMPLOYEES, WHO HAVE DIRECT UNSUPERVISED CONTACT WITH  
DEPARTMENT CLIENTS AND THEIR SUPERIORS FROM CONTINUED  
EMPLOYMENT UPON SUBSTANTIATION OF AN ABUSE OR NEGLECT  
ALLEGATION; PROHIBITING ALL PERSONS WHO HAVE DIRECT UNSUPERVISED  
CONTACT WITH CHILDREN, YOUTH AND FAMILIES DEPARTMENT CLIENTS AND  
THOSE PERSONS' SUPERIORS FROM BEING EMPLOYEES, STAFF MEMBERS OR  
VOLUNTEERS AT THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT IF  
CONVICTED OF A FELONY OFFENSE; ESTABLISHING JUST CAUSE FOR  
DISCIPLINE; PROVIDING THAT FINDINGS OF ABUSE OR NEGLECT BY THE

CHILDREN, YOUTH AND FAMILIES DEPARTMENT ARE BINDING AND NON-APPEALABLE TO THE PERSONNEL BOARD; PROVIDING FOR THE DISCOVERY OF CONFIDENTIAL RECORDS IN HEARINGS BEFORE THE PERSONNEL BOARD OR ITS DESIGNATED HEARING OFFICER.

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

## **Chapter 163 Section 1 Laws 2011**

SECTION 1. A new section of the Children, Youth and Families Department Act is enacted to read:

"PROHIBITION ON EMPLOYMENT FOR INDIVIDUALS WITH SUBSTANTIATED ALLEGATIONS OF CHILD ABUSE OR NEGLECT--PROHIBITION ON CONVICTED FELONS--DISCIPLINARY ACTION--CONFIDENTIALITY OF ABUSE AND NEGLECT RECORDS.--

A. No employee, staff member or volunteer at the department, including prospective employees, having direct unsupervised contact with department clients, nor the superiors of any such employee, staff member or volunteer, shall have been the subject of a substantiated allegation of child abuse or neglect.

B. No employee, staff member or volunteer at the department who has direct unsupervised contact with department clients, or the superiors of an employee, staff member or volunteer at the department who has direct unsupervised contact with department clients, shall have been convicted of a felony offense that is directly related to the job duties of the employee by a court of this state, any other state or the United States.

C. Any employee or staff member subject to the Personnel Act who has been the subject of a substantiated allegation of abuse or neglect as investigated and determined by the department may be subject to increased supervision or disciplinary action under the Personnel Act. Upon appeal of a disciplinary action to the personnel board pursuant to this section, the personnel board shall defer to the record of the administrative hearing affirming a substantiated allegation of abuse or neglect, if one exists, in determining whether the action taken by the agency was with just cause.

D. An employee or a staff member of the department subject to dismissal under this section shall have no right to progressive discipline as a condition precedent to discipline under this section.

E. In any appeal of an employee or staff member to the personnel board as provided by the Personnel Act, records that are otherwise confidential pursuant to the Abuse and Neglect Act shall be discoverable by the parties and admissible as to any relevant fact; provided that any identifying information related to the reporting party, any other party providing information and information the department finds would be



likely to endanger the life or safety of any person providing information to the department may be redacted."

## **Chapter 163 Section 2 Laws 2011**

SECTION 2. Section 9-2A-8 NMSA 1978 (being Laws 1992, Chapter 57, Section 8, as amended) is amended to read:

"9-2A-8. DEPARTMENT--ADDITIONAL DUTIES.--In addition to other duties provided by law or assigned to the department by the governor, the department shall:

A. develop priorities for department services and resources based on state policy and national best-practice standards and local considerations and priorities;

B. strengthen collaboration and coordination in state and local services for children, youth and families by integrating critical functions as appropriate, including service delivery, and contracting for services across divisions and related agencies;

C. develop and maintain a statewide database, including client tracking of services for children, youth and families;

D. develop standards of service within the department that focus on prevention, monitoring and outcomes;

E. analyze policies of other departments that affect children, youth and families to encourage common contracting procedures, common service definitions and a uniform system of access;

F. enact regulations to control disposition and placement of children under the Children's Code, including regulations to limit or prohibit the out-of-state placement of children, including those who have developmental disabilities or emotional, neurobiological or behavioral disorders, when in-state alternatives are available;

G. develop reimbursement criteria for licensed child care centers and licensed home providers establishing that accreditation by a department-approved national accrediting body is sufficient qualification for the child care center or home provider to receive the highest reimbursement rate paid by the department;

H. assume and implement responsibility for children's mental health and substance abuse services in the state, coordinating with the human services department and the department of health;

I. assume and implement the lead responsibility among all departments for domestic violence services;

J. implement prevention and early intervention as a departmental focus;

K. conduct biennial assessments of service gaps and needs and establish outcome measurements to address those service gaps and needs, including recommendations from the governor's children's cabinet and the children, youth and families advisory committee;

L. ensure that behavioral health services provided, including mental health and substance abuse services for children, adolescents and their families, shall be in compliance with requirements of Section 9-7-6.4 NMSA 1978; and

M. fingerprint and conduct nationwide criminal history record searches on all department employees, staff members and volunteers whose jobs involve direct contact with department clients, including prospective employees and employees who are promoted, transferred or hired into new positions, and the superiors of all department employees, staff members and volunteers who have direct unsupervised contact with department clients."

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SPAC/Senate Bill 574, aa

Approved April 8, 2011

## **LAWS 2011, CHAPTER 164**

### **AN ACT**

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;  
POSTPONING INCREASES IN A CERTAIN DISTRIBUTION FROM THE FIRE  
PROTECTION FUND.

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

### **Chapter 164 Section 1 Laws 2011**

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

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

A. For each fiscal year, the amount to be distributed by the marshal pursuant to Sections 59A-53-4, 59A-53-5 and 59A-53-5.1 NMSA 1978 is appropriated from the fire protection fund to the 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, thirteen and four-tenths percent;

(6) on June 30, 2012, thirteen and four-tenths percent;

(7) on June 30, 2013, twenty and one-tenth percent;

(8) on June 30, 2014, twenty-six and eight-tenths percent;

(9) on June 30, 2015, thirty-three and five-tenths percent;

(10) on June 30, 2016, forty and two-tenths percent;

(11) on June 30, 2017, forty-six and nine-tenths percent;

(12) on June 30, 2018, fifty-three and six-tenths percent;

(13) on June 30, 2019, sixty and three-tenths percent;

(14) on June 30, 2020, sixty-seven percent;

(15) on June 30, 2021, seventy-three and seven-tenths percent;

(16) on June 30, 2022, eighty and four-tenths percent;

(17) on June 30, 2023, eighty-seven and one-tenth percent;

(18) on June 30, 2024, ninety-three and eight-tenths percent; and

(19) on June 30, 2025, 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, 2024."

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SFC/Senate Bill 626

Approved April 8, 2011

## **LAWS 2011, CHAPTER 165**

AN ACT

RELATING TO TAXATION; ENACTING THE FILM PRODUCTION TAX CREDIT ACT; PROVIDING TRACKING REQUIREMENTS FOR THE FILM PRODUCTION TAX CREDITS.

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

### **Chapter 165 Section 1 Laws 2011**

SECTION 1. Section 7-2F-1 NMSA 1978 (being Laws 2002, Chapter 36, Section 1, as amended) is amended to read:

"7-2F-1. FILM PRODUCTION TAX CREDIT.--

A. The tax credit created by this section may be referred to as the "film production tax credit". An eligible film production company may apply for, and the taxation and revenue department may allow, a tax credit in an amount equal to the percentage specified in Subsection B of this section of:

(1) direct production expenditures made in New Mexico that:

(a) are directly attributable to the production in New Mexico of a film or commercial audiovisual product;

(b) are subject to taxation by the state of New Mexico; and

(c) exclude direct production expenditures for which another taxpayer claims the film production tax credit; and

(2) postproduction expenditures made in New Mexico that:

(a) are directly attributable to the production of a commercial film or audiovisual product;

(b) are for services performed in New Mexico;

(c) are subject to taxation by the state of New Mexico; and

(d) exclude postproduction expenditures for which another taxpayer claims the film production tax credit.

B. Except as provided in Subsections C and J of this section, the percentage to be applied in calculating the amount of the film production tax credit is twenty-five percent.

C. With respect to expenditures attributable to a production for which the film production company receives a tax credit pursuant to the federal new markets tax credit program, the percentage to be applied in calculating the film production tax credit is twenty percent.

D. The film production tax credit shall not be claimed with respect to direct production expenditures or postproduction expenditures for which the film production company has delivered a nontaxable transaction certificate pursuant to Section 7-9-86 NMSA 1978.

E. A long-form narrative film production for which the film production tax credit is claimed pursuant to Paragraph (1) of Subsection A of this section shall contain an acknowledgment that the production was filmed in New Mexico.

F. To be eligible for the film production tax credit, a film production company shall submit to the division information required by the division to demonstrate conformity with the requirements of the Film Production Tax Credit Act and shall agree in writing:

(1) to pay all obligations the film production company has incurred in New Mexico;

(2) to post a notice at completion of principal photography on the web site of the division that:

(a) contains production company information, including the name of the production, the address of the production company and contact information

that includes a working phone number, fax number and email address for both the local production office and the permanent production office to notify the public of the need to file creditor claims against the film production company; and

(b) remains posted on the web site until all financial obligations incurred in the state by the film production company have been paid;

(3) that outstanding obligations are not waived should a creditor fail to file;

(4) to delay filing of a claim for the film production tax credit until the division delivers written notification to the taxation and revenue department that the film production company has fulfilled all requirements for the credit; and

(5) to submit a completed application for the film production tax credit and supporting documentation to the division within one year of making the final expenditures in New Mexico that are included in the credit claim.

G. The division shall determine the eligibility of the company and shall report this information to the taxation and revenue department in a manner and at times the division and the taxation and revenue department shall agree upon.

H. To receive a film production tax credit, a film production company shall apply to the taxation and revenue department on forms and in the manner the department may prescribe. The application shall include a certification of the amount of direct production expenditures or postproduction expenditures made in New Mexico with respect to the film production for which the film production company is seeking the film production tax credit. If the requirements of this section have been complied with, the taxation and revenue department shall approve the film production tax credit and issue a document granting the tax credit.

I. The film production company may apply all or a portion of the film production tax credit granted against personal income tax liability or corporate income tax liability. If the amount of the film production tax credit claimed exceeds the film production company's tax liability for the taxable year in which the credit is being claimed, the excess shall be refunded.

J. As applied to direct production expenditures for the services of performing artists, the film production tax credit authorized by this section shall not exceed five million dollars (\$5,000,000) for services rendered by all performing artists in a production for which the film production tax credit is claimed."

## **Chapter 165 Section 2 Laws 2011**

SECTION 2. A new section of Chapter 7, Article 2F NMSA 1978 is enacted to read:

"SHORT TITLE.--Chapter 7, Article 2F NMSA 1978 may be cited as the "Film Production Tax Credit Act"."

## **Chapter 165 Section 3 Laws 2011**

SECTION 3. Section 7-2F-2 NMSA 1978 (being Laws 2003, Chapter 127, Section 2, as amended) is amended to read:

"7-2F-2. DEFINITIONS.--As used in the Film Production Tax Credit Act:

A. "commercial audiovisual product" means a film or a videogame intended for commercial exploitation;

B. "direct production expenditure" means a transaction that is subject to taxation in New Mexico, including:

(1) payment of wages, fringe benefits or fees for talent, management or labor to a person who is a New Mexico resident for purposes of the Income Tax Act;

(2) payment to a personal services corporation for the services of a performing artist if:

(a) the personal services corporation pays gross receipts tax in New Mexico on the portion of those payments qualifying for the tax credit; and

(b) the film production company deducts and remits or causes to be deducted and remitted income tax at the maximum rate in New Mexico on the portion of those payments qualifying for the tax credit; and

(3) any of the following provided by a vendor that has a physical presence in New Mexico at which the laborers employed by the vendor include New Mexico residents as that term is defined in the Income Tax Act:

(a) the story and scenario to be used for a film;

(b) set construction and operations, wardrobe, accessories and related services;

(c) photography, sound synchronization, lighting and related services;

(d) editing and related services;

(e) rental of facilities and equipment;

(f) leasing of vehicles, not including the chartering of aircraft for out-of-state transportation; however, New Mexico-based chartered aircraft for in-state transportation directly attributable to the production shall be considered a direct production expenditure;

(g) food or lodging;

(h) commercial airfare if purchased through a New Mexico-based travel agency or travel company for travel to and from New Mexico or within New Mexico that is directly attributable to the production;

(i) insurance coverage and bonding if purchased through a New Mexico-based insurance agent, broker or bonding agent;

(j) other direct costs of producing a film in accordance with generally accepted entertainment industry practice; and

(k) related digital content;

C. "division" means the New Mexico film division of the economic development department;

D. "federal new markets tax credit program" means the tax credit program codified as Section 45D of the United States Internal Revenue Code of 1986, as amended;

E. "film" means a single medium or multimedia program, excluding advertising messages other than national or regional advertising messages intended for exhibition, that:

(1) is fixed on film, digital medium, videotape, computer disc, laser disc or other similar delivery medium;

(2) can be viewed or reproduced;

(3) is not intended to and does not violate a provision of Chapter 30, Article 37 NMSA 1978; and

(4) is intended for reasonable commercial exploitation for the delivery medium used;

F. "film production company" means a person that produces one or more films or any part of a film;

G. "physical presence" means a physical address in New Mexico, not a post office box or other mail drop enterprise unless the business is providing mail



services to a film production company, from which a vendor conducts business, stores inventory or otherwise creates, assembles or offers for sale the product purchased or leased by a film production company; and

H. "postproduction expenditure" means an expenditure for editing, Foley recording, automatic dialogue replacement, sound editing, special effects, including computer-generated imagery or other effects, scoring and music editing, beginning and end credits, negative cutting, soundtrack production, dubbing, subtitling or addition of sound or visual effects, but not including an expenditure for advertising, marketing, distribution or expense payments."

## **Chapter 165 Section 4 Laws 2011**

SECTION 4. A new section of Chapter 7, Article 2F NMSA 1978 is enacted to read:

"PURPOSES--GOALS.--The purposes and goals of the film production tax credit are to:

A. establish the film industry as a permanent component of the economic base of New Mexico;

B. develop a pool of trained professionals and businesses in New Mexico to supply and support the film industry in the state;

C. increase employment of New Mexico residents;

D. improve the economic success of existing businesses in New Mexico;  
and

E. develop the infrastructure in the state necessary for a thriving film industry."

## **Chapter 165 Section 5 Laws 2011**

SECTION 5. A new section of Chapter 7, Article 2F NMSA 1978 is enacted to read:

"REPORTING--ACCOUNTABILITY.--

A. The economic development department shall:

(1) collect data to be used in an econometric tool that objectively assesses the effectiveness of the film production tax credit;

(2) track the direct expenditures for the film production tax credit;

(3) with the support and assistance of the legislative finance committee staff and the taxation and revenue department, review and assess the analysis developed in Paragraph (1) of this subsection and create a report for presentation to the revenue stabilization and tax policy committee and the legislative finance committee that provides an objective assessment of the effectiveness of the film production tax credit; and

(4) report annually to the revenue stabilization and tax policy committee and the legislative finance committee on aggregate approved tax credits made pursuant to the Film Production Tax Credit Act.

B. The division shall develop a form on which the taxpayer claiming a film production tax credit pursuant to the Film Production Tax Credit Act shall submit a report to accompany the taxpayer's application for that credit.

C. With respect to the film on which the application for a film production tax credit is based, the film production company shall report to the division at a minimum the following information:

(1) the total aggregate wages of the members of the New Mexico resident crew;

(2) the number of New Mexico residents employed;

(3) the total amount of gross receipts taxes paid;

(4) the total number of hours worked by New Mexico residents;

(5) the total expenditures made in New Mexico that do not qualify for the film production tax credit;

(6) the aggregate wages paid to the members of the nonresident crew while working in New Mexico; and

(7) other information deemed necessary by the division and economic development department to determine the effectiveness of the film production tax credit.

D. For purposes of assessing the effectiveness of the film production tax credit, the inability of the economic development department to aggregate data due to sample size shall not relieve the department of the requirement to report all relevant data to the legislature. The division shall provide notice to a film production company applying for the film production tax credit that information provided to the division may be revealed by the department in reports to the legislature."

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Senate Bill 44, aa

Approved April 8, 2011

## **LAWS 2011, CHAPTER 166**

AN ACT

RELATING TO THE FAMILY, INFANT, TODDLER PROGRAM; ELIMINATING THE OPTION OF HAVING A CHILD ENROLLED IN THE PROGRAM DURING THE CHILD'S THIRD YEAR.

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

### **Chapter 166 Section 1 Laws 2011**

SECTION 1. Section 22-13-5 NMSA 1978 (being Laws 1972, Chapter 95, Section 1, as amended) is amended to read:

"22-13-5. SPECIAL EDUCATION.--School districts shall provide special education and related services appropriate to meet the needs of students requiring special education and related services. Rules and standards shall be developed and established by the department for the provision of special education in the schools and classes of the public school system in the state and in all institutions wholly or partly supported by the state. The department shall monitor and enforce the rules and standards. School districts shall also provide services for three-year-old and four-year-old preschool children with disabilities, unless the parent or guardian chooses not to enroll the child. Services for students age three through twenty-one may include, but are not limited to, evaluating particular needs, providing learning experiences that develop cognitive and social skills, arranging for or providing related services as defined by the department and providing parent education. The services may be provided by licensed school employees or contracted for with other community agencies and shall be provided in age-appropriate, integrated settings, including home, daycare centers, head start programs, schools or community-based settings."

### **Chapter 166 Section 2 Laws 2011**

SECTION 2. Section 28-18-1 NMSA 1978 (being Laws 1990, Chapter 4, Section 1, as amended) is amended to read:

"28-18-1. DEPARTMENT DESIGNATION--AUTHORIZATION--PAYMENT SYSTEM.--

A. The department of health is designated as the lead state agency for the development and administration of a statewide system of comprehensive, coordinated,

multidisciplinary, interagency early intervention services for eligible children with or at risk of developmental delay and their families. The program shall be known as the "family, infant, toddler program".

B. The parent may choose whether the parent's eligible child shall participate in the family, infant, toddler program.

C. The public education department, the human services department, the children, youth and families department and other publicly funded services shall collaborate with the department of health and continue to provide all services within their respective statutory responsibilities to eligible children. State and local interagency agreements shall delineate responsibility for provisions of the family, infant, toddler program.

D. The department of health shall establish a payment system that shall maximize funds from appropriate federal, state, local and private sources to support the family, infant, toddler program.

E. The secretary of health shall meet the requirements of the Individuals with Disabilities Education Act, 20 U.S.C., Sections 1475(c) and 1476(a), contingent upon voluntary participation by the state, including:

(1) establishing policies and adopting rules necessary to comply with those sections of that act;

(2) implementing procedures to ensure that services are provided to eligible children in a timely manner;

(3) making arrangements for the provisions of the family, infant, toddler program;

(4) carrying out the general administration, supervision and monitoring of the family, infant, toddler program;

(5) resolving complaints concerning the family, infant, toddler program;

(6) maintaining and expanding state and local coordination and interagency agreements pertaining to the family, infant, toddler program;

(7) identifying and coordinating all available resources for early intervention services for the family, infant, toddler program; and

(8) establishing requirements for qualified personnel involved in the family, infant, toddler program.

F. As used in this section:

(1) "early intervention services" means services that are designed to meet the developmental needs of eligible children, including physical development, communications development, adaptive development, social and emotional development or sensory development; and

(2) "eligible child" means infants and toddlers between the ages of birth and thirty-six months with developmental delay or who are at risk of delay according to specific criteria established by the department of health."

## **Chapter 166 Section 3 Laws 2011**

SECTION 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2012.

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Senate Bill 330, aa, w/cc

Approved April 8, 2011

## **LAWS 2011, CHAPTER 167**

AN ACT

RELATING TO PUBLIC FINANCES; CLARIFYING THE INVESTMENT STANDARDS FOR INVESTMENT OF THE TOBACCO SETTLEMENT PERMANENT FUND.

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

## **Chapter 167 Section 1 Laws 2011**

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

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

A. The "tobacco settlement permanent fund" is created in the state treasury. The fund shall consist of money distributed to the state pursuant to the master settlement agreement entered into between tobacco product manufacturers and various states, including New Mexico, and executed November 23, 1998 or any money released to the state from a qualified escrow fund or otherwise paid to the state as authorized by the model statute, Sections 6-4-12 and 6-4-13 NMSA 1978, enacted pursuant to the

master settlement agreement. Money in the fund shall be invested by the state investment officer in accordance with the limitations in Article 12, Section 7 of the constitution of New Mexico. Income from investment of the fund shall be credited to the fund. Money in the fund shall not be expended for any purpose, except as provided in this section.

B. In fiscal 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, fiscal year 2010 and fiscal year 2011, 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 167 Section 2 Laws 2011**

SECTION 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.

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House Bill 52

Approved April 8, 2011

## **LAWS 2011, CHAPTER 168**

AN ACT

RELATING TO EDUCATIONAL ASSISTANCE; AMENDING, REPEALING AND ENACTING SECTIONS OF THE EDUCATIONAL ASSISTANCE ACT; PROVIDING FOR THE CONTINUED DEBT SERVICE AND OTHER PAYMENTS ON OUTSTANDING BONDS; PROTECTING THE RIGHTS OF BONDHOLDERS.

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

### **Chapter 168 Section 1 Laws 2011**

SECTION 1. Section 21-21A-3 NMSA 1978 (being Laws 1981, Chapter 319, Section 3, as amended) is amended to read:

"21-21A-3. DEFINITIONS.--As used in the Educational Assistance Act:

- A. "bond" means any bond, note or other evidence of indebtedness;
- B. "educational loan" means a loan for educational purposes made to or for the benefit of qualified persons;
- C. "foundation" means a corporation formed pursuant to the provisions of the Educational Assistance Act to provide financial assistance for post-secondary education; and
- D. "institution of higher education" means the state institutions of higher education enumerated in Article 12, Section 11 of the constitution of New Mexico or other institution of higher education approved by the foundation."

### **Chapter 168 Section 2 Laws 2011**

SECTION 2. Section 21-21A-7 NMSA 1978 (being Laws 1981, Chapter 319, Section 7, as amended) is amended to read:

"21-21A-7. FOUNDATION POWERS.--The foundation may from time to time issue negotiable bonds in conformity with the applicable provisions of the Uniform Commercial Code. The foundation shall have all the powers necessary and convenient to carry out its purposes under the Educational Assistance Act or other purpose identified by the foundation, including the following powers:

A. to make or participate in the making of educational loans, to purchase or participate in the purchase of educational loans and to contract in advance for any such purchase or to purchase and retain rights to make any such purchase and to pay any amounts payable in respect of such rights;

B. to sell or participate in the sale of educational loans to the student loan marketing association or to other purchasers, in conformity with the federal Higher Education Act of 1965, as amended, any such sale to be public or private and on such terms as the foundation may authorize, and to contract in advance for any such sale or to purchase and retain rights to make any such sale and to pay commitment fees or any other amounts payable in respect of such rights;

C. to collect and pay reasonable fees and charges in connection with the making, purchasing, selling and servicing or the causing to be made, purchased, sold or serviced of educational loans held by the foundation;

D. to enter into an agreement with insurance carriers to insure against any loss in connection with its operations, including without limitation the repayment of any educational loan, in such amounts and from such insurers as it deems necessary or desirable and pay the premiums for that insurance;

E. to consent, when it deems appropriate, to the modification of the rate of interest, the time of payment of any installment of principal or interest or any other terms of any educational loan held by the foundation; provided that no such consent shall be made or given if the effect would be to lessen or invalidate any insurance coverage or reinsurance in respect of any such educational loan;

F. to employ an executive director and such other officers and employees as it deems necessary and set their compensation and prescribe their duties;

G. to make, execute and effectuate any and all agreements or other documents with any federal or state agency or other person, corporation, association, partnership, organization or entity necessary to accomplish its purposes under the Educational Assistance Act;

H. to authorize a retirement program for salaried officers and employees of the foundation;

I. to authorize reimbursement of expenses of salaried officers and employees of the foundation;

J. to purchase liability insurance for officers and directors and such other insurance as may be reasonable and necessary;



K. to accept loans, public or private grants, devises, gifts, bequests and any other aid from any source whatsoever and to agree to and comply with conditions incident thereto;

L. to sue and be sued in its own name and to plead and interplead;

M. to adopt an official seal and alter it at pleasure;

N. to adopt bylaws and policies for the regulation of its affairs and the conduct of its business;

O. to employ fiscal consultants, attorneys, counselors and such other consultants and employees as may be required in its judgment and to fix and pay their compensation;

P. to invest any funds held in reserves, held in sinking fund accounts or not required for immediate disbursement;

Q. to fix, revise from time to time, charge and collect fees and other charges for services rendered by the foundation in connection with educational loan, scholarship, grant, work study and other educational assistance programs; and

R. to do any and all things necessary or convenient to carry out its purpose and powers under the Educational Assistance Act or other purpose identified by the foundation."

## **Chapter 168 Section 3 Laws 2011**

SECTION 3. Section 21-21A-6 NMSA 1978 (being Laws 1981, Chapter 319, Section 6, as amended) is amended to read:

"21-21A-6. FOUNDATION--BOARD OF DIRECTORS--MEMBERS--TERMS--MEETINGS--BYLAWS.--

A. The foundation shall be governed by and all of its functions, powers and duties shall be exercised by a board of directors. After the effective date of this 2011 act, the board sitting prior to the effective date of this 2011 act shall appoint the next successor board and shall establish staggered four-year terms for the members. The board shall consist of the following members:

- (1) the state treasurer or the state treasurer's designee;
- (2) two members representing post-secondary education;
- (3) two members representing lending institutions; and

(4) other members as provided by the foundation bylaws.

B. A vacancy shall be filled by appointment by the board for the unexpired term.

C. The board shall elect a chair and such other officers as it deems necessary.

D. Members of the board shall receive no compensation for their service, but may be reimbursed on a per diem and mileage basis for their actual and necessary expenses reasonably incurred in the performance of their duties as board members, in an amount not exceeding the amount authorized by law for nonsalaried public officers of governmental entities of this state.

E. Board meetings shall be open to the public. The board shall adopt bylaws governing board meetings consistent with the provisions of the Open Meetings Act.

F. The foundation shall adopt bylaws, in accordance with the provisions of the Nonprofit Corporation Act, governing the conduct of the foundation in the performance of its duties under the Educational Assistance Act and the federal Higher Education Act of 1965, as amended."

## **Chapter 168 Section 4 Laws 2011**

SECTION 4. Section 21-21A-9 NMSA 1978 (being Laws 1981, Chapter 319, Section 9) is amended to read:

"21-21A-9. STATUS OF BONDS.--

A. Bonds and other obligations issued under the provisions of the Educational Assistance Act shall not be deemed to constitute a debt, liability or obligation of or a pledge of the faith and credit of the state or any political subdivision thereof, but shall be payable solely from the revenues or assets of the foundation pledged for such payment. Each obligation issued on behalf of the foundation under that act shall contain on its face a statement to the effect that neither the state nor the foundation shall be obligated to pay the obligation or the interest on the obligation except from the revenues or assets pledged for payment and that neither the faith and credit nor the taxing power of the state or any political subdivision thereof is pledged to the payment of the principal of or the interest on such obligation.

B. Expenses incurred by the foundation in carrying out the provisions of the Educational Assistance Act may be made payable from the revenues and funds provided pursuant to that act, and no liability shall be incurred by the foundation under that act beyond the extent to which such money has been provided."

## **Chapter 168 Section 5 Laws 2011**

SECTION 5. Section 21-21A-13 NMSA 1978 (being Laws 1981, Chapter 319, Section 13) is amended to read:

"21-21A-13. ALL MONEY RECEIVED DEEMED TRUST FUNDS.--

Notwithstanding any other provisions of law, all money received by the foundation under the provisions of the Educational Assistance Act shall be deemed to be trust funds to be held and applied solely as provided in that act. The resolution authorizing any obligations or the trust agreement securing the obligations may provide that any of the money may be temporarily invested pending disbursement and shall provide that any officer with whom or any bank or trust company with which the money is deposited shall act as trustee of the money and shall hold and apply the money for the purposes of the Educational Assistance Act pursuant to the resolution or trust agreement."

## **Chapter 168 Section 6 Laws 2011**

SECTION 6. Section 21-21A-16 NMSA 1978 (being Laws 1981, Chapter 319, Section 16) is amended to read:

"21-21A-16. ANNUAL REPORT AND AUDIT.--

A. The foundation shall, promptly following the close of each fiscal year, submit an annual report of its activities for the preceding year to the governor, the corporations bureau of the public regulation commission, the state auditor and the legislative finance committee. Each report shall set forth a complete operating and financial statement of the foundation during the year. The board of directors of the foundation shall annually contract with an independent certified public accountant, licensed by the state, to perform an examination and audit of the accounts and books of the foundation, including its receipts, disbursements, contracts, leases, sinking funds, investments and any other records and papers relating to its financial standing, and shall make a determination as to whether the foundation has complied with the provisions of the Educational Assistance Act. The person performing the audit shall furnish copies of the audit report to the governor, the corporations bureau, the state auditor and the legislative finance committee, where they shall be placed on file and made available for inspection by the general public.

B. Subject to the provisions of any contract with bondholders or noteholders, the foundation shall prescribe a system of accounts.

C. The costs of audits and examinations performed pursuant to this section shall be paid by the foundation."

## **Chapter 168 Section 7 Laws 2011**

SECTION 7. Section 21-21A-21 NMSA 1978 (being Laws 1981, Chapter 319, Section 21) is amended to read:

"21-21A-21. DISSOLUTION OF FOUNDATION.--Upon termination or dissolution, all rights and properties of the foundation shall pass to and be vested in the state, subject to the rights of any bondholders, lienholders and other creditors."

### **Chapter 168 Section 8 Laws 2011**

SECTION 8. A new section of the Educational Assistance Act is enacted to read:

"EDUCATIONAL ASSISTANCE--FOUNDATION ACTIVITIES NOT AFFECTED BY REPEAL.--The repeal of sections or parts of sections of the Educational Assistance Act does not affect the existence of the educational assistance foundation created pursuant to that act or its activities in relation to bonds issued and outstanding or the servicing of student loans outstanding, including any special status of the foundation or dispensation granted to the foundation prior to the effective date of this 2011 act in other provisions of law."

### **Chapter 168 Section 9 Laws 2011**

SECTION 9. A new section of the Educational Assistance Act is enacted to read:

"EDUCATIONAL ASSISTANCE--NONPROFIT CORPORATION STATUS NOT AFFECTED BY REPEAL.--The repeal of sections or parts of sections of the Educational Assistance Act does not affect the existence of the educational assistance nonprofit corporation created pursuant to that act or its designation as the single nonprofit corporation authorized to provide a statewide educational loan program for the purposes of the federal Higher Education Act of 1965."

### **Chapter 168 Section 10 Laws 2011**

SECTION 10. REPEAL.--Sections 21-21A-2, 21-21A-4, 21-21A-17, 21-21A-18, 21-21A-20 and 21-21A-23 NMSA 1978 (being Laws 1981, Chapter 319, Sections 2, 4, 17, 18, 20 and 23, as amended) are repealed.

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House Bill 137

Approved April 8, 2011

## **LAWS 2011, CHAPTER 169**

AN ACT

RELATING TO FIRE PREVENTION; AMENDING SECTION 60-13-6 NMSA 1978 (BEING LAWS 1977, CHAPTER 245, SECTION 168, AS AMENDED) TO EXEMPT RESIDENTIAL FIRE PROTECTION SPRINKLERS FROM CODE ADOPTION.

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

## **Chapter 169 Section 1 Laws 2011**

SECTION 1. Section 60-13-6 NMSA 1978 (being Laws 1977, Chapter 245, Section 168, as amended) is amended to read:

"60-13-6. CONSTRUCTION INDUSTRIES COMMISSION CREATED--MEMBERSHIP--DUTIES.--

A. There is created within the division the "construction industries commission". The commission shall be composed of nine voting members who shall serve at the pleasure of the governor. Members shall be appointed by the governor, with the advice and consent of the senate, as follows:

- (1) one member who is a representative of the residential construction industry of this state;
- (2) one member who is a licensed electrical contractor;
- (3) one member who is a licensed mechanical contractor;
- (4) one member who is a licensed and practicing architect;
- (5) one member who is a practicing general contractor;
- (6) one member who is a representative of the liquefied petroleum gas industry;
- (7) one member who is a resident of the state, who is not a licensed contractor or certified journeyman and who shall represent the people of New Mexico;
- (8) one member who is a representative of the subcontracting industry of the state; and
- (9) one member who is a representative of organized labor.

Members shall be appointed to provide adequate representation of all geographic areas of the state.

B. Each member of the commission shall receive per diem and mileage as provided in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

C. The commission shall annually elect a chair and vice chair from its membership. The director shall serve as the executive secretary of the commission.

D. The commission shall meet bimonthly or at the call of the chair.

E. The commission shall establish policy for the division. It shall advise on, review, coordinate and approve or disapprove all rules, standards, codes and licensing requirements that are subject to the approval of the commission under the provisions of the Construction Industries Licensing Act or the LPG and CNG Act so as to ensure that uniform codes and standards are promulgated and conflicting provisions are avoided. However, the commission shall not enact a bylaw, order, building code, policy or rule requiring the installation of a residential fire protection sprinkler system in detached one- and two-family dwellings and multiple single-family dwellings, such as townhouses that are not more than three stories above grade plane in height and that have a separate means of egress and their accessory structures. The commission shall:

(1) revoke or suspend, for cause, any license or certificate of qualification issued under the provisions of the Construction Industries Licensing Act or the LPG and CNG Act; and

(2) define and establish all license classifications. The licensee shall be limited in bidding and contracting as provided in Subsection B of Section 60-13-12 NMSA 1978. A licensee, subsequent to the issuance of a license, may make application for additional classification and be licensed in more than one classification if the licensee meets the prescribed qualification for the additional classification."

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House Bill 167, aa

Approved April 8, 2011

## **LAWS 2011, CHAPTER 170**

### **AN ACT**

**RELATING TO PUBLIC UTILITIES; PROVIDING FOR THE IMPLEMENTATION OF PROPOSED RATES BY A FOREIGN DISTRIBUTION COOPERATIVE WITHOUT A HEARING.**

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

## Chapter 170 Section 1 Laws 2011

SECTION 1. Section 62-8-7 NMSA 1978 (being Laws 1991, Chapter 251, Section 1, as amended) is amended to read:

"62-8-7. CHANGE IN RATES.--

A. At any hearing involving an increase in rates or charges sought by a public utility, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the utility.

B. Unless the commission otherwise orders, no public utility shall make any change in any rate that has been duly established except after thirty days' notice to the commission, which notice shall plainly state the changes proposed to be made in the rates then in force and the time when the changed rates will go into effect and other information as the commission by rule requires. The utility shall also give notice of the proposed changes to other interested persons as the commission may direct. All proposed changes shall be shown by filing new schedules that shall be kept open to public inspection. The commission for good cause shown may allow changes in rates without requiring the thirty days' notice, under conditions that it may prescribe.

C. Whenever there is filed with the commission by any public utility a complete application as prescribed by commission rule proposing new rates, the commission may, upon complaint or upon its own initiative, except as otherwise provided by law, upon reasonable notice, enter upon a hearing concerning the reasonableness of the proposed rates. If the commission determines a hearing is necessary, it shall suspend the operation of the proposed rates before they become effective but not for a longer initial period than nine months beyond the time when the rates would otherwise go into effect, unless the commission finds that a longer time will be required, in which case the commission may extend the period for an additional three months. The commission shall hear and decide cases with reasonable promptness. The commission shall adopt rules identifying criteria for various rate and tariff filings to be eligible for suspension periods shorter than what is allowed by this subsection and to be eligible for summary approval without hearing.

D. If after a hearing the commission finds the proposed rates to be unjust, unreasonable or in any way in violation of law, the commission shall determine the just and reasonable rates to be charged or applied by the utility for the service in question and shall fix the rates by order to be served upon the utility or the commission by its order shall direct the utility to file new rates respecting such service that are designed to produce annual revenues no greater than those determined by the commission in its order to be just and reasonable. Those rates shall thereafter be observed until changed, as provided by the Public Utility Act.

E. Except as otherwise provided by law, any increase in rates or charges for the utility commodity based upon cost factors other than taxes or cost of fuel, gas or

purchased power, filed for after April 4, 1991, shall be permitted only after notice and hearing as provided by this section. The commission shall enact rules governing the use of tax, fuel, gas or purchased power adjustment clauses by utilities that enable the commission to consider periodically at least the following:

(1) whether the existence of a particular adjustment clause is consistent with the purposes of the Public Utility Act, including serving the goal of providing reasonable and proper service at fair, just and reasonable rates to all customer classes;

(2) the specific adjustment mechanism to recover tax, gas, fuel or purchased power costs;

(3) which costs should be included in an adjustment clause, procedures to avoid the inclusion of costs in an adjustment clause that should not be included and methods by which the propriety of costs that are included may be determined by the commission in a timely manner, including what informational filings are required to enable the commission to make such a determination; and

(4) the proper adjustment period to be employed.

F. The commission may eliminate or condition a particular adjustment clause if it finds such elimination or condition is consistent with the purposes of the Public Utility Act, including serving the goal of providing reasonable and proper service at fair, just and reasonable rates to all customer classes; provided, however, that no such elimination or condition shall be ordered unless such elimination or condition will not place the affected utility at a competitive disadvantage. The commission rules shall also provide for variances and may provide for separate examination of a utility's adjustment clause based upon that utility's particular operating characteristics.

G. Whenever there is filed with the commission a schedule proposing new rates by a rural electric cooperative organized under the Rural Electric Cooperative Act or by a foreign distribution cooperative, the rates shall become effective as proposed by the rural electric cooperative or the foreign distribution cooperative without a hearing, except as provided in this subsection. The rural electric cooperative or the foreign distribution cooperative shall give written notice of the proposed rates to its affected patrons in New Mexico at least thirty days prior to the filing with the commission. Upon the filing with the commission of a protest setting forth grounds for review of the proposed rates signed by the lesser of one percent of or twenty-five members of a customer rate class of the rural electric cooperative or foreign distribution cooperative and if the commission determines that there is just cause for reviewing the proposed rates on one or more of the grounds of the protest, the commission shall suspend the rates and conduct a hearing concerning the reasonableness of any proposed rates filed by a rural electric cooperative or a foreign distribution cooperative pursuant to Subsections C and D of this section. The protest shall be filed no later than twenty days after the filing with the commission of the schedule proposing the new rates. The



hearing and review shall be limited to the issues set forth in the protest and for which the commission may find just cause for the review, which issues shall be contained in the notice of hearing. The provisions of this subsection shall not be construed to affect commission authority or procedure to regulate the sale, furnishing or delivery by wholesale suppliers of electricity to rural electric cooperatives or foreign distribution cooperatives pursuant to Section 62-6-4 NMSA 1978. In addition to the adjustments permitted by Subsections E and F of this section, the commission may authorize rate schedules of rural electric cooperatives and foreign distribution cooperatives to recover, without notice and hearing, changes in the cost of debt capital incurred pursuant to securities that are lawfully issued. This subsection shall not apply to any foreign distribution cooperative that proposes rates for any of its customer rate classes in the state that are higher than the rates it charges to the same or substantially similar customer rate class in the state under the laws of which the foreign distribution cooperative is organized. For the purposes of this subsection:

(1) "foreign distribution cooperative" means a rural electric distribution cooperative corporation serving its members at retail and transacting business in New Mexico pursuant to the authority granted under Section 62-15-26 NMSA 1978;

(2) "member of a foreign distribution cooperative" means a retail customer in New Mexico serviced by a foreign distribution cooperative; and

(3) "member of a rural electric cooperative" means a member as defined by the Rural Electric Cooperative Act."

## **Chapter 170 Section 2 Laws 2011**

SECTION 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.

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House Bill 215

Approved April 8, 2011

## **LAWS 2011, CHAPTER 171**

AN ACT

RELATING TO JUDICIAL SALES; CHANGING THE PERIOD IN WHICH THE STATE MAY EXERCISE A RIGHT OF REDEMPTION AFTER THE SALE OF REAL PROPERTY UPON WHICH THE STATE HAS A LIEN OR ENCUMBRANCE.

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

## **Chapter 171 Section 1 Laws 2011**

SECTION 1. Section 42-6-14 NMSA 1978 (being Laws 1947, Chapter 150, Section 3) is amended to read:

"42-6-14. JUDICIAL SALE--ALTERNATIVE REMEDIES.--

A. Except as provided in Subsection B or C of this section, a judicial sale made in pursuance of a judgment in a suit in which the state is a party, to quiet title to or to foreclose a mortgage or other lien upon real estate or personal property, shall have the same effect respecting the discharge of the property from liens and encumbrances held by the state as may be provided with respect to such matters by law as to all other persons.

B. A sale to satisfy a lien inferior to one of the state shall be made subject to and without disturbing the lien of the state, unless the state consents that the property may be sold free of its mortgage or lien and the proceeds divided as the parties may be entitled.

C. Where a sale of real estate is made to satisfy a lien prior to that of the state, the state shall have one month from the date of sale within which to redeem, but the district court, upon a showing of good cause that redemption will be effected, may increase the redemption period to not more than nine months.

D. In any case where the debt owing the state is due, the state may ask, by way of affirmative relief, for the foreclosure of its own lien or mortgage.

E. In any case where property is sold to satisfy a first mortgage or first lien held by the state, the state may bid at the sale a sum not exceeding the amount of its claim with expenses of sale, as may be directed by the head of the agency of the state that has charge of the administration of the laws in respect of which the claim of the state arises."

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House Bill 220, aa

Approved April 8, 2011

## **LAWS 2011, CHAPTER 172**

AN ACT

RELATING TO BOARDS; EXTENDING THE SUNSET DATE FOR THE ANIMAL SHELTERING BOARD.

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

## **Chapter 172 Section 1 Laws 2011**

SECTION 1. Section 77-1B-12 NMSA 1978 (being Laws 2007, Chapter 60, Section 12, as amended) is amended to read:

"77-1B-12. TERMINATION OF AGENCY LIFE--DELAYED

REPEAL.--The animal sheltering board is terminated on July 1, 2013 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of the Animal Sheltering Act until July 1, 2014. Effective July 1, 2014, the Animal Sheltering Act is repealed."

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House Bill 234, aa

Approved April 8, 2011

## **LAWS 2011, CHAPTER 173**

AN ACT

RELATING TO LOCAL GOVERNMENT CORRECTIONS; PROVIDING THAT THE LOCAL GOVERNMENT CORRECTIONS FUND BE DISTRIBUTED ONLY TO COUNTIES; PROVIDING THAT THE PENALTY ASSESSMENT FEE FOR LOCAL GOVERNMENT CORRECTIONS APPLIES TO ALL COUNTIES; MAKING AN APPROPRIATION.

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

## **Chapter 173 Section 1 Laws 2011**

SECTION 1. Section 33-3-25 NMSA 1978 (being Laws 1983, Chapter 134, Section 1, as amended) is amended to read:

"33-3-25. LOCAL GOVERNMENT CORRECTIONS FUND CREATED--  
ADMINISTRATION--DISTRIBUTION.--

A. There is created in the state treasury the "local government corrections fund" to be administered by the administrative office of the courts.

B. All balances in the local government corrections fund are appropriated to the administrative office of the courts for payment to counties for county jailer or

juvenile detention officer training; for the construction planning, construction, maintenance and operation of the county detention facility, jail or juvenile detention facility; for paying the cost of housing county prisoners or juveniles in any detention facility in the state; for alternatives to incarceration; or for complying with match or contribution requirements for the receipt of federal funds relating to detention facilities, jails or juvenile detention facilities. Payments shall be made quarterly upon certification by the magistrate court or metropolitan court and the motor vehicle division of the taxation and revenue department of eligible amounts as provided in Subsection C of this section.

C. Each county shall be eligible for a payment in an amount equal to the costs and fees collected by a magistrate court or a metropolitan court and the motor vehicle division pursuant to offenses committed within the county and deposited in the local government corrections fund.

D. Payments from the local government corrections fund shall be made upon vouchers issued and signed by the director of the administrative office of the courts upon warrants drawn by the secretary of finance and administration.

E. All money received by a county pursuant to this section shall be deposited in a special fund in the county treasury and shall be used solely for:

- (1) county jailer or juvenile detention officer training;
- (2) the construction planning, construction, maintenance and operation of the county detention facility, jail or juvenile detention facility;
- (3) paying the cost of housing county prisoners or juveniles in any detention facility in the state;
- (4) alternatives to incarceration; or
- (5) complying with match or contribution requirements for the receipt of federal funds relating to detention facilities, jails or juvenile detention facilities."

## **Chapter 173 Section 2 Laws 2011**

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 0.50.

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 173 Section 3 Laws 2011**

SECTION 3. Section 66-8-116.3 NMSA 1978 (being Laws 1989, Chapter 318, Section 35, Laws 1989, Chapter 319, Section 14 and also 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 juvenile adjudication fee of one dollar (\$1.00), which shall be credited to the juvenile adjudication fund;

G. a brain injury services fee of five dollars (\$5.00), which shall be credited to the brain injury services fund;

H. a court facilities fee as follows:

in a county with a metropolitan court      \$24.00;

in any other county                              10.00;

and

I. until May 31, 2014, a magistrate courts operations fee of four dollars (\$4.00), which shall be credited to the magistrate courts operations fund."

## **Chapter 173 Section 4 Laws 2011**

SECTION 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.

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House Bill 417, aa

Approved April 8, 2011

## **LAWS 2011, CHAPTER 174**

AN ACT

RELATING TO PUBLIC FINANCE; RAISING THE THRESHOLD AMOUNT OF GROSS ANNUAL INCOME SUBJECT TO AUDIT OF AN ORGANIZATION THAT TRANSFERS MONEY TO A STATE AGENCY.

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

## **Chapter 174 Section 1 Laws 2011**

SECTION 1. Section 6-5A-1 NMSA 1978 (being Laws 1992, Chapter 27, Section 1) is amended to read:

"6-5A-1. DEFINITIONS--REQUIREMENTS FOR GOVERNMENTAL ENTITIES THAT RECEIVE FUNDS OR PROPERTY FROM CERTAIN ORGANIZATIONS.--

A. As used in this section:

(1) "agency" means any state agency, department or board, any public institution of higher education or public post-secondary educational institution and any county, municipality or public school district;

(2) "organization" means an organization that has been granted exemption from the federal income tax by the United States commissioner of internal revenue as an organization described in Section 501(c) of the Internal Revenue Code of 1986, as amended or renumbered, and whose principal and authorized purpose is to complement, contribute to and support or aid the function of or forward the purposes of a single agency through financial support or contribution of services, goods, data or information that help or aid the agency in carrying out its statutory purpose and goals, including, but not limited to, the provision of scholarships to students of educational institutions and the provision of grants to supplement ongoing research or to provide funds for research and programs being carried out by an agency;



(3) "post-secondary educational institution" means an educational institution designated in Article 12, Section 11 of the constitution of New Mexico and includes an academic, vocational, technical, business, professional or other school, college or university or other organization or person offering or purporting to offer courses, instruction, training or education through correspondence or in person to any individual within this state over the compulsory school attendance age, if that post-secondary educational institution is directly supported in whole or in part by state or local taxation; and

(4) "transferred" means given or otherwise transferred, with or without consideration.

B. Prior to an agency accepting property or funds that have been transferred to an agency by an organization, the agency and the organization shall enter into a written agreement that includes at least the following:

(1) a concise statement of the organization's purpose and of how that purpose is supportive of the agency's statutory responsibilities and authority;

(2) provisions explicitly describing the relationship of the agency to the organization in connection with such issues as authority, autonomy and information sharing and reporting;

(3) provisions defining the extent to which the organization may complement and support functions that are the statutory responsibility of the agency;

(4) requirements that the organization:

(a) if its gross annual income exceeds two hundred fifty thousand dollars (\$250,000), have a financial accounting system considered adequate under customarily and currently accepted accounting standards and that the financial affairs of the organization be audited annually in accordance with generally accepted governmental auditing standards by an independent professional auditor who would be required to furnish to the agency copies of the annual audit, which, exclusive of any lists of donors or donations, shall be a public record, and to make the associated working papers available to the agency for review upon its written request for a period of three years after the audit report date; or

(b) if its gross annual income is two hundred fifty thousand dollars (\$250,000) or less, file a statement with the agency in the form of a balance sheet showing the assets of the organization, its liabilities, its income, classified by general source, and its expenditures, classified by object;

(5) a provision requiring that any funds or property transferred to the agency by the organization be considered subject to all state laws and regulations governing the disbursement and administration of public funds and public property,

except to the extent of any specific conditions of the transfer that are acceptable to the agency and do not require actions that are punishable as crimes under state law;

(6) a provision stating that the agency has reviewed the bylaws of the organization and found them acceptable and a provision requiring that the organization furnish copies of the bylaws to the agency;

(7) a provision requiring specification of the consideration that the agency received from the organization for any agency services provided in support of the organization; and

(8) a provision requiring the application by the organization of the standard described in Section 6-8-10 NMSA 1978 as the standard for evaluating investments of the organization.

C. The written agreement required by Subsection B of this section is not required for each transfer but is a precondition of an agency's acceptance of any transfers. The agreement may be amended by mutual written agreement of the agency and the organization.

D. Nothing in this section subjects an organization to the provisions of the Open Meetings Act or makes its records, other than the annual audit required under this section, public records within the purview of Section 14-2-1 NMSA 1978."

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House Bill 428

Approved April 8, 2011

## **LAWS 2011, CHAPTER 175**

### **AN ACT**

**RELATING TO TAXATION; CLARIFYING TRANSACTION REQUIREMENTS FOR CERTAIN COMPENSATING TAX PURPOSES; EQUALIZING THE COMPENSATING TAX ON CERTAIN SERVICES WITH COMPENSATING TAX ON TANGIBLE PROPERTY.**

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

### **Chapter 175 Section 1 Laws 2011**

**SECTION 1.** Section 7-9-7 NMSA 1978 (being Laws 1966, Chapter 47, Section 7, as amended) is amended to read:

"7-9-7. IMPOSITION AND RATE OF TAX--DENOMINATION AS  
"COMPENSATING TAX".--

A. For the privilege of using tangible property in New Mexico, there is imposed on the person using the property an excise tax equal to five and one-eighth percent of the value of tangible property that was:

(1) manufactured by the person using the property in the state;

(2) acquired inside or outside of this state as the result of a transaction with a person located outside this state that would have been subject to the gross receipts tax had the tangible personal property been acquired from a person with nexus with New Mexico; or

(3) acquired as the result of a transaction that was not initially subject to the compensating tax imposed by Paragraph (2) of this subsection or the gross receipts tax but which transaction, because of the buyer's subsequent use of the property, should have been subject to the compensating tax imposed by Paragraph (2) of this subsection or the gross receipts tax.

B. For the purpose of Subsection A of this section, value of tangible property shall be the adjusted basis of the property for federal income tax purposes determined as of the time of acquisition or introduction into this state or of conversion to use, whichever is later. If no adjusted basis for federal income tax purposes is established for the property, a reasonable value of the property shall be used.

C. For the privilege of using services rendered in New Mexico, there is imposed on the person using such services an excise tax equal to five percent of the value of the services at the time they were rendered. The services, to be taxable under this subsection, must have been rendered as the result of a transaction that was not initially subject to the gross receipts tax but which transaction, because of the buyer's subsequent use of the services, should have been subject to the gross receipts tax.

D. The tax imposed by this section shall be referred to as the "compensating tax".

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House Bill 429, aa

Approved April 8, 2011

**LAWS 2011, CHAPTER 176**

AN ACT

RELATED TO ALCOHOLIC BEVERAGES; CLARIFYING THAT GAMES OF CHANCE PURSUANT TO THE NEW MEXICO BINGO AND RAFFLE ACT ARE PERMITTED ON CLUB PREMISES LICENSED PURSUANT TO THE LIQUOR CONTROL ACT.

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

## **Chapter 176 Section 1 Laws 2011**

SECTION 1. Section 60-7A-19 NMSA 1978 (being Laws 1981, Chapter 39, Section 96, as amended) is amended to read:

"60-7A-19. COMMERCIAL GAMBLING ON LICENSED PREMISES.--

A. It is a violation of the Liquor Control Act for a licensee to knowingly allow commercial gambling on the licensed premises.

B. In addition to any criminal penalties, a person who violates Subsection A of this section may have the person's license suspended or revoked or a fine imposed, or both, pursuant to the Liquor Control Act.

C. As used in this section:

(1) "commercial gambling" means:

(a) participating in the earnings of or operating a gambling place;

(b) receiving, recording or forwarding bets or offers to bet;

(c) possessing facilities with the intent to receive, record or forward bets or offers to bet;

(d) for gain, becoming a custodian of anything of value bet or offered to be bet;

(e) conducting a lottery where both the consideration and the prize are money, or whoever with intent to conduct a lottery possesses facilities to do so; or

(f) setting up for use for the purpose of gambling, or collecting the proceeds of, a gambling device or game; and

(2) "commercial gambling" does not mean:

(a) activities authorized pursuant to the New Mexico Lottery Act;

(b) the conduct of activities pursuant to Subsection B of Section 30-19-6 NMSA 1978 on the licensed premises of the holder of a club license; and

(c) gaming authorized pursuant to the Gaming Control Act on the premises of a gaming operator licensee licensed pursuant to that act."

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House Bill 536, aa

Approved April 8, 2011

## **LAWS 2011, CHAPTER 177**

### **AN ACT**

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE; CREATING THE FILM PRODUCTION TAX CREDIT ACT; DISTRIBUTING REFUNDABLE FILM PRODUCTION TAX CREDIT AMOUNTS OVER MULTIPLE YEARS; SPECIFYING THE ANNUAL PAYOUT ON ACCRUED FILM PRODUCTION TAX CREDITS; PROVIDING THAT THE FILM PRODUCTION TAX CREDIT SHALL NOT APPLY TO CERTAIN EXPENDITURES; LIMITING THE AMOUNT OF CERTAIN EXPENDITURES THAT QUALIFY FOR THE TAX CREDIT; REQUIRING EXPENDITURES TO BE REPORTED WITHIN A CERTAIN TIME; REQUIRING THE SUBMISSION OF AN AUDIT OF EXPENDITURES UNDER CERTAIN CIRCUMSTANCES; PROVIDING FOR A PHYSICAL PRESENCE IN NEW MEXICO OF VENDORS; PROVIDING FOR PERFORMING ARTIST WITHHOLDING; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

### **Chapter 177 Section 1 Laws 2011**

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

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

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

B. Interest on overpayments of tax shall accrue and be paid at the rate established for individuals pursuant to Section 6621 of the Internal Revenue Code, computed on a daily basis; provided that if a different rate is specified by a compact or

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

C. Unless otherwise provided by this section, interest on an overpayment not arising from an assessment by the department shall be paid from the date of the claim for refund until a date preceding by not more than thirty days the date of the credit or refund to any person; interest on an overpayment arising from an assessment by the department shall be paid from the date of overpayment until a date preceding by not more than thirty days the date of the credit or refund to any person.

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

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

(2) the credit or refund is made within:

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

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

(c) one hundred twenty days of the date of the claim for refund of tax imposed pursuant to the Resources Excise Tax Act, the Severance Tax Act, the Oil and Gas Severance Tax Act, the Oil and Gas Conservation Tax Act, the Oil and Gas Emergency School Tax Act, the Oil and Gas Ad Valorem Production Tax Act, the Natural Gas Processors Tax Act or the Oil and Gas Production Equipment Ad Valorem Tax Act;

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

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

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

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

(7) the department applies the credit or refund to an intercept program, to the taxpayer's estimated payment prior to the due date for the estimated payment or to offset prior liabilities of the taxpayer pursuant to Subsection E of Section 7-1-29 NMSA 1978;

(8) the credit or refund results from overpayments the department finds pursuant to Subsection F of Section 7-1-29 NMSA 1978 that exceed the refund claimed by the taxpayer on the return; or

(9) the refund results from a film production tax credit pursuant to Section 7-2F-1 NMSA 1978.

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

## **Chapter 177 Section 2 Laws 2011**

SECTION 2. Section 7-2F-1 NMSA 1978 (being Laws 2002, Chapter 36, Section 1, as amended) is amended to read:

### **"7-2F-1. FILM PRODUCTION TAX CREDIT.--**

A. The tax credit created by this section may be referred to as the "film production tax credit". An eligible film production company may apply for, and the taxation and revenue department may allow, subject to the limitation in Subsection D of this section, a tax credit in an amount equal to the percentage specified in Subsection B of this section of:

(1) direct production expenditures made in New Mexico that:

(a) are directly attributable to the production in New Mexico of a film or commercial audiovisual product;

(b) are subject to taxation by the state of New Mexico;

(c) exclude direct production expenditures for which another taxpayer claims the film production tax credit; and

(d) do not exceed the usual and customary cost of the goods or services acquired when purchased by unrelated parties. The secretary of taxation and revenue may determine the value of the goods or services for purposes of this section when the buyer and seller are affiliated persons or the sale or purchase is not an arm's length transaction; and

(2) postproduction expenditures made in New Mexico that:

(a) are directly attributable to the production of a commercial film or audiovisual product;

(b) are for services performed in New Mexico;

(c) are subject to taxation by the state of New Mexico;

(d) exclude postproduction expenditures for which another taxpayer claims the film production tax credit; and

(e) do not exceed the usual and customary cost of the goods or services acquired when purchased by unrelated parties. The secretary of taxation and revenue may determine the value of the goods or services for purposes of this section when the buyer and seller are affiliated persons or the sale or purchase is not an arm's length transaction.

B. Except as provided in Subsections C and P of this section, the percentage to be applied in calculating the amount of the film production tax credit is twenty-five percent.

C. With respect to expenditures attributable to a production for which the film production company receives a tax credit pursuant to the federal new markets tax credit program, the percentage to be applied in calculating the film production tax credit is twenty percent.

D. A claim for film production tax credits shall be filed as part of a return filed pursuant to the Income Tax Act or the Corporate Income and Franchise Tax Act. The date a credit claim is received by the department shall determine the order that a credit claim is authorized for payment by the department. The aggregate amount of the film production tax credit claims that may be authorized for payment in any fiscal year is fifty million dollars (\$50,000,000) with respect to the direct production expenditures or postproduction expenditures made on film or commercial audiovisual products. A film production company that submits a claim for a film production tax credit that is unable to receive the tax credit because the claims for the fiscal year exceed the limitation in this subsection shall be placed for the subsequent fiscal year at the front of a queue of film production tax credit claimants submitting claims in the subsequent fiscal year in the order of the date on which the credit was authorized for payment.

E. Credit claims authorized for payment pursuant to the Film Production Tax Credit Act shall be paid pursuant to provisions of the Tax Administration Act to the taxpayer as follows:

(1) a credit claim amount of less than two million dollars (\$2,000,000) per taxable year shall be paid immediately upon authorization for payment of the credit claim;



(2) a credit claim amount of two million dollars (\$2,000,000) or more but less than five million dollars (\$5,000,000) per taxable year shall be divided into two equal payments, with the first payment to be made immediately upon authorization of the payment of the credit claim and the second payment to be made twelve months following the date of the first payment; and

(3) a credit claim amount of five million dollars (\$5,000,000) or more per taxable year shall be divided into three equal payments, with the first payment to be made immediately upon authorization of payment of the credit claim, the second payment to be made twelve months following the date of the first payment and the third payment to be made twenty-four months following the date of the first payment.

F. Any amount of a credit claim that is carried forward pursuant to Subsection E of this section shall be subject to the limit on the aggregate amount of credit claims that may be authorized for payment pursuant to Subsection D of this section in the fiscal year in which that amount is paid.

G. A credit claim shall only be considered received by the department if the credit claim is made on a complete tax return filed timely after the close of the taxable year. All direct production expenditures and postproduction expenditures incurred during the taxable year by a film production company shall be submitted as part of the same income tax return and paid pursuant to this section. A credit claim shall not be divided and submitted with multiple returns or in multiple years.

H. For purposes of determining the payment of credit claims pursuant to Subsection E of this section, the secretary of taxation and revenue may require that credit claims of affiliated persons be combined into one claim if necessary to accurately reflect closely integrated activities of affiliated persons.

I. The film production tax credit shall not be claimed with respect to direct production expenditures or postproduction expenditures for which the film production company has delivered a nontaxable transaction certificate pursuant to Section 7-9-86 NMSA 1978.

J. A long-form narrative film production for which the film production tax credit is claimed pursuant to Paragraph (1) of Subsection A of this section shall contain an acknowledgment that the production was filmed in New Mexico.

K. To be eligible for the film production tax credit, a film production company shall submit to the division information required by the division to demonstrate conformity with the requirements of this section, including detailed information on each direct production expenditure and each postproduction expenditure. A film production company shall provide to the division a projection of the film production tax credit claim the film production company plans to submit in the fiscal year. In addition, the film production company shall agree in writing:

(1) to pay all obligations the film production company has incurred in New Mexico;

(2) to publish, at completion of principal photography, a notice at least once a week for three consecutive weeks in local newspapers in regions where filming has taken place to notify the public of the need to file creditor claims against the film production company by a specified date;

(3) that outstanding obligations are not waived should a creditor fail to file by the specified date; and

(4) to delay filing of a claim for the film production tax credit until the division delivers written notification to the taxation and revenue department that the film production company has fulfilled all requirements for the credit.

L. The division shall determine the eligibility of the company and shall report this information to the taxation and revenue department in a manner and at times the economic development department and the taxation and revenue department shall agree upon. The division shall also post on its web site all information provided by the film production company that does not reveal revenue, income or other information that may jeopardize the confidentiality of income tax returns, including that the division shall report monthly the projected amount of credit claims for the fiscal year.

M. To provide guidance to film production companies regarding the amount of credit capacity remaining in the fiscal year, the taxation and revenue department shall post monthly on that department's web site the aggregate amount of credits claimed and processed for the fiscal year.

N. To receive a film production tax credit, a film production company shall apply to the taxation and revenue department on forms and in the manner the department may prescribe. The application shall include a certification of the amount of direct production expenditures or postproduction expenditures made in New Mexico with respect to the film production for which the film production company is seeking the film production tax credit; provided that for the film production tax credit, the application shall be submitted within one year of the date of the last direct production expenditure in New Mexico or the last postproduction expenditure in New Mexico. If the amount of the requested tax credit exceeds five million dollars (\$5,000,000), the application shall also include the results of an audit, conducted by a certified public accountant licensed to practice in New Mexico, verifying that the expenditures have been made in compliance with the requirements of this section. If the requirements of this section have been complied with, subject to the provisions of Subsection D of this section, the taxation and revenue department shall approve the film production tax credit and issue a document granting the tax credit.

O. The film production company may apply all or a portion of the film production tax credit granted against personal income tax liability or corporate income

tax liability. If the amount of the film production tax credit claimed exceeds the film production company's tax liability for the taxable year in which the credit is being claimed, the excess shall be refunded.

P. As applied to direct production expenditures for the services of performing artists, the film production tax credit authorized by this section shall not exceed five million dollars (\$5,000,000) for services rendered by all performing artists in a production for which the film production tax credit is claimed."

## **Chapter 177 Section 3 Laws 2011**

SECTION 3. A new section of Chapter 7, Article 2F NMSA 1978 is enacted to read:

"SHORT TITLE.--Chapter 7, Article 2F NMSA 1978 may be cited as the "Film Production Tax Credit Act"."

## **Chapter 177 Section 4 Laws 2011**

SECTION 4. Section 7-2F-2 NMSA 1978 (being Laws 2003, Chapter 127, Section 2, as amended) is amended to read:

"7-2F-2. DEFINITIONS.--As used in the Film Production Tax Credit Act:

A. "affiliated person" 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 through ownership of voting securities or other ownership interests representing a majority of the total voting power of the entity;

B. "commercial audiovisual product" means a film or a videogame intended for commercial exploitation;

C. "direct production expenditure":

(1) except as provided in Paragraph (2) of this subsection, means a transaction that is subject to taxation in New Mexico, including:

(a) payment of wages, fringe benefits or fees for talent, management or labor to a person who is a New Mexico resident;

(b) payment to a personal services business for the services of a performing artist if the personal services business: 1) pays gross receipts tax in New Mexico on the portion of those payments qualifying for the tax credit; and; 2) deducts and remits withheld income tax pursuant to Subsection I of Section 7-3A-3 NMSA 1978; and

(c) any of the following provided by a vendor: 1) the story and scenario to be used for a film; 2) set construction and operations, wardrobe, accessories and related services; 3) photography, sound synchronization, lighting and related services; 4) editing and related services; 5) rental of facilities and equipment; 6) leasing of vehicles, not including the chartering of aircraft for out-of-state transportation; however, New Mexico-based chartered aircraft for in-state transportation directly attributable to the production shall be considered a direct production expenditure; provided that only the first one hundred dollars (\$100) of the daily expense of leasing a vehicle for passenger transportation on roadways in the state may be claimed as a direct production expenditure; 7) food or lodging; provided that only the first one hundred fifty dollars (\$150) of lodging per individual per day is eligible to be claimed as a direct production expenditure; 8) commercial airfare if purchased through a New Mexico-based travel agency or travel company for travel to and from New Mexico or within New Mexico that is directly attributable to the production; 9) insurance coverage and bonding if purchased through a New Mexico-based insurance agent, broker or bonding agent; and 10) other direct costs of producing a film in accordance with generally accepted entertainment industry practice; and

(2) does not include an expenditure for:

(a) a gift with a value greater than twenty-five dollars (\$25.00);

(b) artwork or jewelry, except that a work of art or a piece of jewelry may be a direct production expenditure if: 1) it is used in the film production; and 2) the expenditure is less than two thousand five hundred dollars (\$2,500); or

(c) entertainment, amusement or recreation;

D. "division" means the New Mexico film division of the economic development department;

E. "federal new markets tax credit program" means the tax credit program codified as Section 45D of the United States Internal Revenue Code of 1986, as amended;

F. "film" means a single medium or multimedia program, excluding advertising messages other than national or regional advertising messages intended for exhibition, that:

(1) is fixed on film, digital medium, videotape, computer disc, laser disc or other similar delivery medium;

(2) can be viewed or reproduced;

(3) is not intended to and does not violate a provision of Chapter 30, Article 37 NMSA 1978; and

(4) is intended for reasonable commercial exploitation for the delivery medium used;

G. "film production company" means a person that produces one or more films or any part of a film;

H. "fiscal year" means the state fiscal year beginning on July 1;

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

J. "personal services business" means a business organization that receives payments for the services of a performing artist;

K. "physical presence" means a physical address in New Mexico, but does not include a post office box or other mail drop enterprise unless the physical presence is for a business and the business is providing mail services to a film production company from which a vendor conducts business, stores inventory or otherwise creates, assembles or offers for sale the product purchased or leased by a film production company;

L. "postproduction expenditure" means an expenditure for editing, Foley recording, automatic dialogue replacement, sound editing, special effects, including computer-generated imagery or other effects, scoring and music editing, beginning and end credits, negative cutting, soundtrack production, dubbing, subtitling or addition of sound or visual effects; but not including an expenditure for advertising, marketing, distribution or expense payments; and

M. "vendor" means a person selling goods or services that has a physical presence in New Mexico and is subject to gross receipts tax pursuant to the Gross Receipts and Compensating Tax Act and income tax pursuant to the Income Tax Act or corporate income tax pursuant to the Corporate Income and Franchise Tax Act."

## **Chapter 177 Section 5 Laws 2011**

SECTION 5. Section 7-3A-2 NMSA 1978 (being Laws 2003, Chapter 86, Section 5, as amended) is amended to read:

"7-3A-2. DEFINITIONS.--As used in the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act:

A. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

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

C. "net income" means, for any pass-through entity, the income reported to an owner by the pass-through entity for federal income tax purposes, including ordinary business income or loss, net rental income or loss, guaranteed payments to a partner of a partnership, dividends, royalties and capital gain or loss, less associated deductions, plus interest earned on a state or local bond, less interest earned on a bond issued by the state of New Mexico or its political subdivisions, less income from obligations of the United States less expenses incurred to earn that income; in the case of a subchapter S corporation, "net income" also includes income taxable to the corporation for federal income tax purposes;

D. "oil and gas" means crude oil, natural gas, liquid hydrocarbons or any combination thereof, or carbon dioxide;

E. "oil and gas proceeds" means any amount derived from oil and gas production from any well located in New Mexico and payable as royalty interest, overriding royalty interest, production payment interest, working interest or any other obligation expressed as a right to a specified interest in the cash proceeds received from the sale of oil and gas production or in the cash value of that production, subject to all taxes withheld therefrom pursuant to law; "oil and gas proceeds" excludes "net profits interest" and other types of interest the extent of which cannot be determined with reference to a specified share of the oil and gas production and excludes any amounts deducted by the remitter from payments to interest owners or paid by interest owners to the remitter that are for expenses related to the production from the well or cessation of production from the well for which the interest owner is liable;

F. "owner" means a partner in a partnership not taxed as a corporation for federal income tax purposes for the taxable year, a shareholder of an S corporation or of a corporation other than an S corporation that is not taxed as a corporation for federal income tax purposes for the taxable year, a member of a limited liability company or any similar person holding an ownership interest in any pass-through entity. "Owner" also means a performing artist to whom payments are due from a personal services business;

G. "partnership" means a combination of persons, including a partnership, joint venture, common trust fund, association, pool or working agreement, or any other combination of persons that is treated as a partnership for federal income tax purposes;

H. "pass-through entity" means a personal services business or any other business association other than:

(1) a sole proprietorship;

(2) an estate or trust that does not distribute income to beneficiaries;

(3) a corporation, limited liability company, partnership or other entity not a sole proprietorship taxed as a corporation for federal income tax purposes for the taxable year;

(4) a partnership that is organized as an investment partnership in which the partners' income is derived solely from interest, dividends and sales of securities;

(5) a single member limited liability company that is treated as a disregarded entity for federal income tax purposes; or

(6) a publicly traded partnership as defined in Subsection (b) of Section 7704 of the Internal Revenue Code;

I. "person" means an individual, club, company, cooperative association, corporation, estate, firm, joint venture, partnership, receiver, syndicate, trust or other association, limited liability company, limited liability partnership or gas, water or electric utility owned or operated by a county or municipality and, to the extent permitted by law, a federal, state or other governmental unit or subdivision or an agency, a department or an instrumentality thereof;

J. "personal services business" means a business organization that receives payments for the services of a performing artist for purposes of the film production tax credit;

K. "remittee" means a person that is entitled to payment of oil and gas proceeds by a remitter; and

L. "remitter" means a person that pays oil and gas proceeds to any remittee."

## **Chapter 177 Section 6 Laws 2011**

SECTION 6. Section 7-3A-3 NMSA 1978 (being Laws 2003, Chapter 86, Section 6, as amended) is amended to read:

"7-3A-3. WITHHOLDING FROM OIL AND GAS PROCEEDS AND NET INCOME.--

A. Except as otherwise provided in this section, a remitter shall deduct and withhold from each payment of oil and gas proceeds being made to a remittee an amount equal to the rate specified in Subsection D of this section multiplied by the amount prior to withholding that otherwise would have been payable to the remittee.

B. Except as otherwise provided in this section, a pass-through entity shall deduct and withhold from each owner's share of net income for that quarter an amount equal to the rate specified in Subsection D of this section multiplied by the owner's share of that net income, reduced, but not below zero, by the amount required to be withheld from the owner's net income under Subsection A of this section.

C. The obligation to deduct and withhold from payments or net income as provided in Subsections A and B of this section does not apply to payments that are made to:

(1) a corporation whose principal place of business is in New Mexico or an individual who is a resident of New Mexico;

(2) the United States, this state or any agency, instrumentality or political subdivision of either;

(3) any federally recognized Indian nation, tribe or pueblo or any agency, instrumentality or political subdivision thereof; or

(4) organizations that have been granted exemption from the federal income tax by the United States commissioner of internal revenue as organizations described in Section 501(c)(3) of the Internal Revenue Code.

D. Except as provided in Subsection I of this section, the rate of withholding shall be set by a department directive; provided that the rate may not exceed the higher of the maximum bracket rate set by Section 7-2-7 NMSA 1978 for the taxable year or the maximum bracket rate set by Section 7-2A-5 NMSA 1978 for the taxable year; and provided further that remitters shall be given ninety days' notice of a change in the rate.

E. Except as provided in Subsection I of this section, if a pass-through entity has been in existence for at least one full taxable year prior to the current calendar year, the pass-through entity may use one-fourth of its total net income for the preceding full taxable year to compute the amount required to be deducted and withheld each quarter under Subsection B of this section.



F. If a remitter receives oil and gas proceeds from which an amount has been deducted and withheld pursuant to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act or a pass-through entity has deducted and withheld an amount pursuant to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act from the net income of an owner that is also a pass-through entity, the remitter or payee pass-through entity may take credit for that amount in determining the amount the remitter or payee pass-through entity must withhold and deduct pursuant to this section.

G. If the amount to be withheld from all payments to a payee in a calendar quarter has not exceeded thirty dollars (\$30.00) and a payment to a payee is less than ten dollars (\$10.00), no withholding is required. If the amount to be withheld from an owner's share of net income in any calendar quarter is less than thirty dollars (\$30.00), no withholding is required.

H. Except as provided in Subsection I of this section, at the option of a remitter or pass-through entity, a remitter or pass-through entity may agree with a payee or an owner that the payee or owner pay the amount that the remitter or pass-through entity would have been required to withhold and remit to the department on behalf of the payee or owner pursuant to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act. The payments by the payee or owner shall be remitted on the dates set forth in Section 7-3A-6 NMSA 1978 on forms and in the manner required by the department.

I. Excluding wages, a personal services business shall deduct and withhold an amount equal to the owner's share of net income multiplied by the highest rate for single individuals provided in Section 7-2-7 NMSA 1978."

## **Chapter 177 Section 7 Laws 2011**

SECTION 7. APPLICABILITY.--The provisions of Sections 5 and 6 of this act apply to amounts paid by a personal services business on and after July 1, 2011.

## **Chapter 177 Section 8 Laws 2011**

SECTION 8. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.

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HTRC/House Bills 607 & 622, aa

Approved April 8, 2011

# **LAWS 2011, CHAPTER 178**

## AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE; CHANGING THE EMPLOYER AND EMPLOYEE CONTRIBUTION RATES IN CERTAIN RETIREMENT PLANS.

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

### **Chapter 178 Section 1 Laws 2011**

SECTION 1. Section 10-11-26.5 NMSA 1978 (being Laws 1994, Chapter 128, Section 6, as amended) 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 for members whose annual salary is greater than twenty thousand dollars (\$20,000):

A. from July 1, 2009 through June 30, 2011, the member contribution rate shall be eight and ninety-two hundredths percent of salary;

B. from July 1, 2011 through June 30, 2012, the member contribution rate shall be ten and sixty-seven hundredths percent of salary; and

C. from July 1, 2012 through June 30, 2013, the member contribution rate shall be eight and ninety-two hundredths percent of salary."

### **Chapter 178 Section 2 Laws 2011**

SECTION 2. Section 10-11-26.6 NMSA 1978 (being Laws 1994, Chapter 128, Section 7, as amended) 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 for members whose annual salary is greater than twenty thousand dollars (\$20,000):

A. from July 1, 2009 through June 30, 2011, the state contribution rate shall be fifteen and nine-hundredths percent of the salary of each member;

B. from July 1, 2011 through June 30, 2012, the state contribution rate shall be thirteen and thirty-four hundredths percent of the salary of each member; and

C. from July 1, 2012 through June 30, 2013, the state contribution rate shall be fifteen and nine-hundredths percent of the salary of each member."

### **Chapter 178 Section 3 Laws 2011**

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 for members whose annual salary is greater than twenty thousand dollars (\$20,000):

A. from July 1, 2009 through June 30, 2011, the member contribution rate shall be nine and one-tenth percent of salary;

B. from July 1, 2011 through June 30, 2012, the member contribution rate shall be ten and eighty-five hundredths percent of salary; and

C. from July 1, 2012 through June 30, 2013, the member contribution rate shall be nine and one-tenth percent of salary."

### **Chapter 178 Section 4 Laws 2011**

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 for members whose annual salary is greater than twenty thousand dollars (\$20,000):

A. from July 1, 2009 through June 30, 2011, the state contribution rate shall be twenty-three and six-tenths percent of the salary of each member;

B. from July 1, 2011 through June 30, 2012, the state contribution rate shall be twenty-one and eighty-five hundredths percent of the salary of each member; and

C. from July 1, 2012 through June 30, 2013, the state contribution rate shall be twenty-three and six-tenths percent of the salary of each member."

### **Chapter 178 Section 5 Laws 2011**

SECTION 5. Section 10-11-38.5 NMSA 1978 (being Laws 1994, Chapter 128, Section 13, as amended) 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 for members whose annual salary is greater than twenty thousand dollars (\$20,000):

A. from July 1, 2009 through June 30, 2011, the member contribution rate shall be six and twenty-eight hundredths percent of salary;

B. from July 1, 2011 through June 30, 2012, the member contribution rate shall be eight and three-hundredths percent of salary; and

C. from July 1, 2012 through June 30, 2013, the member contribution rate shall be six and twenty-eight hundredths percent of salary."

## **Chapter 178 Section 6 Laws 2011**

SECTION 6. Section 10-11-38.6 NMSA 1978 (being Laws 1994, Chapter 128, Section 14, as amended) 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 for members whose annual salary is greater than twenty thousand dollars (\$20,000):

A. from July 1, 2009 through June 30, 2011, the state contribution rate shall be twenty-four and twenty-two hundredths percent of the salary of each member;

B. from July 1, 2011 through June 30, 2012, the state contribution rate shall be twenty-two and forty-seven hundredths percent of the salary of each member; and

C. from July 1, 2012 through June 30, 2013, the state contribution rate shall be twenty-four and twenty-two hundredths percent of the salary of each member."

## **Chapter 178 Section 7 Laws 2011**

SECTION 7. Section 10-12B-1 NMSA 1978 (being Laws 1992, Chapter 111, Section 1) is amended to read:

"10-12B-1. SHORT TITLE.--Chapter 10, Article 12B NMSA 1978 may be cited as the "Judicial Retirement Act"."

## **Chapter 178 Section 8 Laws 2011**

SECTION 8. 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 for members whose annual salary is greater than twenty thousand dollars (\$20,000):

(a) from July 1, 2009 through June 30, 2011, the member contribution rate shall be nine percent of salary;

(b) from July 1, 2011 through June 30, 2012, the member contribution rate shall be ten and three-fourths percent of salary; and

(c) from July 1, 2012 through June 30, 2013, 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 178 Section 9 Laws 2011**

SECTION 9. 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 for members whose annual salary is greater than twenty thousand dollars (\$20,000):

(a) from July 1, 2009 through June 30, 2011, the member's court contribution rate shall be ten and one-half percent of salary for each member in office;

(b) from July 1, 2011 through June 30, 2012, the member's court contribution rate shall be eight and three-fourths percent of salary for each member in office; and

(c) from July 1, 2012 through June 30, 2013, 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 178 Section 10 Laws 2011**

SECTION 10. Section 10-12C-1 NMSA 1978 (being Laws 1992, Chapter 118, Section 1) is amended to read:

"10-12C-1. SHORT TITLE.--Chapter 10, Article 12C NMSA 1978 may be cited as the "Magistrate Retirement Act"."

## **Chapter 178 Section 11 Laws 2011**

SECTION 11. 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 for members whose annual salary is greater than twenty thousand dollars (\$20,000):

(a) from July 1, 2009 through June 30, 2011, the member contribution rate shall be nine percent of salary;

(b) from July 1, 2011 through June 30, 2012, the member contribution rate shall be ten and three-fourths percent of salary; and

(c) from July 1, 2012 through June 30, 2013, 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 178 Section 12 Laws 2011**

SECTION 12. 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 for members whose annual salary is greater than twenty thousand dollars (\$20,000):

(a) from July 1, 2009 through June 30, 2011, the state contribution rate shall be nine and one-half percent of salary for each member in office;

(b) from July 1, 2011 through June 30, 2012, the state contribution rate shall be seven and three-fourths percent of salary for each member in office; and

(c) from July 1, 2012 through June 30, 2013, 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 178 Section 13 Laws 2011**

SECTION 13. 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 for members whose annual salary is greater than twenty thousand dollars (\$20,000):

(a) from July 1, 2009 through June 30, 2011, the member contribution rate shall be nine and four-tenths percent of the member's annual salary;

(b) from July 1, 2011 through June 30, 2012, the member contribution rate shall be eleven and fifteen-hundredths percent of the member's annual salary; and

(c) from July 1, 2012 through June 30, 2013, the member contribution rate shall be nine and four-tenths 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, 2011, 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, 2011 through June 30, 2012, a sum equal to nine and fifteen-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 twelve and four-tenths percent of the member's annual salary;

(8) from July 1, 2012 through June 30, 2013, 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;

(9) from July 1, 2013 through June 30, 2014, a sum equal to thirteen and fifteen-hundredths percent of the annual salary of each member employed by the local administrative unit; and

(10) on and after July 1, 2014, 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 178 Section 14 Laws 2011**

### **SECTION 14. TEMPORARY PROVISION--ACTUARIAL STUDY-- SUPPLEMENTAL APPROPRIATION REQUEST.--**

A. No later than September 30, 2013, the retirement board of the public employees retirement association and the educational retirement board shall each cause an actuarial study to be conducted for each retirement system administered by the board. Each study shall analyze whether the higher employee contribution rates and lower employer contribution rates required by this act and Laws 2009, Chapter 127 have had or will have an adverse actuarial effect on the retirement system in violation of Article 20, Section 22 of the constitution of New Mexico. The results of each study shall be submitted to the legislative finance committee and the governor.

B. If a study concludes that a retirement system has had or will have an adverse actuarial effect as a result of the higher employee contribution rates and the lower employer contribution rates required by this act and Laws 2009, Chapter 127, the board that administers that retirement system shall submit a request for a supplemental appropriation to the second session of the fifty-first legislature in the amount that will rectify the adverse actuarial effect.

## **Chapter 178 Section 15 Laws 2011**

**SECTION 15. TEMPORARY PROVISION--DETERMINATION OF ANNUAL SALARY FOR PURPOSES OF CALCULATING EMPLOYEE AND EMPLOYER CONTRIBUTIONS.--**For the purposes of calculating employee and employer contributions due after June 30, 2011, in determining whether an employee has an annual salary greater or less than twenty thousand dollars (\$20,000), the employee's annual salary shall be the employee's base hourly rate at the time the contribution is made multiplied by the number of compensable hours for a full-time-equivalent in the employee's position at the time the contribution is made as determined by the employer; provided that the department of finance and administration shall determine the number of compensable hours for a full-time-equivalent in the employee's position for employees who are members in a retirement program provided for in the Public Employees Retirement Act, the Magistrate Retirement Act or the Judicial Retirement Act.

## **Chapter 178 Section 16 Laws 2011**

**SECTION 16. TEMPORARY PROVISION--CONTINGENT CONTRIBUTION RATES FOR FISCAL YEAR 2013.--**Notwithstanding a provision of this act to the contrary, the employer and employee contribution rates required by this act for the period from July 1, 2011 through June 30, 2012 shall continue for the period from July 1, 2012 through June 30, 2013 if, after the last consensus revenue forecast before the beginning of the second session of the fiftieth legislature, the secretary of finance and administration certifies to the retirement board of the public employees retirement

association, the educational retirement board and the legislative finance committee that, according to the consensus revenue forecast:

(1) general fund revenues in fiscal year 2012 will be less than one hundred million dollars (\$100,000,000) more than the general fund revenue forecast reflected in the fiscal year 2012 state budget; and

(2) at the end of fiscal year 2012, the total amount in the state reserve funds will be less than five percent of the total general fund appropriations for fiscal year 2012.

## **Chapter 178 Section 17 Laws 2011**

SECTION 17. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.

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HAFC/House Bill 628, aa

Approved April 8, 2011

# **LAWS 2011, CHAPTER 179**

## **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 179 Section 1 Laws 2011**

Section 1. **SHORT TITLE.**--Sections 1 through 13 of this act may be cited as the "General Appropriation Act of 2011".

## **Chapter 179 Section 2 Laws 2011**

Section 2. **DEFINITIONS.**--As used in the General Appropriation Act of 2011:

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 might 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 2012. 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 2011;

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 2011;

(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 179 Section 3 Laws 2011**

### **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 2011, or so much as may be necessary, are appropriated from the indicated source for expenditure in fiscal year 2012 for the objects expressed.

D. Unexpended balances in agency accounts remaining at the end of fiscal year 2011 shall revert to the general fund by October 1, 2011, unless otherwise indicated in the General Appropriation Act of 2011 or otherwise provided by law.

E. Unexpended balances in agency accounts remaining at the end of fiscal year 2012 shall revert to the general fund by October 1, 2012, unless otherwise indicated in the General Appropriation Act of 2011 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 2011, appropriations are made in that act for the expenditures of agencies and for other purposes as required by existing law for fiscal year 2012. If any other act of the first session of the fiftieth 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 2011 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 2012 revenue collections with the revenue estimate. If the analyses indicate that revenues and transfers to the general fund are not expected to meet appropriations, then the department shall present a plan to the legislative finance committee that outlines the methods by which the administration proposes to address the deficit.]~~*LINE-ITEM VETO*

I. Pursuant to Sections 6-3-23 through 6-3-25 NMSA 1978, agencies whose revenue from state board of finance loans, from revenue appropriated by other acts of the legislature, or from gifts, grants, donations, bequests, insurance settlements, refunds or payments into revolving funds exceeds specifically appropriated amounts may request budget increases from the state budget division. If approved by the state budget division, such money is appropriated.

~~[J. Pursuant to Section 6-4-2 NMSA 1978, federal funds received during fiscal year 2012 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 2012 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 fiftieth 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 fiftieth legislature.

K. During fiscal year 2012, each agency, institution or other governmental entity that receives money appropriated in Section 4 of the General Appropriation Act of 2011 and that also receives federal funds shall submit a quarterly report to the department of finance and administration and legislative finance committee pursuant to the following provisions;

(1) the report shall contain the following information:

(a) the amount of federal funds received during the preceding quarter;

(b) whether the federal funds received were referenced in the General Appropriation Act of 2011 or whether they were budgeted through the budget adjustment process;

(c) the purpose for which the federal funds were received;

(d) the expenditure period during which the federal funds may be expended;

(e) the amount of federal funds expended during the preceding quarter and the purpose of the expenditures; and

(f) whether the federal funds expended were referenced in the General Appropriation Act of 2011 or whether they were budgeted through the budget adjustment process;

(2) the reports shall be due on September 15, January 15, April 15 and July 15 for federal funds received or expended during the preceding calendar quarter;

(3) the higher education department shall require the reports from the public post-secondary institutions and shall forward the reports to the



department of finance and administration, legislative finance committee and legislative education study committee; and

(4) the public education department shall require the reports from school districts and locally-chartered and state-chartered charter schools and forward the reports to the department of finance and administration, legislative finance committee and legislative education study committee.

~~L. For fiscal year 2012, 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 2011 or another act of the first session of the fiftieth legislature provides for additional employees. For purposes of the General Appropriation Act of 2011 and any other act of the first session of the fiftieth 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).]LINE-ITEM VETO~~

M. 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 2011 may be expended for payment of agency-issued credit card invoices.

N. To prevent unnecessary spending, expenditures from the General Appropriation Act of 2011 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.

O. For the purpose of administering the General Appropriation Act of 2011 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 179 Section 4 Laws 2011

Item	General Fund	Other State Funds	Intrnl Svc Funds/Inter-Agency Trnsf	Federal Funds	Total/Target
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### Section 4. FISCAL YEAR 2012 APPROPRIATIONS.--

#### A. LEGISLATIVE

**LEGISLATIVE COUNCIL SERVICE:**

(1) Legislative building services:

Appropriations:

(a)	Personal services and employee benefits	2,744.7		2,744.7
(b)	Contractual services	97.3		97.3
(c)	Other	1,045.2	1,045.2	

Authorized FTE: 50.00 Permanent; 1.00 Temporary

(2) Energy council dues:

Appropriations:	32.0		32.0	
Subtotal			3,919.2	
TOTAL LEGISLATIVE	3,919.2			3,919.2

**B. JUDICIAL**

**SUPREME COURT LAW LIBRARY:**

The purpose of the supreme court law library is to provide and produce legal information for the judicial, legislative and executive branches of state government, the legal community and the public at large so they may have equal access to the law, effectively address the courts, make laws and write regulations, better understand the legal system and conduct their affairs in accordance with the principles of law.

Appropriations:

(a)	Personal services and employee benefits	642.0		642.0
(b)	Contractual services	360.7	1.8	362.5
(c)	Other	488.1	488.1	

Authorized FTE: 8.00 Permanent

Performance measures:

(a) Output: Percent of updated titles	70%
(b) Output: Number of research requests	7,000
Subtotal	1,492.6

**NEW MEXICO COMPILATION COMMISSION:**

The purpose of the New Mexico compilation commission is to publish in print and electronic format, distribute and sell (1) laws enacted by the legislature, (2) opinions of the supreme court and court of appeals, (3) rules approved by the supreme court, (4) attorney general opinions and (5) other state and federal rules and opinions. The commission ensures the accuracy and reliability of its publications.

Appropriations:

(a) Personal services and employee benefits	506.4	506.4
(b) Contractual services	939.7 400.0	1,339.7
(c) Other	133.0	133.0

Authorized FTE: 5.00 Permanent; 1.00 Term

Subtotal	1,979.1
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**JUDICIAL STANDARDS COMMISSION:**

The purpose of the judicial standards commission program is to provide a public review process addressing complaints involving judicial misconduct to preserve the integrity and impartiality of the judicial process.

Appropriations:

(a) Personal services and employee benefits	578.5	578.5
(b) Contractual services	28.0	28.0
(c) Other	106.9 25.0	131.9

Authorized FTE: 7.00 Permanent; 1.00 Temporary

Performance measures:

(a) Efficiency: On knowledge of cause for emergency interim suspension,  
time for commission to file petition for temporary  
suspension, in days 2

Subtotal 738.4

### **COURT OF APPEALS:**

The purpose of the court of appeals program is to provide access to justice, resolve disputes justly and timely and maintain accurate records of legal proceedings that affect rights and legal status to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a) Personal services and employee benefits	4,981.1	4,981.1
(b) Contractual services	27.0	27.0
(c) Other	387.5 1.0	388.5

Authorized FTE: 61.50 Permanent

Performance measures:

(a) Explanatory: Cases disposed as a percent of cases filed 95%

Subtotal 5,396.6

### **SUPREME COURT:**

The purpose of the supreme court program is to provide access to justice, resolve disputes justly and timely and maintain accurate records of legal proceedings that affect rights and legal status to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a) Personal services and employee benefits	2,711.4	2,711.4
(b) Contractual services	14.2	14.2

(c) Other 88.1 88.1

Authorized FTE: 34.00 Permanent

Notwithstanding the provisions of Sections 35-8-7 and 38-5-15 NMSA 1978, the supreme court has the authority to reduce juror pay as needed to stay within the appropriation for the jury and witness fund.

Performance measures:

(a) Explanatory: Cases disposed as a percent of cases filed 95%

Subtotal 2,813.7

### 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 2,927.0 125.0 50.0 3,102.0

(b) Contractual services 341.5 100.0 148.9 890.0 1,480.4

(c) Other 3,728.4 2,025.0 346.1 26.3 6,125.8

~~[(d) Other financing uses 250.0 250.0]~~

Authorized FTE: 37.80 Permanent; 3.00 Term

~~[The general fund appropriation to the administrative support program of the administrative office of the courts in the other financing uses category includes two hundred and fifty thousand dollars (\$250,000) to avoid furloughs and layoffs in judicial agencies statewide.]LINE-ITEM VETO~~

Performance measures:

(a) Outcome: Percent of jury summons successfully executed 92%

(b) Output: Average cost per juror \$50

(2) Statewide judiciary automation:

The purpose of the statewide judicial 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	2,297.4	1,961.8	4,259.2
(b)	Contractual services		1,360.7	1,360.7
(c)	Other	44.5	3,325.9	3,370.4

Authorized FTE: 42.50 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	16,185.7	2,504.5	18,690.2
(b)	Contractual services	40.2	598.3	100.0
				738.5
(c)	Other	6,074.7	1,534.4	700.0
				8,309.1

Authorized FTE: 284.50 Permanent; 57.50 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%

(4) Special court services:

The purpose of the special court services program is to provide court advocates, legal counsel and safe exchanges for children and families; to provide judges pro tem; and to adjudicate water rights disputes so the constitutional rights and safety of citizens, especially children and families, are protected.

Appropriations:

(a)	Personal services and employee benefits	213.5	213.5	
(b)	Contractual services	5,512.0	324.2	5,836.2
(c)	Other	15.3	15.3	
(d)	Other financing uses	1,118.1	915.8	2,033.9

Authorized FTE: 3.00 Permanent

Notwithstanding the provisions of Section 11-6A-3 NMSA 1978 or other substantive law, the internal service funds/interagency transfers appropriation to the special court services program of the administrative office of the courts in the other financing uses category includes eight hundred thousand (\$800,000) from the local DWI grant fund for drug courts. Any unexpended balances from the local DWI grant fund appropriation remaining at the end of fiscal year 2012 shall revert to the local DWI grant fund.

Performance measures:

(a) Output:	Number of required events attended by attorneys in abuse and neglect cases	7,800
(b) Output:	Number of cases to which court-appointed special advocates volunteers are assigned	1,000
(c) Output:	Number of monthly supervised child visitations and exchanges conducted	500
	Subtotal	55,785.2

**SUPREME COURT BUILDING COMMISSION:**

The purpose of the supreme court building commission is to retain custody and control of the supreme court building and its grounds and to provide care, preservation, repair, cleaning, heating and lighting and to hire necessary employees for these purposes.

Appropriations:

(a)	Personal services and employee benefits	624.3		624.3
(b)	Contractual services	10.5		10.5
(c)	Other	148.5	148.5	
Authorized FTE: 15.80 Permanent				
	Subtotal		783.3	

**DISTRICT COURTS:**

(1) First judicial district:

The purpose of the first judicial district court program, statutorily created in Santa Fe, Rio Arriba and Los Alamos counties, is to provide access to justice, resolve disputes justly and timely and maintain accurate records of legal proceedings that affect rights and legal status to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a)	Personal services and employee benefits	5,672.9	252.9	298.8	6,224.6
(b)	Contractual services	106.1	55.0	87.2	248.3
(c)	Other	172.1	158.5	46.7	377.3

Authorized FTE: 86.00 Permanent; 8.80 Term

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 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 19,888.9 1,448.6 902.5 22,240.0
- (b) Contractual services 142.1 75.9 218.0
- (c) Other 326.1 267.0 68.7 661.8

Authorized FTE: 326.50 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 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	5,196.8	100.0	533.1	5,829.9
(b)	Contractual services	600.0	70.0	78.2	748.2
(c)	Other	100.0	25.0	58.0	183.0

Authorized FTE: 85.30 Permanent; 6.50 Term

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	65%
(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 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	1,815.1			1,815.1
(b)	Contractual services	59.9	7.0	147.7	214.6

(c) Other 91.5 20.0 111.5

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 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 5,238.9 14.0 5,252.9

(b) Contractual services 300.0 75.0 225.7 600.7

(c) Other 180.0 40.0 61.3 281.3

Authorized FTE: 82.00 Permanent; 1.00 Term

Performance measures:

(a) Explanatory: Cases disposed as a percent of cases filed 95%

(b) Output: Number of days to process juror payment vouchers 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 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	2,255.1		41.4	2,296.5
(b)	Contractual services	536.2	14.8	69.2	620.2
(c)	Other	127.7	11.0	138.7	

Authorized FTE: 35.50 Permanent; .50 Term

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 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 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	1,733.6		261.7	1,995.3
(b)	Contractual services	250.6	21.0	75.3	346.9
(c)	Other	102.3	13.0	35.0	150.3

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 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 1,900.4 1,900.4
- (b) Contractual services 605.1 45.0 112.2 762.3
- (c) Other 74.8 26.0 100.8

Authorized FTE: 27.50 Permanent

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 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	2,904.2		426.7	3,330.9
(b)	Contractual services	20.5	16.5	91.0	128.0
(c)	Other	79.7	41.5	95.4	216.6

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 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	644.7		644.7	
(b)	Contractual services	12.0	19.3		31.3
(c)	Other	68.3	11.4	79.7	

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 9

(11) Eleventh judicial district:

The purpose of the eleventh judicial district court program, statutorily created in San Juan and McKinley counties, is to provide access to justice, resolve disputes justly and timely and maintain accurate records of legal proceedings that affect rights and legal status to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a)	Personal services and				
	employee benefits	4,918.5		351.2	5,269.7
(b)	Contractual services	420.0	94.0	161.9	675.9
(c)	Other	250.0	38.9	84.5	373.4

Authorized FTE: 79.50 Permanent; 6.50 Term

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 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	2,593.9			2,593.9
(b)	Contractual services	141.4	34.5	83.0	258.9
(c)	Other	129.0	23.0	152.0	

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 to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a)	Personal services and				
	employee benefits	4,964.7		279.0	5,243.7
(b)	Contractual services	771.1	101.9	312.1	1,185.1
(c)	Other	329.9	4.0	38.5	372.4

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		73,874.8

**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 to maintain accurate records of legal proceedings that affect rights and legal status to independently protect the rights and liberties guaranteed by the constitutions of New Mexico and the United States.

Appropriations:

(a)	Personal services and				
	employee benefits	16,897.5	1,741.7	98.8	18,738.0
(b)	Contractual services	2,284.6	1,411.3		
		3,695.9			
(c)	Other	2,087.1	341.1	2,428.2	

Authorized FTE: 297.00 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	\$9
(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	80%
(f) Outcome:	Fees and fines collected as a percent of fees and fines assessed	95%

Subtotal		24,862.1
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**DISTRICT ATTORNEYS:**

(1) First judicial district:

The purpose of the prosecution program is to provide litigation, special programs and administrative support for the enforcement of state laws as they pertain to the district attorney and to improve and ensure the protection, safety, welfare and health of the citizens within Santa Fe, Rio Arriba and Los Alamos counties.

Appropriations:

(a) Personal services and				
employee benefits	4,234.2		78.8	4,313.0
(b) Contractual services	13.8			13.8
(c) Other	277.8	277.8		

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 4,000
- (c) Output: Number of cases referred for screening 6,800

(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	15,651.1	417.0	689.0	185.0	16,942.1
(b) Contractual services	40.6	2.0	0.6		43.2
(c) Other	386.1	65.0	44.5		495.6

Authorized FTE: 283.00 Permanent; 15.00 Term

Performance measures:

- (a) Outcome: Percent of cases dismissed under the six-month rule <1.8%

(b) Output: Number of cases prosecuted 24,500

(c) Output: Number of cases referred for screening 29,500

(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	3,969.2	359.4	171.6	508.3	5,008.5
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(b) Contractual services	13.3				13.3
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(c) Other	257.2		257.2		
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Authorized FTE: 62.00 Permanent; 19.00 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 0.05%

(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 protection, safety, welfare and health for the citizens of Mora, San Miguel and Guadalupe counties.

Appropriations:

(a) Personal services and

employee benefits	2,704.7				2,704.7
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(b) Contractual services	13.0				13.0
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(c) Other	164.3		164.3		
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Authorized FTE: 42.00 Permanent

Performance measures:

- (a) Output: Number of cases referred for screening 2,455
- (b) Outcome: Percent of cases dismissed under the six-month rule <1%
- (c) Output: Number of cases prosecuted 2,255

(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 3,948.5 3,948.5
- (b) Contractual services 16.3 16.3
- (c) Other 159.5 159.5

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 4,200
- (c) Output: Number of cases referred for screening 4,700

(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 2,215.8 43.4 128.2 2,387.4
- (b) Contractual services 19.2 19.2

(c) Other 147.6 147.6

Authorized FTE: 35.00 Permanent; 3.00 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	2,066.4	2,066.4
(b)	Contractual services	12.5	12.5
(c)	Other	133.1	133.1

Authorized FTE: 36.00 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 1,950

(c) Output: Number of cases referred for screening 2,050

(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	2,216.5	2,216.5
(b)	Contractual services	10.6	10.6
(c)	Other	142.9	142.9

Authorized FTE: 36.00 Permanent

Performance measures:

- (a) Output: Number of cases referred for screening 2,100
- (b) Output: Number of cases prosecuted 1,500
- (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	2,448.4	2,448.4
(b)	Contractual services	10.3	10.3
(c)	Other	104.8	104.8

Authorized FTE: 39.00 Permanent

Performance measures:

- (a) Output: Number of cases prosecuted 3,000
- (b) Output: Number of cases referred for screening 3,200
- (c) Outcome: Percent of cases dismissed under the six-month rule <1%

(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	843.8		843.8
(b)	Contractual services	11.4		11.4
(c)	Other	85.2	85.2	

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 1,000
- (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	2,867.1	591.5	131.0	78.1	3,667.7
(b)	Contractual services	16.0				16.0
(c)	Other	141.7	141.7			

Authorized FTE: 55.00 Permanent; 11.70 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	1,830.1	124.0	1,954.1
(b)	Contractual services	11.4		11.4
(c)	Other	91.0	91.0	

Authorized FTE: 33.00 Permanent; 3.00 Term

Performance measures:

- (a) Outcome: Percent of cases dismissed under the six-month rule <1%
- (b) Output: Number of cases prosecuted 2,769
- (c) Output: Number of cases referred for screening 3,478

(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	2,246.3	409.5	2,655.8
(b)	Contractual services	15.0		15.0
(c)	Other	152.1	152.1	

Authorized FTE: 39.00 Permanent; 8.50 Term

Performance measures:

- (a) Outcome: Percent of cases dismissed under the six-month rule <0.5%
- (b) Output: Number of cases prosecuted 3,400



(c) Output: Number of cases referred for screening 5,000

(14) Thirteenth judicial district:

The purpose of the prosecution program is to provide litigation, special programs and administrative support for the 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	4,102.8	137.5	4,240.3
(b) Contractual services	7.2		7.2
(c) Other	242.6	10.2	252.8

Authorized FTE: 80.00 Permanent; 2.00 Term

Performance measures:

(a) Outcome: Percent of cases dismissed under the six-month rule <0.01%

(b) Output: Number of cases prosecuted 6,200

(c) Output: Number of cases referred for screening 7,966

Subtotal 58,216.0

#### **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 to effectively and efficiently carry out their prosecutorial, investigative and programmatic functions.

Appropriations:

(a) Personal services and			
employee benefits	982.5		982.5
(b) Contractual services	47.2		47.2

(c) Other 777.5 200.0 977.5

Authorized FTE: 13.00 Permanent

Performance measures:

(a) Output: Number of victim notification events and escapes reported,  
monthly 7,500

(b) Output: Number of trainings conducted during the fiscal year 20

Subtotal 2,007.2

TOTAL JUDICIAL 192,787.0 23,404.9 9,402.9 2,354.2 227,949.0

### C. GENERAL CONTROL

#### ATTORNEY GENERAL:

(1) Legal services:

The purpose of the legal services program is to deliver quality legal services, including opinions, counsel and representation to state government entities and to enforce state law on behalf of the public so New Mexicans have an open, honest, efficient government and enjoy the protection of state law.

Appropriations:

(a) Personal services and employee benefits	7,069.4	6,347.2	13,416.6
(b) Contractual services	62.3	372.4	434.7
(c) Other	700.0 1,284.3	104.0	2,088.3

Authorized FTE: 158.00 Permanent; 1.00 Term

The internal service funds/interagency transfers 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, unless otherwise required by the terms of a court-approved order or settlement.

The other state funds appropriations to the legal services program of the attorney general include eight million three thousand nine hundred dollars (\$8,003,900) from the consumer settlement fund.

The other state funds appropriations to the legal services program of the attorney general include three hundred thousand dollars (\$300,000) for tobacco litigation and arbitration costs, one hundred fifty thousand dollars (\$150,000) for the purpose of qui tam and one hundred fifty thousand dollars (\$150,000) for the purpose of government accountability.

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 and recipient abuse and neglect in the medicaid program.

Appropriations:

(a) Personal services and

employee benefits	410.2	1,230.7	1,640.9
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(b) Contractual services	2.0	5.9	7.9
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(c) Other	79.8	154.1	239.4	473.3
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(d) Other financing uses		104.0	104.0
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Authorized FTE: 21.00 Permanent

The other state funds appropriation to the medicaid fraud program of the attorney general in the other category includes one hundred fifty-four thousand one hundred dollars (\$154,100) for the purpose of court reporting services, witness fees, transaction fees and supplies.

Performance measures:

(a) Outcome: Three-year projected savings resulting from fraud

investigations, in millions \$15

(b) Explanatory: Total medicaid fraud recoveries identified, in thousands  
\$2,000

Subtotal		18,165.7
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**STATE AUDITOR:**

The purpose of the state auditor program is to audit the financial affairs of every agency annually so they can improve accountability and performance and to assure New Mexico citizens that funds are expended properly.

Appropriations:

(a)	Personal services and				
	employee benefits	1,925.0	344.8	172.4	2,442.2
(b)	Contractual services	61.7	11.1	5.5	78.3
(c)	Other	246.7	44.1	22.1	312.9

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	80%
Subtotal		2,833.4

**TAXATION AND REVENUE DEPARTMENT:**

(1) Tax administration:

The purpose of the tax administration program is to provide registration and licensure requirements for tax programs and to ensure the administration, collection and compliance of state taxes and fees that provide funding for support services for the general public through appropriations.

Appropriations:

(a)	Personal services and				
	employee benefits	16,505.1	7,190.9		1,238.0
		24,934.0			
(b)	Contractual services	54.6	44.0	13.0	111.6
(c)	Other	5,159.6	552.8	222.9	5,935.3

Authorized FTE: 472.50 Permanent; 26.00 Term; 29.50 Temporary

Performance measures:

(a) Output: Percent of electronically filed returns for personal income tax and combined reporting system 65%

(b) Outcome: Collections as a percent of collectable audit assessments generated in the current fiscal year 40%

(c) Outcome: Collections as a percent of collectable outstanding balances from the end of the prior fiscal year 15%

(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	6,370.6	8,742.9	15,113.5
(b) Contractual services	1,328.0	2,158.7	
	3,486.7		
(c) Other	3,411.4	2,364.5	5,775.9

Authorized FTE: 342.00 Permanent; 3.00 Term; 3.00 Temporary

Performance measures:

(a) Efficiency: Average call center wait time to reach an agent, in minutes  
6

(b) Outcome: Percent of registered vehicles with liability insurance 92%

(c) Efficiency: Average wait time in qmatic-equipped offices, in minutes  
20

(3) Property tax:

The purpose of the property tax program is to administer the Property Tax Code, to ensure the fair appraisal of property and to assess property taxes within the state.

Appropriations:

(a)	Personal services and employee benefits	2,476.8	2,476.8
(b)	Contractual services	70.0	70.0
(c)	Other	567.2	567.2

Authorized FTE: 41.00 Permanent

Performance measures:

- (a) Output: Number of appraisals or valuations for companies conducting business within the state subject to state assessment 540
- (b) Outcome: Percent of counties in compliance with sales ratio standard of eighty-five percent assessed value-to-market value 92%

(4) Compliance enforcement:

The purpose of the compliance enforcement program is to support the overall mission of the taxation and revenue department by enforcing criminal statutes relative to the New Mexico Tax Administration Act and other related financial crimes, as they impact New Mexico state taxes, to encourage and achieve voluntary compliance with state tax laws.

Appropriations:

(a)	Personal services and employee benefits	1,543.8	250.0	1,793.8
(b)	Contractual services	9.9		9.9
(c)	Other	260.8	260.8	

Authorized FTE: 28.00 Permanent

Performance measures:

- (a) Outcome: Number of tax investigations referred to prosecutors as a percent of total investigations assigned during the year 40%
- (b) 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 to give agency personnel the resources needed to meet departmental objectives. For the general public, the program conducts hearings for resolving taxpayer protests and provides stakeholders with reliable information regarding the state's tax programs.

Appropriations:

(a) Personal services and

employee benefits	12,549.9	787.2	374.8	13,711.9
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(b) Contractual services	2,416.9	104.0	48.0	2,568.9
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(c) Other	4,023.3	41.3	77.2	4,141.8
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Authorized FTE: 191.00 Permanent

Notwithstanding any contrary provision in the Tax Administration Act, the department shall withhold an administrative fee in the amount of three and twenty-five hundredths percent of the distributions specified in Section 7-1-6.46 NMSA 1978 and in Subsection E of Section 7-1-6.41 NMSA 1978. Notwithstanding any contrary provision in the Tax Administration Act, of the amounts withheld, an amount equal to three percent of the distributions specified in Subsection E of Section 7-1-6.41 NMSA 1978 shall be deposited into the general fund and the remainder of the amounts withheld shall be retained by the department and is included in the other state fund appropriations to the department.

Performance measures:

(a) Outcome: Percent of driving-while-intoxicated drivers' license

revocations rescinded due to failure to hold hearings

within ninety days <1%

Subtotal	80,958.1
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**STATE INVESTMENT COUNCIL:**

(1) State investment:

The purpose of the state investment program is to provide investment management of the state's permanent funds for the citizens of New Mexico to maximize distributions to the state's operating budget while preserving the real value of the funds for future generations of New Mexicans.

Appropriations:

(a)	Personal services and employee benefits	3,671.3	3,671.3
(b)	Contractual services	29,837.3	29,837.3
(c)	Other	793.6	793.6

Authorized FTE: 32.00 Permanent

The other state funds appropriation to the state investment council in the contractual services category includes twenty-three million eight hundred forty-two thousand nine hundred dollars (\$23,842,900) for investment 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 34,302.2

**DEPARTMENT OF FINANCE AND ADMINISTRATION:**

(1) Policy development, fiscal analysis, budget oversight and education accountability:

The purpose of the policy development, fiscal analysis, budget oversight and education accountability program is to provide professional and coordinated policy development and analysis and oversight to the governor, the legislature and state agencies so they can advance the state's policies and initiatives using appropriate and accurate data to make informed decisions for the prudent use of the public's tax dollars.

Appropriations:

- (a) Personal services and



	employee benefits	3,023.0		3,023.0
(b)	Contractual services	83.9		83.9
(c)	Other	167.1	167.1	

Authorized FTE: 35.00 Permanent

Performance measures:

- (a) Outcome: General fund reserves as a percent of recurring appropriations 5%

(2) Community development, local government assistance and fiscal oversight:

The purpose of the community development, local government assistance and fiscal oversight program is to help counties, municipalities and special districts to maintain strong communities through sound fiscal advice and oversight, technical assistance, monitoring of project and program progress and timely processing of payments, grant agreements, and contracts.

Appropriations:

(a)	Personal services and				
	employee benefits	1,942.4	1,028.0	429.6	3,400.0
(b)	Contractual services	1,627.9	2,083.1		32.0
		3,743.0			
(c)	Other	75.9	31,534.1	14,269.6	45,879.6
(d)	Other financing uses		1,300.0		1,300.0

Authorized FTE: 30.00 Permanent; 21.00 Term

Notwithstanding the provisions of Section 11-6A-3 NMSA 1978 or other substantive law, the other state funds appropriation in the other financing uses category includes eight hundred thousand dollars (\$800,000) from the local DWI grant fund, including local DWI grant program distributions, to be transferred to the administrative office of the courts for drug courts.

The other state funds appropriations to the community development, local government assistance and fiscal oversight program of the department of finance and administration include fourteen million four hundred sixty-seven thousand nine hundred dollars (\$14,467,900) from the 911 enhancement fund; nineteen million four hundred thousand dollars (\$19,400,000) from the local DWI grant fund; and two million seventy-seven thousand three hundred dollars (\$2,077,300) from the civil legal services fund.

Performance measures:

- (a) Output: Number of capital projects older than five years for which the funding is not expended or reverted 20
- (b) Output: Percent of local entity budgets submitted to the local government division by established deadline 90%
- (c) Outcome: Number of local entities operating under a continuing resolution for a portion of the fiscal year 14

(3) Fiscal management and oversight:

The purpose of the fiscal management and oversight program is to provide for and promote financial accountability for public funds throughout state government by providing state agencies and the citizens of New Mexico with timely, accurate and comprehensive information on the financial status and expenditures of the state.

Appropriations:

(a)	Personal services and employee benefits	4,010.0	595.0	4,605.0
(b)	Contractual services	245.3		245.3
(c)	Other	622.8	622.8	

Authorized FTE: 65.00 Permanent

Performance measures:

- (a) Efficiency: Length of time to issue the comprehensive annual financial report after the end of the fiscal year, in months 7

(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 all state professional service contracts.

Appropriations:

- (a) Personal services and

	employee benefits	1,414.4	1,414.4
(b)	Contractual services	85.1	85.1
(c)	Other	47.9	47.9

Authorized FTE: 19.00 Permanent

Performance measures:

(a) Outcome: Percent of funds reconciled and closed, as an internal process, within 15 days after month-end 100%

(5) Dues and membership fees/special appropriations:

Appropriations:

(a)	Council of state governments	92.4	92.4
(b)	Western interstate commission for higher education	120.3	120.3
(c)	Education commission of the states	58.2	58.2
(d)	National association of state budget officers	15.1	15.1
(e)	National conference of state legislatures	127.1	127.1
(f)	Western governors' association	34.6	34.6
(g)	Governmental accounting standards board	15.1	15.1
(h)	National center for state		

	courts	89.5	89.5	
(i)	National conference of insurance legislators	9.7		9.7
(j)	National council of legislators from gaming states	2.9		2.9
(k)	National governors' association	77.4	77.4	
(l)	Citizens' review board	319.0	174.3	493.3
(m)	Emergency water supply fund	118.4		118.4
(n)	Fiscal agent contract	840.0		840.0
(o)	State planning districts	670.2		670.2
(p)	Youth mentoring program	2,207.7		2,207.7
(q)	Statewide teen court		180.0	180.0
(r)	Santa Fe teen court	60.0		60.0
(s)	Law enforcement protection fund	7,809.4		7,809.4
(t)	Leasehold community assistance	128.9		128.9
(u)	County detention of prisoners	3,300.0		3,300.0
(v)	Acequia and community ditch education program	200.0		200.0
(w)	New Mexico acequia			

	commission	13.4	13.4
(x)	Food banks	339.4	339.4

Upon certification by the state board of finance pursuant to Section 6-1-2 NMSA 1978 that a critical emergency exists that cannot be addressed by disaster declaration or other emergency or contingency funds ~~[and 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 2012.

~~[The outstanding balance of the state board of finance emergency loan to the Tajiue mutual domestic water consumer's association in the original amount of forty-eight thousand dollars (\$48,000) is converted from a loan to a grant.]~~ *LINE-ITEM VETO*

The department of finance and administration shall not distribute a general fund appropriation made in items (o) through (v) to a New Mexico agency or local public body that is not current on its audit or financial reporting or otherwise in compliance with the Audit Act.

Subtotal	81,620.1
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**PUBLIC SCHOOL INSURANCE AUTHORITY:**

(1) Benefits:

The purpose of the benefits program is to provide an effective health insurance package to educational employees and their eligible family members so they can be protected against catastrophic financial losses due to medical problems, disability or death.

Appropriations:

(a)	Contractual services	285,660.0	285,660.0
(b)	Other financing uses	640.1	640.1

Performance measures:

(a) Outcome: Average number of days to resolve inquiries and appeals  
related to customer service claims      10

(b) Efficiency:      Percent variance of medical premium change between the  
public school insurance authority and industry average      0%

(c) Output:      Number of participants covered by health plans 58,000

(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	63,425.2	63,425.2
(b)	Other financing uses	640.1	640.1

Performance measures:

(a) Outcome: Number of workers' compensation claims in the area of ergonomics 192

(b) Outcome: Average cost per claim for current fiscal year as compared with prior fiscal year \$5,250

(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	872.2	872.2
(b)	Contractual services	190.6	190.6
(c)	Other	217.4	217.4

Authorized FTE: 11.00 Permanent

Subtotal 351,645.6

**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	234,278.0	234,278.0
(b)	Other financing uses	2,686.0	2,686.0

Performance measures:

(a) Output:	Minimum number of years of long-term actuarial solvency	15
(b) Outcome:	Total revenue generated, in millions	\$252
(c) Efficiency:	Total revenue increase to the reserve fund, in millions	\$17.7
(d) Efficiency:	Total healthcare benefits program claims paid, in millions	\$234.3

(2) Program support:

The purpose of program support is to provide administrative support for the health care benefits administration program to assist the agency in delivering its services to its constituents.

Appropriations:

(a)	Personal services and employee benefits	1,700.2	1,700.2
(b)	Contractual services	477.7	477.7
(c)	Other	508.1	508.1

Authorized FTE: 25.00 Permanent

Any unexpended balances in program support of the retiree health care authority remaining at the end of fiscal year 2012 shall revert to the health care benefits administration program.

Performance measures:

(a) Outcome:	Number of prior-year audit findings that recur	0
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Subtotal	239,650.0
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**GENERAL SERVICES DEPARTMENT:**

(1) Employee group health benefits:

The purpose of the employee group health benefits program is to effectively administer comprehensive health-benefit plans to state and local government employees.

Appropriations:

(a)	Contractual services		20,280.0	20,280.0
(b)	Other	331,167.8	331,167.8	
(c)	Other financing uses		1,626.7	1,626.7

Performance measures:

(a) Efficiency: Percent change in state employee medical premium compared with the industry average 0%

(b) Efficiency: Percent change in dental premium compared with the national average 0%

(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, workers' compensation, state unemployment compensation, local public bodies unemployment compensation and surety bond losses so agencies can perform their missions in an efficient and responsive manner.

Appropriations:

(a)	Personal services and employee benefits		4,053.0	4,053.0
(b)	Other	500.6	500.6	
(c)	Other financing uses		2,201.3	2,201.3

Authorized FTE: 63.00 Permanent

Performance measures:

(a) Explanatory: Projected financial position of the public property fund 100%



(b) Explanatory: Projected financial position of the workers' compensation fund 35%

(c) Explanatory: Projected financial position of the public liability fund 50%

(3) Risk management funds:

Appropriations:

(a)	Public liability		33,795.8	33,795.8
(b)	Surety bond	145.3	145.3	
(c)	Public property reserve		10,880.9	10,880.9
(d)	Local public body unemployment compensation reserve		3,559.0	3,559.0
(e)	Workers' compensation retention	18,490.7	18,490.7	
(f)	State unemployment compensation		21,203.7	21,203.7
(g)	Employee assistance program		200.0	200.0

(4) State printing services:

The purpose of the state printing services program is to provide cost-effective printing and publishing services for governmental agencies.

Appropriations:

(a)	Personal services and employee benefits		1,160.0	1,160.0
(b)	Contractual services		13.0	13.0
(c)	Other	669.4	669.4	
(d)	Other financing uses		92.3	92.3

Authorized FTE: 18.00 Permanent

(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 so agencies can perform their missions in an efficient and responsive manner.

Appropriations:

(a)	Personal services and employee benefits	5,591.8	5,591.8
(b)	Contractual services	212.3	212.3
(c)	Other	5,531.3	5,531.3
(d)	Other financing uses	157.5	157.5

Authorized FTE: 157.00 Permanent

Performance measures:

(a) Explanatory:	Percent of state-controlled office space occupied	95%
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(6) Transportation services:

The purpose of the transportation services program is to provide centralized and effective administration of the state's motor pool and aircraft transportation services so agencies can perform their missions in an efficient and responsive manner.

Appropriations:

(a)	Personal services and employee benefits	2,366.6	2,366.6
(b)	Contractual services	78.1	78.1
(c)	Other	5,389.8	5,389.8
(d)	Other financing uses	366.2	366.2

Authorized FTE: 38.00 Permanent

Performance measures:

- (a) Explanatory: Percent of short-term vehicle use 50%
- (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 40%

(7) Procurement services:

The purpose of the procurement services program is to provide a procurement process for tangible property for government entities to ensure compliance with the Procurement Code so agencies can perform their missions in an efficient and responsive manner.

Appropriations:

- (a) Personal services and employee benefits 1,175.3 499.5 1,674.8
- (b) Other 170.5 53.0 223.5
- (c) Other financing uses 59.2 25.0 84.2

Authorized FTE: 29.00 Permanent

Performance measures:

- (a) Outcome: Percent of all price agreement renewals considered for "best value" strategic sourcing option 20%
- (b) Quality: Percent of customers satisfied with procurement services 90%
- (c) Outcome: Number of small business clients assisted 250
- (d) Output: Number of government employees trained on Procurement Code compliance and methods 500

(8) Program support:

The purpose of program support is to manage the program performance process to demonstrate success.

Appropriations:

(a)	Personal services and employee benefits	2,698.2	2,698.2
(b)	Contractual services	209.3	209.3
(c)	Other	428.5	428.5

Authorized FTE: 37.00 Permanent

Any unexpended balances in program support of the general services department remaining at the end of fiscal year 2012 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 each individual programs' assessments for program support.

Subtotal	475,051.6
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**EDUCATIONAL RETIREMENT BOARD:**

(1) Educational retirement:

The purpose of the educational retirement program is to provide secure retirement benefits to active and retired members so they can have secure monthly benefits when their careers are finished.

Appropriations:

(a)	Personal services and employee benefits	4,405.5	4,405.5
(b)	Contractual services	35,038.0	35,038.0
(c)	Other	834.6	834.6

Authorized FTE: 58.00 Permanent

The other state funds appropriation to the educational retirement program of the educational retirement board in the contractual services category includes thirty million six hundred thousand dollars (\$30,600,000) 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 one million three hundred fifty thousand dollars (\$1,350,000) for payment of custody services associated with the fiscal agent contract.

The other state funds appropriation to the educational retirement program of the educational retirement board in the contractual services category includes one million seven hundred twenty-seven thousand three hundred dollars (\$1,727,300) for payment of legal services.

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 40,278.1

**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 529.8 25.4 555.2

(b) Other 4.6 4.6

Performance measures:

(a) Outcome: Percent of total possible victims who receive automated  
victim notification 25%

Subtotal 559.8

**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 their liberty and constitutional rights are protected and to serve the community as a partner in assuring a fair and efficient criminal justice system that sustains New Mexico's statutory and constitutional mandate to adequately fund a statewide indigent defense system.

Appropriations:

(a) Personal services and  
employee benefits 23,949.8 23,949.8

(b) Contractual services 9,887.4 74.4 9,961.8

(c) Other 5,311.2 165.6 5,476.8

Authorized FTE: 411.00 Permanent

Performance measures:

(a) Output: Number of alternative sentencing treatment placements for  
felony and juvenile clients 4,000

(b) Efficiency: Percent of cases in which application fees were collected  
35%

(c) Quality: Percent of felony cases resulting in a reduction of  
original formally filed charges 37%

Subtotal 39,388.4

**GOVERNOR:**

(1) Executive management and leadership:

The purpose of the executive management and leadership program is to provide appropriate management and leadership to the executive branch of government to allow for a more efficient and effective operation of the agencies within that branch of government on behalf of the citizens of the state.

Appropriations:

(a) Personal services and  
employee benefits 2,777.4 2,777.4

(b) Contractual services 100.8 100.8

(c) Other 516.4 516.4

Authorized FTE: 27.00 Permanent

Subtotal 3,394.6

**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, keep records of activities and submit an annual report to the governor.

Appropriations:

(a)	Personal services and employee benefits	591.4	591.4
(b)	Contractual services	32.4	32.4
(c)	Other	56.3	56.3
Authorized FTE: 8.00 Permanent			
	Subtotal	680.1	

**DEPARTMENT OF INFORMATION TECHNOLOGY:**

(1) Compliance and project management:

The purpose of the compliance and project management program is to provide information technology strategic planning, oversight and consulting services to New Mexico government agencies so they can improve services provided to New Mexico citizens.

Appropriations:

(a)	Personal services and employee benefits	381.5	381.5
(b)	Other financing uses	103.2	103.2

Authorized FTE: 7.00 Permanent

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 services:

The purpose of the enterprise services program is to provide reliable and secure infrastructure for voice, radio, video and data communications through the state's enterprise data center and telecommunications network.

Appropriations:

(a)	Personal services and employee benefits	10,809.8	10,809.8
(b)	Contractual services	8,308.6	8,308.6
(c)	Other	21,274.8	21,274.8
(d)	Other financing uses	8,028.3	8,028.3

Authorized FTE: 152.00 Permanent

Performance measures:

- (a) Output: Amount of information technology savings, cost avoidance or both realized through enterprise services and promotion of multi-agency initiatives, in millions \$4
- (b) Output: Queue-time to reach a customer service representative at the help desk, in seconds 0:19
- (c) Output: Percent of mission-critical data and applications residing in the enterprise data center not compromised on a security breach 0%
- (d) Outcome: Percent of unscheduled downtime of the mainframe affecting user access or batch scheduling 0.01%

(3) Equipment replacement revolving funds:

Appropriations:

(a)	Contractual services	325.0	325.0
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(b) Other	3,950.0	3,950.0
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(4) Program support:

The purpose of program support is to provide management and ensure cost recovery and allocation services through leadership, policies, procedures and administrative support for the department.

Appropriations:

(a) Personal services and employee benefits	3,017.8	3,017.8
(b) Contractual services	40.8	40.8
(c) Other	194.1	194.1

Authorized FTE: 41.00 Permanent

Performance measures:

(a) Outcome: Percent of audit corrective action plan commitments  
completed on schedule 95%

(b) Outcome: Percent of mainframe services meeting federal standards for  
cost recovery 100%

(c) Outcome: Percent of voice, data and radio services meeting federal  
standards for cost recovery 100%

Subtotal	56,433.9
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**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	5,479.0	5,479.0
(b)	Contractual services	23,208.7	23,208.7
(c)	Other	1,043.0	1,043.0

Authorized FTE: 76.00 Permanent

The other state funds appropriation to the pension administration program of the public employees retirement association in the contractual services category includes nineteen million one hundred sixty-eight thousand two hundred dollars (\$19,168,200) 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 dollars (\$2,000,000) for payment of custody services associated with the fiscal agent contract.

The other state funds appropriation to the pension administration program of the public employees retirement association in the contractual services category includes nine hundred eighty-five thousand one hundred dollars (\$985,100) to be used only for information technology services.

The other state funds appropriation to the pension administration program of the public employees retirement association in the contractual services category includes five hundred sixty thousand six hundred dollars (\$560,600) to be used only for investment-related legal services.

Performance measures:

- (a) Efficiency: Average number of days to respond to requests for benefit estimates, military buy-backs and service credit verifications 30-40
- (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 25th

Subtotal 29,730.7

**STATE COMMISSION OF PUBLIC RECORDS:**

(1) Records, information and archival management:

The purpose of the records, information and archival management program is to develop, implement and provide tools, methodologies and services for use by, and for the benefit of, government agencies, historical record repositories and the public so the state can effectively create, preserve, protect and properly dispose of records, facilitate their use and understanding and protect the interests of the citizens of New Mexico.

Appropriations:

(a) Personal services and employee benefits	2,164.5	53.3	11.7	2,229.5
(b) Contractual services	42.4	10.0	15.0	67.4
(c) Other	221.3	142.9	13.7	377.9

Authorized FTE: 40.00 Permanent; 2.00 Term

Performance measures:

(a) Outcome: Maximum number of days between rule effective date and online availability	32
(b) Outcome: Percent of total records items scheduled, reviewed, amended or replaced within a five-year period	30%

Subtotal 2,674.8

**SECRETARY OF STATE:**

(1) Administration and operations:

The purpose of the administration and operations program is to provide operational services to commercial and business entities and citizens, including administration of notary public commissions, uniform commercial code filings, trademark registrations and partnerships, and to provide administrative services needed to carry out elections.

Appropriations:

(a) Personal services and

	employee benefits	2,450.6	2,450.6
(b)	Contractual services	519.7	519.7
(c)	Other	209.5	209.5

Authorized FTE: 38.00 Permanent; 1.00 Term

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	1,192.7	1,054.0
			2,246.7

Notwithstanding any restriction on the use of the public election fund one million fifty thousand dollars (\$1,050,000) is appropriated to the elections program of the secretary of state for election expenses.

Performance measures:

- (a) Outcome: Percent of eligible registered voters who are registered to  
vote 78%

- (b) Outcome: Percent of campaign reports filed electronically by the due  
date 99%

- (c) Outcome: Percent of voting machines tested 100%

Subtotal 5,451.5

## PERSONNEL BOARD:

(1) Human resource management:

The purpose of the human resource management program is to provide a flexible system of merit-based opportunity, appropriate compensation, human resource accountability and employee development that meets the evolving needs of the agencies, employees, applicants and the public so economy and efficiency in the management of state affairs may be provided while protecting the interest of the public.

Appropriations:

(a)	Personal services and employee benefits	3,675.9	29.0	3,704.9
(b)	Contractual services	27.7		27.7
(c)	Other	197.5	197.5	

Authorized FTE: 57.00 Permanent

~~[Any unexpended balances remaining in the state employees' career development conference fund at the end of fiscal year 2012 shall not revert to the general fund.]LINE-ITEM VETO~~

Performance measures:

- (a) Outcome: Average number of days to fill a vacant position 40
- (b) Outcome: Percent of union grievances resolved prior to formal arbitration 95%
- (c) Explanatory: Percent of new employees who successfully complete their probationary period 85%
- (d) Outcome: Number of rule compliance audit reviews performed during the fiscal year 5
- (e) Output: Percent of eligible employees with a completed performance appraisal on record at the close of the fiscal year 99%
- (f) Outcome: Number of personnel system review audits performed during the fiscal year 4
- (g) Outcome: Average employee pay as a percent of board-approved comparator market based on legislative authorization 100%

(h) Explanatory: Percent of new-hire employee turnover 20%

Subtotal 3,930.1

**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	169.7	169.7
(b) Contractual services	4.1	4.1
(c) Other	41.0	41.0

Authorized FTE: 2.00 Permanent

Subtotal 214.8

**STATE TREASURER:**

The purpose of the state treasurer program is to provide a financial environment that maintains maximum accountability for receipt, investment and disbursement of public funds to protect the financial interests of New Mexico citizens.

Appropriations:

(a) Personal services and employee benefits	2,893.5	2,893.5
(b) Contractual services	205.6	205.6
(c) Other	481.0 122.3	603.3

Authorized FTE: 42.00 Permanent

Performance measures:

(a) Outcome: One-year annualized investment return on local government  
investment pool to exceed internal benchmark, in basis

points 5

(b) Outcome: One-year annualized investment return on general fund core

portfolio to exceed internal benchmarks, in basis points 5

Subtotal 3,702.4

TOTAL GENERAL CONTROL 157,973.2 771,566.1 523,301.1 17,825.5  
1,470,665.9

## 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 253.0 253.0

(b) Contractual services 8.4 8.4

(c) Other 100.7 100.7

Authorized FTE: 4.00 Permanent

Subtotal 362.1

### BORDER AUTHORITY:

(1) Border development:

The purpose of the border development program is to encourage and foster trade development in the state by developing port facilities and infrastructure at international ports of entry to attract new industries and business to the New Mexico border and to assist industries, businesses and the traveling public in their efficient and effective use of ports and related facilities.

Appropriations:

(a) Personal services and

	employee benefits	241.2	56.0		297.2
(b)	Contractual services		26.2	6.0	32.2
(c)	Other	70.2	16.1		86.3

Authorized FTE: 4.00 Permanent

Performance measures:

(a) Outcome: Annual trade share of New Mexico ports within the west

Texas and New Mexico region 5%

Subtotal 415.7

**TOURISM DEPARTMENT:**

(1) Marketing and promotion:

The purpose of the marketing and promotion program is to produce and provide collateral, editorial and special events for the consumer and trade industry so they may increase their awareness of New Mexico as a premier tourist destination.

Appropriations:

(a)	Personal services and				
	employee benefits	1,604.6			1,604.6
(b)	Contractual services		450.3		450.3
(c)	Other	3,750.3	90.0		3,840.3

Authorized FTE: 37.50 Permanent; 1.00 Term

The general fund appropriation to the marketing and promotion program of the tourism department includes four hundred thousand dollars (\$400,000) in the contractual services category and three million forty-five thousand dollars (\$3,045,000) in the other category for direct marketing, promotion and advertising. Of the appropriation in the other category, one hundred thousand dollars (\$100,000) shall be used on statewide advertising [~~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~~]. *LINE-ITEM VETO*

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 1,300,000
- (e) Efficiency: Number of return visitors to New Mexico 19,000,000

(2) Tourism development:

The purpose of the tourism development program is to provide constituent services for communities, regions and other entities so they may identify their needs and assistance can be provided to locate resources to fill those needs, whether internal or external to the organization.

Appropriations:

(a) Personal services and			
employee benefits	147.9	196.4	344.3
(b) Contractual services	39.4	52.3	91.7
(c) Other	798.9	1,058.9	1,857.8

Authorized FTE: 5.00 Permanent

The general fund appropriation to the tourism development program of the tourism department in the other category includes six hundred thousand dollars (\$600,000) for the cooperative advertising program.

Performance measures:

- (a) Outcome: Number of partnered cooperative advertising applications received 25

(3) New Mexico magazine:

The purpose of the New Mexico magazine program is to produce a monthly magazine and ancillary products for a state and global audience so the audience can learn about New Mexico from a cultural, historical and educational perspective.

Appropriations:

(a) Personal services and		
employee benefits	1,181.3	1,181.3
(b) Contractual services	836.9	836.9

(c) Other 2,078.2 2,078.2

Authorized FTE: 17.00 Permanent

Performance measures:

(a) Output: Advertising revenue per issue, in thousands \$110

(b) Outcome: Circulation rate 100,000

(c) 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 75.0 75.0

(b) Contractual services 30.0 30.0

Authorized FTE: 1.00 Permanent

(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 971.8 971.8

(b) Contractual services 27.6 27.6

(c) Other 418.2 418.2

Authorized FTE: 15.00 Permanent

Subtotal 13,808.0

## 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	1,706.4	1,706.4
(b)	Contractual services	1,057.4	1,057.4
(c)	Other	157.6	157.6

Authorized FTE: 26.00 Permanent

#### Performance measures:

- (a) Outcome: Percent of employees whose wages were subsidized by the job training incentive program 60%
- (b) Outcome: Total number of jobs created due to economic development department efforts 2,500
- (c) Outcome: Number of rural jobs created 1,100
- (d) Outcome: Number of jobs created through business relocations facilitated by the economic development partnership 2,200
- (e) Outcome: Number of jobs created by mainstreet 570

### (2) Film:

The purpose of the film program is to maintain the core business for the film location services and stimulate growth in digital film media to maintain the economic vitality of New Mexico's film industry.

#### Appropriations:

- (a) Personal services and

	employee benefits	656.1	656.1
(b)	Contractual services	97.8	97.8
(c)	Other	121.8	121.8

Authorized FTE: 9.00 Permanent

Performance measures:

(a) Output: Number of media industry worker days 150,000

(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)	Contractual services	51.8	51.8
(b)	Other	36.5	36.5

(4) Technology commercialization:

The purpose of the technology commercialization program is to increase the start-up, relocation and growth of technology-based business in New Mexico to give New Mexicans the opportunity for high-paying jobs.

Appropriations:

(a)	Contractual services	6.0	6.0
(b)	Other	14.0	14.0

Performance measures:

(a) Outcome: Amount of investment as a result of office of science and technology efforts, in millions \$30

(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	1,550.0	1,550.0
(b)	Contractual services	842.0	842.0
(c)	Other	223.2	223.2
Authorized FTE: 21.00 Permanent			
	Subtotal		6,520.6

**REGULATION AND LICENSING DEPARTMENT:**

(1) Construction industries and manufactured housing:

The purpose of the construction industries and manufactured housing program is to provide code compliance oversight; issue licenses, permits and citations; perform inspections; administer exams; process complaints; and enforce laws, rules and regulations relating to general construction and manufactured housing standards to industry professionals.

Appropriations:

(a)	Personal services and employee benefits	6,835.2	6,835.2
(b)	Contractual services	48.4	48.4
(c)	Other	1,019.5      100.0   250.0   107.0	1,476.5

Authorized FTE: 126.00 Permanent; 3.00 Term

Performance measures:

(a) Output:    Percent of consumer complaint cases resolved out of the  
total number of complaints filed    90%

(b) Efficiency:        Percent of all inspections performed, including  
installations of manufactured homes in the field, within  
seven days of inspection request    85%

(2) Financial institutions and securities:

The purpose of the financial institutions and securities program is to issue charters and licenses; perform examinations; investigate complaints; enforce laws, rules and regulations; and promote investor protection and confidence so that capital formation is maximized and a secure financial infrastructure is available to support economic development.

Appropriations:

(a)	Personal services and			
	employee benefits	2,105.3	696.4	2,801.7
(b)	Contractual services	24.9	175.3	200.2
(c)	Other	207.0	168.5	375.5

Authorized FTE: 44.00 Permanent

Performance measures:

- (a) Outcome: Percent of statutorily complete applications processed within a standard number of days by type of application 95%
- (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	785.4		785.4
(b)	Contractual services	39.1		39.1
(c)	Other	33.1		33.1

Authorized FTE: 16.00 Permanent

Performance measures:

(a) Output: Number of days to resolve an administrative citation that does not require a hearing 70

(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	1,300.2	1,062.2	2,362.4
(b) Contractual services	104.1	186.7	290.8
(c) Other	236.2	242.1	478.3

Authorized FTE: 31.70 Permanent; 3.00 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	300.5	300.5
(b) Contractual services	16.6	16.6
(c) Other	117.6	117.6
(d) Other financing uses	69.0	69.0

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	158.2	158.2
(b)	Contractual services	19.9	19.9
(c)	Other           21.0	21.0	
(d)	Other financing uses	17.7	17.7

Authorized FTE: 3.20 Permanent

(7) New Mexico athletic commission:

The purpose of the New Mexico 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	78.2	78.2
(b)	Contractual services	9.0	9.0
(c)	Other           23.9	23.9	
(d)	Other financing uses	18.4	18.4

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
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	employee benefits	10.1	10.1
(b)	Contractual services	0.5	0.5
(c)	Other	5.8	5.8
(d)	Other financing uses	3.7	3.7

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	525.5	525.5
(b)	Contractual services	45.0	45.0
(c)	Other	92.0	92.0
(d)	Other financing uses	148.4	148.4

Authorized FTE: 11.60 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	111.9	111.9
(b)	Contractual services	2.0	2.0
(c)	Other	17.8	17.8
(d)	Other financing uses	20.0	20.0

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	278.0	278.0
(b)	Contractual services	10.5	10.5
(c)	Other            57.9	57.9	
(d)	Other financing uses	68.7	68.7

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	257.7	257.7
(b)	Contractual services	22.0	22.0
(c)	Other            64.6	64.6	
(d)	Other financing uses	67.3	67.3

Authorized FTE: 4.90 Permanent

(13) Interior design board:

The purpose of the interior design board program is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and employee benefits	13.5	13.5
(b)	Other	6.7	6.7
(c)	Other financing uses	3.9	3.9

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	18.4	18.4
(b)	Contractual services	0.5	0.5
(c)	Other	8.0	8.0
(d)	Other financing uses	5.7	5.7

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	200.4	200.4
(b)	Contractual services	2.0	2.0
(c)	Other	12.6	12.6
(d)	Other financing uses	39.5	39.5

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	29.3		29.3
(b)	Other	1.3	1.3	
(c)	Other financing uses		6.9	6.9

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	14.2		14.2
(b)	Other	14.1	14.1	
(c)	Other financing uses		7.0	7.0

Authorized FTE: .30 Permanent

(18) Board of examiners for occupational therapy:

The purpose of the examiners for occupational 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	32.5		32.5

(b)	Contractual services	3.0	3.0
(c)	Other	20.1	20.1
(d)	Other financing uses	15.0	15.0

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	41.5	41.5
(b)	Contractual services	11.0	11.0
(c)	Other	7.3	7.3
(d)	Other financing uses	10.5	10.5

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	48.1	48.1
(b)	Contractual services	2.0	2.0
(c)	Other	20.7	20.7
(d)	Other financing uses	9.9	9.9

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	1,100.1	1,100.1
(b)	Contractual services	20.2	20.2
(c)	Other           233.6	233.6	
(d)	Other financing uses	248.7	248.7

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	35.6	35.6
(b)	Contractual services	10.0	10.0
(c)	Other           50.0	50.0	
(d)	Other financing uses	20.7	20.7

Authorized FTE: .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	15.0	15.0
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(b)	Contractual services	1.0	1.0
(c)	Other	10.8	10.8
(d)	Other financing uses	4.8	4.8

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	92.4	92.4
(b)	Contractual services	5.0	5.0
(c)	Other	38.2	38.2
(d)	Other financing uses	30.0	30.0

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	129.5	129.5
(b)	Contractual services	13.4	13.4
(c)	Other	29.3	29.3
(d)	Other financing uses	28.9	28.9

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	113.8	113.8
(b)	Contractual services	11.5	11.5
(c)	Other 23.5	23.5	
(d)	Other financing uses	28.0	28.0

Authorized FTE: 2.10 Permanent

(27) New Mexico real estate commission:

The purpose of the real estate commission program is to provide efficient licensing, compliance and regulatory services to protect the public by ensuring that licensed professionals are qualified to practice.

Appropriations:

(a)	Personal services and employee benefits	581.1	581.1
(b)	Other 158.9	158.9	
(c)	Other financing uses	194.6	194.6

Authorized FTE: 9.00 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	51.5	51.5
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(b)	Other	3.5	3.5	
(c)	Other financing uses		12.9	12.9

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		241.8	241.8
(b)	Contractual services		4.0	4.0
(c)	Other	39.2	39.2	
(d)	Other financing uses		66.0	66.0

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		109.9	109.9
(b)	Contractual services		7.7	7.7
(c)	Other	19.4	19.4	
(d)	Other financing uses		24.9	24.9

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		87.1		87.1
(b)	Contractual services		5.7		5.7
(c)	Other	23.3		23.3	
(d)	Other financing uses		19.7		19.7

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	
(b)	Other financing uses		0.9		0.9

(33) Animal sheltering services board:

The purpose of the animal sheltering 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	29.5	29.0		58.5
(b)	Contractual services			23.2	23.2
(c)	Other	5.9		5.9	

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	83.1	83.1	
(b)	Contractual services		11.0	11.0
(c)	Other	38.8	38.8	
(d)	Other financing uses		19.0	19.0

Authorized FTE: 1.40 Permanent

Subtotal		23,182.6		
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**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 the interests of the consumers and regulated industries are balanced to promote and protect the public interest.

Appropriations:

(a)	Personal services and			
	employee benefits	5,001.6	1,431.5	6,433.1
(b)	Contractual services	160.1		160.1
(c)	Other	582.3	582.3	

Authorized FTE: 79.70 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 three hundred sixty-five thousand one hundred dollars (\$365,100) from the pipeline safety fund, four hundred forty-six thousand four hundred dollars (\$446,400) from the insurance operations fund, one hundred ninety-eight thousand two hundred dollars (\$198,200) from the patient's compensation fund, one hundred thirty-five thousand two hundred dollars (\$135,200) from the fire protection fund, one hundred fifteen thousand dollars (\$115,000) from the public regulation commission reproduction fund, eighty-six thousand

five hundred dollars (\$86,500) from the insurance fraud fund, and eighty-five thousand one hundred dollars (\$85,100) from the title insurance maintenance assessment fund.

Performance measures:

(a) Efficiency: Average number of days for a rate case to reach final order <210

(b) Outcome: Comparison of average commercial electric rates between major New Mexico utilities and selected utilities in regional western states +/-4%

(c) Explanatory: 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 11%

(d) Explanatory: 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 ensure easy public access to reliable insurance products that meet consumers' needs and are underwritten by dependable, reputable, financially sound companies that charge fair rates and are represented by trustworthy, qualified agents, while promoting a positive competitive business climate.

Appropriations:

(a) Personal services and employee benefits	5,294.5	5,294.5
(b) Contractual services	288.0	288.0
(c) Other	558.1	558.1

Authorized FTE: 83.00 Permanent

The internal service funds/interagency transfers appropriations to the insurance policy program of the public regulation commission include thirty-two thousand nine hundred sixteen dollars (\$32,916) from the title insurance maintenance assessment fund, eighty-nine thousand two hundred ninety-five dollars (\$89,295) from the insurance fraud fund, two hundred six thousand seven hundred eighty dollars (\$206,780) from the patient's compensation fund, and four million five hundred twenty-seven thousand nine hundred nine dollars (\$4,527,909) from the insurance operations fund.

The internal service funds/interagency transfers appropriations to the insurance policy program of the public regulation commission include nine hundred ninety-five thousand six hundred dollars (\$995,600) 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 two hundred eighty-eight thousand one hundred dollars (\$288,100) 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 99%

(b) Efficiency: Percent of insurance fraud bureau complaints processed

and

recommended for either further administrative action or

closure within sixty days 87%

(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	3,069.7	331.9	3,401.6
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(b) Contractual services

300.1	14.7	314.8
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(c) Other

1,445.7	201.1	1,646.8
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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 two hundred thousand one hundred dollars (\$2,200,100) 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 four hundred ninety-four thousand five hundred dollars (\$1,494,500) 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 eight hundred eighty-four thousand six hundred dollars (\$884,600) 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 100%

(c) Outcome: Percent of statewide fire districts with insurance office

ratings of eight or better 67%

(4) Program support:

The purpose of program support is to provide administrative support and direction to ensure consistency, compliance, financial integrity and fulfillment of the agency mission.

Appropriations:

(a) Personal services and

employee benefits 1,749.8 989.1 2,738.9

(b) Contractual services 48.6 48.6

(c) Other 339.6 339.6

Authorized FTE: 48.00 Permanent

The internal service funds/interagency transfers appropriations to program support of the public regulation commission include two hundred twenty-five thousand five hundred dollars (\$225,500) from the insurance fraud fund, seventy thousand five hundred dollars (\$70,500) from the pipeline safety fund, three hundred twenty thousand seven hundred dollars (\$320,700) from the fire protection fund, seventy-two thousand

one hundred dollars (\$72,100) from the title insurance maintenance fund, seventy-four thousand six hundred dollars (\$74,600) from the public regulation commission reproduction fund, one hundred nineteen thousand nine hundred dollars (\$119,900) from the patient's compensation fund and one hundred five thousand eight hundred dollars (\$105,800) from the insurance operations fund.

(5) Patient's compensation fund:

Appropriations:

(a)	Personal services and employee benefits	65.7	65.7
(b)	Contractual services	570.3	570.3
(c)	Other	12,047.2	12,047.2
(d)	Other financing uses	524.9	524.9
Authorized FTE: 1.00 Term			
	Subtotal	35,014.5	

**MEDICAL BOARD:**

(1) Licensing and certification:

The purpose of the licensing and certification program is to provide regulation and licensure to healthcare providers regulated by the New Mexico medical board and to ensure competent and ethical medical care to consumers.

Appropriations:

(a)	Personal services and employee benefits	1,051.0	1,051.0
(b)	Contractual services	283.3	283.3
(c)	Other	308.1	308.1

Authorized FTE: 14.00 Permanent

Performance measures:

- (a) Output: Number of triennial physician licenses issued or renewed 3,000
- (b) Output: Number of biennial physician assistant licenses issued or

renewed 225

(c) Outcome: Number of days to issue a physician license 80

Subtotal 1,642.4

### **BOARD OF NURSING:**

(1) Licensing and certification:

The purpose of the licensing and certification program is to provide regulations to nurses, hemodialysis technicians, medication aides and their education and training programs so they provide competent and professional healthcare services to consumers.

Appropriations:

(a) Personal services and

employee benefits 1,259.0 1,259.0

(b) Contractual services 259.8 259.8

(c) Other 1,060.4 1,060.4

Authorized FTE: 19.00 Permanent

Performance measures:

(a) Output: Number of licensed practical nurse, registered nurse and

advanced practice licenses issued 14,500

(b) Output: Number of months to resolution of a disciplinary matter 6

(c) Quality: Number of rule reviews 1

Subtotal 2,579.2

### **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	[52.4]	6,017.8		6,070.2
(b)	Contractual services	[208.0]	3,284.0		
			3,492.0		
(c)	Other	[88.9]	3,086.0	695.0	3,869.9

Authorized FTE: 62.50 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 and debt service interest on negotiable bonds issued for capital improvements.

~~[The general fund appropriation to the New Mexico state fair includes three hundred forty-nine thousand three hundred dollars (\$349,300) for the operation of the African American performing arts center and exhibit hall at the New Mexico state fair.]~~

~~The appropriations to the New Mexico state fair in the personal services and employee benefits category include sufficient funding for one full-time equivalent position for the African American performing arts center and exhibit hall at the New Mexico state fair.]~~ *LINE-ITEM VETO*

Performance measures:

(a) Output: Number of total attendees at annual state fair event 625,000

Subtotal 13,432.1

**STATE BOARD OF LICENSURE FOR PROFESSIONAL ENGINEERS AND PROFESSIONAL SURVEYORS:**

(1) Regulation and licensing:

The purpose of the regulation and licensing program is to regulate the practices of engineering and surveying in the state as they relate to the welfare of the public in safeguarding life, health and property and to provide consumers with licensed professional engineers and licensed professional surveyors.

Appropriations:

(a)	Personal services and				
	employee benefits		525.7		525.7
(b)	Contractual services		97.4		97.4
(c)	Other	200.4		200.4	

Authorized FTE: 9.00 Permanent

Performance measures:

(a) Output: Number of licenses or certifications issued 750

Subtotal 823.5

**GAMING CONTROL BOARD:**

(1) Gaming control:

The purpose of the gaming control board program is to provide strictly regulated gaming activities and to promote responsible gaming to the citizens of New Mexico so they can attain a strong level of confidence in the board's administration of gambling laws and assurance the state has competitive gaming free from criminal and corruptive elements and influences.

Appropriations:

(a) Personal services and  
employee benefits 3,631.8 3,631.8

(b) Contractual services 729.3 729.3

(c) Other 866.1 866.1

Authorized FTE: 62.00 Permanent; .50 Temporary

Performance measures:

(a) Quality: Percent of time the central monitoring system is operational 100%

(b) Output: Percent variance identified between actual tribal quarterly

payments to the state and the audited revenue sharing as

calculated by the gaming control board for the current

calendar year <10%

(c) Outcome: Ratio of gaming revenue generated to general fund revenue  
expended 28:1

Subtotal 5,227.2

**STATE RACING COMMISSION:**

(1) Horse racing regulation:

The purpose of the horse racing regulation program is to provide regulation in an equitable manner to New Mexico's parimutuel horse racing industry and to protect the interest of wagering patrons and the state of New Mexico in a manner that promotes a climate of economic prosperity for horsemen, horse owners and racetrack management.

Appropriations:

(a)	Personal services and employee benefits	1,058.5	1,058.5
(b)	Contractual services	713.7	713.7
(c)	Other	106.0	106.0

Authorized FTE: 16.30 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	\$0.9
	Subtotal	1,878.2

**BOARD OF VETERINARY MEDICINE:**

(1) Veterinary licensing and regulatory:

The purpose of the veterinary licensing and regulatory program is to regulate the profession of veterinary medicine in accordance with the Veterinary Practice Act and to promote continuous improvement in veterinary practices and management to protect the public.

Appropriations:

(a)	Personal services and employee benefits	149.9	149.9
(b)	Contractual services	126.3	126.3
(c)	Other	50.7	50.7

Authorized FTE: 3.00 Permanent

Performance measures:

(a) Output:	Number of veterinarian licenses issued annually	1,030
Subtotal		326.9

**CUMBRES AND TOLTEC SCENIC RAILROAD COMMISSION:**

The purpose of the Cumbres and Toltec scenic railroad commission is to provide railroad excursions through, into and over the scenic San Juan mountains.

Appropriations:

(a)	Personal services and			
	employee benefits	52.0	65.3	117.3
(b)	Contractual services	6.5	3,380.7	3,387.2
(c)	Other	28.5	37.8	66.3

Authorized FTE: 2.10 Permanent

Any revenues generated by the Cumbres and Toltec scenic railroad commission in fiscal year 2012 are appropriated to the Cumbres and Toltec scenic railroad commission for use toward operating expenses of the railroad.

Performance measures:

(a) Output:	Revenue generated from ticket sales, in millions	\$3.3
Subtotal		3,570.8

**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	105.0	105.0
(b)	Other	15.8	15.8

Authorized FTE: 1.00 Term

Subtotal 120.8

**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 386.4 144.4 530.8
- (b) Contractual services 53.8 25.6 79.4
- (c) Other 59.8 30.0 89.8

Authorized FTE: 7.00 Permanent

Performance measures:

- (a) Outcome: Annual aerospace jobs created due to spaceport authority  
efforts 200

Subtotal 700.0

TOTAL COMMERCE AND INDUSTRY	43,984.6	47,845.0	17,120.3	654.7
	109,604.6			

**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	14,245.8	2,750.5	91.9	17,088.2
(b)	Contractual services	437.9	442.5	200.0	1,080.4
(c)	Other	4,049.6	1,129.7	5.0	5,184.3

Authorized FTE: 321.00 Permanent; 39.00 Term

~~[The general fund appropriation to the museums and monuments program of the cultural affairs department in the contractual services category includes an additional thirty thousand dollars (\$30,000) for the Taylor Reynolds Barela Mesilla state monument.~~

~~—The general fund appropriation to the museums and monuments program of the cultural affairs department in the contractual services category includes an additional seventy-five thousand dollars (\$75,000) for an organization to develop an academic program focused on historical research, interpretation and creative expression related to national history day for grades six through twelve.]~~

Performance measures:

(a) Output: Attendance to museum and monument exhibitions,

performances, films and other presenting programs 830,000

(b) Output: Number of participants at off-site educational, outreach

and special events related to museum missions 80,000

(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 512.1 1,612.7 875.4 682.8 3,683.0

(b) Contractual services 7.2 307.8 203.6 518.6

(c) Other 88.6 8.7 346.8 266.9 711.0

Authorized FTE: 30.00 Permanent; 29.50 Term; 6.00 Temporary

The internal service funds/interagency transfers appropriations to the preservation program of the cultural affairs department include one million dollars (\$1,000,000) from the department of transportation for archaeological studies related to highway projects.

Performance measures:

- (a) Output: Number of participants in educational, outreach and special events related to preservation mission 10,000
- (b) Output: Number of historic structures preservation projects completed annually using preservation tax credits 41
- (c) 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 1,876.0 95.5 627.8 2,599.3
- (b) Contractual services 418.2 334.9 753.1
- (c) Other 1,094.5 35.0 431.1 1,560.6

Authorized FTE: 38.00 Permanent; 13.00 Term

Performance measures:

- (a) 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 900,000
- (b) Output: Number of participants in educational, outreach and special

events related to library mission 18,500

(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 682.1 55.2 135.7 873.0
- (b) Contractual services 617.1 406.9 1,024.0
- (c) Other 123.3 1.1 124.4

Authorized FTE: 12.00 Permanent; 4.50 Term

Performance measures:

- (a) Output: Number of clients provided professional development  
training in arts industry 3,450
- (b) Output: Attendance at programs provided by arts organizations  
statewide, funded by New Mexico arts from recurring  
appropriations 1,200,000
- (c) Output: Number of musicians, music groups and businesses supporting  
the music industry that have registered on the nmmusic.org  
website 1,250
- (d) Output: Number of participants in educational and outreach programs  
and workshops, including participants from rural areas 3,000

(5) Program support:

The purpose of program support is to deliver effective, efficient and high-quality services in concert with the core agenda of the governor.

Appropriations:



(a)	Personal services and			
	employee benefits	2,884.4	71.5	2,955.9
(b)	Contractual services	171.0	2.8	173.8
(c)	Other	150.9	117.6	268.5

Authorized FTE: 41.70 Permanent; 2.00 Temporary

~~[Any unexpended balances in the cultural affairs department at the end of fiscal year 2012 from appropriations made from the general fund shall not revert.]~~ *LINE-ITEM VETO*

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

complete targeted professional development training 50%

Subtotal 38,598.1

### **NEW MEXICO LIVESTOCK BOARD:**

(1) Livestock inspection:

The purpose of the livestock inspection program is to protect the livestock industry from loss of livestock by theft or straying and to help control the spread of dangerous livestock diseases.

Appropriations:

(a)	Personal services and			
	employee benefits	379.9	3,490.9	3,870.8
(b)	Contractual services		126.7	126.7
(c)	Other	1,080.4		1,080.4

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 75

(c) Outcome: Number of livestock thefts reported per one thousand head  
inspected 1

(d) Outcome: Number of disease cases per one thousand head inspected 0.15

(2) Administration:

The purpose of the administration program is to provide administrative and logistical services to employees.

Appropriations:

(a)	Personal services and employee benefits	90.3	541.0	631.3
(b)	Contractual services		60.5	60.5
(c)	Other	108.5	108.5	

Authorized FTE: 8.00 Permanent

Subtotal 5,878.2

## DEPARTMENT OF GAME AND FISH:

(1) Sport hunting and fishing:

The purpose of the sport hunting and fishing program is to provide a statewide system for hunting activities as well as self-sustaining and hatchery-supported fisheries taking into account hunter safety, quality hunts, high-demand areas, guides and outfitters, quotas and assuring that local and financial interests receive consideration.

Appropriations:

(a)	Personal services and employee benefits	9,840.2	3,457.4	13,297.6
(b)	Contractual services	727.7	645.4	1,373.1
(c)	Other	4,457.1	1,940.4	6,397.5

(d) Other financing uses 198.9 298.4 497.3

Authorized FTE: 200.00 Permanent; 2.00 Term; 2.50 Temporary

Performance measures:

(a) Outcome: Number of days of elk hunting opportunity provided to New Mexico resident hunters on an annual basis 165,000

(b) Outcome: Percent of public hunting licenses drawn by New Mexico resident hunters 80%

(c) Output: Annual output of fish from the department's hatchery system, in pounds 455,000

(d) Output: Acres of accessible sportsperson opportunity through the open gate program 60,000

(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 1,647.9 967.8 2,615.7

(b) Contractual services 1,020.8 844.6 1,865.4

(c) Other 2,528.9 798.7 3,327.6

Authorized FTE: 32.00 Permanent; 8.00 Term; .50 Temporary

Performance measures:

(a) Outcome: Number of acres of wildlife habitat conserved, enhanced or positively affected statewide 100,000

(b) Output: Number of state threatened and endangered species studied

and conserved through recovery planning and the

comprehensive wildlife conservation strategy for New Mexico

35

(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	271.4	271.4
(b)	Contractual services	130.7	130.7
(c)	Other	639.3	639.3

Authorized FTE: 4.00 Permanent

Performance measures:

- (a) Outcome: Percent of depredation complaints resolved within the mandated one-year timeframe 95%
- (b) Output: Number of educational publications distributed with a message about minimizing potentially dangerous encounters with wildlife 250,000

(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	4,320.2	51.0 4,371.2
(b)	Contractual services	672.4	672.4

(c)	Other	3,112.1	70.0	3,182.1
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Authorized FTE: 60.00 Permanent

Subtotal			38,641.3	
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## **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 to decrease per capita energy consumption, utilize New Mexico's substantial renewable energy resources, minimize local, regional and global air emissions, lessen dependence on foreign oil and reduce in-state water demands associated with fossil-fueled electrical generation.

Appropriations:

(a)	Personal services and employee benefits	800.2	162.7	962.9
(b)	Contractual services	3.1		3.1
(c)	Other	28.4	30.3	58.7

Authorized FTE: 13.00 Permanent; 2.00 Term

Performance measures:

- (a) 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 Facility Energy Efficiency and Water Conservation Act or the clean energy projects program 15%
- (b) Output: Number of inventoried clean energy projects evaluated annually 50
- (c) Outcome: Percent of retail electricity sales from investor-owned utilities in New Mexico from renewable energy sources 10%

(2) Healthy forests:

The purpose of the healthy forests program is to promote the health of New Mexico's forest lands by managing wildfires, mitigating urban-interface fire threats and providing stewardship of private and state forest lands and associated watersheds.

Appropriations:

(a)	Personal services and				
	employee benefits	2,401.4	149.6	1,347.4	3,898.4
(b)	Contractual services	36.4	1.0	470.5	507.9
(c)	Other	454.3	354.1	3,344.9	4,153.3
(d)	Other financing uses		18.7		18.7

Authorized FTE: 58.00 Permanent; 11.00 Term

Performance measures:

- (a) Output: Number of nonfederal wildland firefighters provided  
professional and technical incident command system training 500
- (b) Outcome: Percent of at-risk communities participating in  
collaborative wildfire protection planning 25%
- (c) Output: Number of acres restored in New Mexico's forests and  
watersheds 8,000

(3) State parks:

The purpose of the state parks program is to create the best recreational opportunities possible in state parks by preserving cultural and natural resources, continuously improving facilities and providing quality, fun activities and to do it all efficiently.

Appropriations:

(a)	Personal services and				
	employee benefits	7,953.4	4,503.0	401.3	12,857.7
(b)	Contractual services	229.3	318.5	2,936.3	3,484.1

(c)	Other	1,151.3	4,935.3	2,735.4	1,488.4	10,310.4
(d)	Other financing uses			2,983.3		2,983.3

Authorized FTE: 233.00 Permanent; 6.00 Term; 48.00 Temporary

Performance measures:

- (a) Explanatory: Number of visitors to state parks 4,000,000
- (b) Explanatory: Self-generated revenue per visitor, in dollars \$0.87
- (c) Output: Number of interpretive programs available to park visitors 2,600

(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	476.8	566.3	1,734.7	2,777.8
(b)	Contractual services	1.6	75.5	4,594.2	4,671.3
(c)	Other	7.1	196.9	231.8	435.8
(d)	Other financing uses			70.8	70.8

Authorized FTE: 17.00 Permanent; 15.00 Term

Performance measures:

- (a) Output: Percent of abandoned uranium mines with current site assessments 75%
- (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, dynamic regulation.

Appropriations:

(a)	Personal services and employee benefits	3,075.3	536.7	205.4	3,817.4	
(b)	Contractual services	71.9	3,590.7	16.4	3,679.0	
(c)	Other	435.9	100.4	39.8	31.1	607.2
(d)	Other financing uses		47.5	18.8	115.0	181.3

Authorized FTE: 57.00 Permanent; 5.00 Term

Performance measures:

(a) Output: Number of inspections of oil and gas wells and associated facilities 23,500

(b) Output: Percent of renewal of uncontested discharge permits within thirty days of expiration 75%

(6) Program leadership and support:

The purpose of program leadership and support is to provide leadership, set policy and provide support for every division in achieving their goals.

Appropriations:

(a)	Personal services and employee benefits	2,699.7	648.7	295.8	3,644.2
(b)	Contractual services		120.0	30.6	150.6
(c)	Other	290.6	290.6		
(d)	Other financing uses			1,374.4	1,374.4

Authorized FTE: 42.00 Permanent; 3.00 Term

Subtotal 60,938.9



## **YOUTH CONSERVATION CORPS:**

The purpose of the youth conservation program is to provide funding for the employment of New Mexicans between the ages of fourteen and twenty-five to work on projects that will improve New Mexico's natural, cultural, historical and agricultural resources.

### Appropriations:

(a)	Personal services and employee benefits	159.3	159.3
(b)	Contractual services	3,900.1	3,900.1
(c)	Other 48.8	48.8	
(d)	Other financing uses	150.0	150.0

Authorized FTE: 2.00 Permanent

### Performance measures:

(a) Output:	Number of youth employed annually	925
	Subtotal	4,258.2

## **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 to host a successful event.

### Appropriations:

(a)	Contractual services	30.0	30.0
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### Performance measures:

(a) Output:	Number of intertribal ceremonial tickets sold	7,000
	Subtotal	30.0

## **COMMISSIONER OF PUBLIC LANDS:**

### (1) Land trust stewardship:

The purpose of the land trust stewardship program is to generate sustainable revenue from state trust lands to support public education and other beneficiary institutions and to build partnerships with all New

Mexicans to conserve, protect and maintain the highest level of stewardship for these lands so that they may be a significant legacy for generations to come.

Appropriations:

(a)	Personal services and employee benefits	10,338.0	10,338.0
(b)	Contractual services	519.8	519.8
(c)	Other	1,536.5	1,536.5
(d)	Other financing uses	498.9	498.9

Authorized FTE: 151.00 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	\$423.4
(b)	Outcome: Bonus income per leased acre from oil and gas activities	\$280.50
(c)	Outcome: Dollars generated through oil, natural gas and mineral audit activities, in millions	\$1.5
(d)	Output: Average income per acre from oil, natural gas and mineral activities	\$200
(e)	Output: Percent of total trust revenue generated allocated to beneficiaries	97%
	Subtotal	12,893.2

**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 nonfederal 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	9,476.8	444.8	662.8	10,584.4
(b)	Contractual services		1.3	692.2	693.5
(c)	Other	104.9	1,284.8		1,389.7

Authorized FTE: 177.00 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 two million four hundred ninety-two thousand two hundred dollars (\$2,492,200) from the New Mexico irrigation works construction fund.

Performance measures:

- (a) Output: Average number of unprotested new and pending applications processed per month 65
- (b) Explanatory: Number of unprotested and unaggrieved water right applications backlogged 650
- (c) Outcome: Number of dams inspected per year to establish baseline 100
- (d) Outcome: Number of transactions abstracted annually into the water administration technical engineering resource system database 25,000

(2) Interstate stream compact compliance and water development:

The purpose of the interstate stream compact compliance and water development program is to provide resolution of federal and interstate water issues and to develop water resources and stream systems for the people of New Mexico so they can have maximum sustained beneficial use of available water resources.

Appropriations:

(a)	Personal services and employee benefits	1,848.0	75.0	1,417.1	215.7	3,555.8
(b)	Contractual services		32.0	5,245.5	61.0	5,338.5
(c)	Other	13.0	3,667.8	80.6	3,761.4	

Authorized FTE: 47.00 Permanent; 4.00 Term

The internal service funds/interagency transfers appropriations to the interstate stream compact compliance and water development program of the state engineer include one million six hundred seventy- nine thousand one hundred dollars (\$1,679,100) from the improvement of Rio Grande income fund and seven million six hundred eighty thousand five hundred dollars (\$7,680,500) from the irrigation works construction fund.

The internal service funds/interagency transfers appropriations to the interstate stream compact compliance and water development program of the state engineer include seven hundred eighty-eight thousand five hundred dollars (\$788,500) from revenue received under the emergency drought water agreement and the conservation water agreement.

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.

The internal service funds/interagency transfers appropriation to the interstate stream compact compliance and water development program of the state engineer includes one hundred thousand dollars (\$100,000) from the game protection fund for Ute dam operations. Any unexpended balances remaining at the end of fiscal year 2012 from this appropriation shall revert to the game protection fund.

The internal service funds/interagency transfers appropriation to the interstate stream compact compliance and water development program of the state engineer in the other category includes eighty-two thousand three hundred dollars (\$82,300) from the game protection fund for Eagle Nest dam operation. Any unexpended balances remaining at the end of fiscal year 2012 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 up to 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 irrigation works construction fund includes two million dollars (\$2,000,000) for irrigation districts, acequias, conservancy districts and soil and water conservation districts for purchase and installation of meters and measuring equipment. The maximum loan term is five years.

Performance measures:

(a) Outcome: Cumulative state-line delivery credit per the Pecos river

compact and amended decree at the end of calendar year, in

acre feet 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	506.7	4,088.1	4,594.8
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(b) Contractual services

		1,466.5	1,466.5
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(c) Other

335.4	335.4		
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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 two million eight hundred ninety thousand dollars (\$2,890,000) from the New Mexico irrigation works construction fund and three million dollars (\$3,000,000) from the water project fund pursuant to Section 72-4A-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 50%

(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	3,009.0	204.0	3,213.0
(b)	Contractual services		169.5	169.5
(c)	Other	510.5	510.5	

Authorized FTE: 45.50 Permanent

The internal service funds/interagency transfers appropriations to program support of the state engineer include eight hundred eighty-four thousand dollars (\$884,000) from the New Mexico irrigation works construction fund.

(5) New Mexico irrigation works construction fund:

Appropriations:

(a)	Other financing uses		14,125.0	14,125.0
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(6) Improvement of Rio Grande income fund:

Appropriations:

(a)	Other financing uses		1,826.7	1,826.7
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	Subtotal		51,564.7	
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**ORGANIC COMMODITY COMMISSION:**

(1) New Mexico organic:

The purpose of the New Mexico organic commodity commission 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	189.8		189.8
(b)	Contractual services		89.5	89.5
(c)	Other	45.1	45.1	

Authorized FTE: 3.00 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	324.4		

TOTAL AGRICULTURE, ENERGY AND				
NATURAL RESOURCES	62,518.3	93,851.3	25,058.3	31,699.1
	213,127.0			

**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	[338.3]	180.7	519.0
(b)	Contractual services	[24.7]	25.0	541.5
				588.2

(c) Other ~~[90.0]~~ 55.0 127.8 272.8

Authorized FTE: ~~[8.00 Permanent;]~~ 4.00 Term *LINE-ITEM VETO*

The internal service funds/interagency transfers appropriations to the status of women program of the commission on the status of women include eight hundred fifty thousand dollars (\$850,000) 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, should the program successfully be awarded a contract for this purpose.

The other state funds appropriations to the status of women program of the commission on the status of women include twenty thousand dollars (\$20,000) from the girls' program fund to host conferences and seminars and associated expenses; forty thousand dollars (\$40,000) from the commission on the status of women conference fund to host conferences and seminars and associated expenses and the governor's award for outstanding New Mexico women, the pioneer award, the trailblazer award and various conference booths; and twenty thousand dollars (\$20,000) from the commission on the status of women's office of the governor's council on women's health to host conferences and seminars and associated expenses and various women's health events.

~~[Revenue collected in excess of expenses in other state funds for conferences, awards, seminars and various events shall not revert to the general fund.]~~*LINE-ITEM VETO*

Performance measures:

(a) Outcome: Percent of 12-month job retention of teamworks clients 60%

(b) Output: Number of one-to-one coaching hours performed 200

Subtotal 1,380.0

**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 357.6 357.6

(b) Contractual services 181.5 181.5

(c) Other 160.7 160.7

Authorized FTE: 5.00 Permanent



Subtotal 699.8

**COMMISSION FOR DEAF AND HARD-OF-HEARING PERSONS:**

(1) Deaf and hard-of-hearing:

The purpose of the deaf and hard-of-hearing program is to serve as a dynamic resource that will enhance the quality of life for deaf and hard-of-hearing citizens of New Mexico by being the recognized advocate on important issues impacting the deaf and hard-of-hearing community, the proactive provider of innovative programs and services, and the statewide umbrella and information clearinghouse for interested individuals, organizations, agencies and institutions.

Appropriations:

(a)	Personal services and employee benefits		986.6	986.6	
(b)	Contractual services	300.0	1,805.4		2,105.4
(c)	Other	272.6	272.6		
(d)	Other financing uses		466.0	466.0	

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 general fund appropriation to the deaf and hard-of-hearing program of the commission for deaf and hard-of-hearing persons in the contractual services category includes three hundred thousand dollars (\$300,000) for deaf and deaf-blind support service provider programs.

Performance measures:

(a)	Output:	Hours provided by the sign language interpreter referral service	32,500		
(b)	Output:	Number of accessible technology equipment distributions		800	
(c)	Output:	Number of clients provided assistance to reduce or eliminate communication barriers	1,000		

Subtotal 3,830.6

## 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	76.5		76.5
(b)	Contractual services	12.9		12.9
(c)	Other	87.1	87.1	
Authorized FTE: 2.00 Permanent				
	Subtotal		176.5	

## 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	986.6	136.2	3,452.8	4,575.6
(b)	Contractual services		21.4	176.4	197.8
(c)	Other	911.4	254.0	1,625.9	2,791.3

Authorized FTE: 91.50 Permanent; 1.00 Term

Any unexpended balances in the blind services program of the commission for the blind remaining at the end of fiscal year 2012 from appropriations made from the general fund shall not revert.

### Performance measures:

(a) Output: Number of quality employment opportunities obtained for

agency's blind or visually impaired consumers 38

(b) Output: Number of blind or visually impaired consumers trained in the skills of blindness to enable them to live independently in their homes and communities 600

(c) Outcome: Average employment wage for the blind or visually impaired person \$13.50

(d) Output: Number of employment opportunities provided for blind business entrepreneurs in different vending and food facilities through the business enterprise program 32

Subtotal 7,564.7

**INDIAN AFFAIRS DEPARTMENT:**

(1) Indian affairs:

The purpose of the Indian affairs program is to coordinate intergovernmental and interagency programs concerning tribal governments and the state.

Appropriations:

(a) Personal services and employee benefits	1,077.0	1,077.0
(b) Contractual services	376.9 125.0	501.9
(c) Other	959.3 130.7	1,090.0

Authorized FTE: 15.00 Permanent

The other state funds appropriations to the Indian affairs program of the Indian affairs department include two hundred fifty-five thousand seven hundred dollars (\$255,700) 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 2,668.9

**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 services.

Appropriations:

(a) Personal services and

employee benefits 1,370.1 788.0 784.8 2,942.9

(b) Contractual services 31.3 67.8 21.5 120.6

(c) Other 176.2 92.4 201.1 469.7

Authorized FTE: 45.50 Permanent; 7.00 Term

Performance measures:

(a) Output: Number of ombudsman complaints resolved 3,900

(b) Output: Number of persons accessing the aging and long-term

services department's resource center 25,000

(c) Outcome: Percent of resident-requested transitions from nursing

homes to home- and community-based services that are

completed to the satisfaction of the resident within nine

months from the request 80%

(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	84.9	33.6		118.5
(b)	Contractual services		96.8	4.8	101.6
(c)	Other	25,263.6	34.2	8,096.8	33,394.6

Authorized FTE: 1.00 Permanent; .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 the federal Older Americans Act shall be contracted to the designated area agencies on aging.

Any unexpended balances remaining at the end of fiscal year 2012 in other state funds from conference registration fees shall not revert.

Performance measures:

- (a) Outcome: Percent of individuals exiting from the federal older worker program who obtain unsubsidized employment 18.5%
- (b) Output: Number of persons receiving aging network community services 50,000
- (c) Outcome: Number of persons whose food insecurity is alleviated by meals received through the aging network 25,000

(3) Adult protective services:

The purpose of the adult protective services program is to investigate allegations of abuse, neglect and exploitation of seniors and adults with disabilities and provide in-home support services to adults at high risk of repeat neglect.

Appropriations:

(a)	Personal services and				
	employee benefits	7,503.6			7,503.6

(b)	Contractual services	785.9	2,498.6	3,284.5
(c)	Other	1,862.4	1,862.4	

Authorized FTE: 139.00 Permanent

Performance measures:

- (a) Output: Number of adults receiving adult protective services investigations of abuse, neglect or exploitation 6,000
- (b) Outcome: Number of incapacitated adults who receive in-home services or interventions through adult protective services as a result of an investigation of abuse, neglect or exploitation 1,100
- (c) Outcome: Percent of adult protective services investigations requiring emergency or priority response within twenty-four hours or less 10.5%

(4) Program support:

The purpose of program support is to provide clerical, record keeping and administrative support in the areas of personnel, budget, procurement and contracting to agency staff, outside contractors and external control agencies to implement and manage programs.

Appropriations:

(a)	Personal services and employee benefits	3,333.9	427.2	3,761.1
(b)	Contractual services	128.7	23.8	152.5
(c)	Other	207.7	185.8	393.5

Authorized FTE: 55.00 Permanent; 1.00 Term

Subtotal 54,105.5

**HUMAN SERVICES DEPARTMENT:**

(1) Medical assistance:

The purpose of the medical assistance program is to provide the necessary resources and information to enable low-income individuals to obtain either free or low-cost health care.

Appropriations:

(a)	Personal services and employee benefits	4,765.3		7,147.8	11,913.1
(b)	Contractual services	6,635.7	450.0	162.9	25,353.9
		32,602.5			
(c)	Other	765,323.4	132,839.4	122,838.9	2,417,140.2
					3,438,141.9
(d)	Other financing uses	5,620.5			32,859.7
		38,480.2			

Authorized FTE: 164.50 Permanent; 11.00 Term

The other state funds appropriations to the medical assistance program of the human services department include one million three hundred forty-five thousand nine hundred dollars (\$1,345,900) from the tobacco settlement program fund for the breast and cervical cancer treatment program and eight million one hundred nine thousand five hundred dollars (\$8,109,500) for other medicaid programs.

The other state funds appropriations to the medical assistance program of the human services department include nineteen million seven hundred seventy-six thousand dollars (\$19,776,000) from the tobacco settlement program fund, contingent on enactment of House Bill 79 or similar legislation of the first session of the fiftieth legislature to distribute one hundred percent of the tobacco settlement payment to the tobacco settlement program fund.

The general fund appropriations to the medical assistance program of the human services department in the other category includes six million one hundred thousand dollars (\$6,100,000) for medicaid programs, contingent on enactment of House Bill 607 or similar legislation of the first session of the fiftieth legislature.

Performance measures:

(a) Outcome: Percent of coordinated long-term services c waiver clients

who receive services within ninety days of eligibility

determination 92%

(b) Outcome: Average number of months that individuals are on the

coordinated long-term services c waiver registry prior to

receiving an allocation for services 80

- (c) Output: Number of individuals on the self-directed mi via waiver 1,000
- (d) Output: Number of consumers who transition from nursing facilities placement to community-based services 150
- (e) Output: Percent of eligible children six to twenty-one years of age who get healthcare coverage through medical assistance programs 65%
- (f) Output: Percent of eligible adults, with incomes below one hundred percent of the federal poverty level, who get healthcare coverage through medical assistance programs 35%
- (g) Output: Percent of eligible children through age five, who get healthcare coverage through medical assistance programs 90%
- (h) Outcome: The percent of children two to twenty-one years of age enrolled in medicaid managed care who had at least one dental visit during the measurement year 70%
- (i) Outcome: The percent of infants in medicaid managed care who had six or more well-child visits with a primary care physician during the first fifteen months 65%
- (j) Outcome: The percent of children and youth in medicaid managed care who received one or more well-child visits with a primary care physician during the measurement year 70%
- (k) Outcome: Rate of growth since the close of the previous fiscal year in the number of children and youth receiving services in medicaid school-based service programs 3%



(2) Medicaid behavioral health:

The purpose of the medicaid behavioral health 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	84,726.7	200,269.8	284,996.5
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Performance measures:

(a) Outcome: Percent of readmissions to same level of care or higher for children or youth discharged from residential treatment centers and inpatient care 8%

(b) Output: Number of individuals served annually in substance abuse or mental health programs administered through the behavioral health collaborative statewide entity contract 77,000

(3) Income support:

The purpose of the income support program is to provide cash assistance and supportive services to eligible low-income families so they can achieve self-sufficiency. Eligibility requirements are established by state law within broad federal statutory guidelines.

Appropriations:

(a)	Personal services and employee benefits	20,920.5	970.5	26,727.0	48,618.0
(b)	Contractual services	2,823.3	58.8	16,450.8	19,332.9
(c)	Other	15,691.6	3,758.9	652,653.7	672,104.2
(d)	Other financing uses			24,733.5	24,733.5

Authorized FTE: 1,049.00 Permanent; 34.00 Term; 50.00 Temporary

No less than fifteen percent and no more than twenty-five percent of the federal funds for the low-income home energy assistance program shall be used for weatherization programs.

The federal funds appropriations to the income support program of the human services department include nine million eight hundred forty-five thousand five hundred dollars (\$9,845,500) from the federal temporary assistance for needy families block grant for administration of the New Mexico Works Act.

The appropriations to the income support program of the human services department include five hundred eighty-seven thousand one hundred dollars (\$587,100) from the general fund and seventy-three million three hundred eighty-five thousand eight hundred dollars (\$73,385,800) from the federal temporary assistance for needy families block grant to provide cash assistance grants to participants as defined in the New Mexico Works Act, including education grants, wage subsidies for participants, one-time diversion payments and state-funded payments to aliens.

The federal funds appropriations to the income support program of the human services department include nine million two hundred thousand dollars (\$9,200,000) from the federal temporary assistance for needy families block grant for job training and placement.

The federal funds appropriations to the income support program of the human services department include twenty-three million nine hundred seventy-seven thousand five hundred dollars (\$23,977,500) from the temporary assistance for needy families block grant for transfers to other agencies, including twenty-three million seven hundred seventy-seven thousand five hundred dollars (\$23,777,500) to the children, youth and families department for childcare programs and two hundred thousand dollars (\$200,000) 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 six million two hundred thousand dollars (\$6,200,000) from the general fund and three million four hundred thirty-six thousand seven hundred dollars (\$3,436,700) from other state funds for general assistance. Any unexpended balances remaining at the end of fiscal year 2012 from the other state funds appropriation derived from reimbursements received from the social security administration for the general assistance program shall not revert.

The general fund appropriations to the income support program of the human services department include two hundred ten thousand nine hundred dollars (\$210,900) for the Navajo sovereign temporary assistance for needy families program.

The general fund appropriations to the income support program of the human services department include thirty-one thousand dollars (\$31,000) for the Zuni sovereign temporary assistance for needy families program.

The general fund appropriations to the income support program of the human services department in the other category includes an additional four hundred thousand dollars (\$400,000) for the education works program, contingent on enactment of House Bill 607 or similar legislation of the first session of the fiftieth legislature.

The human services department shall provide the department of finance and administration [~~and the legislative finance committee~~] quarterly reports on the expenditures of the federal temporary assistance for needy families block grant and the state maintenance-of-effort expenditures. *LINE-ITEM VETO*

Performance measures:

- (a) Outcome: Percent of parent participants who meet temporary assistance for needy families federal work participation

requirements 50%

(b) Outcome: Percent of temporary assistance for needy families

two-parent recipients meeting federal work participation

requirements 60%

(c) Outcome: Percent of eligible children in families with incomes of

one hundred thirty percent of the federal poverty level

participating in the supplemental nutrition assistance

program 82%

(d) Outcome: Percent of eligible individuals with incomes of one hundred

thirty percent of the federal poverty level participating

in the supplemental nutrition assistance program 75%

(e) Outcome: Percent of adult temporary assistance for needy families

recipients who become newly employed during the report year 50%

(f) Outcome: Percent of adult temporary assistance for needy families

recipients employed in one quarter during the report year

who are still employed in the next two consecutive quarters 55%

(4) Behavioral health services:

The purpose of the behavioral health services program is to lead and oversee the provision of an integrated and comprehensive behavioral health prevention and treatment system so that the program fosters recovery and supports the health and resilience of all New Mexicans.

Appropriations:

(a) Personal services and

employee benefits	1,897.2	282.0	2,179.2
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(b) Contractual services	39,072.8	12,787.8
51,860.6		

(c)	Other	417.3	21.0	54.0	492.3	
(d)	Other financing uses			279.4		1,073.3 1,352.7

Authorized FTE: 28.00 Permanent; 5.00 Term

The general fund appropriations to the behavioral health services program of the human services department in the contractual services category include six hundred thousand dollars (\$600,000) for operational expenses of the Los Lunas substance abuse treatment center.

Performance measures:

- (a) Output: Percent of youth on probation who were served by the statewide entity 45%
- (b) Outcome: Percent of people receiving substance abuse treatments who demonstrate improvement in the alcohol domain on the addiction severity index 80%
- (c) Outcome: Percent of people receiving substance abuse treatments who demonstrate improvement in the drug domain on the addiction severity index 75%
- (d) Outcome: Number of youth suicides among fifteen to nineteen year olds served by the statewide entity 3

(5) Child support enforcement:

The purpose of the child support enforcement program is to provide location, establishment and collection services for custodial parents and their children; to ensure that all court orders for support payments are being met to maximize child support collections; and to reduce public assistance rolls.

Appropriations:

(a)	Personal services and employee benefits	4,817.7	3,307.7	11,742.2
		19,867.6		
(b)	Contractual services	1,699.5	1,166.8	4,142.1
		7,008.4		

(c) Other 1,235.4 848.1 3,011.0 5,094.5

Authorized FTE: 400.00 Permanent

Performance measures:

(a) Outcome: Amount of child support collected, in millions \$111

(b) Outcome: Percent of current support owed that is collected 60%

(c) Outcome: Percent of cases with support orders 70%

(6) Program support:

The purpose of program support is to provide overall leadership, direction and administrative support to each agency program and to assist it in achieving its programmatic goals.

Appropriations:

(a) Personal services and

employee benefits 3,705.4 3,103.0 10,290.2  
17,098.6

(b) Contractual services 3,973.9 136.2 6,670.1  
10,780.2

(c) Other 4,281.1 649.6 7,873.3 12,804.0

Authorized FTE: 248.50 Permanent

The appropriations to each program of the human services department in the other category include a ten percent reduction to estimated costs for leased office space.

Performance measures:

(a) Outcome: Percent of federal grant reimbursements completed that

minimize the use of state cash reserves in accordance with  
established cash management plans 100%

(b) Output: Percent of intentional violations in the supplemental

nutrition assistance program investigated by the office of  
inspector general that are completed and referred for an

administrative disqualification hearing within ninety days  
 from the date of assignment 70%

Subtotal 4,699,460.9

**WORKFORCE SOLUTIONS DEPARTMENT:**

(1) Workforce transition services:

The purpose of the workforce transition 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	1,054.1	2,067.0	10,066.8	
		13,187.9			
(b)	Contractual services	116.5	80.0	1,079.0	1,275.5
(c)	Other	198.2	3,077.9	3,276.1	
(d)	Other financing uses		1,577.0		1,577.0

Authorized FTE: 285.00 Permanent; 22.50 Term

Up to thirty million dollars (\$30,000,000) may be transferred during fiscal year 2012 from the tobacco settlement permanent fund to the benefit account of the unemployment compensation fund. The transfer is contingent upon certification by the secretary of workforce solutions that there will be insufficient amounts to pay benefits and that the workforce solutions department can repay the loan by June 30, 2012. Further, the transfer is contingent on review by the legislative finance committee and approval by the state board of finance.

Performance measures:

- (a) Outcome: Percent of adult participants receiving workforce development services through the public workforce system who are employed in the first quarter after the exit quarter 66%
- (b) Outcome: Percent of Workforce Investment Act dislocated workers receiving workforce development services who are employed in the first quarter after the exit quarter 77%

- (c) 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 51%
- (d) Output: Percent of eligible unemployment insurance claims issued a determination within twenty-one days from the date of claim 80%
- (e) Output: Percent of adult Workforce Investment Act participants employed in both the second and third quarter following the exit quarter 85%
- (f) Output: Percent of Workforce Investment Act dislocated worker participants employed in both the second and third quarter following the exit quarter 90%
- (g) Output: Average time to complete a transaction with the unemployment insurance call center, 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	976.8	1,265.1	183.1	2,425.0
(b)	Contractual services		5.8	17.7	23.5
(c)	Other	203.3	1,106.3	49.2	1,358.8
(d)	Other financing uses		1,377.2		1,377.2

Authorized FTE: 37.00 Permanent

The internal service funds/interagency transfers appropriations to the labor relations program of the workforce solutions department include one million dollars (\$1,000,000) from fund balances in the workers' compensation administration fund.

Performance measures:

(a) Outcome: Number of backlogged human rights commission hearings

pending each quarter 0

(b) Outcome: Percent of wage claims investigated and resolved within one

hundred twenty days 90%

(c) Output: Number of targeted public works inspections completed 1,500

(d) Outcome: Number of discrimination claims investigated 500

(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 department and its service providers.

Appropriations:

(a) Personal services and

employee benefits 583.6 1,690.5 2,274.1

(b) Contractual services

941.3 941.3

(c) Other 487.3 340.2 827.5

(d) Other financing uses

448.2 448.2

Authorized FTE: 41.00 Permanent

(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 1,666.8 1,666.8



(b)	Contractual services		310.6	310.6
(c)	Other	2,905.8	2,905.8	

Authorized FTE: 30.00 Permanent

Performance measures:

(a) Outcome: Percent of employers sampled reporting customer satisfaction 96%

(b) Output: Number of personal contacts made by field office personnel with New Mexico businesses to inform them of available services 33,000

(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	167.5	1,036.3	4,586.3	5,790.1
(b)	Contractual services		121.7	1,175.0	1,296.7
(c)	Other	93.5	15,001.1	15,094.6	
(d)	Other financing uses		1,010.5		1,010.5

Authorized FTE: 85.00 Permanent; 4.00 Term

Subtotal 57,067.2

**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	7,924.2	7,924.2
(b)	Contractual services	348.7	348.7
(c)	Other	1,178.0	1,178.0
(d)	Other financing uses	1,000.0	1,000.0

Authorized FTE: 130.00 Permanent

Performance measures:

- (a) Output: Number of first reports of injury processed 37,200
- (b) Outcome: Percent of formal claims resolved without trial 86%
- (c) Outcome: Rate of serious injuries and illnesses caused by workplace conditions per one hundred workers 0.620
- (d) Outcome: Percent of employers referred for investigation that are determined to be in compliance with insurance requirements of the Workers' Compensation Act 67%

(2) Uninsured employers' fund:

Appropriations:

(a)	Contractual services	100.0	100.0
(b)	Other	1,069.1	1,069.1
	Subtotal	11,620.0	

## **DIVISION OF VOCATIONAL REHABILITATION:**

(1) Rehabilitation services:

The purpose of the rehabilitation services program is to promote opportunities for people with disabilities to become more independent and productive by empowering individuals with disabilities so they may maximize their employment, economic self-sufficiency, independence and inclusion and integration into society.

Appropriations:

(a)	Personal services and employee benefits	2,537.4	17.1	376.8	9,636.9	12,568.2
(b)	Contractual services	153.6	35.0	49.5	583.3	821.4
(c)	Other	1,600.9	80.1	549.2	10,044.7	12,274.9

Authorized FTE: 190.00 Permanent; 18.00 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 2012 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 1,700
- (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 competitively employed or self-employed 95%
- (d) Outcome: Percent of persons with significant disabilities achieving suitable employment outcomes who are competitively employed or self-employed, earning at least minimum wage 95%

(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 1,091.5 250.0 1,341.5

Performance measures:

(a) Output: Number of independent living plans developed 700

(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 they may receive benefits.

Appropriations:

(a) Personal services and employee benefits	6,200.9	6,200.9
(b) Contractual services	246.8	246.8
(c) Other	9,216.1	9,216.1

Authorized FTE: 90.00 Permanent; 6.00 Term

Performance measures:

(a) Efficiency: Number of days for completing an initial disability claim  
80

(b) Quality: Percent of disability determinations completed accurately 98.8%

Subtotal 42,669.8

**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 on the issues facing New Mexicans with disabilities, especially as they relate to Americans with Disabilities Act directives, building codes, disability technologies and disability culture so they can improve the quality of life of New Mexicans with disabilities.

Appropriations:

(a) Personal services and

	employee benefits	537.7	100.0	13.0	650.7	
(b)	Contractual services		27.7	150.0	30.8	208.5
(c)	Other	92.6	14.9		107.5	

Authorized FTE: 8.00 Permanent

Performance measures:

(a) Output: Number of architectural plans reviewed and sites inspected 200

(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 250

Subtotal 966.7

**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 they can live more independent and self- directed lives.

Appropriations:

(a)	Personal services and				
	employee benefits	87.3			87.3
(b)	Contractual services		1.2		1.2
(c)	Other	132.9	75.0		207.9

Authorized FTE: 2.00 Permanent

(2) Developmental disabilities planning council:

The purpose of the developmental disabilities planning council program is to provide and produce opportunities for persons with disabilities so they may realize their dreams and potential and become integrated members of society.

Appropriations:

(a)	Personal services and employee benefits	349.6	152.0	501.6
(b)	Contractual services	8.5	307.3	315.8
(c)	Other	110.3	51.2	161.5

Authorized FTE: 6.50 Permanent

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 federally mandated areas 4,500
- (b) Output: Number of monitoring site visits conducted 60

(3) Brain injury advisory council:

The purpose of the brain injury advisory council program is to provide guidance on the utilization and implementation of programs provided through the aging and long-term services department's brain injury services fund so they may align service delivery with needs identified by the brain injury community.

Appropriations:

(a)	Personal services and employee benefits	64.5	64.5
(b)	Contractual services	2.0	2.0
(c)	Other	20.2	20.2

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 persons and to help file, investigate and resolve complaints about guardianship services provided by contractors to maintain the dignity, safety and security of the indigent and incapacitated adults of the state.

Appropriations:

(a)	Personal services and employee benefits	427.7	427.7	
(b)	Contractual services	2,877.8	400.0	3,277.8
(c)	Other	68.0	68.0	

Authorized FTE: 5.50 Permanent

Any unexpended balances in the office of guardianship of the developmental disabilities planning council remaining at the end of fiscal year 2012 from appropriations made from the ~~[general fund and]~~ internal service funds/interagency transfers shall not revert. *LINE-ITEM VETO*

Performance measures:

- (a) Outcome: Percent of protected persons properly served with the least restrictive means as evidenced by an annual technical compliance audit 95%

Subtotal 5,135.5

**MINERS' HOSPITAL OF NEW MEXICO:**

(1) Healthcare:

The purpose of miners' hospital of New Mexico 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	12,638.3	266.6	12,904.9
(b)	Contractual services	3,908.8		3,908.8
(c)	Other	6,084.9	55.2	6,140.1
(d)	Other financing uses		5,023.8	5,023.8

Authorized FTE: 211.50 Permanent; 13.50 Term

The internal service funds/interagency transfers appropriation to the healthcare program of the miners' hospital of New Mexico in the other financing uses category includes five million twenty-three thousand eight hundred dollars (\$5,023,800) from the miners' trust fund.

Performance measures:

- (a) Outcome: Percent of budgeted revenue collected 100%
- (b) Outcome: Infection rates following treatment per one thousand patient days <2%
- (c) Outcome: Patient fall rates per one thousand patient days <0.5%
- (d) Quality: Percent of patients readmitted to the hospital within thirty days with the same or similar diagnosis <15%

Subtotal 27,977.6

**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 healthcare.

Appropriations:

(a) Personal services and				
employee benefits	29,190.4	1,711.4	2,583.8	22,401.4
	55,887.0			
(b) Contractual services	18,589.2	1,679.2		10,650.4
	7,099.3	38,018.1		
(c) Other	18,653.1	26,127.9	251.8	48,083.3
				93,116.1
(d) Other financing uses	578.0			578.0

Authorized FTE: 343.50 Permanent; 613.50 Term

The other state funds appropriations to the public health program of the department of health include five million eight hundred twenty-seven thousand four hundred dollars (\$5,827,400) from the tobacco settlement program fund for smoking cessation and prevention programs, seven hundred sixty-seven thousand one hundred dollars (\$767,100) from the tobacco settlement program fund for diabetes



prevention and control services, three hundred thousand five hundred dollars (\$300,500) from the tobacco settlement program fund for HIV/AIDS prevention, services and medicine and one hundred thirty-one thousand eight hundred dollars (\$131,800) from the tobacco settlement program fund for breast and cervical cancer screening.

~~[The general fund appropriation to the public health program of the department of health in the contractual services category includes an additional fifty thousand dollars (\$50,000) for operational support of women's health services in Santa Fe county.]~~ *LINE-ITEM VETO*

The general fund appropriations to the public health program of the department of health include one million three hundred ninety-seven thousand six hundred dollars (\$1,397,600), contingent on enactment of House Bill 607 or similar legislation of the first session of the fiftieth legislature.

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 2012 shall not revert.

Performance measures:

- (a) Output: Number of teens ages fifteen to seventeen receiving family planning services in agency-funded family planning clinics 7,000
- (b) Output: Number of HIV/AIDS prevention interventions 22,000
- (c) Output: Percent of preschoolers fully immunized 82%

(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 4,202.4 911.2 189.2 7,755.6 13,058.4
- (b) Contractual services 732.0 344.5 36.0 3,387.7 4,500.2
- (c) Other 3,174.4 287.9 50.8 4,371.6 7,884.7

Authorized FTE: 45.00 Permanent; 127.00 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 state and local capability 60

(3) Laboratory services:

The purpose of the laboratory services program is to provide laboratory analysis and scientific expertise for policy development for tax-supported public health, environment and toxicology programs in the state of New Mexico to provide timely identification of threats to the health of New Mexicans.

Appropriations:

- (a) Personal services and  
employee benefits 4,786.6 1,282.3 1,078.3  
7,147.2
- (b) Contractual services 100.3 119.4 219.7
- (c) Other 1,618.9 1,595.1 643.3 3,857.3

Authorized FTE: 84.00 Permanent; 49.00 Term

Performance measures:

- (a) Outcome: Percent of public health threat samples for communicable  
diseases and other threatening illnesses that are analyzed  
within specified turnaround times 95%
- (b) Efficiency: Percent of blood alcohol tests from  
driving-while-intoxicated cases that are analyzed and  
reported within ten business days 75%

(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	48,633.9	60,868.1	716.0	110,218.0
(b)	Contractual services	3,529.0	4,251.7		7,780.7
(c)	Other	10,959.4	11,780.5	22,739.9	

Authorized FTE: 2,206.00 Permanent; 21.00 Temporary

The general fund appropriations to the facilities management program of the department of health include two million one hundred two thousand four hundred dollars (\$2,102,400), contingent on enactment of House Bill 607 or similar legislation of the first session of the fiftieth legislature.

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 or adult protective services 0
- (b) Output: Percent of operational capacity beds filled at all agency facilities 91%
- (c) Efficiency: Percent of billed third-party revenues collected at all agency facilities 75%
- (d) Explanatory: Total dollar amount, in millions, of uncompensated care at all agency facilities \$38

(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	4,107.3	5,638.5	445.6	10,191.4
(b)	Contractual services	14,595.2	1,400.0	1,034.1	
		1,061.2	18,090.5		
(c)	Other	17,603.2	1,130.1	1,096.4	19,829.7
(d)	Other financing uses	92,921.5			92,921.5

Authorized FTE: 69.00 Permanent; 97.00 Term

The general fund appropriation to the developmental disabilities support program of the department of health in the contractual services category includes one hundred thousand dollars (\$100,000) for payments due to the plaintiffs' attorneys, their consultants and expert witnesses, and other related court costs as a result of the Jackson v. Ft. Stanton lawsuit and related actions. ~~[There are no other appropriations for this purpose in the General Appropriation Act of 2011 and the department shall not expend any other appropriation for this purpose. During fiscal year 2012, the department has no authority to request a budget adjustment for the purpose of increasing payments to those attorneys, consultants and expert witnesses, and other related court costs. Any amounts budgeted by the department of health for attorneys, consultants, witnesses and related costs as a result of this lawsuit above the amount appropriated in this paragraph shall be expended for the purpose of reducing the number of individuals on the developmental disabilities medicaid waiver waiting list.]~~ *LINE-ITEM VETO*

The general fund appropriation to the developmental disabilities support program of the department of health in the other financing uses category includes one million dollars (\$1,000,000) for the purpose of reducing the number of individuals on the developmental disabilities medicaid waiver waiting list.

~~[The general fund appropriation to the developmental disabilities support program of the department of health in the contractual services category includes sixty five thousand dollars (\$65,000) for an autism summer camp in Torrance county.]~~ *LINE-ITEM VETO*

The general fund appropriation to the developmental disabilities support program of the department of health in the other financing uses category includes ninety-two million nine hundred twenty-one thousand five hundred dollars (\$92,921,500) for medicaid waiver services in local communities: two million three hundred ninety-four thousand eight hundred dollars (\$2,394,800) for medically fragile services and ninety million five hundred twenty-six thousand seven hundred dollars (\$90,526,700) for services to the developmentally disabled.

Performance measures:

(a) Outcome: Percent of adults receiving developmental disabilities day

services who are engaged in community-integrated employment 30%

(b) Efficiency: Percent of developmental disabilities waiver applicants who

have a service plan in place within ninety days of income

and clinical eligibility determination 95%

(c) Efficiency: Percent of requests to increase a level of care reviewed by the department of health 40%

(6) Health certification, licensing and oversight:

The purpose of the health certification, licensing and oversight program is to provide health facility licensing and certification surveys, community-based oversight and contract compliance surveys and a statewide incident management system so that people in New Mexico have access to quality health care and that vulnerable populations are safe from abuse, neglect and exploitation.

Appropriations:

(a) Personal services and

employee benefits	3,530.3	1,095.8	3,017.9	1,617.0
	9,261.0			

(b) Contractual services	316.9	15.1	332.0	
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(c) Other	586.2	1,208.1	433.9	326.4	2,554.6
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Authorized FTE: 44.00 Permanent; 100.00 Term

Performance measures:

(a) Output: Percent of required compliance surveys completed for adult residential care and adult daycare facilities 80%

(b) Output: Percent of developmental disabilities, family infant toddler, medically fragile and behavioral health providers receiving a survey by the quality management bureau 60%

(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	5,547.5	140.0	1,199.7	3,324.1
	10,211.3			

(b)	Contractual services	1,909.8	173.8	773.2	2,856.8
(c)	Other	4,336.5	120.3	497.7	4,954.5
Authorized FTE: 133.00 Permanent; 3.00 Term					
Subtotal		536,208.6			

**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	4,378.9	3,257.2	139.6	7,775.7
(b)	Contractual services	2.6	134.4	34.0	171.0
(c)	Other	751.5	867.5	103.5	1,722.5

Authorized FTE: 109.00 Permanent; 23.00 Term

Performance measures:

- (a) Output: Percent of new septic tanks inspections completed 60%
- (b) Outcome: Percent of high-risk food-related violations corrected within the timeframes noted on the inspection report issued to permitted commercial food establishments 100%
- (c) Output: Percent of radiation-producing machine inspections completed within the timeframes identified in radiation control bureau policies 85%

(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 are conducted in a manner protective of public health and environmental quality.

Appropriations:

(a) Personal services and

employee benefits	1,869.9	5,203.6	6,571.9
13,645.4			

(b) Contractual services

4,965.9		1,580.3	3,385.6
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(c) Other	134.7	1,089.4	955.5	2,179.6
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Authorized FTE: 46.00 Permanent; 140.50 Term

Performance measures:

(a) Output: Percent of groundwater discharge permitted facilities

receiving annual field inspections and compliance

evaluations 50%

(b) Outcome: Percent of permitted facilities where monitoring results

demonstrate compliance with groundwater standards 70%

(c) Output: Percent of large quantity hazardous waste generators

inspected 20%

(d) Explanatory: Stream miles and acreage of lakes monitored annually to

determine if surface water quality is impaired 125/40K

(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 has safe and healthful working conditions.

Appropriations:

(a)	Personal services and				
	employee benefits	1,554.6	8,673.2	2,934.4	
		13,162.2			
(b)	Contractual services	18.9	349.6	214.5	583.0
(c)	Other	334.3	1,482.8	657.3	2,474.4

Authorized FTE: 70.00 Permanent; 126.50 Term

Performance measures:

- (a) Outcome: Percent of underground storage tank facilities in significant operational compliance with release prevention and release detection requirements of the petroleum storage tanks regulations 90%
- (b) 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%

(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 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		4,161.9	1,359.0	5,520.9
(b)	Contractual services		3,230.3	114.1	3,344.4
(c)	Other	664.6	268.1	932.7	

Authorized FTE: 29.00 Permanent; 49.00 Term



Performance measures:

(a) Efficiency: Percent of public drinking water systems inspected within one week of confirmation of system problems that might

acutely impact public health 100%

(b) Explanatory: Number of uniform funding applications processed for water,

wastewater and solid waste projects TBD

(c) Output: Percent of public water systems surveyed to ensure

compliance with drinking water regulations 90%

(5) Program support:

The purpose of program support is to provide overall leadership, administrative, legal and information management support to 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 2,170.6 8.0 2,227.0 1,564.1  
5,969.7

(b) Contractual services 102.1 80.0 152.1 433.6 767.8

(c) Other 185.6 5.0 262.0 220.5 673.1

Authorized FTE: 45.00 Permanent; 30.00 Term

Performance measures:

(a) Output: Percent of enforcement actions brought within one year of inspection or documentation of violation 90%

(6) Special revenue funds:

Appropriations:

(a) Personal services and

	employee benefits	399.1	399.1	
(b)	Contractual services		4,000.0	4,000.0
(c)	Other	7,387.5	7,387.5	
(d)	Other financing uses		29,488.2	29,488.2
Authorized FTE: 5.00 Permanent				
	Subtotal		105,163.1	

**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 injured or lost due to releases of hazardous substances or oil into the environment.

Appropriations:

(a)	Personal services and			
	employee benefits	40.9	200.0	240.9
(b)	Contractual services	6.9	2,000.0	2,006.9
(c)	Other	41.9	41.9	

Authorized FTE: 3.80 Permanent

The other state funds appropriation to the natural resources trustee program of the natural resources trustee in the personal services and employee benefits category includes two hundred thousand dollars (\$200,000) from the natural resource trustee fund from settlement payments for reimbursement of assessment costs.

Performance measures:

(a)	Outcome: Number of acres of habitat restoration	500
(b)	Outcome: Number of acre-feet of water conserved through restoration	500
	Subtotal	2,289.7

**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 analyses 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 5.0 3.4 8.4

Authorized FTE: 2.00 Permanent

Performance measures:

(a) Outcome: Number of health-related bills analyzed during the  
 legislative session 30

Subtotal 8.4

**VETERANS' SERVICES DEPARTMENT:**

(1) Veterans' services:

The purpose of the veterans' services program is to carry out the mandates of the New Mexico legislature and the governor to provide information and assistance to veterans and their eligible dependents to obtain the benefits to which they are entitled to improve their quality of life.

Appropriations:

(a) Personal services and  
 employee benefits 1,607.3 1,607.3  
 (b) Contractual services 794.7 794.7  
 (c) Other 270.8 100.0 370.8

Authorized FTE: 35.00 Permanent; 2.00 Term

Performance measures:

(a) Output: Number of veterans served by veterans' services department  
 field offices 37,000

- (b) Output: Number of homeless veterans provided overnight shelter for a period of two weeks or more 200
- (c) Output: Compensation received by New Mexico veterans as a result of the department's contracts with veterans' organizations, in millions \$85
- (d) Output: Number of property tax waiver and exemption certificates issued to New Mexico veterans 8,000
- Subtotal 2,772.8

**CHILDREN, YOUTH AND FAMILIES DEPARTMENT:**

(1) Juvenile justice facilities:

The purpose of the juvenile justice facilities program is to provide rehabilitative services to youth committed to the department, including medical, educational, mental health and other services that will support their rehabilitation.

Appropriations:

- (a) Personal services and employee benefits 29,034.2 1,532.2 1,310.6 31,877.0
- (b) Contractual services 4,231.4 89.0 4,320.4
- (c) Other 3,910.2 23.0 278.7 4,211.9

Authorized FTE: 561.50 Permanent

Performance measures:

- (a) Outcome: Percent of incidents in juvenile justice services facilities requiring use of force resulting in injury 3%
- (b) Outcome: Percent of clients recommitted to a children, youth and families department facility within two years of discharge

from facilities 9%

(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	28,710.1	722.9	20,221.7	49,654.7
(b)	Contractual services	990.6		9,127.0	10,117.6
(c)	Other	28,585.3	1,873.8	21,367.0	51,826.1
(d)	Other financing uses			240.0	240.0

Authorized FTE: 843.00 Permanent; 6.00 Term

Performance measures:

- (a) Output: Percent of children who are not the subject of substantiated maltreatment while in foster care 99.68%
- (b) Outcome: Percent of children who are not the subject of substantiated maltreatment within six months of a prior determination of substantiated maltreatment 93%
- (c) Outcome: Percent of children reunified with their natural families in less than twelve months of entry into care 71.5%

(3) Early childhood services:

The purpose of the early childhood services program is to provide quality childcare, nutrition services, early childhood education and training to enhance the physical, social and emotional growth and development of children.

Appropriations:

- (a) Personal services and

	employee benefits	2,222.5		541.0	4,808.9	7,572.4
(b)	Contractual services	12,822.7				2,878.0
		15,700.7				
(c)	Other	28,333.1	750.0	24,337.5	73,012.3	126,432.9

Authorized FTE: 100.50 Permanent; 50.00 Term

The internal service funds/interagency transfers appropriations to the early childhood services program of the children, youth and families department include twenty-three million seven hundred seventy-seven thousand five hundred dollars (\$23,777,500) for childcare programs from the temporary assistance for needy families block grant to New Mexico.

The general fund appropriations to the early childhood services program of the children, youth and families department include seven million two hundred twenty-four thousand dollars (\$7,224,000) for direct services and eight hundred two thousand seven hundred dollars (\$802,700) for administrative and program support in the prekindergarten program.

The federal funds appropriations to the early childhood services program of the children, youth and families department include twenty-nine million four hundred sixty-eight thousand two hundred dollars (\$29,468,200) for childcare programs from the child care development block grant to New Mexico.

The general fund appropriations to the early childhood services program of the children, youth and families department include five hundred thousand dollars (\$500,000) for early childhood education.

The general fund appropriations to the early childhood services program of the children, youth and families department include three million one hundred thousand dollars (\$3,100,000) for childcare programs, contingent on enactment of House Bill 607 or similar legislation of the first session of the fiftieth legislature.

~~[The children, youth and families department shall develop a plan to address the childcare program's waiting list for clients from families with incomes between one hundred percent and one hundred fifty percent of the federal poverty level. The plan shall include a reduction in services for children eleven years of age or older from families with incomes between one hundred fifty percent and two hundred percent of the federal poverty level. The department shall report the details of the plan to the department of finance and administration and the legislative finance committee by July 31, 2014.]~~

Performance measures:

(a) Outcome: Percent of children receiving state subsidy in stars/aim

high programs level two through five or with national

accreditation 69%

(b) Outcome: Percent of mothers participating in home visiting who are

identified as having symptoms of post-partum depression baseline

(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	21,184.9	228.7	194.2	21,607.8
(b) Contractual services	22,573.6	1,822.4	423.5	4,148.2
	28,967.7			
(c) Other	2,570.9	133.0		2,703.9

Authorized FTE: 375.10 Permanent; 12.00 Term

Notwithstanding the provisions of Section 31-12-12 NMSA 1978, the other state funds appropriations to the youth and family services program of the children, youth and families department include one million six hundred sixty-seven thousand dollars (\$1,667,000) from the domestic violence offender treatment or intervention fund for domestic violence programs.

Performance measures:

- (a) Outcome: Percent of adult victims or survivors receiving domestic violence services who have an individualized safety plan 95%
- (b) Outcome: Percent of domestic violence offenders who complete a batterers' intervention program 70%
- (c) Outcome: Percent of clients who complete formal probation 90%
- (d) Output: Percent of clients readjudicated 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	7,345.7		3,486.1	10,831.8
(b) Contractual services	1,153.8		44.4	508.6
(c) Other	2,631.1	115.8	1,319.6	4,066.5

Authorized FTE: 157.00 Permanent; 4.00 Term

Performance measures:

(a) Outcome: Percent vacancy rate for youth care specialists 8%

Subtotal 371,838.2

TOTAL HEALTH, HOSPITALS  
AND HUMAN SERVICES 1,528,934.0 351,652.7 232,294.6 3,820,723.2  
5,933,604.5

## 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 in maintaining a high degree of readiness to respond to state and federal missions and to supply an experienced force to protect the public, provide direction for youth and improve the quality of life for New Mexicans.

Appropriations:

(a) Personal services and				
employee benefits	2,809.2	89.8	4,868.6	7,767.6
(b) Contractual services	387.7		3,234.7	3,622.4
(c) Other	3,174.7	78.9	3,804.3	7,057.9

Authorized FTE: 29.00 Permanent; 102.00 Term

Performance measures:

(a) Outcome: Rate of attrition of the New Mexico army national guard 15.5%

(b) Outcome: Percent of strength of the New Mexico national guard 92%



(c) Output: Number of New Mexico youth challenge academy cadets who  
earn their high school equivalency annually 38

(d) Outcome: Percent of cadets successfully graduating from the youth  
challenge academy 92%

Subtotal 18,447.9

### **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	315.8	315.8
(b) Contractual services	7.5	7.5
(c) Other	126.1	126.1

Authorized FTE: 6.00 Permanent

Performance measures:

(a) Efficiency: Percent of revocation hearings held within thirty days of a  
parolee's return to the corrections department 95%

(b) Outcome: Percent of parole certificates issued within ten days of  
hearing or ten days of receiving relevant information needed 95%

Subtotal 449.4

### **JUVENILE PUBLIC SAFETY ADVISORY BOARD:**

The purpose of the juvenile public safety advisory board is to monitor each youth's rehabilitative process through therapy and support services to assure there is a low risk for reoffending or re-victimizing the community.

Appropriations:

(a)	Contractual services	3.8	3.8
(b)	Other	20.3	20.3
	Subtotal	24.1	

**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	93,510.8	8,552.0	113.7	8.0	102,184.5
(b)	Contractual services	45,730.3	48.9	35.0	76.0	45,890.2
(c)	Other	83,128.0	6,465.1	63.8	725.0	90,381.9

Authorized FTE: 1,921.50 Permanent; 34.00 Term

The general fund appropriations to the inmate management and control program of the corrections department include three million five hundred thousand dollars (\$3,500,000) contingent on enactment of House Bill 607 or similar legislation of the first session of the fiftieth legislature.

Performance measures:

(a) Outcome: Recidivism rate of the success for offenders after release

program by thirty-six months 35%

(b) Outcome: Percent of female offenders successfully released in

accordance with their scheduled release date 90%

(c) Outcome: Percent turnover of correctional officers in public

facilities 13%

- (d) Outcome: Percent of male offenders successfully released in accordance with their scheduled release date 90%
- (e) Efficiency: Daily cost per inmate, in dollars, for prior fiscal year \$106.65
- (f) Output: Percent of inmates testing positive for drug use or 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 10
- (i) Output: Number of escapes from a publicly run corrections department facility 0
- (j) Output: Number of escapes from a secure non-New Mexico corrections department facility 0
- (k) Output: Average number of days an inmate waits for medical, dental or psychiatric services 3
- (l) Outcome: Percent of eligible sex offenders within three years of release that are receiving treatment 65%

(2) Corrections industries:

The purpose of the corrections industries program is to provide training and work experience opportunities for inmates to instill a quality work ethic and to prepare them to perform effectively in an employment position and to reduce idle time of inmates while in prison.

Appropriations:

(a)	Personal services and employee benefits	1,854.1	1,854.1
(b)	Contractual services	25.1	25.1
(c)	Other	2,096.1	2,096.1

Authorized FTE: 32.00 Permanent; 3.00 Term

Performance measures:

(a) Outcome: Profit and loss ratio break even

(b) Outcome: Percent of eligible inmates employed 6%

(3) Community offender management:

The purpose of the community offender management program is to provide programming and supervision to offenders on probation and parole, with emphasis on high-risk offenders, to better ensure the probability of them becoming law-abiding citizens, to protect the public from undue risk and to provide intermediate sanctions and post-incarceration support services as a cost-effective alternative to incarceration.

Appropriations:

(a) Personal services and

employee benefits	17,298.1	975.0	18,273.1
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(b) Contractual services	30.9		30.9
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(c) Other	8,713.1	1,275.0	9,988.1
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Authorized FTE: 387.00 Permanent

No more than five hundred thousand dollars (\$500,000) 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%

(4) 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	722.1		722.1
(b)	Contractual services	0.5		0.5
(c)	Other	2,181.5	737.8	2,919.3

Authorized FTE: 17.00 Permanent

The appropriations for the community offender management/vendor-run program of the corrections department are appropriated to the community corrections grant fund.

Performance measures:

- (a) Output: Percent of male offenders who complete the residential treatment center program 75%
- (b) Output: Percent of female offenders who complete the residential treatment center program 75%
- (c) Output: Percent of female offenders who complete the halfway house program 75%

(5) Program support:

The purpose of program support is to provide quality administrative support and oversight to the department operating units to ensure a clean audit, effective budget, personnel management and cost-effective management information system services.

Appropriations:

(a)	Personal services and employee benefits	5,120.0	256.1	100.0	5,476.1
(b)	Contractual services	421.6			421.6
(c)	Other	1,525.8	12.7		1,538.5

Authorized FTE: 90.00 Permanent

Performance measures:

- (a) Outcome: Percent of prisoners reincarcerated back into the corrections department system within thirty-six months due to new charges or pending charges 40%
  - (b) Outcome: Percent of prisoners reincarcerated back into the corrections department within thirty-six months 47%
  - (c) Outcome: Percent of sex offenders reincarcerated back into the corrections department within thirty-six months 40%
- Subtotal 281,802.1

**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 840.1 840.1
- (b) Contractual services 214.7 214.7
- (c) Other 629.3 579.5 1,208.8

Authorized FTE: 16.00 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 <120

(2) Federal grant administration:

The purpose of the federal grant administration program is to provide funding and training to nonprofit providers and public agencies so they can provide services to victims of crime.

Appropriations:

(a)	Personal services and employee benefits		275.1	275.1
(b)	Contractual services		28.0	28.0
(c)	Other	4,193.4	4,193.4	
(d)	Other financing uses		700.0	700.0

Authorized FTE: 4.00 Term

Performance measures:

- (a) Efficiency: Percent of sub-recipients that receive compliance monitoring via desk audits 85%
- (b) Output: Number of training workshops conducted for sub-recipients 12
- (c) Efficiency: Percent of site visits conducted 40%

Subtotal 7,460.1

**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	52,850.9	1,099.6	2,691.0	2,348.9
		58,990.4			
(b)	Contractual services	1,022.8	212.0	114.0	82.0
(c)	Other	10,878.7	4,210.7	1,597.8	1,666.5
					18,353.7

Authorized FTE: 766.00 Permanent; 4.00 Term; 24.20 Temporary

The general fund appropriations to the law enforcement program of the department of public safety include six hundred thirty-four thousand dollars (\$634,000) for a state police recruit school contingent on enactment of House Bill 607 or similar legislation of the first session of the fiftieth legislature.

Performance measures:

- (a) Output: Number of driving-while-intoxicated arrests by department of public safety commissioned personnel in New Mexico 3,200
- (b) Output: Number of driving-while-intoxicated crashes investigated by department of public safety commissioned personnel 200
- (c) Output: Number of drug arrests by department of public safety commissioned personnel in New Mexico 1,000
- (d) 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 200
- (e) Output: Number of criminal cases investigated by department of public safety commissioned personnel in New Mexico 15,000
- (f) Output: Number of criminal citations or arrests for the illegal sale or service of alcohol to minors and intoxicated persons by the special investigation division 150

(2) Motor transportation:

The purpose of the motor transportation program is to provide the highest quality of commercial motor vehicle enforcement services to the public and ensure a safer state.

Appropriations:

- (a) Personal services and employee benefits 6,634.9 80.0 6,085.5 3,213.0  
16,013.4



(b)	Contractual services	421.4	1,567.8	867.5	2,856.7
(c)	Other	2,165.0	1,711.9	936.8	4,813.7

Authorized FTE: 218.50 Permanent; 55.00 Term

The internal service funds/interagency transfers appropriations to the motor transportation program of the department of public safety include six million nine hundred nine thousand two hundred dollars (\$6,909,200) from the state road fund.

Any unexpended balances in the motor transportation program of the department of public safety remaining at the end of fiscal year 2012 made from appropriations from the state road fund shall revert to the state road fund.

The general fund appropriation to the motor transportation program of the department of public safety in the other category includes one hundred sixty-three thousand five hundred dollars (\$163,500) contingent on enactment of House Bill 607 or similar legislation of the first session of the fiftieth legislature.

Performance measures:

(a) Output: Number of narcotic seizures by the motor transportation division 52

(b) Output: Number of commercial motor vehicle safety inspections by the motor transportation division 85,000

(c) Output: Number of motor carrier safety audits completed 200

(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	9,185.9	1,085.7	47.6	1,081.1
		11,400.3			
(b)	Contractual services	299.3	382.0	10.0	268.4
(c)	Other	3,422.8	1,247.3	16.1	4,263.2
					8,949.4

Authorized FTE: 146.00 Permanent; 43.00 Term

The general fund appropriation to program support of the department of public safety in the personal services and employee benefits category includes one hundred two thousand five hundred dollars (\$102,500) to fill a vacant forensic scientist in the deoxyribonucleic acid unit contingent on enactment of House Bill 607 or similar legislation of the first session of the fiftieth legislature.

Performance measures:

(a) Outcome: Percent of forensic cases completed within thirty working days 60%

(b) Outcome: Percent of sex offender registrations processed within forty-eight work hours of receipt 70%

Subtotal 123,768.1

**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	1,201.3	106.8	2,621.8	3,929.9
(b)	Contractual services	54.2		1,558.2	1,612.4
(c)	Other	1,231.1	10.0	74.8	26,049.5
					27,365.4

Authorized FTE: 16.00 Permanent; 46.00 Term

Performance measures:

(a) Outcome: Number of exercises conducted annually in compliance with federal guidelines 25

(b) Outcome: Number of program and administrative team compliance visits conducted each year on all grants 40

Subtotal			32,907.7	
TOTAL PUBLIC SAFETY	356,280.2	31,117.3	14,491.9	62,970.0
	464,859.4			

## 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	16,822.8	9,757.7	26,580.5
(b)	Contractual services	82,906.4		234,536.9
		317,443.3		
(c)	Other	53,384.8	153,555.1	206,939.9

Authorized FTE: 361.00 Permanent; 38.00 Term

The other state funds appropriations to the programs and infrastructure program of the department of transportation include twenty-six million two hundred thousand five hundred dollars (\$26,200,500) for maintenance, reconstruction and related construction costs of state-managed highways.

#### Performance measures:

- (a) Explanatory: Annual number of riders on park and ride >250,000
- (b) Outcome: Annual number of riders on the rail runner corridor, in millions 1.5
- (c) Outcome: Total number of traffic fatalities <365
- (d) Outcome: Number of alcohol-related traffic fatalities <145
- (e) Outcome: Number of non-alcohol-related traffic fatalities <220
- (f) Outcome: Number of passengers not wearing seatbelts in motor vehicle

fatalities <160

(g) Outcome: Number of crashes in established safety corridors <700

(h) Explanatory: Percent of projects in production let as scheduled >75%

(i) Quality: Ride quality index for new construction >4

(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	90,990.8	4,181.0	95,171.8
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(b) Contractual services	33,643.3		33,643.3
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(c) Other	92,032.0	319.0	92,351.0
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Authorized FTE: 1,834.00 Permanent; 16.70 Term

The other state funds appropriation to the transportation and highway operations program of the department of transportation in the contractual services category includes six million dollars (\$6,000,000) for additional contract maintenance on state-managed highways within the six transportation commission districts.

Performance measures:

(a) Output: Number of statewide pavement preservation lane miles >2,750

(b) Outcome: Percent of non-interstate lane miles rated good >88%

(c) Output: Amount of litter collected from department roads, in tons >16,000

(d) Outcome: Percent of interstate lane miles rated good >97%

(e) Quality: Customer satisfaction levels at rest areas >98%

(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	23,991.8	938.6	24,930.4	
(b)	Contractual services	4,426.1	202.0	4,628.1	
(c)	Other	14,272.2	117.4	14,389.6	
(d)	Other financing uses	6,909.2		6,909.2	

Authorized FTE: 251.00 Permanent; 1.80 Term

Performance measures:

(a) Efficiency:	Percent of invoices paid within thirty days	>95%
(b) Output:	Number of employee injuries	<100

Subtotal 822,987.1

TOTAL TRANSPORTATION 419,379.4 403,607.7 822,987.1

**I. OTHER EDUCATION**

**PUBLIC EDUCATION DEPARTMENT:**

The purpose of the public education department is to provide a public education to all students. The secretary of public education is responsible to the governor for the operation of the department. It is the secretary's duty to manage all operations of the department and to administer and enforce the laws with which the secretary or the department is charged. To do this, the department is focusing on leadership and support, productivity, building capacity, accountability, communication and fiscal responsibility.

Appropriations:

(a)	Personal services and				
	employee benefits	9,382.6	1,010.0	38.0	7,110.0
		17,540.6			
(b)	Contractual services	450.0	442.0	16,547.9	17,439.9
(c)	Other	904.8	504.4	3,348.5	4,757.7

Authorized FTE: 208.20 Permanent; 98.00 Term; 4.60 Temporary

Performance measures:

(a) Outcome: Average processing time for school district budget

adjustment requests, in days 7

(b) Outcome: Percent of teachers passing all strands of professional

dossiers upon the first submittal 75%

(c) Explanatory: Number of elementary schools participating in the  
state-funded elementary school breakfast program

(d) Explanatory: Number of eligible children served in state-funded  
prekindergarten

Subtotal 39,738.2

**APPRENTICESHIP ASSISTANCE:**

Appropriations: 192.4 192.4

Subtotal 192.4

**REGIONAL EDUCATION COOPERATIVES:**

Appropriations:

(a) Northwest: 1,593.0 1,593.0

(b) Northeast: 2,415.4 2,415.4

(c) Lea county: 3,900.0 3,900.0

(d) Pecos valley: 1,321.5 1,371.8 2,693.3

(e) Southwest: 300.0 4,500.0 4,800.0

(f) Central: 2,000.0 2,000.0 4,000.0

(g) High plains: 3,357.5 2,854.8 6,212.3

(h)	Clovis:	335.7	1,700.0	2,035.7
(i)	Ruidoso:	4,000.0	4,800.0	8,800.0
	Subtotal		36,449.7	

**PUBLIC EDUCATION DEPARTMENT SPECIAL APPROPRIATIONS:**

Appropriations:

(a)	Breakfast for elementary students	1,924.6		1,924.6
(b)	Regional education cooperatives operations	938.2		938.2
(c)	Prekindergarten program	6,292.6		6,292.6
(d)	Graduation, reality, and dual-role skills	200.0	200.0	400.0
(e)	New Mexico cyber academy		500.0	500.0
(f)	Kindergarten-three-plus	5,292.6		5,292.6
(g)	Advanced placement	541.8		541.8
(h)	Operating budget management system and student, teacher accountability reporting system	673.6	673.6	
(i)	Early childhood education	500.0		500.0

A regional education cooperative may submit an application to the public education department for an allocation from the nine hundred thirty-eight thousand two hundred dollar (\$938,200) appropriation. The public education department may allocate amounts to one or more regional education cooperatives provided that the regional education cooperative's application has adequately justified a need for the allocation, and the department finds that the regional education cooperative has submitted timely quarterly financial reports, is in compliance with state and federal financial reporting requirements, including annual audit requirements pursuant to the Audit Act, and is otherwise financially stable. The

public education department shall not make an allocation to a regional education cooperative that is not in compliance with the Audit Act.

~~[The general fund appropriation to the public education department for the prekindergarten program and the kindergarten three plus program shall be used only for direct instruction, transportation and approved administrative costs.]LINE-ITEM VETO~~

The internal service funds/interagency transfers appropriation to the public education department includes two hundred thousand dollars (\$200,000) 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 operating budget management system and student, teacher accountability reporting system is contingent on the public education department granting the legislative finance committee and the legislative education study committee access to these systems.]LINE-ITEM VETO~~

Any unexpended balances in the special appropriations to the public education department remaining at the end of fiscal year 2012 from appropriations made from the general fund shall revert to the general fund.

Subtotal 17,063.4

#### **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 ensuring adequacy of all facilities in accordance with public education department approved educational programs.

#### Appropriations:

(a)	Personal services and		
	employee benefits	3,888.7	3,888.7
(b)	Contractual services	232.1	232.1
(c)	Other	1,575.5	1,575.5

Authorized FTE: 50.00 Permanent

#### Performance measures:

(a) Outcome: Percent compliance with prompt payment provision of Prompt

Payment Act for all direct payments to vendors 100%

(b) Outcome: Percent of projects meeting all contingencies completed



within the specified period of awards 85%

(c) Explanatory: Change in statewide public school facility condition index measured at December 31 of prior calendar year compared with prior year

Subtotal		5,696.3		
TOTAL OTHER EDUCATION	27,793.2	18,967.4	238.0	52,141.4
	99,140.0			

## 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.

Except as otherwise provided, any unexpended balances remaining at the end of fiscal year 2012 shall not revert to the general fund.

### HIGHER EDUCATION DEPARTMENT:

(1) Policy development and institutional financial oversight:

The purpose of the policy development and institutional financial oversight program is to provide a continuous process of statewide planning and oversight within the department's statutory authority for the state higher education system and to ensure both the efficient use of state resources and progress in implementing a statewide agenda.

#### Appropriations:

(a) Personal services and				
employee benefits	2,461.2	140.0	1,006.6	3,607.8
(b) Contractual services	65.1		1,263.5	1,328.6
(c) Other	3,838.6	5.0	5,785.8	9,629.4
(d) Other financing uses	7,607.8		400.0	2,270.7
	10,278.5			

Authorized FTE: 33.50 Permanent; 24.50 Term

~~[The department shall identify the differences between funded student credit hours and completed student credit hours at each institution and statewide under the funding formula and report the results to the legislative finance committee no later than July 1, 2011.]LINE-ITEM VETO~~

The department shall recommend revisions to the funding formula authorized by Section 21-2-5.1 NMSA 1978 no later than October 15, 2011. ~~[At a minimum, the new formula shall provide incentives for improving student outcomes and quality of programs, including mechanisms to promote cost effective services, greater rates of students completing courses and on-time degree completion.]LINE-ITEM VETO~~

The general fund appropriation to the policy development and institutional financial oversight program of the higher education department in the other category includes an additional one hundred thousand dollars (\$100,000) for the mathematics, engineering, science achievement program to provide educational enrichments for middle and high school students from historically underrepresented populations.

Performance measures:

(a) Efficiency: Percent of properly completed capital infrastructure draws released to the state board of finance within thirty days

of receipt from the institutions 100%

(b) Efficiency: Percent of properly completed financial aid allocations and draw-downs processed within thirty days 100%

(c) Outcome: Percent of adult basic education students who set and attain the goal of obtaining employment 58%

(2) Student financial aid:

The purpose of the student financial aid program is to provide access, affordability and opportunities for success in higher education to students and their families so that all New Mexicans may benefit from postsecondary education and training beyond high school.

Appropriations:

(a)	Contractual services	53.5		53.5
(b)	Other 11,494.6	2,393.0	925.0	14,812.6
(c)	Other financing uses	10,736.5	11,937.6	41,844.8
		64,518.9		

Notwithstanding the provisions of Sections 21-21L-1 through 21-21L-8 NMSA 1978, the other state funds appropriation to the student financial aid program of the higher education department includes two million two hundred thirty-two thousand two hundred dollars (\$2,232,200) from the college affordability endowment fund for student financial aid.

~~[The general fund appropriation to the student financial aid program of the higher education department in the other financing uses category includes two hundred thousand dollars (\$200,000) for ten students to attend a four-year certified veterinary medical program at the college of veterinary medicine at Kansas state university.~~

~~\_\_\_\_\_The general fund appropriation to the student financial aid program of the higher education department in the other category includes two hundred thousand dollars (\$200,000) for the student choice program.]LINE-ITEM VETO~~

Performance measures:

(a) Outcome: Percent of students meeting eligibility criteria for state

loan programs who continue to be enrolled by the sixth

semester 82%

(b) Outcome: Percent of students meeting eligibility criteria for

merit-based programs who continue to be enrolled by the

sixth semester 68%

(c) Outcome: Percent of students meeting eligibility criteria for

need-based programs who continue to be enrolled by the

sixth semester 66%

(d) Output: Number of lottery success recipients enrolled in or

graduated from college after the ninth semester 3,500

Subtotal 104,229.3

**UNIVERSITY OF NEW MEXICO:**

(1) Main campus:

The purpose of the instruction and general program is to provide education services designed to meet the intellectual, educational and quality of life goals associated with the ability to enter the workforce, compete and advance in the new economy and contribute to social advancement through informed citizenship.

Appropriations:

(a) Instruction and general

	purposes	164,428.9	157,238.0	8,846.0	330,512.9
(b)	Athletics	2,257.8	30,147.0	20.0	32,424.8
(c)	Educational television		1,034.0	153.0	1,187.0
(d)	Other	181,803.0	107,636.0	289,439.0	

Performance measures:

(a) Outcome: Percent of full-time, degree-seeking, first-time freshmen

retained to second year 78.4%

(b) Outcome: Amount of external dollars for research and public service,

in millions \$124

(c) Output: Number of undergraduate transfer students from two-year

colleges 1,710

(d) Outcome: Percent of full-time, degree-seeking, first-time freshmen

completing an academic program within six years 46%

(e) Outcome: Percent of enrolled Native American students among all

degree-seeking undergraduates as of fall census date 6.9%

(2) Gallup branch:

The purpose of the instruction and general program at New Mexico's community colleges is to provide credit and noncredit postsecondary education and training opportunities to New Mexicans so that they have the skills to be competitive in the new economy and are able to participate in lifelong learning activities.

Appropriations:

(a) Instruction and general

purposes 8,365.3 6,218.0 1,133.0 15,716.3

(b) Other 1,758.0 73.0 1,831.0

Performance measures:

- (a) Outcome: Percent of new students taking nine or more credit hours  
successful after three years 42%
- (b) Outcome: Percent of graduates placed in jobs in New Mexico 65%
- (c) Output: Number of students enrolled in the area vocational schools  
program 420
- (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 1,706.7 1,745.0 130.0 3,581.7
- (b) Other 559.0 241.0 800.0

Performance measures:

- (a) Outcome: Percent of new students taking nine or more credit hours  
successful after three years 67%
- (b) Outcome: Percent of a cohort of full-time, first-time, degree- or  
certificate-seeking community college students who complete  
the program in one hundred fifty percent of normal time to  
completion 56.5%
- (c) Outcome: Percent of graduates placed in jobs in New Mexico 85%

(d) Output: Number of students enrolled in the small business  
development center program 450

(e) Outcome: Percent of first-time, full-time, degree-seeking students  
enrolled in a given fall term who persist to the following  
spring term 80%

(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	4,766.1	4,919.0	2,458.0	12,143.1
(b)	Other	1,736.0	195.0	1,931.0	

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 69%

(c) Output: Number of students enrolled in the adult basic education  
program 1,500

(d) Outcome: Percent of first-time, full-time, degree-seeking students  
enrolled in a given fall term who persist to the following  
spring term 80%

(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	2,794.4	3,338.0	412.0	6,544.4
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(b) Other	864.0	864.0		
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Performance measures:

(a) Outcome: Percent of new students taking nine or more credit hours

successful after three years	59%
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(b) Outcome: Percent of graduates placed in jobs in New Mexico 67%

(c) Output: Number of students enrolled in the concurrent enrollment

program	424
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(d) Outcome: Percent of first-time, full-time, degree-seeking students

enrolled in a given fall term who persist to the following

spring term	72%
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(6) Research and public service projects:

Appropriations:

(a) Judicial selection	22.1	22.1		
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(b) Judicial education center		1,488.5		1,488.5
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(c) Southwest research center	1,072.0			1,072.0
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(d) Substance abuse program	152.6			152.6
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(e) Resource geographic

information system	63.2			63.2
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(f) Natural heritage program	30.0			30.0
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(g)	Southwest Indian law clinic	166.7	166.7	
(h)	Bureau of business and economic research census/population analysis	369.8	369.8	
(i)	New Mexico historical review	46.8	46.8	
(j)	Ibero-American education	87.9		87.9
(k)	Youth education recreation program	56.7	56.7	
(l)	Manufacturing engineering program	350.5	350.5	
(m)	Wildlife law education	68.3		68.3
(n)	Morrissey hall programs	45.8		45.8
(o)	Disabled student services	192.4		192.4
(p)	Minority student services	681.2		681.2
(q)	Community-based education	426.4		426.4
(r)	Corrine Wolfe children's law center	166.0	166.0	
(s)	Mock trials program	87.1		87.1
(t)	Latin American student recruitment	74.2	74.2	
(u)	Saturday science and math			



	academy	47.8		47.8
(v)	Utton transboundary			
	resources center	285.9		285.9
(w)	International education			
	initiatives	102.4		102.4
(x)	Student mentoring program		283.6	283.6
(y)	Land grant studies	30.5		30.5

(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 workforce, compete and advance in the new economy, and contribute to social advancement through informed citizenship.

Appropriations:

(a)	Instruction and general				
	purposes	58,252.7	40,083.9	2,452.0	100,788.6
(b)	Office of medical				
	investigator	4,002.7	2,514.0		6,516.7
(c)	Children's psychiatric				
	hospital	6,525.5	12,090.0		18,615.5
(d)	Carrie Tingley hospital		4,709.9	12,777.0	
		17,486.9			
(e)	Out-of-county indigent				
	fund	949.2		949.2	
(f)	Newborn intensive care		3,191.1	2,432.0	
		5,623.1			
(g)	Pediatric oncology	956.9	290.7		1,247.6

(h)	Area health education				
	centers	36.3		36.3	
(i)	Poison control center	1,295.1	335.1	198.0	1,828.2
(j)	Cancer center	2,591.4	5,674.0	12,523.0	
		20,788.4			
(k)	Genomics, biocomputing and				
	environmental health research		1,031.2		
		1,031.2			
(l)	Los pasos program	36.3		36.3	
(m)	Trauma specialty education		290.7		290.7
(n)	Pediatrics specialty				
	education	290.7		290.7	
(o)	Native American health				
	center	266.5		266.5	
(p)	Hepatitis community health				
	outcomes	867.5		867.5	
(q)	Nurse expansion	731.4		731.4	
(r)	Other	286,134.0	73,072.0	359,206.0	

The general fund appropriation to the university of New Mexico health sciences center in the instruction and general purposes includes two million two hundred eighty-eight thousand eight hundred dollars (\$2,288,800) to fund the following programs: hemophilia, integrative medicine, locum tenens, nurse advice line, telemedicine, and young children's health center.

The other state funds appropriations to the university of New Mexico health sciences center include three million thirty-seven thousand nine hundred dollars (\$3,037,900) from the tobacco settlement program fund.

Performance measures:

(a) Output: University of New Mexico hospital inpatient readmission rate 4%

(b) Output:	Number of University of New Mexico cancer research and treatment center clinical trials	190
(c) Output:	Number of post-baccalaureate degrees awarded	328
(d) Outcome:	External dollars for research and public service, in millions	\$283.6
(e) Outcome:	Pass rates for step three of the United States medical licensing exam on the first attempt	95%
Subtotal		1,239,974.4

**NEW MEXICO STATE UNIVERSITY:**

(1) Main campus:

The purpose of the instruction and general program is to provide education services designed to meet the intellectual, educational and quality of life goals associated with the ability to enter the workforce, compete and advance in the new economy and contribute to social advancement through informed citizenship.

Appropriations:

(a)	Instruction and general purposes	105,201.3	95,797.0	7,169.0	208,167.3
(b)	Athletics	3,099.2	8,137.0	57.0	11,293.2
(c)	Educational television		960.5 950.0		1,910.5
(d)	Other	81,726.0		117,777.0	199,503.0

The general fund appropriation to New Mexico state university in instruction and general purposes includes seventy-seven thousand one hundred dollars (\$77,100) for the aerospace engineering program at the New Mexico institute of mining and technology.

Performance measures:

(a) Outcome:	Percent of full-time, degree-seeking, first-time freshmen retained to second year	76%
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(b) Outcome: External dollars for research and creative activity, in  
millions \$205.8

(c) Output: Number of teacher preparation programs available at New  
Mexico community college sites 4

(d) Outcome: Percent of full-time, degree-seeking, first-time freshmen  
completing an academic program within six years 45%

(e) Outcome: Number of undergraduate transfer students from two-year  
colleges 925

(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	6,668.0	4,843.0	191.0	11,702.0
(b) Other	873.0	3,981.0	4,854.0	

Performance measures:

(a) Outcome: Percent of graduates placed in jobs in New Mexico 71.5%

(b) Output: Number of students enrolled in the small business  
development center program 575

(c) Outcome: Percent of first-time, full-time, degree-seeking students  
enrolled in a given fall term who persist to the following  
spring term 79.8%

(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	4,313.4	4,671.0	734.0	9,718.4
(b)	Nurse expansion	53.2		53.2	
(c)	Other	742.0	2,363.0	3,105.0	

Performance measures:

- (a) Outcome: Percent of new students taking nine or more credit hours successful after three years 65%
- (b) Outcome: Percent of graduates placed in jobs in New Mexico 85%
- (c) Output: Number of students enrolled in the contract training program 350
- (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%

(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	18,640.1	15,122.0	2,334.0	36,096.1
(b)	Other	4,189.0	17,575.0	21,764.0	

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 77%
- (c) Output: Number of students enrolled in the adult basic education  
program 5,300
- (d) Outcome: Percent of first-time, full-time, degree-seeking students  
enrolled in a given fall term who persist to the following  
spring term 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.

Appropriations:

- (a) Instruction and general  
purposes 3,302.6 2,154.0 619.0 6,075.6
- (b) Other 533.0 2,037.0 2,570.0

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 76%
- (c) Output: Number of students enrolled in the community services  
program 600
- (d) Outcome: Percent of first-time, full-time, degree-seeking students  
enrolled in a given fall term who persist to the following

spring term 78%

(6) Department of agriculture:

Appropriations:

(a) Department of agriculture	9,836.2	3,817.0	1,250.0
	14,903.2		

The general fund appropriation to the department of agriculture includes two hundred thirty thousand dollars (\$230,000) to match federal funds, if available, for soil and water conservation districts to provide water conservation and natural resource restoration technical assistance pursuant to an agreement with the United States department of agriculture's natural resources conservation service.

(7) Research and public service projects:

Appropriations:

(a) Agricultural experiment station	13,262.9	3,900.0	17,400.0	34,562.9
(b) Cooperative extension service	11,359.0	4,150.0	23,700.0	39,209.0
(c) Water resource research	211.2	112.0	525.0	848.2
(d) Indian resources development	290.2			290.2
(e) Waste management education program	116.2		1,047.0	1,163.2
(f) Carlsbad manufacturing sector development program	126.5		198.0	324.5
(g) Manufacturing sector development program	164.5	150.0		314.5
(h) Minority student services	421.4	18.0		439.4
(i) Arrowhead center for business development	94.4	139.0	1,220.0	1,453.4

(j)	Nurse expansion	441.5		441.5
(k)	Institute for international relations	79.2	16.0	95.2
(l)	Mental health nurse practitioner	252.8		252.8
(m)	Space consortium and outreach program			1,200.0
(n)	Alliance teaching and learning advancement	73.2		73.2
	Subtotal			612,383.5

**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 workforce, compete and advance in the new economy and contribute to social advancement through informed citizenship.

Appropriations:

(a)	Instruction and general purposes	25,310.6	11,270.0	360.0	36,940.6
(b)	Athletics, wrestling and rodeo	1,854.1	177.0	14.0	2,045.1
(c)	Other	15,092.0		11,472.0	26,564.0

Performance measures:

(a)	Outcome: Percent of full-time, degree-seeking, first-time freshmen retained to second year	53%
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- (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 19%
- (d) Output: Number of undergraduate transfer students from two-year colleges 450
- (e) Output: Percent of full-time, degree-seeking, first-time freshmen completing an academic program within six years 20%

(2) Research and public service projects:

Appropriations:

(a)	Minority student services	349.9		349.9
(b)	Advanced placement	229.2		229.2
(c)	Forest and watershed institute	209.3		209.3
	Subtotal		66,338.1	

**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 workforce, compete and advance in the new economy and contribute to social advancement through informed citizenship.

Appropriations:

(a)	Instruction and general purposes	14,293.4	8,992.0	469.0	23,754.4
(b)	Athletics	1,725.0	219.0		1,944.0

(c) Other	3,622.0	6,260.0	9,882.0
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Performance measures:

(a) Outcome: Percent of full-time, degree seeking, first-time freshmen

retained to second year 53%

(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 170

(e) Output: Percent of full-time, degree-seeking, first-time freshmen

completing an academic program within six years 22%

(2) Research and public service projects:

Appropriations:

(a) Child development center	211.7	652.0	863.7
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(b) Instructional television	78.4		78.4
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(c) Web-based teacher licensure	141.4		141.4
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(d) Nurse expansion	352.6		352.6
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Subtotal		37,016.5	
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## **EASTERN NEW MEXICO UNIVERSITY:**

(1) Main campus:

The purpose of the instruction and general program is to provide education services designed to meet the intellectual, educational and quality of life goals associated with the ability to enter the workforce, compete and advance in the new economy and contribute to social advancement through informed citizenship.

Appropriations:

(a)	Instruction and general purposes	23,436.8	13,705.0	4,310.0	41,451.8
(b)	Athletics	1,969.2	1,081.0	11.0	3,061.2
(c)	Educational television	982.2	1,312.0	612.0	2,906.2
(d)	Other	12,999.0	14,488.0	27,487.0	

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 \$6

(c) Output: Number of undergraduate transfer students from two-year colleges 575

(d) Output: Percent of full-time, degree-seeking, first-time freshmen completing an academic program within six years 34.5%

(2) Roswell branch:

The purpose of the instruction and general program at New Mexico's community colleges is to provide credit and noncredit postsecondary education and training opportunities to New Mexicans so that they have the skills to be competitive in the new economy and are able to participate in lifelong learning activities.

Appropriations:

(a)	Instruction and general purposes	10,924.4	7,287.0	1,968.0	20,179.4
(b)	Nurse expansion	33.3		33.3	
(c)	Other	5,584.0	10,138.0	15,722.0	

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 68%

(c) Efficiency: Percent of programs having stable or increasing enrollments  
56%

(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%

(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	1,966.8	1,915.0	264.0	4,145.8
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(b) Other	583.0	1,676.0	2,259.0	
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Performance measures:

(a) Outcome: Percent of new students taking nine or more credit hours

successful after three years 54%

(b) Output: 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 66.5%

(4) Research and public service projects:

Appropriations:

(a)	Blackwater Draw site and museum	76.8	8.0	84.8	
(b)	Student success programs	387.4			387.4
(c)	At-risk student tutoring	75.5			75.5
(d)	Allied health	155.6		155.6	
	Subtotal			117,949.0	

**NEW MEXICO INSTITUTE OF MINING AND TECHNOLOGY:**

(1) Main:

The purpose of the instruction and general program is to provide education services designed to meet the intellectual, educational and quality of life goals associated with the ability to enter the work force, compete and advance in the new economy and contribute to social advancement through informed citizenship.

Appropriations:

(a)	Instruction and general purposes	25,473.4	12,776.0	469.0	38,718.4
(b)	Athletics	204.2	20.0	224.2	
(c)	Other	12,921.0	14,395.0	27,316.0	

Performance measures:

- (a) Outcome: Percent of first-time freshmen retained to sophomore year 75%
- (b) Output: Number of students registered in master of science teaching program 170
- (c) Outcome: External dollars for research and creative activity, in millions \$85
- (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 50%

(2) Research and public service projects:

Appropriations:

(a)	Minority engineering, math and science achievement	121.5	1,044.0		1,165.5
(b)	Bureau of mines	3,478.1	236.0		3,714.1
(c)	Petroleum recovery research center	1,965.9	3,060.0		5,025.9
(d)	Bureau of mines inspection		258.3		258.3
(e)	Energetic materials research center	636.4	8,700.0	39,678.0	49,014.4
(f)	Science and engineering fair		273.5		273.5
(g)	Institute for complex additive systems analysis		734.5	20,400.0	21,134.5
(h)	Cave and karst research		377.7		377.7
(i)	Geophysical research center		736.5	9,180.0	9,916.5
(j)	Homeland security center		540.5		540.5
(k)	Aquifer mapping		201.8		201.8
(l)	Southeast New Mexico center for energy studies		45.1		45.1
	Subtotal		157,926.4		

**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	10,074.2	4,578.0	4,294.0	18,946.2
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(b) Athletics	197.4		197.4	
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(c) Other	1,804.0	3,332.0	5,136.0	
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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 80%

(c) Output: Number of students enrolled in the adult basic education

program 450

(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) Northern pueblos institute 72.9 72.9]~~

~~[(b) Faculty salary adjustments 102.4 102.4]~~

Subtotal 24,454.9

**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	8,461.4	22,617.0	2,916.0	33,994.4
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(b) Other	5,723.0	6,804.0	12,527.0	
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Performance measures:

(a) Outcome: Percent of new students taking nine or more credit hours

successful after three years 54%

(b) Outcome: Percent of graduates placed in jobs in New Mexico 79%

(c) Output: Number of students enrolled in the contract training program 3,350

(2) Research and public service projects:

Appropriations:

(a) Small business development

centers	3,967.4	1,601.0	5,568.4	
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(b) Nurse expansion	40.9	40.9		
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Subtotal		52,130.7		
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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	44,138.7	75,841.0	6,073.0	126,052.7
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(b)	Other	5,936.0	42,857.0	48,793.0	
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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 distance education program 9,000

(d) Outcome: Percent of first-time, full-time, degree-seeking students

enrolled in a given fall term who persist to the following

spring term 81%

(2) Research and public service projects:

Appropriations:

(a)	Tax help New Mexico	78.0	78.0
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	Subtotal	174,923.7
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### 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	7,161.2	3,296.0	971.0	11,428.2
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(b)	Athletics	162.7	162.7
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~~[(c) Special projects expansion]~~

and flexibility 93.2] 93.2]

(d)	Nurse expansion	31.8		31.8
(e)	Student service and economic development programs	229.5		229.5
(f)	Other	1,753.0	1,876.0	3,629.0

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 80%

Subtotal 15,574.4

**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	4,089.9	1,304.0	372.0	5,765.9
(b)	Athletics	59.9		59.9	
(c)	Wind training center	71.0			71.0

(d) Other 1,320.0 1,580.0 2,900.0

Performance measures:

(a) Outcome: Percent of new students taking nine or more credit hours

successful after three years 51.7%

(b) Outcome: Percent of graduates placed in jobs in New Mexico 58.6%

(c) Output: Number of students enrolled in the small business

development center program 76

(d) Outcome: Percent of first-time, full-time, degree-seeking students

enrolled in a given fall term who persist to the following

spring term 67.9%

Subtotal 8,796.8

**NEW MEXICO JUNIOR COLLEGE:**

(1) Main campus:

The purpose of the instruction and general program at New Mexico's community colleges is to provide credit and noncredit postsecondary education and training opportunities to New Mexicans so that they have the skills to be competitive in the new economy and are able to participate in lifelong learning activities.

Appropriations:

(a) Instruction and general

purposes 5,525.7 13,781.0 1,392.0 20,698.7

(b) Athletics 326.2 326.2

(c) Other 2,481.0 5,132.0 7,613.0

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 75%

(c) Output: Number of students enrolled in distance education program  
17,000

(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 projects:

Appropriations:

(a)	Nurse expansion	72.9		72.9
(b)	Lea county distance education consortium	29.6		29.6
(c)	Oil and gas training center	86.7		86.7
	Subtotal		28,827.1	

## **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	21,927.4	28,565.0	1,464.0	51,956.4
(b)	Other	7,276.0	10,920.0	18,196.0	

Performance measures:

(a) Outcome: Percent of new students taking nine or more credit hours  
successful after three years 67%

- (b) Outcome: Percent of graduates placed in jobs in New Mexico 67%
- (c) Output: Number of students enrolled in the service learning program 675
- (d) Efficiency: Percent of programs having stable or increasing enrollments  
73%
- (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%

(2) Research and public service projects:

Appropriations:

(a)	Dental hygiene program	166.0	166.0
(b)	Nurse expansion	163.4	163.4
	Subtotal	70,481.8	

**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	8,529.7	3,806.0	620.0	12,955.7
(b)	Nurse expansion	31.7		31.7	
(c)	Other	3,671.0	10,144.0	13,815.0	

Performance measures:

- (a) Outcome: Percent of new students taking nine or more credit hours  
successful after three years 71%
- (b) Outcome: Percent of graduates placed in jobs in New Mexico 72%

(c) Output: Number of students enrolled in the concurrent enrollment 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%

Subtotal 26,802.4

### **NEW MEXICO MILITARY INSTITUTE:**

The purpose of the New Mexico military institute is to provide college-preparatory instruction for students in a residential, military environment culminating in a high school diploma or associates degree.

Appropriations:

(a)	Instruction and general purposes	746.3	21,722.4	123.0	22,591.7
(b)	Athletics	279.5	57.8	337.3	
(c)	Knowles legislative scholarship program		792.8		792.8
(d)	Other	4,773.7		4,773.7	

Performance measures:

(a) Output: Percent of full-time-equivalent capacity enrolled each fall term 96%

(b) Outcome: American college testing composite scores for graduating high school seniors 22.1

(c) Efficiency: Percent of legislative scholarships (Knowles) awarded 100%

Subtotal 28,495.5

### **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 workforce and to lead independent, productive lives.

Appropriations:

(a)	Instruction and general purposes	288.1	11,135.8	694.2	12,118.1
(b)	Early childhood center		373.4		373.4
(c)	Low vision clinic programs		17.8		17.8

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		1,278		
	Subtotal			12,509.3	

**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 and hard-of-hearing.

Appropriations:

(a)	Instruction and general purposes	3,285.9	11,169.3		14,455.2
(b)	Statewide outreach services		231.9		231.9

Performance measures:

(a) Outcome:	Percent of students in kindergarten through twelfth grade demonstrating academic improvement across curriculum domains				80%
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(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 93%

(c) Outcome: Percent of parents satisfied with educational services from  
 New Mexico school for the deaf 96%

Subtotal		14,687.1		
TOTAL HIGHER EDUCATION	731,546.3	1,364,997.0	44,637.8	652,319.8
	2,793,500.9			

**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 2012.

**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: 2,251,522.7 850.0 2,252,372.7

The rate of distribution of the state equalization guarantee distribution shall be based on a program unit value determined by the secretary of public education. The secretary of public education shall establish a preliminary unit value to establish budgets for the 2011-2012 school year and then, upon verification of the number of units statewide for fiscal year 2012 but no later than January 31, 2012, the secretary of public education may adjust the program unit value.

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 principals have been evaluated under the highly objective uniform statewide standards 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.



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 2011-2012 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 includes seven million five hundred thousand dollars (\$7,500,000) contingent on the enactment of House Bill 607 or similar legislation of the first session of the fiftieth legislature.

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.

Pursuant to Article XII, Section 6 of the New Mexico Constitution, the secretary of the public education department has administrative and regulatory powers and duties, including all functions relating to the distribution of school funds and financial accounting for the public schools to be performed as provided by law. To administer spending reductions when approving programs, school district and charter school budgets, budget adjustment requests, and in setting the unit value, the secretary shall verify and audit generation of membership and program units. In approving programs, school district and charter school budgets, budget adjustment requests, and in setting the unit value, the secretary of public education shall work with and assist local superintendents and local school boards to ensure efficient spending practices, to ensure that membership and program units are correctly calculated and to ensure budget reductions are implemented in a manner that will minimize adverse impacts to instructional programs and student achievement. The secretary shall ensure that the number of instructional days will not be reduced.

Any unexpended balances in the authorized distributions remaining at the end of fiscal year 2012 from appropriations made from the general fund shall revert to the general fund.

Performance measures:

- (a) Outcome: Percent of fourth grade students who achieve proficiency or above on the standards-based assessment in reading 78%
- (b) Outcome: Percent of fourth grade students who achieve proficiency or above on the standards-based assessment in mathematics 77%
- (c) Outcome: Percent of eighth grade students who achieve proficiency or above on the standards-based assessment in reading 76%

(d) Outcome: Percent of eighth grade students who achieve proficiency or above on the standards-based assessment in mathematics 74%

(e) Outcome: Percent of recent New Mexico high school graduates who take remedial courses in higher education at two-year and four-year schools 40%

(f) Quality: Current year's cohort graduation rate using four-year cumulative method 75%

(2) Transportation distribution:

Appropriations:	94,063.4	94,063.4
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(3) Supplemental distribution:

Appropriations:

(a) Out-of-state tuition	346.0	346.0
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(b) Emergency supplemental	1,924.6	1,924.6
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Prior to the distribution of emergency supplemental funds to any public school district or charter school, the secretary of public education shall verify with the New Mexico state auditor that the school district or charter school is in compliance with all provisions of the Audit Act. No emergency supplemental distributions shall be made to any school district or charter school not current with its audits.

Prior to the distribution of emergency supplemental funds to any public school district or charter school, the secretary of public education shall verify that the school district or charter school had no more than fifty percent of allowable emergency fund balance carried forward from the previous fiscal year pursuant to Subsection B of Section 22-8-41 NMSA 1978 and no more than fifty percent of allowable operational fund balance carried forward from the previous fiscal year pursuant to Subsection C of Section 22-8-41 NMSA 1978. No emergency supplemental distribution shall be made to any public school district or charter school that has carried forward from the previous fiscal year more than fifty percent of the amount allowable pursuant to Section 22-8-41 NMSA 1978.

Any unexpended balances in the supplemental distribution of the public education department remaining at the end of fiscal year 2012 from appropriations made from the general fund shall revert to the general fund.

Subtotal	2,348,706.7
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**FEDERAL FLOW THROUGH:**

Appropriations:	420,510.1	420,510.1
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Subtotal 420,510.1

**INSTRUCTIONAL MATERIALS:**

(1) Instructional material fund:

Appropriations: 15,092.8 15,092.8

The appropriation to the instructional material fund is made from the federal Mineral Lands Leasing Act (30 USCA 181, et. seq.) receipts.

(2) Dual credit instructional materials:

Appropriations: 812.3 812.3

Subtotal 15,905.1

**INDIAN EDUCATION FUND:**

Appropriations: 1,824.6 1,824.6

The general fund appropriation to the public education department for the Indian Education Act includes four hundred thousand dollars (\$400,000) for a nonprofit organization that provides teaching support 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 three hundred thousand dollars (\$300,000) 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 three hundred thousand dollars (\$300,000) in matching funds from other than state sources no later than September 30, 2011.

Subtotal 1,824.6

TOTAL PUBLIC SCHOOL SUPPORT 2,365,586.4 850.0 420,510.1  
2,786,946.5

**GRAND TOTAL FISCAL YEAR 2012**

APPROPRIATIONS 5,471,322.4 3,123,631.1 866,544.9 5,464,805.7 14,926,304.1

**Chapter 179 Section 5 Laws 2011**

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 2011 and 2012. Unless otherwise indicated, any unexpended balances of the appropriations remaining at the end of fiscal year 2012 shall revert to the appropriate fund.

(1) LEGISLATIVE COUNCIL SERVICE 50.0 50.0

For pre-session expenses for the 2012 legislative session.

(2)	LEGISLATIVE COUNCIL SERVICE	100.0	100.0
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~~For the legislative redistricting committee.]~~LINE-ITEM VETO

(3)	LEGISLATIVE FINANCE COMMITTEE		
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The general fund appropriations to the legislative finance committee in Section 4 of Chapter 1 of Laws 2011 contain sufficient funding to conduct a program evaluation of the state fair's and state fair commission's financing, operations and performance in fiscal year 2012.

(4)	LEGISLATIVE BUILDING SERVICES	30.0	30.0
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For weatherization of the state capitol. The appropriation is from the legislative information systems fund.

(5)	ADMINISTRATIVE OFFICE OF THE COURTS	200.0	200.0
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To avoid statewide furloughs in fiscal years 2011 and 2012 in all courts.

(6)	ADMINISTRATIVE OFFICE OF THE DISTRICT ATTORNEYS		
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Any unexpended balances remaining at the end of fiscal year 2011 from revenues received by a district attorney or the administrative office of the district attorneys from the United States department of justice pursuant to the southwest border prosecution initiative shall not revert but shall remain with the recipient district attorney's office for expenditure in fiscal year 2012. The administrative office of the district attorneys shall provide to the department of finance and administration and the legislative finance committee prior to November 1, 2011, a detailed report documenting the amount of all southwest border prosecution initiative funds that do not revert at the end of fiscal year 2011 for each of the district attorneys and the administrative office of the district attorneys.

(7)	ADMINISTRATIVE OFFICE OF THE DISTRICT ATTORNEYS		
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Any unexpended balances remaining at the end of fiscal year 2011 from revenues received by a district attorney's office from any Native American tribe, pueblo or political subdivision pursuant to a contract, memorandum of understanding, joint powers agreement, or grant shall not revert but shall remain with the recipient district attorney's office for expenditure in fiscal year 2012. The administrative office of the district attorneys shall provide to the department of finance and administration and the legislative finance committee prior to November 1, 2011, a detailed report documenting the amount of all funds received from Native American tribes, pueblos and political subdivisions pursuant to a contract, memorandum of understanding, joint powers agreement, or grant that do not revert at the end of fiscal year 2011 for each of the district attorneys and the administrative office of the district attorneys.

(8)	ATTORNEY GENERAL	1,500.0	1,500.0
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To support legal work relating to interstate water conflicts. The appropriation is from the natural resources trustee fund.

(9)	TAXATION AND REVENUE DEPARTMENT	250.0	250.0
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For the Native American veterans' income tax settlement fund.

(10) STATE INVESTMENT COUNCIL 5,124.0 5,124.0

For attorney fees for restitution.

(11) DEPARTMENT OF FINANCE AND  
ADMINISTRATION 150.0 150.0

For disbursement to the New Mexico mortgage finance authority to carry out the responsibilities, duties and provisions of the regional housing law.

(12) SECRETARY OF STATE 250.0 250.0

For the 2012 primary election.

~~[(13) ECONOMIC DEVELOPMENT DEPARTMENT 3,000.0 3,000.0]~~

For the job training incentive program. The federal funds are from reallocation of the public safety and other government services allocation from the federal American Recovery and Reinvestment Act of 2009.

(14) CULTURAL AFFAIRS DEPARTMENT 200.0 200.0

~~For the New Mexico centennial.]~~ LINE-ITEM VETO

(15) AGING AND LONG-TERM SERVICES  
DEPARTMENT 200.0 200.0

To assist with personnel and other costs associated with the transfer of services from the aging and long-term services department to the human services department.

(16) HUMAN SERVICES DEPARTMENT 7,000.0 25,941.2 32,941.2

For a shortfall in the medical assistance program for medicaid programs.

(17) HUMAN SERVICES DEPARTMENT

Any unexpended balances remaining at the end of fiscal year 2011 from reimbursements received from the social security administration to support the general assistance program shall not revert but may be expended by the human services department in fiscal year 2012 for payments to recipients in the general assistance program.

(18) WORKFORCE SOLUTIONS DEPARTMENT

The period of time for expending the seven million seven thousand five hundred dollars (\$7,007,500) in unexpended federal funds available through the American Recovery and Reinvestment Act contained in Subsection 11 of Section 5 of Chapter 6 of Laws 2010 is extended through fiscal year 2012 to complete improvements to the unemployment insurance program.

(19) DEVELOPMENTAL DISABILITIES PLANNING COUNCIL

Any unexpended balances in the office of guardianship of the developmental disabilities planning council remaining at the end of fiscal year 2011 from appropriations made from the general fund and internal service funds/interagency transfers shall not revert.

(20) DEPARTMENT OF HEALTH 500.0 500.0

For the family, infant, toddler program to provide services in fiscal year 2012 to two- and three-year- old preschool children with disabilities transitioning to public school programs and to replace lapsing federal funds.

(21) 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 2012 but not to exceed eighty million dollars (\$80,000,000).

(22) 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 2012 but not to exceed four hundred million dollars (\$400,000,000).

(23) PUBLIC EDUCATION DEPARTMENT 2,000.0 2,000.0

For emergency support to school districts and charter schools experiencing shortfalls. All requirements for distribution of funds shall be in accordance with Section 22-8-30 NMSA 1978. 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. Prior to the distribution of any emergency supplemental funds, the secretary of public education shall provide the legislative finance committee and the legislative education study committee with a report outlining (1) the criteria used to qualify for funds; (2) the financial status of recipients, including the status of recipients' financial audits; and (3) any cost savings measures recipients implemented before applying for funds. In no event shall money be distributed to any school district or charter school having cash and invested reserves, or other resources or any combination thereof, equaling five percent or more of their operating budget.

(24) PUBLIC EDUCATION DEPARTMENT 1,200.0 1,200.0

For increased fuel costs incurred by school districts or state-chartered charter schools. Notwithstanding the provisions in Section 22-8-29.6 NMSA 1978, for school years 2010-2011 and 2011-2012 the secretary shall make distributions from the transportation emergency fund first to provide additional funding to school districts and state-chartered charter schools for increased school bus fuel costs. The distribution of funding shall be based on miles traveled for to-and-from transportation of public school students. School districts and state-chartered charter schools shall request funds for fuel from the secretary and provide supporting documentation that they have incurred increased costs due to higher fuel prices. The secretary shall approve requests for funding for fuel cost increases and make distributions on a reimbursement basis.

(25) PUBLIC EDUCATION DEPARTMENT 2,500.0 2,500.0

For the governor's educational reforms and initiatives, including third-grade retention, contingent on enactment of House Bill 21 or similar legislation of the first session of the fiftieth legislature; providing technical assistance to low performing schools; improving data systems; innovative digital education and

learning; computer-administered assessments and common core standards implementation. 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. The appropriation is contingent on the public education department providing a detailed action plan to the legislative finance committee and the legislative education study committee [~~no later than May 1, 2011,~~] and [~~continued quarterly~~] reporting on expenditure of funds and progress and results of reforms and initiatives. *LINE-ITEM VETO*

(26) PUBLIC EDUCATION DEPARTMENT

The period of time for expending appropriations contained in Subsection 17 of Section 5 of Chapter 6 of Laws 2010 (second special session), is extended through fiscal year 2012.

(27) HIGHER EDUCATION DEPARTMENT 500.0 500.0

For innovative digital education and learning and the New Mexico cyber academy.

~~[(28) COMPUTER SYSTEMS~~

ENHANCEMENT FUND 2,214.4 2,214.4

~~For transfer to the computer systems enhancement fund for system replacements and enhancements.]~~

TOTAL SPECIAL APPROPRIATIONS 16,114.4 7,854.0 28,941.2 52,909.6

## Chapter 179 Section 6 Laws 2011

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 2011 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 2011 for the purpose specified and approval by the department of finance and administration. Any unexpended balances remaining at the end of fiscal year 2011 shall revert to the appropriate fund. *LINE-ITEM VETO*

(1) ADMINISTRATIVE OFFICE

OF THE COURTS 100.0 100.0

To fund juror and interpreter costs.

(2) ATTORNEY GENERAL 135.6 135.6

To the legal services program for attorney fees in the New Mexico youth organized and southwest organizing project case. The appropriation is from the consumer settlement fund.

(3) DEPARTMENT OF FINANCE

AND ADMINISTRATION 750.0 750.0

To the board of finance for emergency loans or grants with priority for fuel costs for schools and state police vehicles.

(4)	SECRETARY OF STATE	300.0	300.0
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For the 2010 election shortfall.

(5)	DEVELOPMENTAL DISABILITIES		
	PLANNING COUNCIL	300.0	300.0

To fund mental health treatment guardians, corporate guardianship services and legal services to appoint a family member as a guardian.

(6)	DEPARTMENT OF HEALTH	3,094.4	3,094.4
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For a shortfall in the developmentally disabled and medically fragile medicaid waiver programs.

(7)	CHILDREN, YOUTH AND FAMILIES		
	DEPARTMENT	2,409.2	2,409.2

For childcare programs.

(8)	HOMELAND SECURITY AND EMERGENCY		
	MANAGEMENT	817.7	817.7

For a disallowed federal reimbursement claim and to correct the department's erroneously-stated accounts receivables.

TOTAL SUPPLEMENTAL AND

DEFICIENCY APPROPRIATIONS	7,471.3	135.6	300.0	7,906.9
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## Chapter 179 Section 7 Laws 2011

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 2011, 2012 and 2013. Unless otherwise indicated, any unexpended balances remaining at the end of fiscal year 2013 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 project certification process. The judicial information systems council shall certify compliance to the department of finance and administration for judicial branch projects. For executive branch agencies, all hardware and software purchases funded through appropriations made in Sections 4, 5, 6 and 7 of this act shall be procured using consolidated purchasing led by the state chief information officer and state purchasing division to achieve economies of scale and to provide the state with the best unit price.



~~[(1) ADMINISTRATIVE OFFICE OF THE~~

COURTS 942.0 942.0

~~For electronic filing and document and content management at district courts statewide.] LINE-ITEM VETO~~

(2) TAXATION AND REVENUE DEPARTMENT

The period of time for expending the eight million forty-two thousand five hundred dollars (\$8,042,500) appropriated from motor vehicle division cash balances and revenues contained in Subsection 3 of Section 7 of Chapter 124 of Laws of 2009 to replace the 30-year-old common business oriented language-based driver and vehicle systems is granted a final extension through fiscal year 2013.

(3) EDUCATIONAL RETIREMENT BOARD 3,500.0 3,500.0

To upgrade the integrated retirement information system, including two term full-time-equivalent positions. The appropriation is from the educational retirement fund.

~~[(4) DEPARTMENT OF INFORMATION TECHNOLOGY 1,200.0 1,200.0~~

~~To configure the statewide human resource, accounting and management reporting system for benefits and federal Consolidated Omnibus Budget Reconciliation Act requirements and to address data integrity issues. The appropriation is from the health benefits premium and rate stabilization fund.~~

(5) STATE COMMISSION OF PUBLIC RECORDS 1,272.4 1,272.4

~~For a centralized electronic records repository.] LINE-ITEM VETO~~

(6) HUMAN SERVICES DEPARTMENT

The period of time to expend the six million three hundred ninety-two thousand dollars (\$6,392,000) appropriated from the computer systems enhancement fund and the seven million nine hundred seventy-two thousand four hundred dollars (\$7,972,400) in federal funds contained in Subsection 8 of Section 7 of Chapter 124 of Laws 2009 to continue replacing the income support division integrated services delivery system using a transfer system, a commercial off-the-shelf system or a combination is extended through fiscal year 2013. 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.

TOTAL DATA PROCESSING APPROPRIATIONS 5,714.4 1,200.0 6,914.4

## Chapter 179 Section 8 Laws 2011

### Section 8. ADDITIONAL FISCAL YEAR 2011 BUDGET ADJUSTMENT

**AUTHORITY.**--During fiscal year 2011, 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 2010:

A. each agency, except for the department of public safety, may request program transfers between the personal services and employee benefits category of one program to the personal services and employee benefits category of another program;

B. the New Mexico compilation commission may request budget increases from internal service funds/interagency transfers and other state funds for publishing costs associated with subscriptions, supreme court opinions and other publications;

C. the administrative office of the courts may request budget increases up to two hundred thousand dollars (\$200,000) from internal service funds/interagency transfers from the warrant enforcement fund, may request budget increases up to one hundred sixty thousand dollars (\$160,000) from internal service funds/interagency transfers from filing fees collected by the courts, may request budget increases up to two hundred thousand dollars (\$200,000) from the magistrate and metropolitan court capital fund to secure, furnish and equip magistrate court facilities once the New Mexico finance authority determines the court facility fund will have sufficient funds to pay the metropolitan court debt service, may request budget increases up to fifty thousand dollars (\$50,000) from internal service funds/interagency transfers and other state funds from the judicial performance evaluation fund, may request budget increases up to eight hundred forty-two thousand dollars (\$842,000) from other state funds and fund balances for juror and witness pay, may request category transfers up to one hundred sixty-eight thousand five hundred dollars (\$168,500) from the other financing uses category to the contractual services category, and the magistrate court program of the administrative office of the courts may request budget increases up to ninety-seven thousand dollars (\$97,000) from internal service funds/interagency transfers and other state funds for funds received from any political subdivision of the state;

D. the fourth judicial district court may request budget increases up to ten thousand dollars (\$10,000) from other state funds from duplication fees;

E. the fifth judicial district court may request budget increases up to fifteen thousand dollars (\$15,000) from other state funds from duplication fees;

F. the ninth judicial district court may request budget increases up to fifteen thousand dollars (\$15,000) from other state funds from drug court filing fees and may request budget increases up to twenty thousand dollars (\$20,000) from other state funds from duplication fees;

G. the tenth judicial district court may request budget increases up to twenty thousand dollars (\$20,000) from other state funds from copy and tape duplication fees and may request budget increases up to ten thousand dollars (\$10,000) from internal service funds/interagency transfers from the tenth district court mediation fund;

H. the eleventh judicial district court may request budget increases up to twenty thousand dollars (\$20,000) from other state funds for drug court and mediation;

I. the thirteenth judicial district court may request budget increases up to twenty-six thousand dollars (\$26,000) from other state funds from duplication fees and may request budget increases up to forty thousand dollars (\$40,000) from other state funds and fund balances from mediation and arbitration fees;

J. 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;

K. the second judicial district attorney may request budget increases up to one hundred ninety thousand dollars (\$190,000) from internal service funds/interagency transfers and other state funds;

L. the legal services program of the attorney general may request budget increases up to one hundred fifty thousand dollars (\$150,000) from other state funds for discovery costs for tobacco arbitration provided that the revenue expended shall be solely from settlements that authorize consumer issues;

M. the property tax program of the taxation and revenue department may request budget increases up to two hundred thousand dollars (\$200,000) from other state funds to cover a shortfall in personal services and employee benefits, legal fees, expert witnesses and advertising delinquent tax sales;

N. the economic development department may request budget increases up to fifty thousand dollars (\$50,000) from fund balances for the ISO 9000 training program;

O. the private investigations advisory board of the regulation and licensing department may request budget increases up to two hundred eighty-five thousand dollars (\$285,000) from other state funds for costs associated with background investigations;

P. the cultural affairs department may request budget increases up to five hundred thousand dollars (\$500,000) from internal service funds/interagency transfers and other state funds;

Q. the youth conservation corps may request category transfers up to three hundred thousand dollars (\$300,000) to and from the other financing uses category for awards issued to other state agencies and for operational costs;

R. the medical assistance program of the human services department may request budget increases up to twelve million dollars (\$12,000,000) from other state funds received through an intergovernmental transfer from the university of New Mexico for matching funds for the state coverage insurance program;

S. the juvenile justice facilities program of the children, youth and families department may request budget increases up to one million dollars (\$1,000,000) from other state funds from distributions from the land grant permanent and land income funds;

T. the department of military affairs may request program transfers up to five hundred thousand dollars (\$500,000) between the national guard support program and the crisis response program;

U. the corrections department may request program transfers if the cumulative effect of a requested program transfer, together with all program transfers previously requested and approved pursuant to this subsection, will not increase or decrease the total annual appropriation to a program from the general fund by more than four percent; and

V. the programs and infrastructure program of the department of transportation may request budget increases up to fifteen million dollars (\$15,000,000) from other state funds to match with federal funds for debt service and related costs, lawsuit settlements and construction costs and program related costs.

## **Chapter 179 Section 9 Laws 2011**

### **Section 9. CERTAIN FISCAL YEAR 2012 BUDGET ADJUSTMENTS AUTHORIZED.--**

A. As used in this section and Section 8 of the General Appropriation Act of 2011:

(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 2012.

C. In addition to the specific category transfers authorized in Subsection E of this section and unless a conflicting category transfer is authorized in Subsection E of

this section, all agencies, including legislative agencies, may request category transfers among personal services and employee benefits, contractual services and other.

D. Unless a conflicting budget increase is authorized in Subsection E of this section, a program with internal 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 2011. To track the five percent transfer limitation, agencies shall report cumulative budget adjustment request totals on each budget request submitted. The department of finance and administration shall certify agency reporting of these cumulative totals.

E. In addition to the budget authority otherwise provided in the General Appropriation Act of 2011, 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, supreme court updates and other publications;

(2) the judicial standards commission may request budget increases up to thirty thousand dollars (\$30,000) from other state funds from investigation and trial cost reimbursements from respondents;

(3) the second judicial district court may request budget increases up to one hundred thousand dollars (\$100,000) from other state funds and internal service funds/interagency transfers from arbitration revenues and may request budget increases up to one hundred seventy-five thousand dollars (\$175,000) from other state funds and internal service funds/interagency transfers from mediation and supervised visitation fees;

(4) the first judicial district attorney may request budget increases from internal service funds/interagency transfers and other state 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;

(5) the eleventh judicial district attorney-division I may request budget increases up to fifty thousand dollars (\$50,000) from internal service funds/interagency transfers and other state funds to assist in the prosecution of cases;

(6) the eleventh judicial district attorney-division II may request budget increases up to fifty thousand dollars (\$50,000) from internal service funds/interagency transfers and other state funds received from any political subdivision

of the state or from Indian tribes to assist in the prosecution of crimes within McKinley county;

(7) the twelfth judicial district attorney may request budget increases up to one hundred thousand dollars (\$100,000) from internal service funds/interagency transfers and other state funds received from any political subdivision of the state or from Indian tribes to assist in the prosecution of crimes within Otero and Lincoln counties;

(8) the thirteenth judicial district attorney may request budget increases up to seventy-five thousand dollars (\$75,000) 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 cases;

(9) 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;

(10) the state investment council may request budget increases up to two million dollars (\$2,000,000) from other state funds for investment manager fees, custody fees and investment-related legal 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, custody fees and investment-related legal 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;

(11) the benefits and risk program and program support of the public school insurance authority may request budget increases from internal service funds/interagency transfers, other state funds and fund balances;

(12) the health care benefits administration program of the retiree health care authority may request budget increases from other state funds for the benefits program;

(13) the public defender department may request budget increases up to six hundred thousand dollars (\$600,000) from internal service funds/interagency transfers and other state funds;

(14) the department of information technology may request budget increases up to one million dollars (\$1,000,000) from fund balances for telecommunication, information processing and the statewide human resources, accounting and management reporting system;

(15) the department of information technology may request budget increases up to ten percent of internal service funds/interagency transfers appropriated in Section 4 of the General Appropriation Act of 2011 to support existing or new services;

(16) 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, 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 services division of the public employees retirement association shall not be transferred, and 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 or visitors to the agency;

(17) the public regulation commission may request budget increases for the office of the state fire marshal from the firefighter training academy use fee fund and the patient's compensation program of the public regulation commission may request budget increases up to two million dollars (\$2,000,000) from fund balances for patient's compensation expenses;

(18) the New Mexico medical board may request budget increases up to fifty thousand dollars (\$50,000) from other state funds for the administrative hearing and litigation process;

(19) the New Mexico state fair may request budget increases from unforeseen internal service funds/interagency transfers and other state funds;

(20) the preservation program of the department of cultural affairs may request budget increases from internal service funds/interagency transfers and other state funds for archaeological services;

(21) the energy, minerals and natural resources department may request budget increases from internal service 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 service 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 service 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 the 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 service funds/interagency transfers for operational expenses;

(22) the office of the state engineer may request budget increases up to two hundred fifty thousand dollars (\$250,000) 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 dam construction fund to continue managing and participating in the Ute reservoir master plan development or other operational requirements at Ute reservoir, 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 and may request budget increases up to eighty thousand dollars (\$80,000) from the bureau of reclamation for the operation and maintenance costs of the Vaughn pipeline and the interstate stream commission may request budget increases up to seven hundred fifty thousand dollars (\$750,000) from internal service funds/interagency transfers from the attorney general's office to prepare for anticipated water litigation;

(23) the medical assistance program of the human services department may request budget increases up to twelve million dollars (\$12,000,000) from other state funds received through an intergovernmental transfer from the university of New Mexico for matching funds for the state coverage insurance program;

(24) the workforce solutions department may request program transfers up to one million dollars (\$1,000,000) between all programs;

(25) the department of health 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;

(26) the department of environment may request program transfers up to five hundred thousand dollars (\$500,000) among programs, may request budget increases from other state funds for responsible party payments, may request budget increases from internal service funds/interagency transfers or other state funds up to five hundred thirty-nine thousand dollars (\$539,000) 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 one hundred ten thousand dollars (\$110,000) from internal service funds/interagency transfers or other state funds to coordinate multi-state Rio Grande salinity management programs and provide technical support for potential interstate litigation on water issues and the water and wastewater infrastructure development program may request budget increases up to seventy-five thousand dollars (\$75,000) from internal service funds/interagency transfers and 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;

(27) the office of the natural resources trustee may request budget increases up to two million dollars (\$2,000,000) from internal service funds/interagency transfers and other state funds for restoration projects and may request budget increases from other state funds for assessments, including restoration projects equal to any compensation received for damages resulting from a settlement;

(28) the children, youth and families department may request program transfers up to one million dollars (\$1,000,000) between all programs;

(29) the corrections department may request program transfers up to one million dollars (\$1,000,000) between all programs;

(30) the department of transportation may request budget increases up to twenty million dollars (\$20,000,000) from other state funds to meet federal match requirements, for debt service and related costs, intergovernmental agreements, lawsuit and construction- and maintenance-related costs, may request program transfers between the transportation and highway operations program and the programs and infrastructure program for costs related to engineering, construction and maintenance activities; and 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;

(31) the public school facilities authority may request budget increases for project management expenses pursuant to the Public School Capital Outlay Act; and

(32) the higher education department may request transfers to and from the other financing uses category.

F. The department of military affairs, the homeland security and emergency management department, the department of public safety, and the energy, minerals and natural resources department may request budget increases from the general fund as required by an executive order declaring a disaster or emergency.

## **Chapter 179 Section 10 Laws 2011**

### **Section 10. APPROPRIATION REDUCTIONS.--**

~~[A. The general fund appropriations to the economic development department, the regulation and licensing department, the border authority, the department of finance and administration, the personnel board, the homeland security and emergency management department, the gaming control board, the state racing commission, the department of environment, the governor's commission on disability, the aging and long-term services department and the tourism department are reduced by up to two million five hundred thousand dollars (\$2,500,000) to reflect achievements in administrative reforms and restructuring, improvements in program efficiencies and reductions in the duplication of government functions; provided that:~~

(1) the department of finance and administration shall allocate the appropriation reduction among the state agencies and, in order to effectuate the reductions, the state budget division of the department of finance and administration shall reduce the operating budget of each agency, program and institution accordingly;

(2) the department of finance and administration shall report to the legislative finance committee on or before May 1, 2011 on the allocation of the appropriation reduction among the agencies; and

~~\_\_\_\_\_ (3) the department of finance and administration shall submit a quarterly report to the legislative finance committee on the implementation of administrative reforms and restructuring and improvements in program efficiencies.]~~  
*LINE-ITEM VETO*

B. In order to reflect lower employer contribution rates for certain retirement plans under the Public Employees Retirement Act and the Educational Retirement Act:

(1) general fund appropriations set forth in Section 4 of the General Appropriation Act of 2011 and in Laws 2011, Chapter 1, Subsection A of Section 3 and

Sections 4, 5, 7 and 8 are reduced by a total of forty-nine million seven hundred thousand dollars (\$49,700,000); provided that the department of finance and administration shall allocate the appropriation reduction among all state agencies, public school support and higher education institutions;

(2) appropriations set forth in Section 4 of the General Appropriation Act of 2011 to agencies and institutions from sources other than the general fund are also reduced to reflect the lower employer contribution rates; provided that the department of finance and administration shall determine the amount of each reduction;

(3) in order to effectuate the reductions in Paragraphs (1) and (2) of this subsection, the state budget division of the department of finance and administration and the higher education department shall reduce the operating budget of each agency, program and institution accordingly; and

(4) the appropriation reductions in Paragraphs (1) and (2) of this subsection are contingent on enactment of Senate Bill 248 or similar legislation of the first session of the fiftieth legislature that decreases employer contribution rates by one and three-fourths percent of salary from the employer contribution rates applicable during fiscal year 2011; provided that, if other legislation is enacted into law by the first session of the fiftieth legislature that decreases employer contribution rates from the rates applicable during fiscal year 2011 by a different percentage, then the department of finance and administration shall adjust the appropriation reductions of Paragraphs (1) and (2) of this subsection accordingly.

C. As a result of reduced unemployment compensation assessments due to the cancellation of the unemployment services contract by the general services department and performing the service with employees:

(1) general fund appropriations set forth in Section 4 of the General Appropriation Act of 2011 are reduced by a total of three million dollars (\$3,000,000) from the personal services and employee benefits category;

(2) appropriations set forth in Section 4 of the General Appropriation Act of 2011 to agencies and programs from sources other than the general fund are also reduced in the personal services and employee benefits category; provided that the department of finance and administration shall determine the amount of each reduction; and

(3) in order to effectuate the reductions, the state budget division of the department of finance and administration shall reduce the operating budget of state agencies accordingly.

## **Chapter 179 Section 11 Laws 2011**

Section 11. **FUND TRANSFERS.**--Notwithstanding any restriction on the use of money in the funds:

A. On the effective date of the General Appropriation Act of 2011, the following amounts from the following funds or accounts are transferred to the general fund for the purpose of meeting appropriations from the general fund:

(1) five million dollars (\$5,000,000) is transferred from the college affordability endowment fund;

(2) one million nine hundred thousand dollars (\$1,900,000) is transferred from the workers' compensation administration fund;

(3) five hundred thousand dollars (\$500,000) is transferred from the trail safety fund;

(4) one million seven hundred thousand dollars (\$1,700,000) is transferred from the water and wastewater project grant fund;

(5) one million nine hundred thousand dollars (\$1,900,000) is transferred from the economic development revolving fund;

(6) two million eight hundred ten thousand dollars (\$2,810,000) is transferred from the primary care capital fund;

(7) two hundred thousand dollars (\$200,000) is transferred from the child care facility revolving loan fund;

(8) three million four hundred thousand dollars (\$3,400,000) is transferred from accounts established for the deposit of fees received by the New Mexico finance authority for the administration of transportation revenue bonds issued pursuant to Sections 67-3-59.3 and 67-3-59.4 NMSA 1978;

(9) three million four hundred thousand dollars (\$3,400,000) is transferred from the local government transportation fund;

(10) four million nine hundred thousand dollars (\$4,900,000) is transferred from the local transportation infrastructure fund; and

(11) two hundred ninety thousand dollars (\$290,000) is transferred from the emergency drought relief fund.

B. during fiscal year 2012, the following amounts from the following funds or accounts are transferred to the general fund for the purpose of meeting appropriations from the general fund:

(1) ten million dollars (\$10,000,000) is transferred from the college affordability endowment fund; and

(2) one million four hundred thousand dollars (\$1,400,000) is transferred from accounts established for the deposit of fees received by the New Mexico finance authority for the administration of transportation revenue bonds issued pursuant to Sections 67-3-59.3 and 67-3-59.4 NMSA 1978.

## **Chapter 179 Section 12 Laws 2011**

### ~~[Section 12. AUTHORITY TO REDUCE ALLOTMENTS.]~~

A. During fiscal year 2012, the department of finance and administration shall regularly consult with the legislative finance committee staff to compare revenue collections with the revenue estimate. If a general fund consensus revenue forecast projects that revenues and transfers to the general fund, including all transfers authorized pursuant to Section 13 of the General Appropriation Act of 2011, will be insufficient to meet general fund appropriations for fiscal year 2012, the governor, with the approval of the state board of finance and after review and an opportunity to comment by the legislative finance committee, shall reduce general fund allotments to all agencies, funds, programs and other recipients that receive a general fund appropriation in Section 4 of the General Appropriation Act of 2011, pursuant to the following guidelines:

(1) the aggregate of all the reductions in allotments shall equal the amount of the projected deficit;

(2) the reductions shall apply proportionately to all agencies, funds, programs and other recipients, and to all programs and categories within agencies, that receive a general fund appropriation in Section 4 of the General Appropriation Act of 2011, except that no reductions shall be made in the allotments for the medicaid programs or the developmental disabilities support program;

(3) if a reduction in an allotment for personal services and employee benefits necessitates a reduction in salaries, the agency is authorized to temporarily reduce salaries in the amount of the reduction;

(4) if a subsequent general fund consensus revenue forecast released during fiscal year 2012 projects revenues to increase above the previous forecast, the allotments shall be increased to reflect the new forecast, up to the amount of the original appropriations;

(5) if a subsequent general fund consensus revenue forecast released during fiscal year 2012 projects revenues to decrease further from the previous forecast, allotments shall be further reduced pursuant to this subsection; and

(6) expenditures of the appropriations made to legislative agencies in Laws 2011, Chapter 1, Subsection A of Section 3 and Sections 4, 5, 7 and 8 shall also be reduced in accordance with the provisions of this subsection.

~~\_\_\_\_\_ B. As used in this section, "general fund consensus revenue forecast" means the revenue estimates prepared by the career economists of the department of finance and administration, taxation and revenue department, department of transportation and legislative finance committee.]~~ *LINE-ITEM VETO*

## **Chapter 179 Section 13 Laws 2011**

### **Section 13. TRANSFER AUTHORITY.--**

A. If revenue and transfers to the general fund at the end of fiscal year 2011 or 2012 are not sufficient to meet appropriations, the governor, with state board of finance approval, may transfer to the appropriation account of the general fund the amount necessary to meet that fiscal year's obligations from the operating reserve, provided that the total transferred pursuant to this subsection shall not exceed fifty million dollars (\$50,000,000).

## **Chapter 179 Section 14 Laws 2011**

Section 14. Section 14 of the General Appropriation Act of 2010 (being Laws 2010 (2nd S.S.), Chapter 6, Section 14) is amended to read:

### **"Section 14. AUTHORITY TO REDUCE ALLOTMENTS.--**

A. During fiscal year 2011, the department of finance and administration shall regularly consult with the legislative finance committee staff to compare revenue collections with the revenue estimate. If a general fund consensus revenue forecast projects that revenues and transfers to the general fund, including all transfers authorized pursuant to Section 15 of the General Appropriation Act of 2010, will be insufficient to meet general fund appropriations for fiscal year 2011, the governor, with the approval of the state board of finance and after review and an opportunity to comment by the legislative finance committee, shall reduce general fund allotments to all agencies, funds, programs and other recipients that receive a general fund appropriation in Section 4 of the General Appropriation Act of 2010, pursuant to the following guidelines:

(1) the aggregate of all the reductions in allotments shall equal the amount of the projected deficit;

(2) the reductions shall apply proportionately to all agencies, funds, programs and other recipients, and to all programs and categories within agencies, that receive a general fund appropriation in Section 4 of the General Appropriation Act of

2010, except that no reductions shall be made in the allotments for the medicaid programs or the developmental disabilities support program;

(3) if a reduction in an allotment for personal services and employee benefits necessitates a reduction in salaries, the agency is authorized to temporarily reduce salaries in the amount of the reduction;

(4) if allotments are reduced pursuant to this subsection, they shall not thereafter be increased;

(5) except as otherwise provided in Paragraph (6) of this subsection, if allotments are reduced pursuant to this subsection and a subsequent general fund consensus revenue forecast released during fiscal year 2011 projects revenues to decrease further from the forecast upon which allotments are based at the time the subsequent forecast is released, allotments shall be further reduced pursuant to this subsection;

(6) if a subsequent general fund consensus revenue forecast is released during fiscal year 2011 before allotments are reduced pursuant to this subsection based upon the previous general fund consensus revenue forecast, allotments shall not be reduced based upon the previous forecast; and

(7) expenditures of the appropriations made to legislative agencies in Laws 2010, Chapter 1, Subsection A of Section 3 and 4, 5, 7 and 8 shall also be reduced in accordance with the provisions of this subsection.

B. As used in this section, "general fund consensus revenue forecast" means the revenue estimates prepared by the career economists of the department of finance and administration, taxation and revenue department, department of transportation and legislative finance committee."

## **Chapter 179 Section 15 Laws 2011**

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.

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HAFC/House Bills 2, 3, 4, 5 & 6, aa

## **LAWS 2011, CHAPTER 180**

AN ACT

RELATING TO LAW ENFORCEMENT; PROVIDING FOR THE EDUCATION AND TRAINING OF LAW ENFORCEMENT OFFICERS TO FACILITATE INTERACTION WITH PERSONS WITH MENTAL IMPAIRMENTS.

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

## **Chapter 180 Section 1 Laws 2011**

SECTION 1. A new section of the Law Enforcement Training Act is enacted to read:

"INTERACTION WITH PERSONS WITH MENTAL IMPAIRMENTS--TRAINING.--

A. A minimum of forty hours of crisis management, including crisis intervention, confrontation de-escalation practicum and proper interaction with persons with mental impairments training, shall be included in the curriculum of each basic law enforcement training class.

B. A minimum of two hours of crisis management, including crisis intervention, confrontation de-escalation practicum and proper interaction with persons with mental impairments training, shall be included as a component of in-service law enforcement training pursuant to Section 29-7-7.1 NMSA 1978.

C. A pre-recorded course on crisis management, including crisis intervention, confrontation de-escalation practicum and proper interaction with persons with mental impairments training, shall not satisfy the requirements of the basic law enforcement training class required pursuant to Subsection A of this section.

D. As used in this section, "mental impairment" includes a mental illness, developmental disability, posttraumatic stress disorder, dual diagnosis, autism, youth in crisis and traumatic brain injury."

## **Chapter 180 Section 2 Laws 2011**

SECTION 2. Section 29-7C-7 NMSA 1978 (being Laws 2003, Chapter 320, Section 9) is amended to read:

"29-7C-7. IN-SERVICE TELECOMMUNICATOR TRAINING.--

A. In-service telecommunicator training consists of at least twenty hours of board-approved advanced training, including one hour of crisis management, including crisis intervention, confrontation de-escalation practicum and proper interaction with persons with mental impairments training, for each certified telecommunicator during each two-year period. The first training course shall commence no later than twelve months after graduation from a board-approved basic telecommunicator training program.



B. A certified telecommunicator shall provide proof of completion of in-service training requirements to the director no later than March 1 of the year subsequent to the year in which the requirements are met. The director shall provide annual notice to all certified telecommunicators regarding in-service training requirements. Failure to complete in-service training requirements may be grounds for suspension of a telecommunicator's certification at the director's discretion. A telecommunicator may be reinstated at the discretion of the director when the telecommunicator presents to the director evidence the telecommunicator has satisfied the in-service training requirements.

C. As used in this section, "mental impairment" includes a mental illness, developmental disability, posttraumatic stress disorder, dual diagnosis, autism, youth in crisis and traumatic brain injury."

## **Chapter 180 Section 3 Laws 2011**

### **SECTION 3. TEMPORARY PROVISION--IMMEDIATE TRAINING--REQUIRED.-**

A. The chief law enforcement officer of a state, county or municipal law enforcement agency who was elected or appointed prior to July 1, 2011 shall complete a minimum of two hours of crisis management, including crisis intervention, confrontation de-escalation practicum and proper interaction with persons with mental impairments training, no later than July 1, 2012.

B. A law enforcement officer who on September 1, 2010 held an intermediate proficiency certificate or an advanced proficiency certificate issued pursuant to Section 29-7-7.1 NMSA 1978 shall complete a minimum of two hours of crisis management, including crisis intervention, confrontation de-escalation practicum and proper interaction with persons with mental impairments training, no later than July 1, 2012.

C. As used in this section, "mental impairment" includes a mental illness, developmental disability, posttraumatic stress disorder, dual diagnosis, autism, youth in crisis and traumatic brain injury.

## **Chapter 180 Section 4 Laws 2011**

SECTION 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.

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HJC/HJC/House Bill 93

Approved April 8, 2011

# **LAWS 2011, CHAPTER 181**

AN ACT

RELATING TO PUBLIC RECORDS; PROVIDING FOR DELIVERY OF COPIES OF PUBLIC RECORDS IN ELECTRONIC FORMAT.

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

## **Chapter 181 Section 1 Laws 2011**

SECTION 1. Section 14-2-6 NMSA 1978 (being Laws 1993, Chapter 258, Section 3) is amended to read:

"14-2-6. DEFINITIONS.--As used in the Inspection of Public Records Act:

A. "custodian" means any person responsible for the maintenance, care or keeping of a public body's public records, regardless of whether the records are in that person's actual physical custody and control;

B. "file format" means the internal structure of an electronic file that defines the way it is stored and used;

C. "inspect" means to review all public records that are not excluded in Section 14-2-1 NMSA 1978;

D. "person" means any individual, corporation, partnership, firm, association or entity;

E. "public body" means the executive, legislative and judicial branches of state and local governments and all advisory boards, commissions, committees, agencies or entities created by the constitution or any branch of government that receives any public funding, including political subdivisions, special taxing districts, school districts and institutions of higher education; and

F. "public records" means all documents, papers, letters, books, maps, tapes, photographs, recordings and other materials, regardless of physical form or characteristics, that are used, created, received, maintained or held by or on behalf of any public body and relate to public business, whether or not the records are required by law to be created or maintained."

## **Chapter 181 Section 2 Laws 2011**

SECTION 2. Section 14-2-9 NMSA 1978 (being Laws 1993, Chapter 258, Section 6) is amended to read:

"14-2-9. PROCEDURE FOR INSPECTION.--

A. Requested public records containing information that is exempt and nonexempt from disclosure shall be separated by the custodian prior to inspection, and the nonexempt information shall be made available for inspection. If necessary to preserve the integrity of computer data or the confidentiality of exempt information contained in a database, a partial printout of data containing public records or information may be furnished in lieu of an entire database. Exempt information in an electronic document shall be removed along with the corresponding metadata prior to disclosure by utilizing methods or redaction tools that prevent the recovery of exempt information from a redacted electronic document.

B. A custodian shall provide a copy of a public record in electronic format if the public record is available in electronic format and an electronic copy is specifically requested. However, a custodian is only required to provide the electronic record in the file format in which it exists at the time of the request.

C. A custodian:

(1) may charge reasonable fees for copying the public records, unless a different fee is otherwise prescribed by law;

(2) shall not charge fees in excess of one dollar (\$1.00) per printed page for documents eleven inches by seventeen inches in size or smaller;

(3) may charge the actual costs associated with downloading copies of public records to a computer disk or storage device, including the actual cost of the computer disk or storage device;

(4) may charge the actual costs associated with transmitting copies of public records by mail, electronic mail or facsimile;

(5) may require advance payment of the fees before making copies of public records;

(6) shall not charge a fee for the cost of determining whether any public record is subject to disclosure; and

(7) shall provide a receipt, upon request.

D. Nothing in this section regarding the provision of public data in electronic format shall limit the ability of the custodian to engage in the sale of data as authorized by Section 14-3-15.1 NMSA 1978, including imposing reasonable restrictions on the use of the database and the payment of a royalty or other consideration."

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SPAC/Senate Bill 52, aa

Approved April 8, 2011

## **LAWS 2011, CHAPTER 182**

AN ACT

RELATING TO PUBLIC RECORDS; PROVIDING FOR DELIVERY OF COPIES OF PUBLIC RECORDS IN ELECTRONIC FORMAT; REQUIRING A PUBLIC BODY TO DISPLAY PROCEDURES FOR REQUESTING PUBLIC RECORDS FROM AND CONTACT INFORMATION FOR THE PUBLIC RECORDS CUSTODIAN ON A WEB SITE.

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

### **Chapter 182 Section 1 Laws 2011**

SECTION 1. Section 14-2-6 NMSA 1978 (being Laws 1993, Chapter 258, Section 3) is amended to read:

"14-2-6. DEFINITIONS.--As used in the Inspection of Public Records Act:

A. "custodian" means any person responsible for the maintenance, care or keeping of a public body's public records, regardless of whether the records are in that person's actual physical custody and control;

B. "file format" means the internal structure of an electronic file that defines the way it is stored and used;

C. "inspect" means to review all public records that are not excluded in Section 14-2-1 NMSA 1978;

D. "person" means any individual, corporation, partnership, firm, association or entity;

E. "public body" means the executive, legislative and judicial branches of state and local governments and all advisory boards, commissions, committees, agencies or entities created by the constitution or any branch of government that receives any public funding, including political subdivisions, special taxing districts, school districts and institutions of higher education; and

F. "public records" means all documents, papers, letters, books, maps, tapes, photographs, recordings and other materials, regardless of physical form or characteristics, that are used, created, received, maintained or held by or on behalf of

any public body and relate to public business, whether or not the records are required by law to be created or maintained."

## **Chapter 182 Section 2 Laws 2011**

SECTION 2. Section 14-2-7 NMSA 1978 (being Laws 1993, Chapter 258, Section 4, as amended) is amended to read:

"14-2-7. DESIGNATION OF CUSTODIAN--DUTIES.--Each public body shall designate at least one custodian of public records who shall:

A. receive requests, including electronic mail or facsimile, to inspect public records;

B. respond to requests in the same medium, electronic or paper, in which the request was made in addition to any other medium that the custodian deems appropriate;

C. provide proper and reasonable opportunities to inspect public records;

D. provide reasonable facilities to make or furnish copies of the public records during usual business hours; and

E. post in a conspicuous location at the administrative office and on the publicly accessible web site, if any, of each public body a notice describing:

(1) the right of a person to inspect a public body's records;

(2) procedures for requesting inspection of public records, including the contact information for the custodian of public records;

(3) procedures for requesting copies of public records;

(4) reasonable fees for copying public records; and

(5) the responsibility of a public body to make available public records for inspection."

## **Chapter 182 Section 3 Laws 2011**

SECTION 3. Section 14-2-9 NMSA 1978 (being Laws 1993, Chapter 258, Section 6) is amended to read:

"14-2-9. PROCEDURE FOR INSPECTION.--

A. Requested public records containing information that is exempt and nonexempt from disclosure shall be separated by the custodian prior to inspection, and the nonexempt information shall be made available for inspection. If necessary to preserve the integrity of computer data or the confidentiality of exempt information contained in a database, a partial printout of data containing public records or information may be furnished in lieu of an entire database. Exempt information in an electronic document shall be removed along with the corresponding metadata prior to disclosure by utilizing methods or redaction tools that prevent the recovery of exempt information from a redacted electronic document.

B. A custodian shall provide a copy of a public record in electronic format if the public record is available in electronic format and an electronic copy is specifically requested. However, a custodian is only required to provide the electronic record in the file format in which it exists at the time of the request.

C. A custodian:

(1) may charge reasonable fees for copying the public records, unless a different fee is otherwise prescribed by law;

(2) shall not charge fees in excess of one dollar (\$1.00) per printed page for documents eleven inches by seventeen inches in size or smaller;

(3) may charge the actual costs associated with downloading copies of public records to a computer disk or storage device, including the actual cost of the computer disk or storage device;

(4) may charge the actual costs associated with transmitting copies of public records by mail, electronic mail or facsimile;

(5) may require advance payment of the fees before making copies of public records;

(6) shall not charge a fee for the cost of determining whether any public record is subject to disclosure; and

(7) shall provide a receipt, upon request.

D. Nothing in this section regarding the provision of public data in electronic format shall limit the ability of the custodian to engage in the sale of data as authorized by Section 14-3-15.1 NMSA 1978, including imposing reasonable restrictions on the use of the database and the payment of a royalty or other consideration."

Approved April 8, 2011

## **LAWS 2011, CHAPTER 183**

### **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 183 Section 1 Laws 2011**

#### **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 183 Section 2 Laws 2011**

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 183 Section 3 Laws 2011**

SECTION 3. FISHER AND SMITH MEMORIAL GYMNASIUM AT VISTA GRANDE COMMUNITY CENTER--EXPAND PURPOSE--EXTEND TIME--SEVERANCE TAX BONDS.--The local government division project in Subsection 1 of Section 23 of Chapter 42 of Laws 2007 to plan, design and construct the Fisher and Smith memorial gymnasium at the Vista Grande community center in Bernalillo county may include equipping and furnishing that center. The time of expenditure is extended through fiscal year 2013.



## **Chapter 183 Section 4 Laws 2011**

SECTION 4. CHRISTINE DUNCAN COMMUNITY SCHOOL--CHANGE TO AFRICAN AMERICAN PERFORMING ARTS CENTER--CHANGE AGENCY--EXTEND TIME--GENERAL FUND.--Twenty thousand dollars (\$20,000) of the unexpended balance of the appropriation to the public education department in Subsection 52 of Section 55 of Chapter 42 of Laws 2007 for a facility for Christine Duncan community school in the Albuquerque public school district in Bernalillo county shall not be expended for the original purpose but is appropriated to the state fair commission to construct and equip the multipurpose room at the African American performing arts center on the state fairgrounds in Albuquerque. The time of expenditure is extended through fiscal year 2013.

## **Chapter 183 Section 5 Laws 2011**

SECTION 5. HILAND THEATER CONSTRUCTION AND RENOVATION--CHANGE TO AFRICAN AMERICAN PERFORMING ARTS CENTER MULTIPURPOSE ROOM--CHANGE AGENCY--EXTEND TIME--GENERAL FUND.--Ninety-two thousand nine hundred twenty-seven dollars (\$92,927) of the unexpended balance of the appropriation to the local government division in Subsection 14 of Section 68 of Chapter 42 of Laws 2007 to construct and renovate the Hiland theater in Albuquerque in Bernalillo county shall not be expended for the original purpose but is appropriated to the state fair commission to construct and equip the multipurpose room at the African American performing arts center at the state fairgrounds in Albuquerque. The time of expenditure is extended through fiscal year 2013.

## **Chapter 183 Section 6 Laws 2011**

SECTION 6. ALBUQUERQUE BURTON PARK IMPROVEMENTS--EXTEND TIME--GENERAL FUND.--The time of expenditure for the local government division project in Subsection 60 of Section 68 of Chapter 42 of Laws 2007 for improvements to Burton park in Albuquerque in Bernalillo county is extended through fiscal year 2013.

## **Chapter 183 Section 7 Laws 2011**

SECTION 7. ALAMOSA PARK RENOVATIONS--CHANGE TO TOWER PARK-WEST GATE LITTLE LEAGUE IMPROVEMENTS--EXTEND TIME--GENERAL FUND.-  
-The unexpended balance of the appropriation originally made in Subsection 14 of Section 52 of Chapter 347 of Laws 2005 and reappropriated in Laws 2007, Chapter 341, Section 20 to the local government division to plan, design and renovate Alamosa park in Albuquerque shall not be expended for the original or reappropriated purpose but is changed to make improvements for Tower Park-West Gate little league in Albuquerque. The time of expenditure is extended through fiscal year 2013.

## **Chapter 183 Section 8 Laws 2011**

SECTION 8. YOUTH DIAGNOSTIC AND DEVELOPMENT CENTER IMPROVEMENTS--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the capital program fund project in Subsection 1 of Section 6 of Chapter 42 of Laws 2007 for fire suppression improvements, roof repairs, upgrades to comply with the Americans with Disabilities Act of 1990 and kitchen and other renovations at the youth diagnostic and development center in Albuquerque in Bernalillo county is extended through fiscal year 2013.

### **Chapter 183 Section 9 Laws 2011**

SECTION 9. CHRISTINE DUNCAN COMMUNITY SCHOOL--CHANGE TO BERNALILLO COUNTY SOUTH VALLEY POOL--CHANGE AGENCY--EXTEND TIME--GENERAL FUND.--Thirty thousand dollars (\$30,000) of the unexpended balance of the appropriation to the public education department in Subsection 52 of Section 55 of Chapter 42 of Laws 2007 for a facility for Christine Duncan community 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, equip, construct and redevelop the south valley pool facility and grounds in Bernalillo county. The time of expenditure is extended through fiscal year 2013.

### **Chapter 183 Section 10 Laws 2011**

SECTION 10. ALBUQUERQUE DEAF CULTURE MULTIPURPOSE CENTER--EXPAND PURPOSE--CHANGE AGENCY--EXTEND TIME--GENERAL FUND.--The local government division project in Subsection 37 of Section 59 of Chapter 92 of Laws 2008 to purchase land for and plan, design and construct a deaf culture multipurpose center in Albuquerque in Bernalillo county may include purchasing, improving, renovating, furnishing and equipping a building and is appropriated to the commission for deaf and hard-of-hearing persons. The time of expenditure is extended through fiscal year 2013.

### **Chapter 183 Section 11 Laws 2011**

SECTION 11. CENTRAL-HIGHLAND UPPER NOB HILL REDEVELOPMENT AREA IMPROVEMENTS--EXTEND TIME--GENERAL FUND.--The time of expenditure for the local government division project in Subsection 122 of Section 68 of Chapter 42 of Laws 2007 for public infrastructure and street and streetscape improvements to the Central-Highland upper Nob Hill redevelopment area in Albuquerque in Bernalillo county is extended through fiscal year 2013.

### **Chapter 183 Section 12 Laws 2011**

SECTION 12. LA PAZ AND PARADISE BOULEVARD TRAFFIC SIGNALS--EXTEND TIME--GENERAL FUND.--The time of expenditure for the department of transportation project in Subsection 62 of Section 75 of Chapter 42 of Laws 2007 to plan, design, construct, purchase and install traffic signals at La Paz boulevard and

Paradise boulevard in Albuquerque in Bernalillo county is extended through fiscal year 2013.

### **Chapter 183 Section 13 Laws 2011**

SECTION 13. HIGHLAND HIGH SCHOOL INFRASTRUCTURE, FACILITY AND SECURITY IMPROVEMENTS--CHANGE TO CONSTRUCTING THE MULTIPURPOSE ROOM AT THE AFRICAN AMERICAN PERFORMING ARTS CENTER--CHANGE AGENCY--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the public education department in Subsection 108 of Section 55 of Chapter 42 of Laws 2007 for infrastructure, facility and security improvements 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 state fair commission to construct and equip the multipurpose room at the African American performing arts center on the state fairgrounds in Albuquerque. The time of expenditure is extended through fiscal year 2013.

### **Chapter 183 Section 14 Laws 2011**

SECTION 14. STATE LABORATORY SERVICES BUILDING--EXTEND TIME--GENERAL FUND.--The time of expenditure for the capital program fund project originally appropriated in Subsection 3 of Section 41 of Chapter 126 of Laws 2004 and reappropriated in Laws 2009, Chapter 128, Section 77 for a state laboratory services building in Albuquerque in Bernalillo county is extended through fiscal year 2013.

### **Chapter 183 Section 15 Laws 2011**

SECTION 15. HIGHLAND HIGH SCHOOL ON-SITE STREET VACATION INFRASTRUCTURE--CHANGE TO UNIVERSITY OF NEW MEXICO CHEMISTRY BUILDING--CHANGE AGENCY--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the public education department made in Subsection 112 of Section 55 of Chapter 42 of Laws 2007 for on-site street vacation infrastructure at Highland high school in the Albuquerque public school district shall not be expended for the original purpose but is appropriated to the board of regents of the university of New Mexico to renovate the chemistry building at the university of New Mexico in Albuquerque in Bernalillo county. The time of expenditure is extended through fiscal year 2013.

### **Chapter 183 Section 16 Laws 2011**

SECTION 16. HILAND THEATER RENOVATION--CHANGE TO UNIVERSITY OF NEW MEXICO CHEMISTRY BUILDING--CHANGE AGENCY--EXTEND TIME--GENERAL FUND.--One hundred sixty thousand eight hundred fifty-three dollars (\$160,853) of the unexpended balance of the appropriation to the local government division in Subsection 14 of Section 68 of Chapter 42 of Laws 2007 for renovating the Hiland theater in Albuquerque shall not be expended for the original purpose but is

appropriated to the board of regents of the university of New Mexico to renovate and repair the chemistry building at the university of New Mexico in Albuquerque in Bernalillo county. The time of expenditure is extended through fiscal year 2013.

### **Chapter 183 Section 17 Laws 2011**

SECTION 17. ALBUQUERQUE TRANSIT SYSTEM FEEDER ROUTE IMPROVEMENTS--CHANGE TO UNIVERSITY OF NEW MEXICO CHEMISTRY BUILDING--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the department of transportation in Subsection 48 of Section 75 of Chapter 42 of Laws 2007 for improvements to the transit system feeder routes in Albuquerque shall not be expended for the original purpose but is appropriated to the board of regents of the university of New Mexico to renovate the chemistry building at the university of New Mexico in Albuquerque in Bernalillo county. The time of expenditure is extended through fiscal year 2013.

### **Chapter 183 Section 18 Laws 2011**

SECTION 18. GOLD AVENUE STREETScape IMPROVEMENTS--CHANGE TO UNIVERSITY OF NEW MEXICO CHEMISTRY BUILDING--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the department of transportation in Subsection 53 of Section 75 of Chapter 42 of Laws 2007 for streetscape improvements on Gold avenue from Yale boulevard to Sycamore street in Albuquerque shall not be expended for the original purpose but is appropriated to the board of regents of the university of New Mexico to renovate the chemistry building at the university of New Mexico in Albuquerque in Bernalillo county. The time of expenditure is extended through fiscal year 2013.

### **Chapter 183 Section 19 Laws 2011**

SECTION 19. ZUNI ROAD STREET LIGHTING--CHANGE TO UNIVERSITY OF NEW MEXICO CHEMISTRY BUILDING--CHANGE AGENCY--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the department of transportation in Subsection 70 of Section 75 of Chapter 42 of Laws 2007 for street lighting on Zuni road between Louisiana boulevard and Central avenue in Albuquerque shall not be expended for the original purpose but is appropriated to the board of regents of the university of New Mexico to renovate the chemistry building at the university of New Mexico in Albuquerque in Bernalillo county. The time of expenditure is extended through fiscal year 2013.

### **Chapter 183 Section 20 Laws 2011**

SECTION 20. CHRISTINE DUNCAN COMMUNITY SCHOOL--CHANGE TO BOOK PURCHASE FOR SCHOOLS IN HOUSE DISTRICT 25 IN THE ALBUQUERQUE PUBLIC SCHOOL DISTRICT--EXTEND TIME--GENERAL FUND.--Five thousand dollars (\$5,000) of the unexpended balance of the appropriation to the

public education department in Subsection 52 of Section 55 of Chapter 42 of Laws 2007 for a facility for the Christine Duncan community school shall not be expended for the original purpose but is changed to purchase books and software to be divided equally among Jefferson and McKinley middle schools and Bel-Air, Hodgkin and Montezuma elementary schools in the Albuquerque public school district in Bernalillo county. The time of expenditure is extended through fiscal year 2013.

### **Chapter 183 Section 21 Laws 2011**

SECTION 21. CHRISTINE DUNCAN COMMUNITY SCHOOL--CHANGE TO WESTSIDE FOOTBALL STADIUM--EXTEND TIME--GENERAL FUND.--Forty thousand dollars (\$40,000) of the unexpended balance of the appropriation to the public education department in Subsection 52 of Section 55 of Chapter 42 of Laws 2007 for a facility for Christine Duncan community 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 the westside football stadium in that school district. The time of expenditure is extended through fiscal year 2013.

### **Chapter 183 Section 22 Laws 2011**

SECTION 22. LA LUZ ELEMENTARY SCHOOL ELECTRICAL UPGRADES--CHANGE TO MISSION AVENUE ELEMENTARY SCHOOL INFORMATION TECHNOLOGY--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the public education department in Subsection 140 of Section 55 of Chapter 42 of Laws 2007 for electrical upgrades at La Luz elementary school shall not be expended for the original purpose but is changed to purchase and install information technology, including related equipment, furniture and infrastructure, at Mission Avenue elementary school in the Albuquerque public school district in Bernalillo county. The time of expenditure is extended through fiscal year 2013.

### **Chapter 183 Section 23 Laws 2011**

SECTION 23. ALBUQUERQUE GARFIELD PARK RECONSTRUCTION--CHANGE TO MISSION AVENUE ELEMENTARY INFORMATION TECHNOLOGY--CHANGE AGENCY--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 53 of Section 59 of Chapter 92 of Laws 2008 to plan, design and reconstruct Garfield park in Albuquerque 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 Mission Avenue elementary school in the Albuquerque public school district in Bernalillo county.

### **Chapter 183 Section 24 Laws 2011**

SECTION 24. ALBUQUERQUE RANCHO ENCANTADO PARK--CHANGE TO MISSION AVENUE ELEMENTARY SCHOOL SECURITY CAMERAS--CHANGE

AGENCY--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 87 of Section 59 of Chapter 92 of Laws 2008 to plan and design Rancho Encantado park in Albuquerque shall not be expended for the original purpose but is appropriated to the public education department for security cameras at Mission Avenue elementary school in the Albuquerque public school district in Bernalillo county.

### **Chapter 183 Section 25 Laws 2011**

SECTION 25. ROOSEVELT MIDDLE SCHOOL TRACK--EXTEND TIME--GENERAL FUND.--The time of expenditure for the public education department project originally appropriated in Subsection 23 of Section 2 of Chapter 2 of Laws 2007 and reappropriated in Subsection B of Section 99 of Chapter 42 of Laws 2007 to plan, design and construct a track at Roosevelt middle school in the Albuquerque public school district in Bernalillo county is extended through fiscal year 2013.

### **Chapter 183 Section 26 Laws 2011**

SECTION 26. WHITTIER ELEMENTARY SCHOOL LANDSCAPING--EXTEND TIME--GENERAL FUND.--The time of expenditure for the public education department project in Subsection 271 of Section 55 of Chapter 42 of Laws 2007 for landscaping at Whittier elementary school in the Albuquerque public school district in Bernalillo county is extended through fiscal year 2013.

### **Chapter 183 Section 27 Laws 2011**

SECTION 27. SOUTHERN NEW MEXICO REHABILITATION CENTER--EXTEND TIME--REVENUE BONDS.--The time of expenditure for the revenue bond project originally authorized in Subsection C of Section 8 of Chapter 320 of Laws 2005 and reauthorized in Subsection 1 of Section 94 of Chapter 42 of Laws 2007 for improvements at the southern New Mexico rehabilitation center is extended through fiscal year 2013.

### **Chapter 183 Section 28 Laws 2011**

SECTION 28. THIRTEENTH JUDICIAL DISTRICT ATTORNEY OFFICE RENOVATIONS--CHANGE TO CIBOLA COUNTY MOTOR GRADER PURCHASE--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 239 of Section 68 of Chapter 42 of Laws 2007 for renovations and additions to the district attorney's office in the thirteenth judicial district in Cibola county shall not be expended for the original purpose but is changed to purchase and equip a motor grader for Cibola county. The time of expenditure is extended through fiscal year 2013.

### **Chapter 183 Section 29 Laws 2011**

SECTION 29. CIBOLA COUNTY FACILITY RENOVATIONS--CHANGE TO MOTOR GRADER PURCHASE--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 242 of Section 68 of Chapter 42 of Laws 2007 to plan, design, renovate and expand a facility in Cibola county shall not be expended for the original purpose but is changed to purchase and equip a motor grader for the road department in Cibola county. The time of expenditure is extended through fiscal year 2013.

### **Chapter 183 Section 30 Laws 2011**

SECTION 30. CIBOLA COUNTY PLAZA AND COURTHOUSE IMPROVEMENTS--CHANGE TO ROAD DEPARTMENT MOTOR GRADER--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the local government division in Subsection 159 of Section 59 of Chapter 92 of Laws 2008 for the plaza, courthouse and courthouse complex in Grants in Cibola county shall not be expended for the original purpose but is changed to purchase and equip a motor grader for the Cibola county road department. The time of expenditure is extended through fiscal year 2013.

### **Chapter 183 Section 31 Laws 2011**

SECTION 31. PUEBLO OF ACOMA SKYLINE LAGOON SYSTEM--EXTEND TIME--GENERAL FUND.--The time of expenditure for the Indian affairs department project in Subsection 13 of Section 66 of Chapter 42 of Laws 2007 to plan, design, construct and renovate the skyline lagoon system at the Pueblo of Acoma in Cibola county is extended through fiscal year 2013.

### **Chapter 183 Section 32 Laws 2011**

SECTION 32. GRANTS WATER WELL--EXTEND TIME--GENERAL FUND.--The time of expenditure for the department of environment project originally appropriated in Subsection 9 of Section 45 of Chapter 111 of Laws 2006 and reappropriated in Laws 2007, Chapter 341, Section 82 to drill and equip a water well in Grants in Cibola county is extended through fiscal year 2013.

### **Chapter 183 Section 33 Laws 2011**

SECTION 33. EAGLE NEST DAM AND RESERVOIR DIVERSION STRUCTURES--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the office of the state engineer project in Subsection 1 of Section 15 of Chapter 42 of Laws 2007 to plan, design and renovate diversion structures below Eagle Nest dam and reservoir in Colfax county is extended through fiscal year 2013.

### **Chapter 183 Section 34 Laws 2011**

SECTION 34. MINERS' COLFAX MEDICAL CENTER DISPENSING SYSTEM--CHANGE TO FLOORING--EXTEND TIME--MINERS' TRUST FUND.--The unexpended balance of the appropriation from the miners' trust fund to the miners' hospital in Laws 2009, Chapter 125, Section 44 to purchase and install a dispensing system shall not be expended for the original purpose but is changed to replace flooring at the long-term care facility at miners' hospital, also known as miners' Colfax medical center, in Raton in Colfax county. The time of expenditure is extended through fiscal year 2013.

### **Chapter 183 Section 35 Laws 2011**

SECTION 35. CLOVIS MOTOR VEHICLE DIVISION FIELD OFFICE IMPROVEMENTS--EXPAND PURPOSE TO INCLUDE RENOVATION, FURNISHINGS, INSTALLATION AND EQUIPMENT--SEVERANCE TAX BONDS.--The capital program fund project in Subsection 5 of Section 4 of Chapter 4 of Laws 2010 (2nd S.S.) for improvements, including mold remediation and structural and plumbing repairs, at the motor vehicle division's Clovis field office in Curry county may include renovation, furnishings and purchase and installation of equipment at that facility.

### **Chapter 183 Section 36 Laws 2011**

SECTION 36. J. PAUL TAYLOR JUVENILE JUSTICE CENTER EXPANSION--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the capital program fund project in Subsection 2 of Section 6 of Chapter 42 of Laws 2007 to plan and design a gymnasium and weight room and construct vocational classrooms and bathrooms at the J. Paul Taylor juvenile justice center in Dona Ana county is extended through fiscal year 2013.

### **Chapter 183 Section 37 Laws 2011**

SECTION 37. SAN MIGUEL ELEMENTARY SCHOOL PURCHASE FOR COMMUNITY CENTER--CHANGE TO SAN MIGUEL ELEMENTARY SCHOOL RENOVATIONS--CHANGE AGENCY--EXTEND TIME--SEVERANCE TAX BONDS.--One hundred twenty-two thousand five hundred thirty-one dollars (\$122,531) of the unexpended balance of the appropriation to the local government division in Subsection 10 of Section 11 of Chapter 92 of Laws 2008 and reauthorized in Laws 2009, Chapter 128, Section 236 for purchasing San Miguel elementary school for a community center in Dona Ana county shall not be expended for the original or reauthorized purpose but is appropriated to the public education department to renovate the San Miguel school for use by the Gadsden independent school district in Dona Ana county. The time of expenditure is extended through fiscal year 2013.

### **Chapter 183 Section 38 Laws 2011**

SECTION 38. SAN MIGUEL ELEMENTARY SCHOOL PURCHASE FOR COMMUNITY CENTER--CHANGE TO SAN MIGUEL ELEMENTARY SCHOOL RENOVATIONS--CHANGE AGENCY--EXTEND TIME--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 and reappropriated in Laws 2009, Chapter 128, Section 238 for purchasing San Miguel elementary school for a community center in Dona Ana county shall not be expended for the original or reappropriated purpose but is appropriated to the public education department to renovate the San Miguel elementary school for use by the Gadsden independent school district in Dona Ana county. The time of expenditure is extended through fiscal year 2013.

### **Chapter 183 Section 39 Laws 2011**

SECTION 39. SAN MIGUEL MULTIPURPOSE COMPLEX--CHANGE TO SAN MIGUEL ELEMENTARY SCHOOL RENOVATIONS--CHANGE AGENCY--EXTEND TIME--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 and reappropriated in Laws 2009, Chapter 128, Section 242 for San Miguel multipurpose center property acquisition and improvements shall not be expended for the original or reappropriated purpose but is appropriated to the public education department to renovate the San Miguel elementary school for use by the Gadsden independent school district in Dona Ana county. The time of expenditure is extended through fiscal year 2013.

### **Chapter 183 Section 40 Laws 2011**

SECTION 40. SAN MIGUEL MULTIPURPOSE COMPLEX--CHANGE TO SAN MIGUEL ELEMENTARY SCHOOL RENOVATIONS--CHANGE AGENCY--EXTEND TIME--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 and reappropriated in Laws 2009, Chapter 128, Section 243 for San Miguel multipurpose center property acquisition and improvements shall not be expended for the original or reappropriated purpose but is appropriated to the public education department to renovate the San Miguel elementary school for use by the Gadsden independent school district in Dona Ana county. The time of expenditure is extended through fiscal year 2013.

### **Chapter 183 Section 41 Laws 2011**

SECTION 41. SAN MIGUEL MULTIPURPOSE CENTER--CHANGE TO SAN MIGUEL ELEMENTARY SCHOOL RENOVATIONS--CHANGE AGENCY--EXTEND TIME--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 and reappropriated in Laws 2009, Chapter 128, Section 244 for San Miguel multipurpose center property acquisition and improvements shall not be expended for the original or reappropriated purpose but is appropriated to the public education department to renovate the San Miguel elementary school for use by the Gadsden independent school

district in Dona Ana county. The time of expenditure is extended through fiscal year 2013.

### **Chapter 183 Section 42 Laws 2011**

SECTION 42. MCNUTT ROAD AND CRISTO REY ROAD LANE EXTENSIONS--CHANGE TO ANTHONY DRAINAGE IMPROVEMENTS--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the department of transportation in Subsection 7 of Section 24 of Chapter 92 of Laws 2008 for lane extensions to McNutt road and Cristo Rey road in Sunland Park in Dona Ana county shall not be expended for the original purpose but is changed to plan, design and construct drainage improvements in Anthony in Dona Ana county. The time of expenditure is extended through fiscal year 2013.

### **Chapter 183 Section 43 Laws 2011**

SECTION 43. RINCON VICTOR DURAN STREET RUNOFF DETENTION POND--CHANGE TO DONA ANA CAMINO REAL REVITALIZATION--CHANGE AGENCY--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the department of transportation in Subsection 124 of Section 75 of Chapter 42 of Laws 2007 for a detention pond on Victor Duran street in Rincon in Dona Ana county shall not be expended for the original purpose but is appropriated to the local government division to purchase land and equipment for and to plan, design and construct revitalization improvements to El Camino Real in Dona Ana in Dona Ana county. The time of expenditure is extended through fiscal year 2013.

### **Chapter 183 Section 44 Laws 2011**

SECTION 44. LA UNION MUTUAL DOMESTIC SEWER AND WATER ASSOCIATION WATER SYSTEM IMPROVEMENTS--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the department of environment project in Subsection 3 of Section 16 of Chapter 42 of Laws 2007 for water system improvements for La Union mutual domestic sewer and water association in La Union in Dona Ana county is extended through fiscal year 2013.

### **Chapter 183 Section 45 Laws 2011**

SECTION 45. J. PAUL TAYLOR CENTER VOCATIONAL ROOMS AND BASKETBALL GYMNASIUM--EXPAND PURPOSE TO INCLUDE FURNISHINGS, INSTALLATIONS AND EQUIPMENT--SEVERANCE TAX BONDS.--The capital program fund project in Subsection 4 of Section 5 of Chapter 92 of Laws 2008 for construction of vocational rooms and an indoor basketball gymnasium, including a weight room, showers and bleachers, at the J. Paul Taylor center in Las Cruces in Dona Ana county may include furnishings, installation and equipment at that facility.

## **Chapter 183 Section 46 Laws 2011**

SECTION 46. YOUTH DIAGNOSTIC AND DEVELOPMENT CENTER AND CAMINO NUEVO SITE SECURITY SYSTEMS UPGRADES--EXPAND PURPOSE TO INCLUDE J. PAUL TAYLOR JUVENILE JUSTICE CENTER SECURITY SYSTEM UPGRADES--SEVERANCE TAX BONDS.--The capital program fund project authorized in Subsection 3 of Section 4 of Chapter 4 of Laws 2010 (2nd S.S.) for upgrades to the security systems at the youth diagnostic and development center and the Camino Nuevo site in Albuquerque in Bernalillo county may include security system upgrades at the J. Paul Taylor juvenile justice center in Las Cruces in Dona Ana county.

## **Chapter 183 Section 47 Laws 2011**

SECTION 47. SAN MIGUEL ELEMENTARY SCHOOL PURCHASE FOR COMMUNITY CENTER--CHANGE TO LAS CRUCES JUVENILE JUSTICE TRACKING SYSTEM AND INFORMATION TECHNOLOGY--CHANGE AGENCY--EXTEND TIME--SEVERANCE TAX BONDS.--Fifteen thousand dollars (\$15,000) of the unexpended balance of the appropriation to the local government division in Subsection 10 of Section 11 of Chapter 92 of Laws 2008 and reauthorized in Laws 2009, Chapter 128, Section 236 for purchasing San Miguel elementary school for a community center in Dona Ana county shall not be expended for the original or reauthorized purpose but is appropriated to the third judicial district court to plan, design, purchase and install a tracking system, including information technology and related equipment, furniture and infrastructure, for the juvenile justice system in Dona Ana county. The time of expenditure is extended through fiscal year 2013.

## **Chapter 183 Section 48 Laws 2011**

SECTION 48. NEW MEXICO FARM AND RANCH HERITAGE MUSEUM RETRACTABLE COURTYARD COVER--EXPAND PURPOSE TO INCLUDE TORTUGAS ROOM AND KITCHEN EQUIPMENT--SEVERANCE TAX BONDS.--The cultural affairs department project in Subsection 10 of Section 3 of Chapter 7 of Laws 2009 (1st S.S.) to plan, design and construct a retractable cover for the courtyard at the New Mexico farm and ranch heritage museum in Las Cruces in Dona Ana county may include the purchase and installation of equipment for the Tortugas room and kitchen at that facility.

## **Chapter 183 Section 49 Laws 2011**

SECTION 49. NEW MEXICO STATE POLICE DISTRICT OFFICE IN LAS CRUCES--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the capital program fund project in Subsection 4 of Section 6 of Chapter 42 of Laws 2007 for land acquisition and to plan, design, construct and renovate a New Mexico state police district office in Las Cruces in Dona Ana county is extended through fiscal year 2013.

## **Chapter 183 Section 50 Laws 2011**

SECTION 50. SOUTHERN NEW MEXICO CORRECTIONAL FACILITY AND JP TAYLOR JUVENILE JUSTICE CENTER REAL PROPERTY PURCHASE--EXTEND TIME--PROPERTY CONTROL RESERVE FUND.--The time of expenditure for the capital program fund project in Laws 2009, Chapter 71, Section 1 to purchase from the federal bureau of land management the real property occupied by the southern New Mexico correctional facility and the JP Taylor juvenile justice center is extended through fiscal year 2013.

## **Chapter 183 Section 51 Laws 2011**

SECTION 51. SANTA TERESA PORT OF ENTRY EMERGENCY RESPONSE--CHANGE AGENCY--SEVERANCE TAX BONDS.--The capital program fund project in Subsection 6 of Section 7 of Chapter 125 of Laws 2009 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 is appropriated to the local government division for that purpose.

## **Chapter 183 Section 52 Laws 2011**

SECTION 52. SANTA TERESA SAFETY INSPECTION FACILITY--CHANGE AGENCY--SEVERANCE TAX BONDS.--The local government division project in Subsection 149 of Section 3 of Chapter 7 of Laws 2009 (1st S.S.) to plan, design and construct improvements to a safety inspection facility in Santa Teresa in Dona Ana county is appropriated to the general services department for that purpose.

## **Chapter 183 Section 53 Laws 2011**

SECTION 53. SANTA TERESA SAFETY INSPECTION STATION--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the project authorized in Subsection 3 of Section 23 of Chapter 42 of Laws 2007 to the local government division and reauthorized in Subsection B of Section 279 of Chapter 83 of Laws 2008 to the capital program fund for a safety inspection station at Santa Teresa in Dona Ana county is extended through fiscal year 2013.

## **Chapter 183 Section 54 Laws 2011**

SECTION 54. HACHITA DOMESTIC MUTUAL WATER CONSUMERS ASSOCIATION WATER SYSTEM--EXTEND TIME--GENERAL FUND.--The time of expenditure for the department of environment project in Subsection 63 of Section 59 of Chapter 42 of Laws 2007 for a water system for the Hachita domestic mutual water consumers association in Grant county is extended through fiscal year 2013.

## **Chapter 183 Section 55 Laws 2011**

SECTION 55. JAL WASTEWATER TREATMENT PLANT--CLARIFY LANGUAGE AND EXPAND PURPOSE--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the department of environment in Subsection 59 of Section 48 of Chapter 92 of Laws 2008 for improvements to the business incubator wastewater treatment plant in Jal in Lea county shall not be expended for the original purpose but is changed to plan, design, construct and equip improvements at the wastewater plant in Jal in Lea county. The time of expenditure is extended through fiscal year 2013.

### **Chapter 183 Section 56 Laws 2011**

SECTION 56. HONDO VALLEY PUBLIC SCHOOL DISTRICT SCHOOL-BASED HEALTH CLINIC--EXTEND TIME--GENERAL FUND.--The time of expenditure for the public education department project in Subsection 373 of Section 55 of Chapter 42 of Laws 2007 for a school-based health clinic for the Hondo Valley public school district in Lincoln county is extended through fiscal year 2013.

### **Chapter 183 Section 57 Laws 2011**

SECTION 57. FORT DEFIANCE CHAPTER COALMINE AREA BATHROOM ADDITIONS--EXTEND TIME--GENERAL FUND.--The time of expenditure for the Indian affairs department project in Subsection 27 of Section 66 of Chapter 42 of Laws 2007 for bathroom additions in the Coalmine area of the Fort Defiance chapter of the Navajo Nation in McKinley county is extended through fiscal year 2013.

### **Chapter 183 Section 58 Laws 2011**

SECTION 58. CROWNPOINT WELLNESS CENTER--EXTEND TIME--GENERAL FUND.--The time of expenditure for the Indian affairs department project in Subsection 43 of Section 66 of Chapter 42 of Laws 2007 for a wellness center in Crownpoint in McKinley county is extended through fiscal year 2013.

### **Chapter 183 Section 59 Laws 2011**

SECTION 59. EASTERN NAVAJO ADMINISTRATION COMPLEX--EXTEND TIME--GENERAL FUND.--The time of expenditure for the Indian affairs department project in Subsection 48 of Section 66 of Chapter 42 of Laws 2007 to plan, design, construct, equip and furnish the eastern Navajo administration complex and retail center in the Crownpoint chapter of the Navajo Nation in McKinley county is extended through fiscal year 2013.

### **Chapter 183 Section 60 Laws 2011**

SECTION 60. ALLISON ROAD IN GALLUP--EXTEND TIME--GENERAL FUND.-  
-The time of expenditure for the department of transportation project in Subsection 150

of Section 75 of Chapter 42 of Laws 2007 to acquire rights of way for, plan, design, construct and improve Allison road in Gallup in McKinley county is extended through fiscal year 2013.

### **Chapter 183 Section 61 Laws 2011**

SECTION 61. GALLUP LOW-INCOME APARTMENT FACILITY--EXTEND TIME--GENERAL FUND.--The time of expenditure for the local government division project in Subsection 468 of Section 68 of Chapter 42 of Laws 2007 to purchase, plan, design, construct and renovate a facility for low-income apartments in Gallup in McKinley county, with contingency language, is extended through fiscal year 2013.

### **Chapter 183 Section 62 Laws 2011**

SECTION 62. IYANBITO CHAPTER SWEETWATER ROAD IMPROVEMENTS--CHANGE TO DAKOTA ROAD IMPROVEMENTS--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the department of transportation in Subsection 103 of Section 61 of Chapter 92 of Laws 2008 for improvements to Sweetwater road in the Iyanbito 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 to Dakota road in that chapter. The time of expenditure is extended through fiscal year 2013.

### **Chapter 183 Section 63 Laws 2011**

SECTION 63. LAKE VALLEY CHAPTER SENIOR CENTER IMPROVEMENTS--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the aging and long-term services department project in Subsection 14 of Section 4 of Chapter 42 of Laws 2007 to make improvements, including purchase and installation of equipment, to the Lake Valley chapter senior center on the Navajo Nation in McKinley county is extended through fiscal year 2013.

### **Chapter 183 Section 64 Laws 2011**

SECTION 64. LITTLEWATER CHAPTER HEAD START FACILITY--EXTEND TIME--GENERAL FUND.--The time of expenditure for the Indian affairs department project in Subsection 54 of Section 66 of Chapter 42 of Laws 2007 for a head start facility in the Littlewater chapter of the Navajo Nation in McKinley county is extended through fiscal year 2013.

### **Chapter 183 Section 65 Laws 2011**

SECTION 65. TOHATCHI CHAPTER HOUSE KITCHEN PLUMBING SYSTEM--EXTEND TIME--GENERAL FUND.--The time of expenditure for the Indian affairs department project in Subsection 68 of Section 66 of Chapter 42 of Laws 2007 for a

plumbing system in the kitchen area of the chapter house in the Tohatchi chapter of the Navajo Nation in McKinley county is extended through fiscal year 2013.

### **Chapter 183 Section 66 Laws 2011**

SECTION 66. TOHATCHI CHAPTER PARKS AND PLAYGROUNDS--EXTEND TIME--GENERAL FUND.--The time of expenditure for the project originally appropriated in Subsection 154 of Section 26 of Chapter 2 of Laws 2007 and reappropriated in Laws 2009, Chapter 128, Section 312 to the Indian affairs department to plan, design, construct, renovate and equip a skateboard park, volleyball park, picnic area, playground area, trails and landscaping in the Tohatchi chapter of the Navajo Nation in McKinley county is extended through fiscal year 2013.

### **Chapter 183 Section 67 Laws 2011**

SECTION 67. TOHATCHI CHAPTER POWERLINE EXTENSION--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the Indian affairs department project originally authorized 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 and reauthorized for a time extension in Laws 2009, Chapter 128, Section 311 is extended through fiscal year 2013.

### **Chapter 183 Section 68 Laws 2011**

SECTION 68. TWIN LAKES CHAPTER GOVERNMENT OFFICE COMPLEX--EXTEND TIME--GENERAL FUND.--The time of expenditure for the Indian affairs department project in Subsection 71 of Section 66 of Chapter 42 of Laws 2007 to construct a government office complex in the Twin Lakes chapter of the Navajo Nation in McKinley county is extended through fiscal year 2013.

### **Chapter 183 Section 69 Laws 2011**

SECTION 69. WHITE HORSE LAKE CHAPTER WATER LINE--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the Indian affairs department project originally authorized in Subsection 34 of Section 115 of Chapter 126 of Laws 2004 and reauthorized in Laws 2009, Chapter 128, Section 317 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 2013.

### **Chapter 183 Section 70 Laws 2011**

SECTION 70. WHITEHORSE LAKE CHAPTER SENIOR CENTER CONSTRUCTION--EXTEND TIME--GENERAL FUND.--The time of expenditure for the aging and long-term services department project in Subsection 14 of Section 2 of Chapter 2 of Laws 2007 to plan, design, purchase or construct a senior center at the

Whitehorse Lake chapter of the Navajo Nation in McKinley county is extended through fiscal year 2013.

### **Chapter 183 Section 71 Laws 2011**

SECTION 71. CAMP SIERRA BLANCA, EAGLE NEST, MALOOF AND YOUTH DIAGNOSTIC AND DEVELOPMENT CENTER FACILITIES IMPROVEMENTS--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the capital program fund project in Subsection 7 of Section 6 of Chapter 42 of Laws 2007 for grounds and security improvements at Camp Sierra Blanca, Eagle Nest, Maloof and youth diagnostic and development center facilities in multiple counties is extended through fiscal year 2013.

### **Chapter 183 Section 72 Laws 2011**

SECTION 72. TWIN FORKS MUTUAL DOMESTIC WATER CONSUMERS ASSOCIATION WATER SYSTEM IMPROVEMENTS AND EQUIPMENT--EXTEND TIME--GENERAL FUND.--The time of expenditure for the department of environment project in Subsection 104 of Section 59 of Chapter 42 of Laws 2007 for improvements to a water system, including purchasing and installing equipment and water rights, for the Twin Forks mutual domestic water consumers association in Otero county is extended through fiscal year 2013.

### **Chapter 183 Section 73 Laws 2011**

SECTION 73. LAS ACEQUIAS DE EL RITO IMPROVEMENTS--EXTEND TIME--GENERAL FUND.--The time of expenditure for the interstate stream commission project in Subsection 33 of Section 67 of Chapter 42 of Laws 2007 for improvements to las acequias de El Rito in Rio Arriba county is extended through fiscal year 2013.

### **Chapter 183 Section 74 Laws 2011**

SECTION 74. SALAZAR AND HERNANDEZ DITCH ACCESS ROAD--EXTEND TIME--GENERAL FUND.--The time of expenditure for the interstate stream commission project in Subsection 34 of Section 67 of Chapter 42 of Laws 2007 for access road improvements for the Salazar and Hernandez ditches for the Salazar ditch association in Rio Arriba county is extended through fiscal year 2013.

### **Chapter 183 Section 75 Laws 2011**

SECTION 75. SANTA CRUZ SITE 1 FLOOD CONTROL DAM UPGRADES--EXTEND TIME--GENERAL FUND.--The time of expenditure for the board of regents of New Mexico state university project in Subsection 33 of Section 81 of Chapter 42 of Laws 2007 for upgrades to the Santa Cruz site 1 flood control dam in the Santa Fe-



Pojoaque soil and water conservation district in Rio Arriba county is extended through fiscal year 2013.

### **Chapter 183 Section 76 Laws 2011**

SECTION 76. WEST VALLECITOS COMMUNITY ACEQUIA IMPROVEMENTS--EXTEND TIME--GENERAL FUND.--The time of expenditure for the interstate stream commission project in Subsection 35 of Section 67 of Chapter 42 of Laws 2007 for improvements to the West Vallecitos community acequia in Rio Arriba county is extended through fiscal year 2013.

### **Chapter 183 Section 77 Laws 2011**

SECTION 77. CANJILON MUTUAL DOMESTIC WATER CONSUMERS AND MUTUAL SEWAGE WORKS ASSOCIATION WATER SYSTEM IMPROVEMENTS--EXTEND TIME--GENERAL FUND.--The time of expenditure for the department of environment project in Subsection 123 of Section 59 of Chapter 42 of Laws 2007 for water system improvements for the Canjilon mutual domestic water consumers and mutual sewage works association in Canjilon in Rio Arriba county is extended through fiscal year 2013.

### **Chapter 183 Section 78 Laws 2011**

SECTION 78. EL PINABETAL ACEQUIA WATER CONSERVATION TECHNOLOGY AND EQUIPMENT--EXTEND TIME--GENERAL FUND.--The time of expenditure for the interstate stream commission project in Subsection 13 of Section 25 of Chapter 2 of Laws 2007 for water conservation technology and equipment for El Pinabetal acequia in Canjilon in Rio Arriba county is extended through fiscal year 2013.

### **Chapter 183 Section 79 Laws 2011**

SECTION 79. CHAMA SEWER TREATMENT PLANT CONSTRUCTION--EXTEND TIME--GENERAL FUND.--The time of expenditure for the department of environment project in Subsection 124 of Section 59 of Chapter 42 of Laws 2007 for a sewer treatment plant in Chama in Rio Arriba county is extended through fiscal year 2013.

### **Chapter 183 Section 80 Laws 2011**

SECTION 80. ACEQUIA DEL RINCON REPAIRS AND IMPROVEMENTS--EXTEND TIME--GENERAL FUND.--The time of expenditure for the interstate stream commission project in Subsection 14 of Section 25 of Chapter 2 of Laws 2007 for repairs and improvements to the acequia del Rincon in Dixon in Rio Arriba county is extended through fiscal year 2013.

## **Chapter 183 Section 81 Laws 2011**

SECTION 81. ACEQUIA DE OJO SARCO IMPROVEMENTS--CHANGE TO OJO SARCO COMMUNITY CENTER RENOVATION--CHANGE AGENCY--EXTEND TIME--GENERAL FUND.--Fifty thousand dollars (\$50,000) of the unexpended balance of the appropriation to the interstate stream commission in Subsection 31 of Section 67 of Chapter 42 of Laws 2007 for improvements to the acequia de Ojo Sarco in Rio Arriba county shall not be expended for the original purpose but is appropriated to the local government division to plan, design, repair, renovate and equip the Ojo Sarco community center in Rio Arriba county. The time of expenditure is extended through fiscal year 2013.

## **Chapter 183 Section 82 Laws 2011**

SECTION 82. TIERRA AMARILLA SENIOR CENTER CONSTRUCTION--EXTEND TIME--GENERAL FUND.--The time of expenditure for the aging and long-term services department project in Subsection 32 of Section 36 of Chapter 42 of Laws 2007 for a senior center in Tierra Amarilla in Rio Arriba county is extended through fiscal year 2013.

## **Chapter 183 Section 83 Laws 2011**

SECTION 83. ACEQUIA DE OJO SARCO IMPROVEMENTS--CHANGE TO RIO ARRIBA COUNTY SUBSTANCE ABUSE AND DETOXIFICATION FACILITY IMPROVEMENTS IN VELARDE--CHANGE AGENCY--EXTEND TIME--GENERAL FUND.--Thirty-three thousand three hundred sixteen dollars (\$33,316) of the unexpended balance of the appropriation to the interstate stream commission in Subsection 31 of Section 67 of Chapter 42 of Laws 2007 for improvements to the acequia de Ojo Sarco in Rio Arriba county shall not be expended for the original purpose but is appropriated to the local government division to design, renovate and upgrade buildings at a county-owned substance abuse treatment facility in Velarde in Rio Arriba county. The time of expenditure is extended through fiscal year 2013.

## **Chapter 183 Section 84 Laws 2011**

SECTION 84. NAGEEZI CHAPTER POWERLINE EXTENSIONS--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the Indian affairs department project originally authorized in Subsection 65 of Section 21 of Chapter 429 of Laws 2003 and Subsection 21 of Section 115 of Chapter 126 of Laws 2004 for a helicopter pad in the Nageezi chapter of the Navajo Nation in San Juan county and reauthorized in Laws 2007, Chapter 341, Section 257 for powerline extensions in that chapter is extended through fiscal year 2013.

## **Chapter 183 Section 85 Laws 2011**

SECTION 85. NEWCOMB CHAPTER HOUSE ADDITION--EXTEND TIME--GENERAL FUND.--The time of expenditure for the Indian affairs department project in Subsection 100 of Section 66 of Chapter 42 of Laws 2007 for an addition to the chapter house in the Newcomb chapter of the Navajo Nation in San Juan county is extended through fiscal year 2013.

### **Chapter 183 Section 86 Laws 2011**

SECTION 86. SHIPROCK HOME FOR WOMEN AND CHILDREN--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the Indian affairs department project originally authorized in Subsection 20 of Section 115 of Chapter 126 of Laws 2004 and reauthorized in Laws 2009, Chapter 128, Section 393 to make site improvements and to construct, equip and furnish the home for women and children in Shiprock in San Juan county is extended through fiscal year 2013.

### **Chapter 183 Section 87 Laws 2011**

SECTION 87. SHIPROCK HOME FOR WOMEN AND CHILDREN--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the project originally authorized in Subsection 40 of Section 15 of Chapter 126 of Laws 2004 and reauthorized in Laws 2009, Chapter 128, Section 394 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 is extended through fiscal year 2013.

### **Chapter 183 Section 88 Laws 2011**

SECTION 88. SHIPROCK HOME FOR WOMEN AND CHILDREN--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the Indian affairs department project originally authorized in Subsection 43 of Section 20 of Chapter 110 of Laws 2002 and reauthorized in Laws 2006, Chapter 107, Section 101 and again in Laws 2009, Chapter 128, Section 395 to make site improvements and to construct, equip and furnish the home for women and children in Shiprock in San Juan county is extended through fiscal year 2013.

### **Chapter 183 Section 89 Laws 2011**

SECTION 89. T'IISTOH SIKAAD CHAPTER VETERANS' MULTICOMPLEX BUILDING--EXTEND TIME--GENERAL FUND.--The time of expenditure for the project originally appropriated to the aging and long-term services department in Subsection 121 of Section 23 of Chapter 347 of Laws 2005 for a senior center in the Burnham, or T'iistoh Sikaad, chapter of the Navajo Nation in San Juan county and reappropriated to the Indian affairs department in Laws 2007, Chapter 341, Section 251 for a veterans' multicomplex building in that chapter is extended through fiscal year 2013.

### **Chapter 183 Section 90 Laws 2011**

SECTION 90. WHITE ROCK CHAPTER POWERLINE--EXTEND TIME--GENERAL FUND.--The time of expenditure for the Indian affairs department project in Subsection 112 of Section 66 of Chapter 42 of Laws 2007 to plan, design and construct a powerline in scattered home sites in the White Rock chapter of the Navajo Nation in San Juan county is extended through fiscal year 2013.

### **Chapter 183 Section 91 Laws 2011**

SECTION 91. NEW MEXICO STATE POLICE DISTRICT OFFICE IN LAS VEGAS--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the capital program fund project in Subsection 11 of Section 6 of Chapter 42 of Laws 2007 for land acquisition and to plan, design, construct, renovate, furnish and equip a New Mexico state police district office in Las Vegas in San Miguel county is extended through fiscal year 2013.

### **Chapter 183 Section 92 Laws 2011**

SECTION 92. NEW MEXICO HIGHLANDS UNIVERSITY HALL OF HONOR--CHANGE TO ATHLETIC PROGRAM CONSTRUCTION AND EQUIPMENT--EXTEND TIME--GENERAL FUND.--Fourteen thousand ninety-eight dollars (\$14,098) of the unexpended balance of the appropriation to the board of regents of New Mexico highlands university in Subsection 2 of Section 78 of Chapter 42 of Laws 2007 for a hall of honor at New Mexico highlands university in Las Vegas in San Miguel county shall not be expended for the original purpose but is changed to plan, design, construct, equip and furnish athletics program facilities at that university. The time of expenditure is extended through fiscal year 2013.

### **Chapter 183 Section 93 Laws 2011**

SECTION 93. NEW MEXICO HIGHLANDS UNIVERSITY HALL OF HONOR--CHANGE TO WEST LAS VEGAS PUBLIC SCHOOL DISTRICT EQUIPMENT--CHANGE AGENCY--EXTEND TIME--GENERAL FUND.--Fourteen thousand ninety-eight dollars (\$14,098) of the unexpended balance of the appropriation to the board of regents of New Mexico highlands university in Subsection 2 of Section 78 of Chapter 42 of Laws 2007 for a hall of honor 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 for bus equipment, computers to check buses and tools and other equipment for the shop in the west Las Vegas public school district in San Miguel county. The time of expenditure is extended through fiscal year 2013.

### **Chapter 183 Section 94 Laws 2011**

SECTION 94. LORDSBURG PORT OF ENTRY--CHANGE TO LAS VEGAS STATE POLICE DISTRICT OFFICE AND GARAGE--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the capital program fund in Subsection 8 of Section 5 of Chapter 92 of Laws 2008 for the port of entry at

Lordsburg in Hidalgo county shall not be expended for the original purpose but is changed to construct the New Mexico state police district office, including the garage, in Las Vegas in San Miguel county. The time of expenditure is extended through fiscal year 2013.

### **Chapter 183 Section 95 Laws 2011**

SECTION 95. BERNALILLO VETERANS' MEMORIAL--EXPAND PURPOSE--EXTEND TIME--GENERAL FUND.--The local government division project in Subsection 593 of Section 68 of Chapter 42 of Laws 2007 to plan, design and construct a veterans' memorial in Bernalillo in Sandoval county may include improvements. The time of expenditure is extended through fiscal year 2013.

### **Chapter 183 Section 96 Laws 2011**

SECTION 96. COCHITI LAKE ROAD AND HIGHWAY IMPROVEMENTS--EXTEND TIME--GENERAL FUND.--The time of expenditure for the department of transportation project in Subsection 189 of Section 75 of Chapter 42 of Laws 2007 for road and highway improvements in Cochiti Lake in Sandoval county is extended through fiscal year 2013.

### **Chapter 183 Section 97 Laws 2011**

SECTION 97. UNSER AND MONTANO BOULEVARDS SOUND BARRIER WALLS--CHANGE TO CORRALES WASTEWATER COLLECTION SYSTEM--CHANGE AGENCY--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the department of transportation in Subsection 67 of Section 75 of Chapter 42 of Laws 2007 for sound barrier walls in the area of Unser boulevard and Montano boulevard in Albuquerque in Bernalillo county shall not be expended for the original purpose but is appropriated to the department of environment to design and construct a wastewater collection system, including connection to the Albuquerque-Bernalillo county water utility authority system, in Corrales in Sandoval county. The time of expenditure is extended through fiscal year 2013.

### **Chapter 183 Section 98 Laws 2011**

SECTION 98. AGUA FRIA WATER DISTRIBUTION AND SEWER SYSTEMS--EXTEND TIME--GENERAL FUND.--The time of expenditure for the appropriation originally made in Subsection 193 of Section 26 of Chapter 2 of Laws 2007 and reappropriated to the department of environment in Subsection AA of Section 99 of Chapter 42 of Laws 2007 for acquiring water rights, including needed applications and transfers, for improvements to the water distribution system and wells and for planning a sewer system in Agua Fria in Santa Fe county is extended through fiscal year 2013.

### **Chapter 183 Section 99 Laws 2011**

SECTION 99. CERRILLOS MULTIPURPOSE CENTER CONSTRUCTION--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the local government division project originally authorized in Subsection 280 of Section 18 of Chapter 111 of Laws 2006 for a multipurpose center in Cerrillos in Santa Fe county and reauthorized to the energy, minerals and natural resources department in Laws 2007, Chapter 341, Section 289 for that purpose is extended through fiscal year 2013.

### **Chapter 183 Section 100 Laws 2011**

SECTION 100. POJOAQUE VALLEY SENIOR AND COMMUNITY CENTER--CHANGE TO NAMBE SENIOR AND COMMUNITY CENTER--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the aging and long-term services department in Subsection 19 of Section 2 of Chapter 2 of Laws 2007 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 changed to purchase land for, plan, design, construct, equip and furnish the Nambe senior and community center and grounds in Santa Fe county. The time of expenditure is extended through fiscal year 2013.

### **Chapter 183 Section 101 Laws 2011**

SECTION 101. HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT CENTER NORTH OFFICE ADDITION AND RENOVATIONS--EXPAND PURPOSE TO INCLUDE FURNISHINGS, INSTALLATION AND EQUIPMENT--CHANGE AGENCY--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the capital program fund in Subsection 17 of Section 7 of Chapter 125 of Laws 2009 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 is appropriated to the homeland security and emergency management department for that purpose and may include furnishings, installation and equipment at that facility.

### **Chapter 183 Section 102 Laws 2011**

SECTION 102. MANUEL LUJAN BUILDING HEATING, VENTILATION AND AIR CONDITIONING SYSTEM--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the capital program fund project in Subsection 12 of Section 6 of Chapter 42 of Laws 2007 to plan, design and improve the heating, ventilation and air conditioning system at the Manuel Lujan building in Santa Fe in Santa Fe county is extended through fiscal year 2013.

### **Chapter 183 Section 103 Laws 2011**

SECTION 103. MANUEL LUJAN BUILDING IMPROVEMENTS--EXTEND TIME--GENERAL FUND.--The time of expenditure for the capital program fund project originally appropriated in Subsection 17 of Section 64 of Chapter 111 of Laws 2006 and reappropriated in Paragraph (2) of Subsection A of Section 346 of Chapter 128 of Laws

2009 to plan, design, purchase, install and upgrade the interior and heating, ventilation and air conditioning system and make related improvements at the Manuel Lujan building in Santa Fe in Santa Fe county is extended through fiscal year 2013.

### **Chapter 183 Section 104 Laws 2011**

SECTION 104. OLD SANTA FE TRAIL MULTIMODAL TRANSIT ROAD IMPROVEMENTS--EXTEND TIME--GENERAL FUND.--The time of expenditure for the department of transportation project originally appropriated in Subsection 56 of Section 30 of Chapter 2 of Laws 2007 and reappropriated in Laws 2008, Chapter 83, Section 383 to purchase land for, plan, design, construct and equip road improvements for multimodal transit along Old Santa Fe trail, including El Gancho way, in Santa Fe in Santa Fe county is extended through fiscal year 2013.

### **Chapter 183 Section 105 Laws 2011**

SECTION 105. SITE SANTA FE MUSEUM IMPROVEMENTS--CHANGE TO GENOVEVA CHAVEZ CENTER--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the local government division in Subsection 183 of Section 3 of Chapter 7 of Laws 2009 (1st S.S.) for Site Santa Fe museum in Santa Fe shall not be expended for the original purpose but is changed to plan, design, construct, equip and furnish the Genoveva Chavez center in Santa Fe in Santa Fe county.

### **Chapter 183 Section 106 Laws 2011**

SECTION 106. EL MUSEO CULTURAL FACILITY RENOVATIONS--CHANGE TO SANTA FE ACADEMY FOR TECHNOLOGY AND THE CLASSICS KITCHEN AND CAFETERIA--CHANGE AGENCY--EXTEND TIME--GENERAL FUND.--Ninety-five thousand dollars (\$95,000) of the unexpended balance of the appropriation to the local government division in Subsection 644 of Section 68 of Chapter 42 of Laws 2007 for improvements to el museo cultural's facility in Santa Fe shall not be expended for the original purpose but is appropriated to the public education department to construct and equip a kitchen and cafeteria at the academy for technology and the classics, a charter school in the Santa Fe public school district in Santa Fe county. The time of expenditure is extended through fiscal year 2013.

### **Chapter 183 Section 107 Laws 2011**

SECTION 107. SIERRA COUNTY HOSPITAL--EXPAND PURPOSE--EXTEND TIME--GENERAL FUND.--The local government division project in Subsection 685 of Section 68 of Chapter 42 of Laws 2007 to acquire land for, plan, design, construct, furnish and equip a hospital in Sierra county may include refurbishing the hospital and conducting road assessments in proximity to that hospital. The time of expenditure is extended through fiscal year 2013.

## **Chapter 183 Section 108 Laws 2011**

SECTION 108. SIERRA COUNTY HOSPITAL LAND, CONSTRUCTION AND REFURBISHING--EXTEND TIME--SEVERANCE TAX BONDS.--The local government division project in Subsection 24 of Section 23 of Chapter 42 of Laws 2007 to acquire land for, plan, design, construct, furnish and equip a hospital in Sierra county may include refurbishing that hospital. The time of expenditure is extended through fiscal year 2013.

## **Chapter 183 Section 109 Laws 2011**

SECTION 109. NEW MEXICO VETERANS' HOME ALZHEIMER'S UNIT AND EXPANSION--EXTEND TIME--REVENUE BONDS.--The time of expenditure for the revenue bond project originally authorized in Subsection C of Section 8 of Chapter 320 of Laws 2005 and reauthorized in Subsection 3 of Section 94 of Chapter 42 of Laws 2007 to plan, design, construct and expand a facility for an Alzheimer's unit and make other improvements at the New Mexico veterans' home in Truth or Consequences in Sierra county is extended through fiscal year 2013.

## **Chapter 183 Section 110 Laws 2011**

SECTION 110. SOCORRO CONVENTION CENTER AND RODEO AND RECREATION FACILITIES--EXTEND TIME--GENERAL FUND.--The time of expenditure for the local government division project in Subsection 696 of Section 68 of Chapter 42 of Laws 2007 to plan, design and construct a convention center, including rodeo and recreation facilities, in Socorro in Socorro county is extended through fiscal year 2013.

## **Chapter 183 Section 111 Laws 2011**

SECTION 111. CORRECTIONS FACILITIES STATEWIDE RENOVATION AND REPAIR--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the capital program fund project in Subsection 14 of Section 6 of Chapter 42 of Laws 2007 for repairs, maintenance and equipment at state-owned corrections facilities statewide is extended through fiscal year 2013.

## **Chapter 183 Section 112 Laws 2011**

SECTION 112. DEPARTMENT OF HEALTH FACILITIES UPGRADES AND SEQUOYAH MEDICAL AND DENTAL UNIT--EXTEND TIME--REVENUE BONDS.--The time of expenditure for the revenue bond project originally authorized in Subsection C of Section 8 of Chapter 320 of Laws 2005 and reauthorized in Subsection 2 of Section 94 of Chapter 42 of Laws 2007 for upgrades at department of health facilities statewide and to plan, design, construct, renovate, equip and furnish a medical and



dental unit at Sequoyah in Albuquerque in Bernalillo county is extended through fiscal year 2013.

### **Chapter 183 Section 113 Laws 2011**

SECTION 113. LOCAL ECONOMIC DEVELOPMENT ACT GRANTS FOR INFRASTRUCTURE IMPROVEMENTS TO ATTRACT BUSINESSES STATEWIDE--CHANGE AGENCY--SEVERANCE TAX BONDS.--The department of finance and administration project authorized in Subsection 6 of Section 22 of Chapter 125 of Laws 2009 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 is appropriated to the economic development department for that purpose.

### **Chapter 183 Section 114 Laws 2011**

SECTION 114. SANTA FE AVIATION READINESS CENTER RENOVATION--CHANGE TO ARMORY REPAIRS STATEWIDE--CHANGE AGENCY--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the department of military affairs in Laws 2008, Chapter 92, Section 22 to renovate the Santa Fe aviation readiness center in Santa Fe county shall not be expended for the original purpose but is appropriated to the state armory board to renovate and repair armories statewide. The time of expenditure is extended through fiscal year 2013.

### **Chapter 183 Section 115 Laws 2011**

SECTION 115. TAOS ELEMENTARY SCHOOL RENOVATIONS--CHANGE TO ACEQUIA DEL MONTE DEL RIO CHIQUITO IMPROVEMENTS--CHANGE AGENCY--GENERAL FUND.--The unexpended balance of the appropriation to the public education department in Subsection 433 of Section 44 of Chapter 92 of Laws 2008 to renovate Taos elementary school shall not be expended for the original purpose but is appropriated to the interstate stream commission for improvements to the acequia del Monte del Rio Chiquito in Talpa in Taos county.

### **Chapter 183 Section 116 Laws 2011**

SECTION 116. CABRESTO DAM REPAIRS AND IMPROVEMENTS--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the office of the state engineer project authorized in Subsection 10 of Section 14 of Chapter 92 of Laws 2008 for repairs and improvements to Cabresto dam in Taos county is extended through fiscal year 2013.

### **Chapter 183 Section 117 Laws 2011**

SECTION 117. CABRESTO LAKE AND LLANO COMMUNITY DITCH IMPROVEMENTS--EXTEND TIME--GENERAL FUND.--The time of expenditure for the interstate stream commission project in Subsection 24 of Section 25 of Chapter 2 of Laws 2007 for acequia improvements for the Cabresto Lake community ditch association and the Llano ditch association in Questa in Taos county is extended through fiscal year 2013.

### **Chapter 183 Section 118 Laws 2011**

SECTION 118. ACEQUIA DE OJO SARCO IMPROVEMENTS--CHANGE TO TAOS COUNTY ECONOMIC DEVELOPMENT CORPORATION FACILITY, SLAUGHTER UNIT AND PROCESSING FACILITY REPAIRS AND RENOVATION--CHANGE AGENCY--EXTEND TIME--GENERAL FUND.--

Thirty-three thousand three hundred seventeen dollars (\$33,317) of the unexpended balance of the appropriation to the interstate stream commission in Subsection 31 of Section 67 of Chapter 42 of Laws 2007 for improvements to the acequia de Ojo Sarco in Rio Arriba county shall not be expended for the original purpose but is appropriated to the local government division to renovate and repair the Taos county economic development corporation facility, mobile livestock slaughter unit and processing facilities, including cooling units, in Taos county. The time of expenditure is extended through fiscal year 2013.

### **Chapter 183 Section 119 Laws 2011**

SECTION 119. ACEQUIA DE OJO SARCO IMPROVEMENTS--CHANGE TO CRISTOBAL DE LA SERNA LAND GRANT RENOVATION--CHANGE AGENCY--EXTEND TIME--GENERAL FUND.--Thirty-three thousand three hundred sixteen dollars (\$33,316) of the unexpended balance of the appropriation to the interstate stream commission in Subsection 31 of Section 67 of Chapter 42 of Laws 2007 for improvements to the acequia de Ojo Sarco in Rio Arriba county shall not be expended for the original purpose but is appropriated to the local government division to purchase land, plan, design, construct, equip and furnish an office building for La Merced in the Cristobal de la Serna land grant in Taos county. The time of expenditure is extended through fiscal year 2013.

### **Chapter 183 Section 120 Laws 2011**

SECTION 120. QUESTA ECONOMIC DEVELOPMENT PROJECT FACILITY--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the local government division project originally authorized in Subsection 178 of Section 16 of Chapter 347 of Laws 2005 for infrastructure improvements in Questa in Taos county and reauthorized in Laws 2007, Chapter 341, Section 320 for an economic development project facility in Questa is extended through fiscal year 2013.

### **Chapter 183 Section 121 Laws 2011**

SECTION 121. QUESTA SOLAR ECONOMIC DEVELOPMENT PROJECT FACILITY--EXTEND TIME--SEVERANCE TAX BONDS.--The time of expenditure for the local government division project originally authorized in Subsection 284 of Section 16 of Chapter 347 of Laws 2005 for a spire solar project in Questa in Taos county and reauthorized in Laws 2007, Chapter 341, Section 322 for a solar economic development project facility in Questa is extended through fiscal year 2013.

### **Chapter 183 Section 122 Laws 2011**

SECTION 122. BELEN SOLAR EQUIPMENT ECONOMIC DEVELOPMENT PROJECT--CHANGE TO LOCAL ECONOMIC DEVELOPMENT ACT PROJECTS--CHANGE AGENCY--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation to the department of finance and administration in Subsection 7 of Section 22 of Chapter 125 of Laws 2009 for a solar equipment economic development project in Belen in Valencia county pursuant to the Local Economic Development Act shall not be expended for the original purpose but is appropriated to the economic development department for local economic development projects statewide pursuant to that act.

### **Chapter 183 Section 123 Laws 2011**

SECTION 123. LOS LUNAS SUBSTANCE ABUSE TREATMENT CENTER CONSTRUCTION AND RENOVATION--EXPAND PURPOSE TO INCLUDE FURNISHINGS AND INSTALLATION--SEVERANCE TAX BONDS.--The capital program fund project in Paragraph (1) of Subsection B of Section 2 of Chapter 5 of Laws 2009 to plan, design, construct, renovate and equip a substance abuse treatment center in Los Lunas in Valencia county may include furnishings and installation at that facility.

### **Chapter 183 Section 124 Laws 2011**

SECTION 124. MORA COUNTY COURTHOUSE--CHANGE TO MORA COUNTY GOVERNMENT-OWNED FACILITIES--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation originally made in Subsection 76 of Section 12 of Chapter 347 of Laws 2005 and reauthorized in Laws 2009, Chapter 128, Section 323 to the local government division to plan, design and construct a courthouse complex in Mora county shall not be expended for the original or reauthorized purpose but is changed to plan, design, renovate, expand, furnish and equip existing Mora county government-owned facilities, including portable buildings, or to continue construction of the new Mora county government facility. The time of expenditure is extended through fiscal year 2013.

### **Chapter 183 Section 125 Laws 2011**

SECTION 125. MORA COUNTY COURTHOUSE--CHANGE TO MORA COUNTY GOVERNMENT-OWNED FACILITIES--EXTEND TIME--SEVERANCE TAX BONDS.--The unexpended balance of the appropriation originally made to the local

government division in Subsection 208 of Section 18 of Chapter 111 of Laws 2006 and reauthorized in Laws 2007, Chapter 341, Section 203 and further reauthorized in Laws 2009, Chapter 128, Section 326 to plan, design and construct a courthouse complex in Mora county shall not be expended for the original or reauthorized purposes but is changed to plan, design, renovate, expand, furnish and equip existing Mora county government-owned facilities, including portable buildings, or to continue construction of the new Mora county government facility. The time of expenditure is extended through fiscal year 2013.

## **Chapter 183 Section 126 Laws 2011**

SECTION 126. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

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SFC/Senate Bill 373, aa, w/ec, w/cc

Approved April 8, 2011

## **LAWS 2011, CHAPTER 184**

AN ACT

RELATING TO UNEMPLOYMENT COMPENSATION; AMENDING CERTAIN PROVISIONS OF THE UNEMPLOYMENT COMPENSATION LAW THAT EXPAND ELIGIBILITY OR ALLOW INCREASED BENEFITS; PROVIDING THAT EXTENDED BENEFITS SHALL BE PAID ONLY IF FULLY REIMBURSED FROM FEDERAL SOURCES; ESTABLISHING A TEMPORARY SCHEDULE FOR CONTRIBUTIONS.

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

## **Chapter 184 Section 1 Laws 2011**

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

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

(4) in the case of a lump-sum payment of a pension, retirement or retired pay, annuity or other similar payment by a base-period employer that is based on the previous work of the individual, the payment shall be allocated, in accordance with

rules prescribed by the secretary, and shall reduce the amount of unemployment compensation paid, but not below zero, in accordance with Paragraph (3) of this subsection; and

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

C. An individual otherwise eligible for benefits shall be paid for each week of unemployment, in addition to the amount payable under Subsection B of this section, the sum of twenty-five dollars (\$25.00) for each unemancipated child under the age of eighteen, up to a maximum of two 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."

## **Chapter 184 Section 2 Laws 2011**

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

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

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

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

(2) has registered for work at, and thereafter continued to report at, an employment office in accordance with such rules as the secretary may prescribe, except that the secretary may, by rule, waive or alter either or both of the requirements of this paragraph as to individuals attached to regular jobs and as to such other types of cases or situations with respect to which the secretary finds that compliance with such requirements would be oppressive or would be inconsistent with the purposes of the

Unemployment Compensation Law. No such rule shall conflict with Subsection A of Section 51-1-4 NMSA 1978;

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

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

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

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

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

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

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

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

(a) the individual has completed such services; or

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



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

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

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

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

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

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

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

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

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

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

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

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

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

H. Students who are enrolled in a full-time course schedule in an educational or training institution or program, other than those persons in an approved vocational training program in accordance with Subsection E of this section, shall not be eligible for unemployment benefits unless the individual can demonstrate to the division's satisfaction that the individual is able, available and actively seeking full- or part-time work in accordance with rules prescribed by the secretary.

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

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

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

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

J. Notwithstanding any other provision of this section, an otherwise eligible individual shall not be denied benefits for any week by reason of the application of

Paragraph (3) of Subsection A of this section because the individual is before any court of the United States or any state pursuant to a lawfully issued summons to appear for jury duty."

## **Chapter 184 Section 3 Laws 2011**

SECTION 3. Section 51-1-7 NMSA 1978 (being Laws 2003, Chapter 47, Section 10, as amended by Laws 2005, Chapter 3, Section 3 and further amended by Laws 2005, Chapter 255, Section 1) is amended to read:

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

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

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

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

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

(c) if the person voluntarily left work to relocate because of a spouse, who is in the military service of the United States or the New Mexico national guard, receiving permanent change of station orders, activation orders or unit deployment orders;

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

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

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

work shall be deemed suitable and benefits shall not be denied under the Unemployment Compensation Law to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

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

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

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

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

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

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

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

E. A disqualification pursuant to Paragraph (1) or (2) of Subsection A of this section shall continue for the duration of the individual's unemployment and until the individual has earned wages in bona fide employment other than self-employment, as provided by rule of the secretary, in an amount equivalent to five times the individual's weekly benefit otherwise payable. A disqualification pursuant to Paragraph (3) of

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

F. As used in this section:

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

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

## **Chapter 184 Section 4 Laws 2011**

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

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

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

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

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

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

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

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

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

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

(1) separated from employment due to domestic abuse, as "domestic abuse" is defined in Section 40-13-2 NMSA 1978; or

(2) voluntarily left work to relocate because of a spouse, who is in the military service of the United States or the New Mexico national guard, receiving permanent change of station orders, activation orders or unit deployment orders.

E. All contributions to the fund shall be pooled and available to pay benefits to any individual entitled thereto, irrespective of the source of the contributions.

F. For each calendar year, if, as of the computation date for that year, an employer's account has been chargeable with benefits throughout the preceding thirty-six months, the secretary shall classify the employer in accordance with its actual experience of benefits charged against its accounts. For such an employer, the contribution rate shall be determined pursuant to Subsection I of this section on the basis of the employer's record and the condition of the fund as of the computation date for the calendar year. If, as of the computation date for a calendar year, an employer's account has not been chargeable with benefits throughout the preceding thirty-six months, the contribution rate for that employer for the calendar year shall be two percent, except that:

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

(2) an employer that, at the time of establishing an account, is in business in another state or states and that is not currently doing business in New

Mexico may elect, pursuant to Paragraph (3) of this subsection, to receive a beginning contribution rate of two percent or a contribution rate based on the current contribution rate schedule in Paragraph (4) of Subsection I of this section, whichever is lower, if:

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

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

(3) the election authorized in Paragraph (2) of this subsection shall be made in writing within thirty days after receiving notice of New Mexico liability and, if not made timely, a two percent rate will be assigned; if the election is made timely, the employer's account will receive the lesser of the computed rate determined by the condition of the account for the computation date immediately preceding the New Mexico liable date, or two percent; rates for subsequent years will be determined by the condition of the account for the computation date.

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

H. In the case of a transfer of an employing enterprise, notwithstanding any other provision of law, the experience history of the transferred enterprise shall be transferred from the predecessor employer to the successor under the following conditions and in accordance with the applicable rules of the secretary:

(1) as used in this subsection:

(a) "employing enterprise" means a business activity engaged in by a contributing employing unit in which one or more persons have been employed within the current or the three preceding calendar quarters. An "employing enterprise" includes the employer's work force;

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

(c) "successor" means any person that acquires an employing enterprise and continues to operate such business entity;



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

(e) "common ownership" means that two or more businesses are substantially owned, managed or controlled by the same person or persons;

(f) "knowingly" means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibition involved; and

(g) "violates or attempts to violate" includes an intent to evade, a misrepresentation or a willful nondisclosure;

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

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

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

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

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

(3) the applicable experience history may be transferred to the successor in the case of a partial transfer of an employing enterprise if the successor

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

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

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

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

(4) if, at the time of a transfer of an employing enterprise in whole or in part, both the predecessor and the successor are under common ownership, then the experience history attributable to the transferred business shall also be transferred to and combined with the experience history attributable to the successor employer. The rates of both employers shall be recalculated and made effective immediately upon the date of the transfer;

(5) whenever a person, who is not currently an employer, acquires the trade or business of an employing enterprise, the experience history of the acquired business shall not be transferred to the successor if the secretary or the secretary's designee finds that the successor acquired the business solely or primarily for the purpose of obtaining a lower rate of contributions. Instead, the successor shall be assigned the applicable new employer rate pursuant to this section. In determining

whether the business was acquired solely or primarily for the purpose of obtaining a lower rate of contribution, the secretary or the secretary's designee shall consider:

- (a) the cost of acquiring the business;
- (b) whether the person continued the business enterprise of the acquired business;
- (c) how long such business enterprise was continued; and
- (d) whether a substantial number of new employees were hired for performance of duties unrelated to those that the business activity conducted prior to acquisition;

(6) if, following a transfer of experience history pursuant to this subsection, the department determines that a substantial purpose of the transfer of the employing enterprise was to obtain a reduced liability for contributions, then the experience rating accounts of the employers involved shall be combined into a single account and a single rate assigned to the combined account;

(7) the secretary shall adopt such rules as are necessary to interpret and carry out the provisions of this subsection, including rules that:

- (a) describe how experience history is to be transferred; and
- (b) establish procedures to identify the type of transfer or acquisition of an employing enterprise; and

(8) a person who knowingly violates or attempts to violate a rule adopted pursuant to Paragraph (7) of this subsection, who transfers or acquires, or attempts to transfer or acquire, an employing enterprise for the sole or primary purpose of obtaining a reduced liability for contributions or who knowingly advises another person to violate a rule adopted pursuant to Paragraph (7) of this subsection or to transfer or acquire an employing enterprise for the sole or primary purpose of obtaining a reduced liability for contributions is guilty of a misdemeanor and shall be punished by a fine of not less than one thousand five hundred dollars (\$1,500) or more than three thousand dollars (\$3,000) or, if an individual, by imprisonment for a definite term not to exceed ninety days or both. In addition, such a person shall be subject to the following civil penalty imposed by the secretary:

(a) if the person is an employer, the person shall be assigned the highest contribution rate established by the provisions of this section for the calendar year in which the violation occurs and the three subsequent calendar years; provided that, if the difference between the increased penalty rate and the rate otherwise applicable would be less than two percent of the employer's payroll, the

contribution rate shall be increased by two percent of the employer's payroll for the calendar year in which the violation occurs and the three subsequent calendar years; or

(b) if the person is not an employer, the secretary may impose a civil penalty not to exceed three thousand dollars (\$3,000).

I. For each calendar year, if, as of the computation date for that year, an employer's account has been chargeable with benefits throughout the preceding thirty-six months, the contribution rate for that employer shall be determined as follows:

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

(2) for each calendar year after 2012, except as otherwise provided, each employer's rate shall be the corresponding rate in:

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

(b) Contribution Schedule 1 of the table provided in Paragraph (4) of this subsection if the fund equals less than two and three-tenths percent but not less than one and seven-tenths percent of the total payrolls;

(c) Contribution Schedule 2 of the table provided in Paragraph (4) of this subsection if the fund equals less than one and seven-tenths percent but not less than one and three-tenths percent of the total payrolls;

(d) Contribution Schedule 3 of the table provided in Paragraph (4) of this subsection if the fund equals less than one and three-tenths percent but not less than one percent of the total payrolls;

(e) Contribution Schedule 4 of the table provided in Paragraph (4) of this subsection if the fund equals less than one percent but not less than seven-tenths percent of the total payrolls;

(f) Contribution Schedule 5 of the table provided in Paragraph (4) of this subsection if the fund equals less than seven-tenths percent but not less than three-tenths percent of the total payrolls; or

(g) Contribution Schedule 6 of the table provided in Paragraph (4) of this subsection if the fund equals less than three-tenths percent of the total payrolls;

(3) as used in this section:

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

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

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

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

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

Employer Reserve	Contribution Schedule 0	Contribution Schedule 1	Contribution Schedule 2	Contribution Schedule 3
10.0% and over	0.03%	0.05%	0.1%	0.6%
9.0%-9.9%	0.06%	0.1%	0.2%	0.9%
8.0%-8.9%	0.09%	0.2%	0.4%	1.2%
7.0%-7.9%	0.10%	0.4%	0.6%	1.5%
6.0%-6.9%	0.30%	0.6%	0.8%	1.8%
5.0%-5.9%	0.50%	0.8%	1.1%	2.1%
4.0%-4.9%	0.80%	1.1%	1.4%	2.4%
3.0%-3.9%	1.20%	1.4%	1.7%	2.7%

2.0%-2.9%	1.50%	1.7%	2.0%	3.0%
1.0%-1.9%	1.80%	2.0%	2.4%	3.3%
0.9%-0.0%	2.40%	2.4%	3.3%	3.6%
(-0.1%) -(-0.5%)	3.30%	3.3%	3.6%	3.9%
(-0.5%) -(-1.0%)	4.20%	4.2%	4.2%	4.2%
(-1.0%) -(-2.0%)	5.00%	5.0%	5.0%	5.0%
Under (-2.0%)	5.40%	5.4%	5.4%	5.4%

Employer Contribution Contribution Contribution

Reserve Schedule 4 Schedule 5 Schedule 6

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

Under (-2.0%)      5.4% 5.4% 5.4%;

(5) from January 1, 2011 through December 31, 2011, each employer making contributions pursuant to this subsection shall make a contribution at the rate specified in Contribution Schedule 1[; and

~~\_\_\_\_\_ (6) from January 1, 2012 through December 31, 2012, each employer making contributions pursuant to this subsection shall make a contribution at the rate specified in Contribution Schedule 3].~~ *LINE-ITEM VETO*

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

K. The division shall provide each contributing employer, within ninety days of the end of each calendar quarter, a written determination of benefits chargeable to the employer's account. Such determination shall become conclusive and binding upon the employer for all purposes unless, within thirty days after the mailing of the determination to the employer's last known address or in the absence of mailing, within thirty days after the delivery of such determination, the employer files an application for review and redetermination, setting forth the employer's reason therefor. The employer shall be granted an opportunity for a fair hearing in accordance with rules prescribed by the secretary, but an employer shall not have standing in any proceeding involving the employer's contribution liability to contest the chargeability to the employer's account of

any benefits paid in accordance with a determination, redetermination or decision pursuant to Section 51-1-8 NMSA 1978, except upon the ground that the services on the basis of which such benefits were found to be chargeable did not constitute services performed in employment for the employer and only in the event that the employer was not a party to such determination, redetermination or decision, or to any other proceedings under the Unemployment Compensation Law in which the character of such services was determined. The employer shall be promptly notified of the decision on the employer's application for redetermination, which shall become final unless, within fifteen days after the mailing of notice thereof to the employer's last known address or in the absence of mailing, within fifteen days after the delivery of such notice, further appeal is initiated pursuant to Subsection D of Section 51-1-8 NMSA 1978.

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

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

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

## **Chapter 184 Section 5 Laws 2011**

SECTION 5. Section 51-1-48 NMSA 1978 (being Laws 1971, Chapter 209, Section 7, as amended) is amended to read:

"51-1-48. DEFINITIONS--EXTENDED BENEFITS.--



A. As used in this section, unless the context clearly requires otherwise, "extended benefit period" means a period that:

(1) begins with the third week after a week for which there is a state "on indicator";

(2) ends with either of the following weeks, whichever occurs later:

(a) the third week after the first week for which there is a state "off indicator"; or

(b) the thirteenth consecutive week of such period; and

(3) does not begin by reason of a state "on indicator" before the fourteenth week following the end of a prior extended benefit period that was in effect with respect to this state.

B. There is a state "on indicator" for this state for a week if the rate of insured unemployment not seasonally adjusted under this section for the period consisting of that week and the immediately preceding twelve weeks:

(1) equaled or exceeded one hundred twenty percent of the average of the rates for the corresponding thirteen-week period ending in each of the preceding two calendar years; and

(2) equaled or exceeded five percent; or

(3) equaled or exceeded six percent, regardless of the rate of insured unemployment in the two previous years; provided that the operation of this paragraph shall not activate the state "on indicator" any time after four weeks prior to the last week for which one hundred percent federal sharing funding is available under Section 2005(a) of Public Law No. 111-5, without regard to the extension of federal sharing for certain claims as provided under Section 2005(c) of that law; or

(4) with respect to benefits for weeks of unemployment beginning after July 1, 2003 and ending four weeks prior to the last week for which one hundred percent federal sharing funding is available under Section 2005(a) of Public Law No. 111-5, without regard to the extension of federal sharing for certain claims as provided under Section 2005(c) of that law:

(a) the average rate of total unemployment, seasonally adjusted, as determined by the United States secretary of labor, for the period consisting of the most recent three months for which data for all states are published before the close of such week equals or exceeds six and one-half percent; and

(b) the average rate of total unemployment in this state, seasonally adjusted, as determined by the United States secretary of labor, for the three-month period referred to in Subparagraph (a) of this paragraph, equals or exceeds one hundred ten percent of such average:

1) for either or both of the corresponding three-month periods ending in the two preceding calendar years; or 2) for weeks of unemployment beginning after December 17, 2010 and ending before December 31, 2011, for any or all of the corresponding three-month periods ending in the three preceding calendar years.

C. There is a state "off indicator" for this state for a week only if, for the period consisting of that week and the immediately preceding twelve weeks, none of the options specified in Subsection B of this section result in a state "on indicator".

D. Except as provided in Subsection E of this section, the total extended benefit amount payable to an eligible individual with respect to the applicable benefit year shall be the least of the following amounts:

(1) fifty percent of the total amount of regular benefits that were payable to the individual pursuant to this section in the individual's applicable benefit year;

(2) thirteen times the individual's average weekly benefit amount that was payable to the individual pursuant to this section for a week of total unemployment in the applicable benefit year; or

(3) thirty-nine times the individual's average weekly benefit amount that was payable to the individual pursuant to this section for a week of total unemployment in the applicable benefit year, reduced by the total amount of regular benefits that were paid, or deemed paid, to the individual pursuant to this section with respect to the benefit year; provided that the amount determined pursuant to this paragraph shall be reduced by the total amount of additional benefits paid, or deemed paid, to the individual under the provisions of this section for weeks of unemployment in the individual's benefit year that began prior to the effective date of the extended benefit period that is current in the week for which the individual first claims extended benefits; and provided further, if the benefit year of the individual ends within an extended benefit period, the remaining balance of the extended benefits that the individual would, but for this paragraph, be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced, but not below zero, by the product of the number of weeks for which the individual received any amounts as readjustment allowances within that benefit year multiplied by the individual weekly benefit amount for extended benefits.

E. Effective with respect to weeks beginning in a high-unemployment period, the total extended benefit amount payable to an eligible individual with respect to the applicable benefit year shall be the least of the following amounts:

(1) eighty percent of the total amount of regular benefits that were payable to the individual pursuant to this section in the individual's applicable benefit year;

(2) twenty times the individual's average weekly benefit amount that was payable to the individual pursuant to this section for a week of total unemployment in the applicable benefit year; or

(3) forty-six times the individual's average weekly benefit amount that was payable to the individual pursuant to this section for a week of total unemployment in the applicable benefit year reduced by the total amount of regular benefits that were paid, or deemed paid, to the individual pursuant to this section with respect to the benefit year; provided that the amount determined pursuant to this paragraph shall be reduced by the total amount of additional benefits paid, or deemed paid, to the individual under the provisions of this section for weeks of unemployment in the individual's benefit year that began prior to the effective date of the extended benefit period that is current in the week for which the individual first claims extended benefits; and provided further, if the benefit year of an individual ends within an extended benefit period, the remaining balance of the extended benefits that the individual would, but for this paragraph, be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced, but not below zero, by the product of the number of weeks for which the individual received any amounts as readjustment allowances within that benefit year multiplied by the individual weekly benefit amount for extended benefits.

F. For purposes of Subsection E of this section, "high-unemployment period" means a period during which an extended benefit period would be in effect if Paragraph (4) of Subsection B of this section were applied by substituting "eight percent" for "six and one-half percent".

G. A benefit paid to an individual pursuant to this section shall be charged pursuant to Subsection B of Section 51-1-11 NMSA 1978.

H. As used in this section:

(1) "rate of insured unemployment" means the percentage derived by dividing:

(a) the average weekly number of individuals filing claims for regular benefits in this state for weeks of unemployment with respect to the most recent thirteen-consecutive-week period, as determined by the secretary on the basis of the secretary's reports to the United States secretary of labor; by

(b) the average monthly employment covered under the Unemployment Compensation Law for the first four of the most recent six completed calendar quarters ending before the end of such thirteen-week period;

(2) "regular benefits" means benefits payable to an individual under the Unemployment Compensation Law or under any other state law, including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C., Chapter 85, other than extended benefits;

(3) "extended benefits" means benefits, including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C., Chapter 85, payable to an individual under the provisions of this section for weeks of unemployment in the individual's eligibility period;

(4) "eligibility period" of an individual means the period consisting of the weeks in the individual's benefit year that begin in an extended benefit period and, if the individual's benefit year ends within such extended benefit period, any weeks thereafter that begin in such period;

(5) "exhaustee" means an individual who, with respect to any week of unemployment in the individual's eligibility period:

(a) has received, prior to such week, all of the regular benefits that were available to the individual under the Unemployment Compensation Law or any other state law, including dependent's allowance and benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C., Chapter 85, in the individual's current benefit year that includes such week; provided that, for the purposes of this subparagraph, an individual shall be deemed to have received all of the regular benefits that were available to the individual, although, as a result of a pending appeal with respect to wages that were not considered in the original monetary determination in the individual's benefit year, the individual may subsequently be determined to be entitled to added regular benefits; or

(b) if the individual's benefit year has expired prior to such week, has no, or insufficient, wages on the basis of which the individual could establish a new benefit year that would include such week; and

(c) has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, the Trade Act of 1974, the Automotive Products Trade Act of 1965 and such other federal laws as are specified in regulations issued by the United States secretary of labor; and has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada, but if the individual is seeking such benefits and the appropriate agency finally determines that the individual is not entitled to benefits under such law, the individual is considered an exhaustee; and

(6) "state law" means the unemployment insurance law of any state, approved by the United States secretary of labor under Section 3304 of the Internal Revenue Code of 1986."

## **Chapter 184 Section 6 Laws 2011**

SECTION 6. TEMPORARY PROVISION--APPLICABILITY OF ACT.--The amendments to the Unemployment Compensation Law made in Sections 1, 2 and 3 of this act and the amendments to Subsections B and D of Section 51-1-11 NMSA 1978 in Section 4 of this act shall apply to benefit years beginning on or after July 1, 2011.

## **Chapter 184 Section 7 Laws 2011**

SECTION 7. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2011.

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HCPAC/House Bill 59, aa, partial veto

Approved April 8, 2011

# **LAWS 2011, CHAPTER 185**

AN ACT

RELATING TO ELECTIONS; CREATING A JOINT INTERIM LEGISLATIVE REDISTRICTING COMMITTEE.

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

## **Chapter 185 Section 1 Laws 2011**

SECTION 1. REDISTRICTING COMMITTEE CREATED--TERMINATION.-- There is created a joint interim legislative committee, which shall be known as the "redistricting committee". The committee may function from the date of its appointment until January 13, 2012.

## **Chapter 185 Section 2 Laws 2011**

SECTION 2. MEMBERSHIP--APPOINTMENT--VACANCIES.--The redistricting committee shall be composed of eighteen members. Nine members of the house of representatives shall be appointed by the speaker of the house of representatives and nine members of the senate shall be appointed by the committees' committee of the senate, or, if the senate appointment is made in the interim, by the president pro tempore of the senate after consultation and agreement of a majority of the members of the committees' committee. Members shall be appointed from each house so as to give the two major political parties in each house the same proportional representation on the committee as prevails in each house; provided that in no event shall either of the

parties have less than one member from each house on the committee. Vacancies on the committee shall be filled by appointment in the same manner as the original appointments. One co-chair shall be selected by the speaker of the house of representatives and one co-chair by the committees' committee, or, if the senate appointment is made in the interim, by the president pro tempore of the senate after consultation and agreement of a majority of the members of the committees' committee. No action shall be taken by the committee if a majority of the total membership from either house on the committee rejects such action.

## **Chapter 185 Section 3 Laws 2011**

### **SECTION 3. DUTIES.--**

A. After appointment of its members, the redistricting committee shall hold one organizational meeting to develop a work plan and budget for its interim tasks. The work plan and budget shall be submitted to the New Mexico legislative council for approval. Upon approval of the work plan and budget by the New Mexico legislative council, the committee shall:

(1) examine the statutes, constitutional provisions, rules and court decisions governing redistricting in New Mexico;

(2) use the guidelines for redistricting adopted by the New Mexico legislative council so that the procedures, criteria and standards for redistricting plans meet statutory and constitutional requirements;

(3) conduct public hearings to provide a forum for public involvement in the redistricting process; and

(4) recommend appropriate redistricting legislation to the fiftieth legislature.

B. In developing redistricting plans for congressional and state districts, the committee shall use data from the 2010 decennial census.

## **Chapter 185 Section 4 Laws 2011**

SECTION 4. SUBCOMMITTEES.--Subcommittees of the redistricting committee shall be created only by majority vote of all members appointed to the committee and with the prior approval of the New Mexico legislative council. A subcommittee shall be composed of at least one member from the senate and one member from the house of representatives, and at least one member of the minority party shall be a member of the subcommittee. All meetings and expenditures of a subcommittee shall be approved by the full committee in advance of such meeting or expenditure, and the approval shall be shown in the minutes of the committee.

## **Chapter 185 Section 5 Laws 2011**

SECTION 5. REPORT.--The redistricting committee shall recommend proposed redistricting plans to a special session of the fiftieth legislature called for the purpose of redistricting congressional, legislative, public regulation commission and public education commission districts.

## **Chapter 185 Section 6 Laws 2011**

SECTION 6. STAFF.--The legislative council service shall provide staff for the redistricting committee.

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Senate Bill 408, aa, w/o ec

Approved April 8, 2011

# **LAWS 2011, CHAPTER 186**

AN ACT

RELATING TO GAME AND FISH; AMENDING SECTIONS OF CHAPTER 17 NMSA 1978 TO PROVIDE FOR A CHANGE IN THE PERCENTAGES OF HUNTING LICENSES ISSUED TO NONRESIDENTS AND RESIDENTS FOR PUBLIC LAND DRAWS AND TO CHANGE CERTAIN LICENSE FEES.

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

## **Chapter 186 Section 1 Laws 2011**

SECTION 1. Section 17-1-22 NMSA 1978 (being Laws 1964 (1st S.S.), Chapter 18, Section 7, as amended) is amended to read:

"17-1-22. SECURITY--RETIREMENT OF BONDS.--

A. There is created in the state treasury the "game and fish bond retirement fund". The state game commission shall place into the game and fish bond retirement fund the sum of one dollar (\$1.00) from each license enumerated in this subsection that is sold after

April 1, 1976:

(1) resident, fishing;

- (2) resident, game hunting;
- (3) resident, deer;
- (4) resident, game hunting and fishing;
- (5) resident, trapper;
- (6) nonresident, fishing;
- (7) nonresident, game hunting;
- (8) temporary fishing, five days; and
- (9) nonresident, deer.

Such payments to the game and fish bond retirement fund shall be effective for all bonds issued under the Game and Fish Bond Act up to the maximum limitation on the amount of bonds provided in that act.

B. Money in the game and fish bond retirement fund is first pledged for the payment of principal and interest on all state game commission bonds which have been issued and are outstanding prior to June 17, 1983. Money in the game and fish bond retirement fund is further pledged for the payment of principal and interest on all state game commission bonds issued as of June 17, 1983. The issuance and sale of bonds under the Game and Fish Bond Act constitutes an irrevocable contract between the state game commission and the owner of any bond, and so long as any bond remains outstanding the fees pledged for payment shall not be reduced.

C. Bonds issued under the Game and Fish Bond Act are payable solely from the game and fish bond retirement fund, and they are not general obligations of the state.

D. The state game commission shall continue to place in the game and fish bond retirement fund the sum of one dollar (\$1.00) from each of the licenses enumerated in Subsection A of this section, even after the fund is sufficient to pay the principal and interest of the outstanding bonds and after all bonds issued have been retired."

## **Chapter 186 Section 2 Laws 2011**

SECTION 2. 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) "game hunting" entitles the licensee to hunt game birds, other than wild turkey, and squirrel during the open seasons for each and to apply for or purchase a license to hunt for deer, antelope, elk, bighorn sheep, Barbary sheep, javelina, bear, oryx, ibex, cougar and wild turkey;

(3) "deer" entitles the licensee to hunt deer during the open season;

(4) "antelope" entitles the licensee to hunt antelope during the open season;

(5) "elk" entitles the licensee to hunt elk during the open season;

(6) "bighorn sheep" entitles the licensee to hunt bighorn sheep during the open season;

(7) "Barbary sheep" entitles the licensee to hunt Barbary sheep during the open season;

(8) "javelina" entitles the licensee to hunt javelina during the open season;

(9) "bear" entitles the licensee to hunt bear during the open season;

(10) "nongame" entitles the licensee to hunt or take any animal or bird not protected by law;

(11) "temporary fishing" entitles the licensee to fish for game fish during a specific period of time indicated on the license;

(12) "oryx" entitles the licensee to hunt oryx during the open season;

(13) "ibex" entitles the licensee to hunt ibex during the open season;

(14) "cougar" entitles the licensee to hunt cougar during the open season;

(15) "turkey" entitles the licensee to hunt turkey during the open season;

(16) "special season turkey" entitles the licensee to hunt turkey during special seasons designated by the state game commission;

(17) "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;

(18) "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;

(19) "temporary game hunting" entitles the licensee to hunt game birds, except wild turkey, and squirrel during a specific period of time indicated on the license;

(20) "second rod" entitles the licensee to fish using two fishing rods to fish for game fish during the open seasons for each species; and

(21) "fishing and game hunting 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 game hunting license may be purchased by a resident who has reached the age of sixty-five years. A senior game hunting license entitles the licensee to hunt for squirrel and game birds, other than wild turkey, during the open seasons for each species and to apply for or purchase a license to hunt for deer, antelope, elk, bighorn sheep, Barbary sheep, javelina, bear, oryx, ibex, cougar and wild turkey.

H. A junior, resident or nonresident, game hunting license may be purchased by a person who has not reached the age of eighteen years. A junior game hunting license entitles the licensee to hunt for squirrel and game birds, other than wild turkey, during the open seasons for each species and to apply for or purchase a license to hunt for deer, antelope, elk, bighorn sheep, Barbary sheep, javelina, bear, oryx, ibex, cougar and wild turkey.

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 game 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 game hunting license entitles the licensee to hunt for squirrel and game birds, other than wild turkey, during the open season for each species and to apply for or purchase a license to hunt for deer, antelope, elk, bighorn sheep, Barbary sheep, javelina, bear, oryx, ibex, cougar and wild turkey.

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 or senior fishing and game hunting combination license may be purchased by a resident who is younger than eighteen years or older than sixty-five years. A junior or senior fishing and game hunting 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 and to apply for or purchase a license to hunt for deer, antelope, elk, bighorn sheep, Barbary sheep, javelina, bear, oryx, ibex, cougar and wild turkey.

P. A disabled veteran fishing and game hunting 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 game hunting 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 and to apply for or purchase a license to hunt for deer, antelope, elk, bighorn sheep, Barbary sheep, javelina, bear, oryx, ibex, cougar and wild turkey.

Q. A military game hunting and fishing license may be purchased by a member of the armed forces of the United States who, for a period of not less than ninety days immediately preceding the date of application for the license, has been domiciled in New Mexico and has not claimed residency elsewhere for any purpose. A military game hunting and fishing license entitles the licensee to hunt squirrel and game birds, other than wild turkey, and to fish for game fish during the open seasons for each species and to apply for or purchase a license to hunt for deer, antelope, elk, bighorn sheep, Barbary sheep, javelina, bear, oryx, ibex, cougar and wild turkey."

## **Chapter 186 Section 3 Laws 2011**

SECTION 3. Section 17-3-5 NMSA 1978 (being Laws 1923, Chapter 129, Section 1, as amended) is amended to read:

"17-3-5. APPLICATION FOR HUNTING OR FISHING LICENSES--CONTENTS--  
FILING.--

A. The director of the department of game and fish shall prepare and furnish blank applications for all persons applying for fishing or hunting licenses within the state. Except as provided in Subsection B or E of this section, each person, before receiving any fishing or hunting license, shall make application on a blank so provided. Among other matters that may be shown by the application, a statement shall show the exact residence of the applicant. Except as provided in Subsection B or E of this

section, the application shall be signed by the applicant. All applications for licenses shall be filed with and issued by license vendors appointed by the director. All fishing and hunting licenses and the applications therefor shall contain the place of residence of the person to whom any license may be issued.

B. License vendors, as authorized by the director of the department of game and fish, may take applications for hunting and fishing licenses or authorizations via telephone or the internet. The vendor or applicant shall fill out a license application with the same information as required for other applications. The vendor shall mail the license to the applicant, and the license shall be in the possession of the hunter or angler unless otherwise provided in Chapter 17 NMSA 1978. All money collected through telephone or internet sales shall be remitted to the director by the tenth day of the month following the sale. An individual receiving a license pursuant to this subsection is not required to sign an application prior to issuance of the license; provided, however, that the individual is subject to prosecution pursuant to Section 17-3-6 NMSA 1978 for any false or fraudulent statement or other misrepresentation as if the individual had signed an application for license.

C. Upon request, an applicant for a fishing or game hunting license shall receive an authorization number as assigned by the director of the department of game and fish through the vendor. The authorization number may be used in lieu of the actual license only by the individual who applies and meets the requirements for a license. The authorization number shall serve as a license for the purposes of Sections 17-3-1 and 17-3-17 NMSA 1978. It is a misdemeanor to hunt or fish with an invalid authorization number or a number issued to another person.

D. Each license vendor authorized to sell licenses via telephone or internet may collect the actual cost, not to exceed five dollars (\$5.00), of shipping and handling the application and license issuance.

E. The director of the department of game and fish may prepare and furnish an electronic application for all persons applying for hunting license drawings. A person making an electronic application is not required to sign an application prior to issuance of the license; provided that the person is subject to prosecution pursuant to Section 17-3-6 NMSA 1978 for any false or fraudulent statement or other misrepresentation as if the person had signed an application."

## **Chapter 186 Section 4 Laws 2011**

SECTION 4. 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, game hunting 15.00

Resident, deer 31.00

Resident, junior-senior, deer 19.00

Resident, senior, handicapped, military,  
game hunting and fishing 20.00

Resident, fishing and game hunting  
combination 30.00

Resident, junior, fishing and game  
hunting combination 15.00

Resident, disabled veteran, fishing and game hunting 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	15.00
Nonresident, junior, game hunting	15.00
Nonresident, game hunting	65.00
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, game hunting	15.00
Resident, junior, game hunting	10.00
Temporary game hunting, four days	33.00
Second rod validation	4.00."

## **Chapter 186 Section 5 Laws 2011**

SECTION 5. Section 17-3-16 NMSA 1978 (being Laws 1964 (1st S.S.), Chapter 17, Section 7, as amended) is amended to read:

"17-3-16. FUNDS--SPECIAL DRAWINGS FOR LICENSES.--

A. The director of the department of game and fish may provide special envelopes and application blanks when a special drawing is to be held to determine the persons to receive licenses. Money required to be submitted with these applications, if enclosed in the special envelopes, need not be deposited with the state treasurer but may be held by the director until the successful applicants are determined. At that time, the fees of the successful applicants shall be deposited with the state treasurer and the fees submitted by the unsuccessful applicants shall be returned to them.



B. Beginning with the licenses issued from a special drawing for a hunt code that commences on or after April 1, 2012:

(1) licenses shall be issued as follows:

(a) ten percent of the licenses to be drawn by nonresidents and residents who will be contracted with a New Mexico outfitter prior to application; and

(b) six percent of the licenses to be drawn by nonresidents who are not required to be contracted with an outfitter; and

(2) a minimum of eighty-four percent of the licenses shall be issued to residents of New Mexico.

C. If the number of applicants who apply for licenses pursuant to the provisions of Paragraphs (1) and (2) of Subsection B of this section does not constitute the allocated licenses for either category, then the additional licenses available may be granted to another category of applicants. The director shall offer first choice of undersubscribed hunts to residents, whenever practicable.

D. If the determination of the percentages in Subsection B of this section yields a fraction of:

(1) five-tenths or greater, the number of licenses to be issued shall be rounded up to the next whole number; and

(2) less than five-tenths, the number of licenses shall be rounded down to the next whole number.

E. The fee for a nonresident license for a special drawing in a high-demand hunt covered in Subsection B of this section shall be assessed at the same rate as a license for nonresident quality elk or quality deer. As used in this subsection, "high-demand hunt" means:

(1) a hunt where the total number of nonresident applicants for a hunt code in each unit exceeds twenty-two percent of the total applicants and where the total applicants for a hunt exceeds the number of licenses available based on application data indicating that this criteria occurred in each of the two immediately preceding years; or

(2) an additional hunt code designated by the department of game and fish as a quality hunt.

F. All antlerless elk hunts pursuant to this section shall be exclusively for New Mexico residents.

G. Hunts on all state wildlife management areas shall be allocated exclusively to New Mexico residents.

H. As used in this section, "New Mexico outfitter" means a person who has a business:

(1) with a valid New Mexico state, county or municipal business registration and a valid outfitter license issued by the department of game and fish;

(2) that is authorized to do and is doing outfitting business under the laws of this state;

(3) that has paid property taxes or rent on real property in New Mexico, paid gross receipts taxes and paid at least one other tax administered by the taxation and revenue department in each of the three years immediately preceding the submission of an affidavit to the department of game and fish;

(4) the majority of which is owned by the person who has resided in New Mexico during the three-year period immediately preceding the submission of an affidavit to the department of game and fish;

(5) that employs at least eighty percent of the total personnel of the business who are New Mexico residents; and

(6) that has either leased property for ten years or purchased property greater than fifty thousand dollars (\$50,000) in value in New Mexico;

(7) that, if it has changed its name from that of a previously certified business, the business is identical in every way to the previously certified business that meets all criteria;

(8) that possesses all required federal or state land use permits for the hunt; and

(9) that operates as a hunting guide service during which at least two days are accompanied with the client in the area where the license is valid."

## **Chapter 186 Section 6 Laws 2011**

SECTION 6. Section 17-3-40 NMSA 1978 (being Laws 1957, Chapter 194, Section 6) is amended to read:

"17-3-40. REGULAR LICENSES.--Residents or nonresidents may hunt on private shooting preserves when possessed of the appropriate bird or hunting license. All hunting on shooting preserves covered in the Regulated Shooting Preserve Act shall be done only with the consent of the owner of the private preserve."

## **Chapter 186 Section 7 Laws 2011**

SECTION 7. Section 20-1-8 NMSA 1978 (being Laws 2003, Chapter 136, Section 1) is amended to read:

"20-1-8. STATE BENEFITS FOR MEMBERS OF ARMED FORCES CALLED TO ACTIVE DUTY AND DEPLOYED--BENEFITS FOR SURVIVING CHILDREN OF A MEMBER KILLED IN THE LINE OF DUTY.--

A. A New Mexico resident who is a member of the New Mexico national guard or of a branch of the federal armed forces and who is called to active duty and is deployed and serves during the period beginning on the effective date of this section and ending on the date the president of the United States declares that the emergency requiring the call-up is terminated is entitled to the following benefits, notwithstanding any provision of law to the contrary:

(1) a free game hunting and fishing license for the year following the year of the member's deactivation and return to the state;

(2) an extension of one year after the return of the member to the state of the date the member is required to file a state personal income tax return if the filing date occurs while the member is on active duty and deployed;

(3) an extension for one month after the member's return to the state of the date to renew a driver's license if the renewal date occurs while the member is on active duty and deployed; and

(4) a refund or credit of tuition paid to a state post-secondary educational institution for attendance during a period when the attendance of the member was interrupted by activation and deployment.

B. The surviving children of a New Mexico resident who was a member of the New Mexico national guard or of a branch of the federal armed forces and who was killed in the line of duty after being called to active duty and deployed during the period beginning on April 3, 2003 and ending on the date the president of the United States declares that the emergency requiring the call-up is terminated are entitled to waivers of tuition for four consecutive years at a state post-secondary educational institution, notwithstanding any provision of law to the contrary."

## **Chapter 186 Section 8 Laws 2011**

SECTION 8. EFFECTIVE DATE.--The effective date of the provisions of this act is April 1, 2012.

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SFC/Senate Bill 196, aa

Approved April 8, 2011

## **LAWS 2011, HOUSE JOINT RESOLUTION 9**

### A JOINT RESOLUTION

RATIFYING AND APPROVING THE DONATION OR SALE OF REAL PROPERTY IN THE CITY OF SANTA FE.

WHEREAS, Section 13-6-2 NMSA 1978 provides that a state agency may sell or otherwise dispose of real property by negotiated sale or donation to a state educational institution; and

WHEREAS, Section 13-6-3 NMSA 1978 requires ratification and approval of any sale or trade or lease of more than twenty-five years of real property belonging to a state agency for a consideration of one hundred thousand dollars (\$100,000) or more; and

WHEREAS, the property control division of the general services department owns certain real property in the city of Santa Fe, New Mexico, described as:

Tract C, lying within the Perimeter of the former College of Santa Fe, within projected Section 34, T.17N., R.9E., N.M.P.M., Santa Fe County, New Mexico, Said Portions being more particularly described as follows:

Beginning at the most Easterly corner common to Tract C and Tract G,

Thence S20°02'9"W, 382.52 feet;

Thence S58°37'39"W, 465.30 feet to a point on a line common to Tract C and Tract D;

Thence N60°34'20"W, 74.42 feet;

Thence 194.15 feet along a curve to the right with a radius of 503.00 feet and chord of N49°30'54"W, 192.94 feet to a point on a line common to Tract C and Tract G;

Thence N56°40'38"E, 285.00 feet;

Thence N33°19'22"W, 105.00 feet;

Thence N56°40'38"E, 355.80 feet to the point of beginning, containing 4.103 Acres more or less; and

WHEREAS, the property is located at the west capitol campus adjacent to the Santa Fe university of art and design; and

WHEREAS, the Santa Fe community college has plans for construction of an approximately thirty-five-thousand-square-foot higher education center on the former college of Santa Fe campus to provide bachelor's completion and graduate programs and related student support services;

NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO that the property control division of the general services department be authorized to donate or sell the real property described in this resolution to the Santa Fe community college by negotiated sale; and

BE IT FURTHER RESOLVED that the property control division of the general services department may donate or sell the described property to the Santa Fe community college and that the donation or sale is hereby ratified and approved pursuant to the provisions of Section 13-6-2 NMSA 1978, subject to the conditions of this resolution; and

BE IT FURTHER RESOLVED that the property control division of the general services department be authorized to donate or sell the described land; and

BE IT FURTHER RESOLVED that the property shall not be donated or sold until the donation or sale has been reviewed by the capitol buildings planning commission; and

BE IT FURTHER RESOLVED that copies of this resolution be transmitted to the property control division of the general services department, the governing body of Santa Fe community college, the property tax division of the taxation and revenue department and the capitol buildings planning commission.

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HVEC/House Joint Resolution 9

## **LAWS 2011, SENATE JOINT RESOLUTION 1**

### A JOINT RESOLUTION

AUTHORIZING A DONATION OF A COMMERCIAL BUILDING AND REAL PROPERTY IN DOWNTOWN LAS CRUCES TO THE CITY OF LAS CRUCES.

WHEREAS, Section 13-6-2 NMSA 1978 authorizes the donation of real property by state agencies to local public bodies; and

WHEREAS, Section 13-6-3 NMSA 1978 requires the ratification and approval of the legislature of any sale, trade or lease for a period exceeding twenty-five years in duration of real property belonging to any state agency, which sale, trade or lease shall be for a consideration of one hundred thousand dollars (\$100,000) or more; and

WHEREAS, the property control division of the general services department owns certain real property in Dona Ana county, New Mexico, described as:

"A tract of land situate in the City of Las Cruces, Dona Ana County, New Mexico, located in Block 8, Original Townsite of Las Cruces, filed September 15, 1853, in Book 6, Page 1, Dona Ana County records, also being part of Block 14, Downtown Urban Renewal Project No. N.M.-4 filed November 29, 1973, in Book 11, Pages 74-82, Dona Ana County records and being more particularly described as follows to wit:

Beginning at a cross set on the East line of North Downtown Mall whence the Northeast corner of Block 14, Downtown Urban Renewal Project No. N.M.-4 filed November 29, 1973, in Book 11, Pages 74-82, Dona Ana County records bears N.12°34'58"W, 191.35 feet;

THENCE, from the point of beginning and along the East line of North Downtown Mall, S.12°34'58"E., 63.14 feet to a cross found on the North line of Organ Avenue for the Southeast corner of this tract;

THENCE, along the North line of Organ Avenue, S.77°46'02"W., 140.61 feet to a cross set for the Southwest corner of this tract;

THENCE, N.13°33'12"W., 65.62 feet to a cross found for the Northwest corner of this tract;

THENCE, N.78°45'48"E., 141.76 feet to the point of beginning, containing 0.209 acre tract of land, more or less. Subject to any easements and restrictions of record."; and

WHEREAS, the property control division of the general services department and the city of Las Cruces have determined that the city of Las Cruces would be the better and more proper owner of this community asset;

NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO that the property control division of the general services department be authorized to donate the real property described in this resolution to the city of Las Cruces; and

BE IT FURTHER RESOLVED that the authorization be contingent upon agreement by the parties in the conveyance document that, if the city of Las Cruces ever decides that the property is no longer needed for any municipal purpose and

should be disposed of, at the option of the state and at no cost to the state, the property shall be reconveyed by the city to the state; and

BE IT FURTHER RESOLVED that copies of this resolution be transmitted to the secretary of general services and to the mayor and the city manager of the city of Las Cruces.

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Senate Joint Resolution 1, aa

## **LAWS 2011, SENATE JOINT RESOLUTION 11**

### A JOINT RESOLUTION

PROPOSING THE TRANSFER OF STATE-OWNED REAL PROPERTY AT 206 DON PASQUAL ROAD, LOS LUNAS, NEW MEXICO, FROM THE STATE TO THE LOS LUNAS PUBLIC SCHOOL DISTRICT.

WHEREAS, Section 13-6-2 NMSA 1978 provides that a state agency may sell or otherwise dispose of real property by negotiated sale or donation to a local public body; and

WHEREAS, Section 13-6-3 NMSA 1978 provides that any sale, trade or lease for a period exceeding twenty-five years in duration of real property belonging to any state agency, which sale, trade or lease shall be for a consideration of one hundred thousand dollars (\$100,000) or more, shall be subject to the ratification and approval of the state legislature prior to the sale, trade or lease becoming effective; and

WHEREAS, the property control division of the general services department owns real property located at 206 Don Pasqual road, Los Lunas, New Mexico, more particularly described as:

"MAP 73 TRACT 9A1B CONTAINING 9.35 ACRES, MAP 69 TRACT 60 CONTAINING 1.38 ACRES and MAP 69 TRACT 107B CONTAINING 13.30 ACRES"; and

WHEREAS, it may be determined that the property is not needed by the state for any purpose and that it may be sold or donated; and

WHEREAS, the Los Lunas public school district currently uses the real property for use as the Katherine Gallegos elementary school; and

WHEREAS, the real property has a value in excess of one hundred thousand dollars (\$100,000);





Hector H. Balderas, Democrat	State Auditor
James B. Lewis, Democrat	State Treasurer
Gary K. King, Democrat	Attorney General
Ray Bennett Powell, Democrat	Commissioner of Public Lands
Jason A. Marks, Democrat	Public Regulation Commissioner, District 1
Patrick H. Lyons, Republican	Public Regulation Commissioner, District 2
Jerome D. Block, Jr., Democrat	Public Regulation Commissioner, District 3
Theresa Becenti-Aguilar, Democrat	Public Regulation Commissioner, District 4
Ben R. Hall, Republican	Public Regulation Commissioner, District 5

## **JUSTICES OF THE SUPREME COURT**

Charles W. Daniels, Chief Justice

Patricio M. Serna

Petra Jimenez Maes

Richard C. Bosson

Edward L. Chavez

## **JUDGES OF THE COURT OF APPEALS**

Celia Foy Castillo, Chief Judge

James J. Wechsler

Michael D. Bustamante

Jonathan B. Sutin

Cynthia A. Fry

Roderick T. Kennedy

Michael E. Vigil

Robert E. Robles

Linda M. Vanzi

Timothy L. Garcia

## **DISTRICT COURTS**

## **DISTRICT JUDGES**

### **FIRST JUDICIAL DISTRICT**

#### **Santa Fe, Los Alamos & Rio Arriba Counties**

Division	I	Barbara J. Vigil	Santa Fe
Division	II	Sarah M. Singleton	Santa Fe
Division	III	Raymond Z. Ortiz	Santa Fe
Division	IV	Michael Vigil	Santa Fe
Division	V	Sheri A. Raphaelson	Santa Fe
Division	VI	Stephen D. Pfeffer	Santa Fe
Division	VII	T. Glenn Ellington	Santa Fe
Division	VIII	Mary L. Marlowe Sommer	Santa Fe

### **SECOND JUDICIAL DISTRICT**

#### **Bernalillo County**

Division	I	William E. Parnall	Albuquerque
Division	II	Stan Whitaker	Albuquerque
Division	III	Maria M. Zamora	Albuquerque
Division	IV	Beatrice Brickhouse	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	Gerard J. Lavelle	Albuquerque
Division	XII	Clay Pace Campbell	Albuquerque
Division	XIII	Valerie A. Huling	Albuquerque
Division	XIV	Reed S. Sheppard	Albuquerque
Division	XV	Alan M. Malott	Albuquerque
Division	XVI	Carl J. Butkus	Albuquerque
Division	XVII	Nan G. Nash	Albuquerque
Division	XVIII	Denise Barela-Shepherd	Albuquerque
Division	XIX	Albert S. "Pat" Murdoch	Albuquerque
Division	XX	Jacqueline D. Flores	Albuquerque
Division	XXI	Alisa Hadfield	Albuquerque
Division	XXII	Deborah Davis Walker	Albuquerque
Division	XXIII	Shannon Bacon	Albuquerque
Division	XXIV	Kenneth H. Martinez	Albuquerque
Division	XXV	Elizabeth Whitefield	Albuquerque
Division	XXVI	Charles W. Brown	Albuquerque

### **THIRD JUDICIAL DISTRICT**

#### **Doña Ana County**

Division	I	Manuel I. Arrieta	Las Cruces
Division	II	Susan M. Riedel	Las Cruces
Division	III	Mike Murphy	Las Cruces
Division	IV	Jacinto Palomino	Las Cruces

Division	V	Lisa C. Schultz	Las Cruces
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Division	VI	Jim T. Martin	Las Cruces
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Division	VII	Douglas R. Driggers	Las Cruces
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Division	VIII	Fernando R. Macias	Las Cruces
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#### **FOURTH JUDICIAL DISTRICT**

##### **Guadalupe, Mora & San Miguel Counties**

Division	I	Eugenio S. Mathis	Las Vegas
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Division	II	Abigail Aragon	Las Vegas
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Division	III	Matthew J. Sandoval	Las Vegas
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#### **FIFTH JUDICIAL DISTRICT**

##### **Lea, Eddy & Chaves Counties**

Division	I	J. Richard Brown	Carlsbad
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Division	II	Freddie J. Romero	Roswell
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Division	III	William G. Shoobridge	Lovington
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Division	IV	Mark T. Sanchez	Lovington
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Division	V	Jane Shuler Gray	Carlsbad
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Division	VI	Ralph D. Shamas	Roswell
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Division	VII	Gary L. Clingman	Lovington
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Division	VIII	Charles C. Currier, III	Roswell
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Division	IX	Thomas A. Rutledge	Carlsbad
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Division	X	Steven L. Bell	Chaves
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#### **SIXTH JUDICIAL DISTRICT**

##### **Grant, Hidalgo & Luna Counties**

Division	I	Henry R. Quintero	Silver City
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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. Sweazea	Estancia

## **EIGHTH JUDICIAL DISTRICT**

### **Colfax, Union & Taos Counties**

Division	I	John M. Paternoster	Raton
Division	II	Sam B. Sanchez	Taos

## **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	Farmington
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	Bill Brogan	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 Martinez 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 Amy Orlando Doña Ana

Fourth Judicial District Richard D. Flores San Miguel, Guadalupe & Mora

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 Division 1: San Juan

Karl R. Gillson 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 FIFTIETH LEGISLATURE**

### **STATE OF NEW MEXICO**

#### **FIRST SESSION**

**CONVENED JANUARY 18, 2011**

<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 & Torrance	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	
Park	19	Bernalillo, Sandoval, Santa Fe & Torrance	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	Linda M. Lovejoy	
	23	Bernalillo & Sandoval Albuquerque	Sander Rue	
Fe	24	Santa Fe	Nancy Rodriguez	Santa
Fe	25	Santa 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
Cruces	31	Doña Ana	Cynthia L. Nava	Las
	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	
Cruces	38	Doña Ana	Mary Kay Papen	Las
Jose	39	Los Alamos, Mora, Sandoval, San Miguel, Santa Fe & Taos	Phil A. Griego	San
	40	Doña Ana & Otero Tularosa	William F. Burt	
	41	Eddy & Lea	Carroll H. Leavell	Jal
	42	Chaves, Curry, Eddy, Lea & Roosevelt Hobbs	Gay G. Kernan	

## STATE REPRESENTATIVES SERVING IN THE FIFTIETH LEGISLATURE

### STATE OF NEW MEXICO

### FIRST SESSION

CONVENED JANUARY 18, 2011

<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 Crownpoint	Sandra D. Jeff	
6	Cibola & McKinley	Eliseo Lee Alcon	Tome
7	Valencia	David C. Chavez	Belen

8	Valencia	Alonzo Baldonado	Belen
9	McKinley & San Juan	Patricia A. Lundstrom	Gallup
10	Bernalillo & Valencia Albuquerque	Henry "Kiki" Saavedra	
11	Bernalillo Albuquerque	Rick S. Miera	
12	Bernalillo Albuquerque	Ernest H. Chavez	
13	Bernalillo Albuquerque	Eleanor Chavez	
14	Bernalillo Albuquerque	Miguel P. Garcia	
15	Bernalillo Albuquerque	Bill B. O'Neill	
16	Bernalillo Albuquerque	Antonio "Moe" Maestas	
17	Bernalillo Albuquerque	Edward C. Sandoval	
18	Bernalillo Albuquerque	Gail Chasey	
19	Bernalillo Albuquerque	Sheryl Williams Stapleton	
20	Bernalillo Albuquerque	James P. White	
21	Bernalillo Albuquerque	Mimi Stewart	
22	Bernalillo, Sandoval & Santa Fe Cedar Crest	James E. Smith	
23	Bernalillo & Sandoval Corrales	David L. Doyle	
24	Bernalillo Albuquerque	Conrad D. James	

	25	Bernalillo Albuquerque	Danice R. Picraux	
	26	Bernalillo Albuquerque	Al Park	
	27	Bernalillo Albuquerque	Larry A. Larrañaga	
	28	Bernalillo Albuquerque	Jimmie C. Hall	
	29	Bernalillo Albuquerque	Thomas A. Anderson	
	30	Bernalillo Albuquerque	Nathaniel "Nate" Gentry	
	31	Bernalillo Albuquerque	William "Bill" R. Rehm	
	32	Luna Deming	Dona G. Irwin	
	33	Doña Ana	Joni Marie Gutierrez	Mesilla
Cruces	34	Doña Ana	Mary Helen Garcia	Las
Cruces	35	Doña Ana	Antonio Lujan	Las
	36	Doña Ana Hatch	Andrew "Andy" Nuñez	
Cruces	37	Doña Ana	Terry H. McMillan	Las
	38	Grant, Hidalgo & Sierra Silver City	Dianne Hamilton	
	39	Grant & Hidalgo	Rodolpho 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
Alamos	43	Los Alamos, Sandoval & Santa Fe	Jeannette O. Wallace	Los
	44	Sandoval Corrales	Jane E. Powdrell-Culbert	
Fe	45	Santa Fe	Jim R. Trujillo	Santa
Fe	46	Santa Fe	Ben Lujan	Santa
Fe	47	Santa Fe	Brian F. Egolf, Jr.	Santa
	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	Yvette Herrell	
Cruces	52	Doña Ana	Joseph Cervantes	Las
Cruces	53	Doña Ana & Otero	Ricky L. Little	Las
	54	Eddy & Otero Artesia	William J. Gray	
	55	Eddy Carlsbad	Cathrynn N. Brown	
	56	Lincoln & Otero Ruidoso	Zachary J. Cook	
	57	Chaves, Lincoln & Otero Roswell	Dennis J. Kintigh	

58	Chaves Roswell	Candy Spence Ezell	
59	Chaves, Lincoln & Otero Roswell	Nora Espinoza	
60	Sandoval Rancho	Timothy Dwight Lewis	Rio
61	Lea Lovington	Shirley A. Tyler	
62	Lea	Donald E. Bratton	Hobbs
63	DeBaca, Curry, Guadalupe & Roosevelt Santa Rosa	George Dodge Jr.	
64	Curry Clovis	Anna M. Crook	
65	Bernalillo, McKinley, Rio Arriba, Jemez Pueblo  & Sandoval	James Roger Madalena	
66	Chaves, Eddy, Lea & Roosevelt Roswell	Bob R. Wooley	
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	